INTERMEDIATE : PAPER - 7

DIRECT TAXATION GROUP - I

INTERMEDIATE

STUDY NOTES

The Institute of Cost Accountants of India
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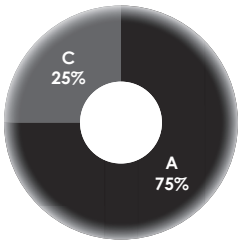
Syllabus

PAPER 7: DIRECT TAXATION (DTX)

Syllabus Structure

The syllabus comprises the following topics and study weightage:

A	Income Tax	75%
B	Wealth Tax [Wealth Tax Act has been abolished w.e.f. A.Y. 2016-2017]	
C	International Taxation	25%



ASSESSMENT STRATEGY

There will be written examination paper of three hours.

OBJECTIVES

To gain knowledge about the direct tax laws in force for the relevant previous year and to provide an insight into procedural aspects for assessment of tax liability for various assessees.

Learning Aims

The syllabus aims to test the student's ability to:

- Understand the basic principles underlying the Income Tax Act and Wealth Tax Act
- Compute the taxable income of an assessee
- Analyze the assessment procedure and representation before appropriate authorities under the law
- Apply the Generally Accepted Cost Accounting Principles and Techniques for determination of arm's length price for domestic and international transactions

Skill set required

Level B: Requiring the skill levels of knowledge, comprehension, application and analysis.

Note : Subjects related to applicable statutes shall be read with amendments made from time to time.

Section A : Income Tax	**75%**
1. Income Tax Act, 1961 – (a) Basic Concepts and definitions (b) Tax Accounting Standards (by the Central Board of Direct Taxes)	
2. Income which do not form part of Total Income (Section 10, 10A, 10B and 11-13A)	
3. Heads of Income and Computation of Total Income under various heads	
4. Income of other Persons included in Assessee's Total Income; Aggregation of Income and Set off or Carry Forward of Losses; Deductions in computing Total Income; Rebates and Reliefs; Applicable rates of Tax and Tax Liability	
5. Taxation of Individuals including Non-residents, Hindu Undivided Family, Firms, LLP, Association of Persons, Co-operative Societies, Trusts, Charitable and Religious Institutions	
6. Corporate Taxation – classification, Tax Incidence, computation of Taxable Income and Assessment of Tax Liability, Dividend Distribution Tax (DDT), Minimum Alternate Tax and other Special provisions relating to Companies	
7. Tax Deduction at Source, Tax Collection at Source, Recovery and Refund of Tax, Advance Tax, Refunds	
8. Tax Planning and Tax Management	
Section B : Wealth Tax	
9. Wealth Tax Act, 1957 [Wealth Tax Act has been abolished w.e.f. A.Y. 2016-2017]	
Section C : International Taxation	**25%**
10. (a) Basic concepts of International Taxation and Transfer Pricing (b) General Anti-Avoidance Rules (GAAR) – concept and application (c) Advance Pricing Agreement (APA) – concept and application	

SECTION A: INCOME TAX [75 MARKS]

1. Income Tax Act, 1961 –

(a) Basic Concepts and definitions

(i) Background, concepts, definitions

(ii) Capital and revenue – receipts, expenditures

(iii) Basis of charge and scope of total income

(iv) Residential Status and Incidence of Tax

(b) Tax Accounting Standards by the Central Board of Direct Taxes (CBDT)

2. Incomes which do not form part of Total Income [Sec.10, 10A, 10B and 11 to 13A]

3. Heads of Income and Computation of Total Income under various heads

(a) Income from Salaries

(b) Income from House Property

(c) Profits and gains from Business or Profession

(d) Capital Gains

(e) Income from Other Sources

4. Income of other persons included in Assessee's Total Income; Aggregation of Income and Set off or Carry Forward of Losses; Deductions in computing Total Income; Rebates & Reliefs; Applicable Rates of Tax and Tax Liability

5. Taxation of Individuals including Non-residents, Hindu Undivided Family, Firms, LLP, Association of Persons, Co-operative Societies, Trusts, Charitable and Religious Institutions

6. Corporate Taxation – classification, tax incidence, computation of taxable income and assessment of tax liability, Dividend Distribution Tax (DDT), Minimum Alternate Tax and other special provisions relating to companies

7. Tax Deduction at Source, Tax Collection at Source, Recovery and Refund of Tax, Advance Tax, Refunds

8. Tax Planning and Tax Management

(a) Tax Planning:

(i) Concept and application

(ii) For setting up new business units - study of location, nature of business, tax holiday offered [with special reference to provisions in Chapter VIA of the Act]

(iii) Tax incentives and Export Promotion Schemes, other applicable tax benefits and exemptions

(b) Tax Management

(i) Computation of income and Return of Income Tax, Filing procedure, e-filing

(ii) Assessment, Reassessment, Appeals, Revisions, Review rectifications, Settlement of cases

(iii) Special procedure for assessment of Search cases

(iv) E-commerce transactions, Liability in Special cases

(v) Penalties, Fines and Prosecution

SECTION B: WEALTH TAX

9. Wealth Tax Act, 1957

Wealth Tax Act has been abolished w.e.f. A.Y. 2016-2017

SECTION - C - INTERNATIONAL TAXATION [25 MARKS]

10. International Taxation and Transfer Pricing

(a) Basic concepts of International Taxation and Transfer Pricing

(i) Residency issues, source of income, tax heavens, withholding tax, unilateral relief, double taxation avoidance agreements

(ii) Transfer Pricing – concepts, meaning of International transactions

(iii) Costing Issues in Transfer Pricing

(iv) Computation of Arm's length Price – methods

(v) Governance through application of generally accepted cost accounting principles and techniques for assessment of arm's length price – a measure to curb revenue leakages/tax evasion

(vi) Reference to Cost Accounting Records and Cost Audit Reports.

(b) General Anti-Avoidance Rules (GAAR) – concept and application

(c) Advance Pricing Agreement (APA) – concept and application

Content

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Study Note 6 : Profits and Gains of Business or Profession

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Study Note 14 : Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT)

Study Note 15 : Return of Income

Study Note 16 : Assessment Procedure

Study Note 17 : Assessment of Various Entities & Tax Planning

Study Note 18 : Grievances Redressal Procedure

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SECTION B - WEALTH TAX

Study Note 28 : Wealth Tax

SECTION C - INTERNATIONAL TAXATION & TRANSFER PRICING

Study Note 29 : Taxation of International Transactions

AMENDMENTS BROUGHT IN BY THE FINANCE ACT, 2015

AMENDMENTS MADE IN INCOME-TAX ACT

Rates of income-tax for Assessment Year 2016-17

1. Normal rates of Income Tax

(A) (I) In the case of every Individual (other than those covered in part (II) or (III) below) or Hindu undivided family or AOP/BOI (other than a co-operative society or any other AOP or BOI which is taxable at maximum marginal rate) whether incorporated or not, or every artificial judicial person

Upto ₹ 2,50,000	Nil
₹ 2,50,010 to ₹ 5,00,000	10%
₹ 5,00,010 to ₹ 10,00,000	20%
Above ₹10,00,000	30%

II. In the case of every individual, being a resident in India, who is of the age of 60 years or more but less than 80 years at any time during the previous year.

Upto ₹ 3,00,000	Nil
₹3,00,010 to ₹5,00,000	10%
₹5,00,010 to ₹ 10,00,000	20%
Above ₹ 10,00,000	30%

III. In the case of every individual, being a resident in India, who is of the age of 80 years or more at any time during the previous year.

Upto ₹ 5,00,000	Nil
₹5,00,010 to ₹10,00,000	20%
Above ₹ 10,00,000	30%

Note:-

1. **Special rates of income tax:** Besides the normal rates, special rates of tax are applicable in case of certain incomes in the hands of various persons. These rates are given in Chapter XII of the Income Tax Act which are covered under sections 111A to 115BBE.
2. **Rebate of income tax under section 87A:** This rebate is allowed to an individual who is resident in India and whose total income (including the income taxable at special rates) does not exceed ₹5,00,000. The rebate available shall be 100% of income tax payable (before cess) or ₹2,000, whichever is less.

Surcharge: The amount of income-tax computed in accordance with the above normal and special rates shall be increased by a surcharge at the rate of 12% of such income-tax in case of a person referred to in clause (A) above having a total income exceeding ₹1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹1 crore.

Cess: 'Education Cess' @ 2%, and 'Secondary and Higher Education Cess (SHEC)' @ 1% on income tax (inclusive of surcharge if applicable) shall be chargeable.

Illustration 1.

Marginal relief

The total income of R for the assessment year 2016-17 is ₹ 1,01,20,000. Compute the tax payable by R for the assessment year 2016-17.

	₹	₹
Tax on ₹ 1 crore		
On first ₹2,50,000		Nil
Next ₹2,50,000 — 10%		25,000
Next ₹5,00,000 — 20%		1,00,000
Balance ₹90,00,000 — 30%		27,00,000
		28,25,000
Tax on ₹ 1,20,000 which is above ₹1 crore (₹ 1,20,000 @ 30%)		36,000
Total tax		28,61,000
Additional income above ₹1 crore	1,20,000	
Tax payable	36,000	
Balance income	84,000	
Surcharge on ₹28,61,000 @ 12% — ₹3,43,320		
∴ Surcharge in this case shall be ₹84,000 or ₹3,43,320 whichever is less due to marginal relief		84,000
Tax including surcharge		29,45,000
Add: Education cess & SHEC @ 3%		88,350
		30,33,350

Illustration 2.

What shall be your answer if the total income is ₹ 1,04,50,000 instead of ₹1,01,20,000.

		₹
Tax on ₹ 1 crore (as above)		28,25,000
Tax on ₹4,50,000 which is above ₹1 crore		1,35,000
		29,60,000
Additional income above ₹1 crore	4,50,000	
Less: Tax payable @ 30%	1,35,000	
Balance income	3,15,000	
Surcharge @ 12% on ₹ 29,60,000	3,55,200	
∴Surcharge in this case shall be ₹ 3,15,000 or ₹ 3,55,200 whichever is less		3,15,000
		32,75,000
Add: Education cess & SHEC @ 3%		98,250
		33,73,250

Illustration 3.

What will be your answer if the total income is ₹ 1,06,00,000

		₹
Tax on ₹ 1 crore		28,25,000
Tax on ₹ 6,00,000		1,80,000
Total tax		30,05,000
Additional income above ₹ 1 crore	6,00,000	
Less: Tax payable @ 30%	1,80,000	
Balance income	4,20,000	
Surcharge @ 12% on ₹ 30,05,000	3,60,600	
∴Surcharge in this case shall be ₹ 4,20,000 or ₹ 3,60,600 whichever is less (In this case there is no marginal relief)		3,60,600
		33,65,600
Add: Education cess & SHEC @ 3%		1,00,968
		34,66,568

(B) In the case of every co-operative society

(1) where the total income does not exceed ₹ 10,000	10% of the total income;
(2) where the total income exceeds ₹ 10,000 but does not exceed ₹ 20,000	₹ 1,000 plus 20% of the amount by which the total income exceeds ₹ 10,000;
(3) where the total income exceeds ₹20,000	₹3,000 plus 30% of the amount by which the total income exceeds ₹20,000.

Surcharge: The amount of income-tax computed as per the normal and special rates shall be increased by a surcharge at the rate of 12% of such income-tax in case of a co-operative society having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Cess: 'Education Cess' @ 2% and SHEC @ 1% on income tax (inclusive of surcharge if applicable) shall be chargeable.

(C) In case of any firm (including limited liability partnership) — 30%.

Surcharge: The amount of income-tax computed as per the normal and special rates shall be increased by a surcharge at the rate of 12% of such income-tax in case of a firm having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹1 crore by more than the amount of income that exceeds ₹ 1 crore.

Cess: 'Education Cess' @ 2% and SHEC @ 1% on income tax (inclusive of surcharge if applicable) shall be chargeable.

(D) In the case of a company

(i) For domestic companies: 30%.

Surcharge: The surcharge @ 7% of income tax computed as per the normal and special rates shall be levied if the total income of the domestic company exceeds ₹ 1 crore but does not exceed ₹10 crore.

The surcharge at the rate of 12% of income tax computed as per the normal and special rates shall be levied if the total income of the domestic company exceeds ₹10 crore.

Marginal relief: However, the total amount payable as income-tax and surcharge on total income exceeding ₹1 crore but not exceeding ₹10 crore, shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore, by more than the amount of income that exceeds ₹1 crore. The total amount payable as income-tax and surcharge on total income exceeding ₹10 crore, shall not exceed the total amount payable as income-tax and surcharge on a total income of ₹10 crore, by more than the amount of income that exceeds ₹10 crore.

Cess: 'Education Cess' @ 2%, and 'Secondary and Higher Education Cess' @ 1% on income tax (inclusive of surcharge if applicable) shall be chargeable.

(ii) For foreign company: 40%.

Surcharge: In case of companies other than domestic companies, the surcharge of 2% of income tax computed as per the normal and special rates shall be levied if the total income of such company exceeds ₹ 1 crore but does not exceed ₹10 crore.

The surcharge at the rate of 5% of income tax computed as per the normal and special rates shall be levied if the total income of the company other than domestic company exceeds ₹10 crore.

Marginal relief: However, the total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore but not exceeding ₹10 crore, shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore, by more than the amount of income that exceeds ₹1 crore. The total amount payable as income-tax and surcharge on total income exceeding ₹10 crore, shall not exceed the total amount payable as income-tax and surcharge on a total income of ₹10 crore, by more than the amount of income that exceeds ₹10 crore.

Cess: 'Education Cess' @ 2%, and 'Secondary and Higher Education Cess' @ 1% on income tax (inclusive of surcharge if applicable) shall be chargeable.

Amendments relating to Definitions

2. Amendment to section 2(13A)

Section 2(13A) defines "business trust". It has been amended with effect from the assessment year 2016-17. Under the amended definition "business trust" means a trust registered as,-

a. an Infrastructure Investment Trust under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 made under the SEBI Act; or

b. a Real Estate Investment Trust under the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 made under the SEBI Act, and

the units of which are required to be listed on a recognized stock exchange in accordance with the aforesaid regulations.

3. Rationalisation of definition of charitable purpose in the Income-tax Act [Section 2(15)] [W.e.f. A.Y. 2016-17]

(A) Yoga to be treated as separate limb of charitable purpose

The activity of Yoga has been one of the focus areas in the present times and international recognition has also been granted to it by the United Nations. Therefore, the Act has included 'yoga' as a separate category in the definition of charitable purpose on the lines of education.

Thus, 'yoga' like relief to the poor, education, medical relief, etc. will constitute an independent limb of charitable purpose and the trust can carry on commercial activities without any financial limit if such activity is incidental to the attainment of the objectives of the trust.

(B) Trust/institution covered under advancement of any other object of general public utility can do commercial activities upto 20% of its total receipts as against ₹25,00,000 allowed earlier

In so far as the advancement of any other object of general public utility is concerned, there is a need to ensure appropriate balance being drawn between the object of preventing business activity in the garb of charity and at the same time protecting the activities undertaken by the genuine organization as part of actual carrying out of the primary purpose of the trust or institution.

The Act has, therefore, merged the first and second provisos given under section 2(15) relating to the definition of charitable purpose to provide that the advancement of any other object of general public utility **shall not be a charitable purpose,** if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, **unless,**—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; **and**

(ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year.

4. Subsidy or grant or cash incentive, duty drawback etc. deemed to be income [Section 2(24)(xviii)] [W.e.f. A.Y. 2016-17]

The Finance Act, 2015 has inserted clause (xviii) in section 2(24) which provides as under:

"assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to section 43(1)." shall be deemed to be income.

Amendments relating to determination of residential status

5. CBDT empowered to prescribe the manner and procedure for computing period of stay in India of an Indian citizen who is a member of the crew of a foreign bound ship [Explanation 2 to section 6(1) inserted] [W. r. e. f. A.Y. 2015-16]

The provisions of section 6(1) provide the conditions under which an individual is held to be resident in India. The determination is based, inter alia, on the number of days during which such individual has been in India during a previous year.

In the case of foreign bound ships, where the destination of the voyage is outside India, there is uncertainty with regard to the manner and basis of determination of the period of stay in India for crew members of such ships who are Indian citizens.

In view of the above, the Act has inserted Explanation 2 to section 6(1) to provide that in the case of an Individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.

6. The conditions for determining residential status in respect of a company amended [Substitution of section 6(3)] [W.e.f. A.Y. 2016-17]

The Act has substituted the existing clause (3) to section 6 by a new clause (3) to provide as under:

A company shall be said to be resident in India in any previous year, if—

(i) it is an Indian company; or

(ii) d uring that year, the control and management of its affairs is situated wholly in India.

Further, the Act has inserted the following Explanation under section 6(3) to define the place of effective management.

"For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made."

Since POEM is an internationally well accepted concept, there are well recognised guiding principles for determination of POEM although it is a fact dependent exercise. However, in due course, a set of guiding principles to be followed in determination of POEM would be issued for the benefit of the taxpayers as well as, tax administration.

Amendments relating to income deemed to accrue or arise in India

7. Modifications pertaining to indirect transfer provisions [Sec. 9(1)(i)]

Section 9(1)(i) provides a set of circumstances in which income accruing or arising, directly or indirectly, is taxable in India. The said clause provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situated in India shall be deemed to accrue or arise in India.

Modifications by the Finance Act, 2012 - The Finance Act, 2012 inserted certain clarificatory amendments in the provisions of section 9. The amendments, inter alia, included insertion of the Explanation 5 to section 9(1)(i) with retrospective effect from the assessment year 1962-63. The Explanation 5 (clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India, shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

- Meaning of the expression "substantially" -The Delhi High Court in the case of DIT v. Copal Research Ltd. [2014] 49 taxmann.com 125 (Delhi) examined the meaning of expression "substantially" and concluded that the expression "substantially" would necessarily have to be read as synonymous to "principally", "mainly" or at least "majority", Explanation 5 must be read restrictively and at best to cover situations where in substance the assets in India are transacted by transferring in shares of overseas holding companies and not to transactions where assets situated overseas are transacted which also derive some value on account of assets situated in India. In view of the above, the court held that gains arising from sale of a share of a company incorporated overseas, which derives less than 50 per cent of its value from assets situated in India would certainly not be taxable under section 9(1)(i), read with the Explanation 5 thereto.

Amendment - Considering the concerns raised by various stakeholders regarding the scope and impact of the above amendments, an Expert Committee under the Chairmanship of Dr. Parthasarathi Shome was constituted by the Government to go into various aspects relating to the amendments. The recommendations of the Expert Committee were considered and a number of recommendations (either in full or with partial modifications) have been accepted for implementation either by way of an amendment to the Act or by way of issuance of a clarificatory circular in due course. In order to give effect to the recommendations, the following amendments have been made (with effect from the assessment year 2016-17) to section 9 (and other sections) relating to indirect transfer -

"Substantial" - The share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date the value of Indian assets,-

a. exceeds the amount of ₹ 10 crore; and

b. represents at least 50 per cent of the value of all the assets owned by the company or entity.

Value of asset - Value of an asset shall mean the fair market value of such an asset without reduction of liabilities, if any, in respect of the asset.

Specified date - The specified date of valuation shall be the date on which the accounting period of the company or entity ends (i.e., March 31 or accounting period end date, as the case may be) preceding the date of transfer. If, however, the book value of the assets of the company or entity on the date of transfer exceeds by at least 15 per cent of the book value of the assets as on the last balance sheet date preceding the date of transfer, then instead of the date mentioned above, the date of transfer shall be the specified date of valuation.

Mode of determination of fair market value - The manner of determination of fair market value of the Indian assets vis-a-vis global assets of the foreign company shall be prescribed in the rules.

Taxation on proportionate basis - The taxation of gains arising on transfer of a share or interest deriving, directly or indirectly, its value substantially from assets located in India will be on proportional basis. The method for determination of proportionality will be specified in the rules.

Exemption in case foreign entity that is transferred directly owns Indian assets - Exemption shall be available to the transferor of a share of, or interest in, a foreign entity if the transferor (along with its associated enterprises) -

a. neither holds the right of control or management;

b. nor holds voting power or share capital or interest exceeding 5 per cent of the total voting power or total share capital,

in the foreign company or entity directly holding the Indian assets.

Exemption in case foreign entity that is transferred indirectly owns Indian assets through another company - In case the transfer is of snares or interest in a foreign entity which does not hold the Indian assets directly then the exemption shall be available to the transferor if the transferor (along with its associated enterprises),-

a. neither holds the right of management or control in relation to such company or the entity,

b. nor holds any rights in such company which would entitle it to either exercise control or management of the direct holding company or entity or entitle it to voting power exceeding 5 per cent in the direct holding company or entity.

Exemption in the case of amalgamation/demerger - The transfer of shares in a foreign company (deriving value of assets substantially from assets situated in India) on account of amalgamation/demerger of foreign companies will be exempt from tax subject to the satisfaction of the following conditions of section 47(viab)/(vicc) –

In case of amalgamation	In case of demerger
1. At least 25 per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company.	1. The shareholders, holding not less than 75 per cent in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company.
2. Such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated.	2. Such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated.
	3. The provisions of sections 391 to 394 of the Companies Act, 1956 shall not apply in case of demergers given above.

Reporting obligation on Indian concern - There shall be a reporting obligation on Indian concern through or in which the Indian assets are held by the foreign company or the entity. The Indian entity shall be obligated to furnish information relating to the off-shore transaction having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity. In case of any failure on the part of Indian concern in this regard a penalty shall be leviable. The quantum of penalty in such case shall be -

a. a sum equal to 2 per cent of the value of the transaction in respect of which such failure has taken place in case where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; and

b. a sum of ₹ 5 lakh in any other case.

Example:

Consider the case given below -

Who is transferor	N Inc. (a company incorporated in country N)
Who is transferee	C Inc. (a company incorporated in country C)
What is transferred by N Inc.	Shares in E Inc.
In which country E Inc. is located	E Inc. is located in country E
Where shares are transferred	In country N or C or E or any other country (but not in India)
Where sale proceeds of shares are received by Nine.	Sale proceeds of shares are received in US Dollars in a country outside India
What is Indian connection in this transfer	E Inc. has assets (tangible/intangible) located in India
Whether capital gain arising to N Inc. is taxable in India	It depends upon additional information which is given below.

	Situation 1	**Situation 2**	**Situation 3**	**Situation 4**	**Situation 5**	**Situation 6**
Date of transfer	June 25, 2015	June 25, 2015	June 25, 2015	June 25, 2015	June 25, 2015	June 25, 2015
Last date of the accounting period of E Inc.	December 31,2014	December 31,2014	December 31,2014	December 31,2014	December 31,2014	December 31,2014
Book value of assets of E Inc. on June 25, 2015						
- located in India	₹ 56 crore	₹ 59 crore	₹ 57 crore	₹ 10 crore	₹ 11 crore	₹ 10 crore
- located outside India	₹ 58 crore	₹ 57 crore	₹ 59 crore	₹ 5 crore	₹ 7 crore	₹ 8 crore
Book value of assets of E Inc. on December 31, 2014						
- located in India	₹ 60 crore	₹ 60 crore	₹ 60 crore	₹ 11 crore	₹ 10 crore	₹ 11 crore
- located outside India	₹ 40 crore	₹ 40 crore	₹ 40 crore	₹ 7 crore	₹ 5 crore	₹ 4 crore

E Inc. has liabilities (pertaining to these assets) which are situated in India and outside India. There is no amalgamation or demerger of N Inc. and C Inc. N Inc. owns (individually and along with its associated enterprises) more than 5 per cent shares in E Inc. during 12 months ending on the date of transfer. However, N Inc. does not hold right of management or control in relation to E Inc. at any time during 12 months ending on the date of transfer. Book value of assets and fair market value of assets are the same.

Solution:

		Situation 1	Situation 2	Situation 3	Situation 4	Situation 5	Situation 6
Book value of global assets of E Inc. on December 31, 2014 (i.e., last date of accounting year immediately before date of transfer)	(a)	₹ 100 crore	₹ 100 crore	₹ 100 crore	₹ 18 crore	₹ 15 crore	₹ 15 crore
Book value of global assets of E Inc. on June 25, 2015 (i.e., date of transfer)	(b)	₹ 114 crore	₹ 116 crore	₹ 116 crore	₹ 15 crore	₹ 18 crore	₹ 18 crore
Whether (b) exceeds (a) by more than 15% of (a)	(c)	No	Yes	Yes	No	Yes	Yes
Specified date [it is last date of accounting year, if (c) is "No"] (otherwise it is date of transfer)	(d)	December 31,2014	June 25, 2015	June 25, 2015	December 31,2014	June 25, 2015	June 25, 2015
Fair market value of assets owned by E Inc. in India on specified date	(e)	₹ 60 crore	₹ 59 crore	₹ 57 crore	₹ 11 crore	₹ 11 crore	₹ 10 crore
Fair market value of assets owned by E Inc. outside India on specified date	(f)	₹ 40 crore	₹ 57 crore	₹ 59 crore	₹ 7 crore	₹ 7 crore	₹ 8 crore
Percentage of Indian assets of E Inc. on specified date [(e) ÷ {(e) + (f)}]	(g)	60%	50.86%	49.14%	61.11%	61.11%	55.56%
Whether income of N Inc. from transfer of shares in E Inc. is chargeable to tax in India		Yes [Note 1]	Yes [Note 1]	No [Note 2]	Yes [Note 1]	Yes [Note 1]	No [Note 3]

Notes -

1. Income of N Inc. in respect of transfer of shares in E Inc. outside India is taxable in India on proportionate basis, as the transaction satisfies the following conditions -
   a. fair market value of Indian assets of E Inc. on the specified date is more than ₹ 10 crore;
   b. Indian assets of E Inc. on the specified date are more than 50% of its global assets;
   c. transfer of shares is not on account of amalgamation/demerger of N Inc. and C Inc.;
   d. N Inc. owns (individually and along with its associated enterprises) more than 5 per cent shares in E Inc.
2. Indian assets of E Inc. on the specified date are not more than 50% of its global assets. Consequently, nothing is taxable in India in the hands of N Inc.
3. The fair market value of Indian assets of E Inc. on the specified date is not more than ₹10 crore. Consequently, nothing is taxable in India in the hands of N Inc.

Example:

In example above, assume that fair market value of assets is different from book value of assets. Fair market value of assets is given below (no change in book value as given in the original example) -

	Situation 1	Situation 2	Situation 3	Situation 4	Situation 5	Situation 6
Fair market value of assets of E Inc. on June 25, 2015						
– located in India	₹ 85 crore	₹ 60 crore	₹ 69 crore	₹ 17 crore	₹ 12 crore	₹ 11 crore
– located outside India	₹ 90 crore	₹ 58 crore	₹ 67 crore	₹ 8 crore	₹ 9 crore	₹ 10 crore

Fair market value of assets of E Inc. on December 31, 2014						
- located in India	₹ 70 crore	₹ 61 crore	₹ 61 crore	₹ 12 crore	₹ 10 crore	₹ 12 crore
- located outside India	₹ 80 crore	₹ 41 crore	₹ 41 crore	₹ 13 crore	₹ 6 crore	₹ 6 crore

Solution:

Determination of "specified date" is based upon book value of assets. Consequently, specified date (as given in the original example) will have to be adopted.

		Situation 1	**Situation 2**	**Situation 3**	**Situation 4**	**Situation 5**	**Situation 6**
Specified date (as given in the original example)	(d)	December 31,2014	June 25,2015	June 25,2015	December 31,2014	June 25,2015	June 25,2015
Fair market value of assets owned by E Inc. in India on specified date	(e)	₹ 70 crore	₹ 60 crore	₹ 69 crore	₹ 12 crore	₹ 12 crore	₹ 11 crore
Fair market value of assets owned by E Inc. outside India on specified date	(f)	₹ 80 crore	₹ 58 crore	₹ 67 crore	₹ 13 crore	₹ 9 crore	₹ 10 crore
Percentage of Indian assets of E Inc. on specified date [(e) ÷{(e)+(f)}]	(g)	46.67%	50.85%	50.74%	48%	57.14%	52.38%
Whether income of N Inc. from transfer of shares in E Inc. is chargeable to tax in India		No [Note 2]	Yes [Note 1]	Yes [Note 1]	No [Note 2]	Yes [Note 1]	Yes [Note 1]

Notes -

1. Income of N Inc. in respect of transfer of shares in E Inc. outside India is taxable in India on proportionate basis, as the transaction satisfies the following conditions -
   a. fair market value of Indian assets of E Inc. on the specified date is more than ₹10 crore;
   b. Indian assets of E Inc. on the specified date is more than 50% of its global assets;
   c. transfer of shares is not on account of amalgamation/demerger of N Inc. and C Inc.;
   d. N Inc. owns (individually and along with its associated enterprises) more than 5 per cent shares in E Inc.
2. Indian assets of E Inc. on the specified date are not more than 50% of its global assets. Consequently, nothing is taxable in India in the hands of N Inc.

In example above, assume that there is amalgamation/demerger of N Inc. and C Inc. However, amalgamation/demerger does not satisfy the conditions of section 47(viab)/(vicc).

- As conditions of section 47(viab)/(vicc) are not satisfied, exemption is not available to N Inc. Consequently, N Inc. is chargeable to tax in Situations 2, 3, 5 and 6.

In example above, assume that N Inc. owns (individually and along with its associated enterprises) 5 per cent (or less) shares in E Inc. during 12 months ending on the date of transfer.

- Nothing will be taxable in the hands of N Inc. in India if N Inc. does not hold right of management or control in relation to E Inc. at any time during 12 months ending on the date of transfer. Conversely, if N Inc. holds such right of management or control in relation to E Inc., it will be chargeable to tax in Situations 2, 3, 5 and 6.

8. Interest paid by Indian PE to its foreign head office bank [Sec. 9(1)(v)]

When interest is payable by an Indian branch of a foreign bank to its overseas head office, it is deductible while computing income of Indian branch. Moreover, in the hands of recipient head office, the same is not taxable in India as payer and recipient are the same. Tax is not deductible by the payer Indian branch.

Many judicial rulings are available on this point - Sumitomo Mitsui Banking Corpn. v. DIT [2012] 19 taxmann.com 364 (Mum.), Bank of Tokyo Mitsubishi UFJ Ltd. v. ADIT[2014] 49 taxmann.com 441 (Delhi-Trib.), Deutche Bank AG v. Asstt. DIT[2014] 47 taxmann.com 378 (Mum.-Trib.), ADIT v. Mizuho Corporate Bank Ltd. [2014] 48 taxmann.com 104 (Mum.-Trib.).

Amendment - To supersede the aforesaid ruling, section 9(1)(v) has been amended with effect from the assessment year 2016-17. The modified version is applicable if the following conditions are satisfied -

1. The assessee is a non-resident and engaged in the business of banking.
2. Interest is payable by the permanent establishment in India of such non-resident to the head office or any permanent establishment or any other part of such non-resident outside India.

If the above two conditions are satisfied, the permanent establishment in India shall be deemed to be a person separate and independent of the non-resident person of which it is a permanent establishment and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply.

Section 9(1)(v) has been amended in order to provide that in the case of a non-resident, being a person engaged in the business of banking, any interest payable by the permanent establishment in India of such non-resident to the head office or any permanent establishment or any other part of such non-resident outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the permanent establishment in India.

Accordingly, the PE in India shall be obligated to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc., of the non-resident outside India. Further, non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.

9. Fund Managers in India not to constitute business connection of offshore funds [Section 9A] [W.e.f. A.Y. 2016-17]

There are a large number of fund managers who are of Indian origin and are managing the investment of offshore funds in various countries. These persons are not locating in India due to the above tax consequence in respect of income from the investments of offshore funds made in other jurisdictions.

In order to facilitate location of fund managers of off-shore funds in India, section 9A has been inserted in the Act in line with international best practices which provides as under,—

(1) 'Fund management activity' in case of an 'eligible investment fund' carried out through an 'eligible fund manager' shall not constitute business connection in India [Section 9A(1)]

(2) 'Eligible investment fund' will not be treated as resident in India even if 'eligible fund manager' is situated in India [Section 9A(2)]

Amendments relating to income exempt from tax

10. Income of Swachh Bharat Kosh and Clean Ganga Fund to be exempt from income-tax [Section 10(23C)] [W.r.e.f. A.Y. 2015-16]

Considering the importance of Swachh Bharat Kosh and Clean Ganga Fund, the Act has amended section 10(23C) of the Act so as to exempt the income of Swachh Bharat Kosh and Clean Ganga Fund set up by the Central Government from income-tax.

11. Exemption to income of Core Settlement Guarantee Fund (SGF) set up by the recognised Clearing Corporations [Section 10(23EE)] [Inserted w.e.f. A.Y. 2016-17]

Section 10(23EE) has been inserted to exempt the income of the Core SGF set up by recognised clearing corporation in accordance with regulation as the Central Government may by notification in the Official Gazette specify in this behalf.

12. Income of Investment Fund other than the income chargeable under the head PGBP to be exempt [Section 10(23FBA)] [W.e.f. A.Y. 2016-17]

13. Proportionate income received by unit holder from investment fund which was taxable under PGBP in the hands of the investment fund to be exempt [Section 10(23FBB)] [Inserted w.e.f. A.Y. 2016-17]

14. Income by way of renting or leasing or letting out any real estate asset owned directly by a real estate investment trust to be exempt in the hands of real estate investment trust [Section 10(23FCA)] [Inserted w.e.f. A.Y. 2016-17]

15. Exemption u/s 10(38) in respect of long-term capital gain to be available to the sponsor of business trust [Section 10(38)] [W.e.f. A.Y. 2016-17]

16. Rationalisation of provisions of section 11 relating to accumulation of Income by charitable trusts and institutions [Section 11 & 13] [W.e.f. A.Y. 2016-17]

The following amendments have been made by the Finance Act, 2015 relating to accumulation of income by charitable trusts and institutions:

(A) Amendment of the provisions relating to the income which is treated as deemed to have been applied in the previous year [Clause (2) of the Explanation to section 11(1)] [W.e.f. A.Y. 2016-17]

The existing clause (2) to the Explanation to section 11(1) provides as under:

If the income applied to charitable or religious purposes during the previous year falls short of 85% of the income derived during the year either:

(a) for the reason that whole or part of the income has **not been received during the previous year,** or

(b) for any other reason,

then the charitable trust has been given the option to spend such income for charitable or religious purposes in the following manner:

(i) In case of (a) either during the previous year in which the income is so received or in the immediately following previous year.

(ii) In case of (b) during the previous year immediately following the previous year in which the income was derived.

To avail the facility of the above extended period of application of income, the **trust has to exercise such option in writing before the due date of filing return under section 139(1).**

The words given in bold above have been substituted by the following words:

The trust has to excise such option before the expiry of the time allowed under section 139(1) for furnishing the return of income **in such form or manner as may be prescribed.**

In other words, the words 'in writing' have been substituted by the words in such form or manner as may be prescribed.

(B) Provisions relating to accumulation of income in excess of 15% of the income earned amended [Section 11(2)] [W.e.f. A.Y. 2016-17]

As per section 11(1)(a), the assessee is allowed to accumulate indefinitely upto 15% of the income earned during the year for application for charitable or religious purposes in India in future. If the assessee wants to accumulate or set apart the income in addition to 15% of the income, he cannot do so unless certain conditions prescribed under section 11(2) are satisfied. In this case, the amount accumulated in excess of 15% shall be deemed to have been applied for charitable or religious purposes in India during the previous year itself.

Conditions to be satisfied under existing section 11(2):

(1) Such assessee should give a notice, in writing, in the prescribed form [F. No. 10] and manner, to the Assessing Officer specifying:

(a) the purpose for which the income is being accumulated or set apart;

(b) the period for which the income is to be accumulated or set apart. Such period should not exceed 5 years in any case.

(2) The money so accumulated or set apart should be invested or deposited in the form or mode specified in section 11(5).

In order to remove the ambiguity regarding the period within which the assessee is required to file Form 10, and to ensure due compliance of the above conditions within time, the existing conditions mentioned in sub-section (2) of section 11 have been substituted by the following:

Exemption under section 11(2) shall be allowed subject to the following conditions being satisfied:

"(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5);

(c) the statement referred to in clause (a) is furnished on or before the due date specified under section 139(1) for furnishing the return of income for the previous year.

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Consequential amendment due to the new conditions specified under section 11(2)

Exemption under section 11(2) not be allowed unless the statement mentioned in section 11(2)(a) and the return of income of the trust is furnished before the due date of filing the return specified under section 139(1) [Section 13(9) inserted w.e.f. A.Y. 2016-17]

As per section 13(9), nothing contained in section 11(2) shall operate so as to exclude any income from the total income of the previous year of a person in receipt thereof, if—

(i) the statement referred to in clause (a) of section 11(2) (mentioned above) in respect of such income is not furnished on or before the due date specified under section 139(1) for furnishing the return of income for the previous year; or

(ii) the return of income for the previous year is not furnished by such person on or before the due date specified under section 139(1) for furnishing the return of income for the said previous year.

In other words, benefit of accumulation shall not be allowed under section 11(2) unless the said statement in prescribed form as well as the return of income are furnished before the due date of filing the return of income specified under section 139(1).

Amendments relating to "income from Business and Profession"

17. Allowance of balance 50% additional depreciation [Third proviso to section 32(1)(ii) inserted] [W.e.f. A.Y. 2016-17]

To encourage investment in plant or machinery by the manufacturing and power sector, additional depreciation of 20% of the cost of new plant or machinery acquired and installed is allowed under the existing provisions of section 32(1)(iia) of the Act over and above the general depreciation allowance. On the lines of allowability of general depreciation allowance, the second proviso to section 32(1) inter alia provides that the additional depreciation would be restricted to 50% when the new plant or machinery acquired and installed by the assessee, is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in the previous year. Non-availability of full 100% of additional depreciation for acquisition and installation of new plant or machinery in the second half of the year may motivate the assessee to defer such investment to the next year for availing full 100% of additional depreciation in the next year. To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, the Act has inserted following third proviso to section 32(1)(ii).

Provided also that where an asset referred to in section 32(1)(iia) (i.e. eligible for addition depreciation @ 20%) or the **first proviso to section 32(1)(iia) (i.e. eligible for addition depreciation @ 35%),** as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to 50% of the amount calculated at the percentage prescribed for an asset under section 32(1)(iia) for that previous year, then, the deduction for the balance 50% of the amount calculated at the percentage prescribed for such asset under section 32(1)(iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset.

18. Incentives for the State of Andhra Pradesh, State of Bihar, State of Telangana or State of West Bengal [Section 32(1)(iia) & 32AD] [W.e.f. A.Y. 2016-17]

In order to encourage the setting up of industrial undertakings in the backward areas of the State of Andhra Pradesh, State of Bihar, State of Telangana or State of West Bengal, the Act has provided following Income-tax incentives:

(A) Additional Depreciation at the rate of 35 %

To incentivise investment in new plant or machinery, additional depreciation of 20% is allowed under the existing provisions of section 32(1)(iia) of the Act in respect of the cost of plant or machinery acquired and installed by certain assessees. This depreciation allowance is allowed over and above the deduction allowed for general depreciation under section 32(1)(ii) of the Act. In order to incentivise acquisition and installation of plant and machinery for setting up of manufacturing units in the notified backward area in the State of Andhra Pradesh, or in the State of Bihar, or in the State of Telangana or in the State of West Bengal, the Act has allowed higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed by a manufacturing undertaking or enterprise which is set up in the notified backward area in the State of Andhra Pradesh, or in the State of Bihar, or in the State of Telangana or in the State of West Bengal on or after 1.4.2015. This higher additional depreciation shall be available in respect of acquisition and installation of any new machinery or plant for the purposes of the said undertaking or enterprise during the period beginning on the 1.4.2015 and ending before 1.4.2020. The eligible machinery or plant for this purpose shall not include the machinery or plant which are currently not eligible for additional depreciation as per the existing proviso to section 32(1)(iia) of the Act.

Consequential amendments have been made in the second proviso to section 32(1)(ii) of the Act for applying the existing restriction of the allowance to the extent of 50% for assets used for the purpose of business for less than 180 days in the year of acquisition and installation. However, the balance 50% of the allowance will be allowed in the immediately succeeding financial year.

(B) Investment in new plant and machinery in notified backward areas in certain States [Section 32AD]

(1) Manufacturing unit eligible for deduction @ 15% of actual cost of new asset being eligible plant and machinery [Section 32AD(1)]

A new section 32AD has been inserted in the Act to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee (whether company or non-company), if—

(a) he sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 01.04.2015 in any backward area notified by the Central Government in this behalf in the State of Andhra Pradesh, or in the State of Bihar, or in the State of Telangana or in the State of West Bengal; and

(b) the new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period beginning from 01.04.2015 & ending before 01.04.2020.

The deduction will be available for the assessment year relevant to the previous year in which the new asset is installed. But in order to avail benefit under section 32AD, the new asset must both be acquired and installed on or after 01.04.2015 but on or before 31.03.2020.

This deduction shall be available over and above the existing deduction available under section 32AC of the Act which is allowed only to a company assessee. Accordingly, if an undertaking is set up in the notified backward areas in the State of Andhra Pradesh, or in the State of Bihar, or in the State of Telangana or in the State of West Bengal by a company, it shall be eligible to claim deduction under the existing provisions of section 32AC of the Act as well as under the new section 32AD if it fulfills the conditions (such as investment above a specified threshold of ₹ 25 crore) specified in the said section 32AC and conditions specified under section 32AD.

(2) Meaning of new asset [Section 32AD(4)]

"New asset" means any new plant or machinery (other than a ship or aircraft), but does not include—

(a) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

(b) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(b) any office appliances including computers or computer software;

(c) any vehicle;

(d) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

Note:-

The above "new asset" acquired and installed should not to be sold or otherwise transferred within a period of 5 years from the date of its installation except in connection with amalgamation or demerger.

(3) Consequences if the new asset acquired and installed is transferred within a period of 5 years from the date of its installation except in connection with the amalgamation or demerger or reorganization of business [Section 32AD(2)]

If any new asset acquired and installed by the assessee is sold or otherwise transferred except in connection with the amalgamation or demerger or reorganisation of business referred to in section 47(xiii), (xiiib) or (xiv), within a period of 5 years from the date of its **installation,** the consequence of the same shall be as under:

1. The amount of deduction allowed under section 32AD(1) in respect of such new asset shall be deemed to be income chargeable under the head profit and gains of business and profession of the previous year in which new asset is sold or otherwise transferred.

2. In addition to the above, if any capital gain arises under section 50 on account of transfer of such new asset, that too shall become taxable in that previous year.

(4) Consequences if amalgamated company or resulting company or the successor referred to in section 47(xiii), (xiiib) or (xiv), as the case may be, transfers such assets within 5 years from the date of installation by the amalgamating company or demerged company or the predecessor referred to in section 47(xiii), (xiiib) or (xiv) [Section 32AD(3)]

If after amalgamation or demerger or reorganisation of business referred to in section 47(xiii), (xiiib) or (xiv), the amalgamated company or the resulting company or the successor, as the case may be, sells or transfers any such asset within 5 years from the date of its installation by the amalgamating company or the demerged company or the predecessor referred to in section 47(xiii), (xiiib) or (xiv), then the amalgamated company or resulting company or the successor shall be taxed in the same manner as it would have been taxed in the hands of the amalgamating or demerged company or the predecessor, as the case may be.

19. Prescribed conditions relating to maintenance of accounts, audit etc to be fulfilled by the approved in-house R&D facility [Section 35(2AB)] [W.e.f. A.Y. 2016-17]

In order to have a better and meaningful monitoring mechanism for weighted deduction allowed under section 35(2AB) of the Act, the Act has amended the provisions of section 35(2AB)(3) of the Act to provide that deduction under the said section shall be allowed if the company enters into an agreement with the prescribed authority for cooperation in such research and development facility and **fulfills such conditions with regard to maintenance of account and audit thereof and furnishing of reports in such manner as may be prescribed.**

20. Interest on borrowing for acquisition of an asset, till the date the asset is first put to use not to be allowed as deduction in all cases [Proviso to section 36(1)(iii)] [W.e.f. A.Y. 2016-17]

As per existing provisions of the proviso to section 36(1)(iii), no deduction shall be allowed in respect of any amount of interest paid, in respect of capital borrowed for acquisition of new asset **for extension of existing business or profession** (whether capitalised in the books of account or not) and such amount of interest is for the period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use. Hence, such interest shall be added to the cost of the asset.

The Finance Act, 2015 has omitted the words **"for extension of existing business or profession".**

Hence, the interest on money borrowed for acquisition of a new asset shall not be allowed as deduction till the asset is put to use, whether such asset is acquired for extension of existing business or otherwise. However, such interest shall be added to the cost of the asset.

21. Bad debts to be allowed as deduction only in the year in which they become irrecoverable on the basis of recently notified income computation and disclosure standards without recording the same in the accounts [Section 36(1)(vii)] [W.e.f. A.Y. 2016-17]

Where the amount of debt or part thereof which has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standards notified under section 145(2) without recording the same in the accounts, then, such debt or part thereof shall be allowed in the previous year in which such debt or part thereof becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the purposes of this clause.

22. Expenditure incurred by a cooperative society engaged in the business of manufacture of sugar for purchase of sugarcane at a specified price to be allowed as deduction [Section 36(1)(xvii)] [W.e.f. A.Y. 2016-17]

The amount of expenditure incurred by a cooperative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Government shall be allowed as a deduction.

Amendments relating to Capital Gains

23. Transfer of shares of a foreign company in a scheme of amalgamation not to be regarded as a transfer [Section 47(viab)] [W.e.f. A.Y. 2016-17]

Any transfer, in a scheme of amalgamation, of a capital asset, being a share of a foreign company, referred to in Explanation 5 to section 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company shall not be regarded as transfer, if—

(A) at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and

(B) such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated;

Further, section 49(1)(iii)(e) of the Income-tax Act has also been amended to include transfer under section 47(viab) and to provide that the cost of acquisition of an asset acquired by the amalgamated company shall be the cost for which the amalgamating company acquired the capital asset as increased by the cost of improvement incurred or borne by the amalgamating company or the amalgamated company.

24. Transfer of shares of a foreign company in a scheme of demerger not to be regarded as a transfer [Section 47(vicc)] [W.e.f. A.Y. 2016-17]

Any transfer in a demerger, of a capital asset, being a share of a foreign company, referred to in Explanation 5 to section 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company shall not be regarded as transfer, if,—

(a) the shareholders, holding not less than three-fourths in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated:

Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 shall not apply in case of demergers referred to in this clause.

Further, section 49(1)(iii)(e) of the Income-tax Act has been amended to include transfer under section 47(vicc) and to provide that the cost of acquisition of an asset acquired by resulting company shall be the cost for which the demerged company acquired the capital asset as increased by the cost of improvement incurred by the demerged company.

25. Tax neutrality on merger of similar schemes of Mutual Funds [Section 47(xviii)] [Inserted w.e.f. A.Y. 2016-17]

Securities and Exchange Board of India has been encouraging mutual funds to consolidate different schemes having similar features so as to have simple and fewer numbers of schemes. However, such mergers/consolidations are treated as transfer and capital gains are imposed on unitholders under the Income-tax Act.

In order to facilitate consolidation of such schemes of mutual funds in the interest of the investors, the Act has provided tax neutrality to unit holders upon consolidation or merger of mutual fund schemes by inserting clause (xviii) in section 47.

Clause (xviii) provides as under:

any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund shall not be regarded as transfer.

Provided that the consolidation is of two or more schemes of equity oriented fund **or** of two or more schemes of a fund other than equity oriented fund.

Consequential amendments in other provisions due to insertion of clause (xviii) in section 47

(1) Cost of acquisition of the units of the consolidated scheme acquired in lieu of units held in a consolidating scheme [Section 49(2AD)] [Inserted w.e.f. A.Y. 2016-17]

Where the capital asset, being a unit or units in a consolidated scheme of a mutual fund, became the property of the assessee in consideration of a transfer referred to in section 47(xviii), the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating scheme of the mutual fund.

(2) Period of holding of units of consolidated scheme of mutual funds [Explanation 1 to section 2(42A)] [W.e.f. A.Y. 2016-17]

The following sub-clause (hd) has been inserted in the Explanation 1 to section 2(42A) for determining the time period of holding of the units acquired under the consolidated scheme:

"in the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer referred to in section 47(xviii), there shall be **included** the period for which the unit or units in the consolidating scheme of the mutual fund were held by the assessee".

26. Amendment to section 49

The following amendments have been made to section 49 with effect from the assessment year 2016-17:

- Securities and Exchange Board of India has been encouraging mutual funds to consolidate different schemes having similar features so as to have simple and fewer number of schemes. To provide tax neutrality, section 47 has been amended (as given above). Besides, section 49 has been amended with effect from the assessment year 2016-17 to provide the following –

    1. The cost of acquisition of the units of consolidated scheme shall be the cost of units in the consolidating scheme.

    2. Period of holding of the units of the consolidated scheme shall include the period for which the units in consolidating schemes were held by the assessee.

- Where shares in a company is acquired by a non-resident assessee on redemption of Global Depository Receipts [referred to in section 115AC(1)(b) held by such assessee], the cost of acquisition of such shares shall be calculated on the basis of the price prevailing on any recognised stock exchange on the date on which a request for such redemption was made.

27. Cost of acquisition of a capital asset in the hands of resulting company to be the cost for which the demerged company acquired the capital asset [Section 49(1)(iii)(e)] [W.e.f. A.Y. 2016-17]

Under section 47(vib) of the Income-tax Act any capital asset transferred by the demerged company to the resulting company in the scheme of demerger is not regarded as transfer if the resulting company is an Indian company. In such cases the cost of such asset in the hands of resulting company should be cost of such asset in the hands of demerged company as increased by the cost of improvement, if any, incurred by the demerged company. Further, the period of holding of such asset in the hands of resulting company should include the period for which the asset was held by the demerged company. Under the existing provisions of the Income-tax Act, there is no express provision to this effect. Accordingly, section 49(1)(iii)(e) of the Income-tax Act has been amended to include transfer under section 47(vib) and to provide that the cost of acquisition of an asset acquired by resulting company shall be the cost for which the demerged company acquired the capital asset as increased by the cost of improvement incurred by the demerged company.

Amendments relating to deductions from Gross Total Income

28. Tax benefits under section 80C for the girl child under the Sukanya Samriddhi Account Scheme [Section 80C] [W.r.e.f. A.Y. 2015-16]

Pursuant to the Budget announcement in July 2014, a special small savings instrument for the welfare of the girl child was introduced under the Sukanya Samriddhi Account Rules, 2014. The following tax benefits had been envisaged in the Sukanya Samriddhi Account scheme:

(i) The investments made in the Scheme will be eligible for deduction under section 80C of the Act.

(ii) The interest accruing on deposits in such account will be exempt from income tax.

(iii) The withdrawal from the said scheme in accordance with the rules of the said scheme will be exempt from tax.

The Scheme has been notified under section 80C(2)(viii) vide Notification number 9/2015 S.O.210(E), F. No. 178/3/2015-ITA-I dated 21.01.2015.

The Act has formulized the above benefits envisaged in the Sukanya Samriddhi Account scheme by making the following amendments in the Income Tax Act:

(1) Deduction under section 80C: As per section 80C(2), subscription made to Sukanya Samriddhi Account scheme by the individual in the name of any of the following persons referred to in section 80C(4)(ba) shall be eligible for deduction under section 80C:

   (i) individual, or (ii) any girl child of that individual, or (iii) any girl child for whom such person is the legal guardian, if the scheme so specifies.

(2) Withdrawal from the Sukanya Samriddhi Account shall be exempt under section 10(11A).

A new clause (11A) has been inserted in section 10 of the Act so as to provide that any payment from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014 made under the Government Saving Bank Act, 1873 shall not be included in the total income of the assessee. As a result, the interest accruing on deposits in, and withdrawals from any account under the scheme would be exempt.

Illustration:

R, an individual resident in India, aged 54 years, submits you the following information for the previous year 2015-16:

	₹
Income under the head salary	6,80,000
Income from house property (self occupied for residence)	(-) 2,00,000
Income from other sources	1,60,000
Amount deposited in PPF	1,20,000
Amount deposited in Sukanya Samridhi Account in the name of girl child	70,000

Compute the tax payable by R for the assessment year 2016-17.

Solution:

Computation of total income and tax payable R for the assessment year 2016-17

	₹	₹
Income under the head salary	6,80,000	
Less: Loss from House Property (self occupied)	2,00,000	4,80,000
Income from house property	(-) 2,00,000	
Less: Set off from income under the head salary	2,00,000	---
Income from other sources		1,60,000
Gross total income		6,40,000
Less: Deduction u/s 80C		
PPF	1,20,000	
Sukanya Samridhi Account	70,000	
	1,90,000	
But limited to maximum ₹ 1,50,000		1,50,000
Total income		4,90,000

	₹	₹
Tax on ₹4,90,000		
First ₹2,50,000	Nil	
Balance ₹2,40,000 — 10%	24,000	
	24,000	
Less: Rebate u/s 87A		
100% of tax or ₹ 2,000 whichever is less	2,000	
	22,000	
Add: Education cess and SHEC @ 3%	660	
	22,660	

29. Raising the limit of deduction under 80CCC [Section 80CCC] [W.e.f. A.Y. 2016-17]

Under the existing provisions contained in section 80CCC(1), an assessee, being an individual is allowed a deduction upto ₹ 1,00,000 in the computation of his total income, of an amount paid or deposited by him to effect or keep in force a contract for any annuity plan of Life Insurance Corporation of India or any other insurer for receiving pension from a fund set up under a pension scheme.

In order to promote social security, the Act has amended section 80CCC(1) so as to raise the limit of deduction under section 80CCC from ₹ 1,00,000 to ₹ 1,50,000, within the overall limit provided in section 80CCE.

30. Additional deduction under 80CCD [Section 80CCD] [W.e.f. A.Y. 2016-17]

Under the existing provisions contained in section 80CCD(1) of the Income-tax Act, 1961 if an individual, employed by the Central Government on or after 1.1.2004, or being an individual employed by any other employer, or any other assessee being an individual has paid or deposited any amount in a previous year in his account under a notified pension scheme, a deduction of such amount not exceeding 10% of his salary in the case of an employee and 10% of the gross total income in case of any other individual is allowed. Similarly, the contribution made by the Central Government or any other employer to the said account of the individual under the pension scheme is also allowed as deduction under section 80CCD(2), to the extent it does not exceed 10% of the salary of the individual in the previous year. Section 80CCD(1A) provides that the amount of deduction under sub-section (1) shall not exceed ₹1,00,000. Till date, under section 80CCD, only the National Pension System (NPS) has been notified by the Ministry of Finance.

With a view to encourage people to contribute towards NPS, the following amendments have been made in section 80CCD:

(i) **Section 80CCD(1A) omitted:** Section 80CCD(1A) which allowed the deduction under section 80CCD(1) to the maximum extent of ₹ 1,00,000 has been omitted. Due to this omission, deduction under section 80CCD(1) will now be allowed within the overall limit of ₹ 1,50,000 provided in section 80CCE.

(ii) **Deduction of ₹ 50,000 under section 80CCD(1B):** In addition to the enhancement of the limit under section 80CCD(1), the Act has inserted a new sub-section (1B) to section 80CCD so as to provide for a deduction in respect of any amount paid, upto ₹50,000 for contributions made by any individual assessees under the NPS, **whether or not any deduction is allowed under section 80CCD(1).**

However, no deduction under section 80CCD(1B) shall be allowed in respect of the amount on which a deduction has been claimed and allowed under section 80CCD(1).

Consequential amendments have also made in section 80CCD(3) to specify that amount which was eligible for deduction under section 80CCD(1B) if, later on, withdrawn as per the scheme shall be taxable. Further, according to section 80CCD(4), the amount so contributed under section 80CCD(1B) shall not be eligible for deduction under section 80C.

Illustration:

R, aged 61 years, a resident in India, submits you the following information for the previous year ending 31-3-2016.

	₹
Income under the head salary	6,00,000
Income from house property	1,10,000
Income from other sources	30,000

He has contributed 10% of basic salary and dearness allowance amounting to ₹50,000 to National Pension Scheme referred to in section 80CCD(1) to which his employer contributes equal amount. He has also deposited ₹ 1,20,000 to his PPF. In addition to amount contributed under section 80CCD(1), he has deposited a sum of ₹ 45,000 in new pension scheme under section 80CCD(1B). Compute the tax payable by R for the assessment year 2016-17.

Solution:

Computation of total income and tax payable by R for the assessment year 2016-17

	₹	₹
Income under the head salary		6,00,000
Income from house property		1,10,000
Income from other sources		30,000
		7,40,000
Less: Deductions under Chapter VI-A		
Section 80C — PPF	1,20,000	
Section 80CCD — Employee contribution	50,000	
	1,70,000	
Limited to ₹ 1,50,000 under section 80CCE	1,50,000	
Employers contribution to National Pension Scheme (Not covered in the overall ceiling of ₹ 1,50,000 under section 80CCE)	50,000	
Contribution to National Pension Scheme covered under section 80CCD(1B)	45,000	2,45,000
Total income		4,95,000

		₹
Tax on ₹ 4,95,000		
First ₹ 3,00,000		Nil
Balance ₹ 1,95,000 — 10%		19,500
		19,500
Less: Rebate u/s 87A 100% of tax or ₹ 2,000 whichever is less		2,000
		17,500
Add: Education cess & SHEC @ 3%		525
		18,025
Rounded off		18,030

31. Amendment in section 80D relating to deduction in respect of health insurance premia [Section 80D] [W.e.f. A.Y. 2016-17]

The existing provisions contained in section 80D, inter alia, provide for deduction of—

(a) upto ₹ 15,000 to an assessee, being an individual in respect of health insurance premia, paid by any mode, other than cash, to effect or to keep in force an insurance on the health of the assessee or his family or any contribution made to the Central Government Health Scheme or any other notified scheme or any payment made on account of preventive health check up of the assessee or his family; and

(b) an additional deduction of ₹15,000 is provided to an individual assessee to effect or to keep in force insurance on the health of the parent or parents of the assessee.

A similar deduction is also available to a Hindu undivided family (HUF) in respect of health insurance premia, paid by any mode, other than cash, to effect or to keep in force insurance on the health of any member of the HUF.

The section also presently provides for a deduction of ₹ 20,000 in both the cases if the person insured is a senior citizen of sixty years of age or above.

The quantum of deduction allowed under section 80D to individuals and HUF in respect of premium paid for health insurance had been fixed vide Finance Act, 2008 at ₹ 15,000 and ₹20,000 (for senior citizens). In view of continuous rise in the cost of medical expenditure, the Act has amended section 80D so as to raise the limit of deduction from ₹ 15,000 to ₹ 25,000. Consequently, the limit of deduction for senior citizens has been raised from ₹ 20,000 to ₹30,000.

Further, very senior citizens are often unable to get health insurance coverage and are therefore unable to take tax benefit under section 80D. Accordingly, as a welfare measure towards very senior citizens, the Act has provided that the whole of the amount paid on account of medical expenditure in respect of a very senior citizen, (if no payment has been made to keep in force an insurance on the health of such person), as does not exceed ₹30,000 shall be allowed as deduction to any of the following persons who has paid such amount:

(a) An individual, provided the amount is incurred by the assessee on himself or any member of his family

(b) HUF, provided the amount is incurred for very senior citizen who is the member of HUF

(c) An individual, provided is the amount incurred for very senior citizen who is the parent of such individual

The aggregate deduction available to any individual in respect of health insurance premia and the medical expenditure incurred would however be limited to ₹ 30,000. Similarly aggregate deduction for health insurance premia and medical expenditure incurred in respect of parents would be limited to ₹30,000.

Example

		₹
(i)	For Individual and his family	
	Health insurance premia	21,000
(ii)	For parents	
	Health insurance of Mother	18,000
	Medical expenditure on father (very senior citizen)	15,000
	Deduction eligible u/s 80D ₹ 21,000 + ₹ 30,000	51,000

Note:-

1. Meaning of senior citizen: "Senior citizen" means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year.
2. Meaning of very senior citizen: "Very senior citizen" means an individual resident in India who is of the age of eighty years or more at any time during the relevant previous year.

32. Raising the limit of deduction under section 80DD for person with disability and person with severe disability [Section 80DD] [W.e.f. A.Y. 2016-17]

The existing provisions of section 80DD, inter alia, provide for a deduction to an individual or HUF, who is a resident in India, who has incurred—

(a) Expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability as defined under the said section; or

(b) Paid any amount to LIC or any other insurer in respect of a scheme for the maintenance of a disabled dependant.

The section presently provides for a deduction of ₹ 50,000 if the dependant is suffering from disability and ₹1,00,000 if the dependant is suffering from severe disability (as defined under the said section).

The limits under section 80DD in respect of a person with disability were fixed at ₹ 50,000 by Finance Act, 2003. Further, the limit under section 80DD in respect of a person with severe disability was last enhanced from ₹ 75,000 to ₹ 1,00,000 by Finance (No. 2) Act, 2009.

In view of the rising cost of medical care and special needs of a disabled person, the Act has amended section 80DD so as to raise the limit of deduction in respect of a person with disability from ₹ 50,000 to ₹ 75,000 and in respect of a person with severe disability from ₹1,00,000 to ₹1,25,000.

33. Raising the limit of deduction under section 80DDB [W.e.f. A.Y. 2016-17]

Under the existing provisions of section 80DDB of the Act, an assessee, resident in India is allowed a deduction of a sum not exceeding forty thousand rupees, being the amount actually paid, for the medical treatment of certain chronic and protracted diseases such as Cancer, full blown AIDS, Thalassaemia, Haemophilia etc. specified in rule 3A(2) of Income Tax Rules, 1962. This deduction is allowed up to sixty thousand rupees where the expenditure is in respect of a senior citizen i.e. a person who is of the age of sixty years or more at any time during the relevant previous year.

The above deduction is available to an individual for medical expenditure incurred on himself or a dependant relative. It is also available to a Hindu undivided family (HUF) for such expenditure incurred on its members. Dependant in case of an individual means the spouse, children, parents, brother or sister of an individual and in case of an HUF means a member of the HUF, wholly or mainly dependant on such individual or HUF for his support and maintenance.

Under the existing provisions of this section, a certificate in the prescribed form, from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist working in a Government hospital is required. It has been represented that the requirement of a certificate from a doctor working in

a Government hospital causes undue hardship to the persons intending to claim the aforesaid deduction. Government hospitals at many places do not have doctors specialising in the above branches of medicine. For this and other reasons, it may be difficult for the taxpayer to obtain a certificate from a Government hospital.

In view of the above, the Act has amended section 80DDB to provide that the assessee will be required to obtain a prescription from a specialist doctor for the purpose of availing this deduction.

Section 80DDB has been further amended to provide for a higher limit of deduction of upto ₹80,000, for the expenditure incurred in respect of the medical treatment of a "very senior citizen". A "very senior citizen" defined as an individual resident in India who is of the age of eighty years or more at any time during the relevant previous year.

34. Tax benefits for Swachh Bharat Kosh and Clean Ganga Fund [Section 80G] [W.r.e.f. A.Y. 2015-16]

With a view to encourage and enhance people's participation in the national effort to improve sanitation facilities and rejuvenation of river Ganga, the Act has amended section 80G of the Act so as to allow 100% deduction from the total income on account of donations made by the specified assessee to the following two funds:

(i) donations made by any assessee (resident and non-resident) to the Swachh Bharat Kosh set up by the Central Government, and

(ii) donations made by a resident assessee to Clean Ganga Fund set up by the Central Government.

However, any sum spent in pursuance of Corporate Social Responsibility under section 135(5) of the Companies Act, 2013 for die above purpose, will not be eligible for deduction from the total income of the assessee.

35. 100% deduction for National Fund for Control of Drug Abuse [Section 80G] [W.e.f. A.Y. 2016-17]

The National Fund for Control of Drug Abuse is a fund created by the Government of India in the year 1989, under section 7A of the Narcotic Drugs and Psychotropic Substances Act, 1985. Since, National Fund for Control of Drug Abuse is also a Fund of national importance, the Act has amended section 80G so as to provide 100% deduction in respect of donations made to the said National Fund for Control of Drug Abuse.

36. Deduction for employment of new workmen [Section 80JJAA] [W.e.f. A.Y. 2016-17]

The existing provisions contained in section 80JJAA of the Act, inter alia, provide for deduction to an Indian company, deriving profits from manufacture of goods in a factory. The quantum of deduction allowed is equal to thirty per cent of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

Section 80JJAA(2)(a), inter alia, provides that no deduction under section 80JJAA(1) shall be available if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company.

Clause (i) of Explanation to the section defines "Additional wages" to mean the wages paid to the new regular workmen in excess of 100 workmen employed during the previous year.

With a view to encourage generation of employment, the Act has made the following changes in section 80JJAA:

(i) Section 80JJAA(1) has been amended so as to extend the benefit to all assessees having manufacturing units rather than restricting it to company assessees only.

(ii) Section 80JJAA(2)(a) has been amended so as to provide that no deduction under section 80JJAA(1) shall be available if the factory is acquired by the assessee by way of transfer from any other person or as a result of any business re-organisation.

(iii) Clause (i) of the Explanation has been amended so as to provide "additional wages" to mean the wages paid to the new regular workmen in excess of 50 workmen (instead of 100) employed during the previous year.

37. Raising the limit of deduction under section 80U for persons with disability and severe disability [Section 80U] [W.e.f. A.Y. 2016-17]

In view of the rising cost of medical care and special needs of a disabled person, the Act has amended section 80U(1) so as to raise the limit of deduction in respect of a person with disability from ₹50,000 to ₹75,000.

Further, the proviso to section 80U(1) has been amended so as to raise the limit of deduction in respect of a person with severe disability from ₹ 1,00,000 to ₹ 1,25,000.

Amendments relating to Specified Domestic Transactions

38. Raising the threshold limit for specified domestic transactions [Sec. 92BA]

The existing threshold limit for specified domestic transactions of ₹ 5 crore under section 92BA has been extended to ₹ 20 crore from the assessment year 2016-17.

Amendments relating to General Anti-Avoidance Rule (GAAR)

39. Deferment of provisions relating to General Anti-Avoidance Rule (GAAR) [Sec. 95]

Implementation of GAAR has been deferred by 2 years. GAAR provisions will now be applicable to the income of the previous year 2017-18 (assessment year 2018-19) and subsequent years. Further, investments made up to March 31, 2017 will be protected from the applicability of GAAR.

Amendments relating to Determination of Tax in certain special cases

40. Amendment to section 111A

The second proviso to section 111A(1) provides that the provisions of section 111A shall not be applicable in respect of any income arising from transfer of units of a business trust which were acquired by the assessee in exchange of the shares of a special purpose vehicle.

Amendments - The said second proviso has been omitted with effect from the assessment year 2016-17. After the amendment, section 111A will be applicable in respect of any income arising from transfer of units of a business trust which were acquired by the assessee in exchange of the shares of a special purpose vehicle.

41. Reduction in rate of tax on income by way of royalty and fees for technical services in case of non-residents [Sec. 115A]

Royalty and fees for technical services (FTS) received by a non-resident from the Government or an Indian concern, which is not effectively connected with permanent establishment, if any, of the nonresident in India, is currently taxable at the rate of 25 per cent (+SC+EC+SHEC) of gross amount. The rate of 25 per cent has been reduced to 10 per cent (+SC+EC+SHEC) with effect from the assessment year 2016-17.

42. Modification in the taxation scheme of Global Depository Receipts (GDRs) [Sec. 115ACA]

The Depository Receipts Scheme, 2014 was notified by the Department of Economic Affairs in October 2014. This scheme replaces "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993".

New scheme - Under new scheme, Depository Receipts (DRs) can be issued against the securities of listed, unlisted or private or public companies against underlying securities which can be debt instruments, shares or units, etc. Further, both the sponsored issues and unsponsored deposits and acquisitions are permitted under the new scheme. DRs can be freely held and transferred by both residents and non-residents.

Modification in present taxation scheme - The tax benefits under section 115ACA were intended to be provided in respect of sponsored GDRs and listed companies only. Therefore, the present scheme of section 115ACA has been amended (with effect from the assessment year 2016-17) to continue the tax benefits only in respect of such GDRs as were defined in the earlier depository scheme. Under the modified version, "Global Deposit Receipts" means an instrument in the form of a depository receipt or certificate created by the Overseas Depository Bank outside India and issued to investors against the issue of,-

a. ordinary shares of issuing company, being a company listed on a recognised stock exchange in India; or

b. foreign currency convertible bonds of issuing company.

Amendments relating to Minimum Alternate Tax

43. Modification in the scheme of Minimum Alternate Tax [Sec. 115JB]

The following amendments have been made to the scheme of minimum alternate tax under section 115JB from the assessment year 2016-17 onwards –

Share of profit from AOP - In some cases, income of AOP is taxable at the maximum marginal rate of tax (or taxable at a rate higher than maximum marginal rate of tax). Share of profit from such AOP is not taxable in the hands of its members by virtue of section 86. If a joint stock company (say, X Ltd.) is a member of such AOP, share of profit from AOP is not taxable for computing income of the X Ltd. (under normal provisions other than minimum alternate tax provisions). However, under the present provisions, such share of profit from AOP is liable to minimum alternate tax (MAT) in the hands of X Ltd., as there is no provision to exclude such income within the parameters of section 115JB – CIT v. B. Seenaiah & Co. Projects Ltd. [2014] 150 ITD 189 (Hyd. - Trib.), Goldgerg Finance (P.) Ltd. v. CIT [2015] 152 ITD 766 (Mum. - Trib.).

To supersede the above rulings, section 115JB has been amended so as to provide that share of profit from AOP, credited to the profit and loss account of a company (on which no income-tax is payable in accordance with the provisions of section 86), shall be excluded while computing book profit. Likewise, any expenditure (debited to the profit and loss account), corresponding to such income, shall be added back to convert net profit into book profit.

Capital gains, interest, royalty, technical fees of foreign companies - The following incomes of a foreign company will not be subject to minimum alternate tax (MAT) –

Income of foreign company (on which MAT will not be applicable)	Relevant conditions to avoid MAT
a Capital gains arising on transactions in securities Interest, royalty or technical fees chargeable to tax under sections 115A to 115BBE	1. These incomes are credited in the profit and loss account. 2. Income-tax payable in respect of these incomes under normal provisions (other than provisions governing MAT) is less than 18.5 per cent.

Above incomes shall be excluded while computing book profit. Any expenditure (debited to profit and loss account), corresponding to these incomes, shall be added back to convert net profit into book profit.

Notional gain /loss on transfer of shares in SPV to business trust -The following income will not be subject to MAT -

a. notional capital gain on transfer of a share in a special purpose vehicle (SPV) to a business trust in exchange of units allotted by that trust referred to in section 47(xvii); or

b. notional gain resulting from any change in carrying amount of said units.

The above incomes shall be excluded while computing book profit (if these are credited to profit and loss account). Any notional loss [pertaining to (a) or (b) (supra)] shall be added back to convert net profit into book profit (whether or not such notional losses are debited to profit and loss account).

Gain or loss on transfer of units referred to in section 47(xvii) - In respect of transfer of units referred to in section 47(xvii) the following adjustments will be made –

1. Gain on transfer of units referred to in section 47(xvii) shall be deducted from net profit (if it is credited to profit and loss account).

2. Loss on transfer of units referred to in section 47(xvii) shall be added to net profit (whether or not it appears in profit and loss account).

3. The amount of loss on transfer of units referred to in section 47(xvii) computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be, shall be deducted from net profit to convert it into book profit.

4. Amount of gain [if any, pertaining to transaction mentioned in (3) (supra)] shall be added to net profit to convert it into book profit as per profit and loss account.

44. Amendment to section 115U

Section 115U has been amended (with effect from the assessment year 2016-17) to provide that the existing pass through scheme contained in sections 10(23FB) and 115U shall not apply to investment funds covered by the new regime provided in section 115UB.

45. Modification in taxation regime for Real Estate Investment Trusts (REIT) and Infrastructure Investment -Trusts (InvIT) [Sec. 115UA]

Business trust includes a Real Estate investment Trust (REIT) or an Infrastructure Investment Trust (InvIT) which is registered under regulations framed by SEBI in this regard.

Tax incidence on offloading units of a business trust acquired in exchange of shareholding in SPV - The existing tax regime for the business trust and their investors (as contained in different sections), inter alia, provides for the following -

1. The listed units of a business trust (when traded on a recognised stock exchange) are liable to securities transaction tax (STT). Long-term capital gains is exempt under section 10(38) and the short-term capital gains is taxable at the rate of 15 per cent under section 111A.

2. In case of capital gains arising to the sponsor at the time of exchange of shares in Special Purpose Vehicle (SPV), being the unlisted company through which income generating assets are held indirectly by the business trusts, with units of the business trust, the taxation of gains is deferred.

3. The tax on such gains is to be levied at the time of disposal of units by the sponsor. However, the preferential capital gains regime (consequential to levy of STT) available to other unit holders of a business trust, is not available to the sponsor in respect of these units at the time of their transfer. For the purpose of computing capital gain, the cost of these units is considered as cost of the shares to the sponsor. The holding period of shares is included in computing the holding period of such units.

4. The pass through is provided in respect of income by way of interest received by the business trust from SPV (i.e., there is no taxation of such interest income in the hands of the trust and no withholding tax at the level of SPV). However, TDS at the rate of 5 per cent (in case of payment of interest component of income distributed to non-resident unit holders) and at the rate of 10 per cent (in respect of payment of interest component of distributed income to a resident unit holder) is required by the trust.
5. The dividend received by the trust is subject to dividend distribution tax at the level of SPV and is exempt in the hands of the trust, and the dividend component of the income distributed by the trust to the unit holders is also exempt.

Illogical tax treatment of capital gains - The deferral of capital gains provided to the sponsor of business trust places such a sponsor at a disadvantageous tax position vis-a-vis direct listing of the shares of the SPV. In case sponsor holding the shares of the SPV decides to exit through the Initial Public Offer (IPO) route, then the benefit of concessional tax regime relating to capital gains arising on transfer of shares subject to levy of STT is available to him. The tax on short-term capital gains in such cases is levied at the rate of 15 per cent under section 111A and the long-term capital gain is exempt under section 10(38). The benefit of concessional regime is, however, not available to the sponsor at the time it offloads units of business trust acquired in exchange of its shareholding in the SPV through IPO at the time of listing of business trust on stock exchange.

Amendment - In order to provide uniformity in the case given above, the following amendments have been made -

1. The sponsor would get the same tax treatment on offloading of units under an initial offer on listing of units as it would have been available had he offloaded the underlying shareholding through an IPO.
2. The Finance (No. 2) Act, 2004 has been amended (with effect from June 1, 2015) to provide that STT shall be levied on sale of such units of business trust which are acquired in lieu of shares of SPV, under an Initial offer at the time of listing of units of business trust on similar lines as in the case of sale of unlisted equity shares under an IPO.
3. Section 111A has been amended (with effect from the assessment year 2016-17) to provide the benefit of concessional tax regime of tax at 15 per cent on short-term capital gain. Similarly, section 10(38) has been amended (with effect from the assessment year 2016-17) to provide exemption to long-term capital gain. These benefits will be available to the sponsor on sale of units received in lieu of shares of SPV subject to levy of STT.

Example:

X is a shareholder in S Ltd., a SPV. On January 5, 2015, he gets 1,000 unlisted units in DEF, a business trust, by surrendering his shareholding in S Ltd. These unlisted units in DEF are transferred under an IPO as follows -

- 500 units are transferred on March 30, 2015.
- 300 units are transferred on May 10, 2015.
- 200 units are transferred on June 10, 2015.

Solution:

Tax treatment will be as follows -

1. **Transfer of 500 units on March 30, 2015 -** Capital gain is taxable for the assessment year 2015-16. The amended provisions are applicable from the assessment year 2016-17. Long-term capital gain/short-term capital gain will be taxable under normal provisions. The concessional tax treatment of section 111A in the case of short-term capital gain and exemption under section 10(38) are not available.

2. **Transfer of 300 units on May 10, 2015 -** Units are transferred during the previous year 2015-16 (i.e., assessment year 2016-17). The amended provisions of sections 10(38) and 111A are applicable from the assessment year 2016-17. However, the concession given by these sections is applicable only if securities transaction tax is payable. For this purpose, the Finance (No. 2) Act, 2004 is amended only from June 1, 2015. On May 10, 2015, securities transaction tax is not applicable. Consequently, long-term capital gain/short-term capital gain will be taxable under normal provisions. In the absence of securities transaction tax, the concessional tax treatment of section 111A in the case of short-term capital gain and exemption under section 10(38) are not available.

3. **Transfer of 200 units on June 10, 2015 -** Units are transferred during the previous year 2015-16 (i.e., assessment year 2016-17). Securities transaction tax is applicable from June 1,2015. Short-term capital gain will be taxable in the hands of X under section 111A at the rate of 15% (+SC+EC+SHEC). However, long-term capital gain will be exempt by virtue of section 10(38).

Example:

Suppose in above example, X holds 1,000 unlisted units in DEF directly (no investment through SPV). These units are transferred on the dates given in the example.

Solution:

Securities transaction tax is applicable in the 3 cases. Consequently, in these cases short-term capital gain will be taxable in the hands of X under section 111A at the rate of 15% (+SC+EC+SHEC). However, long-term capital gain will be exempt by virtue of section 10(38).

Rental income of REITs - In case of a business trust, being REITs, the income is predominantly in the nature of rental income. This rental income arises from the assets held directly by REIT or held by it through an SPV. The rental income received at the level of SPV gets passed through by way of interest or dividend to the REIT, the rental income directly received by the REIT is taxable at REIT level and does not get pass through benefit.

Amendments - In order to provide pass through to the rental income arising to REIT from real estate property directly held by it, the following amendments have been made from the assessment year 2016-17-

1. Any income of a business trust, being REIT by way of renting or leasing or letting out any real estate asset owned directly by such business trust shall be exempt under section 10(23FCA).

2. The distributed income (or any part thereof) received by a unit holder from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT, shall be deemed to be income of such unit holder and shall be charged to tax.

3. The REIT shall deduct tax at source on rental income allowed to be passed through. In case of resident unit holder, tax shall deducted at the rate of 10 per cent under section 194LBA and in case of distribution to non-resident unit holder, the tax shall be deducted at rate in force as applicable for deduction of tax on payment to the non-resident of any sum chargeable to tax [i.e., at 30 per cent (+SC+EC+SHEC) if the recipient is a non-resident (not being a foreign company) or at 40 per cent (+SC+EC+SHEC) if the recipient is a foreign company].

4. No tax deduction shall be made under section 194-I where the income by way of rent is credited or paid by a tenant to a business trust, being a REIT, in respect of any real estate asset held directly by such REIT.

Example:

DEF is a real estate investment trust (REIT). It owns house properties in different parts of Maharashtra. Besides, it holds controlling interest in A Ltd. (A Ltd., an Indian company, is SPV created by DEF for the purpose of

owning commercial properties). Annual taxable income of DEF is calculated as follows –

	₹ in crore
Rental income from properties directly owned by DEF (annual value : ₹ 13 crore - municipal tax : ₹ 3 crore - standard deduction : ₹ 3 crore)	7
Long-term capital gain on sale of land and buildings directly owned by DEF (computed as per section 48 after deducting indexed cost of acquisition)	20
Interest from A Ltd.	13
Dividend from A Ltd.	10
Total	50

DEF distributes ₹ 40 crore to its unitholders. X is one of the unitholders. He holds 10 per cent units in DEF and is entitled to ₹ 4 crore (before TDS).

The above information pertains to (a) previous year 2014-15 (Situation 1) or (b) previous year 2015-16 (Situation 2).

Solution:

Income of DEF – (₹ in crore)

	AY 2015-16	AY 2016-17
Rental income [exempt under section 10(23FCA)]	7	Nil
Long-term capital gain	20	20
Interest from A Ltd. [exempt under section 10(23FC]	Nil	Nil
Dividend [exempt under section 10(34)]	Nil	Nil
Net Income	27	20
Income-tax [(30% of ₹ 7 crore + 20% of ₹ 20 crore), (20% of ₹ 20 crore)]	6.1	4
Add: Surcharge	0.61	0.48
Income-tax and surcharge	6.71	4.48
Add: Education cess	0.2013	0.1344
Tax liability of DEF	6.9113	4.6144

Income of X –

	AY 2015-16	AY 2016-17
Rental income [₹ 4 crore × ₹ 7 crore ÷ ₹ 50 crore]: ₹0.56 crore	Exempt[1]	0.56
Long-term capital gain [₹4 crore × ₹ 20 crore ÷ ₹ 50 crore]: ₹ 1.6 crore	Exempt[1]	Exempt[1]
Interest [₹ 4 crore × ₹ 13 crore ÷ ₹ 50 crore]: ₹ 1.04 crore	1.04	1.04
Dividend [₹4 crore × ₹ 10 crore ÷ ₹ 50 crore]: ₹ 0.8 crore	Exempt[1]	Exempt[1]
Net income	1.04	1.6

[1] Exempt under section 10(23FD).

46. Pass through status to Category I and Category II Alternative Investment Funds [Sec. 115UB]

The existing provisions of section 10(23FB) provide that any income of a Venture Capital Company (VCC) or a Venture Capital Fund (VCF) from investment in a Venture Capital Undertaking (VCU) shall be exempt from taxation. Section 115U provides that income accruing or arising or received by a person out of investment made in a VCC or VCF shall be taxable in the same manner, on current year basis, as if the person had made direct investment in the VCU.

These sections provide a tax pass through (i.e., income is taxable in the hands of investors instead of VCF/ VCC) only to the funds, being set-up as a company or a trust, which are registered (i) before May 21, 2012 as a VCF under SEBI (Venture Capital Funds) Regulations, 1996, or (ii) as venture capital fund [being one of the sub-categories under Category-I Alternative investment fund (AIF) regulated by SEBI (AIF) Regulations, 2012] with effect from May 21, 2012. The existing pass through is available only in respect of income which arises to the fund from investment in VCU, being a company which satisfies the conditions provided in SEBI (VCF) Regulations, 1996 or SEBI (AIF) Regulations, 2012 (AIF regulations).

Under the AIF regulations, various types of AIFs have been classified under three separate categories as Category I, II and III AIFs -

– **Category I** includes AIFs that invest in start-ups or early stage ventures or social ventures or small and medium enterprises (SMEs) or infrastructure or other sectors or areas, which the Government or regulators consider as socially or economically desirable. Category I AIFs are the funds which have positive spillover effects on economy and for which the Government/SEBI/other regulators in India might consider providing incentives or concessions.

– **Category II** AIFs are funds including private equity funds or debt funds which do not fall in Category I and III and which do not undertake leverage or borrowing other than to meet day-to-day operational requirements.

– **Category III** AIFs are funds which employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. These AIFs are hedge funds or funds, which trade with a view to making short-term returns, or such other funds, which are open ended, for which no specific incentives or concessions are given by the Government or any other regulators.

These funds can be set-up as a trust, company, limited liability partnership and any other body corporate. Similarly, investment by AIFs can be in entities which can be a company, firm, etc.

Pooled investment vehicles (other than hedge funds) engaged in making passive investments have been accorded pass through in certain tax jurisdictions. In order to rationalize the taxation of Category I and Category II AIFs (hereafter referred to as investment fund), a special tax regime has been provided under section 115UB. The salient features of the special regime are given below -

- Income of a person (being a unit holder of an investment fund) out of investments made in the investment fund shall be chargeable to income-tax in the same manner as if it was the income accruing or arising to (or received by) such person, had the investments (made by the investment fund) been made directly by him.
- Income in the hands of investment fund, other than income from profits and gains of business, shall be exempt from tax. The income in the nature of profits and gains of business or profession shall be taxable in the case of investment fund. If investment fund is a company or a firm, such business income will be taxable at the rate applicable to the company or firm. Conversely, if such fund is a person other than company or firm, business income will be taxable at the maximum marginal rate of tax (i.e., at 34.608 per cent for the assessment year 2016-17).
- Income in the hands of investor which is of the same nature as income by way of profits and gain of business at investment fund level shall be exempt.
- Where any income, other than income which is taxable at investment fund level, is payable to a unit holder by an investment fund, the fund shall deduct income-tax at the rate of 10 per cent under section 194LBB (with effect from June 1, 2015).
- The income paid or credited by the investment fund shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as if it had been received by, or had accrued or arisen to, the investment fund.

- If in any year there is a loss at the fund level (either current loss or the loss which remained to be set off), the loss shall not be allowed to be passed through to the investors but would be carried over at fund level to be set off against income of the next year in accordance with the provisions of Chapter VI.
- The provisions of dividend distribution tax under section 115-O or tax on distributed income under section 115R shall not apply to the income paid by an investment fund to its unit holders.
- The income received by the investment fund would be exempt from TDS requirement [a notification to this effect will be issued under section 197A(1F)].
- It shall be mandatory for the investment fund to file its return of income. The investment fund shall also provide to the prescribed income-tax authority and the investors, the details of various components of income, etc., for the purposes of the scheme.
- The existing pass through regime shall continue to apply to VCF/VCC which had been registered under SEBI (VCF) Regulations, 1996. Remaining VCFs (being part of Category I AIFs) shall be subject to the new pass through regime.

Example:

DEF is an investment fund. There are 20 unit holders. X is one of the unit holders holding 1 unit. For the previous year 2015-16, DEF reports the following income -

₹ in crore

Business income	8
Long-term capital gains	10
Income from other sources	2

After payment of income-tax, the entire post-tax income is distributed to unit holders. Income of X from other sources is bank interest of ₹ 24,60,000. Find out the net income and tax liability of DEF under the following situations -

Situation 1 [DEF (AOP)] - DEF is an Indian trust and has registration certificate as Category I Alternate Investment Fund under SEBI (AIF) Regulations.

Situation 2 [DEF (LLP)] - DEF in the above case is a limited liability partnership in India.

Situation 3 [DEF (Co.)] - DEF in the above case is an Indian company.

Solution:

Computation of income and tax of DEF –

	DEF (AOP) ₹	DEF (LLP) ₹	DEF (Co.) ₹
Business income	8,00,00,000	8,00,00,000	8,00,00,000
Long-term capital gains [exempt under section 10(23FBA)]	-	-	-
Income from other sources [exempt under section 10(23FBA)]	-	-	-
Net income	8,00,00,000	8,00,00,000	8,00,00,000
Tax liability [34.608% (being maximum marginal rate of tax, i.e., IT : 30%, SC : 12%, EC : 3%) in the case of AOP, 34.608% (being applicable rate, i.e., IT : 30%, SC : 12%, EC : 3%) in the case of LLP and 33.063% (being applicable rate, i.e., IT : 30%, SC : 7%, EC : 3%) in the case of company]	2,76,86,400	2,76,86,400	2,64,50,400

Notes –

1. At the time of distribution of income to unit holders, there is no distribution tax or dividend tax under section 115-O or section 115R.

2. When income (pertaining to long-term capital gains and income from other sources) is distributed to unit holders, DEF will deduct tax at source at the rate of 10% (no surcharge/education cess) under section 194LBB. However, there is no TDS if income is paid/credited during April 1, 2015 and May 31, 2015. Moreover, when business income is distributed to unit holders, TDS provisions are not applicable.

3. Minimum alternate tax/alternate minimum tax provisions will not have any impact in the above computation of tax liability.

Computation of income and tax of X - X holds 1 out of 20 (i.e., 5%) units. His income will be calculated as follows -

	₹
Business income received from DEF [exempt under section 10(23FBB)]	Nil
Long-term capital gains received from DEF (5% of ₹ 10,00,00,000)	50,00,000
Income from other sources -	
- received from DEF (i. e., 5% of ₹ 2,00,00,000)	10,00,000
- bank interest	24,60,000
Net income	84,60,000
Income-tax (20% of ₹ 50,00,000 and normal tax on the balance)	18,63,000
Add: Surcharge	Nil
Tax and surcharge	18,63,000
Add: Education cess	55,890
Tax liability	19,18,890

Example:

In the above example, income of DEF pertaining to the previous year 2015-16 is as follows (in place of income given in the table in the original example) –

	₹ In Core
Business income	(-)6
Long-term capital gains	(-)2
Income from other sources	7

No other change in data/information.

Solution:

Computation of income of DEF for the assessment year 2016-17

	DEF (AOP) ₹	**DEF (LLP) ₹**	**DEF (Co.) ₹**
Business loss (it is adjusted against income from other sources)			
Long-term capital loss (it cannot be set off during the current year, it will be carried forward by DEF)	Nil	Nil	Nil
Income from other sources (₹ 7 crore - business loss of ₹ 6 crore)	-	-	-
Less: Exemption under section 10(23 FBA)	1,00,00,000	1,00,00,000	1,00,00,000
Net income	1,00,00,000	1,00,00,000	1,00,00,000
	Nil	Nil	Nil

Computation of income and tax of X - Income of X will be ₹ 29,60,000 (being 5% of ₹ 1 crore + bank interest of ₹ 24,60,000).

Example:

In example above, income of DEF pertaining to the previous year 2016-17 is as follows -

	₹ In Core
Business income	1
Long-term capital gains	5
Income from other sources	4

No other change in data/information.

Solution:

Computation of income of DEF for the assessment year 2017-18 -

	DEF (AOP) ₹	DEF (LLP) ₹	DEF (Co.) ₹
Business income	1,00,00,000	1,00,00,000	1,00,00,000
Long-term capital gains (₹ 5 crore - brought forward long-term capital loss of ₹ 2 crore) [₹ 3 crore is exempt under section 10(23 FBA)]	-		
Income from other sources [₹ 4 crore is exempt under section 10(23FBA)]	-		
Net income	1,00,00,000	1,00,00,000	1,00,00,000
Tax liability* [34.608% (being maximum marginal rate of tax, i.e., IT: 30%, SC : 12%, EC : 3%) in the case of AOP, 30.9% (being applicable rate, i.e., IT: 30%, SC : nil, EC : 3%) in the case of LLP or in the case of company]	34,60,800	30,90,000	30,90,000

*It is assumed that tax rates for the assessment years 2016-17 and 2017-18 will be the same.

Computation of income and tax of X - Income of X will be ₹ 59,60,000 [i.e., long-term capital gain : ₹ 15,00,000 (being 5% of ₹ 3 crore) + income from other sources : ₹ 44,60,000 (being 5% of ₹ 4 crore + bank interest of ₹ 24,60,000)].

Amendments relating to Income-Tax Authorities - Powers

47. Amendment to section 132B

The existing provisions contained in section 132B provide that the assets seized under section 132 or requisitioned under section 132A may be adjusted against the amount of existing liability under the Income-tax Act, the Wealth-tax Act, etc., and the amount of liability determined on completion of assessment. This provision has been amended with effect from June 1, 2015 to provide that the asset seized under section 132 or requisitioned under section 132A may be adjusted against the amount of liability arising on an application made before the Settlement Commission under section 245C(1).

Amendments relating to filing of returns, assessments and re-assessment

48. Compulsory filing of return in relation to assets, etc. located outside India [Fourth proviso to section 139(1)] [W.e.f. A.Y. 2016-17]

Fourth proviso to section 139(1) provides that a person, being a resident other than not ordinarily resident in India, who is not required to furnish a return under section 139(1) and who during the previous year has:

(a) (i) any asset located outside India, or

(ii) any financial interest in any entity located outside India like right to share profit in any entity outside India as partner or member of AOP, etc.

(b) signing authority in any account located outside India,

shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed.

The Act has substituted the above fourth proviso by the following:

A person, being a resident other than not ordinarily resident in India within the meaning of section 6(6), who is not required to furnish a return under this sub-section and who at any time during the previous year,—

(a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or

(b) is a beneficiary of any asset (including any financial interest in any entity) located outside India,

shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed.

Provided also that nothing contained in the fourth proviso shall apply to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India when income, if any, arising from such asset is includible in the income of the person referred to in clause (a) of that proviso in accordance with the provisions of this Act.

Note:-

"Beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

"Beneficiary" in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

49. Prescribed form of return of income to also require the assessee to furnish certain additional particulars relating to assets held by him [Section 139(6)] [W.e.f. A.Y. 2016-17]

The Act has amended section 139(6) to provide that, besides other particulars required to be furnished in the form, the form of return of income shall require the assessee to give particulars relating to assets of the prescribed nature and value, held by him as a beneficial owner or otherwise or in which he is a beneficiary.

50. Furnishing of return of income also made mandatory for certain funds or institution [Section 139(4C) & (4F)] [W.e.f. A.Y. 2016-17]

(a) Universities or educational institutions or hospitals or other institutions referred to in section 10(23C) (iiiab) and (iiiac) mandatorily required to furnish return of income [Section 139(4C)] [W.e.f. A.Y. 2016-17]

Under the Income Tax Act, exemption under section 10(23C)(iiiab) and (iiiac), subject to specified conditions, is available to such university or educational institution, hospital or other institution which is **wholly or substantially** financed by the Government.

Under the existing provisions of section 139(4C), besides other institutions specified under that clause, all entities whose income is exempt under section 10(23C)(iiiad), (iiiae), (iv), (v), (vi), (via), are mandatorily required to file their return of income.

The Act has amended section 139(4C) to provide that entities covered under section 10(23C)(iiiab) and (iiiac) i.e. university or educational institution, hospital or other institution which is wholly or substantially financed by the Government shall also be mandatorily required to file their return of income.

In other words, all universities or educational institutions or hospitals or other institution whether financed by the Government or not or whether their gross receipts exceed ₹1 crore or not, will be required to file return of income as per section 139(4C).

(b) Investment fund referred to in section 115UB mandatory required to furnish return of income [Section 139(4F)] [Inserted w.e.f. A.Y. 2016-17]

Every investment fund referred to in section 115UB, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of income in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under section 139(1).

51. Simplification of approval regime for issue of notice for re-assessment [Section 151] [W.e.f. 01-06-2015]

Section 151 of the Act provides for sanction from certain authorities before issue of notice for reassessment of income under section 148. Under certain specified circumstances, the Assessing Officer is required to obtain sanction before issue of notice under section 148. Section 151 specifies different sanctioning authorities based on-(i) whether scrutiny under section 143(3) or section 147 has been made earlier or not, (ii) whether notice is proposed to be issued within or after four years from the end of relevant assessment year, and (iii) the rank of the Assessing Officer proposing to issue notice.

To bring simplicity, section 151 has been substituted by the new section 151 which provides as under:

(1) Where the notice is to be issued after the expiry of 4 years [Section 151(1)]: No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In any other case: In a case other than a case falling under section 151(1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

However, for the purposes of section 151(1) and section 151(2), the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself. [Section 151(3)]

52. Assessment of income of a person other than the person in whose case search has been initiated [Sec. 153C]

Section 153C relates to assessment of income of any other person. The existing provisions provide that where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to a person other than searched person, then the books of account, documents, etc., shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person. On a plain reading of section 153C, it is evident that the Assessing Officer of the searched person must be "satisfied" that inter alia any document seized or requisitioned "belongs to" a person other than the searched person.

Originals v. Photocopies - Finding of photocopies in the possession of a searched person does not necessarily mean and imply that they (i.e., photocopies) "belong" to the person who holds the originals.

Possession of documents and possession of photocopies of documents are two separate things. Take the case of a search on the premises of Jay Ltd. During search photocopies of certain documents belonging to Peesee Ltd. are recovered from the premises of Jay Ltd. "Photocopies" are owned by Jay Ltd. but original documents belong to Peesee Ltd. Unless it is established that the documents in question (i.e., photocopies in this example) do not belong to Jay Ltd., the question of invoking section 153C does not arise and proceedings cannot be started on Peesee Ltd. - Pepsico India Holdings (P.) Ltd. v. CIT [2014] 50 taxmann.com 299 (Delhi).

Amendment - To supersede the above observations, section 153C has been amended with effect from June 1, 2015. The amended section provides that notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153, where the Assessing Officer is satisfied that,-

a. any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

b. any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

any person, other than the searched person, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person. hereunto

53. Amendment to section 154

Provisions of section 154 (rectification of mistakes) have been amended with effect from June 1, 2015 so as to insert the reference of "collector" in different sub-sections. Consequently, intimation generated after processing of TCS statement can be rectified under section 154.

54. Amendment to section 156

The existing provisions contained in the proviso to section 156 provide that where any sum is determined to be payable by the assessee or by the deductor under section 143(1) or section 200A(1), the intimation under these sections shall be deemed to be a notice of demand for the purposes of section 156.

The scope of above provision has been extended (with effect from June 1, 2015) to cover intimation generated after processing of TCS statements. The amended provisions provide that where any sum is determined to be payable by the assessee or the deductor or the collector under section 143(1), section 200A(1) or section 206CB(1), the intimation under these sub-sections shall be deemed to be a notice of demand for the purposes of section 156.

Amendments relating to Special procedure for avoiding Repetitive Appeals

55. Procedure for appeal by revenue when an identical question of law is pending before Supreme Court [Sec. 158AA]

Presently, special provisions for avoiding repetitive appeals are given by section 158A.

Existing provisions of section 158A - Section 158A provides that during pendency of proceedings in his case for an assessment year an assessee can submit a claim before the Assessing Officer or any appellate authority that a question of law arising in the instant case for the assessment year under consideration is identical with the question of law already pending in his own case before the High Court or Supreme Court for another assessment year. If the Assessing Officer or any appellate authority agrees to apply the final decision on the question of law in that earlier year in the present year, he will not agitate the same question of law once again for the present year before higher appellate authorities. The Assessing Officer or any appellate authority before whom his case is pending can admit the claim of the assessee. As and when the decision on the question of law becomes final, they will apply the ratio of the decision of the High Court or Supreme Court for that earlier case to the relevant year's case also.

Section 158A not applicable if revenue has to file appeal for subsequent years - There is presently no parallel provision for revenue to not file appeal for subsequent years where the Department is in appeal on the same question of law for an earlier year. As a result, appeals are filed by the revenue year after year on the same question of law until it is finally decided by the Supreme Court, thus, multiplying litigations.

New provisions of section 158AA - New section 158AA has been inserted with effect from June 1, 2015. It is applicable when department is in appeal before the Supreme Court. It provides that where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year which is pending before the Supreme Court (in an appeal or in a special leave petition) filed by the revenue, against the order of the High Court in favour of the assessee, the Commissioner or Principal Commissioner may (instead of directing the Assessing Officer to appeal to the Appellate Tribunal), direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within 60 days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case.

The Commissioner or Principal Commissioner shall proceed under above provisions only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case. However, in case no such acceptance is received the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in section 253(2)/(2A) and, accordingly, may, if he objects to the order passed by the Commissioner (Appeals), direct the Assessing Officer to appeal to the Appellate Tribunal.

Where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case (if the Supreme Court decides the earlier case in favour of the Department), the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order within 60 days from the date on which the order of the Supreme Court is communicated to the Commissioner or Principal Commissioner.

Amendments relating to TDS

56. Employer to obtain evidence/proof regarding deductions, exemptions or allowances claimed by the employee while estimating the income of the employee for the purpose of deduction of tax under section 192 [Section 192] [W.e.f. 01.06.2015]

Under section 192 of the Act, the person responsible for paying (DDO) income chargeable under the head "salaries" under the Act is authorised to allow certain deductions, exemptions or allowances or set-off of certain loss as per the provisions of the Act for the purposes of estimating income of the assessee or computing the amount of the tax deductible under the said section. The evidence/proof/particulars for some of the deductions/exemptions/ allowances/set-off of loss claimed by the employee such as rent receipt for claiming exemption of HRA, evidence of interest payments for claiming loss from self occupied house property etc. is generally not available with the DDO. In these circumstances, the DDO has to depend upon the evidence/particulars furnished, if any, by the employees in support of their claim of deductions, exemptions, etc. As the existing provisions of the Act do not contain any guidance regarding nature of evidence/documents to be obtained by the DDO, there is no uniformity in the approach of the DDO in this matter.

In order to bring clarity in this matter, sub-section (2D) has been inserted in section 192, w.e.f. 01.06.2015 which provides as under:

The person responsible for making the payment referred to in section 192(1) shall, for the purposes of estimating income of the assessee or computing tax deductible under section 192(1), obtain from the assessee the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act **in such form and manner as may be prescribed.**

57. TDS on income in respect of payment of accumulated balance due to an employee under Employees Provident Fund and Miscellaneous Provisions Act, 1952 [Section 192A] [W.e.f. 1-6-2015]

Under the existing provisions of rule 8 of Schedule IV-A of the Act, the withdrawal of accumulated balance by an employee from the RPF is exempt from taxation. However, in order to discourage pre-mature withdrawal and to promote long term savings, it has been provided that such withdrawal shall be taxable if the employee makes withdrawal before continuous service of five years (other than the cases of termination due to ill health, closure of business, etc.) and does not opt for transfer of accumulated balance to new employer. Rule 9 of the said Schedule further provides computation mechanism for determining tax liability of the employee in respect of such pre-mature withdrawal. For ensuring collection of tax in respect of these withdrawals, rule 10 of Schedule IV-A provides that the trustees of the RPF, at the time of payment, shall deduct tax as computed in rule 9 of Schedule IV-A.

Rule 9 of Schedule IV-A of the Act provides that the tax on withdrawn amount is required to be calculated by recomputing the tax liability of the years for which the contribution to RPF has been made by treating the same as contribution to unrecognized provident fund. The trustees of private PF schemes, being generally part of the employer group, have access to or can easily obtain the information regarding taxability of the employee making pre-mature withdrawal for the purposes of computation of the amount of tax liability under rule 9 of the Schedule-IV-A of the Act. However, at times, it is not possible for the trustees of EPFS to get the information regarding taxability of the employee such as year-wise amount of taxable income and tax payable for the purposes of computation of the amount of tax liability under rule 9 of the Schedule-IV-A of the Act.

Therefore, a new section 192A has been inserted w.e.f. 01.06.2015 for deduction of tax which provides as under:

Notwithstanding anything contained in this Act, the trustees of the Employees' Provident Fund Scheme, 1952, framed under section 5 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees, shall, in a case where the accumulated balance due to an employee participating in a recognised provident fund is includible in his total income owing to the provisions of rule 8 of Part A of the Fourth Schedule not being applicable, at the time of payment of the accumulated balance due to the employee, deduct income-tax thereon at the rate of 10%.

However, no deduction under this section shall be made where the amount of such payment or, as the case may be, the aggregate amount of such payment to the payee is less than ₹ 30,000.

Rate of TDS if PAN is not provided [Second proviso to section 192A]: Any person entitled to receive any amount on which tax is deductible under this section shall furnish his Permanent Account Number to the person responsible for deducting such tax, failing which tax shall be deducted at the maximum marginal rate.

58. Rationalisation of provisions relating to deduction of tax on interest (other than interest on securities) [Section 194A] [W.e.f. 1-6-2015]

The following amendments have been made in section 194A relating to deduction of tax on interest other than interest on securities:

1. Co-operative banks to deduct TDS on time deposits if interest exceeds ₹ 10,000 [Section 194A(3)(v) w.e.f. 01.06.2015]

Section 194A(1) read with section 194A(3)(i) of the Act provide for deduction of tax on interest (other than interest on securities) over a specified threshold, i.e. ₹ 10,000 for interest payment by banks, co-operative society engaged in banking business (co-operative bank) and post office and ₹5,000 for payment of interest by other persons.

There is no difference in the functioning of the co-operative banks and other commercial banks, the Finance Act, 2006 and Finance Act, 2007 amended the provisions of the Act to provide for co-operative

banks a taxation regime which is similar to that for the other commercial banks. However, section 194A(3)(v) of the Act provides a general exemption from making tax deduction from payment of interest by all co-operative societies to its members, the co-operative banks tried to avail this exemption by making their depositors as members of different categories. This has led to dispute as to whether the co-operative banks, for which the specific provisions of tax deduction exist in the form of section 194A(1), section 194A(3)(i)(b) and section 194A(3)(viia)(b) of the Act, can take the benefit of general exemption provided to all co-operative societies from deduction of tax on payment of interest to members. There is no rationale for treating the co-operative banks differently from other commercial banks in the matter of deduction of tax and allowing them to avail the exemption meant for smaller credit co-operative societies formed for the benefit of small number of members.

In view of the above, the Act has amended the provisions of the section 194A of the Act to expressly provide from the prospective date of 1st June, 2015 that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A(3)(v) of the Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members.

However, the existing exemption provided under section 194A(3)(viia)(a) of the Act to primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank from deduction of tax in respect of interest paid on deposit shall continue to apply. Therefore, these co-operative credit societies/banks referred to in said clause (viia)(a) would not be required to deduct tax on interest payment to depositors even after the above amendment. Further, the existing exemption provided under section 194A(3)(v) of the Act from deduction of tax from interest paid by a cooperative society to another co-operative society shall continue to apply to the co-operative bank and, therefore, a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society.

2. Definition of time deposits amended [Explanation 1 under section 194A(3) w.e.f. 01.06.15]

The existing definition of "time deposits" provided in the section 194A of the Act **excludes** recurring deposit from its scope. Therefore, payment of interest on recurring deposits by banking company or co-operative bank is currently not subject to TDS. The recurring deposit is also made for a fixed tenure and, therefore, the same is akin to time deposit. The Act has therefore, amended the definition of 'time deposits' so as to **include** recurring deposits within its scope for the purposes of deduction of tax under section 194A of the Act. However, the existing threshold limit of ₹ 10,000 for non-deduction of tax shall also be applicable in case of interest payment on recurring deposits to safeguard interests of small depositors.

3. Tax on time deposits to be deducted bank wise instead of branch wise [Second proviso to section 194A(3)(i) inserted w.e.f. 01.06.2015]

Currently, provisions of proviso to section 194A(3)(i) of the Act provide that the interest income for the purpose of deduction of tax by the banking company or the co-operative bank or the public company shall be computed with reference to **a branch of these entities.** As currently, most of these entities are computerised and follow core banking solutions for crediting interest, there is no rationale for continuing branch wise calculation of interest by the entities who have adopted core banking solutions. The Act has therefore amended the provisions of section 194A of the Act to provide that the computation of interest income for the purposes of deduction of tax under section 194A of the Act should be made **with reference to the income credited or paid by the banking company or the co-operative bank or the public company which has adopted core banking solutions.**

4. Tax on interest on compensation amount of Motor Accident Claim to be deducted at the time of payment instead of accrual basis [Section 194A(3)(ix) & (ixa)]

Under section 194A(3)(ix) of the Act, tax is not required to be deducted from the interest credited or paid on the compensation amount awarded by the Motor Accident Claim Tribunal if the amount of such interest credited or paid during a financial year does not exceed ₹ 50,000. Finance (No. 2) Act, 2009 amended the provisions of section 56 of the Act as well as substituted section 145A of the Act to, inter alia, provide that interest income received on compensation or enhanced compensation shall be deemed to be the

income of the year in which the same has been received. However, the existing provisions of section 194A of the Act provides for deduction of tax from interest paid or credited on compensation, whichever is earlier. Section 145A(b) of the Act provides an exception to method of accounting contained in section 145 of the Act and mandates for taxation of interest on compensation on receipt basis only. Therefore, deduction of tax on such interest on mercantile/accrual basis results into undue hardship and mismatch.

The Act has therefore, amended the provisions of section 194A of the Income-tax Act, 1961 to provide that deduction of tax under section 194A of the Act from interest payment on the compensation amount awarded by the Motor Accident Claim Tribunal compensation shall be made only at the time of payment, if the amount of such payment or aggregate amount of such payments during a financial year exceeds ₹ 50,000.

In other words, no tax shall be deducted at source from interest on compensation amount awarded by Motor Accident Claim Tribunal in the following cases:

(a) If such interest is credited during the financial year,

(b) If such interest or aggregate of such interest or paid during the financial year does not exceed ₹ 50,000.

59. Clarification regarding deduction of tax from payments made to transporters [Section 194C] [W.e.f. 1-6-2015]

Under the existing provisions of section 194C of the Act payment to contractors is subject to tax deduction at source (TDS) at the rate of 1% in case the payee is an individual or Hindu undivided family and at the rate of 2% in case of other payees if such payment exceeds ₹30,000 or aggregate of such payment in a financial year exceeds ₹75,000. Prior to 01.10.2009, section 194C of the Act provided for exemption from TDS to an individual transporter who did not own more than two goods carriage at any time during the previous year. Subsequently, Finance (No. 2) Act, 2009 substituted section 194C of the Act with effect from 01.10.2009, which inter alia provided for non- deduction of tax from payments made to the contractor during the course of plying, hiring and leasing goods carriage if the contractor furnishes his Permanent Account Number (PAN) to the payer.

The memorandum explaining the provisions of Finance (No. 2) Bill, 2009 indicates that the intention was to exempt only small transport operators (as defined in section 44AE of the Act) from the purview of TDS on furnishing of Permanent Account Number (PAN). Thus, the intention was to reduce the compliance burden on the small transporters. However, the current language of section 194C(6) of the Act does not convey the desired intention and as a result all transporters, irrespective of their size, are claiming exemption from TDS under the existing provisions of section 194C(6) of the Act on furnishing of PAN.

As there is no rationale for exempting payment to all transporters, irrespective of their size, from the purview of TDS, the Act has amended the provisions of section 194C of the Act to expressly provide that the relaxation under section 194C(6) of the Act from non-deduction of tax shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to an contractor who is engaged in the business of transport i.e. plying, hiring or leasing goods carriage and who is eligible to compute income as per the provisions of section 44AE of the Act (i.e. a person who is not owning more than 10 goods carriage at any time during the previous year) and who has also furnished a declaration to this effect along with his PAN.

60. Amendment to section 194-I

Section 194-I has been amended with effect from June 1, 2015. A proviso has been inserted to provide that no deduction shall be made under section 194-I where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in section 10(23FCA), owned directly by such business trust.

61. Amendment to section 194LBA

Section 194LBA is applicable if a business trust distributes any income referred to in section 115UA [being of the nature referred to in section 10(23FC] to its unit holder. In order to provide pass through to the rental

income arising to real estate investment trust from real estate property directly held by it, the scope of section 194LBA has been modified. The amended provisions are applicable from June 1, 2015. Under the modified version, real estate investment trust shall deduct tax at source on rental income allowed to be passed through. In case of resident unit holder, tax shall be deducted at the rate of 10 per cent under section 194LBA and in case of distribution to non-resident unit holder, the tax shall be deducted at rate in force as applicable for deduction of tax on payment to the non-resident of any sum chargeable to tax [i.e., at 30 per cent (+SC+EC+SHEC) if the recipient is a non-resident (not being a foreign company) or at 40 per cent (+SC+EC+SHEC) if the recipient is a foreign company].

62. Tax deduction from income in respect of units of investment fund [Sec. 194LBB]

Section 194LBB has been inserted with effect from June 1, 2015. Provisions of this section are given below –

Time of tax deduction - Tax deduction is applicable if a business trust distributes any income referred to in section 115UB [not being business income of the nature referred to in section 10(23FBB)] to its unit holders. Tax is deductible at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

Rate of TDS - Tax is deductible at the rate of 10 per cent. If the recipient does not have PAN, tax is deductible at the rate of 20 per cent.

Lower TDS certificate - Provisions of section 197 or section 197A are not applicable.

63. Extension of eligible period of concessional tax rate under section 194LD

The existing provisions of section 194LD provide for lower withholding tax at the rate of 5 per cent in case of interest payable at any time on or after June 1, 2013 but before June 1, 2015 to foreign institutional investors and qualified foreign investors on their investments in Government securities and rupee denominated corporate bonds provided the rate of interest does not exceed the rate notified by the Central Government in this regard.

The limitation date of the eligibility period for benefit of reduced rate of tax available under section 194LC in respect of external commercial borrowings (ECB) has been extended from June 30, 2015 to June 30, 2017 by the Finance (No.2) Act, 2014. On similar lines, section 194LD has been amended to provide that the concessional rate of 5 per cent withholding tax on interest payment under this section will now be available on interest payable up to June 30, 2017.

64. Amendment to section 195(6)

Section 195(6) provides that the person responsible for making payment/credit to a non-resident/ foreign company shall furnish the information relating to payment of any sum in such form and manner as may be prescribed by the Board.

The above provisions of section 195(6) have been amended with effect from June 1, 2015. The amended provisions provide that the person responsible for paying to a non-resident/foreign company, any sum (whether or not chargeable under the provisions of this Act in the hands of recipient) shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.

65. Amendment to section 200

Sub-section (2A) has been inserted in section 200 with effect from June 1, 2015. It provides that in case of an office of the Government, where TDS has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer/Treasury Officer/Cheque Drawing and Disbursing Officer/any other person, who is responsible for crediting TDS to the credit of the Central Government, shall deliver to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed.

66. Amendment to section 200A

Section 200A provides for processing of TDS statements for determining the amount payable or refundable to the deductor. However, as section 234E was inserted after the insertion of section 200A, the existing provisions of section 200A do not provide for determination of fee payable under section 234E at the time of processing of TDS statements.

Therefore, the above provision has been amended with effect from June 1, 2015 so as to enable computation of fee payable under section 234E at the time of processing of TDS statement under section 200A.

67. Rationalisation of provisions relating to Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) [Section 197A, 200, 200A, 206CB] [W.e.f. 1-6-2015]

The following amendments have been made to rationalise the provisions relating to TDS & TCS:

Fee payable under section 234E to be included for determination of amount payable/refundable while processing of TDS statement [Section 200A]: Finance (No. 2) Act, 2009 inserted section 200A in the Act which provides for processing of TDS statements for determining the amount payable or refundable to the deductor. However, as section 234E was inserted after the insertion of section 200A in the Act. The existing provisions of section 200A of the Act does not provide for determination of fee payable under section 234E of the Act at the time of processing of TDS statements. The Act has therefore, amended the provisions of section 200A of the Act so as to enable computation of fee payable under section 234E of the Act at the time of processing of TDS statement under section 200A of the Act.

Enabling of filing of Form 15G/15H for payment made under life insurance policy [Section 197A] [W.e.f. 1-6-2015]

The Finance (No. 2) Act, 2014, inserted section 194DA in the Act with effect from 01.10.2014 to provide for deduction of tax at source at the rate of 2% from payments made under life insurance policy, which are chargeable to tax. It has been further provided that no deduction shall be made if the aggregate amount of payment during a financial year is less than ₹1,00,000. In spite of providing high threshold for deduction of tax under this section, there may be cases where the tax payable on recipient's total income, including the payment made under life insurance, will be nil.

Similarly, newly inserted section 192A provides for deduction of tax at source at the rate of 10% from payment of accumulated balance due to an employee from recognized provident fund. It has been further provided that no deduction shall be made if the aggregate amount of payment during a financial year **is less than ₹ 30,000.** In this case also tax payable on recipient's total income, including the payment made from recognised provident fund may be nil.

The existing provisions of section 197A of the Act inter alia provide that tax shall not be deducted, if the recipient of the certain payment on which tax is deductible furnishes to the payer a self-declaration in prescribed Form No. 15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil. The Act has amended section 197A(1A) and (1C) for making the recipients of payments referred to in section 192A and 194DA also eligible for filing self-declaration in Form No. 15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A.

68. Relaxing the requirement of obtaining TAN for certain deductors [Section 203A] [W.e.f. 1-6-2015]

Under the provisions of section 203A of the Act, every person deducting tax (deductor) or collecting tax (collector) is required to obtain Tax Deduction and Collection Account Number (TAN) and quote the same for reporting of tax deduction/collection to the Income-tax Department. However, currently, for reporting of tax deducted from payment over a specified threshold made for acquisition of immovable property (other than rural agricultural land) from a resident transferor under section 194-IA of the Act, the deductor is not required to obtain and quote TAN and he is allowed to report the tax deducted by quoting his Permanent Account Number (PAN).

The obtaining of TAN creates a compliance burden for those individuals or Hindu Undivided Family (HUF) who are not liable for audit under section 44AB of the Act. The quoting of TAN for reporting of Tax Deducted

at Source (TDS) is a procedural matter and the same result can also be achieved in certain cases by mandating quoting of PAN especially for the transactions which are likely to be one time transaction such as single transaction of acquisition of immovable property from non-resident by an individual or HUF on which tax is deductible under section 195 of the Act.

To reduce the compliance burden of these types of deductors, the Act has inserted sub-section (3) to section 203A to provide as under:

The provisions of this section (section 203A) shall not apply to such person, as may be notified by the Central Government in this behalf.

In other words, the requirement of obtaining and quoting of TAN under section 203A of the Act shall not apply to the notified deductors or collectors.

69. Amendment to section 206C

Sub-section (3A) has been inserted in section 206C with effect from June 1, 2015. It provides that in case of an office of the Government, where TCS has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer/Treasury Officer/Cheque Drawing and Disbursing Officer/any other person, who is responsible for crediting TCS to the credit of the Central Government, shall deliver to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed.

Further, sub-section (3B) has been inserted with effect from June 1, 2015. It provides that person collecting tax at source may also deliver to the prescribed authority, a correction statement for rectification of any mistake or to add, delete or update the information furnished in the quarterly statement.

70. Processing of quarterly TCS statements [Sec. 206CB]

Currently, there does not exist any provision in the Act to enable processing of the TCS statement filed by the collector as available for processing of TDS statement. The mechanism of TCS statement is similar to TDS statement. Section 206CB has been inserted (with effect from June 1, 2015) to provide for processing of TCS statements on the line of existing provisions for processing of TDS statement contained in section 200A. This provision also incorporates the mechanism for computation of fee payable under section 234E.

Intimation - After processing of TCS statement, an intimation is generated specifying the amount payable or refundable. This intimation generated after processing of TCS statement will be (i) subject to rectification under section 154; (ii) appealable under section 246A; and (iii) deemed as notice of demand under section 156.

71. Interest for late payment of amount due as specified in TCS intimation [Sec. 220]

As the intimation generated after processing of TCS statement shall be deemed as a notice of demand under section 156, the failure to pay the tax specified in the intimation shall attract levy of interest as per the provisions of section 220(2). However, section 206C(7) also contains provisions for levy of interest for non-payment of tax specified in the intimation to be issued. To remove the possibility of charging interest on the same amount for the same period of default both under section 206C(7) and section 220(2), section 220 has been amended. The amended section 220 provides that where interest is charged for any period under section 206C(7) on the tax amount specified in the intimation, then no interest shall be charged under section 220(2) on the same amount for the same period.

72. Amendment to section 234B

The following amendments have been made to the scheme of section 234B with effect from June 1, 2015-

- The existing provisions contained in section 234B(3) provide that where the total income is increased on reassessment under section 147/153A, the assessee shall be liable for interest at the rate of 1 per cent on the amount of increase in total income. This interest is presently calculated for the period commencing

from date of determination of total income under section 143(1) or on regular assessment and ending on the date of reassessment under section 147/153A.

Interest is charged under section 234B on the principle that the amount of tax determined on the total income [whether determined in intimation under section 143(1) or assessment or reassessment under section 143(3)/147/153A] was the taxpayer's true liability right from the beginning and it was with reference to that amount the advance tax should have been paid within the prescribed due date. Accordingly, section 234B(3) has been amended to provide that the period for which the interest is to be computed will begin from the first day of the assessment year and end on the date of determination of total income under section 147 or section 153A.

- A new sub-section (2A) has been inserted to provide that where an application for settlement is made under section 245C(1), the assessee shall be liable to pay simple interest at the rate of 1 per cent for every month (or part of a month) comprised in the period commencing on the first day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax. Further, where as a result of an order of the Settlement Commission under section 245D(4) for any assessment year, the amount of total income disclosed in the application under section 245C(1) is increased, the assessee shall be liable to pay simple interest at the rate of 1 per cent for every month (or part of a month) comprised in the period commencing on the first day of April of such assessment year and ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under section 245C(1).

Where, as a result of a rectification order under section 245D(6B), the amount on which interest was payable under the above provisions has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly.

73. Settlement Commission

Provisions regulating settlement of cases have been amended with effect from June 1, 2015 as follows -

- An assessee can make an application to the Settlement Commission at any stage of a "case" relating to him. "Case" is defined as any proceeding for assessment/reassessment which may be pending before an Assessing Officer on the date on which an application is made. The proceeding for assessment or reassessment under section 147 is deemed to commence from the date of issue of notice under section 148. Issue relating to escapement of income is often involved in more than one assessment year. In such a case the assessee becomes eligible to approach Settlement Commission only for the assessment year for which notice under section 148 has been issued. Therefore, to take the proceeding for all other assessment years where there is escapement, the assessee becomes eligible only after notice under section 148 has been issued for all such assessment years.

In order to obviate the need for issue of notice in all such assessment years for commencement of pendency, Explanation (i) to section 245A(b) has been amended. After the amendment, a proceeding for assessment or reassessment or recomputation under section 147 shall be deemed to have commenced—

a. from the date on which a notice under section 148 is issued for any assessment year;

b. from the date of issuance of such notice referred to in sub-clause (a), for any other assessment year or assessment years for which a notice under section 148 has not been issued but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished under section 139 or in response to a notice under section 142.

In other words, where a notice under section 148 is issued for any assessment year, the assessee can approach Settlement Commission for other assessment years as well (for which notice could have been issued on such date) even if notice under section 148 for such other assessment years has not been issued. However, a return of income for such other assessment years should have been furnished under section 139 or in response to notice under section 142.

- The existing provision contained in the Explanation (iv) to section 245A(b) provides that a proceeding for any assessment year [other than the proceedings of assessment or reassessment referred to in the Explanation (i)/(iii)/(iiia)] shall be deemed to have commenced from the first day of the assessment year and concluded on the date on which the assessment is made. This provision has been amended to provide that a proceeding for any assessment year [other than the proceedings of assessment or reassessment referred to in the Explanation (i)/(iii)/(iiia)] shall be deemed to have commenced from the date on which a return of income is furnished under section 139 or in response to notice under section 142 and concluded on the date on which the assessment is made or on the expiry of 2 years from the end of relevant assessment year, in a case where no assessment is made.
- The existing provision contained in section 245D(6B) provides that the Settlement Commission may, at any time within a period of 6 months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed under section 245D(4).

There is no provision for additional time where the assessee or the Commissioner files an application for rectification towards the end of the limitation period. Accordingly, the above provision has been amended to provide that the Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it -

a. at any time within a period of 6 months from the end of month in which the order was passed;

b. at any time within the period of 6 months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be.

Moreover, no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of 6 months from the end of the month in which an order under section 245D(4) is passed by the Settlement Commission.

- The existing provision contained in section 245H(1) provides that the Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, immunity from prosecution.

  As immunity is provided from prosecution by the Settlement Commission, section 245H(1) has been amended so as to provide that the Settlement Commission while granting immunity to any person shall record the reasons in writing in the order passed by it.

- The existing provision contained in section 245HA(1) provides for abatement of proceedings in different situations. This section has been amended to provide that where in respect of any application made under section 245C, an order under section 245D(4) has been passed without providing the terms of settlement the proceedings before the Settlement Commission shall abate on the day on which such order was passed.
- The existing provision contained in section 245K provides that where an application of a person has been allowed to be proceeded with under section 245D(1), then such person shall not be subsequently entitled to make an application before Settlement Commission. It further provides that in certain situations the person shall not be entitled to apply for settlement before Settlement Commission.

The restriction is presently applicable to a person, who makes the application under section 245C for settlement. Therefore, an individual who has approached the Settlement Commission once can subsequently approach again through an entity controlled by him. This defeats the purpose of restricting the opportunity of approaching the Settlement Commission only once for any person. Accordingly, section 245K has been modified to provide that any person related to the person who has already approached the Settlement

Commission once, also cannot approach the Settlement Commission subsequently. The "related person" is explained below -

Person who has approached the Settlement Commission	'Related persons" who cannot approach Settlement Commission subsequently
1. Where such person is an individual	Any company in which such person holds more than 50 per cent of the shares or voting power at any time, or any firm or association of persons or body of individuals in which such person is entitled to more than 50 per cent of the profits at any time, or any Hindu undivided family in which such person is a karta.
2. Where such person is a company	Any individual who held more than 50 per cent of the shares or voting power in such company at any time before the date of application before the Settlement Commission by such person.
3. Where such person is a firm or association of persons or body of individuals	Any individual who was entitled to more than 50 per cent of the profits in such firm, association of persons or body of individuals, at any time before the date of application before the Settlement Commission by such person
4. Where such person is an Hindu undivided family	The karta of that Hindu undivided family.

74. Amendment to section 245-0

With effect from April 1, 2015, a person shall be qualified for appointment as law Member from the Indian Legal Service, if he is an Additional Secretary to the Government of India or if he is qualified to be an Additional Secretary to the Government of India.

75. Amendment to section 246A

Section 246A has been amended with effect from June 1, 2015. After the amendment, the intimation generated after processing of TCS quarterly statements will be appealable within the parameters of section 246A.

76. Orders passed under section 10(23C)(vi)/(via) made appealable before ITAT [Sec. 253]

Section 10(23C)(vi) provides that any income received by a person on behalf of any university or other educational institution existing solely for educational purposes and not for purpose of profit, is not liable to tax. Likewise, section, 10(23C)(via) provides that any income received by a person on behalf of any hospital or other institution for treatment of persons suffering from illness or mental defectiveness or treatment of persons during convalescence or persons requiring medical attention, existing solely for philanthropic purposes and not for the purpose of profit, is not liable for tax. However, exemption is available under these provisions only if the educational institute or the hospital is approved by the prescribed authority.

In the above cases, if the prescribed authority refuses to grant approval (which can have significant financial implications for the educational or medical institution), the order of prescribed authority is not appealable before ITAT under the existing provisions of section 253(1). Therefore, section 253(1) has been amended with effect from June 1, 2015. Under the amended provisions an assessee aggrieved by the order passed by the prescribed authority under section 10(23C)(vi)/(via) may appeal to the Appellate Tribunal.

77. Raising of the income-limit in the cases that may be decided by single member bench of ITAT [Sec. 255]

The existing provisions of section 255(3) provides that single member bench may dispose of any case which pertains to an assessee whose total income as computed by the Assessing Officer does not exceed ₹ 5 lakh. With effect from June 1, 2015, the monetary limit of ₹ 5 lakh has been increased to ₹ 15 lakh.

78. Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue [Sec. 263]

If the Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer is "erroneous in so far as it is prejudicial to the interests of the revenue", he may, after giving the assessee an opportunity of being heard and after making an enquiry, pass an order modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment.

Amendment - The interpretation of expression "erroneous in so far as it is prejudicial to the interests of the revenue" has been a contentious one. In order to provide clarity on the issue, Explanation 2 has been inserted in section 263(1) with effect from June 1, 2015. This Explanation provides that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

a. the order is passed without making inquiries or verification which should have been made;

b. the order is passed allowing any relief without inquiring into the claim;

c. the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

d. the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

79. Mode of taking or accepting certain loans, deposits and specified sums and mode of repayment of loans or deposits and specified advances [Sees. 269SS and 269T]

In order to curb generation of black money by way of dealings in cash in immovable property transactions, sections 269SS and 269T have been amended with effect from June 1,2015. After the amendment, no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account-payee cheque/draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is ₹ 20,000 or more. Likewise, no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account-payee cheque/draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is ₹ 20,000 or more. The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place.

Consequential amendments have been made to sections 271D and 271E to provide penalty for failure to comply with the amended provisions of section 269SS and 269T, respectively.

80. Amount of tax sought to be evaded for the purpose of concealment penalty under section 271(1)(c)

Under the existing provision contained in section 271(1)(c) penalty for concealment of income or furnishing inaccurate particulars of income is levied on the "amount of tax sought to be evaded", which has been defined, inter alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income.

Concealment of income where tax is payable under MAT - Problems have arisen in the computation of amount of tax sought to be evaded where the concealment of income or furnishing inaccurate particulars of income occurs in the computation of income under provisions of minimum alternate tax (MAT)/alternate minimum tax (AMT) under sections 115JB and 115JC and also under general provisions (i.e., computation of income ignoring MAT/AMT). Courts have held that penalty under section 271(1)(c) cannot be levied in cases where the concealment of income occurs under general provisions and the tax is paid under the provisions of MAT/AMT under sections 115JB and 115JC – CIT v. Aleo Manali Hydro Power (P.) Ltd. [2013] 38 taxmann.com 288 (All.), CIT v. Jindal Polyester & Steel Ltd [2014] 52 taxmann.com 259 (All.).

Is there any revenue loss if tax is payable under MAT/AMT but concealment occurs under general provisions - Tax paid under the provisions of section 115JB or 115JC over and above the tax liability arising under general provisions is available as MAT/AMT credit for set off against future tax liability. Understatement of income and the tax liability thereon under general provisions results in larger amount of such credit becoming available to the assessee for set off in future years. If it is not checked, it will ultimately result in revenue loss in future. Therefore, where concealment of income, as computed under the general provisions, has taken place, penalty under section 271(1)(c) should be leviable even if the tax liability of the assessee for the year has been determined under provisions of MAT/AMT.

Amendment - Accordingly, section 271(1)(c) has been amended from the assessment year 2016-17. The amended version provides that the amount of tax sought to be evaded shall be the summation of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of MAT/ AMT under sections 115JB and 115JC. If, however, amount of concealment of income on any issue is considered both under the general provisions and provisions of MAT/AMT then such amount shall not be considered in computing tax sought to be evaded under provisions of MAT/AMT. Further, in a case where the provisions of MAT/AMT are not applicable, the computation of tax sought to be evaded under the provisions of MAT/AMT shall be ignored.

New definition of "tax sought to be evaded" - To make the above calculations, "tax sought to be evaded" shall be determined in accordance with the following formula -

Tax sought to be evaded = (A-B) + (C-D)	
A =	Amount of tax on the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (hereinafter referred to as "general provisions"
B =	Amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished
C =	Amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC
D =	Amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished.

The following points should be noted -

1. Where on any issue concealed income is considered both under MAT/AMT provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under Item D.

2. In a case where the provisions contained in section 115JB or section 115JC are not applicable, Item (C- D) in the formula shall be ignored.

3. Where in any case the amount of concealed income has the effect of reducing the loss declared in the return or converting that loss into income, the amount of tax sought to be evaded shall be determined in accordance with the above formula with the modification that the amount to be determined for Item (A - B) in the formula shall be the amount of tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income.

Example:

The following information is noted from the records of X Ltd. for the assessment year 2016-17 -

	General provisions ₹	MAT ₹
Income/book profit as per return of income	6,00,000	14,00,000
Add: Addition on estimate basis (not representing concealed income)	50,000	Nil
Add: Amount of concealed income (as per assessment order)	40,000	Nil
Net income/book profit (as per assessment order)	6,90,000	14,00,000
Tax liability/MAT	2,13,210	2,66,770

Tax payable as per assessment order is ₹ 2,66,770. What is tax sought to be evaded for the purpose of concealment penalty under section 271(1)(c)?

Solution:

Tax sought to be evaded will be calculated as follows -

	₹
A = Normal tax on ₹ 6,90,000	2,13,210
B = Normal tax on (₹ 6,90,000 - ₹ 40,000)	2,00,850
C = MAT on ₹ 14,00,000	2,66,770
D = MAT on (₹ 14,00,000 - nit)	2,66,770
Tax sought to be evaded = (A-B) + (C-D)	12,360

Example:

The following information is noted from the records of X Ltd. for the assessment year 2016-17:

	General provisions ₹	MAT ₹
Income/book profit as per return of income	7,00,000	16,00,000
Add: Addition on estimate basis (not representing concealed income)	10,000	Nil
Add: Amount of concealed income (sale to A Ltd. not recorded in books of account as discovered by the Assessing Officer) (as per assessment order)	30,000	30,000
Add: Amount of concealed income (being deliberate attempt to conceal income by claiming higher deduction under section 35, even no explanation is offered) (as per assessment order)	70,000	Nil
Add: Deferred tax (being deliberate attempt by X Ltd. to declare lower book profit by not adding deferred tax which appeared on the debit side or profit and loss account) (as per assessment order)	Nil	80,000
Net income/book profit (as per assessment order)	8,10,000	17,10,000
Tax liability/MAT	2,50,290	3,25,840

Tax payable as per assessment order is ₹ 3,25,840. What is tax sought to be evaded for the purpose of concealment penalty under section 271(1)(c)?

Solution:

Tax sought to be evaded will be calculated as follows -

	₹
A = Normal tax on ₹ 8,10,000	2,50,290
B = Normal tax on (₹ 8,10,000 - ₹ 30,000 - ₹ 70,000)	2,19,390
C = MAT on ₹ 17,10,000	3,25,840
D = MAT on (₹ 17,10,000 - ₹ 80,000) (₹ 30,000 will not be reduced as it is also considered for computing normal income)	3,10,597
Tax sought to be evaded = (A- B) + (C - D)	46,143

Example:

The following information is noted from the records of X Ltd. for the assessment year 2016-17 –

	General provisions ₹	MAT ₹
Income/book profit as per return of income	(-) 6,00,000	17,00,000
Add: Addition on estimate basis (not representing concealed income)	5,000	Nil
Add: Amount of concealed income (sale to A Ltd. not recorded in books of account as discovered by the Assessing Officer) (as per assessment order)	15,000	15,000
Add: Amount of concealed income (being deliberate attempt to conceal income by claiming higher deduction under section 35, even no explanation is offered) (as per assessment order)	7,50,000	Nil
Add: Deferred tax (being deliberate attempt by X Ltd. to declare lower book profit by not adding deferred tax which appeared on the debit side or profit and loss account) (as per assessment order)	Nil	45,000
Net income/book profit (as per assessment order)	1,70,000	17,60,000
Tax liability/MAT	52,530	3,35,368

Tax as per assessment order is ₹ 3,35,368. What is tax sought to be evaded for the purpose of concealment penalty under section 271(1)(c)?

Solution:

Tax sought to be evaded is calculated on the basis of the following formula -

Tax sought to be evaded = (A-B) + (C-D)

This formula is generally followed. If, however, by adding concealed income loss declared in the return of income is reduced or loss declared in the return of income is converted into income, the above formula will be modified. (A-B) in the above formula will be tax that would have been chargeable on the income in respect of which particulars have been concealed. There is no modification in (C- D). In this example, loss declared in the return of income is converted into income (because of addition of concealed income). Consequently, (A-B) will be replaced by tax on concealed income (i.e., tax on ₹ 7,65,000 which comes to ₹ 2,36,385).

Tax sought to be evaded will be calculated as follows -

	₹
A -B = As calculated above	2,36,385
C = MAT on ₹ 17,60,000	3,35,368
D = MAT on (₹ 17,60,000 - ₹ 45,000) (₹ 15,000 will not be reduced as it is also considered for computing normal income)	3,26,793
Tax sought to be evaded = (A - B) + (C- D)	2,44,960

81. Amendments to sections 271D and 271E

Section 271D provides that if a person accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so accepted. Likewise, section 271E provides that if a person repays any loan or deposit referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so repaid. These two sections have been amended with effect from June 1, 2015 to incorporate the reference of "specified sum" in section 271D and "specified advance" in section 271E consequent to the modification in sections 269SS and 269T. "Specified advance" means any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place.

82. Penalty for failure to furnish statement by an eligible investment fund [Sec. 271 FAB]

Section 271FAB has been inserted with effect from the assessment year 2016-17. It provides that if any eligible investment fund which is required to furnish a statement or any information and document under section 9A(5) fails to furnish such statement or information and the document within 90 days from the end of the previous year, the concerned income-tax authority may direct that such fund shall pay, by way of penalty, a sum equal to ₹ 5 lakh.

83. Penalty for failure to furnish information or documents under section 285A [Sec. 271GA]

Section 271GA has been inserted with effect from the assessment year 2016-17. It provides that if any Indian concern which is required to furnish any information or document under section 285A, fails to do so, the Income-tax authority, as may be prescribed in the said section 285A, may direct that such Indian concern shall pay, by way of penalty -

a. a sum equal to 2 per cent of the value of the transaction, in respect of which such failure has taken place, if such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern;

b. a sum of ₹ 5 lakh in any other case.

84. Penalty for failure to furnish information or furnishing inaccurate information under section 195(6) [Sec. 271-I]

Section 271-I has been inserted with effect from June 1, 2015. It provides that if a person, who is required to furnish information under section 195(6), fails to furnish such information; or furnishes inaccurate information, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ₹ 1 lakh.

85. Amendment to section 272A

Section 272A has been amended with effect from June 1, 2015 on the following lines -

1. If any person fails to deliver (or cause to be delivered) a statement within the time as may be prescribed under section 200(2A) or section 206C(3A), then such person shall pay, by way of penalty, a sum of ₹ 100 for every day of such default.

2. The above penalty shall not exceed the amount of tax deductible or tax collectible, as the case may be.

86. Amendment to section 273B

Section 273B provides for non-levy of penalty under various sections enumerated in the said section, if the assessee is able to show existence of reasonable cause for the failure for which penalty is leviable.

- This section has been amended with effect from the assessment year 2016-17 so as to include the reference of new section 271FAB relating to penalty for failure to furnish statement or information or document by an eligible investment fund and new section 271GA relating to penalty for failure to furnish information or document under section 285A.
- Further, section 273B has been amended with effect from June 1, 2015 so as to include the reference of new section 271-I.

87. Furnishing of information or document by an Indian concern [Sec. 285A]

Section 285A has been inserted with effect from the assessment year 2016-17. It provides that where any share or interest in a company or entity registered or incorporated outside India derives, directly or indirectly, its value substantially from the assets located in India as referred to in the Explanation 5 to section 9(1)(i), and such company or, as the case may be, entity holds such assets in India through or in an Indian concern, then, any such Indian concern shall, for the purposes of determination of income accruing or arising in India, under section 9(1)(i), furnish within the prescribed period to the prescribed income-tax authority the relevant information or document, in such manner and form as is prescribed in this behalf.

88. Amendment to section 288

Section 288 has been amended (with effect from June 1, 2015).

Certain chartered accountants not to give reports/certificates - The following chartered accountants will not be eligible to furnish audit reports and certificates under different provisions of the Income-tax Act. However, these persons can attend income-tax proceeding before income-tax authorities and ITAT as authorised representative on behalf of the assessee.

In the case of a corporate-assessee - In the case of a company, the person [who is not eligible for appointment as an auditor of the said company in accordance with the provisions of section 141(3) of the Companies Act, 2013], will not be eligible to furnish audit reports and different certificates under different provisions of the Income-tax Act. Under section 141(3) of the Companies Act, the following persons are eligible for appointment as an auditor of a company, namely—

1. A body corporate other than a LLP.
2. An officer or employee of the company.
3. A person who is a partner, or who is in the employment, of an officer or employee of the company.
4. A person who, or his relative or partner—
    i. is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company (the relative may hold security or interest in the company of fa« value not exceeding ₹ 1 lakh),
    ii. is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of suclholding company, in excess of ₹ 5 lakh,
    iii. has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for exceeding ₹ 1 lakh.

5. A person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed [i. e., any commercial purpose not being (a) professional services permitted to be rendered by an auditor under Chartered Accountants Act or under Companies Act, (b) commercial transactions under ordinary course of business at arm's length price like sale of products/ services to the Chartered Accountant as customer].
6. A person whose relative is a director or is in the employment of the company as a director or key managerial personnel.
7. A person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies.
8. A person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction.
9. Any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144 of the Companies Act.

In the case of a non-corporate assessee - In the case of an assessee (not being a company) the following chartered accountants will not be eligible to furnish audit reports and different certificates under different provisions of the Income-tax Act -

1. The assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family.
2. In case of the assessee, being a trust or institution, any person referred to in section 13(3)(a)/(b)/(c) and (cc).
3. In case of any person [other than persons referred to in (1) and (2) above], the person who is competent to verify the return under section 139 in accordance with the provisions of section 140.
4. Any relative of any of the persons referred to in (1), (2) and (3) above.
5. An officer or employee of the assessee.
6. An individual who is a partner, or who is in the employment, of an officer or employee of the assessee.
7. An individual who, or his relative or partner—
   i. is holding any security of, or interest in, the assessee (the relative may hold security or interest in the company of face value not exceeding ₹ 1 lakh),
   ii. ii is indebted to the assessee in excess of ₹ 1 lakh,
   iii. Hi has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee (the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding ₹ 1 lakh).
8. A person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed.
9. A person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction.

Meaning of relative - For the purpose of section 288, relative in relation to an individual means -

a. spouse of the individual;

b. brother or sister of the individual;

c. brother or sister of the spouse of the individual;

d. any lineal ascendant or descendant of the individual;

e. any lineal ascendant or descendant of the spouse of the individual;

f. spouse of a person referred to in (b), (c), (d) or (e) (supra);

g. any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

Example:

X is a chartered accountant in practice in Mumbai. On June 5, 2015, he holds appointments as a statutory auditor of 21 companies. On June 6, 2015, he wants to sign and upload the following reports/certificates –

1. Tax audit report in Form Nos. 3CA and 3CD pertaining to A Ltd. for the assessment year 2015-16 (professional fees: ₹ 1,80,000).
2. Report in Form No. 3CEA under section 50B(3) relating to computation of capital gain in the case of slump sale made by B & Co. (a partnership firm) during the previous year 2014-15 (professional fees : ₹ 30,000).
3. Audit report section 80-IA(7) for C Ltd. for the assessment year 2015-16 (professional fees : ₹ 5,000).
4. Tax audit under section 44AB for D (D is a sole proprietor having turnover of ₹ 5.5 crore) for the assessment year 2015-16 (professional fees : ₹ 1,05,000).

Solution:

X holds appointment as a statutory auditor of more than 20 companies on June 6, 2015. He will have to vacate the office of the statutory auditor of one of the companies. Till he vacates the office of the statutory auditor of one of the companies, he cannot sign and upload any report/certificate pertaining to a company. However, there is no such limitation for report/certificate pertaining to a person other than a company. Consequently, X is not competent to sign and upload audit reports pertaining to A Ltd. and C Ltd. on June 6, 2015. Slump sale report for B & Co. and tax audit report of D can be signed and uploaded on June 6, 2015.

Convicted person not eligible to act as authorised representative - Any person convicted by a court of an offence involving fraud shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction.

89. Board to notify rules for giving foreign tax credit [Sec. 295]

Section 91 provides for relief in respect of income-tax on the income which is taxed in India as well as in the country with which there is no Double Taxation Avoidance Agreement (DTAA). It provides that an Indian resident is entitled to a deduction from the Indian income-tax of a sum calculated on such doubly taxed income, at the Indian rate of tax or the rate of tax of said country, whichever is lower. In cases of countries with which India has entered into an agreement for the purposes of avoidance of double taxation under section 90 or section 90A, a relief in respect of income-tax on doubly taxed income is available as per the respective DTAAs.

The Income-tax Act does not provide the manner for granting credit of taxes paid in any country outside India. To provide this, section 295(2) has been amended with effect from June 1, 2015. The amended version provides that CBDT may make rules to provide the procedure for granting relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90, or under section 90A, or under section 91, against the income-tax payable under the Act.

90. Abolition of levy of wealth-tax under Wealth-tax Act, 1957

Levy of wealth tax under the Wealth-tax Act has been abolished with effect from the assessment year 2016-17.

91. Amendment to the Finance (No. 2) Act, 2004 pertaining to securities transaction tax

The Finance (No. 2) Act, 2004 has been amended with effect from June 1, 2015 to provide that securities transaction tax (STT) shall be levied on sale of such units of business trust which are acquired in lieu of shares of SPV, under an initial offer at the time of listing of units of business trust on similar lines as in the case of sale of unlisted equity shares under an IPO.

It shall be payable by seller at the rate of 0.2 per cent and collected by the lead merchant banker appointed by the business trust in respect of an initial offer.

Section - A
INCOME TAX

Study Note - 1

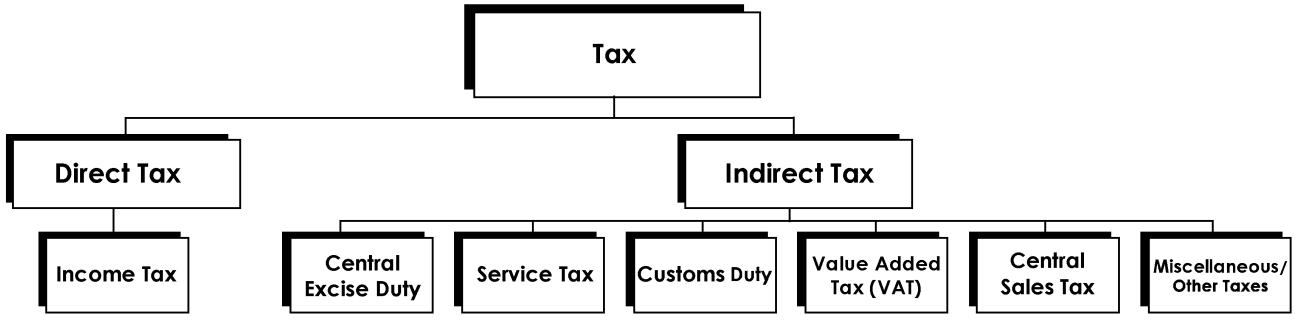
TYPES OF TAXES

This Study Note includes

1.1 Basis of Taxation
1.2 Direct Taxes and Indirect Taxes
1.3 Sources and Authority of Taxes in India
1.4 Seventh Schedule of the Constitution

1.1 BASIS FOR TAXATION

India is a socialist, democratic and republic State. Constitution of India is supreme law of land. All other laws, including the Income-tax Act, are subordinate to the Constitution of India. The Constitution provides that 'no tax shall be levied or collected except by authority of law'. The Constitution includes three lists in the Seventh Schedule providing authority to the Central Government and the State Governments to levy and collect taxes on subjects stated in the lists.



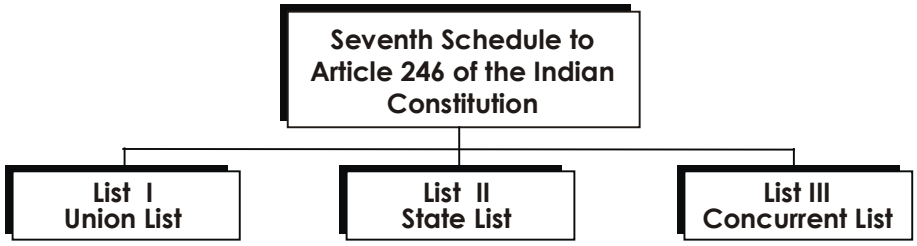
1.2 DIRECT TAXES & INDIRECT TAXES

Particulars	Direct Tax	Indirect Tax
Meaning	Direct Taxes are the taxes in which the incidence and impact falls on the same person/assessee	Indirect Taxes are such type of taxes where incidence and impact fall on two different persons.
Nature of tax	Direct Tax is progressive in nature.	Indirect Taxes are regressive in nature.
Taxable Event	Taxable Income of the Assessees.	Purchase / Sale / Manufacture of goods and /or rendering of services.
Levy & Collection	Levied and collected from the Assessee.	Levied & collected from the consumer but paid / deposited to the Exchequer by the Assessee / Dealer.
Shifting of Burden	Tax Burden is directly borne by the Assessee. Hence, the burden cannot be shifted.	Tax burden is shifted to the subsequent / ultimate user.
Tax Collection	Tax is collected on the income for a year is earned.	At the time of sale or purchases or rendering of services.

1.3 SOURCES AND AUTHORITY OF TAXES IN INDIA

Powers of Central or State Government to levy tax		
Article	**Empowers**	**For**
246(1)	Central or State Government	Levy of various taxes
246(1)	Central Government	Levy taxes in List I of the Seventh Schedule of the Constitution.
246(3)	State Government	Levy taxes in List II of the Seventh Schedule of the Constitution.
—	Central and State Government	List III of Seventh Schedule.

1.4 SEVENTH SCHEDULE OF THE CONSTITUTION



Taxation under Constitution

Union List (List I)	**State List (List II)**
Only Union Government can make laws.	Only State Government can make laws.
Given in Schedule Seven of Constitution	Given in Schedule Seven of Constitution.
Important taxes in Union List	**Important taxes in State List**
Entry No. 82 – Tax on income other than agricultural income.	**Entry No. 46 –** Taxes on agricultural income.
Entry No. 83 – Duties of customs including export duties.	**Entry No. 51 –** Excise duty on alcoholic liquors, opium and narcotics.
Entry No. 84 – Duties of excess on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, narcotic drugs, but including medicinal and toilet preparations containing alcoholic liquor, opium or narcotics.	**Entry No. 52 –** Tax on entry of goods into a local area for consumption, use or sale therein (usually called Entry Tax or Octroi).
Entry No. 85 – Corporation Tax.	**Entry No. 54 –** Tax on sale or purchase of goods other than newspapers except tax on interstate sale or purchase.
Entry No. 86 – Taxes on the capital value of assets, exclusive of agricultural land, of individuals and companies; taxes on capital of companies	**Entry No. 55 –** Tax on advertisements other than advertisements in newspapers.
Entry No. 92A – Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of Interstate trade or commerce.	**Entry No. 56 –** Tax on goods and passengers carried by road or inland waterways.
Entry No. 92B – Taxes on consignment of goods where such consignment takes place during Interstate trade or commerce.	**Entry No. 59 –** Tax on professions, trades, callings and employment.
Entry No. 92C – Tax on services [Amendment passed by Parliament on 15-1-2004, but not yet made effective].	
Entry No. 97 – Any other matter not included in List II, List III and any tax not mentioned in list II or list III. (These are called 'Residual Powers'.)	

List III : Concurrent List
Both Union and State Government can exercise power
Given in Schedule Seven of Constitution
Entry No.17A – Forest Income
Entry No. 25 – Education Income

Study Note - 2

THE SOURCE OF INCOME TAX LAW

This Study Note includes

2.1 BASIC CONCEPTS

THE ELEMENTS / SOURCES OF INCOME TAX LAW

1. The Income Tax Act, 1961

(a) Income tax in India is governed by the Income Tax Act, 1961

(b) It came into force w.e.f.1.4.1962

(c) The Act contains 298 sections and XIV Schedules

(d) The Finance Act shall bring amendment to this Act.

(e) The Law provides for determination of taxable income, tax liability and procedure for assessment, appeal, penalties and prosecutions.

2. Finance Act

(a) Finance Minister presents this as Finance Bill in both the Houses of Parliament.

(b) Part A of the Budget contains proposed policies of the Government in fiscal areas.

(c) Part B contains the detailed tax proposals.

(d) Once the Finance Bill is approved by the Parliament and gets the assent of the President, it becomes the Finance Act.

(e) The rate of tax, at which income shall be charged, is prescribed in the Schedule I of Finance Act.

(f) The Finance Act brings amendments to both the Direct Tax Laws (i.e. Income Tax) and Indirect Tax Laws (i.e. law relating to Central Excise, Customs Duty, Service Tax etc.)

3. The Income Tax Rules, 1962

(a) The administration of Direct Taxes is vested with Central Board of Direct Taxes (CBDT).

(b) Under Section 295 of IT Act, CBDT is empowered to frame rules from time to time to implement the amendment in tax provisions for proper administration of the Act.

(c) All forms, procedures and principles of valuation of perquisites prescribed under the Act are provided in the Rules framed by CBDT.

4. Circulars / Notifications from CBDT

(a) In exercise of the powers u/s 119, CBDT issues circulars and notifications from time to time.

(b) These circulars clarify doubts regarding the scope and meaning of the various provisions of the Act.

(c) These circulars act as guidance for officers and assessees.

(d) These circulars are binding on Assessing Officers but not on assessees and Courts.

(e) The circulars issued by the CBDT shall not be in contrary to the provisions of the Act.

Note: Subordinate Legislation

The Government enacts the law in the Parliament, e.g. Income Tax Act, Central Excise Act, etc. Where there is a need for detailed rules and regulations, the enactment is to be done by either CBDT or CBE&C. The rules and regulations enacted by CBDT or CBE&C are Income Tax Rules, CENVAT Credit Rules, and the Notifications and Circulars issued by CBDT, CBE&C is called Subordinate Legislation.

5. Supreme Court and High Court Decisions

(a) The Supreme Court and the High Court can give judgment only on the question of law.

(b) The Law laid down by the Supreme Court is the law of the land.

(c) The decision of High Court will apply in the respective States, within its jurisdiction.

DETERMINING THE RATES OF TAX UNDER THE INCOME TAX ACT, 1961

1. Income Tax shall be charged at the rates fixed for the year by the Annual Finance Act.
2. The First Schedule to the Finance Act provides the following rates of taxation.

Part I	The tax rates applicable to income of various types of assessees for the Assessment Year
Part II	Rates of TDS for the current Financial Year
Part III	Rates of TDS for salary and advance tax (which becomes Part I of the next Assessment Year)

2.2. RATES OF INCOME TAX FOR ASSESSMENT YEAR 2016-17

Normal Rates of Income Tax

I. Rate of Tax applicable to any Resident Senior Citizen (who attains 60 years age or more during any time of the Previous Year but less than 80 years of age)

Net Income Range	Rate of Income	Education Cess	Secondary and Higher Education Cess
Upto ₹ 3,00,000	Nil	Nil	Nil
₹ 3,00,001 to ₹ 5,00,000	@10% on total income minus ₹ 3,00,000	@2% of Income Tax	@1% of Income Tax
₹ 5,00,001 to ₹ 10,00,000	₹ 20,000 + @20% on total income minus ₹ 5,00,000	@2% of Income Tax	@1% of Income Tax
₹ 10,00,000 onwards	₹ 1,20,000 + @30% on total income minus ₹ 10,00,000	@2% of Income Tax	@1% of Income Tax

II. Rate of Tax applicable to any Resident Super Senior Citizen (who attains 80 years age or more during any time of the Previous Year)

Net Income Range	Rate of Income Tax	Education Cess	Secondary and Higher Education Cess
Upto ₹ 5,00,000	Nil	Nil	Nil
₹ 5,00,001 to ₹ 10,00,000	@20% on total income minus ₹ 5,00,000	@ 2% of Income Tax	@ 1% of Income Tax
₹ 10,00,000 onwards	₹ 1,00,000 + @ 30% on total income minus ₹ 10,00,000	@ 2% of Income Tax	@ 1% of Income Tax

III. In the case of any other Individual or Hindu Undivided Family or AOP/BOI (other than a co-operative society) whether incorporated or not, or every Artificial Judicial Person

Net Income Range	Rate of Income Tax	Education Cess	Secondary and Higher Education Cess
Upto ₹ 2,50,000	Nil	Nil	Nil
₹ 2,50,001 to ₹ 5,00,000	@10% on total income minus ₹ 2,50,000	@ 2% of Income Tax	@ 1% of Income Tax
₹ 5,00,001 to ₹ 10,00,000	₹ 25,000 + @ 20% on total income minus ₹ 5,00,000	@ 2% of Income Tax	@ 1% of Income Tax
₹ 10,00,000 onwards	₹ 1,25,000 + @ 30% on total incom minus ₹ 10,00,000	@ 2% of Income Tax	@ 1% of Income Tax

Note : The above rate is applicable to any individual who is not a Senior Citizen. No Addl / special benefit is awarded to Women tax payers. Here, the other individual includes Non-resident individual also irrespective of their age.

A resident individual, having total income not exceeding ₹ 5,00,000, can avail rebate, of ₹ 2,000 or 100% of income tax, whichever is less, u/s 87A. The amount of income tax computed in accordance with the above rates and special rates u/s 111A (relating to STCG on shares sold through recognised stock exchange) and 112 (relating to LTCG) shall be increased by a surcharge at the rate of 12% of such income tax in case the total income exceeds ₹ 1 crore.

2.2.1 Other Assessees:

Assessee	Rate of Tax	Surcharge
For Firms (including Limited Liability Partnership)	Total Income × 30% + EC@ 2% + SHEC @ 1%.	Surcharge @12% if the total income exceeds ₹ 1 crore.
Domestic Companies	Total Income × 30% + EC@ 2% + SHEC @ 1%.	Surcharge @ 7% if the total income exceeds ₹ 1 crore and @12% if the total incomeexceeds ₹ 10 crore.

Foreign Companies :		
Royalty received from Indian Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after March 31st, 1961, but before April 1st, 1976, or fees for rendering technical services received from Government or an Indian Concern in pursuance of an agreement made by it with the Government or the Indian Concern after February 29, 1964 and where such agreement has, in either case been approved by the Central Government	Total Income × 50% + EC@ 2% + SHEC @ 1%.	Surcharge @ 2% if the total income exceeds ₹ 1 crore and @5% if the total incomeexceeds ₹ 10 crore.
Other Income	Total Income x 40%+ EC@ 2% + SHEC @ 1%	Surcharge @ 2% if the totalincome exceeds ₹ 1 crore and5% if the total income exceeds ₹ 1 crore.
For Local Authorities	Total Income × 30% + EC@ 2% + SHEC @ 1%.	Surcharge @12% is total income exceeds ₹ 1 crore
For Co-operative Societies	For First ₹ 10,000 @ 10% For Next ₹ 1,000 + ₹ 10,000 @ 20% For the Balance ₹ 3,000 + @ 30% on balance amount EC @ 2% and SHEC @ 1% are applicable.	Surcharge @12% if total income exceeds ₹ 1 crore.
MAT = Minimum Alternate Tax	18.5% of Book Profit + EC @ 2% + SHEC 1%	Surcharge as applicable if Book Profits exceed ₹ 1 crore or ₹ 10 crore
AMT = Alternate Minimum Tax	18.5% of Book Profit + EC @ 2% + SHEC 1%	Surcharge @12% if Adjusted Total Income exceed ₹ 1 crore

Marginal Relief : The total amount payable as income tax and surcharge on total income exceeding ₹ 1crore but not exceeding ₹ 10 crore, shall not exceed the total amount payable as income tax on a totalincome of ₹ 1 crore, by more than the amount of income that exceeds ₹ 1 crore.

In case of company having a total income of exceeding ₹ 10 crores, the amount payable as income taxand surcharge shall not exceed the total amount payable as income tax and surcharge on total incomeof ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

2.3 DEFINITION

Assessee: [Section 2(7)]

Any person who is liable to pay any tax or any other sum under the Income Tax Act, 1961, and

Assessee includes:

(a) Every person in respect of whom any proceeding has been taken for the assessment of:-

  (i) His income or of the income of any other person;

  (ii) Loss sustained by him or other person;

  (iii) Refund due to him or such other person.

(b) Every person who is **deemed to be an assessee** under the Act.

(c) Every person who is **deemed to be an assessee** in default under the Act.

Assessment Year [Section 2 (9)]

Assessment Year means the **period of twelve months commencing on the 1st day of April every year.**

It relates to the previous year for which the income is assessed to tax.

The present Assessment Year is 2016-17 relating to Previous Year 2015-16.

Previous Year [Section 3]

"Previous Year" means the **Financial Year** immediately preceding the Assessment Year.

The year in respect of the income of which tax is levied is called Previous Year.

The present Previous Year 2015-16 and its Assessment Year is 2016-17.

Note : Previous Year for newly established business from the date of setting up of the business to the end of the Financial Year in which business was set up.

Example: X Ltd. started business on 1.11.15. So for X Ltd. Previous Year will be considered as 1.11.15 to 31.3.16.

Income [Section 2(24)] includes :

1. Profits or gains of business or profession.
2. Dividend.
3. Voluntary Contribution received by a Charitable / Religious Trust or University / Education Institution or Hospital
4. Value of perquisite or profit in lieu of salary taxable u/s 17 and special allowance or benefit specifically granted either to meet personal expenses or for performance of duties of an office or an employment of profit.
5. Export incentives, like Duty Drawback, Cash Compensatory Support, Sale of licences etc.
6. Interest, salary, bonus, commission or remuneration earned by a partner of a Firm from such Firm.
7. Capital Gains chargeable u/s 45.
8. Profits and gains from the business of banking carried on by a cooperative society with its members.
9. Winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.
10. Deemed income u/s 41 or 59.
11. Sums received by an assessee from his employees towards welfare fund contributions such as Provident Fund, Superannuation Fund etc.
12. Amount received under Keyman Insurance Policy including bonus thereon.

13. Amount received under agreement for (a) not carrying out activity in relation to any business, or (b) not sharing any knowhow, patent, copyright etc.
14. Benefit or perquisite received from a Company, by a Director or a person holding substantial interest or a relative of the Director or such person.
15. Gift as defined u/s 56 (2)(vi) (w.e.f. A.Y 2008-2009). Any sum of money exceeding ₹ 50,000, received by an Individual or a HUF from any person during the previous year without consideration on or after 1.4.2007, then the whole of aggregate of such sums will be taxable.
16. Any consideration received for issue of shares as exceeds the fair market value of the shares referred to in Section 56(2)(vii)(b).
17. Any sum of money referred to in clause (ix) of Sub-Section (2) of section 56.
18. "Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to section 43(1)" shall be deemed to be income.

PREVIOUS YEAR & ASSESSMENT YEAR WILL BE SAME in the following cases :

1. Shipping business of nonresident [Section 172]
2. Persons leaving India [Section 174]
3. AOP or BOI or Artificial Juridical Person formed for a particular event or purpose [Section 174A]
4. Persons likely to transfer property to avoid tax [Section 175]
5. Discontinued business [Section 176]

RELEVANT PREVIOUS YEAR FOR UNDISCLOSED SOURCES OF INCOME

SEC.	UNDISCLOSED SOURCES	PREVIOUS YEAR
68	Unexplained Cash Credits	The year in which books of accounts are found credited
69	Unexplained investments	The year in which the investment made
69A	Unexplained money, bullion or jewel or valuable article	The year in which it is found
69B	Undisclosed investments	The year in which the investment made
69C	Unexplained expenditure	The year in which it was incurred
69D	Amount borrowed or repaid on hundi, other than by way of account payee cheque in excess of ₹ 20,000.	The year in which the amount was borrowed or repaid on hundi.

Application of Income

An obligation to apply income, which has accrued or has arisen or has been received amounts to merely the apportionment of income. Therefore the essentials of the concept of application of income under the provisions of the Income Tax Act are :

1. Income accrues to the assessee
2. Income reaches to the assessee
3. Income is applied to discharge an obligation, whether self-imposed or gratuitous.

Diversion of Income

An obligation to apply the income in a particular way before it is received by the assessee or before it has arisen or accrued to the assessee results in diversion of income. The source is charged with an overriding title, which diverts the income. Therefore the essentials are the following:

1. Income is diverted at source,
2. There is an overriding charge or title for such diversion, and
3. The charge / obligation is on the source of income and not on the receiver.

Examples of diversion by overriding title are -

(a) Right of maintenance of dependants or of coparceners on partition

(b) Right under a statutory provision

(c) A charge created by a decree of a Court of law.

TOTAL INCOME [Sec. 2(45)]

"Total Income" means the total amount of income as referred to in Sec. 5 and computed in the manner laid down in the Act. Total income constitutes the tax with reference to which income tax is charged.

ROUNDING OFF TOTAL INCOME AND TAX

Rounding Off Income [Sec. 288A]: The Total Income computed under this Act, shall be rounded off to the **nearest multiple of ₹ 10.**

Rounding Off Tax [Sec. 288B] : The amount of Tax including Tax Deducted at Source (TDS) and advance tax, interest, penalty, fine or any other sum payable, and the amount of refund due under the Income Tax Act, shall be rounded off to the **nearest ₹ 10.**

BOOKS OF ACCOUNT [Sec. 2(12A)]

It includes Ledgers, Day Books, Cash Books, Account Books and other books, whether kept in the written form or as printouts or data stored in a floppy, disc, tape or any other form of electromagnetic data storage device.

DOCUMENT [Sec. 2(22AA)]

It includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000.

INFRASTRUCTURAL CAPITAL COMPANY [Sec. 2 (26A)]

"Infrastructure Capital Company" means such company which makes investments by way of acquiring shares or providing long-term finance to any enterprise or undertaking wholly engaged in the business referred to in sub-section (4) of section 80-IA or sub-section (1) of section 80-IAB or an undertaking developing and building a housing project referred to in sub-section (10) of section 80- IB or a project for constructing a hospital with at least one hundred beds for patients.

INFRASTRUCTURAL CAPITAL FUND [Sec. 2 (26B)]

"Infrastructure Capital Fund" means such fund operating under a trust deed registered under theprovisions of the Registration Act, 1908 established to raise monies by the trustees for investment by way of acquiring shares or providing long-term finance to any enterprise or undertaking wholly engaged in the business referred to in sub-section (4) of section 80-IA or sub-section (1) of section 80- IAB or an undertaking developing and building a housing project referred to in sub-section (10) of section 80-IB or a project for constructing a hotel of not less than three star category as classified by the Central Government or a project for constructing a hospital with at least one hundred beds for patients.

INSURER [Sec. 2(28BB)]

It means an insurer being an Indian insurance company, as defined under clause (7A) of section 2 of the Insurance Act, 1938, which has been granted a certificate of registration under section 3 of that Act.

SUBSTANTIAL INTEREST [Sec. 2 (32)]

Person who has a substantial interest in the company, in relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power. In the case of a non-corporate entity, a person can be said to have substantial interest if 20% or more share of profit is held.

RELATIVE [Sec. 2(41)]

In relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

RESULTING COMPANY [Sec. 2(41A)]

It means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.

CHARGE OF INCOME TAX [Sec. 4]

According to Sec. 4 of the Income Tax Act, 1961 the following basic principles are followed while charging Income-tax—

(i) Income-tax is a tax on the annual income of an assessee,

(ii) Usually, the income of the Previous Year (PY) is charged to the following Assessment Year (AY) at the prescribed rate fixed by the relevant Financial Act, and

(iii) Tax is levied on the total income of every assessee

RECEIPT OF INCOME - DEEMED INCOME [Sec. 7]

The following income shall be deemed to be received in the Previous Year :

(i) Employers contribution to recognized provident fund in excess of 12% of salary and interest credited to the recognized provident fund in excess of 9.5%

(ii) The transfer balance in a recognized provident fund, to the extent provided in Sub-rule 4 of Rule 11 of Part A of Fourth Schedule.

DIVIDEND INCOME [Sec. 8]

Dividend include –

(a) any distribution by a company of accumulated profits whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;

(b) any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not ;

(c) any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not ;

(d) any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits which arose after the end of the Previous Year ending next before the 1st day of April, 1993, whether such accumulated profits have been capitalised or not ;

(e) any payment by a company, not being a company in which the public are substantially interested,of any sum (whether as representing a part of the assets of the company or otherwise) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits ;

But "dividend" does not include -

(i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;

(ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964 ;

(ii) any advance or loan made to a shareholder [or the said concern] by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company ;

(iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off ;

(iv) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956 (Corresponding Section 68 of Companies Act, 2013) ;

(v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company)

Explanation 1 — The expression "accumulated profits", wherever it occurs in this clause, shall not include Capital Gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2 — The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation,[but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive Previous Years immediately preceding the Previous Year in which such acquisition took place].

Explanation 3 — For the purposes of this clause, —

(a) "concern" means a Hindu Undivided Family, or a Firm or an Association of Persons or a Body of Individuals or a Company ;

(b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the Previous Year, beneficially entitled to not less than twenty per cent of the income of such concern ;

CAPITAL AND REVENUE RECEIPTS

The objective of the Income-tax Act is to tax only income generally revenue receipts unless specifically exempted. On the other hand capital receipts are not chargeable to tax except when specifically provided in the Act. The distinction between a capital receipt and a revenue receipt should be perceived based on the facts and circumstances of each case. There is no specific provision in the Act to distinguish between a capital receipt and revenue receipt. It may be observed that :

A receipt in substitution of a source of income is a capital receipt while a receipt in substitution of an income is a revenue receipt.

An amount received as a compensation for surrender of certain rights under an agreement is a capital receipt whereas an amount received under an agreement as compensation for loss of future profit is arevenue receipt.

CAPITAL AND REVENUE EXPENDITURE

In computing taxable income normally revenue expenditure incurred for the purpose of earning income is deductible from revenue receipt unless the law provides specific rules to disallow such expenditure wholly or partly. On the other hand capital expenditure is not deductible while computing taxable income unless the law expressly so provides.

Neither the capital expenditure nor revenue expenditure has been defined in the Act. However, from the facts and circumstances of each case and from the judicial decisions the following general principles to be kept in mind:

(i) Capital expenditure is incurred in acquiring, extending or improving a fixed asset whereas revenue expenditure is incurred in the normal course of business as a routine expenditure.

(ii) Capital expenditure incurred for enduring benefits whereas revenue expenditure is consumed within a Previous Year.

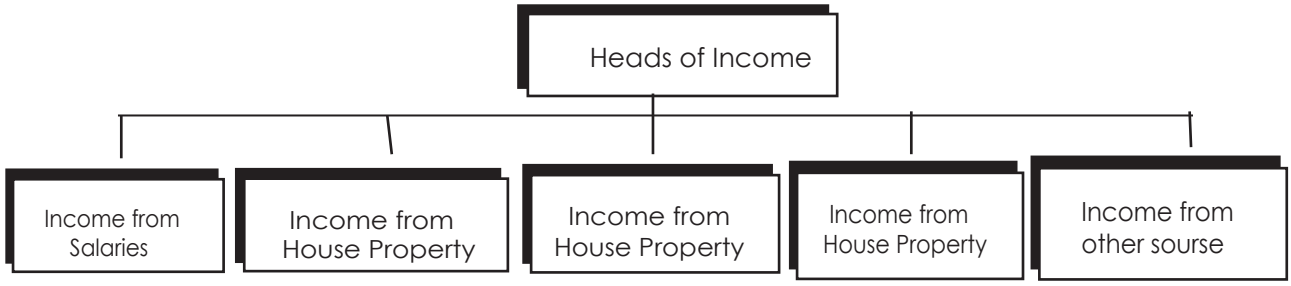
(iii) Capital expenditure makes improvement with earning capacity of a business whereas a revenue expenditure maintains the profit making capacity of a business.

(iv) Capital expenditure is a nonrecurring expenditure whereas revenue expenditure is normally a recurring one.

2.4 HEADS OF INCOME [SEC. 14]

Significance of Heads of Income:

1. The income chargeable under a particular head cannot be charged under any other head.
2. The Act has self contained provisions in respect of each head of income.
3. If any income is charged under a wrong head of income, the assessee will lose the benefit of deduction available to him under that head.



Relevance of method of accounting for heads of income:

Heads of Income	Chapter	Section Coverage	Relevance of Method of Accounting
Salaries	**Chapter IV-A**	**(Sec.15 - 17)**	1. Taxable on **due basis or on receipt basis,** whichever is earlier. 2. Method of accounting is **irrelevant**
House Property	**Chapter IV- C**	**(Sec. 22-27)**	1. Income from house property is **taxable** only on **accrual basis.** 2. Method of accounting is **not relevant**
Income from Business or Profession	**Chapter IV-D**	**(Sec. 28-44DB)**	1. U/s 145 assessee may follow either **Cash or Mercantile system** of accounting **regularly employed** by the assessee. 2. Exceptions : Certain payments are allowable only on actual payment basis. Accrual concept does not hold good - (a) Employer's contribution to PF, ESI, Tax, Duty, Cess, Fees to Government, Interest on loans and advances from banks and financial institutions, provision for leave encashment, bonus or commission etc. (b) Telecommunication Licence Fee is allowable in instalments only from the year of payment. (c) Preliminary Expenses distributed over five years. (d) Amalgamation / Demerger Expenses distributed over five years. (e) Amount paid in connection with Volun-tary Retirement Scheme distributed over five years.
Capital Gains	**Chapter IV-E**	**(Sec. 45 - 55A)**	1. Income from Capital Gains shall be taxableduring the **Previous Year Capital Gains in which the Capital Asset is transferred (i.e. year of accrual)**. 2. The method of accounting is not relevantfor taxing the income under the head Capital Gains.
Other Sources	**Chapter IV-F**	**(Sec. 56 - 59)**	U/s145 assessee may follow either on **Cash or Mercantile System** of accounting **regularlyemployed** by the assessee.

Study Note - 3

RESIDENTIAL STATUS AND TAX INCIDENCE

This Study Note includes

3.1 INTRODUCTION

Sometimes it is difficult for people to understand the fundamental difference between Nationality, Residency and Citizenship and the rights they have being nationals, residents and citizens of a State.

Nationality and ***Citizenship*** are two terms that are sometimes used interchangeably. Some people even use the two words "citizenship and nationality" — as synonyms. But this is not true and they differ in many aspects.

Nationality	Citizenship
Nationality can be applied to the country where an individual was born. Hence an individual is a national of a particular country by birth	Citizenship is a legal status, which means that an individual has been registered with the Government in some country
Nationality is got through inheritance from his parents which is called a natural phenomenon	An individual becomes a citizen of a country only when he is accepted into that country's political framework through legal terms
No one will be able to change his nationality	One can have different citizenship
No country can confer honorary nationality on any one as his birthplace cannot be changed	Some nations also confer honorary citizenship to individuals
Nationality can be described as a term that refers to belonging to a group having same culture, traditions history, language and other general similarities	Citizenship may not refer to people of the same group. For example, an Indian may be having a US citizenship but he will not be belonging to the same group as that of the American nationals
Example:	
(1) Elaborating the two words, an individual born in India, will be having Indian nationality. But he may have an American citizenship once he has registered with that country.	
(2) An Indian can have an American or Canadian citizenship but he cannot change his nationality. Another example is that people of the European Union may have European Union Citizenship but that person's nationality does not change.	

Citizenship and Residency/Residential Status can be differentiated in the following ways:

Citizenship	Residency/Residential Status
Citizenship means that a person is a citizen of a country with certain rights and responsibilities.	• Residency means that a person is a resident of a country but not a citizen • Residential status forms the basis of incidence and levy of tax liability • Residential status is determined on the basis of number of days an "Individual" was physically present in a country during the Previous Year/ Financial Year – income during that period is subject to assessment under tax laws.

3.1.1 Residential Status

The residential status of a person as referred in Sec. 2(31) of the Act for each Assessment Year under consideration to determine the scope of Total Income.

3.1.2 Salient Features

The following are the salient features of this study on "Residential Status" :-

(i) A person can have different residential status in different years.

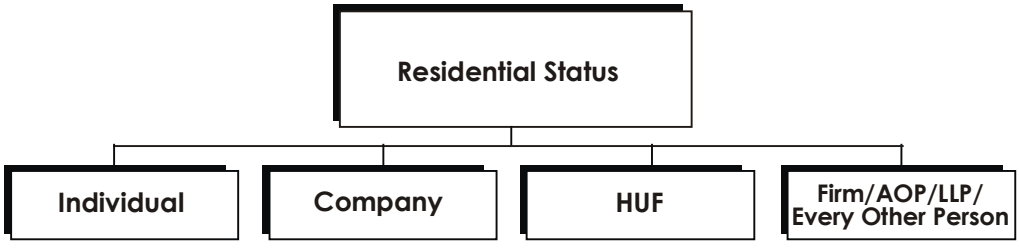
(ii) A person can have different residential status in different countries.

(iii) In the same year an assessee cannot have different residential status for different source of income.

(iv) Residential status once decided, shall continue to be applied during the previous year under consideration.

3.1.3. Study of Residential Status

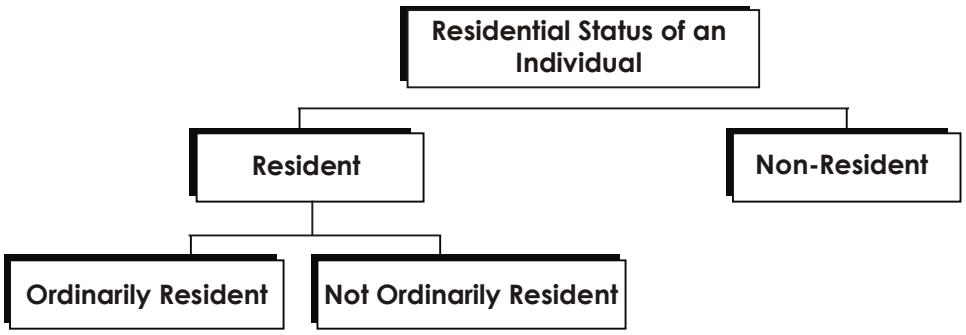
The concept of Residential Status could be understood in the following categories :



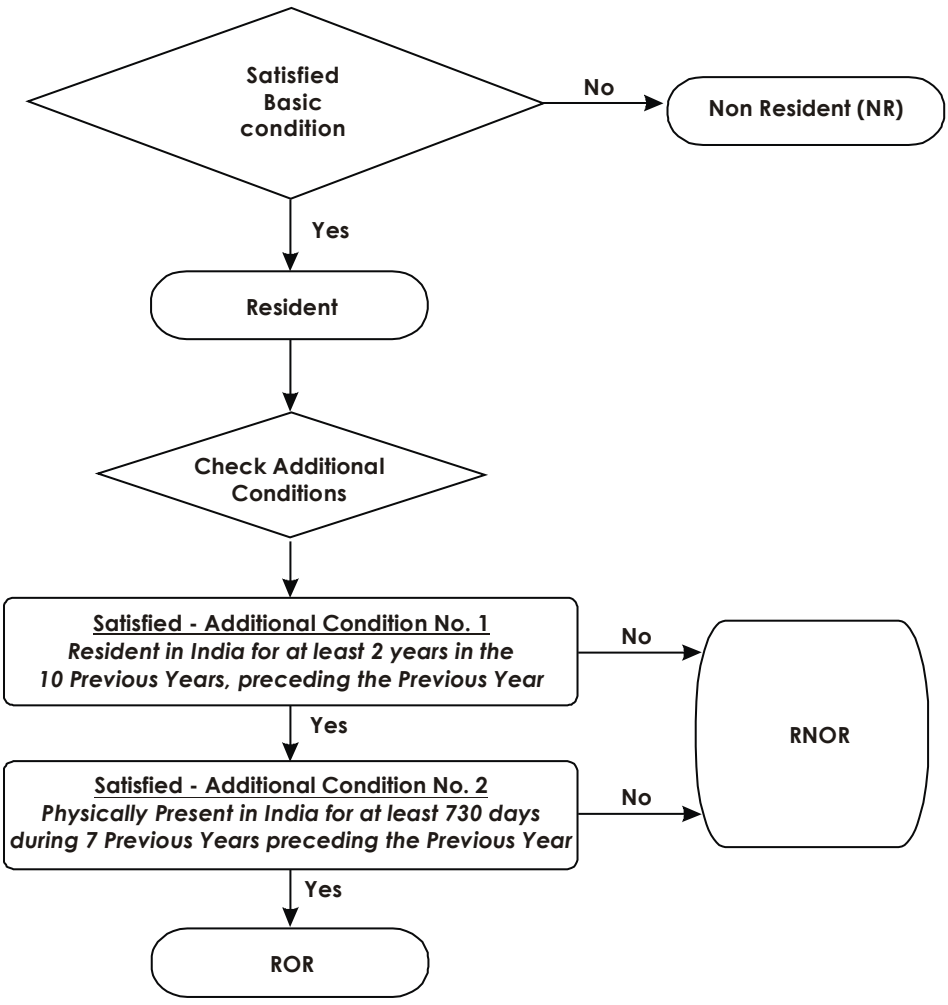
3.1.4 Importance

1. Total income of an assessee cannot be determined without knowing his residential status.
2. The residential status shall be determined for every person for each Previous Year independently.
3. The onus of responsibility to prove the residential status is on the assessee.

3.2 RESIDENTIAL STATUS OF AN INDIVIDUAL [SEC. 6(1)]



3.2.1. Steps to ascertain Residential Status



1. Basic Conditions:

(a) If the Individual stayed in India for a period of **182 DAYS OR MORE** during the **Relevant Previous Year (RPY), he is Resident of India;**

(OR)

(b) If he stayed in India for a period of **60 DAYS OR MORE** during **Relevant Previous Year (RPY) and 365 DAYS OR MORE** during the four preceding Previous Years, he is **Resident of India.**

If the assessee fails to satisfy either of the above basic conditions, as applicable, then the assessee is a Non-Resident for that Relevant Previous Year.

Note: The day on which he enters India as well as the day on which he leaves India shall be taken into account as the stay of the Individual in India.

Special exceptional situations:

For the following persons, condition mentioned in 1(a) above shall only apply to determine their Residential Status:

(i) Individual, an Indian citizen, leaving India for employment outside India, or

(ii) Indian Citizen being a crew member of an Indian ship leaving India, or

(iii) Individual, an Indian citizen or a person of Indian origin, visiting India, or

(iv) Individual, an Indian citizen and a member of the crew of a foreign bond ship leaving India.

2. Additional Conditions: Sec. 6(6)(a)

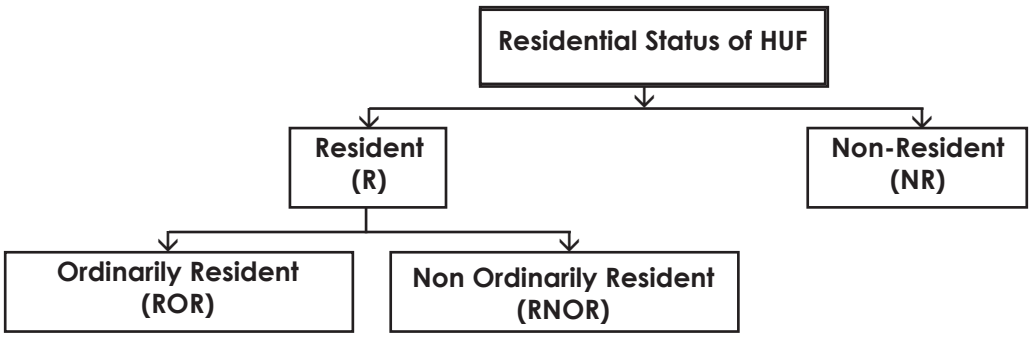
(i) Resident in India for at least 2 years out of the preceding 10 Previous Years, or

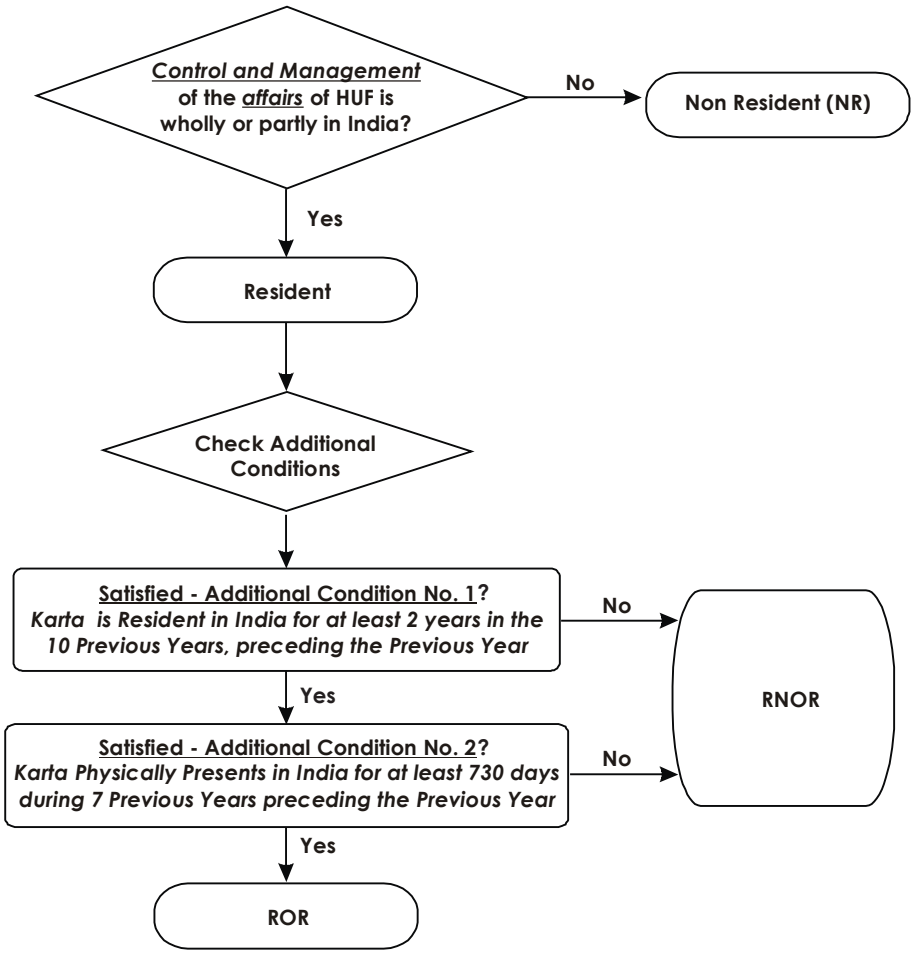
(ii) Physically present in India for at least 730 days during the 7 preceding Previous Years.

Status of an Individual	Basic condition	Additional condition/(s)
Resident and ordinarily Resident u/s 6(6)	Satisfied	Satisfied both the conditions
Resident but not ordinarily Resident u/s 6(6)	Satisfied	May or may not satisfy any of the additional condition
Non Resident	Fails to satisfy	Not required to check the additional condition/(s)

3.3 RESIDENTIAL STATUS OF HUF [SEC. 6(2) READ WITH SEC. 6(6)]

A Hindu Undivided Family (HUF) is either resident in India or non-resident in India. A resident Hindu undivided family is either ordinarily resident or not ordinarily resident.





3.3.1 When a Hindu Undivided Family is Resident or Non-Resident:

If the control and management of the affairs of a HUF is	Residential Status
1. Wholly or partly in India	Resident
2. Wholly outside India	Non-resident

Note:

(i) The onus of proving that HUF was non-resident is on the assessee [Subbayya Chettiar (V.V. R.N.M) vs. CIT (1951) 19 ITR 168 (SC)

(ii) "Control and Management" means de facto control and management and not merely the right to control or manage – CIT vs. Nandalal Gandalal [1960] 40 ITR 1 (SC).

(iii) "Place of Management" - control and management is situated at a place where the head, the seat the directing power are situated. The head and brain is situated where vital decisions concerning the policies of the business, such as, the raising finance and its appropriation for specific purposes, appointment and removal of staff, expansion, extension, or diversification of business, etc., are taken place – San Paulo (Brazilian) Railway Co. vs. Carter[1886] AC 31 (HL).

(iv) The term "affairs" in the clause refers to operations or activities in relation to the income which is sought to be assessed. Thus, mere activity of an entity at a place which does not give rise to any income does not make that entity resident of that place [Subbayya Chettiar (V.VR.N.M) vs. CIT (1951) 19 ITR 168 (SC)]. Further, the mere fact that the assessee HUF has a house in India where some of the members live, cannot constitute that place the seat of control and management of the affairs of the family.

(v) Occasional visits of a non-resident Karta of HUF to India or casual directions given in respect of business carried on in India while on such visits would not make the HUF resident of India. [Raja K.V.Narsimha Rao Bahadur vs. CIT (1950) 18 ITR 181 (Mad.)]. On the other hand, mere absence of the Karta from India throughout the year does not mean that business of the HUF is controlled from outside India [Annamalai Chettiar vs. ITO(1958) 34 ITR 88 (Mad.)]

3.3.2. Where a resident HUF is Ordinarily Resident in India or Not Ordinarily Resident in India

The HUF which is Resident in India shall be said to be Resident and Ordinarily Resident in India if the Karta of the HUF satisfies both the following conditions:

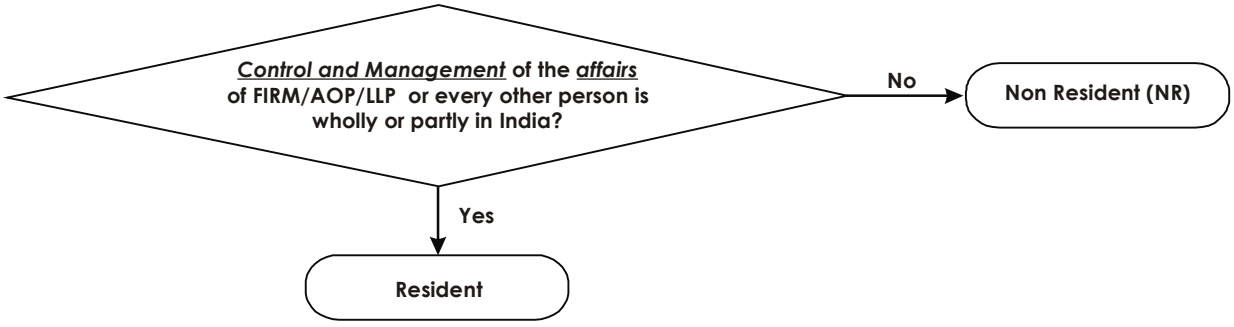
(a) He (Karta) must be resident in India for at least 2 out of 10 Previous Years immediately preceding the relevant Previous Year; and

(b) He must be in India for at least 730 days during 7 Previous Years immediately preceding the relevant Previous Year

As per Sec.6(6)(b), a HUF, which is Resident in India is said to be Resident but not Ordinarily Resident in India during the relevant Previous Year, if the manager (Karta) of the HUF does not satisfy any one, or both of the conditions mentioned in clauses (a) & (b) above.

3.4 RESIDENTIAL STATUS OF FIRM/AOP/LLP/EVERY OTHER PERSON (OTHER THAN AN INDIVIDUAL, HUF & COMPANY) [SEC. 6(2) READ WITH SEC. 6(4)]

While determining residential status of a Firm/AOP/LLP/Every other person (other than an Individual, HUF & Company), the residential status of the partners/members that Firm/AOP/LLP/Every other Person is not relevant. The Firm/AOP/LLP/Every other Person can only be either Resident or Non-Resident. There is no scope for further classification of resident for these assesees.



3.4.1 When a FIRM/AOP/LLP/EVERY OTHER PERSON is Resident or Non-Resident:

If the control and management of the affairs of a FIRM/AOP/LLP/Every other Person [other than Individual, HUF & Company]	Residential Status
1. Wholly or partly in India	Resident
2. Wholly outside India	Non-resident

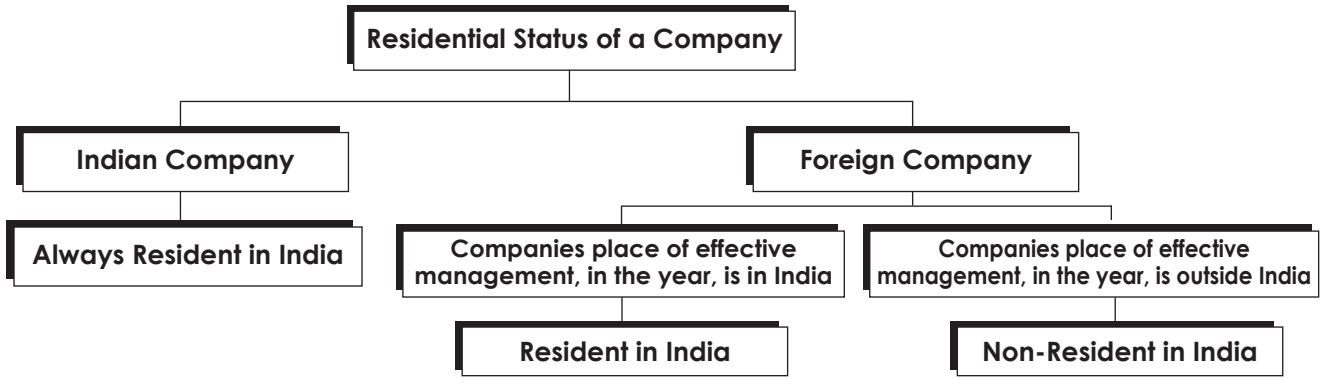
3.4.2. "Control and Management" in relation to FIRM/AOP/LLP/EVERY OTHER PERSON:

Assessee	Control and Management vests with
Firm/LLP	Partners
AOP	Principal Officer
Every other Person	Principal officer

3.5 RESIDENTIAL STATUS OF A COMPANY [SEC. 6(3)]

1. Indian Company	Resident
2. Other Companies – Companies place of effective management, in the year, is in India	Resident
3. Other Companies – Companies place of effective management, in the year, is in Outside India.	Non-resident

"Place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made.



Here, the term 'control and management' refers to 'head and brain' which directs the affairs of policy, finance, disposal of profits and vital things concerned in the management of a company. Control is not necessarily situated in the country in which the company is registered. The mere fact that a parent company exercises shareholders' influence on its subsidiaries does not generally imply that subsidiaries are to be deemed residents of the state in which the parent company resides [*Vodafone International Holdings B.V. vs. Union of India (2012) 204 Taxman 408 (SC)*].

Note: If a "Person" is a resident for one source of income in a Previous Year, he shall be deemed to be a resident for all other sources of income also. [Section 6(5)]

3.6 RESIDENTIAL STATUS AND INCIDENCE OF INCOME TAX [SEC.5]

The incidence of tax on a tax-payer depends on his residential status as well as on the place and time of accrual or receipt of income.

3.6.1. TAX INCIDENCE FOR AN INDIVIDUAL AND HUF

Particulars of Income	Tax incidence in case of		
	Resident	Resident but not Ordinarily Resident	Non Resident
(a) Income received in India whether accrued in India or outside India.	Yes	Yes	Yes
(b) Income deemed to be received in India whether accrued in India or outside India.	Yes	Yes	Yes
(c) Income accruing or arising in India whether received in India or outside India.	Yes	Yes	Yes
(d) Income deemed to accrue or arise in India, whether received in India or outside India.	Yes	Yes	Yes
(e) Income received and accrued outside India from a business controlled or profession set up in India.	Yes	Yes	No
(f) Income received and accrued outside India from a business controlled from outside India or profession set up outside India.	Yes	No	No
(g) Income earned and received outside India but later on remitted to India.	No	No	No
Gross Total Income	**(a) to (f)**	**(a) to (e)**	**(a) to (d)**

3.6.2. TAX INCIDENCE FOR COMPANY, FIRM, AOP, HUF & EVERY OTHER PERSON (OTHER THAN AN INDIVIDUAL & HUF)

NATURE OF INCOME	RESIDENT	NON RESIDENT
Income received in India (irrespective of whether the income was earned)	TAXABLE	TAXABLE
Income earned in India (irrespective of whether the same was received)	TAXABLE	TAXABLE
Income earned and received outside India from a source controlled from India	TAXABLE	NON TAXABLE
Income earned and received outside India from a source not controlled from India	TAXABLE	NOT TAXABLE

3.6.3. SIGNIFICANT AMENDMENTS:

Income through the Transfer of Capital Asset situated in India [U/s. 9(1)(i)]

With effect from the Assessment Year 2013-14, the provision of section 9(1)(i) of the Act relating to "Income through the transfer of Capital Asset situated in India" has been amended.

Explanation 4 & 5 have been included in section 9(1)(i) with retrospective effect of 1st April 1962 to provide that :

1. The expression 'through' shall mean and include and shall be deemed to have always meant and include "by means of", "in consequence of" or "by reason of"

2. An asset or a capital asset being any share or interest in a company / entity registered or incorporated outside India shall mean and shall be deemed to be and shall always be deemed to have been situated in India if the shares or interest derives, directly or indirectly, it's value substantially from the assets located in India.

Explanation 7 of section 9(1)(i), inserted by Finance Act, 2015

1. **Exemption in case foreign entity that is transferred directly owns Indian assets -** Exemption shall be available to the transferor of a share of, or interest in, a foreign entity if the transferor (along with its associated enterprises) -
   a. neither holds the right of control or management;
   b. nor holds voting power or share capital or interest exceeding 5 per cent of the total voting power or total share capital, in the foreign company or entity directly holding the Indian assets.
2. **Exemption in case foreign entity that is transferred indirectly owns Indian assets through another company -** In case the transfer is of snares or interest in a foreign entity which does not hold the Indian assets directly then the exemption shall be available to the transferor if the transferor (along with its associated enterprises),-
   a. neither holds the right of management or control in relation to such company or the entity,
   b. nor holds any rights in such company which would entitle it to either exercise control or management of the direct holding company or entity or entitle it to voting power exceeding 5 per cent in the direct holding company or entity.

3.7 SPECIAL PROVISIONS RELATING INTEREST INCOME/ROYALTY INCOME AND FEES FOR TECHNICAL SERVICES

Certain income is deemed to accrue or arises in India under section 9, even though it may actually accrue or arise outside India. Section 9 applies to all assesses irrespective of their residential status and place of business. The categories of income which are deemed to accrue or arise in India under section 9 are as under:-

3.7.1. Interest Income [Section 9(1)(v)]- Interest shall be deemed to accrue or arise in India if:

PAYER	CONDITIONS
Indian Government	No condition
Resident in India	The borrowed amount must not be used for the purpose of business or profession carried on by such person outside India or for the purpose of making or earning an income from any source outside India
Non Resident in India	The borrowed amount must be used for the purpose of business or profession carried on by such person in India

Explanation of section 9(1)(v), inserted by Finance Act, 2015

1. In the case of a non-resident, being a person engaged in the business of banking, any interest payable by the permanent establishment in India of such non-resident to the head office or any permanent establishment or any other part of such non-resident outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the permanent establishment in India.
2. PE in India shall be obligated to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc., of the non-resident outside India. Further, non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.

3.7.2. Royalty Income [Section 9(1)(vi)]- Royalty income shall be deemed to accrue or arise in India if:

PAYER	CONDITIONS
Indian Government	No condition
Resident in India	The royalty amount must not be paid in respect of any right , property or information used or services utilised for the purpose of business or profession carried on by such person outside India or for the purpose of making or earning an income from any source outside India.
Non Resident in India	The royalty amount must be paid in respect of any right , property or information used or services utilised for the purpose of business or profession carried on by such person in India or for the purpose of making or earning an income from any source in India.

Amended provisions of section 9(1)(vi) provides to include explanation 4 to clarify that the transfer in respect of any right, property or information includes transfer of all rights for the use or right to use a computer software including granting of a licence irrespective of the medium through which such right is transferred

Explanation 5 also has been included to clarify that the Royalty income includes consideration in respect of any right or property or information whether or not:-

(a) the possession or control of such right / property/ information is with the payer

(b) such right/property/information is used directly by the payer

(c) the location such right/property/information is located in India

3.7.3. Taxability for 'Fees for Technical Services' [Section 9(1)(vii)] - The fees for technical services shall be deemed to accrue or arise in India if:

PAYER	CONDITIONS
Indian Government	No condition
Resident in India	The fees for technical services amount must not be paid in respect of any services utilised for the purpose of business or profession carried on by such person outside India or for the purpose of making or earning an income from any source outside India.
Non Resident in India	The fees for technical services amount must be paid in respect of any services utilised for the purpose of business or profession carried on by such person in India or for the purpose of making or earning an income from any source in India.

3.8. Fund Managers in India not to constitute business connection of offshore funds [Section 9A] [W.e.f. A.Y. 2016-17]

There are a large number of fund managers who are of Indian origin and are managing the investment of offshore funds in various countries. These persons are not locating in India due to the above tax consequence in respect of income from the investments of offshore funds made in other jurisdictions.

In order to facilitate location of fund managers of off-shore funds in India, section 9A has been inserted in the Act in line with international best practices which provides as under,—

(1) 'Fund management activity' in case of an 'eligible investment fund' carried out through an 'eligible fund manager' shall not constitute business connection in India [Section 9A(1)];

(2) 'Eligible investment fund' will not be treated as resident in India even if 'eligible fund manager' is situated in India [Section 9A(2)].

ILLUSTRATIONS ON RESIDENTIAL STATUS AND TAX INCIDENCE

Illustration 1: X, after about 30 Years stay in India, returns to America on January 29, 2013. He returns to India in July 1, 2015 to join an American company as its overseas branch manager. Determine his residential status for the Assessment Year 2016-17.

Solution:

For the Assessment Year 2016-17, the Year 2015-16 is the Previous Year. During 2015-16, X is in India for more than 274 days. He is, therefore, resident in India. He is resident in India for 2 years out of 10 years (i.e., 2005-2006 to 2014-15), and he has stayed for more than 730 days during the seven years preceding the Previous Year 2015-16. He is, therefore, Resident and Ordinarily Resident in India for the Assessment Year 2016-17.

Illustration 2 : Indian citizen and businessman Shri Hari, who resides in Kolkata, went to France for employment purposes on 15.8.2015 and would come back to India on 10.11.2016. He has never been out of India in the past.

(a) Determine residential status of Shri Hari for the Assessment Year 2016-17.

(b) Will your answer be different if he had gone on a leisure trip?

Solution:

(a) The previous year for the Assessment Year 2016-17 is 2015-16. During this period he was in India for 137 days (30+31+30+31+15). As he is not in India for 182 days, he does not satisfy the first condition of category A. The second condition of category 'A' is also not satisfied because he is a citizen of India and leaves India during the Previous Year for employment outside India and is therefore, covered under exception No. 1 where 60 days will be substituted by 182 days.

In this case, although he does not satisfy the first condition of category A, he satisfies the second condition as he was in India for more than 60 days in the relevant Previous Year and was also here for more than 365 days during four preceding Previous Years. He is, therefore, resident in India.

(b) The exception will not be applicable to him because he did not leave India for the purpose of employment. He satisfies both the conditions of category B because he was always been in India before 15.8.2015. The status of the assessee for the Previous Year 2015-16 will in this case be resident and ordinarily resident in India.

Illustration 3 : 'B', an Indian citizen left India for the first time on 21.9.2014 for employment in Denmark. During the Previous Year 2015-16 he comes to India on 5.5.2014 for 150 days. Determine the residential status of 'B' for Assessment Years 2015-16 and 2016-17.

Solution :

During the Previous Year 2014-15 'B' was in India for 174 days (30+31+30+31+31+21) and therefore, does not satisfy the first condition. As regards the second condition, although he was here in the four preceding Previous Years for more than 365 days as he was permanently in India but for the relevant Previous Year 2014-15 he should have been here for 182 days instead of 60 days as he is a citizen of India and leaves India in 2014-15 for employment abroad.

He neither satisfies the first, nor the second condition and is therefore, Non-Resident in India.

Similarly, during the previous year 2015-16 he visits India for 150 days. In this case also, the period of 60 days will be substituted by 182 days as he is a citizen of India. Therefore, he will be a Non-Resident in India even for the Previous Year 2015-16.

Illustration 4 : The Head Office of XY, a Hindu Undivided Family, is situated in Hong Kong.The family is managed by Y (since 1980) who is resident in India in only 3 out of 10 years preceding the Previous Year 2015-16 and he is present in India for more than 729 days during the last 7 years. Determine the residential status of the family for the Assessment Year 2016-17 if the affairs of the family's business are (a) wholly controlled from Hong Kong (b) partly controlled from India.

Solution:

(a) If affairs of a Hindu Undivided Family are controlled from a place outside India, the family will be non-resident. Accordingly, XY HUF is Non-resident for the Assessment Year 2016-17.

(b) Affairs of the family's business are partly controlled from India during the Previous Year 2015-16. Therefore, the family is resident in India. However, it would be ordinarily resident in India if Karta satisfies the following two conditions laid down u/s 6(6)(b):

(1) He has been resident in India in at least 2 out of 10 years preceding the Previous Year;

(2) He has been physically present in India for at least 730 days during seven years preceding the Previous Year.

As the Karta (i.e. Y)is resident in India in 3 out of 10 years preceding the Previous Year, and he is present in India for more than 730 days during the 7 years, preceding the Previous Year, the family would be Resident and Ordinarily Resident in India for the Assessment Year 2016-17.

Illustration 5: A Hindu Undivided Family (Mr. B is Karta, X, Y and Z are coparceners) carries on cloth business in Burma. X comes to India and starts a cloth business at Mumbai in partnership with some other persons. The capital contributed by X to this firm is found to have come from the family. Subsequently, Y joins the firm as partner. Later on another business is started at Varanasi with the same persons and one outsider as partner. Z joins this firm. The Assessing Officer wants to treat the family as resident on the ground that its coparceners are partners in firms, financed out of the family funds, and the firms are resident in India. Is the Assessing Officer legally correct?

Solution:

A case on similar facts was examined by the Supreme Court of India in the case of CIT vs. Nandlal Gandalal (1960) 40 ITR 1, wherein the Apex Court pointed out that both under the Hindu Law and under the Law of Partnership, the Hindu Undivided Family as such could exercise no control over the management of a firm in which some of its coparceners were partners, even if capital contributed by coparceners was found to have come from the family.

The position in Hindu Law with regard to coparcener who has entered into partnership with others is well settled. The partnership is a contractual partnership and is governed by the Indian Partnership Act, 1932. The partnership is between the coparcener individually and the other partners and not between the family and other partners. This remains so even if the coparcener is accountable to the family for the income received. Thus, control and management over the firm's business lies in the hands of individual coparceners and not in the hands of the family. The Assessing Officer is, therefore, not justified while holding the HUF as resident in India.

Illustration 6: Mr. Waugh, an Australian National, visits India since the Previous Year 2005-06 and resided for 90 days per year. Ascertain his Residential Status for the Assessment Year 2016-17. What would be the opinion if he was in India for (i) 100 days per Previous Year (ii) 110 days per Previous Year?

Solution:

Mr. Waugh visits India for 90 days in each of the Previous Year since 2005-06. To ascertain his Residential Status:

	90 days per Year					**100 days per Year**			**110 days per Year**
Previous Year	No. of Days Physically Present in India during the Previous Year	Total number of days during the preceding four Years Prior to the Previous Year	Residential Status	No. of Days Physically Present in India during the Previous Year	Total number of days during the preceding four Years Prior to the Previous Year	Residential Status	No. of Days Physically Present in India during the Previous Year	Total number of days during the preceding four Years Prior to the Previous Year	Residential Status
2005-06	90	Nil	NR	100	Nil	NR	110	Nil	NR
2006-07	90	90	NR	100	100	NR	110	110	NR
2007-08	90	180	NR	100	200	NR	110	220	NR
2008-09	90	270	NR	100	300	NR	110	330	NR
2009-10	90	360	NR	100	400	RNOR	110	440	RNOR
2010-11	90	360	NR	100	400	RNOR	110	440	RNOR
2011-12	90	360	NR	100	400	RNOR	110	440	RNOR
2012-13	90	360	NR	100	400	RNOR	110	440	ROR
2013-14	90	360	NR	100	400	RNOR	110	440	ROR
2014-15	90	360	NR	100	400	RNOR	110	440	ROR
2015-16	90	360	NR	100	400	RNOR	110	440	ROR
	NR = Non-Resident					**RNOR = Resident but not Ordinarily Resident**			**ROR = Resident and Ordinarily Resident**

Explanation:

Case I : If he was present for 90 days every Year

(a) Physically present in India for more than 60 days during any Previous Year

(b) Physically present in India for less than 365 days during four Previous Years preceding the Previous Year

So, the assessee, fails to satisfy the Basic Condition of – "physically present in India for at least 60 days during the Previous Year and at least 365 days during the four Previous Years preceding the Previous Year". Hence, the Assessee is a Non-Resident for the Assessment Year 2016-17 related to Previous Year 2015-16.

Case II : If he was present for 100 days every Year

(a) Physically present in India for more than 60 days during any Previous Year

(b) Physically present in India for more than 365 days during four Previous Years preceding the Previous Year

So, the assessee satisfies the Basic Condition of – "physically present in India for at least 60 days during the Previous Year and at least 365 days during the four Previous Years preceding the Previous Year". Hence, the Assessee is a Resident for the Assessment Year 2016-17 related to Previous Year 2015-16.

Now, we will have to check the Additional conditions:

(c) Additional Condition No.1 – The assessee must be a Resident in India for at least two times during the 10 Previous Years, preceding the Previous Year 2015-16.

The Assessee satisfies this additional condition, as he was a resident for more than two times during the 10 Previous Years, preceding the Previous Year.

(d) Additional Condition No.2 – The assessee must be physically present in India for at least 730 days during the 7 Previous Years, preceding the Previous Year 2015-16.

The Assessee fails to satisfy this additional condition, as he was physically present in India for 700 days only during the 7 Previous Years, preceding the Previous Year.

Since the assessee satisfies either of the additional condition/(s), the Assessee is determined as "Resident but not Ordinarily Resident (RNOR)" for the Previous Year 2015-16.

Case III : If he was present for 110 days every Year

(a) Physically present in India for more than 60 days during any Previous Year

(b) Physically present in India for more than 365 days during four Previous Years preceding the Previous Year

So, the assessee satisfies the Basic condition of – "physically present in India for at least 60 days during the Previous Year and at least 365 days during the four Previous Years preceding the Previous Year". Hence, the Assessee is a Resident for the Assessment Year 2016-17 related to Previous Year 2015-16.

Now, we will have to check the Additional Conditions:

(c) Additional Condition No.1 – The assessee must be a Resident in India for at least two times during the 10 Previous Years, preceding the Previous Year 2015-16.

The Assessee satisfies this additional condition, as he was a resident for more than two times during the 10 Previous Years, preceding the Previous Year.

(d) Additional Condition No.2 – The assessee must be physically present in India for at least 730 days during the 7 Previous Years, preceding the Previous Year 2015-16.

The Assessee also satisfies this additional condition, as he was physically present in India for 770 days (i.e. more than 730 days) only during the 7 Previous Years, preceding the Previous Year.

Since the assessee satisfies both the additional condition/(s), the Assessee is determined as "Resident and Ordinarily Resident (ROR)" for the Previous Year 2015-16.

Illustration 7. Subhash discloses following particulars of his receipts during the Previous Year 2015-2016:

(i)	Salary income earned at Pune but received in Sri Lanka	2,50,000
(ii)	Profits earned from a business in Kenya which is controlled in India, half of the profits being received in India.	2,20,000
(iii)	Income from property, situated in Nairobi and received there	75,000
(iv)	Income from agriculture in Bangladesh and brought to India	95,000
(v)	Dividend-paid by an Indian company but received in London on 15th May, 2015	22,000
(vi)	Interest on USA Development Bonds, one half of which was received in India	76,000
(vii)	Past foreign untaxed income brought to India	2,10,000
(viii)	Gift of $1000 from father, settled in USA, received in India	80,000
(ix)	Capital Gains on sale of Land in Delhi, consideration received in Canada	2,50,000
(x)	Income from structure-designing consultancy service, set up in Germany, controlled from India, profits being received outside India	4,00,000
(xi)	Loss from foreign business, controlled from India, sales being received in India	2,00,000

Determine his Gross Total Income for the Previous Year 2015-2016 if he is (i) Resident and Ordinarily Resident, (ii) Resident but not Ordinarily Resident, (iii) Non Resident.

Solution: Computation of Gross Total Income for the Previous Year 2015-16

Particulars	ROR	RNOR	NR
(i) Salary earned at Pune but received at Sri Lanka. Salary is deemed to accrue or arise at a place where services are rendered, place of receipt being immaterial [Sec. 9(1)(ii)] Hence, it is taxable in all cases	2,50,000	2,50,000	2,50,000
(i) Profits of ₹ 2,00,000 earned from a business in Kenya, controlled in India:			
(a) One half of profits are taxable on receipt basis	1,10,000	1,10,000	1,10,000
(b) Other half profits—from foreign business controlled in India (in case of resident and ordinarily resident, place of control is of no relevance)	1,10,000	1,10,000	—
(iii) Income from property in Nairobi and received there : income accruing or arising outside India	75,000	—	—
(iv) Income from agriculture in Bangladesh and brought to India: It is not income received in India as receipt means first receipt. Hence, it is not taxable in case of "not ordinarily resident" and "non-resident". In case of "ordinarily resident", it is income accruing or arising outside India. Hence, it is taxable. It should be noted that it is not agricultural income as it is not received from land, situated in India, and hence not derived from sources of income being exempted u/s 10(1).	95,000	—	—
(v) Dividend paid by an Indian company but received in London: Dividend paid by an Indian Company is deemed to accrue or arise in India. However, any dividend paid, declared or distributed by a domestic company on or after 1st April,2005 is exempt from tax u/s 10(34). Therefore, such dividend is not taxable	—	—	—
(vi) Interest on USA Development Bonds:			
(a) One half of taxable on receipt basis	38,000	38,000	38,000
(b) Other half is taxable only in case of "ordinarily resident" as it is foreign income accruing or arising outside India	38,000	—	—
(vii) Past untaxed foreign income brought to India. It is not an income received in India. Furthermore, it is not the income of the Previous Year 2015-16. Hence, it is not taxable in any case	—	—	—
(viii) Gift from a relative is not taxable	—	—	—
(ix) Capital gain is deemed to accrue or arise in India u/s 9(1)(i)	2,50,000	2,50,000	2,50,000
(x) Income from consultancy profession, set up outside India, profits being received outside India: Taxable in case of "ordinarily resident", as income accruing or arising outside India and received outside India [Sec.5(1)(c)] In case of "not ordinarily resident, as it is not income from profession set up in India, control and management applies to business and not to professions. Hence, it is not taxable [Sec. 5(1)(c) r.w. proviso]	4,00,000	—	—

(xi) Loss from foreign business, controlled from India Income includes loss also. Profits are embedded in sales. As sales realization were received in India, the place of control and management is not relevant. Business loss can be set off against business profits and thereafter against the income of any other head except income from salary and chance winnings (Sec.70)	(2,00,000)	(2,00,000)	(2,00,000)
Gross Total Income	**11,66,000**	**5,58,000**	**4,48,000**

Illustration 8: Mr. Tajuddin, an Indian citizen, earns the following income during the Previous Year 2015-2016:

Particulars	₹
(i) Profits from a business in Mumbai, managed from France	5,20,000
(ii) Pension for services rendered in Kenya but kept with State Bank in Kenya with the permission of the Reserve Bank of India	1,80,000
(iii) Income from property in Kuwait, received in India	1,85,000
(iv) Profits from business in Nepal and deposited in a bank there	12,000
(v) Income received in Oman from a profession which was set up in India, extended to Oman and managed from Kenya	1,50,000
(vi) Profit on sale of machinery in India but received in Italy	1,26,000
(vii) Profits, before allowing depreciation, from business Kuwait 50% of profits were received in India	2,00,000
Total depredation	2,50,000
(viii) Interest on foreign bank deposit, received by his minor son in India Bank deposit was made out of funds gifted by grandfather	1,70,000
(ix) A German company credited commission to his Bank Account outside India for sale of goods by him in India	1,75,000
(x) Commission earned and received by him outside India on export orders collected by him in India for foreign exporters, without any authority being given to him by them	2,30,000
(xi) Dividends remitted in India by an Egyptian company to him under his instruction through Bank of Patiala	1,80,000

Determine his Gross Total Income for the Previous Year 2015-2016 if he is (i) Resident and Ordinarily Resident; (ii) Resident but not Ordinarily Resident; and (iii) Non Resident.

Solution: Computation of Gross Total Income for the Previous Year 2015-16

Particulars	ROR	RNOR	NR
(i) Profits from a business at Mumbai, managed from France: Income from business accrues at the place where the business is done, place of management being of no relevance. Hence, it is taxable in all cases.	5,20,000	5,20,000	5,20,000
(ii) Pension for services rendered in Kenya, received there: –Pension is deemed to accrue or arise at a place where services are rendered	1,80,000	—	—
(iii) Rent of house property, situated in Kuwait, but received in India	1,85,000	1,85,000	1,85,000
(iv) Profits from business in Nepal and deposited in Bank there: Income accruing or arising outside India	12,000	—	—
(v) Income from profession in Oman which was set up in India, received there, managed from there: Foreign Income accruing or arising outside India from a Profession set up in India is taxable in case of ROR and RNOR. Its control and management is not relevant	1,50,000	1,50,000	—
(vi) Profit on sale of machinery in India but received in Italy: Income from asset situated in India is deemed to accrue or arise in India. Hence, it is taxable in all cases	1,26,000	1,26,000	1,26,000
(vii) Profits from foreign business	2,00,000	1,00,000	1,00,000
(viii) Depreciation of foreign business It can be set off first from business profits and thereafter against the income of any other head u/s 32(2)	(2,50,000)	(1,25,000)	(1,25,000)
(ix) Income of a minor child is included in total income of that parent whose income, before including such income is greater [Sec.64(1A)], however, an exemption upto ₹1,500 is to be allowed u/s 10(32)	1,68,500	1,68,500	1,68,500
(x) Commission from German company received outside India is deemed to accrue or arise in India because of business connection in India u/s 9(1)(i)	1,75,000	1,75,000	1,75,000
(xi) Commission earned and received outside India on export orders collected in India is deemed to accrue or arise in India [Explanation 2 of Sec.9(1)(i) w.e.f. A.Y. 2007-08]	2,30,000	2,30,000	2,30,000
(xii) Dividends from foreign company received outside India	1,80,000	—	—
Gross Total Income	**18,76,500**	**15,29,500**	**13,79,500**

Illustration 9 : Kimono, a Japanese national discloses the following particulars of his income during Previous Year 2015-2016.

(i) Income from house property in Japan, remitted by tenant to him in India through State Bank of India	4,00,000
(ii) Loss from business in India	(-) 3,00,000
(iii) Profits from speculation business in India	2,00,000
(iv) Profit from business in Japan, controlled and managed from India but being received in Japan	20,00,000
(v) Interest received on bonds of Indian companies outside India	1,45,000

(vi) Net dividends received from Japanese companies outside India (tax deducted at source ₹ 15,000) 2,35,000

(vii) Interest received on compensation of land, acquired by Government of India during the Previous Year 2010-11 60,000

Determine his Gross Total Income for the Previous Year 2015-2016 in the following cases:

(i) He is Resident and Ordinarily Resident during the Previous Year;

(ii) He is Resident but not Ordinarily Resident during the Previous Year;

(iii) He is Non Resident during the Previous Year.

Solution:

Computation of Gross Total Income for the Previous Year 2015-2016

Particulars	ROR	RNOR	NR
(i) Income from House Property in Japan received in India	4,00,000	4,00,000	4,00,000
(ii) Loss from Business in India to be set off against business profits and thereafter against any other income except salary income and winning from lotteries/ horse race, etc u/s 70	(3,00,000)	(3,00,000)	(3,00,000)
(iii) Profits from speculation business in India	2,00,000	2,00,000	2,00,000
(iv) Profits from business in Japan, received outside India, control and management of foreign business in India is not relevant in the case of non-resident	20,00,000	20,00,000	—
(v) Interest from investments in Public Sector Companies in India deemed to accrue or arise in India though received outside India	1,45,000	1,45,000	1,45,000
(vi) Dividends of ₹2,35,000 received from Japanese companies outside India, not accruing or deemed to accrue or arise in India	2,35,000	—	—
(vii) Interest for land compensation taxable on accrual basis: ₹60,000/6 = ₹10,000 [Rama Bai vs. CIT (1991) 181 ITR 400 (SC)]	10,000	10,000	10,000
Gross Total Income	**26,90,000**	**24,55,000**	**4,55,000**

Illustration 10. Ms. R discloses the following particulars of her income during the Previous Year 2015-2016:

Particulars	₹
(i) Dividends from Sri Lankan companies received in India Dividends were received partly in cash and partly in shares. Face value of shares is ₹1,00,000 but their market value is ₹4,00,000. However, currently there is no buyer in the market	5,00,000
(ii) Pension remitted to her in India by Sri Lankan Government after deduction of tax at source (₹15,000)	1,70,000
(iii) Fees received in Ceylon for arguing a patent case in Delhi High Court on behalf of a fellow-lawyer friend of Mumbai	2,00,000
(iv) Commission credited to her account in India under her instructions by law firms in India, for referring clients from outside India but commission was received in Mauritius	1,00,000
(v) Share of income from a Partnership firm, in which she is a partner received in Kolkata	1,50,000

(vi)	Income from law practice in Mauritius and Qatar, received there, but practice was set up in Delhi	6,80,000
(vii)	5% commission for the Year 2015-2016 from publishers of law books on their annual profits, received in India, commission has been paid after setting off ₹30,000 for books purchased by her. She has purchased the dealership rights from Mumbai Law House on 1 January, 2015.	1,20,000
(viii)	Gift from a foreign client, received outside India	20,000

Determine her Gross Total Income for the Previous Year 2015-2016 if she is (i) Resident and Ordinarily Resident; (ii) Resident but not Ordinarily Resident; and (iii) Non Resident

Solution: Computation of Gross Total Income for the Previous Year 2015-16

Particulars		ROR	RNOR	NR
(i)	Dividend received in India			
	(a) Cash dividend	1,00,000	1,00,000	1,00,000
	(b) Dividend in kind to be valued at market price of shares	4,00,000	4,00,000	4,00,000
(ii)	Pension received outside India and not deemed to accrue or arise in India [CIT *vs.* Kalyanakrishnan 195 ITR 534]	1,70,000	-	-
(iii)	Fees for arguing patent case in Delhi, but received in Ceylon – Income from business connection deemed to accrue or arise in India	2,00,000	2,00,000	2,00,000
(iv)	Commission credited to the account of payee under her instruction in the books of payer is a deemed receipt in India [Raghava Reddy vs.CIT (1962) 441 ITR 720 (SC)]	1,00,000	1,00,000	1,00,000
(v)	Share income received from Partnership firm exempt from tax – as tax liability borne by Firm	-	-	-
(vi)	Income from profession set up in India, extended outside India - Income being received outside India	6,80,000	6,80,000	—
(vii)	Commission on account of dealership rights, received in India @ 5% or the annual profits of the publishers - Commission not to be apportioned between seller and purchase on time basis	1,50,000	1,50,000	1,50,000
(viii)	Gift from a foreign client, received outside India [Sec.28(iv)]	20,000	-	-
Gross Total Income		**18,20,000**	**16,30,000**	**9,50,000**

Illustration 11. Compute Income for Mr. Jaikishan for the Previous Year 2015-16.

Particulars		₹
(a)	Salary accrued and received in India	30,000
(b)	Profit from hotel business in Japan	60,000
(c)	Dividends declared in Japan received in India	15,000
(d)	Gain from transfer of capital asset in India	35,000
(e)	Interest on Debentures of a company in New York received in India	19,000
(f)	Royalty received in Germany from a resident in India for technical services provided for a business in Germany	20,000

(g) Interest received in UK from Mr. Robert, a non-resident, on loan provided to him for business in India 6,000

(h) Fees from an Indian company carrying on business in the UK for technical services rendered in London, directly deposited in his bank account in India 25,000

Compute the Gross Total Income Mr. Jaikishan for the relevant Previous Year 2015-16, if he is (i) Ordinarily Resident, (ii) Not Ordinarily Resident, (iii) Non Resident.

Solution:

Computation of Gross Total Income of Mr. Jaikishan for the Previous Year 2015-2016

Particulars	ROR	RNOR	NR
(a) Salary accrued and received in India	30,000	30,000	30,000
(b) Profit from hotel business in Japan	60,000	—	—
(c) Dividends declared in Japan received in India	15,000	15,000	15,000
(d) Gains from transfer of a capital asset in India deemed to accrue or arise in India	35,000	35,000	35,000
(e) Interest on debentures of a company in New York but received in India	19,000	19,000	19,000
(f) Royalty received in Germany from a resident in India for technical services provided for a business in Germany	20,000	—	—
(g) Interest received in UK from Mr. Robert, a non-resident, on loan provided to him for business in India	6,000	6,000	6,000
(h) Fees from an Indian company, carrying on business in UK for technical services rendered in London, directly deposited in his Bank Account in India	25,000	25,000	25,000
Gross Total Income	**2,10,000**	**1,30,000**	**1,30,000**

Illustration 12. Mr.X furnishes the following particulars of his income earned during Previous Year 2015-16:

(i) Income from agriculture in Bangladesh, received there ₹ 3,80,000, but later on remitted to India.

(ii) Interest on Pakistani Development Bonds, ₹ 90,000, one-sixth of which received in India.

(iii) Gift of ₹ 70,000 received in foreign currency from a relative in India.

(iv) Arrears of salary ₹ 1,50,000 received in Pakistan from a former employer in India.

(v) Income from property received outside India ₹ 3,00,000 (₹1,00,000 is used in Bahrain for the educational expenses of his son in Bahrain, and ₹ 2,00,000 later on remitted to India).

(vi) Income from business in Iran which is controlled from India (₹1,00,000 being received in India) ₹2,00,000.

(vii) Dividends received on 30.06.2015 outside India from an Indian company, ₹ 2,50,000.

(viii) Untaxed profit of the FY 2009-2010 brought to India in July 2015, ₹ 2,50,000.

(ix) Profit from business in Kolkata managed from outside India ₹1,00,000, 60% of which is received outside India.

Determine the Gross Total Income of Mr. X for Previous Year 2015-2016, if Mr. X is (a) Resident and Ordinarily Resident; (b) Resident but not Ordinarily Resident; (c) Non Resident.

Solution:

Computation of Gross Total Income for the Previous Year 2015-16

Particulars	ROR	RNOR	NR
(i) Income from agriculture in Bangladesh, received there but later on remitted to India	3,80,000	-	-
(ii) Interest on Development Bonds in a foreign land :			
(a) 1/6th of ₹90,000 received in India	15,000	15,000	15,000
(b) 5/6th of ₹90,000 being received in India	75,000	-	-
(iii) Gift received from a relative in India is exempted u/s 57(v)	-	-	-
(iv) Salary arrears received in Pakistan from a former employer in India	1,50,000	1,50,000	1,50,000
(v) Income from property received outside India but later on remitted to India	3,00,000	-	-
(vi) Profit from a business in foreign land but controlled from India			
(a) Profits received in India	1,00,000	1,00,000	1,00,000
(b) Profits received outside India	1,00,000	1,00,000	-
(vii) Dividends received from an Indian Company, outside India, deemed to accrue or arise but exempted u/s 10(34)	-	-	-
(viii) Untaxed foreign profit of 2009-10 brought to India	-	-	-
(ix) Profit from business in India ₹1,00,000, 60% of which was received outside India	1,00,000	1,00,000	1,00,000
Gross Total Income	**12,20,000**	**4,65,000**	**3,65,000**

Study Note - 4

INCOME FROM SALARIES

This Study Note includes

4.1 INTRODUCTION

Any person employed gets compensated by way of remuneration for services rendered. This is called 'Salary'. It is received in cash or in kind – by way of amenities, benefits, perquisites. Which emoluments are 'salary' how to value perquisites and what deductions are available from 'salary' has been dealt with under this head of income. Certain tax-free items of remuneration have been enumerated under section 10 and are discussed in this chapter.

4.2 MEANING OF SALARY

The meaning of the term 'salary' for purposes of Income tax is much wider than what is normally understood. Every payment made by an employer to his employee for service rendered would be chargeable to tax as income from salaries. The term 'salary' for the purposes of Income Tax Act will include both monetary payments (e.g. basic salary, bonus, commission, allowances etc.) as well as non-monetary facilities (e.g. housing accommodation, medical facility, interest free loans etc).

(1) Employer-employee relationship:

Before an income can become chargeable under the head 'salaries', it is vital that there should exist between the payer and the payee, the relationship of an employer and an employee.

(2) Full-time or Part time employment:

It does not matter whether the employee is a fulltime employee or a part-time one. Once the relationship of employer and employee exists, the income is to be charged under the head "Salaries". If, for example, an employee works with more than one employer, salaries received from all the employers should be clubbed and brought to charge for the relevant Previous Years.

(3) Foregoing or sacrificing of salary:

Once salary accrues, the subsequent waiver by the employee does not absolve him from liability to Income- tax. Such waiver is only an application and hence chargeable.

(4) Surrender of salary:

However, if an employee surrenders his salary to the Central Government u/s 2 of the Voluntary Surrender of Salaries (Exemption from Taxation) Act, 1961, the salary so surrendered would be exempt while computing his taxable income.

(5) Salary paid tax-free:

This, in other words, means that the employer bears the burden of the tax on the salary of the employee. In such a case, the income from salaries in the hands of the employee will consist of his salary income and also the tax on this salary paid by the employer. This means both the salary and the tax paid thereon will be taxable in the hands of the employee.

(6) Voluntary Payments:

Whether the payment from an employer is based on a contract or not, it constitutes salary in the hands of the employee. However, many employers give personal gifts and testimonials to the employees. For example, employees who complete 20 years of service may be given a wrist watch. The question arises whether the value of the watch can be taxed in the hands of the employee. Courts have taken the view that such gifts are not taxable. However, in these cases it is important that such gifts must be given to employees pursuant to a scheme applicable to employees in general. If gifts are given purely on a selective basis they will become chargeable in the hands of the recipient.

Chargeability of Salary in the relevant Previous Year : [Sec.15]

(1) Due or receipt whichever falls earlier: Salary is taxable on due basis or on receipt basis, whichever is earlier.

Hence,

(a) Salary due in a Previous Year is taxable, even if it not received.

(b) Salary received in a Previous Year is taxable, even if it is not due.

(c) Arrears of salary received during the current Previous Year shall be taxable in the current year if not charged to tax in an earlier Previous Year.

(2) No double taxation: once salary is taxed on due/receipt basis, it will not be taxed again on receipt/ falling due, as the case may be.

(3) The assessee can claim relief u/s 89(1) for arrears or advance salary.

(4) Loan from employer is not salary. Advance salary is taxable, while advance against salary is not taxable.

(5) For Government employees, the period of chargeability of salary is from March to February. For example, salary from 1st March 2015 to 28th February 2016 is chargeable as Income of the Assessment Year 2016-17.

"Place of accrual of Salary"

(1) The place of accrual of salary is the place of employment.

(2) Service rendered in India: U/s 9(1)(ii), salary earned in India is deemed to accrue or arise in India even if –

(a) it is paid outside India,

(b) it is paid or payable after the contract of employment in India comes to an end.

(3) If an employee gets pension paid abroad in respect of services in India, the same will be deemed to accrue or arise in India.

(4) Leave salary paid abroad in respect of leave earned in India is deemed to accrue or arise in India.

(5) Services rendered outside India: Sec. 9(1)(iii) provides that income chargeable under the head "Salaries" payable by the Government to a citizen of India for service provided outside India will be deemed to accrue or arise in India.

(6) U/s10(7), any allowance or perquisites paid or allowed outside India by the Government to a citizen of India for rendering services outside India will be fully exempted.

Place of accrual of Salary - at a glance:

Received / Earned in India	Taxable in the hands of all persons /assessees whether resident or non-resident in India.
Deemed to be earned in India	The same would be taxable provided : 1. The services are rendered in India. 2. The leave period preceding / succeeding the tenure of services rendered in India & forms part of the contract of service.

Definition of 'Salary' [u/s 17]

In accordance with the provisions of Sec. 17(1) of Income Tax Act,1961, the term Salary includes:

- Wages
- Any annuity or pension
- Any gratuity
- Any fees, commission, perquisite or profits in lieu of or in addition to any salary or wages
- Any advance salary
- Encashment of leave-not-availed
- Interest earned in excess of 9.5% on Recognized Provident Fund (RPF)
- Amount transferred in excess of 12% of Salary to RPF
- Contribution made by Central Government or any other employer (w.e.f. A.Y. 2008-09) in the Previous Year to the account of an employee under Pension Scheme u/s 80CCD
- Money embezzled by an employee constitutes his income.

Item wise applicability of "Salary":

While deciding on the issue of applicability of taxable salary, the following matrix would be of immense help:

Particulars	Treatment
Wages for Workers	The same would be treated as "Salary" and would be taxable accordingly. There arises no difference between wages & salary
Salary received by a partner of a firm	Such remuneration would be treated as "Business Income" since the partner is not an employee of the entity
Director Fees	Sitting fees paid to directors for attending Board Meeting is not a salary but taxable as " Other Income"
Salary received by a proprietor	Proprietor is not an employee and hence any amount received by him would not be treated as salary
Director Remuneration	Any amount payable to any whole time directors who are also an employee of the company would be treated as salary. In any other case, the same would be treated as "Other Income"

Pension to retired employee	Pension is paid in pursuance to the terms of employment. Hence any amount received as pension would be considered as "Salary" in the hand of the recipient
Pension to legal heir of the deceased employee	Amount received by legal heir of the deceased employee, who is not an employee of the organization, would be considered as "Income from Other Sources" and not as "Income from Salary"
Remuneration paid to teacher of any University / College	Any such remuneration would be treated as "Salary" if the terms of employment provide a condition for checking such any paper. However, in any other case, such income shall be considered as "Other Income"
Voluntary Retirement payment by employer to employees	Since the employee would get the amount in accordance with the terms of employment obligation, the same would be considered as "Salary"
Remuneration to the MP / MLA	Such income shall be considered as "Income from Other Sources" as there exist no employer / employee relationship

Fully taxable components of "Salary" :

1. Basic Salary	10. Fees
2. Dearness Allowance	11. Lunch/Tiffin Allowance
3. Advance Salary	12. Overtime Allowance
4. Arrears of Salary	13. Servant Allowance
5. City Compensatory Allowance	14. Warden Allowance
6. Bonus	15. Non-practicing Allowance
7. Commission as a percentage on turnover	16. Family Allowance
8. Fixed Medical Allowance	17. Leave encashment during service
9. Project Allowance	18. Holiday Allowance

Profits in Lieu of Salary [u/s 17(3)]

(1) Compensation due or received from present/former employer in connection with

(a) termination of employment, or

(b) modification of terms and conditions of employment.

(2) Any amount received from an Unrecognized Provident Fund, to the extent of Employer's contributions, along with interest on such contribution.

(3) Sum received under Keyman Insurance Policy, including Bonus on it.

(4) Any sum received (either in lump sum or otherwise), either prior to employment or after cessation of employment.

Specified Employee

An Individual will be considered as a Specified Employee if:

(1) He is a director of a company, or

(2) He holds 20% or more of equity voting power in the company,

(3) Monetary salary in excess of ₹ 50,000: His income under the head salaries, (from any employer icluding a company) excluding non-monetary payments exceeds ₹ 50,000. For the above purpose, salary, should be arrived at after making the following deductions:

(a) Entertainment Allowance

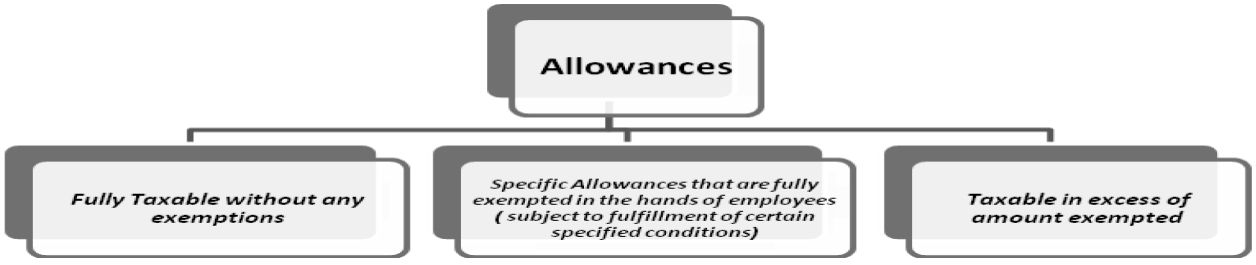
(b) Professional Tax

4.3 ALLOWANCES

Allowance is a fixed monetary amount paid by the employer to the employee for meeting some particular expenses, whether personal or for the performance of his duties. These allowances are generally taxable and are to be included in the gross salary unless specific exemption has been provided in respect of any such allowance.

4.3.1 Taxability of Allowances

Allowances received by an employee may be classified as follows:



1. Fully taxable allowances without any exemptions:

1. City Compensatory Allowance	8. Lunch/Tiffin Allowance
2. Dearness Allowance / Pay	9. Overtime Allowance
3. Fixed Medical Allowance	10. Servant Allowance
4. City Compensatory Allowance	11. Warden Allowance
5. Deputation Allowance	12. Non-practicing Allowance
6. Family Allowance	13. Leave encashment during service
7. Project Allowance	14. Holiday Allowance

2. Specific allowances that are fully exempt in the hands of employees

Allowance	Conditions to claim full exemption
1. Travelling Allowance	Should be provided by the employer and spent by the employee to meet the cost of official tour or transfer expenses. Cost of travel or transfer includes payments for transfer, packing and transportation of personal effects.

2. Daily Allowance	Should be spent by the employee for meeting the daily charges incurred on a tour or transfer.
3. Conveyance Allowance	Should be used by the employee to meet the expenditure on conveyance in performance of official duties.
4. Helper Allowance	Should be used by an employee to meet the expenditure on a helper who assists him in the performance of official duties.
5. Academic Allowance	Should be used by the employee for his academic research and training pursuits.
6. Uniform Allowance	Should be spent by the employee for purchasing/maintaining office uniform for official duties.
7. Allowances and perks paid by Government of India to an Indian citizen outside India	Fully exempted

Example: During the Previous Year 2015-16, the following allowances are given to X by the employer company

Nature of Allowance	Amount of Allowance (₹)	Amount actually spent for the purpose (₹)	Amount chargeable to tax (₹)
Travelling allowance for official purpose	36,000	32,000	4,000
Travelling allowance given at the time of transfer of X from Delhi to Ajmer	40,000	41,000	Nil
Conveyance allowance for official purposes	50,000	42,000	8,000
Helper allowances for engaging helper for official purpose	68,000	64,000	4,000
Research allowance	1,00,000	90,000	10,000
Uniform allowance for official purposes	18,000	17,000	1,000

3. When Exemption does not depend upon Expenditure -

In the case given below, the amount of exemption does not depend upon expenditure incurred by the employee. Regardless of the amount of expenditure, the allowances given below are exempt to the extent of (a) the amount of allowance; or (b) the amount specified in rule 2BB, whichever is lower.

On the above basis, exemption is available in the case of the following allowances. It may be noted that in these cases, the amount of actual expenditure is not taken into consideration:-

Allowance	Nature of Allowance	Exemption as specified in Rule 2BB
Special Compensatory (Hill Areas) Allowance	It includes any special compensatory allowance in the nature of special compensatory (hilly areas) allowance or high altitude allowance or uncongenial climate allowance or snow bound area allowance or avalanche allowance.	Amount exempt from tax varies from ₹ 300 per month to ₹ 7,000 per month.

Border Area Allowance	It includes any special compensatory allowance in the nature of border area allowance or remote locality allowance or difficult area allowance or disturbed area allowance	The amount of exemption varies from ₹ 200 per month to ₹ 1,300 per month
Tribal Areas/ Scheduled Areas Allowance	Tribal areas allowance is given in (a) Madhya Pradesh; (b) Tamil Nadu; (c) Uttar Pradesh; (d) Karnataka; (e) Tripura; (f) Assam; (g) West Bengal; (h) Bihar; (i) Odisha.	₹ 200 per month
Allowance for Transport Employees	It is an allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place provided that such employee is not in receipt of daily allowance	The amount of exemption is :- (i) 70 % of such allowance; or (ii) ₹ 10,000 per month, whichever is lower.
Children Education Allowance	This allowance is given for Children's education.	The amount exempt is limited to ₹ 100 per month per child up to a maximum of two children.
Hostel Expenditure Allowance	This amount is granted to an employee to meet the hostel expenditure on his child.	It is exempt from tax to the extent of ₹ 300 per month per child up to a maximum of two children.
Compensatory Field Area Allowance	If this exemption is taken, the same employee cannot claim any exemption in respect of border area allowance mentioned above.	Exemption is limited to ₹ 2,600 per month in some cases.
Transport Allowance	Transport allowance is granted to an employee to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty.	It is exempt up to ₹ 1,600 per month. For handicapped person, exemption upto ₹3,200 per month.
Underground Allowance	Underground allowance is granted to an employee who is working in uncongenial, unnatural climate in underground mines.	Exemption is limited to ₹800 per month.
High Altitude Allowance	It is granted to the member of armed forces operating in high altitude areas.	It is exempt from tax up to ₹ 1,060 per month (for altitude of 9,000 to 15,000 feet) or ₹ 1,600 per month

Example:- The following example are given to have better understanding:

(i) During the Assessment Year 2016-17, the following allowances are given to "A" by the employer-company

Nature of allowance	Amount of allowance (₹)	Amount spent (₹)	Amount of exemption (₹)	Amount chargeable to tax (₹)
Tribunal area allowance for A's posting in Assam for two months	3,000	Not relevant	200 p.m.	600
Child education allowance for A's elder son	1,800	Not relevant	100 p.m.	600
Child education allowance for A's younger son	900	Not relevant	-	900
Child education allowance for A's daughter	1,080	Not relevant	100 p.m.	Nil
Hostel expenditure allowance for A's elder son	6,600	Not relevant	300 p.m.	3,000
Transport allowance for commuting between office and residence	12,000	Not relevant	800 p.m.	2,400

(ii) The following allowances are given by a transport company to its drivers to meet personal expenditure in the course of running truck from one place to another place :-

Name of drivers	Amount of allowance (₹)	Amount spent (₹)	Amount not chargeable to tax (₹)	Amount chargeable to tax (₹)
A	72,000	Not relevant	70% of ₹72,000	21,600
B	7,20,000	Not relevant	₹10,000 per month	6,00,000
C	1,30,000	Not relevant	₹10,000 per month	10,000
D	46,200	Not relevant	70% of ₹46,200	13,860

C is in employment only for 2 months during the Previous Year 2014-15; D is in employment only for 7 months during the Previous Year 2014-15.

4.3.2 Various items of salary for which exemptions are available subject to limitations:

A. LEAVE TRAVEL ASSISTANCE (LTA) u/s 10(5) Rule 2B

Conditions for claiming the benefit:

(a) An individual can avail the benefit of LTA offered by his employer, twice in a block of four years.

(b) The present block of four years applicable for A.Y. 2016-17 is calendar years 2013-2016.

(c) LTA may be provided by the employer to the employee and his family:

(i) In connection with his proceeding on leave to any place in India, while in service;

(ii) Proceeding to any place in India after retirement or termination from service.

When Taxable:

- LTA encashed without performing journey is fully taxable
- Expenses reimbursed other than the fare like boarding or lodging is fully taxable.
- Amount received from employer in excess of the cost of traveling on the shortest route.

'Family' of an Individual means:

- Spouse and children of the individual, and
- Parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual.

B. HOUSE RENT ALLOWANCE [Sec.10(13A) Rule 2A]

Conditions for claiming exemption:

- Assessee is in receipt of HRA
- Pays Rent
- Rent paid is more than 10% of salary

Very Important:

- The exemption shall be calculated on the basis of where the accommodation is situated.
- If the place of employment is the same for the whole year, then exemption shall be calculated for the whole year.
- If there is a change in place during the Previous Year, then it will be calculated on a monthly basis.
- Exemption should be calculated in respect of the period during which rental accommodation is occupied by the employee during the Previous Year.
- Salary for the period during which rental accommodation is not occupied shall not be considered.

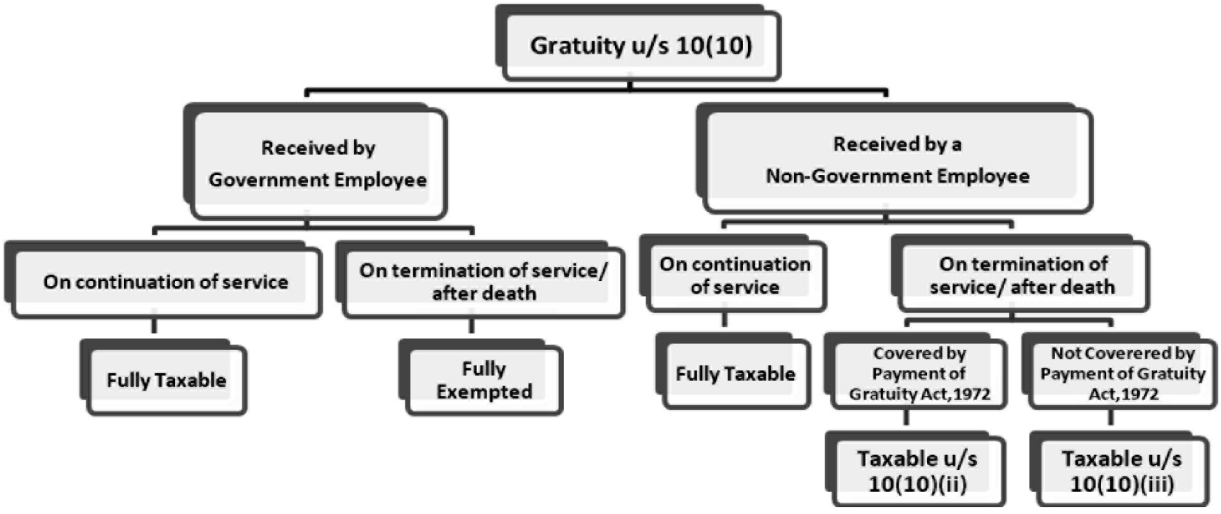
Salary for HRA = Basic Pay + DA (considered for retirement benefits) + Commission (if received as a fixed percentage on turnover as per terms of employment)

Computation of Taxable House Rent Allowance (HRA)

Particulars	₹	₹
Amount received during the financial year for HRA		xxx
Less: Exemption u/s 10(13A) Rule 2A:		
Least of the followings:		
(a) Actual amount received	xxx	
(b) 50% (for metro cities) / 40 % (for non-metro cities) of Salary	xxx	
(c) Rent paid less 10 % of Salary	xxx	xxx
Taxable HRA		**xxx**

4.4 DEATH-CUM-RETIREMENT BENEFITS

A. Gratuity u/s 10(10)



For Non-Government Employee – Covered by Payment of Gratuity Act, 1972

Computation of Taxable Gratuity

Particulars	₹	₹
Amount received as Gratuity		**xxxx**
Less: Exemption u/s 10(10)(ii) Least of the followings: (i) Actual amount received (ii) 15/26 x Last drawn salary x No. of years of completed service or part thereof in excess of 6 months (iii) Maximum limit	 xxx xxx 10,00,000	 xxxx
Taxable Gratuity		xxxx

Note: Salary = Basic Pay + Dearness Allowance

In case of seasonal employment, instead of 15 days, 7 days shall be considered.

For Non-Government Employee – Not-covered by Payment of Gratuity Act, 1972

Computation of Taxable Gratuity

Particulars	₹	₹
Amount received as Gratuity		xxxx
Less: Exemption u/s 10(10)(iii) Least of the followings: (i) Actual amount received (ii) ½ x Average Salary x No. of fully completed years of service (iii) Maximum limit	 xxx xxx 10,00,000	 xxxx
Taxable Gratuity		xxxx

Note: Salary = 10 months average salary preceeding the month of retirement.

= Basic Pay + Dearness Allowance considered for retirement benefits + Commission (if received as a fixed percentage on turnover)

Gratuity received while in service:-

Any gratuity paid to an employee while he continues to remain in service (whether or not after he has put in minimum specified period of service) is not exempt from tax. Tax exemption will be available only if gratuity is paid on (i) retirement; (ii) becoming incapacitated prior to such retirement; (iii) termination of employment; (iv) resignation; or (v) death. Gratuity received under other circumstances would not be exempt from tax, though the assessee can claim relief under section 89.

Very Important:

- Where an individual receives retirement gratuity from more than one employer, he can claim exemption in respect of both of them.
- However, the maximum amount of exemption should not exceed ₹ 10,00,000.
- When gratuity is received from more than one employer during different periods of time, the maximum exemption claimed by an assessee during his entire life should not exceed ₹ 10,00,000.

Gratuity received by family members after the death of the employee:-

If gratuity is paid after the death of an employee, then the case may fall in one of the following situations given below:-

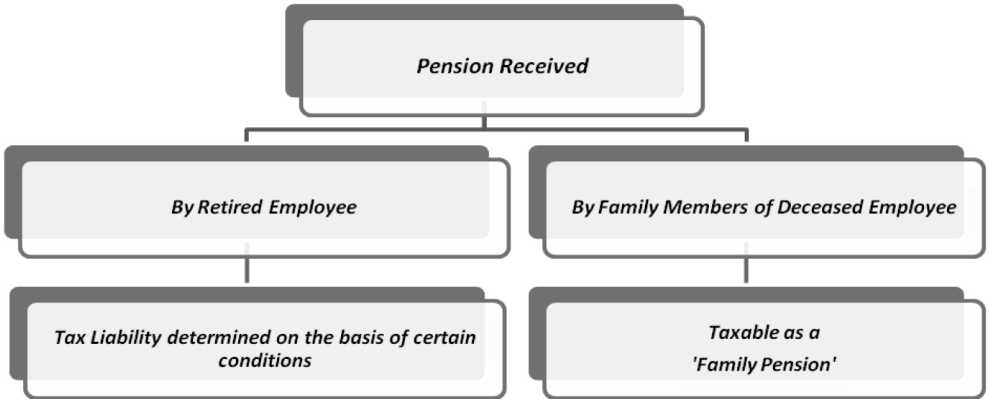
	Normal date of retirement of employee (say A)	When gratuity become due	Date of payment of gratuity	Date of death of A
Situation 1	June 30, 2015	June 30, 2015	July 11, 2015	July 20, 2015
Situation 2	June 30, 2015	June 30, 2015	July 11, 2015	July 6, 2015
Situation 3	June 30, 2015	July 6, 2015	July 11, 2015	July 6, 2015

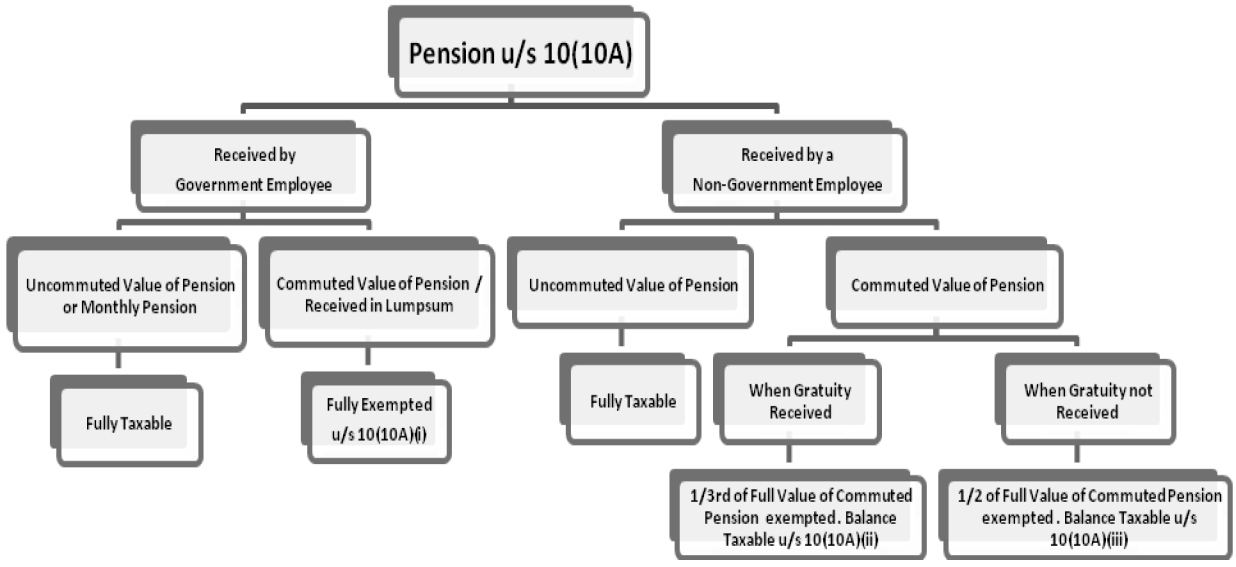
Situation 1 - The gratuity become due (and paid) during the lifetime of X, it is taxable in the hand of X. He can claim exemption under section 10(10).

Situation 2 - Gratuity becomes due on June 30, 2015 at the time of retirement. It is taxable in the hand of A even if it is received by legal heirs on July 11, 2015 after his death. After claiming exemption under section 10(10) (ii)/(iii), the balance shall be included in the salary income of X. Income-tax return shall be submitted by Mrs. A(or her children) as legal heirs of A.

Situation 3 - A dies on July 6, 2015 while in service. Gratuity is sanctioned after his death on July 6, 2015. It cannot be taxed in the hands of deceased employee X as it becomes due and is paid after his death. This amount is not taxable in the hands of legal heirs also as it does not partake the character of income in their hands but is only a part of the estate devolving upon them.

B. Pension





Tax treatment of pension in different cases:-

	Different situations	Tax treatment
Case -1	Pension is received from UNO by the employee or his family members	It is not chargeable to tax
Case -2	Family pension received by the family members of armed forces (after the death of employee)	It is exempt under section 10(19) after fulfilling of certain condition.
Case -3	Family pension received by family members in other cases (after the death of employee)	It is taxable in the hand of recipients under section 56 under the head "Income from Other Sources''. Standard deduction is available under section 57 which is 1/3 of such pension or ₹ 15,000, whichever is lower.

1. Taxability of Uncommuted Pension or Monthly Pension:

(a) Pension is received periodically by the retired employee
(b) It may be received by Government or non-government employees
(c) Amount received shall be fully taxable under the head "Salaries"

2. Taxability of Commuted Pension:

(a) Pension is received in lumpsum as per the terms of the employment on retirement or superannuation.
(b) Full Value of Commuted Pension = Amount received on commutation/percentage of commutation.
(c) Taxability:

Recipient	Amount Taxable
Government employee(Central/State/Local Authority or Statutory Corporation)	Fully exempted u/s 10(10A)(i)
Non-Govt. employee who has also received Gratuity u/s 10(10A)(ii)	Amount Received Less: 1/3 of Full Value of Commuted Pension
Non-Govt. employee who has not received Gratuity u/s 10(10A)(iii)	Amount Received Less:1/2 of Full Value of Commuted Pension

In accordance with the aforesaid rules, pension is chargeable to tax on "accrual" basis whether it is received voluntarily or under a contract. Arrears of pension are also assessable on "due" basis whether paid or not. In respect of the arrear pension which is not exempt from tax, the assessee can, however, claim relief under section 89.

Notified Pension Scheme- These provisions are given below:-

(i) Contribution by Central Government or any other employer to the Notified Pension Scheme (NPS) is first included under the head "Salaries" in hand of employee.

(ii) Such contribution is deductible (to the extent of 10 percent of the salary of the employee) or 10% of the gross total income in case of any other individual under section 80CCD.

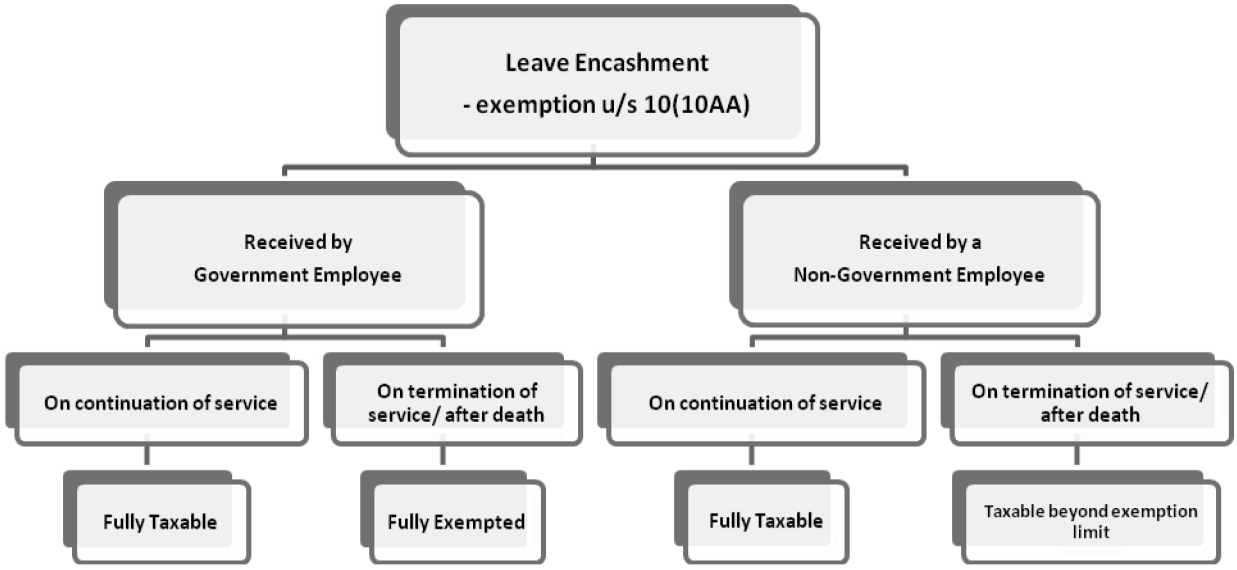
(iii) Employees contribution to the Notified Pension Scheme (NPS) (to the extent of 10 percent of the salary of the employee) is also deductible under section 80CCD.

(iv) When pension is received out of the aforesaid amount, it will be chargeable to tax in the hand of the recipient.

(v) The aggregate amount of deduction under section 80C, 80CCC and 80CCD(1) cannot exceed ₹1,50,000. For contribution made by Employee/Assessee u/s 80CCD(1B), further deduction of ₹ 50,000 is available in addition to the overall ceiling limit of ₹1,50,000.

(vi) Salary for the purpose of point (ii) & (iii) includes basic salary and dearness allowance (if the term of employment so provided) but excluded all other allowances and perquisites.

C. Leave Encashment



1. Leave encashment while in service is fully taxable as income of Previous Year in which it is encashed.

2. *Leave encashment on retirement:*

(a) If an individual receives leave encashment on his retirement, then the amount received will be eligible for exemption.

(b) The amount of exemption is based on his employment:

(i) Government employee: fully exempted from tax

(ii) Non-Govt. employee: An individual who is not a Government employee is also entitled for exemption in respect of leave encashment compensation received by him.

3. Computation of exemption from Leave Encashment:

Step 1: Computation of Salary = 10 months average salary preceding the month of retirement.

Step 2: Salary = Basic Pay + Dearness Allowance (forming a part of salary for retirement benefits) + Commission (if received as a fixed percentage on turnover)

Step 3: This calculation is only applicable where the employer has sanctioned leave to the employee in excess of 30 days for every completed year of service.

Particulars	No. of Days
(i) Leave credit available on the date of retirement	xxx
Less: Excess leave sanctioned by the employer (Leave sanctioned by the employer per year – leave @ 30 days per year) x No. of completed years of service	(xxx)
Leave credit on the basis of 30 days credit for completed years of service	xxx
(ii) Leave salary on the basis of 30 days credit = Step 3(i) × Step 1 (Amount in ₹)	₹ xxxx

Note: In case the employer sanctioned leave of 30 days or less for completed year of service then the salary for actual leave balance shall be considered and Step 3(i) shall not apply.

4. Computation of Taxable Leave Salary/Encashment on Retirement:

Particulars	Amount (₹)	Amount (₹)
Amount received on Leave Salary/Encashment		xxxx
Less: Exemption u/s 10(10AA): Least of the followings: (i) Actual amount of leave encashment received (ii) Average salary of the individual x 10 months (iii) Maximum limit (iv) Leave credit (as per computation stated in 3 above)	 xxxx xxxx 3,00,000 xxxx	
Taxable Value of Leave Salary/Encashment		xxxx

Note:

(a) If the individual receives leave encashment from more than one employer, the quantum of exemption will be computed independently in respect of each employer.

(b) The total amount of exemption should not exceed ₹ 3,00,000 during his life time.

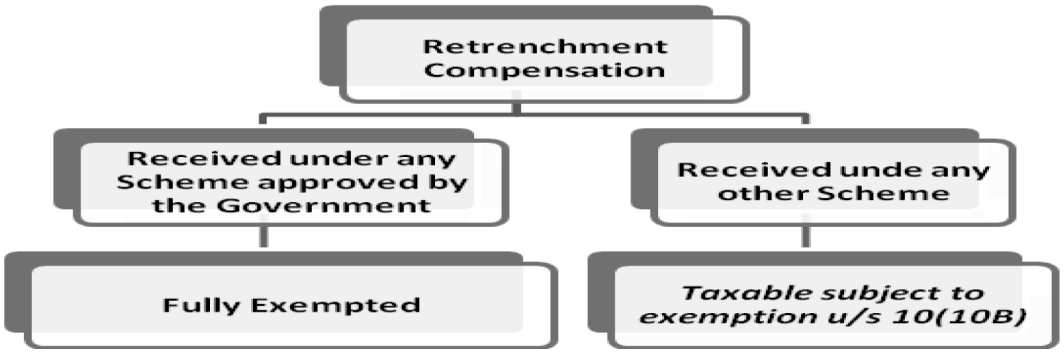
D. Retrenchment Compensation [Sec.10(10B)]

Compensation is received by a workman at the time of:

(i) Closing down of the undertaking.

(ii) Transfer (irrespective of by agreement/compulsory acquisition) if the following conditions are satisfied:

- Service of workmen interrupted by transfer
- Terms and conditions of employment after transfer are less favourable
- New employer is not under a legal obligation whether under the terms of transfer or otherwise to pay compensation on the basis that the employee's service has been continuous and has not been interrupted by transfer.



Note:

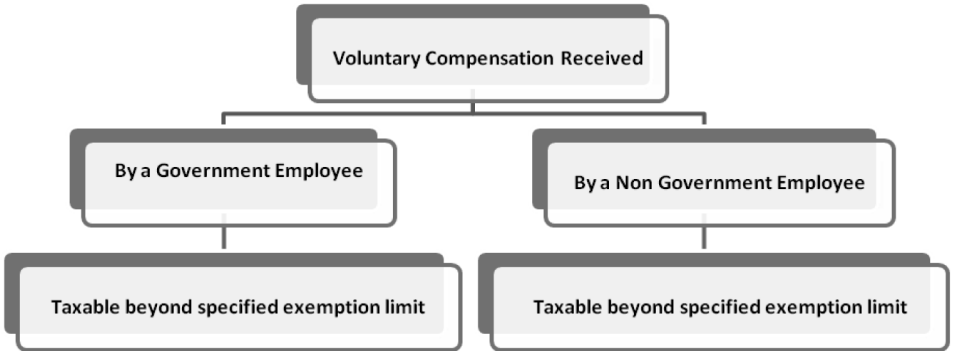
(a) Retrenchment compensation received in accordance with any scheme, which is approved by the Central Government, is fully exempt from tax.

(b) An individual who receives retrenchment compensation is entitled for exemption u/s 10(10B).

Computation of Taxable Retrenchment Compensation

Particulars	Amount (₹)	Amount (₹)
Amount received as Retrenchment Compensation		xxxx
Less: Exemption u/s 10(10B):		
Least of the followings:		
(i) Actual amount received	xxxx	
(ii) Amount determined under the Industrial Disputes Act,1947	xxxx	
(iii) Maximum Limit	5,00,000	xxxx
Taxable amount of Retrenchment Compensation		**xxxx**

E. Voluntary Retirement Compensation u/s 10 (10C)



Conditions for claiming exemption:

(i) An individual, who has retired under the Voluntary Retirement Scheme, should not be employed in another company of the same management.

(ii) He should not have received any other Voluntary Retirement Compensation before from any other employer and claimed exemption.

(iii) Exemption u/s 10(10C) in respect of Compensation under VRS can be availed by an Individual only once in his lifetime.

Computation of Exemption:

Step 1: Salary = Last drawn salary = Basic Pay + D.A. (considered for retirement benefits)

Step 2: Computation of Taxable VRS compensation

Particulars	Amount (₹)	Amount (₹)
Amount received as VRS Compensation		xxxx
Less: Exemption u/s 10(10C):		
Least of the followings:		
(i) Actual amount received	xxxx	
(ii) Maximum Limit	5,00,000	
(iii) The highest of the followings :		
(a) Last drawn salary x 3 x No. of fully completed years of service xxxx		
(b) Last drawn salary x Balance no. of months of service left xxxx	xxxx	xxxx
Taxable amount of Retrenchment Compensation		**xxxx**

4.5 PROFITS IN LIEU OF SALARY [SECTION 17(3)]

These payments are made to an employee in lien of salary even if these payments have no connection with the "Profits" of the employer. These are the followings:-

(a) Compensation for loss of employment or modification of the employment terms- Compensation for loss of employment or modification of terms of employment is generally treated as a capital receipt. But by virtue of section 17(3)(i), any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or modification of terms of employment is taxable as profit in lieu of salary. It is taxable on ''due'' or ''receipt'' basis, whichever come earlier. The recipient may claim exemption under section 10(10B) or 10(10C).

The silent features are:-

(i) Compensation is received by an assessee from his employer or former employer;

(ii) It is received at or in connection with termination of his employment or modification of terms and conditions relating thereto.

(b) Payment from unrecognized provident or superannuation fund- Accumulated balance in any provident fund/superannuation fund of employer's portion consists of the following:-

(i) Employer's contribution;

(ii) Interest on employer's contribution is taxable subject to the following propositions

(1) The provident fund/ superannuation fund is an unapproved fund;

(2) These are taxable at the time of payment to the assessee

(c) Payment from Keyman insurance policy- Any sum received under Keyman insurance policy (including the sum allocated by way of bonus on such policy) is taxable as "policy in lieu of salary".

(d) Profits in lieu of salary will include amount received in lump sum or otherwise, prior to employment or after cessation of employment for the purpose of taxation.

(e) Any other payment due to or received [excluding Sec. 10(10A) /10(10B) /10(11) /10(12) / 10(13) / 10(13A)] by an assessee from his employer or former employer is treated as "Profit in Lieu in Salary".

4.6 DEDUCTIONS AGAINST SALARY

1. Entertainment Allowance: **Applicable only for Government Employees [Sec.16(ii)]**

Least of the following will be allowed as a deduction:

(i) Actual amount of entertainment allowance received;

(ii) 20% of basic salary of the individual

(iii) ₹ 5,000

2. Professional Tax [Sec.16(iii)]

(i) Professional tax or tax on employment paid by an employee, levied under a State Act shall be allowed as deduction ;

(ii) such deduction is available only on actual payment;

(iii) If an employer pays professional tax on behalf of his employee, then it will first be included in the Salary as a perquisite and then, allowed as a deduction.

4.7 VALUATION & TAXABILITY OF PERQUISITES

Perquisite: A perquisite is defined in the Oxford English Dictionary as any casual emolument, fee or profit, attached to an office or position in addition to the salary or wages. Perquisite has a known normal meaning, namely, personal advantage. In simple words, perquisites are the benefits in addition to normal salary to which the employee has a right by virtue of his employment.

The essential feature of a perquisite is that an employee should have a right to the same and that it should not be a mere voluntary or contingent payment.

Perquisite includes:

(a) Value of rent free accommodation given by the employer

(b) Value of accommodation given at concessional rate

(c) Value of benefit given free of cost or at concessional rate in the following cases:

  (i) given by employer to his Director Employee;

  (ii) given by employer to his employee who owns 20% or more of voting power in the company, and

  (iii) given by any employer (including company) to his employees whose monetary salary exceeds ₹ 50,000

(d) Any sum paid by the employer on behalf of the employees

(e) Sum paid/payable by the employer towards insurance on the life of the individual or annuity payments

(f) Value of any other fringe benefit or amenity. [Sec. 17(2)(vi)]

4.7.1 Perquisites which are fully exempted from Tax

The following perquisites are exempt from tax in all cases and hence not includible for the purpose of tax deduction at source under section 192:

1. Provision for medical facilities subject to limit
2. Tea or snacks provided during working hours
3. Free meals provided during working hours in a remote area or an offshore installation
4. Perquisites allowed outside India by the Government to a citizen of India for rendering service outside India.
5. Sum payable by an employer through a recognized provident fund or an approved superannuation or deposit-linked insurance fund established under the Coal Mines Provident Fund or the Employees Provident Fund.
6. Employer's contribution to staff group insurance scheme.
7. Leave travel concession subject to Sec. 10(5)
8. Payment of annual premium by employer on personal accident policy affected by him on his employee
9. Free educational facility provided in an institute owned/maintained by employer to children of employee provided cost/value does not exceed ₹ 1,000 per month per child (no limit on no. of children)
10. Interest-free/concessional loan of an amount not exceeding ₹ 20,000
11. Computer/laptop given (not transferred) to an employee for official/personal use.
12. Transfer without consideration to an employee of a movable asset (other than computer, electronic items or car) by the employer after using it for a period of 10 years or more.
13. Traveling facility to employees of railways or airlines.
14. Rent-free furnished residence (including maintenance thereof) provided to an Official of Parliament, a Union Minister or a Leader of Opposition in Parliament.
15. Conveyance facility provided to High Court Judges u/s 22B of the High Court Judges (Conditions of Service) Act, 1954 and Supreme Court Judges u/s 23A of the Supreme Court Judges (Conditions of Service) Act, 1958.
16. Conveyance facility provided to an employee to cover the journey between office and residence.
17. Accommodation provided in a remote area to an employee working at a mining site or an onshore oil exploration site, or a project execution site or an accommodation provided in an offshore site of similar nature.
18. Accommodation provided on transfer of an employee in a hotel for not exceeding 15 days in aggregate.
19. Interest free loan for medical treatment of the nature given in Rule 3A.
20. Periodicals and journals required for discharge of work.
21. Tax on perquisite paid by employer [Sec. 10(10CC)]
22. Other Exempted Payments:
    (a) Bonus paid to a football player after the World Cup victory to mark an exceptional event;
    (b) Payment made as a gift in appreciation of the personal qualities of the employee;

(c) Payment of proceeds of a benefit cricket match to a great cricket player after he retired from test match;

(d) Trust for the benefit of employee's children.

4.7.2 Medical Facilities

(a) Fixed medical allowance is fully taxable

(b) Medical payments include reimbursements also [Circular no.603/6.6.1991]

Medical Treatment in India:

1. Local treatment to employee or any member of his family in:
   (a) Hospital maintained by employer
   (b) Government Hospital
   (c) Notified hospital for prescribed diseases [Sec.17(2)(v)]

   Family includes spouse, children (whether dependent or independent) and parents, brothers and sisters wholly dependent on the employee.
2. Group Medical insurance paid u/s 36(1)(ib) & Medical Insurance paid u/s 80D- which are approved by the Central Govt. or IRDA w.e.f. A.Y.2007-08.
3. Any other medical expenditure reimbursed subject to a maximum of ₹ 15,000.

Medical Treatment Abroad (for the patient and the attendant):

If the employee underwent medical treatment abroad and the expenditure is met by the employer, the exemption will be subject to the following:

1. Medical treatment and stay expenses abroad (both for the patient and the attendant) is exempt from tax, subject to the maximum amount permitted by the Reserve Bank of India.

2. Travel expenditure of the patient and the attendant:

Gross Total Income, before including reimbursement of Foreign Travel Expenditure	**Amount of Exemption**
Upto ₹ 2,00,000	Fully Exempted
Above ₹ 2,00,000	Fully Taxable

3. Computation of exemption for foreign travel expenditure

Step 1: Compute Gross Total Income of the assessee without considering foreign travel reimbursement but after set-off loss and unabsorbed depreciation.

Step 2: If the Gross Total Income does not exceed ₹ 2 lakhs, Foreign Travel Reimbursement is not taxable otherwise fully taxable.

Step 3: If Foreign Travel reimbursement is taxable as per Step 2, recomputed the income under the head Salary after including foreign travel reimbursement and Gross Total Income must also be recomputed.

4.7.3 Accommodation Facilities

1. Value of Unfurnished Accommodation: Explanation 1 to Sec.17(2), Rule 3(1)

Nature of Perquisite	Taxable Value of Perquisite
Provided by Central Govt. or State Govt.	Licence fee determined by the Government Less: Rent recovered from employee

Provided by Employer other than Central or State Government

(a) owned by employer	**In cities having population exceeding 25 lakhs as per 2001 census**: 15% of Salary **Less** Rent actually paid by employee
	In cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census: 10% of Salary **Less** Rent actually paid by employee
	In other places: 7.5% of Salary **Less** Rent actually paid by employee
(b) taken on lease by the employer	Rent paid by the employer or 15% of Salary whichever is lower **Less** Rent recovered from employee
(c) Accommodation in a hotel	24% of salary paid/payable or actual charges paid/payable whichever is lower **Less:** Amount paid or payable by the employee

Hotel Accommodation: Accommodation provided in a hotel will not be a taxable perquisite if the following two conditions are fulfilled:

(a) The period of such accommodation does not exceed 15 days

(b) Such accommodation has been provided on the transfer of the employees from one place to another.

2. Value of Furnished Accommodation

Particulars	₹
Value of unfurnished accommodation as above	xxx
Add : Value of Furniture provided:	
• If owned by employer, 10%p.a. of original cost of such furniture	xxx
• If hired from third party, then Actual hire charges	
Less: Any charges paid or payable by the employee	(xxx)
Value of Furnished Accommodation	**xxx**

Note: Furniture includes Television sets, radio, refrigerator, other household appliance, air-conditioning plant or equipment.

3. Valuation not applicable:

(a) Employees working at mining site, onshore oil exploration site, offshore site, project execution site, dam site, power generation site.

(b) Conditions to be fulfilled:

(i) The accommodation should be of a temporary nature, and

(ii) Plinth area should not exceed 800 square feet

(iii) Accommodation should be located at least 8 kms away from local limits of municipality/ cantonment or located in a remote area

Remote area means area located at least 40 kms away from town having a population not exceeding 20,000 based on latest published All-India census.

4. Valuation of accommodation in case of Employees on transfer:

(a) For the first 90 days of transfer: Where accommodation is provided both at existing place of work and in new place, the accommodation, which has lower value, shall be taxable.

(b) After 90 days: Both accommodations shall be taxable.

5. Salary for Valuation of Accommodation facilities:

Salary includes	Salary excludes
Basic Salary D.A. (if considered for retirement benefits) All taxable allowances Bonus or commission or ex-gratia Any other monetary payment	Other D.A Employer's contribution to PF Exempted allowances Perquisites u/s 17(2) Perquisites u/s 17(2)(iii) or its provisions

4.7.4 Other Facilities and Perquisites to Employee and his Household

Rule	Nature of Perquisite	Taxable Value of Perquisite(TVP)
3(3)	Service of sweeper, gardener or watchman or personal attendant	Actual cost to the employer **Less:** Amount paid by employee
3(4)	Supply of gas, electricity or water for household consumption	**(i) Procured from outside agency** Amount paid to outside agency **(ii) Resources owned by employer himself** Manufacturing cost per unit Less: amount paid by the employee
3(5)	Education facilities to members of his household (a) free education to children in the school maintained by the employer or the school sponsored by the employer (b) other schools (c) for other members of the household	If the cost of education per child does not exceed ₹ 1,000 p.m.- then not taxable **For points (b) & (c)** In other case, cost to the employer **Less:** amount recovered from employee

3(7)(i)	Housing Loan/Vehicle Loan- for acquiring capital assets and not for repairs SBI Rate= SBI Rate prevailing on the first day of the Previous Year	**Other Loans** Interest charged by employer is equal to or higher than SBI rates. It is not a taxable perquisite. Interest charged is lower than SBI rates: Interest charged at SBI rates on maximum outstanding balance **Less:** Interest paid by the employee on that loan **Exceptions :** (a) Medical loan for treatment of diseases specified in Rule 3A except loan reimbursed by medical insurance (b) Loan not exceeding ₹ 20,000 in aggregate
3(7) (vii)	Use of any movable asset other than computer or laptops or other assets already mentioned	10% of Actual Cost if owned by the employer; or Actual rental charge paid/payable by the employer **Less**: Amount recovered from employee

Note: Members of household includes: spouse(s), children and their spouses, parents, servants and dependents.

4.7.5 Transfer of Movable Assets to Employees [Rule 3(7)(viii)]

Particulars	Computer & Electronic Gadgets	Car	Other Movable Assets
Method of Depreciation	**WDV**	**WDV**	**SLM**
Rate of Depreciation for every completed year	50%	20%	10%
Actual Cost *Less* : Depreciation for completed years	XXXXX (XXXXX)	XXXXX (XXXXX)	XXXXX (XXXXX)
WDV at the end of completed years *Less* :Sale Value taken from Employee	XXXXX (XXXXX)	XXXXX (XXXXX)	XXXXX (XXXXX)
Taxable Value of Perquisite	**XXXXX**	**XXXXX**	**XXXXX**

Note:

(a) Electronic gadgets include computer, digital diaries and printers, but excludes washing machines, microwave ovens, hot plates, mixers, ovens, etc.

(b) Transfer of Assets, which are 10 years old, shall not attract tax liability.

(c) Member of household includes: Spouse(s), children and their spouses, parents, servants and dependents.

(d) Completed year means actual completed year from the date of acquisition of the asset to the date of transfer of such asset to the employees.

4.7.6 Taxability of Perquisites provided by Employers

4.7.6.1 Taxability of Motor Car Benefits

Owner of Car	Expenses borne by	Purpose	Taxable value of Perquisite
1(a) Employer	Employer	Fully official	Not a perquisite provided the documents as specified in Rule 3(2)(B) are maintained
1(b) Employer	Employer	Fully private	Total of: (i) Actual expenditure on car (ii) Remuneration to Chauffeur (iii) 10% of the above cost of car (normal wear & tear) Less: Amount charged from employee
1(c)(i) Employer	Employer	Partly official and partly for personal use	Cubic capacity of car engine upto 1.6 litres ₹ 1,800 p.m. + ₹ 900 p.m. for chauffeur Cubic capacity of car engine above 1.6 litres ₹ 2,400 p.m. + ₹ 900 p.m. for chauffeur
1(c)(ii) Employer	Employee	Partly for official and partly for personal use	Cubic capacity of car engine upto 1.6 litres ₹ 600 p.m. + ₹ 900 p.m. for chauffeur Cubic capacity of car engine above 1.6 litres ₹ 900 p.m. + ₹ 900 p.m. for chauffeur
2(i) Employee	Employer	Fully official use	Not a perquisite provided the documents as specified in Rule 3(2)(B) are maintained
2(ii) Employee	Employer	Partly official and partly personal	Subject to Rule 3(2)(B) Actual expenditure incurred Less: Value of Car cubic capacity upto 1.6 litres [i.e. value as per 1(c)(i)] Or Value of Car cubic capacity above 1.6 litres [i.e. value as per 1(c)(i)]
3(i) Employee owns other automotive but not car	Employer	Fully official use	Not a perquisite provided the documents as specified in Rule 3(2)(B) are maintained
3(ii) employee owns other automotive but not car	Employer	Partly for official use and partly for personal use	Subject to Rule 3(2)(B) Actual expenditure incurred by employer Less: ₹ 900 p.m.

Note:

1. Using cars from pool of cars owned or hired by Employer:
   The employee is permitted to use any or all cars for both official and personal use:

For one car	Valued as per 1(c)(i)
For more than one car	Valued as per 1(b) as if fully used for personal purpose

2. Documents to be maintained for claiming ' non-taxable perquisite' or higher deduction wherever applicable [Rule 3(2)(B)]:
   (a) Employer should maintain complete details of journey undertaken for official purpose, which includes date of journey, destination, mileage and amount of expenditure incurred thereon.

(b) Certificate of supervising authority of the employee, wherever applicable, to the effect that the expenditure incurred for wholly and exclusively for performance of official duties, should be provided.

4.7.6.2 Taxability of other benefits

Rule	Nature of Perquisite	Taxable Value of Perquisite (TVP)
3(6)	Transportation of goods or passengers at free or concessional rate provided by the employer engaged in that business (other than railways/airlines)	Value at which offered to public Less: Amount recovered from the employee
3(7)(ii)	Travelling, touring, accommodation and other expenses met by the employer other than specified in Rule 2B (this shall be calculated only for the period of vacation)	Amount recovered by employer or value at which offered to public Less: Amount recovered from employee
3(7)(iii)	Free meals during office hours. Free meal in remote area or offshore installation area is not a taxable perquisite	Actual cost to the employer in excess of ₹ 50 per meal or tea or snacks Less: Amount recovered from the employee Tea or non-alcoholic beverages and snacks during working hours is not taxable
3(7) (iv)	Value of any gift or voucher or token other than gifts made in cash or convertible into money (i.e. gift cheques) on ceremonial occasion	Value of gift (In case the aggregate value of gift during the Previous Year is less than ₹ 5,000, then it is not a taxable perquisite)
3(7)(v)	Expenditure incurred on credit card or add on card including membership fee and annual fee	Actual expenditure to employer is taxable Less: Amount recovered from employee (If it is incurred for official purpose and supported by necessary documents then it is not taxable)
3(7)(vi)	Expenditure on club other than health club or sports club or similar facilities provided uniformly to all employees	Actual expenditure incurred by the employer Less: Amount recovered from employee If the expenditure is incurred exclusively for official purposes and supported by necessary documents then it is not taxable. Initial fee of corporate membership of a club is not a taxable perquisite
3(7)(ix)	Any other benefit or amenities or service or right or privilege provided by the employer other than telephone or mobile phone	Cost to the employer Less: Amount recovered from employee

Note: Members of household includes spouse/(s), children and their spouses, parents, servants and dependants.

4.7.6.3 Employee Stock Option [ESOP]

1. **Employee Stock Option** means any specified Securities or Sweat Equity Shares, allotted or transferred by the present or former Employer, to the Employee, directly or indirectly, either free of cost or at a concessional price.
2. **"Specified Security"** means Securities as defined in Securities Contracts (Regulation) Act, 1956 and where Employees' Stock Option has been granted under any plan or scheme, **includes securities offered under such Plan/ Scheme.**
3. **Sweat Equity Shares** means Equity Shares issued by a Company to its Employees or Directors, at a discount or for consideration other than cash, for – (a) providing know-how, or (b) making available intellectual property rights, or (c) value additions, by whatever name called.
4. **Value of the Security or Sweat Equity Shares =** FMV of the Security / Sweat Equity Shares as on the date of exercise of Option Minus Amount recovered from the Employee.
5. **Fair-Market Value (FMV)** means the Value determined in the prescribed manner. [See Table below]
6. **Option** means a **right** but **not an obligation** granted to an Employee, to apply for the specified Security or Sweat Equity Shares, at a pre-determined price.

As per Rule 40C the Fair Market Value shall be determined as under-

Particulars	**Fair Market Value**
1. **Shares of an Unlisted Company**	As determined by a Merchant Banker on the specified date.
2. **Shares of a Listed Company**	
(a) **Trading on the date of vesting of option:**	
• Listed in one Recognised Stock Exchange	**Average** of Opening and Closing Price on the date of exercising of option.
• Listed in more than one Recognised Stock Exchange	**Average** of Opening and Closing Price in the Stock Exchange that records the **highest volume of trading** in Shares on the date of exercising of option.
(b) **No Trading on the date of vesting of option:**	
• Listed in one Recognised Stock Exchange	**Closing Price** of the Share on any Recognised Stock Exchange on a date closest and immediately preceding the date of exercising of option.
• Listed in more than one Recognised Stock Exchange	**Closing Price** of the Share on the Stock Exchange on a date closest and immediately preceding the date of exercising of option in the Stock Exchange that records the highest volume of trading in shares.
3. **FMV of specified Security, not being an Equity Share in the Company (Rule 40D)**	As determined by a Merchant Banker on the specified date. **(Notfn. No.11/2008 dt. 18.01.2008)**

4.7.6.4 Taxability of Perquisites (At a glance)

Perquisites	Specified Employee	Non-Specified Employee
Rent free/concessional accommodation	Taxable	Taxable
Watchman, gardener, sweeper, personal attendant engaged by employee and expenses met by the employer	Taxable	Taxable
The aforesaid mentioned servants provided in any other manner	Taxable	Non-taxable
Gas, electricity, water, etc. for household consumption and the connection in the name of employee but expenses paid by the employer	Taxable	Taxable
Above facilities provided in any other manner	Taxable	Non-taxable
Education expenses, if the bills are in the name of employee, but met by employer	Taxable	Taxable
Above facilities provided in any other manner	Taxable	Non-taxable
Transport facilities provided by transport undertakings, other than Railways, Airlines	Taxable	Taxable
Interest free loans or loans provided at concessional rates by the employer to employee	Taxable	Taxable
Holiday home facilities provided	Taxable	Taxable
Club facility provided by employer(other than official purposes)	Taxable	Taxable
Computer/laptop provided by the employer for use by the employee	Non-taxable	Non-taxable
Other movable assets provided by the employer for use by the employees	Taxable	Taxable
Sale/transfer of movable assets to employees	Taxable	Taxable
Magazines, periodicals, journals, etc. for official work	Not taxable	Not taxable
Medical facilities, if the bills are in the name of employee, but met by employer above ₹ 15,000	Taxable	Taxable
Above facility in any other manner	Taxable	Non-taxable
Leave travel concession	Not taxable subject to 10(5)	Not taxable subject to Sec.10(5)
Stock option under approved scheme	Not taxable	Not taxable

4.8 PROVIDENT FUNDS

Particulars	Statutory Provident Fund(SPF)	Recognized Provident Fund (RPF)	Unrecognized Provident Fund (URPF)	Public Provident Fund (PPF)
Constituted under	Provident Funds Act,1952	EPF and Miscellaneous Provisions Act, 1952 & recognized by the Commissioner of PF and CIT	Not recognized by the Commissioner of Income Tax	Public Provident Fund Act,1968 Account in SBI or Post Offices
Contributed by	Employer and employee	Employer and employee	Employer and employee	All assessees independently
Assessee's contribution	Deduction u/s 80C	Deduction u/s 80C	No Income tax benefit	Deduction u/s 80C
Employer's Contribution	Not taxable	Amount exceeding 12% of salary is taxable	Not taxable at the time of contribution	Not applicable
Interest credited	Fully exempted	Exempted upto 9.5% p.a. Any excess is taxable	On Employee's Contribution - Taxable – under the Head " Income from Other Sources"	Fully exempted
			On Employer's contribution – not taxable at the time of credit	
Withdrawal at the time of retirement or resignation or termination, etc	Exempted u/s 11	Exempted u/s 10(12) subject to conditions	Employee's contribution and interest thereon is not taxable	Exempted u/s 10(11)
			Employer's contribution and interest thereon is taxable as Profits in lieu of Salary, under the head "Salaries"	

Note: Sum received by an Employee under approved Superannuation Fund is also exempt from tax u/s 10(13).

Amount transferred from unrecognized provident fund to recognized provident fund- Out of the sum standing to the credit of an employee under recognized provident fund which is accorded recognition for the first time or a part of the sum transfer from unrecognized provident fund to the recognized provident fund is taxable under the head "salaries". Of all the sums comprises in the transferred balance, the amount which would have been liable to tax if provident fund had been recognized from the date of institution of the fund, shall be deemed to be the income received by the employee in the Previous Year in which

recognition of the fund takes effect. The remaining amount is not chargeable to tax. No other relief or exemption is granted.

Employers Contribution to RPF is excluded from Salary

1. If the employee has rendered continuous service with his employer for a period of 5 years or more.
2. If he has not rendered such continuous service of 5 years, then the service has been terminated:
   (a) By reason of such employee's ill health, or
   (b) By the contraction or discontinuance of the employer's business, or
   (c) Any other cause beyond the control of the employee
3. If, on the cessation of his employment, the employee obtains employment with another employer, to the extent, the accumulated balance due and becoming payable to him is transferred to his individual account in any recognized fund maintained by such employer.

The period of service rendered under the previous employer(s) should also be included in determining the period of continuous service in (3) above.

4.9 "SALARY" UNDER DIFFERENT CIRCUMSTANCES – AT A GLANCE

For the purpose of	Means
1. Deduction for Entertainment Allowance u/s 16(ii) – in case of Government employees	Basic Pay
2. Voluntary Retirement Compensation u/s 10(10C)	Basic Pay + D.A. (forming part of salary for retirement benefits)
3. Exemption from Gratuity covered under Payment of Gratuity Act u/s 10(10)(ii)	Basic Pay + D.A.
4. Exemption from Gratuity not covered under Payment of Gratuity Act u/s 10(10)(iii)	Basic Pay + D.A. (forming part of salary for retirement benefits) + Commission (if received as a fixed percentage on turnover)
5. Exemption for Leave Salary u/s 10(10AA)	Same as above
6. Exemption for House Rent Allowance u/s 10(13A) Rule 2A	Same as above
7. Contribution to Recognized Provident Fund	Same as above
8. Determination of Specified Employee u/s 17 including the value of non-monetary benefits	Income under the head salaries without benefits
9. Rent- free accommodation	*Salary includes:*
	Basic Pay
	Dearness Allowance (forming part of salary for retirement benefits)
	Employer's Contribution to RPF
	All Taxable allowances
	Bonus or commission or ex-gratia
	Any other monetary payment
	Salary excludes:

	Dearness Allowance (not forming part of salary)
	Exempted allowances
	Perquisites u/s 17(2) or 17(2)(iii) or its provisions
	Any allowance in the nature of medical facility to the extent not taxable

4.10 TAX ON SALARY OF NON-RESIDENT TECHNICIANS [SECTION 10(5B)]

In Finance Act, 1993 clause (5B) has been inserted in section 10 with effect from the Assessment Year 1994-95. Exemption under section 10(5B) is not available from the Assessment Year 2003-04.

Salary of Foreign Citizens:

(i) **Salary of diplomatic personnel [Section 10(6)(ii)]-** Remuneration received by foreign citizen as an official of an embassy, high commission, legation, commission, consulate or trade representation of a foreign state, or a member of the staff of any of that official will be exempt from tax if corresponding Indian official in that foreign country enjoys a similar exemption.

(ii) **Salary of foreign employees [Section 10(6)(vi)]-** The remuneration received by a foreign national, as an employee of a foreign enterprise, for services rendered by him during his stay in India, is totally exempt from tax provided: (a) the foreign enterprise is not engaged in any business or trade in India; (b) his stay in India does not exceed a period of 90 days in such Previous Year; and (c) such remuneration is not liable to be deducted from the income of the employer chargeable under the Income Tax Act.

(iii) **Salary received by a ship's crew [Section 10(6)(viii)]-** Salary received by, or due to, a non-resident foreign national as a member of a ship's crew is exempt from tax provided his total stay in India does not exceed 90 days during the Previous Year.

(iv) **Remuneration of a foreign trainee of foreign nation as an employee of a foreign government,** during his stay in India, is exempt from tax, if remuneration is received in connection with training in an undertaking or office owned by-(a) the Government; or(b) any company owned by the Central Government or any State Government; or (c) any company which is subsidiary of a company referred to in (b) supra; or (d) any statutory corporation; or (e) any co-operative society, wholly financed by the Central Government, or any State Government.

11 RELIEF UNDER SECTION 89

If an individual receives any portion of his salary in arrears or in advance or receives profit in lieu of salary, he can claim relief in terms of section 89 read with rule 21A as under:

Computation of relief when salary has been received in arrears or in advance [Rule 21A(2)]

The relief on salary received in arrears or in advance (hereinafter to be referred as additional salary) is computed in the manner laid down in rule 21A (2) as under:

1. Calculate the tax payable on the total income, including the additional salary, of the relevant Previous Year in which the same is received.
2. Calculate the tax payable on the total income, excluding the additional salary, of the relevant Previous Year in which the additional salary is received.
3. Find out the difference between the tax at (1) and (2).
4. Compute the tax on the total income after including the additional salary in the Previous Year to which such salary relates.

5. Compute the tax on the total income after excluding the additional salary in the Previous Year to which such salary relates.
6. Find out the difference between the tax at (3) and (4).
7. The excess of tax computed at (3) over tax computed at (6) is the amount of relief admissible under section 89. No relief is, however, admissible if tax computed at (3) is less than tax computed at (6). In such a case, the assessee-employee need not apply for relief.

If the additional salary relates to more than one Previous Year, salary would be spread over the Previous Years to which it pertains in the manner explained above.

ILLUSTRATIONS ON INCOME FROM SALARIES

Illustration 1: Mr. Z has joined ICC Ltd. on 1st July, 2012 in the scale of ₹15,000 -1,500 – 21,000 – 2,500 – 31,000. Compute gross salary for the Previous Year 2015-16.

Solution: **Computation of Gross Salary for the Previous Year 2015-16**

Particulars	Amount (₹)	Amount (₹)
Salary for (i) April 2015 to June 2015	18,000 x 3	54,000
(ii) July 2015 to March 2016	19,500 x 9	1,75,500
Gross Salary		**2,29,500**

Workings:

Previous Year	April to June	July to March
2012-13	Nil	15,000
2013-14	15,000	16,500
2014 -15	16,500	18,000
2015-16	18,000	19,500

Illustration 2: Mr. Kabir is getting a salary of ₹ 12,000 p.m. w.e.f. 1.4.2015. He is promoted w.e.f. 31.12.2013 and got arrears of ₹ 75,000 on 31.12.2015. Bonus for the year 2015-16 is ₹ 15,000 remains outstanding but bonus of ₹ 12,000 for the year 2014-15 was paid on 1st January 2016. In March 2016, he got two months' salary i.e. April and May 2016 in advance. Compute gross salary for the Previous Year 2015-16.

Solution:
Computation of Gross Salary for the Previous Year 2015-16

Particulars	Amount (₹)	Amount (₹)
Basic Salary : ₹12,000 x 12 months		1,44,000
Add: Arrears of Salary		75,000
Add: Bonus for the year 2015-16 (Receivable)		-
Add: Bonus for the year 2014-15 (Received)		12,000
Add: Advance Salary : for April & May 2016 : ₹12,000 x 2 months		24,000
Gross Salary		**2,55,000**

Illustration 3: Mr. Pradip, a foreign technician is employed with an Indian company. His contract of service was approved by the Government. He was in receipt of bonus from the said Company where he is working. The Assessing Officer subjected the amount to tax on the ground that bonus receipt falls outside the purview of the contract of service. Is the Assessing Officer justified?

Solution:

U/s 9(1)(ii) salary earned in India is deemed to accrue or arise in India and is taxable in India.

The salary and bonus paid to a foreign technician for services rendered in India is taxable in India and the same is not entitled for any exemption from the Assessment Year 2008-09 onwards.

Illustration 4: Amal Kumar, an Indian citizen, is posted in the Indian High Commission at Nairobi during the Previous Year 2015-16. His emoluments consist of Basic Pay of ₹1,50,000 per month and overseas allowance of ₹ 60,000 per month. Besides, he is entitled to & from journey to India and also use Government's car at Nairobi. He has no taxable income except salary income stated above.

Compute tax liability if he is a non-resident during the Previous Year 2015-16.

Solution:

(1) U/s 9(1)(iii), Salary paid by the Government of India to an Indian citizen for services rendered outside India is deemed to accrue or arise in India and is therefore taxable in India.

(2) U/s 10(7), allowances or perquisites paid by the Government of India to an Indian citizen or services rendered outside India, is fully exempt from tax.

(3) Computation of Gross Salary for the Previous Year 2015-16

Particulars	Amount (₹)	Amount (₹)
Salary : ₹1,50,000 x 12 months		18,00,000
Add: Overseas allowance ₹60,000 x 12 months	7,20,000	
Less: Exemption u/s 10(7)	7,20,000	Nil
Gross Salary		**18,00,000**
Less: Deduction u/s 16		Nil
Income under the head Salaries		**18,00,000**

Computation of Tax Liability

Particulars	Amount (₹)	Amount (₹)
Upto ₹ 2,50,000	Nil	
₹ 2,50,001 to ₹ 5,00,000 = @ 10% of ₹ 2,50,000	25,000	
₹ 5,00,001 to ₹ 10,00,000 = @ 20% of ₹ 5,00,000	1,00,000	
₹ 10,00,001 to ₹ 18,00,000 = @ 30% of ₹ 8,00,000	2,40,000	3,65,000
Tax (excluding cess)		**3,65,000**
Add: Education Cess @ 2%		7,300
Add: Secondary and Higher Education Cess @ 1%		3,650
Tax Liability (including Cess)		**3,75,950**

Illustration 5: A, is entitled to a basic salary of ₹ 5,000 p.m. and dearness allowance of ₹ 1,000 p.m., 40% of which forms part of retirement benefits. He is also entitled to HRA of ₹ 2,000 p.m. He actually pays ₹ 2,000 p.m. as rent for a house in Delhi. Compute the taxable HRA.

Solution:

Salary for House Rent Allowance = Basic Pay + D.A. (considered for retirement benefits) + Commission (if received as a fixed percentage on turnover as per terms of employment) = (5,000 × 12) + (40% × 1,000 ×12) = 64,800

Computation of Taxable House Rent Allowance

Particulars	₹	₹
Amount received during the financial year for HRA		24,000
Less: Exemption u/s 10(13A) Rule 2A		
Least of the followings:		
(a) Actual amount received	24,000	
(b) 50% of Salary of ₹ 64,800	32,400	
(c) Rent paid less 10% of Salary [2,000 × 12 – 10% of 64,800]	17,520	17,520
Taxable House Rent Allowance		**6,480**

Illustration 6: X, is employed at Delhi as Finance Manager of R Ltd. The particulars of his salary for the Previous Year 2015-16 are as under: Basic Salary ₹ 16,000 p.m.; Dearness allowance ₹ 12,000 p.m.; Conveyance Allowance for personal purpose ₹ 2,000p.m.; Commission @2% of the turnover which was achieved ₹ 9,00,000 during the Previous Year and the same was evenly spread. HRA of ₹6,000 p.m. was received. The actual rent paid by him ₹5,000 p.m. for an accommodation at till 31.12.15. From 1.1.16 the rent was increased to ₹7,000 p.m. Compute taxable HRA.

Note : If there is an increase in rent paid, it is advisable to calculate the exemptions separately based on the time period. Rent before and after increase.

Solution:

Salary for HRA (for 9 months)= Basic Pay + DA (considered for retirement benefits) + Commission (if received as a fixed percentage on turnover as per terms of employment) = (16,000 × 9) + (12,000 × 9) + (2% of 9,00,000 × 9/12) = 2,65,500.

Computation of Taxable House Rent Allowance

Particulars	(₹)	(₹)
Amount received during the financial year for HRA		54,000
Less: Exemption u/s 10(13A) Rule 2A Least of the followings: (a) Actual amount received (b) 50% of Salary (c) Rent paid less 10% of Salary [5,000 × 9 – 10% of 2,65,500]	 54,000 1,32,750 18,450	 18,450
Taxable House Rent Allowance		**35,550**

Salary for HRA (for 3 months) = Basic Pay + DA (considered for retirement benefits) + Commission (if received as a fixed percentage on turnover as per terms of employment) = (16,000 × 3) + (12,000 × 3) + (2% of 9,00,000 × 3/12) = 88,500.

Computation of Taxable House Rent Allowance

Particulars	₹	₹
Amount received during the financial year for HRA		18,000
Less: Exemption u/s 10(13A) Rule 2A Least of the followings: (a) Actual amount received (b) 50% of Salary (c) Rent paid less 10% of Salary [7,000 × 3 – 10% of 88,500]	 18,000 44,250 12,150	 12,150
Taxable House Rent Allowance		**5,850**

Illustration 7: Z is employed in A Ltd. As on 31.3.16, his basic salary is ₹6,000 p.m. He is also entitled to a dearness allowance of 50% of basic salary. 70% of the dearness allowance is considered for retirement benefits. The company gives him HRA ₹ 3,000 p.m. With effect from 1.1.16 he receives an increment of ₹1,000 in his basic salary. He was staying with his parents till 31.10.2015. From 1.11.15 he takes an accommodation on rent in Delhi and pays ₹ 2,500 pm as rent for the accommodation. Compute taxable HRA for the Previous Year 2015-16.

Solution:

Salary for the purpose of HRA shall cover the time period for which the assessee, who is in receipt of HRA, resided in a rented accommodation and the rent paid by such assessee, is more than 10% of salary.

Salary for HRA (for 5 months) = Basic Pay + DA (considered for retirement benefits) + Commission (if received as a fixed percentage on turnover as per terms of employment)

Basic Pay = (5,000 × 2) + (6,000 × 3)	= 28,000
Add: DA = 50% of Basic Pay × 70% forming part of retirement benefits	
[50 % × 28,000 × 70%]	= 9,800
Total Salary for HRA	**37,800**

Computation of Taxable House Rent Allowance

Particulars	(₹)	(₹)
Amount received during the financial year for HRA (3,000 × 12)		36,000
Less: Exemption u/s 10(13A) Rule 2A Least of the followings: (a) Actual amount received (b) 50% of Salary (c) Rent paid less 10% of Salary [2,500x 5 – 10% of 37,800]	 36,000 18,900 8,720	 8,720
Taxable House Rent Allowance		**27,280**

Illustration 8: Mr. Hari retires on 15th October 2015, after serving 30 years and 7 months. He gets ₹ 3,80,000 as gratuity. His salary details are given below:

FY 2015 -16	Salary ₹16,000 pm	D.A. 50% of salary. 40% forms part of retirement benefits.
FY 2014 -15	Salary ₹15,000 pm	D.A. 50% of salary. 40% forms part of retirement benefits

Determine the taxable value of gratuity in the following cases:

(i) He retires from Government service

(ii) He retires from seasonal factory in a private sector, covered under Payment of Gratuity Act, 1972.

(iii) He retires from non-seasonal factory, covered by Payment of Gratuity Act, 1972

(iv) He retires from private sector, not covered by payment of Gratuity Act, 1972

Solution:

(i) The amount of gratuity received as a Government employee is fully exempt from tax u/s 10(10)(i)

(ii) As an employee of a seasonal factory, in a private sector, covered under the Payment of Gratuity Act, 1972

Computation of Taxable Gratuity

Particulars	**Amount (₹)**	**Amount (₹)**
Amount received as Gratuity		3,80,000
Less: Exemption u/s 10(10)(ii)		
Least of the followings: (a) Actual amount received (b) 7/26 x Last drawn salary x No. of years of completed service [7/26 x 24,000 x 31] (c) Maximum Limit	 3,80,000 2,00,308 10,00,000	 2,00,308
Taxable Gratuity		**1,79,692**

(iii) As an employee of a non-seasonal factory, covered by Payment of Gratuity Act, 1972

Computation of Taxable Gratuity

Particulars	**Amount (₹)**	**Amount (₹)**
Amount received as Gratuity		3,80,000
Less: Exemption u/s 10(10)(ii)		
Least of the followings: (a) Actual amount received (b) 15/26 x Last drawn salary x No. of years of completed service [15/26 x 24,000 x 31] (c) Maximum Limit	 3,80,000 4,29,231 10,00,000	 3,80,000
Taxable Gratuity		**NIL**

Note: Salary = Basic Pay + Dearness Allowance

In case of seasonal employment, instead of 15 days, 7 days shall be considered.

(iv) As an employee of a private sector, not covered by Payment of Gratuity Act, 1972.

Computation of Taxable Gratuity

Particulars	**Amount (₹)**	**Amount (₹)**
Amount received as Gratuity		3,80,000
Less: Exemption u/s 10(10)(iii)		
Least of the followings: (a) Actual amount received (b) ½ x Average Salary x No. of fully completed years of service [½ x18,720 x 30] (c) Maximum Limit	 3,80,000 2,80,800 10,00,000	 2,80,800
Taxable Gratuity		**99,200**

Note: Salary = 10 months average salary preceding the month of retirement.

= Basic Pay + Dearness Allowance considered for retirement benefits + commission (if received as a fixed percentage on turnover)

Salary for the months December '14 till September '15 shall have to be considered.

Basic Salary: (i) December "14 to March '15	15,000 × 4	60,000
(ii) April '15 to September '15	16,000 × 6	96,000
Total Basic Salary		1,56,000
Add: D.A. [50% of 1,56,000 × 40%, forming part of superannuation benefits]		31,200
Salary for 10 months		1,87,200
Average salary = 1,87,200/10		**18,720**

Illustration 9: Mr. Surya was an employee of Z Ltd. After 38 years of service, he retired on 28.2.16. He was drawing a monthly salary of ₹ 18,000. On retirement he received a gratuity of ₹ 4,00,000. Compute taxable gratuity.

Solution:

Computation of Taxable Gratuity (Assuming employee not covered by Payment of Gratuity Act, 1972)

Particulars	Amount (₹)	Amount (₹)
Amount received as Gratuity		4,00,000
Less: Exemption u/s 10(10)(iii)		
Least of the followings:		
(a) Actual amount received	4,00,000	
(b) ½ × Average Salary × No. of fully completed years of service [½ × 18,000 × 38]	3,42,000	
(c) Maximum Limit	10,00,000	3,42,000
Taxable Gratuity		**58,000**

Note: Salary = 10 months average salary preceding the month of retirement.
= Basic Pay + Dearness Allowance considered for retirement benefits + commission (if received as a fixed percentage on turnover)

In this case, Average salary for 10 months preceding the month of retirement is ₹ 18,000 only.

Illustration 10: Mr. King is getting a salary of ₹ 5,400 pm since 1.1.15 and dearness allowance of ₹ 3,500 p.m., 50% of which is a part of retirement benefits. He retires on 30th November 2015 after 30 years and 11 months of service. His pension is fixed at ₹ 3,800 pm. On 1st February 2016 he gets 3/4ths of the pension commuted at ₹ 1,59,000. Compute his gross salary for the Previous Year 2015-16 in the following cases :

(i) If he is a Government employee, getting gratuity of ₹ 1,90,000
(ii) If he is an employee of a private company, getting gratuity of ₹ 1,90,000
(iii) If he is an employee of a private company but gets no gratuity.

Solution: Previous Year 2015-16. Tenure of Service: 1.4.15 to 30.11.15 = 8 months
Post-retirement period: December '15 to March '16 = 4 months

Particulars	Case (i)	Case (ii)	Case (iii)
Salary	43,200	43,200	43,200
Add: Dearness Allowance	28,000	28,000	28,000
Add: Taxable Gratuity	Exempted	82,750	Nil
Add: Uncommuted Pension [(3,800×2)+(950×2)]	9,500	9,500	9,500
Add: Commuted Value of Pension	Exempted	88,333	53,000
Gross Salary	**80,700**	**2,51,783**	**1,33,700**

Case (ii) Gratuity received by an employee of a private company

Particulars	Amount (₹)	Amount (₹)
Actual amount received		1,90,000
Less: Exempted amount (least of the followings):		
(i) Actual amount received	1,90,000	
(ii) ½ × Average Salary × No. of years of completed service [½ x 7,150 × 30]	1,07,250	
(iii) Maximum limit	10,00,000	1,07,250
Taxable Gratuity		**82,750**

Computation of Taxable Value of Commuted Value of Pension
(Non-Government employee and gratuity received)

Actual commuted value of pension received		1,59,000
Less: Exempted u/s 10(10A)		
1/3 rd of Full Value of Commuted Pension [1/3 × 2,12,000]		70,667
Full value of commuted pension = Amount received on commutation / Percentage of pension commuted = 1,59,000 / 75 % = 2,12,000		
Taxable Commuted Value of Pension		**88,333**

Case (iii) Computation of Taxable Value of Commuted Value of Pension
(Non-Government employee and gratuity not received)

Actual commuted value of pension received		1,59,000
Less: Exempted u/s 10(10A)		
½ of Full Value of Commuted Pension [1/2 × 2,12,000]		
Full value of commuted pension = Amount received on commutation / Percentage of pension commuted = 1,59,000 / 75 % = 2,12,000		1,06,000
Taxable Commuted Value of Pension		**53,000**

Illustration 11: Ms. Vandana retires on 16th October 2015 after 30 years and 8 months of service. Salary structure is given below:

FY 2015-16	Salary ₹ 15,000 pm	D.A ₹ 7,500 pm
FY 2014-15	Salary ₹ 12,000 pm	D.A ₹ 6,000 pm

40%of dearness allowance forms a part of superannuation benefits. Record of Earned Leave is given below: Leave allowed for one year of completed service - 20 days; Leave taken while in service -150 days; Leave encashed during the year 60 days.

Determine the gross salary in the following cases:

(i) He retires from Government service

(ii) He retires from the service of Delhi Municipal Corporation

(iii) He retires from the service of Life Insurance Corporation of India

(iv) He retires from private sector

Solution:

Particulars	Case(i)	Case(ii)	Case(iii)	Case(iv)
Salary for 6 months & 16 days	98,000	98,000	98,000	98,000
Dearness Allowance	49,000	49,000	49,000	49,000
Taxable amount of Leave Encashment	Exempted	1,25,116	1,25,116	1,25,116
Gross Income from Salary	**1,47,000**	**2,72,116**	**2,72,116**	**2,72,116**

Working Notes:

Average monthly salary for 10 months, prior to retirement:

Salary of 6 months 16 days : (1st April, 2015 to 16th October, 2015)		98,000
Salary of 3 months 14 days: (17th December, 2014 to 31st March, 2015)		41,600
Total Basic Salary (A)		1,39,600
Add: Dearness Allowance		
For 6 months 16 days : (1st April, 2015 to 16th October, 2015)	49,000	
For 3 months 14 days: (17th December, 2014 to 31st March, 2015)	20,800	
Total D.A.	69,800	
D.A. [@ 40% of ₹69,800, forming part of retirement benefits] (B)		27,920
Total Salary of 10 months [(A) + (B)]		1,67,520
Average Salary = 1,67,520/10 = ₹ 16,752		

Computation of Taxable Leave Encashment

Particulars	Amount (₹)	Amount (₹)
Amount of encashment received		
[(30 × 20) – (150 + 60)] × (15,000 + 7,500)/30		2,92,500
Less : Exempted u/s 10(10AA)		
Least of the followings:		
Actual amount received	2,92,500	
10 months salary (preceding the month of retirement)	1,67,520	
Leave credit on the date of retirement [(30 × 20) – (150 +60)] × 16,752/30	2,17,776	
Maximum Limit	3,00,000	1,67,520
Taxable amount of Leave Encashment		**1,24,980**

Note : To avoid the fractions and ease of calculation, per day remuneration is calculated by dividing 30 days.

Illustration 12: Ms. Parinita retired from service after 28 years from ABC Ltd. Leave sanctioned by employer 45 days p.a. Leave availed during service 400 days. Leave encashment received ₹ 4,30,000. Average salary for 10 months preceding the month of retirement ₹15,000.

Compute taxable amount of Leave encashment for the Previous Year 2015-16.

Solution :

Since leave sanctioned by the employer is more than 30 days p.a., the following calculation is required, to determine the amount of leave credit on the date of retirement.

Particulars	No. of Days
(i) Leave credit available on the date of retirement = Total Leave sanctioned during tenure of employment – Total leave availed during service = [(28 × 45) – 400]	860
Less: Excess leave sanctioned by the employer [(45– 30 days) per year × 28)	420
Leave credit on the basis of 30 days credit for completed years of service	**440**
(ii) Leave salary on the basis of 30 days credit = Step (i) × Average Salary = 440 × (15,000/30)	**2,20,000**

Taxable Leave Salary on Retirement

Particulars	Amount (₹)	Amount (₹)
Amount Received on Leave Encashment		4,30,000
Less: Exemption u/s 10(10AA)		
Least of the followings:		
(i) Actual amount of Leave encashment received	4,30,000	
(ii) Average salary of the individual for the past 10 months × 10 months	1,50,000	
(iii) Maximum Limit	3,00,000	
(iv) Leave at credit at the rate of 30 days p.a. for every completed year of service as calculated in Step (ii)	2,20,000	1,50,000
Taxable Leave Encashment		**2,80,000**

Illustration 13: Mr.Clever was retrenched from service of UGLY Ltd. The scheme of retrenchment is approved by the Central Government. Retrenchment compensation received ₹ 8 lakhs. What is the taxability?

Solution : When retrenchment compensation is received in accordance with any scheme, which is approved by the Central Government, it is fully exempted from tax.

Illustration 14: Mr. Flemming was retrenched from service of "GO SLOW Ltd". Retrenchment compensation received ₹6,00,000. Amount determined under the Industrial Disputes Act, 1948 ₹4,75,000. What is the taxability?

Solution: Computation of Taxable Value of Retrenchment Compensation

Particulars	₹	₹
Amount received as Retrenchment Compensation		6,00,000
Less: Exemption u/s 10(10B):		
Least of the followings:		
(i) Actual amount received	6,00,000	
(ii) Amount determined under the Industrial Disputes Act, 1948	4,75,000	
(iii) Maximum Limit	5,00,000	4,75,000
Taxable Retrenchment Compensation		**1,25,000**

Illustration15: Mr. Hitesh, after serving Z Ltd. for 23 years 7 months, opted the Voluntary Retirement Scheme. Total tenure of service: 30 years. Compensation received ₹ 8,00,000. Last drawn Salary (i.e. Basic Pay + D.A, forming part of retirement benefits) ₹ 15,000. Compute exemption & taxable value of VRS compensation.

Solution :

Total tenure of service = 30 × 12=360 months

Actual length of service = 23 years 7 months = 283 months

No. of months of service left= (360 – 283) months = 77 months

Computation of Taxable VRS compensation

Particulars	Amount (₹)	Amount (₹)
Amount received as VRS Compensation		8,00,000
Less: Exemption u/s 10(10C):		
Least of the followings:		
(i) Actual amount received	8,00,000	
(ii) Maximum Limit	5,00,000	
(iii) The **highest** of the following:		
Last drawn salary x 3 x No. of fully completed years of service =15,000 x 3 x 23= 10,35,000		
Last drawn salary x Balance of no. of months of service left. = 15,000 x 77 months= 11,55,000	11,55,000	5,00,000
Taxable VRS Compensation		**3,00,000**

Illustration 16: Ms. Neha is a Senior Accountant in the Ministry of Defence, Govt. of India. She received entertainment allowance ₹ 5,000 p.m. Her basic salary is ₹ 35,000 p.m. Professional tax paid ₹ 5,000. Compute Income from Salary.

Solution: **Computation of Income from Salary**

Particulars	Amount (₹)	Amount (₹)
Basic Salary : 35,000 x 12		4,20,000
Add: Entertainment Allowance: 5,000 x 12		60,000
Gross Income from Salary		4,80,000
Less: Deduction u/s 16(ii): Entertainment allowance		
Least of the following will be allowed as a deduction:		
(i) Actual amount of entertainment allowance received	60,000	
(ii) 20% of Basic salary of the Individual [20% of 4,20,000]	84,000	
(iii) Statutory limit	5,000	
Exempted amount being the least		5,000
Gross Income from Salary		4,75,000
Less: Professional Tax paid u/s 16(iii)		5,000
Income from Salary		**4,70,000**

Illustration 17: Calculate the perquisite value of the expenditure on medical treatment, which is assessable in the hands of an employee of a company, inclusive of the conditions to be satisfied:

Gross Total Income, inclusive of salary ₹ 2,00,000

(a)	Amount spent on treatment of the employee's wife in a hospital maintained by the employer	₹ 20,000
(b)	Amount paid by the employer on treatment of the employee's child in a hospital	₹ 14,000
(c)	Medical insurance premium reimbursed by the employer on a policy covering the employee, his wife and dependent parents	₹ 7,000
(d)	(i) Amount spent on medical treatment of the employee outside India	₹ 2,50,000
	(ii) Amount spent on travel and stay abroad	₹ 90,000
(e)	Amount spent on travel and stay abroad of attendant	₹ 60,000

Solution:

Nature of Perquisites	Amount Taxable	Taxability/Non-taxability
Treatment of employee's wife in a hospital maintained by employers	Nil	Fully exempted
Reimbursement of expenses incurred on treatment of employee's child in hospital	Nil	Not taxable: since the amount is less than ₹ 15,000
Reimbursement of medical insurance premium paid	Nil	Not taxable: since medical insurance premium referred to u/s 80D is paid on the employee and members of his family
Medical treatment outside India	Nil	It is assumed that the whole of such expenditure is permitted by RBI
Amount spent on travel and stay abroad for the employee (herein referred as the patient)	Nil	Not taxable: as the Gross Total Income does not exceed ₹ 2,00,000
Amount spent on travel and stay abroad of the attendant	Nil	Not taxable: as the Gross total income does not exceed ₹ 2,00,000

Illustration 18: Mr. Goutam is a Central Govt. employee. He is provided with an accommodation. The Licence fee determined by the Government is ₹ 500 p.m. An amount of ₹ 50 is deducted from his salary towards such rent. Determine the taxable value of perquisite.

Solution:

Computation of Taxable Perquisite – related to unfurnished accommodation vide Explanation No.1 to Sec.17(2) Rule 3(1)

Particulars	Amount (₹)
Licence fee determined by the Government (₹ 500 x 12)	6,000
Less: Rent recovered from employee (₹ 50 x 12)	600
Taxable Value of Perquisite	5,400

Illustration 19: R submits the following information regarding his salary income for the year 2014-15: Basic salary ₹15,000 p.m.; D.A (forming part of salary) 40% of basic salary; City Compensatory Allowance ₹300 p.m.; Children Education Allowance ₹400 p.m. per child for 3 children; Transport Allowance ₹2,000 p.m. He is provided with a rent free unfurnished accommodation which is owned by the employer. The fair rental value of the house is ₹ 24,000 p.a. Compute the gross salary assuming accommodation is provided in a city where population is (a) exceeding 25 lakhs (b) exceeding 10 lakhs but not exceeding 25 lakhs (c) less than 10 lakhs.

Solution : **Computation of Income from Salary**

Particulars	Amount (₹)	Amount (₹)
Basic salary 15,000 × 12		1,80,000
Add: D.A. (40% of 1,80,000)		72,000
Add: City Compensatory Allowance (fully taxable) (300 × 12)		3,600
Add: Children Education Allowance		
Actual amount received (400 × 12 × 3)	14,400	
Less: Exemption u/s 10(14) @ ₹100 per month per child subject to a maximum of 2 children (100 × 12 × 2)	(2,400)	12,000
Add: Transport Allowance		
Actual amount received (2,000 × 12)	24,000	
Less: Exemption u/s 10(14) @ ₹ 1,600 p.m. (1,600 × 12)	19,200	4,800
Gross Income from Salary u/s 17(1)		**2,72,400**
Add: Value of Unfurnished accommodation u/s 17(2) rule 3(1) explanation 1 [Case (a) Population exceeding 25 lakhs]		
15% of salary ₹ 2,72,400		
Salary = Basic Pay + DA(forming part of retirement benefits) + all other taxable allowances		
= 1,80,000 + 72,000 + 3,600 + 12,000 + 4,800		
= 2,72,400		40,860
Total Income from Salary		**3,13,260**

Note: Case (b): Where population is exceeding 10 lakhs but not exceeding 25 lakhs

10% of Salary shall be considered as the value of taxable perquisite

= 10% of ₹ 2,72,400 = ₹ 27,240

Hence, under this situation, Total Income from Salary = ₹ (2,72,400 + 27,240) = ₹ 2,99,640

Case (c): Where population is less than 10 lakhs

7.5 % of salary shall be considered as the value of taxable perquisite

= 7.5% of ₹ 2,72,400 = ₹ 20,430

Hence, under this situation, Total Income from Salary = ₹ (2,72,400 + 20,430) = ₹ 2,92,830

Illustration 20: Mr. Kushal submits the following information regarding his salary income which he gets from ABC Ltd. Basic salary ₹ 15,000 p.m.; D.A. 40% of Basic Salary (forming part of retirement benefits); City Compensatory Allowance ₹ 300 p.m.; Children Education Allowance ₹ 400 p.m. (for 3 children); Transport allowance ₹1,800 p.m.; Reimbursement of Medical Expenses ₹ 25,000. He is also entitled to HRA of ₹ 6,000 p.m. from 1.4.2015 to 31.8.2015. He was paying a rent of ₹ 7,000 p.m. for a house in Delhi. From 1.9.2014 he was provided with an accommodation by the company for which the company was paying the rent of ₹5,000 p.m. The company charged him ₹ 1,000 pm as rent for the accommodation. Compute Gross Salary for the Assessment Year 2016-17.

Solution:

Computation of Income from Salary

Particulars		Amount (₹)	Amount (₹)
Basic Salary : (15,000 × 12)			1,80,000
Add: D.A. (40% of 1,80,000)			72,000
Add: City Compensatory Allowance (fully taxable) [(300 × 12)]			3,600
Add: House Rent Allowance (April to August 2015)			
Actual amount received (6,000 × 5)		30,000	
Less: Exemption u/s 10(13A) Rule 2A			
Least of the followings:			
(a) Actual amount received	30,000		
(b) 50% of salary	52,500		
(c) Rent paid – 10% of Salary [7,000 x 5 – 10% of 1,05,000]	24,500	24,500	
			5,500
Note: Salary for HRA (5 months) Basic salary:15,000 × 5 =	75,000		
Add: D.A. = 40% of 75,000 =	30,000		
Total Salary for the purpose of HRA	1,05,000		
Add: Children Education Allowance			
Actual amount received (400 ×12 × 3)		14,400	
Less: Exemption u/s 10(14)			
@ ₹100 per month per child subject to a maximum of 2 children (100 × 12 × 2)		2,400	12,000
Add: Transport Allowance			
Actual amount received (1,800 × 12)		21,600	
Less: Exemption u/s 10(14) @₹1,600 p.m (1,600 × 12)		19,200	2,400
Gross Income from Salary u/s 17(1)			**2,75,500**
Add: Value of Unfurnished accommodation u/s 17(2) rule 3(1) Explanation 1 [Assuming Population exceeding 25 lakhs (as accommodation provided in a Metro city)] 15% of salary for 7 months (September 2015 to March 2016) Salary = Basic pay + DA (forming part of retirement benefits) + all other taxable allowances = [(15,000 × 7) + (40% of 1,05,000) + (300 × 7)+ {(400 × 7 × 3) – (100 × 7 × 2)}+ {(1,800 – 1,600) × 7}] = 1,57,500			23,625
Total Income from Salary			**2,99,125**

Illustration 21: Mr. Sambhu was provided an accommodation in a hotel by his employer for 22 days before providing him a rent free accommodation which is owned by the employer. The hotel charges paid ₹ 6,000 of which ₹ 1,000 was recovered from the employee. Salary for the purpose of accommodation for the period of 22 days is ₹ 11,000. Compute the taxable perquisite of accommodation.

Solution :

In case of accommodation provided to the assessee on account of transfer, which is exceeding 15 days cumulatively, such shall be taxable as a perquisite. The company recovered ₹ 1,000 from the employee.

Computation of Taxable Value of Perquisite for Accommodation in a Hotel

Particulars	**Amount (₹)**
Lower of the followings: (i) 24% of Salary paid/payable = 24% of ₹ 11,000 = 2,640 (ii) Actual Charges paid/payable = 6,000	2,640
Less: Amount recovered from the employee	1,000
Taxable Value of Perquisite	**1,640**

Illustration 22: Value of unfurnished accommodation (computed) ₹ 50,000. Cost of furniture provided by the employer ₹ 80,000. Hire charges of furniture (other than those owned by employer) provided in the accommodation ₹ 500 p.m. Amount recovered from employee ₹ 200 p.m. Compute taxable value of perquisite.

Solution:

Computation of Taxable Value of Perquisite – related to furnished accommodation

Particulars	**Amount (₹)**
Value of unfurnished accommodation [given]	50,000
Add: Value of furniture provided (i) 10% p.a. of original cost of such furniture (ii) Actual Hire charges of furniture [hired from third party]	8,000 6,000
	64,000
Less : Amount recovered from the employee (₹ 200 x 12)	(2,400)
Taxable Value of perquisite – related to furnished accommodation	**61,600**

Illustration 23: Mr. Ritesh is provided with an accommodation in Kolkata since April 2015. Salary ₹ 40,000 p.m. Cost of furniture provided ₹ 80,000. On 1st October, 2015, following a promotion with a increase in Salary by ₹ 15,000, he was transferred to Jharkhand (population less than 25 lakhs but more than 10 lakhs), and was also provided an accommodation there. Mr. Ritesh was allowed to retain the Kolkata accommodation till March, 2016. Compute taxable value of perquisite.

Solution:

Phase 1: Value of Furnished Accommodation (Kolkata) (April to September 2015)

Particulars	**Amount (₹)**
Value of unfurnished accommodation (15% of 40,000 × 6 months)	36,000
Add: Value of Furniture provided: • 10%p.a. of original cost of such furniture (10% of 80,000 x 6/12 months)	4,000
Taxable Value of Perquisite – related to Furnished Accommodation	**40,000**

Phase 2: Valuation of accommodation (October 2015 to December 2015)

(a) For the first 90 days of transfer: Where accommodation is provided both at existing place of work and in new place, the accommodation, which has lower value, shall be taxable.

(b) After 90 days: Both accommodations shall be taxable.

Computation for the first 90 days of transfer: (October 2015 to December 2015)

Particulars	Amount (₹)
Lower of the followings:	
(i) Value of accommodation at existing place of work	
(ii) Value of accommodation at new place of work	
Value of accommodation at existing place of work (i.e. Kolkata)	
15% of Salary for 3 months (i.e. 90 days) = 15% of ₹ 55,000 x 3 months	24,750
Add: Cost of Furniture provided : 10% p.a. on ₹ 80,000 x 3/12 months	2,000
Taxable Value of Perquisite	**26,750**

Value of accommodation at new work place (Jharkhand)

10% of salary for 3 months (i.e. 90 days) = 10% of 55,000 × 3 months = 16,500

Therefore, the assessee shall be assessed to tax on ₹ 16,500 (being the lowest)

Phase 3: Valuation of accommodation (after 90 days) (January 2016 to March 2016)		₹
(i) For Kolkata accommodation: 15% of 55,000 x 3 months	=	24,750
Add: Cost of furniture provided: 10% x 80,000 x 3 months	=	2,000
Total value of perquisite		**26,750**
(ii) For Jharkhand accommodation: 10% of 55,000 x 3 months/12 months	=	16,500

Total Taxable Value of Perquisite

Particulars	Taxable value of perquisite (₹)
Phase 1: Accommodation in Kolkata	40,000
Phase 2: Accommodation in Jharkhand (being the lower during 90 days)	16,500
Phase 3: (i) Accommodation in Kolkata	26,750
(ii) Accommodation at Jharkhand	16,500
Total Taxable Value of Perquisite	**99,750**

Illustration 24: Mr. E is employed with N Ltd. He also gets the services of sweeper and watchman. Determine his gross salary in the following cases:

(i) His salary is ₹ 4,200 pm. Employer provides the services of sweeper and watchman. He pays them ₹ 600 pm and ₹ 500 pm;

(ii) His salary is ₹ 4,200 pm. Sweeper and watchman are engaged by E at the rates given in clause (1) above but their wages are reimbursed by the employer;

(iii) His salary is ₹ 4,210 p.m. Employer provides the services of sweeper and watchman at the above rates but he recovers from E ₹ 200 p.m. and ₹ 300 p.m. respectively.

E has paid employment tax of ₹ 400.

Solution:

Particulars	Case (1)	Case (2) [Ref. Sec. 17(2)(iv), Rule 3(3)]	Case (3) [Ref. Sec. 17(2) (iii) Rule 3(3)]
Salary	50,400	50,400	50,520
Wages of sweeper	Sec.17(2)(iii) not taxable	7,200	4,800
Wages of watchman	Sec.17(2)(iii) not taxable	6,000	2,400
Gross Salary	**50,400**	**63,600**	**57,720**

Working Note:

Case (1): He is a non-specified employee. Perquisites provided by employer u/s 17(2)(iii) are not chargeable to tax:

Salary : ₹ 4,200 x 12 months	50,400
Less: Professional tax paid u/s 16(iii)	400
Monetary income not exceeding ₹ 50,000	50,000

Case (2): If the facility is engaged by the employee but reimbursed by the employer, it is an obligation of employee, discharged by employer u/s 17(2)(iv), it is always taxable.

Case (3): He is a specified employee, as his monetary income, chargeable under the head "salaries" exceeds ₹ 50,000.

Salary : ₹ 4,210 x 12 months	50,520
Less: Professional tax paid u/s 16(iii)	400
Monetary income exceeding ₹ 50,000	50,120

Illustration 25: G Ltd. provides electricity to its employee, P. Annual consumption as per meter reading comes to 2,250 units. Determine the value of the perquisite in the following cases:

(1) Electricity meter is in the name of P and the rate of electricity is ₹ 3 per unit

(2) Electricity meter is in the name of G Ltd. the rate of electricity is ₹ 3 per unit.

(3) G Ltd. is a power-generating company. Manufacturing cost is 90 paise per unit but supplied to public @ ₹ 2 per unit. However, it charges 30 paise per unit from employees.

Solution:

With reference to Rule 3(4)

(1) Perquisite value of free electricity is ₹ 6,750 (2,250 × 3). As the electric meter is in the name of the employee, it is his obligation to pay the bill. However, as the bill has been paid by the employer, it is an obligation of employee, discharged by the employer. It is always taxable u/s 17(2)(iv).

(2) Perquisite value of free electricity will be ₹ 6,750. It shall be assessed to tax, if the employee is a specified employee as per Sec. 17(2)(iii)

(3) Perquisite value of electricity supplied = ₹ 2,250 (0.90 – 0.30) = ₹ 1,350

Illustration 26: Determine the value of education facility in the following cases:

(1) Three children of G, an employee of S Ltd., are studying in a school, run by S Ltd. School fees is ₹ 2,500 p.m. and hostel fees is ₹ 2,000 p.m. But the employer recovers only ₹ 600 p.m. and ₹ 500 p.m. respectively. However, a similar school or a hostel around the locality charges ₹ 1,800 p.m. and ₹ 1,200 p.m. respectively.

(2) The employer has also reimbursed the school fees of ₹ 1,200 p.m. of his nephew, fully dependent on him after the death of his brother.

Solution:

Computation of Taxable value Perquisite- related to education facility [As per Rule 3(5)]

Particulars	Taxable value of perquisite Amount (₹)
1. (a) School fees of his children, studying in a school run by employer : (₹1,800 × 3 × 12) – (₹1,000 × 3 × 12) – (₹600 × 3 × 12)	7,200
(b) Hostel fees: (₹2,000 × 3 × 12) – (₹500 × 3 × 12)	54,000
2. School fee of nephew (₹1,200 × 12)	14,400
Total value of Taxable Perquisite	**75,600**

Illustration 27: Mr. Z is the manager of F Ltd. His son is a student of Amity International School. School fees of ₹ 4,000 p.m. and hostel fees of ₹ 3,000 p.m., are directly paid by Z Ltd. to the school but it recovers from Z only 30%. F also joins an advanced course of Marketing Management for 4 months at IIM, Ahmedabad, fees of the course, ₹ 2,50,000 is paid by F Ltd. determine the taxable value of perquisite related to educational facilities.

Solution:

Computation of Taxable value Perquisite- related to education facility [As per Rule 3(5)]

1.(a) School fees of his child, studying in a school not owned/controlled by employer (₹ 4,000 x 12) – (₹ 1,200 x 12)	33,600
(b) Hostel Fees : (₹ 3,000 x 12) – (₹ 900 x 12)	25,200
2. Fees paid for marketing management course for Mr. Z (it is fully exempted perquisite)	Nil
Total value of Taxable Perquisite	**58,800**

Illustration 28: Mr. D takes interest-free loan of ₹ 2,50,000 on 1.11.15 from his employer to construct his house. The loan is repayable in 50 monthly installments from January 2016. Compute the value of interest free loan. SBI Lending rate 8.5% p.a. (for housing loans not exceeding 5 years).

Solution:

Computation of Taxable Value of Perquisite – related to Loan provided by employer [As per Rule 3(7)(i)]

Time period during which loan remains outstanding	Balance on the last day of the month (₹)
November	2,50,000
December	2,50,000
January	2,45,000
February	2,40,000
March	2,35,000
Total	**12,20,000**
Perquisite value of interest-free loan: 12,20,000 × 8.5% × 1/12 = ₹ 8,642	

Illustration 29: Mr. Prabir Nandy is a manager in H Ltd. He gets salary @ ₹ 30,000 pm. He is also allowed free use of computer, video-camera and television of the company. H Ltd. has purchased (i) Computer for ₹ 1,00,000 (ii) Video-camera for ₹ 30,000. Their written down value on 1.4.15 is ₹ 60,000 and ₹ 20,000 respectively. Television set has been taken on lease rent @ ₹ 100 p.m. Compute his gross salary for the Assessment Year 2016-17.

Solution:

Computation of Taxable Value of Asset provided by Employer [As per Rule 3(7)(vii)]

Particulars	Amount (₹)
Salary : ₹ 30,000 × 12	3,60,000
Add: Free use of computer u/s 17(2)(vi) read with Rule 3(7)(vii)	Nil
Add: Free use of video camera u/s 17(2)(vi) read with Rule 3(7)(vii) [10% of ₹ 30,000]	3,000
Add: Free use of telephone u/s 17(2)(vi) read with Rule 3(7)(vii) [₹ 100 x 12]	1,200
Gross Salary	**3,64,200**

Illustration 30: Mr. C is an accountant of D Ltd. He gets salary of ₹ 25,000 pm. He has purchased motor car and washing machine from the company on 1st February 2016. Particulars of cost and sale price of the two assets are given below:

Year of Purchase	Particulars of the Asset	Purchase Price (₹)	Sale price (₹)
01.07.2012	Motor car	2,50,000	85,000
15.09.2011	Washing Machine	10,000	5,000

Compute the taxable value of perquisites for the Assessment Year 2016-17.

Solution:

Computation of Taxable Value of Perquisite on Transfer of Moveable Assets [As per Rule 3(7)(viii)

Nature of Asset transferred – Motor Car	**Amount (₹)**
Motor Car (Actual Cost)	2,50,000
Less: Depreciation @ 20% on WDV from 01.07.2012 to 30.06.2013	50,000
W.D.V. as on 30.06.2013	2,00,000
Less: Depreciation @ 20% on WDV from 01.07.2013 to 30.06.2014	40,000
W.D.V. as on 30.06.2014	1,60,000
Less: Depreciation @ 20% on WDV from 01.07.2014 to 30.06.2015	32,000
W.D.V. as on 30.06.2015	**1,28,000**

Nature of Asset transferred – Washing Machine	**Amount (₹)**
Washing Machine (Actual Cost)	10,000
Less: Depreciation @ 10% on SLM from 15.09.2011 to 14.09.2012	1,000
W.D.V. as on 15.09.2012	9,000
Less: Depreciation @ 10% on SLM from 15.09.2012 to 14.09.2013	1,000
W.D.V. as on 15.09.2013	8,000
Less: Depreciation @ 10% on SLM from 15.09.2013 to 14.09.2014	1,000
W.D.V. as on 15.09.2014	7,000
Less: Depreciation @ 10% on SLM from 15.09.2014 to 14.09.2015	1,000
W.D.V. as on 15.09.2015	**6,000**

Particulars	Motor Car (₹)	Washing Machine (₹)
W.D.V. of the Asset on the date of transfer	1,28,000	6,000
Less: Amount recovered from employee	85,000	5,000
Taxable Value of Perquisite	**43,000**	**1,000**

Illustration 31: Shri A. Chakraborty, Director (Administration) in MNPC Ltd. He is entitled to a motor car (1.8 ltrs) to be used for both official & private purposes.

Discuss the taxability of perquisite if:

(i) The car is owned by the employer, expenses paid by employer & it is a chauffeur driven car.

(ii) The car is owned by Sri Chakraborty. Expenses incurred ₹ 20,000 & chauffeur paid a salary of ₹60,000 provided by the employer.

Solution:

As per notification No. 24 dated 18.12.09, the taxable value of perquisite will be:

(i) ₹2,400 p.m + ₹ 900 p.m for chauffeur = ₹3,300 p.m. × 12 months

= ₹39,600

(ii) **Computation of Taxable Value of Perquisite**

Particulars	Amount (₹)
Amount of expense	20,000
Add: Salary to Chauffeur	60,000
	80,000
Less: Value of perquisite if the car was owned by the employer [as computed in (i) above]	39,600
Taxable Value of Perquisite	40,400

Illustration 32: Aniket joined a company on 1.7.2015 and was paid the following emoluments and allowed perquisites as under:

Emoluments: Basic Pay ₹ 35,000 per month; D.A. ₹ 20,000 per month; Bonus ₹ 20,000 per month.

Perquisites :

(i) Furnished accommodation owned by the employer and provided free of cost;

(ii) Value of furniture therein ₹ 3,60,000; Hire charges of Furniture provided ₹ 20,000 p.a.

(iii) Motor car owned by the company (with engine c.c. less than 1.6 litres) along with chauffeur for official and personal use, expenses met by Employer.

(iv) Sweeper salary paid by company ₹ 1,500 per month; amount recovered @ ₹ 200 pm.

(v) Watchman salary paid by company ₹ 1,500 per month; amount recovered @ ₹ 300 pm.

(vi) Educational facility for 2 children provided free of cost. The school is owned and maintained by the company. Elder child studies in class V and younger child in class II. Tuition fee per month ₹ 1,600 & ₹ 900 respectively.

(vii) Loan of ₹ 5,00,000 repayable within 7 years given on 1.9.2015 for purchase of a house. No repayment was made during the year; interest charged by employer @ 2% p.a. Interest chargeable as per Income Tax Act @ 10% p.a.

(viii) Interest free loan for purchase of computer ₹ 50,000 given on 1.2.2016. No repayment was made during the year.

(ix) Corporate membership of a club. The initial fee of ₹ 1,00,000 was paid by the company. Aniket paid the bills for his use of club facilities.

You are required to compute the income of Aniket under the head "Salaries" in respect of Assessment Year 2016-17.

Solution: **Assessee: Mr.Aniket** **Assessment Year: 2016-17**

Computation of Income from Salary

Particulars	Amount (₹)	Amount (₹)
Basic Pay	35,000 x 9 months	3,15,000
Add: Dearness Allowance	20,000 x 9 months	1,80,000
Add: Bonus	20,000 x 9 months	1,80,000
Add: Taxable Value of Perquisite related to: -		
- furnished accommodation	Note 1	1,28,250
- motor car provided by employer	(1,800 + 900) x 9 months	24,300
- salary of sweeper	(1,500 – 200) x 9 months	11,700
- salary of watchman	(1,500 – 300) x 9 months	10,800
- educational facilities	Note 2	5,400
- interest free housing loan	Note 3	23,333
- interest free computer loan	Note 4	1,375
Gross Income from Salary		**8,80,158**

Note 1: Salary for the purpose of computing taxable value of furnished accommodation:

Particulars	Amount (₹)
Basic Salary	3,15,000
Dearness Allowance	1,80,000
Bonus	1,80,000
	6,75,000

Assuming, Mr. Aniket stays in a city where population is more than 25,00,000 as per 2001 census, Value of unfurnished accommodation = 15% of salary

= 15% of ₹ 6,75,000

= ₹1,01,250

Value of furniture provided = 10% p.a. of actual cost

= 10% of ₹ 3,60,000 × 9/12

= ₹ 27,000

(Assuming, value of furniture given in the problem represents actual cost.)

Note 2 : Computation of taxable value of perquisite – related to educational facility.

Where the school is owned and maintained by employer, if the cost of education provided is less than ₹1,000 p.m. then the value of perquisite is NIL. If the cost of education exceeds ₹1,000 p.m. then the value of perquisite will be equal to the actual cost of education provided in excess of ₹1,000 p.m. per child maximum for two children.

Value of perquisite for elder child = ₹ (1,600 – 1,000) × 9 m = ₹ 5,400 (where 9 months = from 1.7.2015 to 31.3.2016)

Value of perquisite for younger child = NIL, since tuition fee per month is less than ₹ 1,000.

Assuming, cost of education provided to Aniket's children is less than ₹ 1,000 p.m. value of perquisite provided is NIL.

Note 3: Computation of taxable value of perquisite – related to interest free housing loan.

Value of Perquisite = Interest @ 10% p.a. less Actual interest charged

= (10% - 2%) x ₹ 5,00,000 x 7/12 = ₹ 3,333

Note 4 : Computation of taxable value of perquisite – interest free loan to purchase computer

Value of Perquisite = Interest @ 16.50% p.a. less Actual interest charged

= (16.50% - 0%) x ₹ 50,000 x 2/12 = ₹ 3,333

Illustration 33: Amit was employed with Z Ltd. He retired w.e.f. 1.2.2016 after completing a service of 24 years and 5 months. He submits the following information:

Basic Salary : ₹5,000 per month (at the time of retirement)

Dearness Allowance : 100% of Basic Pay (60% of which forms part of salary for retirement benefits). Last increment : ₹ 500 w.e.f. 1st July, 2015.

His pension was determined at ₹ 3,000 per month. He got 50% of the pension commuted w.e.f. 1.3.2016 and received a sum of ₹ 1,20,000 as commuted pension. In addition to this, he received a gratuity of ₹1,50,000 and leave encashment amounting to ₹ 56,000 on account of accumulated leave of 240 days. He was entitled to 40 days leave for every year of service.

Compute his Gross Salary for Assessment Year 2016-17 assuming that he is not covered under Payment of Gratuity Act.

Solution: **Assessee: Mr. Amit** **Assessment Year: 2016-17**

Computation of Income from Salary

Particulars	Amount (₹)	Amount (₹)
Basic Pay		
- April 2015 to June 2015 @ ₹ 4,500 p.m.	13,500	
- July 2015 to January 2016 @ ₹5,000 p.m.	35,000	48,500
Add: Dearness Allowance @ 100 % of Basic Pay		48,500
Add: Uncommuted value of pension		
- February 2016 @ ₹3,000 p.m	3,000	
- March 2016 ₹1,500 p.m. (since 50% already commuted)	1,500	4,500

Add: Commuted Value of Pension Amount Received Less: Exemption u/s/ 10(10A) 1/3rd of full value of commuted pension [1/3rd of ₹2,40,000] Full Value of commuted pension = Amount received / % commuted = ₹ 1,20,000 / 50% = ₹2,40,000	1,20,000 80,000	40,000
Add: Taxable Value of Gratuity Amount received as Gratuity Less: Exemption u/s 10(10) Least of the followings: (i) Actual amount received = 1,50,000 (ii) Maximum limit = 10,00,000 (iii) ½ months average salary for each years of completed service = [½ x 7,760 x 24] = 93,120 Salary for Gratuity (not covered by Payment of Gratuity Act) = Basic Pay + D.A. (forming part of salary for retirement benefits) Average Salary = Total salary of 10 months preceding the month of retirement / 10 = (48,500 + 60% of 48,500)/10 = ₹ 7,760	1,50,000 93,120	56,880
Add: Taxable Value of Leave Encashment Amount Received Less : Exemption u/s 10(10AA) Least of the followings: (i) Actual amount received = 56,000 (ii) 10 months average salary = 77,600 (iii) Maximum limit = 3,00,000 (iv) Leave credit (- refer Note 1) = NIL Notes: Calculation of leave credit Total leave entitlement (24 years x 40 days p.a.) = 960 days Less: Leave availed during service = Total leave entitlement – leave encashment = (960 days – 240 days) = 720 days 240 days Less: Leave in excess of 30 days p.a. granted by employer [24 years (40 days p.a. granted by employer - 30 days p.a. as per rules)] = 24 x 10 = 240 days NIL	56,000 NIL	56,000
Gross Income from Salary		**2,54,380**

Illustration 34 : During the Previous Year ending March 31, 2016, Adi, a salaried employee (age: 40 years), received ₹10,70,000 as basic salary and ₹20,000 as arrears of bonus of the financial year 1994-95. During the Previous Year 1994-95, Adi has received ₹50,000 as salary. Adi deposits ₹1,500 (during 1994-95) and ₹13,000 (during 2015-16) in public provident fund.

Solution:

The admissible relief under section 89, in respect of bonus paid in the financial year 2015-16 will be computed as under:

	Taxable income and tax liability on "receipt" basis		**Taxable income and tax liability on "accrual" basis**	
Assessment Year	**2016 – 17**	**1995 – 96**	**2016 – 17**	**1995 – 96**
	₹	₹	₹	₹
Salary	10,70,000	50,000	10,70,000	50,000
Arrears of salary	20,000	-	-	20,000
Gross Salary	10,90,000	50,000	10,70,000	70,000
Less: Standard deduction under section 16(i)	Nil	12,000	Nil	12,000
Gross Total Income	10,90,000	38,000	10,70,000	58,000
Less: Deduction under section 80C	13,000	Nil	13,000	Nil
Net Income	10,77,000	38,000	10,57,000	58,000
Tax on net income	1,53,100	2,000	1,47,000	6,800
Less: Rebate under section 88	Nil	300	Nil	300
Tax	1,53,000	1,700	1,47,000	6,500
Add : Surcharge	Nil	-	Nil	-
Tax and surcharge	1,53,000	1,700	1,47,000	6,500
Add : Education cess	3,062	-	2,942	-
Add: Secondary and higher education cess	1,531	-	1,471	-
Tax liability	1,57,693	1,700	1,51,513	6,500

	₹
Tax liability of the two Assessment Years on receipt basis	1,59,393
Tax liability of the two Assessment Years on accrual basis	1,58,013
Tax relief under section 89 for the Assessment Year 2016-17 (i.e., ₹1,59,393 - ₹1,58,013)	1,380
Tax payable for the Assessment Year 2016 -17 (i.e., ₹1,57,693,- ₹1,380)	1,56,313

Note : For the Assessment Year 1995 - 96, an assessee, having income under the head "salaries", is eligible for deduction u/s 16 (1) of a sum equal to $33\frac{1}{3}\%$ of the salary on ₹12,000 which ever is less. However, Section 16 (i) has been omitted by finance Act, 2005.

Illustration 35 : Salil is a scientist having special knowledge in the field of technology. He was in the Canada till 2007 before joining Techno Ltd., an Indian company on January 1, 2008 (salary being ₹1,50,000 per month). Besides, Techno Ltd. has given an option to Salil to get shares in Techno Ltd. (as given below) in consideration for providing technical knowledge which Salil has gained while working with an overseas multinational company –

Date of granting the option	January 2, 2008
Date of vesting of the option	December 31, 2008
What is the option	Purchase 1,000 shares in Techno Ltd. at pre-determined price of ₹10 per share at any time during December 31, 2008 and December 31, 2015
Date of exercise of option (lot one)	January 1, 2011 (to purchase 400 share)
Date of allotment (lot one)	January 1, 2011
Fair market value on December 31, 2008	₹700 per share
Fair market value on January 1, 2011	₹750 per share
Date of exercise of option (lot two)	March 25, 2015 (to purchase 600 shares)
Date of allotment (lot two)	April 1, 2015
Fair market value on March 25, 2015	₹850 per share
Market value of the technical knowledge provided by Salil to Techno Ltd.	₹16,80,000

State the tax consequences for the above case.

Solution:

Tax consequences of allotment of 400 shares (i.e., lot one) – Fringe benefit tax will be applicable in the case of lot one as transferred to Salil in consideration of employment before April 1, 2011. Value of fringe benefit taxable in the hands of Techno Ltd. for the Assessment Year 2011 – 12 is ₹2,76,000 [i.e., 400 shares x (₹700 – ₹10)]. Cost of acquisition of 400 shares in the hands of Salil is ₹700 per share.

Tax consequences of allotment of 600 shares (i.e., lot two) – The option is exercised on March 25, 2015. 600 shares are allotted to Salil on April 1, 2015. The perquisite is taxable under section 17(2) (vi) as shares are allotted for making available right in the nature of intellectual property to the employer – company. The value of perquisite chargeable to tax for the Assessment Year 2016-17 is ₹5,04,000 [i.e., 600 shares × (₹850 – ₹10)]. Cost of acquisition of 600 shares in the hands of Salil will be ₹850 per share.

Study Note - 5

INCOME FROM HOUSE PROPERTY

This Study Note includes

5.1 CHARGEABILITY [SECTION 22]

1. The basis of chargeability under the head income from house property is **Annual Value.**
2. The property must consist of Building or Lands Appurtenant thereto.
3. The assessee must be the owner of such property.
4. The property may be used for any purpose other than the assessee's business or profession.

5.2 DEEMED OWNER [SECTION 27]

1. **Owner:** An Individual shall be considered as owner of a property when the document of title to the property is registered in his name.
2. **Deemed Owner:** Under the following circumstances, Income from House Property is taxable in the hands of the Individual, even if the property is not registered in his name:
   (a) Where the Property has been transferred to **spouse for inadequate consideration** other than in pursuance of an agreement to live apart.
   (b) Where the Property is transferred to a **minor child for inadequate consideration (except a transfer** to minor married daughter)
   (c) Where the Individual holds an **impartible estate.**
   (d) Where the Individual is a **member** of Co-operative Society, Company, or other Association and has been allotted a house property by virtue of his being a member, even though the property is registered in the name of the Society / Company / Association.
   (e) Where the property has been transferred to the individual's name as part-performance of a contract u/s 53A of the Transfer of Property Act, 1882. (i.e. Possession of the Property has been transferred to Individual, but the Title Deeds have not yet been transferred).

(f) Where the Individual is a **holder of a Power of Attorney** enabling the right of possession or enjoyment of the property.

(g) Where the property has been constructed on a **leasehold land.**

(h) Where the **ownership** of the Property is under **dispute.**

(i) Where the property is taken on a lease for a period of not less than 12 years, then the lessee shall be deemed as the owner of the property.

5.3 APPLICABILITY OF SECTION 22 IN CERTAIN SITUATIONS

Following points are relevant for understanding the implications and scope of section 22:

1. House property in a foreign country- A resident assessee is taxable under section 22 in respect of annual value of a property situated in a foreign country. A resident but not ordinarily resident or non-resident is, however, chargeable under section 22 in respect of income of a house property situated abroad, if income is received in India during the Previous Year. If tax incidence is attracted under section 22 in respect of a house property situated abroad, annual value will be computed as if the property is situated in India. The Madras High Court in *CIT vs. R. Venugopala Reddiar* [1965] 58 ITR 439 observed that while computing taxable income, no distinction should be made between a house property situated in India and a house property situated abroad.

2. Disputed ownership- If title of ownership of a house property is under dispute in a court of law, the decision as to who is the owner rests with the Income-tax Department. The department has *prima facie* the power to decide whether the assessee is the owner and is chargeable to tax under section 22, without waiting for judicial judgment of any suit filed in respect of the property-Re. *Keshardeo Chamaria* [1937] 5 ITR 246 (Cal.). It was observed in *Franklin* vs. *IRC* 15 TC 464 that the recipient of income is taxable though there may be a rival claim as to the title of source of income and he may have to give up and account for what he is taxed upon.

3. Property held as stock-in-trade - As a specific head of charge is provided for income from house property, annual value of house property cannot be brought to tax under any other head of income. It will remain so even if-

a. the property is held by the assessee as stock-in-trade of a business; or

b. assessee is engaged in the business of letting out of property on rent; or

c. if the assessee is a company which is incorporated for the purpose of owning house property.

House-owning, however profitable, is neither trade nor business for the purpose of the Act. Where income is derived from house property by the exercise of property rights, income falls under the head "Income from House Property"- CIT vs. *National Storage* (P.) *Ltd* [1963] 48 ITR 577(Bom.).

4. Splitting up of a Composite Rent- Apart from recovering rent of the building, in some cases, the owner gets rent of other assets (like furniture) or he charges for different services provided in the building (for instance, charges for lift , security, air conditioning, etc.). The amount so recovered is known as "Composite Rent". The tax treatment of the composite rent is as follows -

(i) Where Composite Rent includes rent of building and charges for different services (like lift, air conditioning) - If the owner of a house property gets a composite rent for the property as well as for services rendered to the tenants, composite rent is to be split up and the sum which is attributable to the use of property is to be assessed in the form of annual value under section 22. The amount which relates to rendition of the services (such as electricity supply, provision of lifts, supply of water, arrangement for scavenging, watch and ward facilities, etc.) is charged to tax under the head ''Profit and Gains of Business or Profession" or under the head "Income from Other Sources'' .

(ii) Where Composite Rent is rent of letting out of building and letting out of other assets (like Furniture) and the two letting are not separable - If there is letting of machinery, plant and furniture and also letting of the building and the two lettings form part and parcel of the same transaction or the two lettings are inseparable (in the sense that letting of one is not acceptable to the other party without letting of the other), then such income is taxable either as Business Income or Income from Other Sources. This rule is applicable even if sum receivable for the two lettings is fixed separately.

(iii) Where Composite Rent is rent of letting out of building and letting out of other assets and the two letting are separable - If there is letting out of building and letting of other assets and the two lettings are separable (in the sense that letting of one is acceptable to the other party without letting out of the other; for instance letting out of building along with car), then income from letting out of building is taxable under the head "Income from House Property" and income from letting out of other assets is taxable either as Business Income or Income from Other Sources. This rule is applicable even if the assessee receives composite rent from his tenant for two lettings.

5. Property owned by co-owners [Sec. 26] - If a house property is owned by two or more persons, such persons are known as co-owners. Section 26 covers a case if a property is owned by co-owners.

Section 26 is applicable if the following conditions are satisfied -

1. The property must consist of building or building and land appurtenant thereto.
2. It is owned or deemed to be owned by two or more persons.
3. The respective shares of the co-owners are definite and ascertainable.

If these conditions are satisfied, then the share of each co-owner in the income of the property (as computed under the head "Income from House Property") shall be included in the total income of each such person. The following points should be noted-

1. In respect of property income, co-owners shall not be assessed as an Association of Persons.
2. The concessional tax treatment in respect of self-occupied property is applicable as if each such person is individually entitled to such relief.

6. Other points- One should also keep in view the following proposition:

Transfer by book entries - If a firm transfers its house property to its partners before dissolution, merely by book entries, annual value of the property is taxable in the hands of the firm [Inder Narain Har Narain vs. CIT[1980] 3 Taxman 365 (Delhi)]

5.4 PRINCIPLE OF MUTUALITY VIS-A-VIS SECTION 22

Tax levied under section 22 is tax on income from house property and it is not tax on house property.

A club owns a house property and it provides recreational and refreshment facilities exclusively to its members and their guests. Its facilities are not available to non-members. The club is run on 'no profit no loss' basis in that the members pay for all their expenses and are not entitle to any share in the profit. Surplus, if any, is used for maintenance and development of the club.

The business of trust is governed by principle of mutuality. It is not only the surplus from the activities of the business of the club that is excluded from the levy of Income-tax, even the annual value of the club house as contemplated in section 22 will be outside the purview of the levy of Income-tax.

5.5 PROPERTY INCOME IS EXEMPT FROM TAX TO CERTAIN PERSONS

10(19A)	An Ex-Ruler for his occupation (palace)
10(20)	Local Authority.
10(21)	Approved Scientific Research Association.
10(23B)	Institution for the development of Khadi and Village Industries.
10(23BB)	Khadi and Village Industries Boards.
10(23BBA)	A body or authority for administering religious or charitable Trust or endowments.
10(23C)	Certain Funds, educational institutions, hospitals etc.
10(24)	Registered Trade Union.
10 (26B)	Statutory Corporation or an institution or association financed by the Government for promoting in the interests of members of SC or ST.
10(27)	Co-operative Society for promoting the interest of the members of SC or ST.
11	Charitable Trust.
13A	Political Party.

5.6 COMPUTATION OF INCOME FROM A LET OUT HOUSE PROPERTY

Income from a let out house property is determined as follows-

	₹
Gross Annual Value	xxxx
Less: Municipal Taxes	xxxx
Net Annual Value	**xxxx**
Less: Deduction under section 24	
- Standard deduction	xxxx
- Interest on borrowed capital	xxxx
Income from House Property	**xxxx**

Gross Annual Value [Section 23(1)] - Tax under the head "Income from House Property" is not a tax upon rent of a property. It is taxed on inherent capacity of a building to yield income. The standard selected as a measure of the income to be taxed is "Annual Value".

Gross Annual Value is determined as follows-

Step I	Find out reasonable expected rent of the property *[*given below]
Step II	Find out rent actually received or receivable after excluding unrealized rent but before deducting loss due to vacancy [given below]
Step III	Find out which one is higher – amount computed in step I or step II.
Step IV	Find out loss because of vacancy
Step V	Step III minus Step IV is Gross Annual Value [given below]

Step 1- Find out Reasonable Expected Rent [Sec. 23(1)(A)] - Reasonable expected rent is deemed to be the sum for which the property might reasonably be expected to be let out from year to year. In determining reasonable rent, several factors have to be taken into consideration, such as, location of the property, annual ratable value of the property fixed by municipalities, rents of similar properties in neighborhood, rent which the property is likely to fetch having regard to demand and supply, cost of construction of the property and nature and history of the property. These factors play a vital role in determining reasonable expected rent of a house property. In a majority of cases, however, reasonable expected rent can be determined by taking into consideration the following factors:

a. municipal valuation of the property; or

b. fair rent of the property.

The higher of *(a)* or *(b)* is generally taken as reasonable expected rent.

If, however, a property is covered by a Rent Control Act, then the amount so computed cannot exceed the standard rent determinable under the Rent Control Act.

(a) Municipal Valuation- For collecting municipal taxes, local authorities make a periodical survey of all buildings in their jurisdiction. Such valuation may be taken as a strong evidence representing the earning capacity of a building- C.J. George vs. CIT [1973]92 ITR 137 (Ker.). It cannot, however, be considered to be a conclusive evidence-Jamnadas Prabhudas vs. CIT [1951] 20 ITR 160 (Bom.). Moreover, in some big cities (like Delhi, Mumbai, Chennai, Kolkata) municipal authorities determine net ratable value after deducting 10 per cent of the gross ratable value, on account of repairs, and an allowance for service taxes (such as sewerage tax and water tax). The net municipal valuation, therefore, requires an adjustment for determining reasonable expected rent for Income tax purposes.

(b) Fair Rent of the Property- Fair rent of the property can be determined on the basis of a rent fetched by a similar property in the same or similar locality. Though two properties cannot be alike in every respect, it has been observed in *Stocks vs. Sulley* 4 TC 98 that the evidence afforded by transactions of other parties in the matter of other properties in the neighbourhood, more or less comparable with the property in question, is very relevant in arriving at reasonable expected rent.

(c) Standard Rent under the Rent Control Acts - Standard rent is the maximum rent which a person can legally recover from his tenant under a Rent Control Act. The Supreme Court has observed in the cases of *Shiela Kaushish vs. CIT* [1981] 7 Taxman 1 and *Amolak Ram Khosla vs. CIT*[1981] 7 Taxman 51 that a landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent under the Rent Control Act. This rule is applicable even if a tenant has lost his right to apply for fixation of the standard rent. This rule is also applicable to the owner himself. These judgments make it clear that if a property is covered under the Rent Control Act, its reasonable expected rent cannot exceed the standard rent (fixed or determinable) under the Rent Control Act.

Provision Illustrated- As mentioned earlier, the reasonable expected rent under computation will be computed on the basis of three factors, namely-

a. Municipal Valuation (MV);

b. Fair Rent of the property (FR); and

c. Standard Rent of the property (SR).

The higher of (MV) and (FR), subject to maximum of (SR), is expected rent under *Step I.*

The example given below illustrates the aforesaid propositions- (₹ In thousands)

	A	B	C	D	E
Municipal Value (MV)	50	50	50	50	50
Fair Rent (FR)	56	56	56	58	61
Standard Rent (SR)	NA	55	45	55	73
Reasonable Expected Rent under Step I [MV or FR, whichever is higher, subject to maximum of (SR)]	56	55	45	55	61

"Reasonable expected rent cannot exceed the amount of standard rent. Reasonable expected rent can, however, be lower than standard rent- Dr. Balbir Singh vs. MCD [1985] 152 ITR 388 (SC). In other words, standard rent is the maximum amount of reasonable expected rent. In the case of E, ₹ 61,000 (being higher of municipal valuation and fair rent) is the reasonable expected rent. Since this amount is lower than the maximum ceiling (i.e., standard rent: ₹ 73,000), it is taken as reasonable expected rent.

Step II - Find Out Rent Actually Received or Receivable- For the purpose of Step II, rent received or receivable shall be calculated as follows-

Rent of the Previous Year (or that part of the Previous Year) for which the property is available for letting out	xxxx
Less: Unrealized rent if a few conditions are satisfied	xxxx
Rent received/ receivable before deducting loss due to vacancy	xxxx

5.7 COMPUTATION OF INCOME FROM SELF-OCCUPIED PROPERTY

Before steps for computation are explained, it would be advisable to highlight the following features which regulate tax incidence on self-occupied properties :

- **A property occupied for own business purposes -** Where an assessee uses his property for carrying on any business or profession, no income is chargeable to tax under the head "Income from House Property". The assessee, in such a case, is not entitled to claim any deduction on account of rent in respect of such house property in computing taxable profits of the business or profession.
- **When more than one property is occupied for own residential purposes -** Where the person has occupied more than one house for his own residential purposes, only one house (according to his own choice) is treated as self-occupied and all other houses will be "deemed to be let out". In the case of "deemed to be let out" properties, the taxable income will be calculated in the manner explained above (Gross Annual Value shall be taken as reasonable expected rent).

In the case of one self-occupied property (treated as such), the procedure for determining taxable income is as follow:

5.7.1 Computation of Annual Value of one self-occupied property – One self-occupied property, treated as such, may fall in any one of the following categories:

- If such property is used throughout the Previous Year for own residential purposes, it is not let out or put to any other use.
- If such property could not be occupied throughout the Previous Year because employment, business or profession of the owner is situated at some other place.
- When a part of the property (being independent residential unit) is self-occupied and the other part is let out.
- When such property is self-occupied for a part of the year and let out for the other part of the year.

1. A House Property fully utilised throughout the Previous Year for self-residential purposes [Section 23(2)(a)] – Where the property consists of one house in the occupation of the owner for his own residence, the annual value of such house shall be taken to be nil, under section 23(2)(a), if the following conditions are satisfied-

- Condition 1- The property or part thereof is not actually let during whole (or any part) of the Previous Year.
- Condition 2- No other benefit is derived there from.

Computation of income – In the case of one property (which is not let out nor put to any other use) used throughout the previous year by the owner for his residential purpose, income shall be determined as follows-

Gross Annual Value	Nil
Less: Municipal tax	Nil
Net Annual Value	Nil
Standard deduction	Nil
Interest on borrowed capital	Deductible
Income from one self-occupied house property	xxxx

2. A House Property, which is not actually occupied by the owner owing to employment or business/ profession, carried on at any other place [Section 23(2)(B) – The provision of the section is applicable if the following conditions are satisfied –

- Condition 1 – The taxpayer owns a house property, which cannot actually be occupied by him by reason of the fact that owing to his employment, business or profession, carried on at any other place.
- Condition 2 – He has to reside at that other place in a building not owned by him.
- Condition 3 – No other benefit is derived from the above property by the owner.

The method of computation of "Income from House property" is same as in the case of self-occupied house property.

3. When a part of property is self-occupied and a part is let out – If a house property consists of two or more independent residential units, one of which is self-occupied for own residential purpose and other unit(s) are let out, income is computed as follows-

- Unit self-occupied for residential purpose throughout the Previous Year (which is not let out nor put to any other use) as given above in Section 23(2)(a).
- Let out units as given earlier in the case of let out property.
- Units self-occupied for residential purpose for a part of year and lying vacant for remaining part because of business or profession is situated at some other place as given above in Section 23(2)(b).

4. Where a house is self-occupied for a part of the year and let out for remaining part of the year – In this case, the benefit of section 23(2)(a) is not available and income will be computed as if the property is let out.

5.7.2 Brief Provision- Tax incidence on self-occupied house property may be summarized as follows –

Self -occupied property	Tax treatment
i) If such property is used by the owner for the purpose of carrying on his business or profession	Income is not taxable under the head "Income from House Property". Any income and expenditure in respect of such property will be considered while calculating income from business or profession under section 28.
ii) If such property is used for residence of the owner and his family members	

A. If only one property is used for such purpose	
• If such property is used throughout the previous year for own residential purposes, it is not let out or put to any other use	Nothing is taxable. Only interest on borrowed capital is deductible subject to a maximum of ₹30,000 /₹2,00,000.
• If such property could not be occupied throughout the previous year because employment, business or profession of the owner is situated at some other place	Nothing is taxable. Only interest on borrowed capital is deductible subject to a maximum of ₹30,000 /₹2,00,000 subject to satisfaction of the all conditions which are specified in Section 23(2)(b).
• When a part of the property (being independent residential unit) is self-occupied and the other part is let out	Income from the independent unit, which is self-occupied, will not be taxable. Interest on borrowed capital is deductible up to ₹ 30,000 / ₹2,00,000. Income from the unit which is let out is to be computed as if the unit is let out.
• When such property is self-occupied for a part of the year and let out for the other part of the year	No concession is available. The house will be taken as let out property
B. If more than one property is used for residential purpose	Only one property selected by the taxpayer will be treated as self-occupied. Other remaining properties will be deemed as let out.

5. 8 RECOVERY OF UNREALISED RENT [SECTION 25AA]

1. **Unrealized Rent means** the rent not paid by the tenant to the owner and the same shall be deducted from the 'Actual Rent Receivable' from the property before computing income from that property, provided the following conditions are satisfied:
   (i) The tenancy is bonafide
   (ii) The defaulting tenant should have vacated the property
   (iii) The assessee has taken steps to compel the defaulting tenant to vacate the property
   (iv) The defaulting tenant is not in occupation of any other property owned by the assessee
   (v) The assessee has taken all reasonable steps for recovery of unrealized rent or satisfies the Assessing Officer that such steps would be useless.
2. **Chargeability:** Recovery of Unrealized Rent is chargeable to tax as "Income from House Property".
3. **Year of Taxability:** Unrealized Rent recovered is taxable in the financial year in which it is recovered.
4. **Non-subsistence of Ownership:** It will be taxable in the hands of Individual even if he does not own the property to which such rent pertains during the relevant Previous Year.
5. **Deduction:** No deduction will be allowed against such receipt.

5.9 RECEIPT OF ARREARS OF RENT [SECTION 25B]

1. **Meaning:** Arrears of Rent means the incremental rent relating to earlier financial years which has not been offered to tax in those financial years itself, but received during the current financial year.
2. **Chargeability:** Receipt of Arrears of Rent will be chargeable to tax under the head Income from House Property only.

3. **Year of Receipt:** It is taxable as income of the financial year in which he receives the arrears of rent.
4. **Non-subsistence of Ownership:** It is taxable in the hands of the Individual even if he does not own the property at the time of receipt of arrears of rent.
5. **Deduction:** A standard deduction of 30% of the amount of arrears received will be allowed as deduction.

5.10 MUNICIPAL TAX

1. **Municipal Tax includes** services tax like Water Tax and Sewerage Tax levied by any Local Authority. It can be claimed as a deduction from the Gross Annual Value of the Property.
2. **Conditions:**
   (a) **Paid by Owner.** The tax shall be borne by the owner and the same was paid by him during the Previous Year.
   (b) **Property Let out:** Municipal Tax can be claimed as a deduction only in respect of let out or deemed to be let out properties (i.e. not in respect of the self-occupied house property or one of the self-occupied properties which the assessee chose as self occupied in case where assessee owns more than one property self occupied).
   (c) **Year of Payment:** Municipal Tax relating to earlier Previous Years, but paid during the current Previous Year can be claimed as deduction only in the year of payment.
   (d) **Advance Taxes:** Advance Municipal Tax paid shall not be allowed as deduction in the year of payment, but can be claimed in the year in which it falls due.
   (e) **Borne by Tenant:** Municipal Taxes met by tenant are not allowed as deduction.
3. **Foreign Property:** For a property situated outside India, Municipal Tax levied by foreign Local Authority can be claimed as a deduction.

5.11 DEDUCTION FROM NET ANNUAL VALUE

A. Standard Deduction u/s 24(a)

Standard deduction of 30% of NAV (Net Annual Value) shall be allowed to the assessee in respect of (i) maintenance charges, (ii) repairs, (iii) collection charges, (iv) electricity, (v) fire insurance premium, (vi) ground rent, and (vii) depreciation.

Hence, expenses on maintenance charges, repairs, collection charges, electricity, fire insurance premium, ground rent and depreciation incurred by the assessee relating to the house property will not further be allowed to be deducted in calculation Income from House Property.

B. Interest on Loan u/s 24(b)

1. **Purpose of Loan:** The loan shall be borrowed for the purpose of acquisition, construction, repairs, renewal or reconstruction of the house property.
2. **Accrual Basis:** The interest will be allowed as a deduction on accrual basis, even though it is not paid during the financial year.
3. **Interest on Interest:** Interest on unpaid interest shall not be allowed as a deduction.
4. **Brokerage:** Any brokerage or commission paid for acquiring the loan **will not be allowed as a deduction.**
5. **Prior Period Interest:** Prior Period Interest shall be allowed in **five equal installments commencing from the financial year in which the property was acquired or construction was completed.**

Note: Prior period interest means the interest from the date of borrowed of the loan up to the end of the financial year immediately preceding the financial year in which acquisition was made or construction was completed.

6. **Interest on fresh loan to repay existing loan:** Interest on any fresh loan taken to repay the existing loan shall be allowed as a deduction. **[Circular 28 / 20.9.1969]**
7. **Inadmissible Interest:** Interest payable outside India without deduction of tax at source and in respect of which no person in India is treated as an Agent u/s *163* **shall not be an allowable expenditure. [Section25]**
8. **Certificate:** The assessee should furnish a **certificate from the person from whom the amount is borrowed.**
9. **Maximum Ceiling:**

(a) In case of self occupied house property: Interest on borrowed capital [of current year and pre-construction period] is deductible subject to a maximum ceiling given below –

If the following three conditions are satisfied, interest on borrowed capital is deductible up to ₹ 2,00,000-

- **Condition 1 –** Capital is borrowed on or after April 1, 1999 for acquiring or constructing a property.
- **Condition 2 –** The acquisition or construction should be completed within 3 years, from the end of the financial year in which the capital was borrowed.
- **Condition 3 –** The person extending the loan certifies that such interest is payable in respect of the amount advance for acquisition or construction of the house or as re-finance of the principle amount outstanding under an earlier loan taken for such acquisition or construction.

In any other case, interest on borrowed capital is deductible up to ₹ 30,000.

(b) In case of let-out house property or deemed let-out house property: Deduction of interest on borrowed capital is not subjected to maximum ceiling.

5.12 COMPUTATION OF PRIOR PERIOD INTEREST

Let us illustrate the steps with an example:

Loan taken on1.7.12 ₹ 8,00,000 @ 9% p.a. Date of completion of construction 31.5.15. Loan amount remains outstanding till date. Prior Period and Interest u/s 24(b) are determined as under :

Step 1:	Identify the Date of Borrowal of Loan	1.7.12 (P.Y : 12-13)
Step 2:	Identify the Date of Completion / Acquisition	31.5.15 (P.Y : 15-16)
Step 3:	Identify Last Date of the Financial Year immediately preceding the date of Completion / Acquisition.	31.3.15 (P.Y: 14-15)
Step 4:	Prior Period = Calculated Period from Step 1 to Step 3	= 1.7.12 - 31.3.15 = 33 months
Step 5:	Prior Period Interest = Prior Period as per Step 4/12 months × Rate of interest × Amount of Loan	$= \frac{33}{12} \times \frac{9}{100} \times 8,00,000$ = 1,98,000
Step 6:	Allowable Prior Period Interest = Prior Period Interest as per Step 5/ 5	= 39,600

Current Year Interest = 8,00,000 × 9% = 72,000

Therefore, Interest allowable u/s 24(b) = CYI + 1/5 PCPI

= 72,000+1/5 x 1,98,000

= 72,000 + 39,600

= 1,11,600

A SNAPSHOT OF THE COMPUTATION OF GAV AND INCOME FROM HOUSE PROPERTY

COMPUTATION OF GROSS ANNUAL VALUE

1. Municipal Value	xx
2. Fair Rental Value or Notional Rental Value	xx
3. Higher of (1) and (2)	xx
4. Standard Rent (if applicable)	xx
5. **Reasonable Expected Rent**= Lower of Step (3) and (4)	xx
6. Annual Rent (total rent assuming the property to be let out throughout the Previous Year)	xx
7. **Deduct:** Unrealized Rent as per Rule 4	xx
8. **Actual Rent= Step (6) – (7)**	xx
9. **Higher of Reasonable Expected Rent (Step 5) & Actual Rent (Step 8)**	xx
10. **Deduct:** Vacancy Allowance (proportionately on the basis of Annual Rent in Step 6)	xx
11. **GROSS ANNUAL VALUE**	**xx**

COMPUTATION OF INCOME FROM HOUSE PROPERTY

GROSS ANNUAL VALUE	xx
Less: Municipal Taxes paid during the year	xx
NET ANNUAL VALUE	xx
Less: Standard Deduction @ 30% of NAV u/s 24(a)	xx
Less: Interest on Loan u/s 24(b)	xx
Add: Recovery of Unrealized Rent u/s 25 AA	xx
Income from House Property before considering Arrears of Rent	xx
Add: Arrears of Rent Received	xx
Less: Deduction u/s 25B: 30% of Arrears Received	xx
NET INCOME FROM HOUSE PROPERTY	**xx**

ILLUSTRATIONS ON INCOME FROM HOUSE PROPERTY

Illustration 1. R owns a house. The municipal value of the house is ₹ 80,000. He paid ₹ 18,000 as local taxes during the year. He uses this house for his residential purposes but let out half of the house at ₹ 3,000 per month with effect from 1st January 2016. Compute the Annual Value of the house.

Solution :

Mr. R uses the house for his residential purpose and let out half of the house for 3 months. Accordingly, the house shall be treated as partly self occupied and partly let out

Particulars	Total	Unit 1 (self occupied)	Unit 2 (let out)
Municipal value	80,000	40,000	40,000
Fair Rent	36,000	-	36,000
Actual Rent receivable	3,000 x 3	-	9,000
Municipal Tax	18,000	9,000	9,000

Computation of Net Asset Value (NAV)

Step	Particulars	Working	Unit 1 (self occupied)	Unit 2 (let out)
	Municipal Value	1 : 1	40,000	40,000
	Fair Rent	3,000 × 12		36,000
I	Reasonable Rent	Higher of above two		40,000
II	Actual Rent receivable - Unrealised Rent	3,000 × 3		9,000
	GAV – higher of Step I & II			40,000
	Less: Municipal Tax		Nil	(9,000)
	Net Annual Value		Nil	31,000

Illustration 2. Mr. Rohan owns two houses. Their particulars for the Previous Year 2015-2016 are given below:

Particulars	House I	House II
	Construction completed on 01.04.2014	
	Self-occupied ₹	Let out ₹
Municipal Valuation	10,00,000	15,00,000
Fair Rent	12,00,000	14,00,000
Standard Rent	8,00,000	16,00,000
Annual Rent received /receivable	Nil	18,00,000
Municipal Taxes paid	1,20,000	150,000
Insurance premium paid	10,000	15,000
Repair expenses	1,50,000	2,00,000
Unrealised rent-conditions of Rule 4 satisfied	Nil	4,50,000
Interest on loan for the pre-construction period	3,00,000	4,50,000
Interest on loan for the post construction period for the PY year 2015-2016	1,00,000	1,50,000
Date of borrowing the loan	31.12.2010	31.12.2010
Certificate of interest attached to the return	No	No

Determine the Income from House Property for the Assessment Year 2016-2017.

Would you change your answer if construction is completed on 31-3-2014 and interest certificate is also attached?

Solution : Computation of Income from House Property for the AY 2016-2017

Particulars	House No. I-Self-occupied		House No. II-Let out
	Date of completion 1-4-2014 failing after 3 years from the end of FY in which loan was taken	Date of completion 31-3-2014 within 3 years from the end of FY in which loan was taken	House No. II-Let out Interest certificate & Date of competing construction are not relevant.
	Interest certificate not relevant (a)	Interest certificate attached (b)	
	₹	₹	₹
Gross Annual Value			
(a) Annual Letable Value (Higher of MV & FR subject to SR)	Nil	Nil	15,00,000
(b) Annual rent received excluding unrealised rent			
Whichever is higher, is GAV	Nil	Nil	13,50,000
	Nil	Nil	15,00,000
Less : Municipal taxes paid	Nil	Nil	(-) 1,50,000
Net Annual Value	Nil	Nil	13,50,000
Less : Permissible deductions :			
(i) Statutory deduction :			
30% of Net Annual Value	Nil	Nil	(-) 4,05,000
(ii) Interest on loan	(-) 30,000	(-) 1,60,000	(-) 2,40,000
Income from House Property	(-) 30,000	(-) 1,60,000	7,05,000

Note :

1. Interest for House No. I- Self-occupied :

(a) (i) Interest for pre-construction period ÷ 5 = 3,00,000 ÷ 5= ₹ 60,000

(ii) Interest for post-construction period = ₹ 1,00,000

(i) + (ii) = ₹ 1,60,000

Where loan is taken on or after 01.04.1999 but the house is not completed within 3 years from the end of the financial year in which the loan was taken, maximum ceiling of interest, eligible for deduction is only ₹30,000. It is operative from the AY 2005-2006 and subsequent years.

In the instant case, self-occupied house is completed after the prescribed time-limit of 3 years. Hence, deduction is restricted to ₹ 30,000.

(b) (i) In the instant case, self-occupied house has been completed within 3 years from the end of the financial year in which loan was taken and certificate of interest is also attached. Hence, interest on loan, subject to the maximum ceiling of ₹ 2,00,000 has been allowed.

(ii) Construction is completed within the prescribed time-limit of 3 years from the end of the FY in which loan was taken but interest certificate is not attached. Hence, interest on loan, subject to a maximum of ₹ 30,000, has been allowed.

2. Interest for House No. II. Deduction has been worked out as under:

(i) Interest for pre-construction period: 4,50,000 ÷ 5 = 90,000

(ii) Interest for post-construction period during 2015-2016 = 1,50,000

Interest eligible for deduction (i) + (ii) = 2,40,000

3. No deduction is available for insurance premium and repair expenses incurred.

Illustration 3. Mr. Shyam owns two houses, which are occupied by him for his own residence.

The detailed particulars of houses and his other incomes for the Previous Year 2015-16 are given below:

Particulars	**House A** ₹	**House B** ₹
Fair Rent	5,00,000	5,00,000
Municipal Value	4,20,000	4,50,000
Standard Rent	4,50,000	6,20,000
Municipal taxes paid	50,000	60,000
Interest on loan for the FY 2015-16	1,60,000	2,20,000
Date of loan	1.12.2004	1.04.2005
Date of completion	31.03.2006	31.03.2008
Certificate of interest attached with return of income	No	Yes
Mr. Shyam earns income from other sources amounting to ₹ 2,00,000		

Compute his Total Income and advise him which house should be opted for self-occupation.

Solution : Computation of Income from House Property under different options

Particulars	House A ₹	House B ₹
(a) Assuming both properties are self-occupied (SO)		
Annual Value	Nil	Nil
Less : Interest on loan	(-) 30,000	(-) 2,00,000
Loss from House Property	(-) 30,000	(-) 2,00,000
(b) Assuming both properties as deemed let out (DLO)		
Gross Annual Value	4,50,000	5,00,000
Less : Municipal taxes paid	(-) 50,000	(-) 60,000
Net Annual Value	4,00,000	4,40,000
Less : Permissible deduction :		
(i) Statutory deduction : 30% of Net Annual Value	(-) 1,20,000	(-) 1,32,000
(ii) Interest on loan	(-)1,60,000	(-) 2,20,000
Income from House Property	1,20,000	88,000
(c) Criteria for selection of house for self-occupied : Lowest taxable income	Option I	Option II
Income from house A	(-)30,000 (SO)	1,20,000 (DLO)
Income from house B	88,000 (DLO)	(-)2,00,000 (SO)
Income from Other Sources	2,00,000	2,00,000
Total Income	2,58,000	1,20,000

Conclusion : House B should be treated as self-occupied.

Illustration 4. Dr. (Ms) Priyanka is the owner of a big house consisting of three units. Unit I consist of 40% area and Unit II and III are equal dimension, each occupying 30% area. The construction of house was completed on 1st April 2009 at a cost of ₹ 10,00,000. The municipal value of the house for the Previous Year 2015-16 has been fixed at ₹ 2,00,000. Municipal Taxes have been levied and paid @ 15% of rateable value. The rent under the Rent Control Act is ₹ 1,50,000. Unit I is let out @ ₹10,000 p.m. for residential purposes. Unit II is self-occupied. Unit III is used by her for her professional purposes. The tenant did not pay two months rent and conditions of Rule 4 are satisfied. She paid ground rent ₹ 9,000; interest on loan, taken during 2005-2006 for the construction of the house and payable during the PY 2015-2016 ₹ 1,50,000; insurance premium, ₹ 6,000. She spent ₹ 30,000 on repair of the house. Depreciation for the clinic portion is ₹ 15,000. Her gross receipt from professional during the Previous Year 2015-2016 amounted to ₹ 5,00,000.

Compute her Gross Total Income for the Assessment Year 2016-2017.

Solution :

Computation of Income from House Property for the Assessment Year 2016-2017

Particulars	House Let-out ₹	House Self-occupied ₹
Gross Annual Value :		
(a) ALV : House let out		
(i) 40% of municipal value : ₹ 80,000 or		
(ii) 40% of the standard rent : ₹ 60,000		
ALV is restricted to ₹ 60,000		
(b) Actual rent for 40% portion for 10 months : ₹ 1,00,000		
Gross Annual Value	1,00,000	Nil
Less : Municipal taxes paid by the owner for 40%		
Portion ₹ 2,00,000 × $\frac{15}{100} \times \frac{40}{100}$ = ₹ 12,000	12,000	Nil
Net Annual Value	88,000	Nil
Less : Deduction from net annual value (Sec. 24)		
1. Statutory deduction : 30% of Net Annual Value	(-) 26,400	Nil
2. Interest on loan : 40% of ₹ 1,50,000 for let out	(-) 60,000	(-) 30,000
Income from House Property	**1,600**	**(-) 30,000**
Computation of taxable income from profession :		
Gross professional income		5,00,000
Less : Expenses for 30% portion used for profession		
1. Municipal taxes ₹ 2,00,000 × $\frac{15}{100} \times \frac{30}{100}$ (Sec. 30)	9,000	
2. Repair : 30% of ₹ 30,000 (Sec. 30)	9,000	
3. Ground rent : 30% of ₹ 9000 (Sec. 30)	2,700	
4. Interest on loan : 30% of ₹ 1,50,000 [Sec. 36(1)(iii)]	45,000	
5. Insurance premium : 30% of ₹ 6000 (Sec.30)	1,800	
6. Depreciation (Sec. 32)	15,000	82,500
Taxable Income from Profession		**4,17,500**
Computation of Total Income :		
1. Income from House Property :		
(a) Let out	1,600	
(b) Self-occupied	(-)30,000	(-) 28,400
2. Income from profession		4,17,500
Gross Total Income/Total Income		**3,89,100**

Illustration 5. Mr. Ranjit Sinha is employed with HUD Co. Ltd. @ ₹ 25,000 p.m. He is the owner of a house property construction of which was completed on 1st April 2006. Since then, it has been in his self-occupancy for residential purposes. The particulars in respect of the house for financial year 2015-2016 are given below:

	₹
Municipal Valuation	2,00,000
Municipal tax paid	20,000
Ground rent outstanding	5,000
Insurance premium paid	3,000

Interest on loan, taken on 1-6-2014 for renovation of the house, is ₹ 75,000 for the year 2015-2016. However, he could pay only, ₹ 45,000 during the year. He is transferred in February 2016 to the Nagpur Branch of the Company. He intends to allow his sister to occupy the house free of rent in his absence. He seeks your advice in this connection. Compute his total income for AY 2016-2017.

Solution :

Computation of Total Income

Assessee : Mr. Ranjit Sinha **A. Y : 2016-17**

Particulars	**Case I House kept vacant** ₹	**Case II House is occupied by his sister in his absence** ₹
Income from House Property :		
Gross Annual Value	Nil	2,00,000
Less : Municipal taxes paid	Nil	(-) 20,000
Net Annual Value	Nil	1,80,000
Less : Permissible deduction (Sec. 24)		
(i) Statutory deduction – 30% of Net annual value	Nil	(-) 54, 000
(ii) Interest on loan for renovation	(-) 30,000	(-) 75,000
Income from House Property	(-) 30,000	51,000
Statement of Total Income :		
Income from Salary	3,00,000	3,00,000
Income from House Property	(-) 30,000	51,000
Total Income	2,70,000	3,51,000

Advise : From tax angle it is not advisable to allow his sister to occupy the house in his absence.

Illustration 6. Mr. Kalidas is the owner of a house property. Its municipal valuation is ₹ 3,00,000. It has been let out for ₹ 4,40,000. The local taxes payable by the owner amounted to ₹ 30,000 but as per agreement between the tenant and the landlord, the tenant has paid them direct to the municipality. The landlord, however, bears the following expenses on tenant's amenities during the year 2015-2016.

	₹
Expenses of water connection	10,000
Water charges	20,000
Lift maintenance	15,000
Salary of gardener	18,000
Lighting of stairs	6,000
Maintenance of swimming pool	12,000
The landlord claims the following deductions :	
Repairs	30,000
Land revenue paid	6,000
Collection charges	10,000

Compute the Taxable Income from the House Property for the Assessment Year 2016-17.

Solution :

Computation of Income from House Property

Assessee : Mr. Kalidas **A.Y : 2016-17**

Particulars	₹	₹
Gross annual value to be higher of the following :		
(a) ALV : Municipal valuation : 3,00,000 Or		
(b) Actual Rent : 3,69,000		
Whichever is higher, is GAV		3,69,000
Less : Local taxes payable		Nil
Net Annual Value		3,69,000
Less : Statutory deduction : 30% of Net Annual Value		1,10,700
Taxable Income from House Property		2,58,300
Note : Composite rent		4,40,000
Less : Value of the amenities provided by the assessee :		
(i) Water connection expenses : Not allowed beings capital expenditure	—	
(ii) Water charges	20,000	
(iii) Lift maintenance	15,000	
(iv) Salary of gardener	18,000	
(v) Lighting of stairs	6,000	
(vi) Maintenance of swimming pool	12,000	(-) 71,000
Actual Rent		3,69,000

Illustration 7. Mr. M. Saha is the owner of a house in Kolkata consisting of three identical floors, (ground floor, first floor and second floor). Ground floor is let out and the rest is occupied by him for his residence. The full particulars of the house for the Previous Year 2015-2016 are given below:

Particulars	₹
(i) Municipal Valuation	12,00,000
(ii) Fair Rent	5,00,000
(iii) Standard Rent	Nil
(iv) Annual Rent of the ground floor	6,00,000
(v) Municipal taxes paid by Mr. M. Saha	1,50,000
(vi) Water/sewerage benefit tax, paid to Kolkata Municipal Corporation	70,000
(vii) House remains vacant for 2 months	
(viii) Unrealized rent, condition of Rule 4 are satisfied	2,50,000
(ix) Interest on loan, taken for the purchase of the house in April 2013 as per certificate	2,70,000

Compute the Income from the House Property for the AY 2016-2017.

Solution :

Computation of Income from House Property

Assessee : Mr. M. Saha **AY 2016-2017**

Particulars	Ground floor ₹	I & II floor in self-occupancy ₹
Gross Annual Value		
(a) ALV	5,00,000	Nil
(b) Actual Rent received / receivable	3,50,000	Nil
Even without vacancy, actual rent received is lower than the ALV: 6,00,000 –2,50,000 = 3,50,000. Thus, the loss is not wholly due to vacancy. Hence, only loss due to vacancy is to be deducted from ALV to determine GAV.		
GAV is (5,00,000-1,00,000)	4,00,000	Nil
Less : Municipal taxes paid	(-) 50,000	Nil
Net Annual Value	3,50,000	Nil
Less :		
(1) Statutory deduction – 30% of AV.	(-)1,05,000	—
(2) Interest on loan	(-) 90,000	(-) 1,80,000
Income from House Property	1,55,000	(-) 1,80,000

Illustration 8 . Mr. Ashis discloses the following particulars of the property owned by him during the PY 2015-2016.

Particulars	House self-occupied ₹	Flat allotted by HB Society let out ₹	Shops & godowns let out ₹
Municipal Value	5,00,000	2,00,000	4,00,000
Fair Rent	4,00,000	2,50,000	5,00,000
Municipal taxes payable	60,000	80,000	80,000
(a) Paid by Ashis	60,000	30,000	-
(b) Paid by tenant	-	50,000	80,000
Annual Rent	-	3,60,000	7,00,000
Expenses incurred by Ashis :			
Maintenance charges	-	12,000	-
Repairs	-	-	2,60,000
Collection charges	-	-	6,000
Electricity bills paid	-	-	Nil
Insurance premium	20,000	-	6,000
Ground rent	5,000	2,000	600
Depreciation	1,000	2,000	20,000

Other information :

(i) He has taken the loan on 1st July 2013 to purchase the house in self-occupancy. However, he could purchase the house on 1st May 2014. He repaid ₹ 6,30,000 on 1st July 2015. This includes a charge of ₹ 1,20,000 on account of interest from the date of borrowing.

(ii) The flat has been purchased under EMI scheme of the Gujarat Apartment Cooperative House Building Society Ltd. He has to pay 120 EMI of ₹ 10,000 each, which includes 50% charge on account of interest. He has defaulted in payment of the last 20 EMI. To repay the outstanding EMI and penal interest of ₹ 20,000, he borrowed ₹ 2,20,000 on 1st October 2015 @ 15% p.a.

The flat remained vacant for 1.5 months and rent of 3/4th month could not be realized. Conditions of Rule 4 have been satisfied.

(iii) Shops and godowns are held as stock-in-trade. However, till a suitable buyer is found, these are let out. P claims that income from letting should be computed under the head "Profits and Gains of Business of Profession".

He has borrowed money to construct/repair the godowns/ shops. He paid ₹ 20,000 on account of brokerage for arranging the loan.

Interest is payable outside India, in two equal installments of ₹ 50,000 each. The first installment was paid net of tax at ₹ 40,000. However, the second instilment was paid without deducting tax at sources as the recipient had given an undertaking in the prescribed form to pay the tax. Compute Income from House Property for the Assessment Year 2016-2017.

Solution :

Assessee : Mr. Ashis **Computation of Income from House Property** **A. Y : 2016-17**

Particulars	House self-occupied ₹	Flat let-out ₹	Shops and godowns let out ₹
Gross Annual Value	Nil	2,92,500	7,00,000
Less: Municipal taxes paid by the assessee	—	30,000	—
Net Annual Value	Nil	2,62,500	7,00,000
Less: Deductions u/s 24			
Statutory deduction u/s 24(a) @ 30% of NAV	—	(78,750)	(2,10,000)
Interest on Loan u/s 24(b)	(24,000)	(37,500)	(50,000)
Income from House Property	(24,000)	1,46,250	4,40,000

Workings:

1. Gross Annual Value:

(a) ALV	2,50,000
(b) Annual Rent (3,60,000 – 22,500)	3,37,500
Higher of the above (a) & (b)	3,37,500
Less: Vacancy Allowance	(45,000)
	2,92,500

2. Interest on loan taken for self occupied:

(i) Amount of interest = ₹ 1,20,000

(ii) Period of interest = 01.07.2013 to 01.07.2015 = 2 years

(iii) Pre-acquisition period = 01.07.2013 to 31.3.2014 = 9 months

(iv) Interest for pre-acquisition period =1,20,000× 9/24 = ₹ 45,000

(v) Interest for 2014-2015 = ₹ 1,20,000/2 = ₹ 60,000

(vi) Interest for 2015-2016 for 3 months = 1,20,000 × 3/24 = 15,000

(vii) Interest deductible during PY 2015-2016 = (45,000/5) + (15,000) = 24,000

3. Interest for the flat:

(i) Interest included in EMI from 01.04.2015 to 30.09.2015 = ₹ (10,000 × 6/2) = ₹ 30,000

(ii) Interest on money borrowed to repay original loan interest ₹ (10,000 × 20/2) = (1,00,000 × 15% × 1/2) = 7,500

(iii) Total interest = ₹ (30,000 + 7,500) = ₹ 37,500

(iv) No deduction is allowed for penal interest.

4. Letting out of shops and godowns, held as stock-in-trade:

Section 22 excludes from its charge only such building as is occupied by the assessee for his business or profession, profits of which are chargeable to tax. In the instant case, as letting out is not the business of

the assessee, so, it cannot be said that he has occupied shop and godown for his business. Accordingly, income from letting out shop and building, held as stock-in- trade is assessable under the head "Income from House Property". Where an assessee is not holding shops and godowns as stock-in-trade but engaged in the business of letting them on hire, the income is again chargeable under the head "House Property" as it is a specific head of income dealing with letting out of buildings only.

5. Deduction in respect of other expenses: Section 24 does not allow any deduction in respect of (i) maintenance charges, (ii) repairs, (iii) collection charges, (iv)electricity, (v) fire insurance premium, (vi) ground rent, and (vii) depreciation.

Illustration 9. Puja has occupied three houses for her self-occupancy. Their particulars for the Previous Year 2015- 2016 are given below:

Particulars	**House X** ₹	**House Y** ₹	**House Z** ₹
Municipal Value	3,60,000	9,60,000	9,50,000
Municipal taxes paid	40,000	80,000	90,000
Fair Rent	5,40,000	8,00,000	10,00,000
Standard Rent	4,50,000	6,00,000	9,00,000
Repairs	1,50,000	2,50,000	3,00,000
Ground rent paid	20,000	25,000	30,000
Insurance premium paid	5,000	6,000	7,000
Interest on loan taken for purchase of H.P.	75,000	1,20,000	2,00,000
Year of the loan	1999-2000	1999-2000	2007-2008

She has suffered loss in his business, amounting ₹ 3,00,000
Compute her total income, advising her which house should be specified for self- occupancy concession:

Solution :

Computation of Income from House Property under different options :

(a) Assuming all the properties are self-occupied (SO)	**House X (SO)** ₹	**House Y (SO)** ₹	**House Z (SO)** ₹
Annual Value	Nil	Nil	Nil
Less: Interest on loan	30,000	30,000	2,00,000
Loss from House Property	30,000	30,000	2,00,000

(b) Assuming all the properties as Deemed Let Out (DLO)	**House X (DLO)** ₹	**House Y (DLO)** ₹	**House Z (DLO)** ₹
Gross Annual Value	4,50,000	6,00,000	9,00,000
Less: Municipal taxes paid	40,000	80,000	90,000
Net Annual Value	4,10,000	5,20,000	8,10,000
Less: Statutory deduction u/s 24(a) @ 30% of Net Annual Value	1,23,000	1,56,000	2,43,000
Interest on Loan u/s 24(b)	75,000	1,20,000	2,00,000
Income from House Property	2,12,000	2,44,000	3,67,000

(c) Total Income under different options for self-occupancy:

Particulars	Option 1 House X ₹	Option 2 House Y ₹	Option 2 House Z ₹
House X	(-) 30,000 (SO)	2,12,000 (DLO)	2,12,000 (DLO)
House Y	2,44,000 (DLO)	(-) 30,000 (SO)	2,44,000 (DLO)
House Z	3,67,000 (DLO)	3,67,000 (DLO)	(-)1,50,000 (SO)
Income from House Property	5,81,000	5,49,000	3,06,000
Loss from business	(-) 3,00,000	(-) 3,00,000	(-)3,00,000
Total Income	2,81,000	2,49,000	6,000

Conclusion: A house with minimum income/maximum loss should be opted for self-occupancy concession to minimize the tax liability.

The option can be changed from year to year.

In the instant case, House Z should be treated as self-occupied.

Illustration 10. Mr. Pradipto completed construction of a residential house on 1.4.2015. Interest paid on loans borrowed for purpose of construction during the 2 years prior to completion was ₹ 40,000. The house was let-out on a monthly rent of ₹ 4,000. Annual Corporation Tax paid is ₹ 2,000. Interest paid during the year is ₹ 16,000. Amount spent on repairs is ₹ 2,000. Fire Insurance Premium paid is ₹ 1,500 p.a. Property was vacant for 3 months. Annual letting value as per corporation records is ₹ 30,000. Compute the income under the head "Income from House Property" for the A.Y. 2016-17.

Solution :

Assessee : Mr. Pradipto **Previous Year : 2015-2016** **Assessment Year : 2016-17**

Computation of Income from House Property

	Particulars		₹	₹
	Gross Annual Value u/s 23(1)(c) **(Note 1)**			36,000
Less :	Municipal Taxes Paid			(2,000)
	Net Annual Value (NAV)			**34,000**
Less :	Deduction u/s 24 —			
	(a) 30% of Net Annual Value (₹ 34,000 × 30%)		10,200	
	(b) Interest on Borrowed Capital :			
	Interest for Current Year	₹ 16,000		
	Interest of Prior Period (₹ 40,000 × 1/5)	₹ 8,000	24,000	(34,200)
	Income from House Property			**(200)**

Note :

Computation of Gross Annual Value

Municipal Value	30,000
Annual Rent (4,000 × 12)	48,000
(–) Unrealised Rent	Nil
Annual Rent	**48,000**
Higher of MV & Actual Rent	48,000
Less : Vacancy Allowance	
$\frac{48,000}{12} \times 3$	12,000
Gross Annual Value	**36,000**

Illustration 11. Mr. Suman owned a house property at Chennai which was occupied by him for his residence. He was transferred to Mumbai in June 2015 and therefore he let out the property with effect from 1.7.2015 on a monthly rent of ₹ 5,000. The corporation tax payable in respect of the property was ₹ 10,000 of which 50% was paid by him before 31.3.2016. Interest on money borrowed for the construction amounted to ₹ 20,000. Compute the income from house property for the A.Y. 2016-17.

Solution :

Assessee : Mr. Suman **Previous Year : 2015-2016** **Assessment Year : 2016-17**

Computation of Income from House Property

	Particulars	₹	₹
	Annual Value u/s 23(1)(a)/(b) – Rent receivable for the whole year		60,000
Less :	Municipal Taxes paid ₹ 10,000 × 50%		(5,000)
	Net Annual Value		**55,000**
Less :	**Deduction u/s 24**		
	(a) 30% of Net Annual Value ₹ 55,000 × 30%	16,500	
	(b) Interest on borrowed Capital	20,000	(36,500)
	Income from House Property		**18,500**

Illustration12. Mr. G and N constructed their houses on a piece of land purchased by them at Kolkata. The built-up area of each house was 1,000 sq ft. Ground floor and an equal area in the First floor. Mr. G started construction on 1.7.2014. Mr. G occupied the entire house on 1.4.2015. Mr. N occupied the Ground floor on 1.7.2015 and let-out the first floor for a rent of ₹ 20,000 p.m. However, the tenant vacated the house on 31.12.2015 and Mr. N occupied entire house during 1.1.2016 to 31.3.2016.

Following are the other information :

(i)	Fair Rental Value of each unit (Ground floor/First floor)	₹ 2,00,000 p.a.
(ii)	Municipal Value of each unit (Ground floor/First floor)	₹ 90,000 p.a.
(iii)	Municipal taxes paid by	G – ₹ 12,000
		N – ₹ 12,000
(iv)	Repair and Maintenance charges paid by	G – ₹ 40,000
		N – ₹ 50,000

Mr. G has availed a housing loan of ₹ 16.00 Lakhs @ 12% p.a. on 1.4.2014. N has availed a housing loan of ₹ 18.00 Lakhs @ 10% p.a. on 1.7.2014. No repayment was made by either of them till 31.3.2016. Compute Income from House Property for G and N for the A.Y. 2016-17.

Solution :

Assessee : Mr. G **Previous Year : 2015-2016** **Assessment Year : 2016-17**

Computation of Income from House Property

Particulars	₹
Nature : Self Occupied – Annual Value u/s 23(2)	NIL
Less :Deduction u/s 24 : Interest – ₹ 16 Lakhs × 12% = ₹ 1,92,000 (Restricted to ₹ 2,00,000)	1,92,000
Loss from House Property	**(1,92,000)**

Note : Since construction of property is completed in the year of borrowal of loan itself, prior period interest does not arise.

Assessee : Mr. N **Previous Year : 2015-2016** **Assessment Year : 2016-17**

Computation of Income from House Property

Particulars	₹	₹	₹
Ground Floor Nature : Self Occupied			
Annual Value u/s 23(2)		NIL	
Less : Deduction u/s 24 : Interest on Borrowed Capital			
Current Year : ₹ 18,00,000 × 10% × 50%	90,000		
Prior Period : ₹ 18,00,000 × 10% × 9/12 × 50% ×1/5	13,500	(1,03,500)	(1,03,500)
First Floor Nature : Let-Out			
Annual Value u/s 23(1)(a)/(b)			
Higher of Fair Rent vs. Municipal Rent **[See Note 1]**	1,50,000		
Higher of Rent selected above vs. Acual Rent received **[See Note 2]**	1,80,000	1,80,000	
Less : Municipal Taxes – (₹ 12,000 × 50%)		(6,000)	
Net Annual Value		**1,74,000**	
Less : Deduction u/s 24			
(a) 30% of Net Annual Value	52,200		
(b) Interest on borrowed Capital			
Current Period Interest – (₹ 18,00,000 × 10% × 50%)	90,000		
Prior Period Interest – (₹ 18,00,000×10% ×9/12×50% ×1/5)	13,500	(1,55,700)	18,300
Net Income from House Property			**(85,200)**

Note :

1. Since the construction of property was completed on 1.7.2015, Fair Rent, Municipal Rent and Actual Rent receivable are to be considered only for a period of **9 months**.

   Fair Rent = 2,00,000x9/12= 1,50,000

   Municipal Value = 90,000x9/12 = 67,500

2. Since the house is self occupied for part of the year and let out for part of the year, income from house property shall be calculated for the whole year as deemed let out property. Therefore Rent receivable is ₹ 1,80,000 (₹ 20,000 × 9).

Illustration 13. Mr. L is the owner of a commercial property let out at ₹ 30,000 p.m. The Municipal tax on the property is ₹ 15,000 annually, 60% of which is payable by the tenant. This tax was actually paid on 15.4.2016. He had borrowed a sum of ₹ 20 Lakhs from his cousin, resident in USA (in dollars) for the construction of the property on which interest at 8% is payable. He has also received arrears of rent of ₹ 40,000 during the year, which was not charged to tax in the earlier years. What is the Property Income of Mr. L for A.Y. 2016-17?

Solution :

Assessee : Mr. L **Previous Year : 2015-2016** **Assessment Year : 2016-17**

Computation of Income from House Property

Particulars		₹	₹
Let Out : So, Annual Value u/s 23(1)(a)/(b) = Actual Rent = ₹ 30,000×12			3,60,000
Less : Municipal Taxes Paid during the F.Y. 2015-16			NIL
Net Annual Value			**3,60,000**
Less : Deduction u/s 24			
– 30% of NAV –	₹ 3,60,000 × 30%	1,08,000	
– Interest on Housing Loan (Note)	₹ 20,00,000 × 8%	1,60,000	(2,68,000)
Income from House Property before considering Arrears of Rent			**92,000**
Arrears of Rent Received		40,000	
Less : Deduction u/s 25B – 30% of Arrears received – ₹ 40,000 × 30%		(12,000)	28,000
Net Income from House Property			**1,20,000**

Note : It is presumed that the tax has been deducted at source on the amount of interest payable outside India.

Study Note - 6

PROFITS AND GAINS OF BUSINESS OR PROFESSION

This Study Note includes

6.1 DEFINITION OF BUSINESS AND PROFESSION

BUSINESS [Sec. 2(13)]

Definition of "Business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

Certain terms used in the definition can be understood as follows:

"Trade" is the activity of purchase and sale of goods with an object of making profit. "Commerce" means trade repeated on a large scale.

"Manufacture" is said to have taken place when as a result of certain process(es) applied on a product, a new and commercially different product comes into existence which is known to the market as different from the raw material.

"Adventure or concern in the nature of trade, commerce or manufacture" has to be decided on the basis of cumulative effect of the facts and circumstances of each case i.e. scale of activity, time period covered by it, nature of the commodity etc. in order to decide whether the act is an adventure or concern.

Business necessarily means a continuous activity with a profit motive by the application of labour and skill. Under certain circumstances a single and isolated transaction may also constitute business provided it bears clear indications of trade or is an adventure in the nature of trade.

PROFESSION [Sec. 2(36)]

Profession involves an exercise of intellect and skill based on learning and experience. It includes "vocation". Vocation refers to any work performed on the strength of one's natural ability for that work. Regularity and profit-motive are not necessary for an activity to be called a vocation.

6.2 CHARGEABILITY [SEC. 28]

U/s 28, the following income shall be chargeable to Income-tax under the head "Profits and Gains of Business or Profession",—

(i) The profits and gain of any business or profession which has been carried on by the assessee at any time during the Previous Year;

(ii) Any compensation or other payment due to or received by, —

(a) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;

(b) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto ;

(c) any person, by whatever name called, holding any agency in India for any part of the activities relating to the business of any other person at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto ;

(d) any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business ;

(iii) Income derived by a trade, professional or similar association from specific services performed for its members ;

(iiia) Profits on sale of a licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947;

(iiib) Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India ;

(iiic) Any duty of customs or excise re-paid or re-payable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971 ;

(iiid) Any profit on the transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;

(iiie) Any profit on the transfer of the Duty Free Replenishment Certificate, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;

(iv) The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;

(v) Any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm.

Exception :

Where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (b) of section 40. The income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted ;

(va) any sum, whether received or receivable, in cash or kind, under an agreement for-

(a) not carrying out any activity in relation to any business; or

(b) not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services.

Exception: This sub-clause (a) shall not apply to—

(i) any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business, which is chargeable under the head "Capital Gains";

(ii) any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Program, in accordance with the terms of agreement entered into with the Government of India.

Explanation: For the purposes of this clause,—

(i) "agreement" includes any arrangement or understanding or action in concert,—

(A) whether or not such arrangement, understanding or action is formal or in writing; or

(B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

(ii) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as accounting, banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging;

(vi) Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation : For the purposes of this clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in sub-section (10D) of section 10;

(vii) any sum, whether received or receivable, in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD.

Speculative Business :

Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business.

In the context of computation of income under the head profits and gains of Business or Profession, the following points may be noted :

(a) Profits chargeable to tax are computed on the basis of commercial principles including Generally Accepted Accounting Principles and Practices.

(b) Only profits or gains are liable to Income-tax and not mere gross receipts. Capital receipts and Capital expenditures are not generally to be taken into account while computing profits under this section unless it expressly provides in the provisions of the Income Tax Act.

(c) Taxable profits or gains should be real and not notional. Anticipated losses are not provided for and unrealized gains are not considered except in case of stock valuation which is valued at lower of cost or market price.

(d) Profits and gains arises to Business or Profession carried on by the assessee are computed in relation to a time period which is covered by a Previous Year.

It is not necessary that Business or Profession should be carried on throughout the Previous Year. However, as an exception, the following incomes are taxable by virtue of express provisions under the Act even if no business was carried on during the Previous Year.

(i) Recovery against any loss, expenditure or trading liability earlier allowed as deduction. [Sec. 41(1)]

(ii) Balancing charge i.e. profits or gains from sale of a building, machinery, plant or furniture owned by a power undertaking. [Sec. 41(2)]

(iii) Profits and gains from sale of capital asset used for scientific research. [Sec. 41(3)]

(iv) Recovery against bad debt. [Sec. 41(4)]

(v) Amount withdrawn from special reserve. [Sec. 41(4A)]

(vi) Profits and gains from transfer of the Business or interest in the petroleum and natural gas business. [Sec. 42(2)]

(vii) Any sum received after the discontinuance of a business. [Sec. 176(3A), Sec. 176(4)]

(e) Profits and gains can not arise by trading with oneself.

(f) Taxability of an income depends on its source. Thus, profits and gains that arise to an assessee during the Previous Year may not be taxed under the head Business or Profession, its taxability depends on source.

For example :

(i) Profits from activity of purchasing and selling real estate properties is taxable under the head "Profits and Gains of Business or Profession". However, rental income from any of such properties is taxable under the head "Income from House Property".

(ii) Interest on securities held as investment is charged to tax under the head "Income from Other Sources".

However, interest on securities held as stock-in-trade is charged under the head "Profits and Gains of Business or Profession ".

(g) Profits and gains from illegal business are also chargeable to Income-tax under this head.

(h) Income from letting or exploiting of commercial assets is charged under the head Business or Profession but the intention of the assessee should be to treat the asset as commercial asset.

6.3 COMPUTATION OF INCOME FROM BUSINESS OR PROFESSION (SEC. 29)

Format for Computation of Business or Profession Income :

Computation of Income from Business

Net Profit as per Profit & Loss Account	xxx
Add : Expenses disallowed/Inadmissible Expenses [i.e. items already debited in P & L A/c but not eligible for deduction]	xxx
Less : Incomes Credited in P & L A/c to be treated separately under different heads of income	(xxx)
Less : Expenses (not debited to P & L A/c) allowed as per Provisions	(xxx)
Income from Business	**xxx**

Computation of Income from Profession

Receipts relating to Profession (on Cash Basis)	xxx
Less : Payment relating to profession (both cash and accrual basis)	(xxx)
Income from Profession	**xxx**

Expenses which are allowed as deduction [Sections 30 to 37]

Rent, Rates, Taxes, Repairs and Insurance of Buildings [Sec. 30]

In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed—

(a) where the premises are occupied by the assessee—

(i) as a tenant, the rent paid for such premises ; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;

(ii) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises ;

(b) any sums paid on account of land revenue, local rates or municipal taxes ;

(c) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.

Repairs and Insurance of Machinery, Plant And Furniture [Sec. 31]

In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed—

(i) the amount paid on account of current repairs thereto ;

(ii) the amount of any premium paid in respect of insurance against risk of damage or destruction thereof

Depreciation [Sec. 32]

Depreciation is the diminution in the value of an asset due to normal wear and tear or due to obsolescence. In order to allow depreciation as notional expenses in computing profits and gains of Business or Profession, the following conditions are to be fulfilled;

(i) **There must be assets :** It may be classified into two types.

(a) **Tangible assets :** Buildings, machinery, plant or furniture.

(b) **Intangible assets :** Know-how, patents, copy rights, trademarks, licences, franchise or any other business or commercial right of similar nature acquired on or after 1st April, 1998.

(ii) **Such asset should be owned, wholly or partly, by the assessee :** Ownership does not necessarily mean legal ownership. Assessee will be treated as owner if he is capable of enjoying the right of the owner in respect of asset in his own right and not on behalf of the owner in whom title vests even though a formal deed of title has not been executed and registered (*Mysore Minerals Ltd.* vs. *CIT[(1999) 239 ITR 775(SC)]*. In case of a building in which Business or Profession is carried on is not owned by the assessee but he holds a lease or other right of occupancy though he is not entitled to depreciation on the building, depreciation is allowed on the capital expenditure incurred for the purposes of Business or Profession on construction of any structure or renovation etc.

(iii) **Such asset should be used for purposes of Business or Profession.**

(iv) **It should be used during the relevant Previous Years.**

Depreciation Statement as per Income Tax Act, 1961

Particular of Asset	WDV as on 01.4....	Additions at Actual Cost	Deductions	Net Value of Block	Depreciation for Current Year	WDV as on 31.03...
1	2	3	4	5	6	7

Block of Assets [Sec. 2(11) and Explanation 3 to Section 32]:

It means a group of assets falling within a class of assets comprising,

(i) **Tangible assets :** Buildings, machinery, plant or furniture;

(ii) **Intangible assets :** Know-how, patents, copyright, trademarks, licences, franchises or any other business or commercial rights of similar nature in respect of which same percentage of depreciation has been prescribed.

Aligning the definition of 'Block of Asset" [Explanation 3 to Section 32(1)] [W.e.f. A.Y. 2010-11]

The term "Block of Assets" has been defined in section 2(11) and in *Explanation*3 to section 32(1) of the Income-Tax Act. However, these definitions are not identical and therefore they are subject to misuse. Accordingly, *Explanation* of section 32(1) has been amended so as to delete the definition of "Block of Assets" provided therein. Consequently, "Block of Assets" will derive its meaning only from section 2(11) and *Explanation* 3 shall contain the meaning of assets which shall be applicable for electricity undertaking only.

Written Down Value [Sec. 43(6)]

(i) In case of assets acquired in the Previous Year, Written Down Value is the actual cost to the assessee.

(ii) In case of assets acquired before the Previous Year :- Written Down Value is the actual cost of the asset to the assessee as reduced by depreciation actually allowed to him in respect of such asset under this Act.

(iii) In case of any block of assets : Written Down Value of the block of asset is computed as per the following mechanism.

	₹
Written Down Value of the block of assets at the beginning of the current Previous Year.	***
Add: Actual cost of assets falling within that block, acquired during the Previous Year.	***
Less: Moneys Payable and scrap value if any, in respect of asset sold/discarded/ demolished/destroyed during the Previous Year	***
Written Down Value	***

(iv) In case of block of assets when there is a slump sale:– In accordance with Section 2(42C), "slump sale" means the transfer of one or more undertakings as a result of the sale for lump sum consideration without values being assigned to the individual assets and liabilities in such sales. In such a situation it is not possible to deduct the money receivable in respect of the asset sold, as is done normally.

Written Down Value in case of slump sale is computed as per the following mechanism.

	₹
Written Down Value of the entire block at the beginning of the relevant Previous Year.	***
Add: Actual cost of assets falling within that block, acquired during the Previous Year.	***
	***
Less: Moneys payable and scrap value if any, in respect of asset sold/discarded/ demolished/destroyed during the Previous Year	***
	***
Less: Actual cost of the asset falling within that block transferred by "Slum Sale"as reduced by amount of depreciation actually allowed to such asset, it should not exceed the written down value of the block as at the end of the Previous Year, it cannot be negative.	***
Written Down Value	***

(v) Written down value in case of demerged company [Explanation 2A of section 43(6)]

Written Down Value of demerged company	Written Down Value of assets prior to demerger shall be reduced by the written down value of assets transferred pursuant to demerger.

(vi) Written Down Value in case of resulting company [Explanation 2B of Sec. 43(6)]

Written Down Value of resulting company	Written Down Value of transferred assets as appearing in the books of the demerged company before the demerger.

(vii) Written Down Value in case of Corporatization [Explanation 5 of Section 43(6)]

Written Down Value of a company under the scheme of corporatization	Written Down Value of the transferred asset by a scheme of corporatization approved by SEBI to recognized stock exchange in India immediately before such transfer.

Note : Written down value cannot be negative i.e. it shall be reduced to 'nil' in the following situations :

(a) Where the block of assets ceases to exist i.e., all the assets of the block are transferred.

(b) Where a part of the block is sold and the sale consideration of the assets sold exceeds the value of the block.

Written Down Value where the assessee was not required to compute his total income of any earlier Previous Year [*Explanation* 6* to section 43(6) inserted by the Finance Act, 2008, w.r.e.f Assessment Year 2003-2004]

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

(a) the actual cost of an asset shall be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of account;

(b) the total amount of depreciation on such asset, provided in the books of account of the assessee in respect of such previous year or years preceding the Previous Year relevant to the Assessment Year under consideration shall be deemed to be the depreciation actually allowed under this Act for the purposes of this clause; and

(c) the depreciation actually allowed under clause (b) shall be adjusted by the amount of depreciation attributable to such revaluation of the asset.

Computation of Written Down Value where income of an assessee is derived in part from agriculture and in part from business chargeable to Income-tax under the head "Profits and Gains of Business or Profession" [Explanation 1 to Section 43(6)] [W.e.f. A.Y. 2010-11]

Section 32(I)(iii) provides that depreciation is to be allowed and computed at the prescribed percentage on the Written Down Value (WDV) of any block of assets. Clause (b) of sub-section (6) of section 43 provides that WDV in the case of assets acquired before the Previous Year shall be computed by taking the actual cost to the assessee less all depreciation "actually allowed" to him under the Income Tax Act.

Rules 7A, 7B and 8 of the Income Tax Rules, 1962, deal with the computation of composite income where income is derived in part from agricultural operations and in part from business chargeable to tax under the Income Tax Act, 1961 under the head "Profits & Gains of Business". These rules prescribe the method of computation in the case of manufacture of rubber, coffee and tea. In such cases, the income which is brought to tax as "Business Income" is a prescribed fixed percentage of the composite income.

The Hon'ble Supreme Court in the case of CIT *vs*. Doom Dooma India Ltd 222 CTR 105 (SC) has held that in view of the language employed in clause (b) of sub-section (6) of section 43 regarding depreciation "actually allowed", where any income is partially agricultural and partially chargeable to tax under the Income Tax Act, 1961 under the head "Profits & Gains of Business", the depreciation deducted in arriving at the taxable income alone can be taken into account for computing the WDV in the subsequent year.

For instance, Rule 8 prescribes the taxability of income from the manufacture of tea. Under the said rule, income derived from the sale of tea grown and manufactured by seller shall be computed as if it were income derived from business, and 40% of such income shall be deemed to be income liable to tax. As a result of the Court decision, the resultant computation of depreciation is as per the following illustration :

	₹
Sale proceeds of tea	5,000
Less: Expenses:	
Depreciation - (10% of ₹ 5,000)	(500)
Others expenses	(1,500)
Composite income	3,000
Income subject to charge under the Income Tax Act, 1961 by application of rule 8 (40% of 3,000)	1,200
Income not chargeable to income Tax (60% of 3,000)	1,800

According to the interpretation of the Court, the W.D.V. of the fixed asset for the immediately succeeding year is to be taken at ₹ 4,800 (₹ 5,000 minus ₹ 200 being depreciation allocated for business income) and not ₹ 4,500 (₹ 5,000 minus depreciation of ₹ 500 allowed for determining composite income). Thus the depreciation for which deduction is allowed to the assessee while computing its agricultural income is to be ignored for computing the W.D.V. of the asset according to the Court ruling.

The above interpretation is not in accordance with the legislative intent. WDV is required to be computed by deducting the full depreciation attributable to composite income. Hence in the above illustration, the WDV of the fixed asset for the immediately succeeding year is to be taken at ₹ 4,500 and not 4,800 as held by the Supreme Court. The ambiguity in this case has arisen on account of the interpretation of the meaning of the phrase "actually allowed" in clause (b) of sub-section (6) of section 43.

Therefore Explanation 7 has been inserted in section 43(6) to provide that where the income of an assessee is derived, in part from agriculture and in part from business chargeable to Income-tax under the head "Profits and Gains of Business or Profession", for computing the written down value of assets acquired before the Previous Year, the total amount of depreciation shall be computed as if the entire income is derived from the business of the assessee under the head "Profits and Gains of Business or Profession" and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act.

Moneys Payable [Explanation To Sec. 41]

Moneys payable in respect of any building, machinery, plant and furniture includes

(a) any insurance, salvage or compensation moneys payable in respect thereof;

(b) where the building, machinery plant or furniture is sold, the price for which it is sold.

Depreciation Mandatory

Explanation 5 to Sec. 32 inserted by the Finance Act, 2001 w.e.f. 1.4.2002, it is clarified that the depreciation provisions shall apply, whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income.

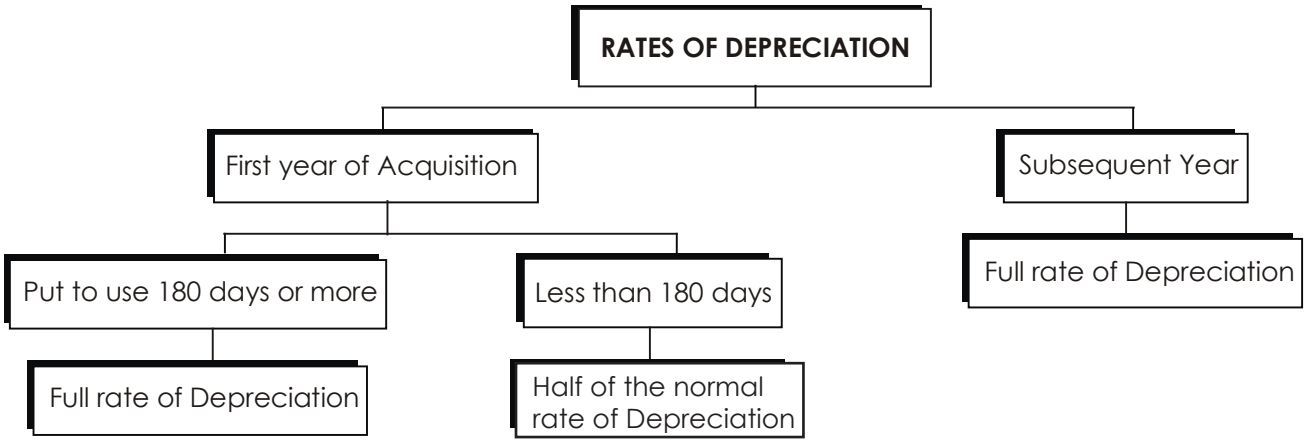
Rate of Depreciation for different 'Block of Asset':

Section 2(11) provides that it is not necessary that assets should be used for purpose of business during the year under consideration. The use of the asset is important for the purpose of actual alllowability of depreciation, but not for determining whether the asset falls within the block of assets or not.

A taxpayer may have different block of assets as given below

Number	Nature of Assets	Rate of Depreciation
Block 1	Building- Residential building other than hotels and boarding houses	5%
Block 2	Building- Office, factory, godowns or buildings which are not mainly used for residential purpose (it cover hotels and boarding houses except cover under Block 3)	10%
Block 3	Buildings- The followings buildings: i. building acquired on or after September 1, 2002 for installing machinery and plant forming part of water supply project or water treatment system and which is put to use for the purpose of business of providing infrastructure facilities under section 80IA(4)(i). ii. temporary erection such as wooden structures	100%
Block 4	Any furniture/ fitting including electrical fittings	10%
Block 5	Any plant & machinery (except covered by Block 6, 7,8, 9, 10, 11 or 12) and motor cars (other than those used in a business of running them on hire) acquired or put to use on or after April 1, 1990	15%

Block 6	Ocean-going ships, vessels ordinarily operating on inland waters including speed boats	20%
Block 7	Buses, lorries and taxies used in the business of running them on hire, machinery used in Semi-conductor industry, moulds used in rubber and plastic goods factories.	30%
Block 8	Aero planes- besides, it includes commercial vehicle which is acquired after September 30, 1998 but before April 1, 1999 and it is put to use for any period prior to April 1, 1999; life saving medical equipment	40%
Block 9	Containers made of glass or plastic used as refills and plant and machinery which satisfy conditions of rule 5(2) and the following- i. new commercial vehicle acquired during 2001-02 and put to use before March 31, 2002 for the purpose of business or profession; ii. machinery/plant used in weaving, processing and garment sector of textile industry which is purchase under Technology Upgradation Fund Scheme during April 1, 2001 and March 31, 2004 and put to use up to March 31, 2004; and iii. new commercial vehicle which is acquired during January 1, 2009 and September 30, 2009 and put to use before October 1, 2009 for the purpose of business or profession.	50%
Block 10	Computers including computer software. Besides, it includes new commercial vehicles acquired in replacement of condemned vehicle of 15 years of age and put to use before April 1, 1999 or put to use before April 1, 2000. It also includes books owned by a professional. It also includes gas cylinders; plant used in field operation by mineral oil concerns; direct fire glass melting furnaces	60%
Block 11	Energy saving device; renewal energy devices; rollers in flour mills, sugar works & steel industry.	80%
Block 12	Air pollution control equipments; water pollution control equipments; solid water control equipments; recycling and resource recovery systems; machinery acquired and installed on or after September 1, 2002 in a water supply project or water treatment system or for the purpose of providing infrastructure facilities; wooden parts used in artificial silk manufacturing machinery; cinematograph films, bulbs of studio lights; wooden match frames; some plants used in mines, quarries and salt works: and books carrying on business in running lending libraries	100%
Block 13	Intangible assets- Know-how, patents, copyrights, trademarks, Licences, Franchises and any other business or commercial rights of similar nature	25%



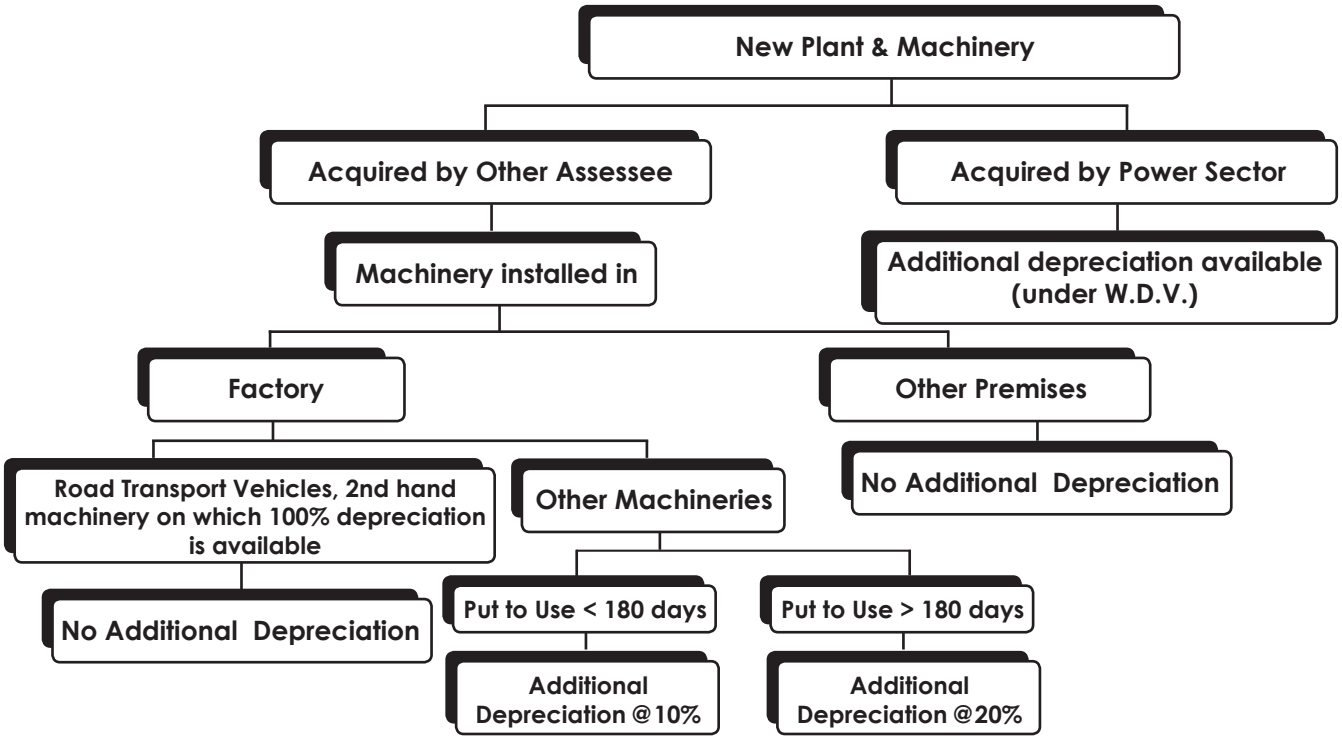
Additional Depreciation :

Applicable	For assesses engaged in the business of manufacture or production of any article or thing or engaged in the business of generation or generation and distribution of power
Assets eligible for additional depreciation	Any new plant or machinery acquired and installed after 31.3.2005
Assets not eligible for additional depreciation	(a) Ships and aircrafts; (b) Any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person, or (c) Any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house, or (d) Any office appliance or road transport vehicle, or (e) Any machinery or plant, the whole of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head " Profits and Gains from Business or Profession" of any Previous Year
Rate of Additional Depreciation	20% of the Actual Cost of Plant or Machinery
Adjusted rate of additional depreciation	If the newly acquired asset is "put to use" for a period of less than 180 days during the Previous Year, in which it is acquired, the rate of additional depreciation shall be provided at 50% of the normal rate = 50% × 20% = 10%

Additional depreciation as per section 32(1)(iia) is available on furnishing the details of machinery or plant and increase in the installed capacity of production in the prescribed form along with the returned income and the report of an accountant as defined in the explanation below subsection 2 of section 288 certify that the deduction has been correctly cleaned in accordance with the provisions of this clause.

(i) Even after the amendment, a power generating unit which claims depreciation on straight-line basis under section 32(1)(i) cannot claim any additional depreciation in respect of investment in new plant and machinery. This is because of the fact that the additional depreciation under section 32(1)(iia) is available only in those cases where normal depreciation is claimed under section 32(1)(ii) on the basis of written down value of block of assets.

(ii) manufacturing companies (owning power generation units for captive consumption) were eligible for additional depreciation even before the amendment.



Following proviso shall be inserted before the existing proviso to clause (iia) of sub-section (1) of section 32 by the Finance Act, 2015, w.e.f. 1-4-2016 :

Where an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1st day of April, 2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal, and acquires and installs any new machinery or plant (other than ships and aircraft) for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020 in the said backward area, then, the rate of additional depreciation shall be provisions of clause (iia) shall have effect, as if for the words 25%, the words 35% had been substituted.

Provided that where an asset referred to in section 32(1)(iia) or the first proviso to section 32(1)(iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia) for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset:

Illustration 1 : The WDV of plant and machinery on 1.4.2015 of Z Ltd. engaged in manufacturing of PVC granules is ₹ 2,000 lacs. Company purchased additional plant and machinery for ₹ 1,600 lacs on 18.4.2015 inclusive of second-hand machine imported from Ireland of ₹ 400 lacs to increase its installed capacity of production from 1000 TPA to 1500 TPA. The production from new machine commenced w.e.f.1.12.2015. Work out by giving reasons the amount of allowable depreciation.

Solution:

Assessee : Z Ltd. **Previous Year : 2015-16** **Assessment Year : 2016-17**

Computation of Depreciation

Particulars	**Lakhs**	
	₹	₹
Opening WDV		2,000
Add : Additions During the year		1,600
Net Value for the purpose of Depreciation		3,600
Less : **Depreciation of the Year**		
— On Opening Block – ₹ 2,000 Lakhs × 15%	300	
— On Additions (Period of usage less than 180 days) ₹ 1,600 lakhs × 15% × 50%	120	
— Additional Depreciation on Eligible Assets (Notes)	120	540
Closing WDV		**3,060**

Notes :

1. Second hand machinery imported from Ireland is not an eligible asset for the purpose of Additional Depreciation computation. Therefore, cost of eligible assets = ₹ 1,600 lakhs – ₹ 400 lakhs = ₹ 1,200 lakhs.
2. Period of usage of new machine is less than 180 days. Therefore, they are entitled to only 50% of additional depreciation rate of 20%.

Illustration 2:

W.D.V. of Machinery (Rate of Depreciation @15%) = ₹ 5,00,000

New Machinery Purchased (on 31.12.15) = ₹ 1,00,000, having same rate of depreciation.

Calculate : Depreciation u/s 32

Solution:

Block A : Machinery

(Rate of Depreciation = 15%)

W.D.V of the machinery	5,00,000
Add: Cost of New asset Purchase (relating to the Block) [Put to Use > 180 Days]	Nil
Less: Government subsidy Received for Purchase/ Acquisition Asset	Nil
Less: Adjustment for CENVAT credit	Nil
Less: Sale of Asset from the Block	Nil
W.D.V for charging Depreciation	5,00,000
Less: Depreciation @15%	75,000
Closing W.D.V	**4,25,000**

Block B : Machinery

(Rate of Depreciation = 50% of 15%, since Acquired & Put to Use for less than 180 Days)

Cost	1,00,000
Less : Depreciation @ 7.5%	7,500
Closing WDV	**92,500**

From Block A	= 75,000
From Block B	= 7,500
Total Depreciation u/s 32	82,500

Illustration 3:

From the following details, ascertain the amount of depreciation admissible.

Particulars	**Machinery**	**Building**
Opening WDV	500000	2000000
Addition during the year	600000	Nil
Sale during the year	1200000	400000
Rate of Depreciation	15%	10%

Solution :

Statement showing calculation of depreciation on machinery (Rate of depreciation @ 15%)

Particulars	**Amount (₹)**
Opening WDV	5,00,000
Add : Addition during the year	6,00,000
Less : Money receivable on sale of assets	(12,00,000)
Closing WDV before depreciation	(1,00,000)
Depreciation charged @15%	Nil
Closing Written Down Value after depreciation	Nil
Short Term Capital Gains	1,00,000

Statement showing calculation of Depreciation on Building (Rate of depreciation @10%)

Particulars	**Amount (₹)**
Opening WDV	20,00,000
Add : Addition during the year	Nil
Less : Money receivable on sale of assets	(4,00,000)
Closing WDV before depreciation	16,00,000
Depreciation charged @10%	1,60,000
Closing Written Down Value after depreciation	14,40,000
Short Term Capital Gains	Nil

Note: Excess of the value of sale proceeds over the written down value of the block of asset, would result Short Term capital Gains.

TERMINAL DEPRECIATION [SEC. 32(1)(iii)]

Terminal Depreciation (i.e. Loss on Transfer) & Balancing Charge (i.e. Gain on Transfer)

(a) Applicable for any undertaking engaged in generation or generation and distribution of power;

(b) It must be a depreciable asset, on which depreciation is claimed on straight line basis;

(c) Such depreciable asset is sold, discarded, demolished or destroyed in a Previous Year.

If there arises:

(i) Loss on Sale = Terminal Depreciation;

(ii) Gain on Sale= Balancing Charge.

Calculation of Terminal Depreciation:

1. Calculate Written Down Value of the depreciable asset on the first day of the Previous Year in which such asset is sold, discarded, demolished or destroyed.
2. Ascertain Net Sale Consideration.

If value as per (1) > value as per (2) = Loss= Terminal Depreciation

Note:

(i) Sale Consideration is money payable to the tax payer in respect of such depreciable asset (+) Scrap Value, if any

(ii) Net Sale Consideration = Sale Consideration (-) Expenses on Transfer;

(iii) Sale consideration is the actual money, received or receivable in cash or by cheque or draft;

(iv) It excludes any other thing or benefit which can be measured and converted in terms of money;

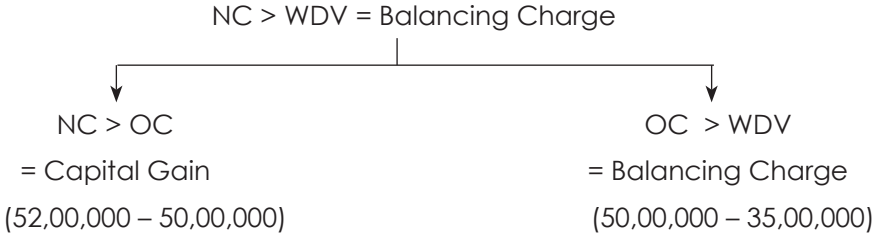
(v) If the asset is sold or discarded, etc, in the Previous Year in which it is first put to use, any loss on transfer of that asset shall be treated as capital loss and not as terminal depreciation;

(vi) The asset must be used by the assessee for the purpose of business or profession, at least for some considerable time period during the Previous Year, in which the transfer/sale takes place;

(vii) Terminal depreciation can only be allowed, if the asset is completely written off from the books of accounts.

Balancing Charge u/s 41(2) and Capital Gain u/s 50A:

If value as per (2) > value as per (1) = Gain = Balancing Charge



Where,

NC = Net Sale Consideration

OC = Original Cost

WDV = Written Down Value

Illustration 4 :

Kalpataru Power Projects is a power generating unit. On 1.4.2013, it purchased a plant of ₹ 50,00,000, eligible for depreciation @15% on SLM. Compute balancing charge or terminal deprecation assuming the plant is sold on 21.4.2015 for : (a) ₹ 8,50,000 (b) ₹ 32,00,000 (c) ₹ 45,00,000 (d) ₹ 52,00,000. (Ignore the provision of additional Depreciation)

Solution :

Computation of Terminal Depreciation or Balancing Charge, Capital Gain.

Particulars	A	B	C	D
W.D.V. as on 1.4.2015	35,00,000	35,00,000	35,00,000	35,00,000
Less: Sale Proceeds	8,50,000	32,00,000	45,00,000	52,00,000
Balance	26,50,000	3,00,000	(10,00,000)	(17,00,000)
Terminal Depreciation	26,50,000	3,00,000	NIL	NIL
Balancing Charge	NIL	NIL	10,00,000	15,00,000
Short term capital Gain	NIL	NIL	NIL	2,00,000
Computation of Depreciation:				
Original cost	50,00,000			
Less: Depreciation for the year 2013-14	7,50,000			
WDV as on 1.4.2014	42,50,000			
Less : Depreciation for the year 2014-2015	7,50,000			
WDV as on 1.4.2015	35,00,000			

Section 43(1) — Actual Cost

Actual Cost [Sec. 43 (1)] for the purpose of determination of Depreciation :-

Explanation	Nature of Acquisition	Actual Cost
1	Assets used in scientific research subsequently put into use for the business	NIL
2	Asset received under gift, will or inheritance	WDV to the previous owner
3	Acquisition of asset to claim depreciation on enhanced cost to reduce tax liability	Cost as determined by the Assessing Officer with the prior approval of Joint Commissioner of Income Tax
4	Transfer and re-acquisition of the same asset	Least of the followings: (i) WDV at the time of original transfer (ii) Re-purchase price
4A	Sale and Lease Back	WDV to the transferor
5	Building previously used for private purpose	Cost of Acquisition or construction *Less* : Deemed Depreciation Deemed depreciation refers to the total depreciation that would have been allowable had the building been used for business purpose since its acquisition
	Succession of business	WDV to the previous owner
6	Transfer by Parent Company to its wholly owned Indian Subsidiary Company	WDV to Parent company

	Transfer by wholly owned Indian Subsidiary Company to its Indian Parent Company	WDV to Indian Subsidiary Company
7	Amalgamation (Amalgamated Company must be an Indian Company)	WDV to the Amalgamating Company
7A	Demerger : In the hands of the Demerged Company after demerger	WDV of Demerged Company before Demerger *Less* : WDV of assets transferred to Resulting Company
7A	Demerger: In the hands of the Resulting Company	WDV to Demerged Company
8,9,10	Asset acquired by the Assessee	Cost of Acquisition *Add* : (i) Interest on loan for the period upto the date of usage of the asset (ii) Freight & Insurance (iii) Loading, Unloading Charges (iv) Installation Charges *Less* : (i) Government Subsidy or Grant received related to purchase of asset (ii) CENVAT Credit
11	Assets brought into India by a Non-resident	Actual cost of Acquisiton *Less* : Notional depreciation for the period such asset was held outside India
12	Asset acquired by a company under a scheme of Corporatization of Recognized Stock Exchange	Actual Cost as if there is no such corporatization.

Note:

The followings are to be considered for determination of Actual Cost

(i) Actual cost refers to the cost of the asset to the assessee;

(ii) Interest on loan after commencement of commercial production should not be included in the Actual Cost;

(iii) Trial Run expenses should be included in Actual Cost, after adjusting any income derived during the trial run period;

(iv) All expenses directly attributable (e.g. salaries, guest house for staff engaged in installation activities, travelling expenses incurred) to setting up of plant and machinery, will be included;

(v) Loss arising out of exchange rate differences, should be included in Actual Cost;

(vi) Subsidy received from Government for units in backward areas should not be adjusted against Actual Cost of project, for computing depreciation;

(vii) Cost of land shall not be considered for claiming depreciation;

(viii) Interest receipts and Hire charges received from Contractors should be reduced from Actual Cost;

(ix) Conversion cost incurred for transforming an asset shall be included in Actual Cost;

(x) Interest earned on deposits made to open Letter of Credit for purchase of any asset will be adjusted to reduce Actual Cost.

SALE AND LEASEBACK [EXPLANATION 4A OF SECTION 43(1)]

Explanation 4A to section 43(1) is applicable if the following conditions are satisfied-

(i) Mr. A as second person owns an asset.

(ii) The asset is used by A for the purpose of his business or profession.

(iii) Depreciation under section 32 is claimed by A.

(iv) A transfer the assets to Mr. B.

(v) Mr. A acquired the same asset from B by lease, hire or otherwise.

If all the aforesaid conditions are satisfied, then, "actual cost" of asset in the hand of B for the purpose of depreciation will be the written down value of the asset in the hands of A at the time of transfer of asset by A to B.

Subsidy [Explanation 10 of section 43(1)]

Explanation 10 to section 43(1) provides that where a portion of the cost of an asset acquired by the assessee has been met, directly or indirectly, by the Central Government or State Government, or any Authority established under any law, or by any other person, in the form of subsidy or grant or reimbursement, then in a case where the subsidy is directly relatable to the asset, such subsidy shall not be included in the actual cost of the asset. In a case where the subsidy is directly relatable to the asset, such subsidy shall not be included in the actual cost of the asset. In a case where such subsidy, or grant or reimbursement, is of such nature that it cannot be directly relatable to any particular asset, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of which or with reference to which such grant or subsidy or reimbursement is received, shall not be included in the actual cost of the asset to the assessee.

Treatment of Trial Run Expenses and Income earned during Trial Run Period

Illustration 5 :

X Ltd. acquired a printing machine for ₹ 25,00,000. Transport Cost, including loading and unloading charges ₹ 35,000. Expenses incurred during the trial run period ₹ 2,00,000. Output generated during trial run period was sold for ₹ 90,000. Depreciation @ 15% . Compute WDV. Would your answer differ if the output generated during trial run period was ₹ 3,00,000.

Solution:

Assessee : X Ltd

Previous Year : 2015-16

Computation of Depreciation

Particulars	Amount (₹)	Amount (₹)
Expenses incurred during trial run period	2,00,000	2,00,000
Less : Income from sale of output generated during trial run period	(90,000)	(3,00,000)
Net Cost / Gain	1,10,000	(1,00,000)
Actual Cost of the Machine	25,35,000	25,35,000
Add : Net Cost during trial run	1,10,000	—
Less : Net Gain during trial run	—	(1,00,000)
Actual Cost of Machine for charging depreciation	26,45,000	24,35,000
Less : Depreciation @ 15%	3,96,750	3,65,250
Written Down Value (W.D.V.)	22,48,250	20,69,750

Treatment of Currency Exchange Fluctuation

Illustration 6 :

Z Ltd. purchased machinery (rate of depreciation 15%) from Japan for US$ 2,50,000 on 17. 08.2014 (US $ = ₹63.25) by borrowing from Hero Bank Ltd. Z Ltd. took a forward contract on 11.07.2015, when the exchange rate was ₹ 65.70 per US$. This was put to use from 23.11.2014. Compute Depreciation for the Previous Years 2014-15 and 2015-16.

Solution:

Assessee: Z Ltd

Previous Year : 2014-15 & 2015-16

Computation of Depreciation and Written Down Value

Particulars	Amount (₹)
Cost of the Asset (US$ 2,50,000 × ₹ 63.25)	1,58,12,500
Less : Depreciation @ 50% of 15% (since Put to Use < 180 days) for Previous Year 2014-15 (₹ 1,58,12,500 × 50% × 15%)	(11,85,938)
WDV as on 01.04.2015	1,46,26,562
Add : Exchange Rate Difference [US$ 2,50,000 × ₹ (65.70 – 63.25)]	6,12,500
WDV for claiming depreciation	1,52,39,062
Less : Depreciation @ 15% for the Previous Year 2015-16 (₹ 1,52,39,062 × 15%)	22,85,859
WDV as on 01.04.2016	1,29,53,208

CENVAT Credit Adjustment

Illustration 7 :

Pharma Ltd. imported machinery from Germany on 27.8.15 at a cost of ₹ 40 crores. Customs Duty paid @20%. Government granted subsidy of ₹ 25 crores. The entire logistics was supported by Nexgen Courier Ltd., an Indian Company. Total Service charges paid to them ₹ 20 lacs (Pre-acquision cost) including service tax of ₹ 2,20,000.

Compute Actual Cost, if assessee, avail CENVAT credit adjustment.

Solution:

Assessee: Pharma Ltd. **Previous Year : 2015-16**

Computation of Depreciation and Written Down Value

Particulars	Amount (₹crores)
Cost of Purchase	40.000
Add: Customs Duty @ 20% on ₹ 40 crores	8.000
Add: Service charges (Being pre-acquisition cost)	0.200
Less: Government subsidy granted	25.000
Less: CENVAT Credit (Service Tax paid included in the payment made to Naxgen Courier Ltd.)	0.022
Actual Cost for the purpose of charging depreciation	23.178

Illustration 8:

ZED Ltd. imported machinery from South Korea on 12.5.2015 for US$ 50,000. Exchange rate on that date : US$ = 60.70. Customs Duty paid @ 20%. Government granted subsidy of ₹ 15,00,000. The assessee had a forward contract on 2.4.2015 at US$ ₹ 61.30. Logistics services was provided by Carrywell Courier Ltd. Service Charges paid ₹ 2,00,000 including service tax of ₹ 25,000. Engineers and labourers were engaged at site for installation of the machinery. Salary and wages paid for site engineers and labourers including their travelling expenses amounted to ₹ 4,60,000. Expenses incurred during trial run period ₹1,50,000. Sale of output produced during trial run period ₹ 90,000. Interest earned on deposits made to open Letter of Credit for purchase of this machinery ₹15,000. The machine was put to use from 05.10.15. Depreciation @15%. Compute Actual Cost and Written Down Value.

Solution:

Assessee: ZED Ltd. **Previous Year : 2015-16**

Computation of Actual Cost and Written Down Value

Particulars	**Amount** (₹ crores)
Cost of the Asset (US$ 50,000 × ₹ 60.70)	30,35,000
Add : Customs Duty paid @ 20% on ₹ 30,35,000	6,07,000
Less : Government Subsidy granted	(15,00,000)
Add : Exchange Rate Difference [US$ 50,000 × ₹ (61.30 - 60.70)]	30,000
Add : Transportation charges paid ₹2,00,000 (including Service Tax ₹25,000)	2,00,000
Less : CENVAT credit adjustment (credit for Service tax included in service charges paid to Carrywell Courier Ltd.)	(25,000)
Add : Installation expenses incurred for payment of site engineers & labourers including travelling expenses	4,60,000
Add : Expenses incurred during trial run period	1,50,000
Less : Sale of output generated during trial run period	(90,000)
Less : Interest earned on deposits made to open Letter of Credit for purchase of this machinery	(15,000)
Actual Cost for the purpose of determining depreciation	28,52,000
Less : Depreciation @ 50% of 15% (since Put to Use < 180 days) for Previous Year 2015-16 (₹28,52,000 × 50% x 15%)	2,13,900
WDV as on 01.04.2016	26,38,100

Proportionate Depreciation

In the following cases, depreciation is allowed on proportionate basis where in any Previous Year, there is:-

(a) Succession of a partnership firm by a company [u/s. 47(xiii)] or

(b) Succession of a proprietary concern by a company [u/s. 47(xiv)]or

(c) Succession of any business other than on death [u/s. 170] or

(d) Amalgamation of company [u/s. 2(1B)] or

(e) Demerger of any company [u/s. 2(19AA)]

Depreciation : Adjustments required after Succession of Business

Illustration 9 : Conversion of Sole-proprietorship into Company

A Bros., a sole-proprietorship concern, was converted into A Ltd. on 20.9.2015. Before the conversion, the concern had a block of furniture (rate of depreciation @ 10%), whose WDV as on 01.04.2015 was ₹ 6,50,000. On 01.05.2015, a new furniture of the same block was purchased for ₹ 50,000. A Ltd. purchased another furniture of the same type on 20.12.2015 for ₹ 48,000. Compute depreciation that would be claimed by A Bros. and A Ltd. for the Previous Year 2015-16.

Solution :

(1) Depreciation shall have to be calculated at the prescribed rates, as is applicable for a going concern, without considering the event of amalgamation or demerger.

(2) Depreciation shall have to be apportioned between the predecessor and the successor in the ratio of number of days for which such assets were held for their business purpose and used by them.

Depreciation to be apportioned = [W.D.V. as on 1.4.2015 + New Purchases on 01.05.2015] × 10%

= ₹ (6,50,000 + 50,000) × 10% = ₹ 7,00,000 × 10% = ₹ 70,000

Apportionment of Depreciation and Allowable Depreciation

Assessee	**No. of Days**	**Depreciation on Assets exists on the date of succession**	**Depreciation on Assets acquired after Succession**	**Total Depreciation for the Previous Year 2015-16**
A Bros. (Sole-Proprietorship concern)	01.04.2015 to 20.9.2015 = 173 days	₹ 70,000 × 173/365 = ₹ 33,178	Nil	₹ 33,178
A Ltd. (Company)	21.09.2015 to 31.3.2016 = 192 days	₹ 70,000 ×192/365 = ₹ 36,822	₹ 48,000 × 50% × 10% = ₹ 2,400 (Put to use < 180days)	₹ 39,222

Illustration 10 : Amalgamation of Companies

P Ltd. was taken over by Q Ltd. with effect from 31.7.2015. This satisfies the conditions of Sec. 2(1B) of the Income Tax Act, 1961. From the following information, compute deductions admissible u/s 32 to P Ltd and Q Ltd. for the previous year 2015-16.

Assets	**Rate of Depreciation**	**WDV in the hands of P Ltd (as on 01.04.2015)**	**Transfer Value to Q Ltd. (₹)**
Building	10%	30,00,000	45,00,000
Plant & Machinery	15%	20,00,000	15,00,000
Motor Car	15%	8,00,000	6,00,000
Computers	60%	5,00,000	2,00,000
Furniture	10%	3,00,000	1,40,000

Solution :

(1) Depreciation shall have to be calculated at the prescribed rates, as is applicable for a going concern, without considering the event of amalgamation or demerger.

(2) Depreciation shall have to be apportioned between the predecessor and the successor in the ratio of number of days for which such assets were held for their business purpose and used by them.

Depreciation Statement as per Income Tax Act, 1961

Particulars of Block of Assets	Rate Of Dept.	W.D.V as on 01.04.2015	Additional Actual Cost	Debenture	Net Value of Block	Depreciation for the Current Year	W.D.V. as on 31.3.2016
1	2	3	4	5	6	7	
Block I – Building	10%	30,00,000	**Nil**	**Nil**	30,00,000	**3,00,000**	**27,00,000**
Block – II Plant & Machinery	15%	20,00,000	**Nil**	**Nil**	20,00,000	**3,00,000**	**17,00,000**
Block – III Motor Car	15%	8,00,000	**Nil**	**Nil**	8,00,000	**1,20,000**	**6,80,000**
Block – IV Computers	60%	5,00,000	**Nil**	**Nil**	5,00,000	**3,00,000**	**2,00,000**
Block – V Furniture	10%	3,00,000	**Nil**	**Nil**	3,00,000	**30,000**	**2,70,000**
		66,00,000			**66,00,000**	**10,50,000**	**55,50,000**

TOTAL DEPRECIATION ADMISSIBLE ₹ 10,50,000

Apportionment of Depreciation and Allowable Depreciation

Assessee	No. of Days	Depreciation on Assets on the date of amalgamation	Depreciation on Assets acquired after amalgamation	Total Depreciation for the Previous Year 2015-16
P Ltd.	01.04.2015 to 31.7.2015 = 122 days	₹ 10,50,000 × 122/366 = ₹ 3,50,000	Nil	₹ 3,50,000
Q Ltd.	01.08.2015 to 31.3.2016 = 244 days	₹ 10,50,000 × 244/366 = ₹ 7,00,000	Nil	₹ 7,00,000

Depreciation : Personal Assets used in the Business

Illustration 11 :

Mr. Hari purchased a house property on 18.11.2011 for ₹15,00,000. Till 1.7.2015, the same was self-occupied for own residence. Thereafter, the said building was brought into use for the purpose of his profession. Determine the amount of depreciable admissible for the Assessment Year 2016-17, given rate of depreciation @ 10%.

Solution :

Property acquired by the assessee himself: As per Sec. 43(1), if a building/asset used for private purpose of the assessee is subsequently put to use for the purpose of business, the cost of acquisition shall be determined in the following manner:

	₹
Cost of acquisition of Residential House Property as on 18.11.2011	15,00,000
Less: Deemed depreciation for the Financial Year 2011-12 @ 50% of 10% on ₹ 15,00,000 (since period of usage is less than 180 days)	75,000
WDV as on 01.04.2012	14,25,000
Less: Deemed Depreciation for Financial Year 2012-13 @ 10% on ₹ 14,25,000	1,42,500
WDV as on 01.04.2013	12,82,500
Less: Deemed Depreciation for Financial Year 2013-14 @ 10% on ₹ 12,82,500	1,28,250
WDV as on 01.04.2014	11,54,250
Less: Deemed Depreciation for Financial Year 2014-15 @ 10% on ₹ 11,54,250	1,15,425
WDV as on 01.04.2015 = **Actual cost for the purpose of charging depreciation**	10,38,825
Less: Depreciation Admissible for Financial Year 2015-16 @ 10% on ₹ 10,38,825	1,03,883
WDV as on 01.04.2016	9,34,942

ASSET IS PARTLY USED FOR BUSINESS, PARTLY FOR PERSONAL PURPOSES [SEC. 38(2)]

If any asset is partly used for business and partly for personal purposes, depreciation u/s. 32(1)(ii) shall be restricted to a fair proportionate part thereof which the Assessing Officer may determine having regard to the user of such assets (building, machinery, plant or furniture) for the purposes of business or profession.

UNABSORBED DEPRECIATION [SEC. 32(2)]

Unabsorbed depreciation shall be treated as part of the current year depreciation such unabsorbed depreciation can be set off not only against income under "Profits and Gains of Business or Profession" but also against income under any other head. Unabsorbed depreciation can be carried forward indefinitely and the business need not be continued in order to get the benefit of carry forward of unabsorbed depreciation.

SPECIAL PROVISION FOR COMPUTATION OF CAPITAL GAINS IN CASE OF DEPRECIABLE ASSETS [SECTION 50]

Notwithstanding anything containing in section 2(42A), where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act, then the provisions of sections 48 and 49 shall be subject to the following modifications:-

(1) Where the full value of the consideration arising as a result of the transfer of one or more capital asset forming part of block of assets exceeds the aggregate of the following amount-

(i) expenditure incurred wholly and exclusively in connection with such transfer or transfers;

(ii) the written down value of the block of assets at the beginning of the Previous Year; and

(iii) the actual cost of any asset falling within the block of assets acquired during the Previous Year.

Such excess shall be deemed to be the Capital Gains arising from the transfer of short-term capital assets;

(2) Where any block of assets ceases to exist as such, for the reason that all the assets in that block are transferred during the Previous Year, then the following shall be deemed to be short-term capital gains/losses:

	₹
Full Value of Consideration	xxx
Less:	
(i) WDV of the block of assets at the beginning of the Previous Year	xxx
(ii) Actual cost of the assets falling within the block acquired during the Previous Year	xxx
(iii) Expenses for transfer	xxx
Short Term Capital Gain/Loss	xxx

INVESTMENT ALLOWANCE [SEC.32A]

In respect of a ship or an aircraft or machinery or plant specified in sub-section 2, which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction, in respect of the Previous Year in which the ship or aircraft was acquired or the machinery or plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that Previous Year, of a sum by way of investment allowance equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee.

INVESTMENT ALLOWANCE FOR ACQUISITION AND INSTALLATION OF NEW PLANT AND MACHINERY [SEC. 32AC]

Section 32AC has been inserted by the Finance Act, 2013 to provide for investment allowance in order to encourage substantial investment in new plant and machinery. Investment allowance is in addition to depreciation.

Conditions: Investment allowance is available if the following conditions are satisfied –

- The assessee is a company.
- It is engaged in the business of manufacture or production of any article or thing.
- It has acquired and installed a "New Asset".

  "New Asset" for this purpose is a new plant or machinery but it does not include–

  (a) Any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

  (b) Any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

  (c) Any office appliances including computers or computer software;

  (d) Any vehicle;

  (e) Ship or aircraft; or

  (f) Any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and Gains of Business or Profession" of any previous year.
- The new asset should be acquired and installed after March 31, 2013 but before April 1, 2015. Both the 'acquisition' and 'installation' of the new asset are required to be made after March 31, 2013 but before April 1, 2015. If the new asset is acquired on or before March 31, 2013 but installed after March 31, 2013, it does not qualify for investment allowance.
- The aggregate amount of actual cost of new asset should be more than ₹100 crore.

Amount of investment allowance: - On satisfaction of above conditions, investment allowance will be available for the assessment years 2014 – 15 and 2015-16 as follows –

- Assessment year 2014-15 – If the aggregate amount of actual cost of new asset (which is acquired and installed during the financial year 2013-14) exceeds ₹100 crore, investment allowance is available for the assessment year 2014-15. The amount of allowance is 15 per cent of actual cost of new asset acquired and installed during the previous year 2013-14.
- Assessment year 2015-16 – Amount of investment allowance shall be calculated as follows –

	₹
Actual cost of new asset acquired and installed during April 1, 2013 and March 31, 2015 [a]	xxx
15% of (a) [b]	
Less: Investment allowance allowed as deduction for the assessment year 2014 – 15 [c]	xxx
Investment allowance for the assessment year 2015-16 [(b) – (c)]	xxx
	xxx

Amount of investment allowance under section 32AC (1A) – A company which satisfies conditions given above can claim investment allowance under section 32AC(1A). Under section 32AC (1A), investment allowance is available if the aggregate amount of actual cost of "new asset" acquired and installed by the company during any previous year exceeds 25 crore. The amount of investment allowance is 15% of actual cost of new asset acquired and installed during the previous year. This deduction is available for the assessment years 2015-16 to 2017-18. However, no deduction is available for the assessment year 2015-16 under section 32AC (1A) to a company which is eligible for deduction under section 32AC(1A).

Withdrawal of investment allowance – The new asset should not be sold or otherwise transferred within a period of 5 years from the date of its installation. If the new asset is sold or transferred within 5 years from its installation, the amount of investment allowance allowed to the assessee shall be deemed to be the income of assessee of the previous year in which such asset is sold or otherwise transferred. Such deemed income will be taxable under the head "Profit and Gains of Business or Profession". Such deemed income shall be taxable in addition to taxability of capital gain which arises under section 45, read with section 50.

Above restriction not to apply in case of amalgamation/demerger – The above restriction will not apply in a case of amalgamation or demerger. In other words, if the undertaking of the assessee – company is amalgamated or demerged within 5 years from the date of installation of new asset, investment allowance allowed to the amalgamating company or demerged company will not be taken back. However, the amalgamated company or the resulting company should not transfer the new asset within 5 years (from its installation by the amalgamating company or demerged company). If it is sold or otherwise transferred within 5 years by the amalgamated company/resulting company, the notional income stated above will be taxable in the hands of amalgamated company or resulting company.

Investment in new plant or machinery in notified backward areas in certain States [Section 32AD]

(1) Where an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1st day of April, 2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal, and acquires and installs any new asset for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020 in the said backward area, then, there shall be allowed a deduction of a sum equal to fifteen per cent of the actual cost of such new asset for the assessment year relevant to the previous year in which such new asset is installed.

(2) If any new asset acquired and installed by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger or re-organisation of business referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47, within a period of five years from the date of its installation, the amount of deduction allowed under sub-section (1) in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of

business or profession" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

(3) Where the new asset is sold or otherwise transferred in connection with the amalgamation or demerger or re-organisation of business referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47 within a period of five years from the date of its installation, the provisions of sub-section (2) shall apply to the amalgamated company or the resulting company or the successor referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47, as the case may be, as they would have applied to the amalgamating company or the demerged company or the predecessor referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47.

(4) For the purposes of this section, "new asset" means any new plant or machinery (other than a ship or aircraft) but does not include—

(a) any plant or machinery, which before its installation by the assessee, was used either within or outside India by any other person;

(b) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(c) any office appliances including computers or computer software;

(d) any vehicle; or

(e) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

TEA DEVELOPMENT ACCOUNT, COFFEE DEVELOPMENT ACCOUNT AND RUBBER DEVELOPMENT ACCOUNT [SECTION 33AB]

(1) The provisions of this section are applicable to an assessee carrying on business of growing and manufacturing tea or coffee or rubber in India and the assessee has before the expiry of 6 months from the end of the previous year or before furnishing the return of income, whichever is earlier –

(a) deposited any amount with National Bank for Agricultural and Rural Development in an account maintained by the assessee with that Bank in accordance with, and for the purposes specified in,a scheme approved in this behalf by the Tea Boa rd or Coffee Board or Rubber Board

(b) deposited any amount in Deposit Account opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Tea Board or Coffee Board or Rubber Board with the previous approval of the Central Government.

On making the deposit within th e stipulated time, the assessee will be entitled to a deduction (such deduction being allowed before set off of any unabsorbed losses of Previous Years) equal to the amount of deposit which will, however, be restricted t o 40% of the profits of such business.

(2) Where the deduction is allowed to a Firm or any Association of Persons or any Body of Individuals, it will not again be allowed in the hand of any of its partner/member.

(3) The accounts of the Business of the assessee for the Previous Year for which the deduction is claimed have been audited by a Chartered Accountant and the assessee furnishes, along with his return of income, the report of such audit in the prescribed Form No. 3AC duly signed and verified by such accountant.

(4) The deduction under this section will not be allowed in respect of any amount utilized for the purchase of:

(i) any machinery or plant to be installed in any office premises or residential accommodation, including accommodation in the nature of guesthouse;

(ii) any office appliances (not being computer)

(iii) any new machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise); and

(iv) any machinery or plant to be installed in an industrial under taking for the purpose of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

(5) Any amount standing to the credit of the assessee in the account (mentioned earlier) or the Deposit Account shall not be allowed to be withdrawn except for the purposes specified in the scheme or, as the case may be, in the deposit scheme or in the circumstances specified below:

(a) *Death of an assessee;*

(c) *Partition of HUF;*

(e) *Liquidation of a company*

(6) Where any amount withdrawn from the said account is utilized by the assessee for the purposes of any business expenditure in accordance with the scheme or the deposit scheme, then such expenditure will not be allowed as deduction in computing the income chargeable under the Head "Profit and gains of business or profession".

(7) Where any amount standing to the assessee in the special account or in the Deposit Account is released/withdrawn during any previous year for being utilized by the assessee for purpose of business in accordance with the scheme and such amount is not so utilized, within that previous year, the amount not so utilized shall be deemed to be Business Income of the previous year.

(8) Where any asset acquired in accordance with the scheme or the deposit scheme is sold or otherwise transferred in any Previous Year within 8 years from the end of the Previous Year in which it was acquired, such part of the cost of such asset as is relatable to the deduction earlier allowed shall be deemed to be the profits and gains of business or profession of the Previous Year in which the asset is sold or otherwise transferred.

(9) Deduction under this section is computed before apportioning the income under Rule 7A/7B/8, Rule 7A/7B/8 provides that in case of an assessee carrying on business of growing and manufacturing of tea or coffee or rubber, computation of Agricultural and business income is done on the basis of percentage of business profits in the following manner –

Rule	Nature of Business	Agricultural Income %	Business Income %
7A	Sale of centrifuged latex or cenex manufactured from rubber	65	35
7B	Sale of grown and cured coffee by the seller in India	75	25
	Sale of grown, cured, roasted and grounded coffee by the seller in India	60	40
8	Sale of grown and manufactured tea	60	40

(10) Procedure of computation of Business Income in case of 33AB along with Rule 7A/7B/8:

Particulars	Amount (₹)	Amount (₹)
Profit from business before deduction u/s 33AB		xxx
Less: Deduction u/s 33AB:		
Least of the following:		
(a) 40% of the Profit from the business	xxx	
(b) Amount deposited within the specified time in the specified account	xxx	xxx
Profit of the Business		xxx
Less: Agricultural Income [as per Rule 7A/7B/8]		xxx
Business Income		xxx
Less: Unabsorbed business loss or unabsorbed depreciation		xxx
Taxable Business Income		xxx

Illustration 12 :

Cash Book of M/S Brinda Rubber for financial year 2015-16 is given below:

Cash Book

Dr. ***Cr.***

Particulars	Amount (₹)	Particulars	Amount (₹)
To, Balance b/d	15,750	By, Salaries & Wages A/c	9,78,000
To, Sale of centrifuged latex	14,45,800	By, Electricity Charges A/c	32,500
To, Interest on Bank FD	38,000	By, Printing & Stationery A/c	2,890
		By, Other Expenses A/c	28,110
		By, Amount deposited to Special A/c [specified by Rubber Board and approved by Central Govt.]	2,00,000
		By, Amount deposited to a account not specified by Central Govt.	2,00,000
		By, Bank Charges A/c	
		By, Balance c/d	1,550
			56,500
	14,99,550		14,99,550

Additional Information:

1. Deprecation allowed u/s 32 of Income Tax Act is ₹ 28,200 but depreciation to be charged to the Profit & Loss A/c is ₹ 31,550.
2. Unabsorbed business loss brought forward is ₹ 30,000 [A.Y. 2013-14].

You are required to prepare Profit & Loss A/c and calculate the Taxable Business Profit for the Assessment Year 2015-16.

Solution:

Profit & Loss A/c
for the year ended 31st March, 2016

Particulars	Amount (₹)	Particulars	Amount (₹)
To, Salaries & Wages A/c	9,78,000	By, Sale of centrifuged latex	14,45,800
To, Electricity Charges A/c	32,500	By, Interest on Bank FD	38,000
To, Printing & Stationery A/c	2,890		
To, Other Expenses A/c	28,110		
To, Bank Charges A/c	1,550		
To, Depreciation A/c	31,550		
To, Net Profit - transferred	4,09,200		
	14,83,800		14,83,800

Statement showing calculation of Business Income

Particulars		Amount (₹)
Net Profit as per Profit & Loss A/c		4,09,200
Add: Depreciation debited to Profit & Loss A/c		31,550
		4,40,750
Less: depreciation allowable under Section 32		28,200
Income chargeable under other head		38,000
Business Profit		3,74,550
Less: Deduction u/s 33AB:		
Least of the following:		
(a) 40% of the Profit from the business	₹ 1,49,820	
(b) Amount deposited within the specified time in the specified account	₹ 2,00,000	1,49,820
Profit of the Business		2,24,730
Less: Agricultural Income [as per Rule 7A]		1,46,075
Business Income		78,655
Less: Unabsorbed business loss		30,000
Taxable Business Income		48,655

Illustration 13 :

X Ltd., is a company engaged in the business of growing, manufacturing and selling of tea.

For the accounting year ended 31st March, 2015, its composite business profits, before an adjustment under section 33AB of the Income-tax Act, were ₹ 60 lakhs. In the year, it deposited ₹ 25 lakhs with NABARD.

The company has a business loss of ₹10 lakhs brought forward from the Previous Year.

The company withdrew in February, 2015 ₹ 20 lakhs from the deposit account to buy a non-depreciable asset for ₹ 18 lakhs and could not use the balance before the end of the accounting year. The withdrawal and the purchase were under a scheme approved by the Tea Board.

The non-depreciable asset was sold in November, 2015 for ₹ 29 lakhs.

Indicate clearly the tax consequences of the above transactions and the total income for the relevant years.

Solution:

Computation of Total Income of X Ltd. for A.Y. 2015-16

Particulars	₹
Net profits before adjusting deduction u/s 33AB	60,00,000
Less: Deduction u/s 33AB - Lower of :	24,00,000
(i) 40% of ₹60 lakhs = ₹24 lakhs; or	
(ii) actual amount deposited with NABARD = ₹25 lakhs	
Profiits after adjusting deduction u/s 33AB	36,00,000
As per Rule 8 of Income-tax Rules, 40% of this sum is subject to income-tax and the balance 60% is treated as agricultural income.	
Hence, the business income is 40% of ₹36 lakhs	14,40,000
Add: Non-utilisation of amount withdrawn:	
₹ 2 lakhs [i.e. (₹20 lakhs – ₹18 lakhs)]	
40% is taxable as business income (the balance 60% is treated as agricultural income).	80,000
Business Income	15,20,000
Less: Business loss brought forward from the Previous Year	10,00,000
Total Income	**5,20,000**

Computation of total income of X Ltd. for A.Y. 2016-17

Particulars	₹
Business income **(See Note 2)**	7,20,000
Capital gains (Short-term) **(See Note 1)**	11,00,000
Total Income	**18,20,000**

Note 1 - Computation of capital gains

Particulars	₹
Sale proceeds	29,00,000
Less: Cost of acquisition	18,00,000
Short Term Capital Gains (since the period of holding is less than 36 months)	**11,00,000**

Note 2 - Computation of business income:

Since the asset is sold within 8 years, the cost of the asset i.e. ₹ 18 lakhs should be treated as income since the same has been allowed as deduction in the Assessment Year 2015-16.

However, out of this ₹18 lakhs, 60% would be agricultural income and the balance 40% i.e. ₹7.2 lakhs would be business income of P.Y. 2015-16. This is because deduction under section 33AB was allowed in P.Y. 2014-15 before disintegration of income into agricultural income and non-agricultural income.

The assessment must satisfy the following conditions :

(i) The assessee must be engaged in the business of tea, coffee or rubber plantation in India

(ii) The amount must be deposited in a "Special Account" Specified in Section 33AB.

(iii) The deposit should be made within the specified time limit.

(iv) The accounts should be duly audited.

Amount of Deduction :

Least of the followings :

(i) Amount Deposited

(ii) 40% of the Profit of the Business before any adjustment u/s 33AB & Sec. 72.

Site Restoration Fund [Sec. 33ABA]

Deduction under section 33ABA is allowed to an assessee who satisfies the following conditions:

Essential conditions:

(1) The assessee is carrying on business consisting of prospecting for or extraction or production of petroleum or natural gas or both in India and in relation to which the Central Government has entered into an agreement with such assessee for such business.

(2) The assessee has before the end of the previous year (a) deposited with the State Bank of India any amount(s) in a special account maintained by the assessee with that bank, in accordance with and for the purposes specified in, a scheme approved in this behalf by the ministry of Petroleum and Natural Gas of the Government of India; or (b) deposited any amount in the Site Restoration Account opened by the assessee in accordance with, and for the purpose specified in a scheme framed by the aforesaid Ministry. This scheme is known as Deposit Scheme.

(3) The assessee must get its accounts audited by a Chartered Accountant and furnish the report of such audit in the Form No. 3AD along with the return of income. In a case where the assessee is required by or any other law to get its accounts audited, it shall be sufficient compliance if such assessee gets the accounts of such business audited under such law and furnishes the report of the audit as required under such other law and a further report in the form prescribed.

(4) **Quantum of deduction:** Quantum of deduction shall be:

(a) the amount deposited in the scheme referred to above; or

(b) 20% of the profit of such business computed under the head profits and gains of business or profession, whichever is less.

(5) **Restriction on utilization of the deposit amount:** The amount standing to the credit of the assessee, in the Special Account of State Bank of India or the Site Restoration Account, is to be utilized for the business of the assessee in accordance with the scheme specified. However, no deduction shall be allowed in respect of any amount utilized for the purchase of:

(a) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest house;

(b) any office appliances (not being computers);

(c) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and Gains of Business or Profession" of any one Previous Year;

(d) any new machinery or plant to be installed in an industrial undertaking for purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

(6) **Withdrawal of deposit:** Any amount deposited in the special account maintained with State Bank of India or the Site Restoration Account shall not be allowed to be withdrawn, except for the purposes specified in the scheme or, as the case may be, in the deposit scheme.

(7) **Withdrawal of deduction:** The deduction will be withdrawn under the following circumstances:

(i) Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is withdrawn on closure of the account during any Previous Year by the assessee, the amount so withdrawn from the account, as reduced by the amount, if any, payable to the Central Government by way of profit or production share as provided in the agreement referred to in section 42, shall be deemed to be the Profits and Gains of Business or Profession of that Previous Year and shall accordingly be chargeable to income-tax as the income of that Previous Year. Further, if the business carried on by the assessee is no longer in existence, these provisions shall apply as if the business is in existence in that Previous Year.

(ii) Where any amount, standing to the credit of the assessee in the special account or in the Site Restoration Account, which is released during any Previous Year by the State Bank of India or which is withdrawn by the assessee from the Site Restoration Account for being utilized by the assessee for the purposes of such business in accordance with the scheme or the deposit scheme is not so utilized, either wholly or in part, within that Previous Year, the whole of such amount or, as the case may be, part thereof which is not so utilized shall be deemed to be profits and gains of business and accordingly chargeable to income-tax as the income of that Previous Year.

(iii) Where any asset acquired in accordance with the scheme is sold or otherwise transferred before the expiry of 8 years from the end of the Previous Year in which it was acquired, such part of the cost of the asset as is relatable to the deduction allowed, shall be treated as the income of the Previous Year in which the asset is sold or otherwise transferred.

The restriction of 8 years will not be applicable in the following cases

(i) where the asset is sold or transferred by the assessee to Government, local authority or a statutory corporation or a Government company;

(ii) Where the sale or transfer of the asset is made in connection with the succession of a firm by a company provided the following conditions are satisfied:

(a) All the assets and all the liabilities of the firm relating to the business or profession immediately before the succession become the assets and liabilities of the company;

(b) All the shareholders of the company were partners of the firm immediately before the succession.

Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is utilized by the assessee for the purpose of any expenditure in connection with such business in accordance with the scheme or the deposits scheme, such expenditure shall not be allowed in computing the income chargeable under the head Profits and Gains of Business or Profession.

Expenditure On Scientific Research [Sec. 35]

"Scientific Research" means any activities for the extension of knowledge in the filed of natural or applied sciences including agriculture, animal husbandry and fisheries. [Sec. 43(4)]

Section	Particulars		Deduction
35(1) (i)	Revenue Expenditure related to the business — incurred for own business	– Current year	100%
		– Prior Period	100% upto 3 years prior to commencement
35(1) (ii)	Any sum paid to approved Scientific Research Association or University or College or Institution	For undertaking Scientific research	175% of amount paid
35(1) (iia)	Any sum paid for scientific research, to a company, registered in India, having an object to carry out scientific research and development activities	For undertaking Scientific research	125% of amount paid
35(1) (iii)	Any sum paid to an approved University, College or other Institution	For research in Social Science or Statistical research	125% of amount paid
35 (1) (iv) read with 35 (2)	Capital expenditure incurred for own business (excluding cost of land)	related to the business Current year	100% reduction
		Prior Period	100% upto 3 years prior to commencement
35(2AA)	Any sum paid to National Laboratory or University or IIT or a specified person	For undertaking a program approved by the prescribed Authority	200% of amount paid
35(2AB)	In house research and development of Bio-technology in the business of manufacture or production of any article or thing, not being an article or thing specified in list of Eleventh Schedule	Bio-technology or in-house research	200% of expense incurred allowed upto 31.3.2017

For the purpose of claiming deduction under section 35(2AB), the assessee shall enters into an agreement with the prescribed authority for co-operation in such research and development facility and for audit of the accounts maintained for that facility.

Expenditure on scientific research- In view of section 43(4)(ii), reference to expenditure incurred on scientific research includes all expenditure incurred for the prosecution, or the provision of facilities for the prosecution, of scientific research, but do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research.

Any methodical or systematic investigation based on science into the study of any materials and sources, is a scientific research. The dismantling of the imported coffee machine with a view to decipher how the said machine functions and also with a view to develop a new model of the machine with the intention of making the said machine suitable to the Indian condition is an investigation based on science and included in the definition of scientific research. When the term investigation based on science, it included in the definition of scientific research. When the term scientific research is used in relation to business, it does not have to be a research only in the field of natural or applied sciences.

Scientific research related to business- In view of section 43(4)(iii), reference to scientific research related to a business or class of business include:

(I) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class; and

(II) any scientific research of a medical nature which has a special nature which has a special relation to the welfare of workers employed in that business or, as the case may be, all businesses of that class.

Carry forward and setoff of deficiency in subsequent year- If on account of inadequacy or absence of profit of the business, deduction on account of capital expenditure referred to in section 35(1)(iv) cannot be allowed, fully or partly, the deficiency so arising is to be carried forward for unlimited years and set-off in any subsequent Assessment Year. However, carry forward of deficiency is subject to the condition that business loss already brought forward, if any, will have precedence over such deficiency in the matter of set-off. To put it little differently, the aforesaid deficiency will be given the same treatment as is given to unabsorbed depreciation vis-a-vis brought forward business losses.

Consequence in the case of Amalgamation- In pursuance of an agreement of amalgamation, if the amalgamating company transfer to the amalgamated company, which is an Indian Company, any asset representing capital expenditure on scientific research, provision of section 35 would apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not transferred the asset.

Expenditure on acquisition of patent rights and copyrights [section 35A]

If expenditure on acquisition of patent rights/ copyrights is incurred after March 31, 1988, depreciation is available under section 32. Now a day no deduction is available under section 35A.

Deduction in respect of expenditure on Know-how [section 35AB]

Deduction under section 35AB is available only if expenditure is incurred before April 1, 1998. If expenditure on acquisition of technical Know-how is incurred after March 31,1998, depreciation is available under section 32.

AMORTISATION OF TELECOM LICENCE FEES [Sec. 35ABB]

Expenditure incurred for obtaining licence to operate telecommunication services shall be allowed for deduction / amortization, if the following conditions are satisfied:

(i) Expenditure should be capital in nature;

(ii) Expenditure should have been incurred for purpose of acquiring any right to operate telecommunication services;

(iii) Payment should have been actually made to obtain a licence;

(iv) Expenditure may be incurred either before commencement of business or at any time during the previous year.

Mode of calculating deduction :

(i) If licence fees is actually paid before commencement of business

$$= \frac{\text{Licence fees actually paid before commencement of business}}{\text{No. of years from the previous year of commencement of business to the previous year in which licence expires}}$$

(ii) If licence fees is paid after commencement of business

$$= \frac{\text{Licence fees actually paid after commencement of business}}{\text{N No. of years from the previous year in which licence fee actually paid to the Previous Year in which licence expires}}$$

In case of transfer :

(a) Calculate Unallowed amount = Actual cost of licence fee paid less amount of deduction already claimed u/s 35ABB

(b) For consideration received on transfer:

(i) If whole licence is transferred and net consideration is less than "Unallowed Amount" Business Expenditure = Unallowed amount less Net consideration

(ii) Where part of licence is transferred and net consideration is less than "Unallowed amount"

$$\text{Amount of deduction} = \frac{\text{Unallowed Amount less Net Consideration}}{\text{Remaining period of licence}}$$

(iii) Where whole or part of licence is transferred and net consideration is more than "Unallowed amount"

Net consideration **more** than Unallowed Amount but **less** than Original Cost of licence	Business Income = Net Consideration less Unallowed amount
Net Consideration is **more** than Original Cost of licence and Un allowed Amount	Business Income = Original cost of licence less Unallowed Amount Capital Gain = Net Consideration less Original Cost of licence

The following table would explain the various situations

	Full Sold @150	**A**	**B**	**C**	**D**
Transfer of licence	**Example**	**Full**	**In Part**	**Full**	**In part**
Licence period (years)		7	7	7	7
Acquisition cost	140	140	140	140	140
Deduction claimed so far (4 years)	80	80	80	80	80
Unamortised value	60	60	60	60	60
Sale price – current year	150	140	45	50	30
Amount remaining to be amortised	—	—	15	—	30
Amount deductible U/s. 35ABB(3)	—	—	—	10	—
Amount chargeable to tax as business income	80	80	—	—	—
Amount to be amortised in remaining 3 years	—	—	5	—	10
Capital Gains (150-140)	10	—	—	—	—

Consequences in the case of amalgamation or demerger- Where under the scheme of amalgamation, a telecom licence is transferred by the amalgamating company to the amalgamated company (being an Indian Company) or by a demerged company to a resulting company (being an Indian company), then deduction will not be available under section 35ABB continue to apply to the amalgamated company. However, the provisions of section 35ABB continue to apply to the amalgamated company if the latter had not transferred the licence.

Where a deduction for any Previous Year is claimed and allowed under section 35ABB, then no deduction of the same expenditure shall be allowed under section 32 for the same Previous Year or any subsequent Previous Year.

Illustration 14 :

Free Call Ltd. obtained a telecom licence on 15.6.12 for a period of 8 years ending on 31.3.2020 against a fee of ₹ 30 crores to be paid in four instalments of ₹12 crores, ₹7 crores, ₹6 crores, ₹5 crores by June 2012, June 2013, June 2014 and June 2015 espectively. Explain how the payment for licence fee shall be dealt under the Income Tax Act, 1961.

Solution :

Assessee : Free Call Ltd. **Previous Year 2015-16** **Assessment Year : 2016-17**

(a) U/s 35ABB, expenditure incurred for the purpose of acquiring any right to operate telecommunication services is allowed equally as deduction throughout the unexpired life of the licence. Deduction shall be allowed only for the actual payment made.

(b) If only part payment is made, amortization is based on the amount paid and not on the basis of total consideration. For any further payments, deduction/amortization is allowed equally for the remaining unexpired useful life.

(c) Computation of amount of eligible deduction u/s 35 ABB:

Previous Year	Amount paid (₹ Crores)	Unexpired Period of Licence on the date of actual payment	Amount of Deduction (₹ Crores)
2012-13	12.00	8 years	1.50
2013-14	7.00	7 years	[1.50 + (7.00/7)] = 2.50
2014-15	6.00	6 years	[2.50 + (6.00/6)] = 3.50
2015-16	5.00	5 years	[3.50 + (5.00/5)] = 4.50

Illustration 15 :

Hello International Ltd. incurs an expenditure of ₹ 240 crores for acquiring the right to operate telecommunication services for Assam & Sikkim. The payment was made in November 2013 and the licence to operate the services was valid for 15 years. In December 2014, the company transfers part of the licence, in respect of Assam, to Hi International Ltd. for a sum of ₹56 crores and continue to operate the licence in Sikkim. What is the deduction allowable u/s 35ABB to Hello International Ltd. for the Assessment Year 2016-17?

Solution :

Assessee: Hello International Ltd. **Previous Year : 2015-16** **Assessment Year : 2016-17**

(a) u/s 35ABB, where part of the Telecom Licence is transferred and Net Consideration received on such transfer, is less than the expenditure remaining unallowed, the amount of deduction shall be computed as follows :

(i) Unallowed amount as on 01.04.2014	= Total Expenditure Less Deduction for Financial Year 2013-14 = ₹ 240 crores Less (₹ 240 crores/licence period of 15 years) = ₹ 240 crores less ₹ 16 crores = ₹ 224 crores.
(ii) Net Consideration received	= ₹ 56 crores
(iii) Remaining period of licence	= 14 years (including current Previous Year)
(iv) Deduction u/s 35ABB	= ₹ (224 crores less 56 crores)/14 years = ₹ 12 crores.

Illustration 16 :

Jammer International Ltd. incurs an expenditure of ₹300 crores for acquiring the right to operate telecommunication services for Odisha and Jharkhand. The payment was made in August 2014 and the licence to operate the services was valid for 12 years. In December 2015, the company transfers part of the licence, in respect of Odisha to Hammer International Ltd. for a sum of ₹280 crores and continue to operate the licence in Jharkhand . What is the deduction allowable u/s 35ABB to Jammer International Ltd. for the Assessment Year 2016-17?

Solution:

Assessee: Jammer International Ltd. Previous Year : 2015-16 Assessment Year : 2016-17

(a) u/s 35ABB, where part of the Telecom Licence is transferred and Net Consideration received on such transfer, is more than the expenditure remaining unallowed, the amount of deduction shall be computed as follows :

(i) Unallowed amount as on 01.04.2015	= Total Expenditure Less Deduction for Financial Year 2014-15 = ₹300 crores Less (₹300 crores / licence period of 12 years) = ₹300 crores less ₹25 crores= ₹275 crores.
(ii) Net Consideration received	= ₹280 crores
(iii) Remaining period of licence	= 11 years (including current Previous Year)
(iv) Deduction u/s 35 ABB	= Nil
(v) Business Income	= ₹ (280 – 275) = ₹ 5 crores.

Illustration 17 :

Ms. Chitralekha, a retail trader of Kolkata furnishes the following Extracted Trading and Profit and Loss Account for the year ending 31st March, 2016 :

Trading and Profit and Loss Account for the year ended 31.03.2016

Particulars	₹	Particulars	₹
To Opening Stock	90,000	By Sales	12,11,500
To Purchases	10,04,000	By Income from UTI	2,400
To Gross Profit	3,06,000	By Other business receipts	6,100
		By Closing stock	1,80,000
	14,00,000		14,00,000
To Salary	60,000	By Gross profit b/d	3,06,000
To Rent and Rates	36,000		
To Interest on loan	15,000		
To Depreciation	1,05,000		
To Printing & stationery	23,200		
To Postage & telegram	1,640		
To Loss on sale of shares (Short term)	8,100		
To Other general expenses	7,060		
To Net Profit	50,000		
	3,06,000		3,06,000

Additional Information :

(i) It was found that some stocks were omitted to be included in both the Opening and Closing Stock, the values of which were

Opening Stock ₹ 9,000

Closing Stock ₹ 18,000

(ii) Salary includes ₹ 10,000 paid to his brother, which is unreasonable to the extent of ₹ 2,000.

(iii) The whole amount of Printing and Stationery was paid in cash.

(iv) The depreciation provided in the Profit and Loss Account ₹ 1,05,000 was based on the following information :

The written down value of plant and machinery is ₹ 4,20,000. A new plant falling under the same Block of depreciation of 25% was bought on 1.7.2015 for ₹70,000. Two old plants were sold on 1.10.2015 for

₹ 50,000.

(v) Rent and Rates includes sales tax liability of ₹ 3,400 paid on 7.4.2015.

(vi) Other business receipts include ₹ 2,200 received as refund of sales tax relating to 2013-14.

(vii) Other general expenses include ₹ 2,000 paid as donation to a Public Charitable Trust.

You are required to advise Ms.Chitralekha whether she can offer her business income for the A.Y. 2016-17.

Solution :

Computation of Income from Business

Assessee : Ms. Chitralekha **A.Y : 2016-17.**

	₹	₹
Net Profit as per Profit and loss account		50,000
Add : **Inadmissible expenses / losses and unrecorded items**		
Under valuation of closing stock	18,000	
Unreasonable salary paid to brother [Section 40A(2)]	2,000	
Printing and Stationery paid in cash [Section 40A(3)] 100% of ₹ 23,200	23,200	
Depreciation (considered separately)	1,05,000	
Short term capital loss on shares	8,100	
Donation to public charitable trust	2,000	1,58,300
		2,08,300
Less : **Deductions items:**		
Under valuation of opening stock	9,000	
Income from UTI	2,400	
Refund of sales tax [Taxable u/s 41(1) – No adjustment necessary]	—	11,400
Business income before depreciation		1,96,900
Less : Depreciation (see note 1)		66,000
Income from Business		1,30,900

Note 1 :

Calculation of Depreciation

WDV of the block of Plant & Machinery as on the first day of Previous Year	4,20,000
Add : Cost of new Plant & Machinery	70,000
	4,90,000
Less : Sale proceeds of assets sold	50,000
WDV of the block of Plant & Machinery as on the last day of Previous Year	4,40,000
Depreciation @ 15%	66,000

Note 2 : No additional depreciation is allowable as the assessee is not engaged in manufacture or production of any article.

Note 3: Since sales-tax liability has been paid before the due date of filing return of income under section 139(1), the same is deductible.

Illustration 18 :

Discuss the tax implications of the following transactions in the case of a doctor running a nursing home :

		₹
(1)	Amount paid to a scientific research association approved by the Central Government and run by a drug manufacturing company	20,000
(2)	Amounts received from the employees of the nursing home as contributions towards provident fund for the month of March, 2016 paid to the PF Commissioner on 25th April, 2016	25,000
(3)	Repayment made in cash towards purchases of medicines	50,000
(4)	Repayment of loan taken from a bank for doing a post-graduate course in medicine – instalment	50,000
	– interest	10,000

Answer :

(i) Under section 35(1)(ii), 175% of the sums paid to scientific research association, which has as its object the undertaking of scientific research is deductible.

Deduction admissible = 20,000 ×175%

= ₹ 35,000.

(ii) Under clause (x) of sub section 24 of section 2, any sum received by an assessee from his employees as contribution to any provident fund is deemed to be his income. Such income is deductible under section 36(1) (va) only if it is credited to the employees' account in the relevant fund by the due date.

Under Employees' Provident Fund Act, the due date for the payment of the contribution is the 15th of the month following the month for which the contribution is due. A grace period of 5 days is also allowed. Hence the payment of the employee's contribution for the P.F. Commissioner should have been made by 20th April. Since the payment has been made on 25th April, the deduction is not available.

(iii) Under section 40A(3) payments made in cash exceeding ₹ 20,000 are not allowable in computing the income from business or profession. Hence ₹ 50,000 will be disallowed. It is assumed that the case is not covered by the exceptions under Rule 6DD.

(iv) Under section 80E, a deduction is admissible in the case of an individual towards any amount paid in the previous year by way of interest on loan taken from any financial institution for the purpose of pursuing his higher education. The purpose stated in the question is covered by the section. The deduction is allowable only towards payment of interest. The amount deductible under section 80-E would be ₹10,000.

Expenditure On Eligible Projects/Schemes [Sec. 35AC]

Where an assessee incurs any expenditure by way of payment of any sum to a public sector company or a local authority or to an association or institution approved by the national committee for carrying out any eligible project or scheme it will be allowed as deduction. In order to avail the deduction under this section the assessee should furnish with return of income, a certificate from the Chartered Accountant to that extent.

National committee can withdraw the approval granted by it to an association or institution on the ground that the project or scheme is not being carried out in accordance with all or any of the conditions subject to which approval was granted or the notification through which a project or scheme was notified after giving reasonable opportunity. The contribution or donation received by the company or authority or association or institution, as the case may be, or the deduction claimed by company in respect of any expenditure incurred directly on the eligible project or scheme, the approval for which is withdrawn by the national committee shall be deemed to be the income of the company or authority or association or institution as the case may be, of the year in which such approval or notification is withdrawn w.e.f. AY 2003-04 and shall be taxed at the maximum marginal rate of tax in force for that year.

Deduction in Respect of Expenditure on Specified Business [Sec. 35AD]

Section 35AD has been inserted (with effect from the Assessment Year 2010-11) to provide for investment-linked tax incentive.

Conditions - The following conditions should be satisfied to avail of the benefit of deduction under section 35AD—

Condition 1 – SPECIFIED BUSINESS - Deduction under section 35AD is available only in the case of a "specified business" given below—

Specified business	Who should own the business	Approval (if any)	Date of commencement of business
1. Setting up and operating a cold chain facility [Note 1]	Any person	Not required	On or after April 1, 2009
2. Setting up and operating a ware-housing facility for storage of agricultural produce.	Any person	Not required	On or after April 1, 2009
3. Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network	An Indian company or a consortium of Indian companies or an authority /Board/ corporation established under any Central or State Act	Should be approved by Petroleum and Natural Gas Regulatory Board and notified by the Central Government [Note 2]	• On or after April 1, 2007, in the case of laying and operating a cross-country natural gas pipeline net-work for distribution or storage. • In other cases, on or after April 1, 2009.

4. Building and operating anywhere in India a hotel of 2 star or above category [Note 3]	Any person	No approval required; however, hotel should be classified by the Central Government as 2 star hotel or above category	On or after Aptil 1, 2010
5. Building and operating, anywhere in India, any hospital with at least 100 beds for patients	Any person	No approval required	On or after April 1, 2010
6. Developing and building a housing project	Any person	Developing and building housing project should be under a scheme for slum redevelopment or rehabilitation framed by the Central Government/ State Government and notified by the Board in accordance with prescribed guidelines	On or after April 1, 2010
7. Developing and building a housing project	Any person	Developing and building a housing project should be under a scheme for affordable housing framed by the Central Government or a State Government and notified by the Board [Rule 11-OA]	On or after April 1, 2011
8. Production of fertilizer in India	Any person	Not required	On or after Aptil 1, 2011
9. Setting up and operating an inland container depot or a container freight station	Any person	As notified or approved under the Customs Act	On or after April 1, 2012
10. Bee-keeping and production of honey and beeswax	Any person	No approval	On or after April 1, 2012
11. Setting up and operating a warehousing facility for storage of sugar	Any person	No approval	On or after April 1, 2012
12. Laying and operating a slurry pipeline for the transportation of iron ore	Any person	No approval	On or after April 1, 2014
13. Setting up and operating a semi-conductor wafer fabrication manufacturing unit	Any person	As notified by the Board in accordance with such guidelines as may be prescribed	On or after April 1, 2014

Note 1 - "Cold chain facility" means a chain of facilities for storage or transportation of agticultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, florticulture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce. In this definition, the words 'storage' and 'transportation' are separated by the conjunction 'or'. 'Storage' and 'transportation' are complementally to each other and the absence of one will not make the chain complete. However, separation is specified by use of the word 'or '. Consequently, an assessee is eligible for deduction under section 35AD even if it has operated only cold storage plant and does not operate transportation facility.

Note 2 - This business should make not less than one-third (for a natural gas pipeline network) or one-fourth (for petroleum product pipeline network) of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person. Associated person is a person who participates in the management of the assessee; holds at least 26 per cent voting power in the assessee; appoints more than half of the board of directors or who guarantees not less than 10 per cent of the total borrowing of the assessee.

Note 3 - Where an assessee builds a two-star (or above category) hotel and, subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business of building and operating hotel for the purpose of section 35AD (applicable from the Assessment Year 2011-12).

Condition - 2 SPECIFIED BUSINESS SHOULD BE NEW BUSINESS – The specified business should not be set by splitting up, or the reconstruction, of a business already in existence. Moreover, it should not be set up by the transfer of old plant and machiney.However,

- 20 percent old machinery is permitted.
- Second-hand imported machinery is treated as new subject to the following conditions:-

1. Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India.
2. Such machinery or plant is imported into India from any country outside India.
3. No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assesse.

Condition - 3 AUDIT OF BOOKS OF ACCOUNT – Books of account of the assessee should be audited.

Amount of deduction – 100 per cent of capital expenditure incurred wholly and exclusively for the purpose of specified business carried on by an assessee is deductible in the Previous Year in which the expenditure is incurred. However, this is subject to the following propositions —

1. Expenditure incurred on the acquisition of any land or goodwill or financial instrument is not eligible for any deduction under section 35AD.
2. Expenditure incurred prior to the commencement of operation, wholly and exclusively, for the purpose of any specified business, shall be allowed as deduction during the Previous Year in which the assessee commences the operation of his specified business, if the amount is capitalized in the books of account of the assessee on the date of commencement of operation.
3. If operation of the business of laying and operating a cross-country natural gas distribution network is commenced during April, 2007 and March 31, 2009 and deduction for such amount has beeen allowed to the assessee in any earlier year.

CONSEQUENCES OF CLAIMING DEDUCTION UNDER SECTION 35AD – The following consequences should be noted—

1. If deduction is claimed and allowed under section 35AD, the assessee shall not be allowed any deduction in respect of the specified business under the provisions of Chapter VIA under sections 80HH to 80RRB for the same or any other Assessment Year. Moreover, no deduction shall be allowed (with effect from the assessment year 2015-16) under the provisions of section 10AA in respect of a specified business when deduction is claimed under section 35AD.
2. No deduction in respect of the expenditure in respect of which deduction has been claimed shall be allowed to the assessee under any other provisions of the Income-tax Act.
3. Any sum received or receivable on account of any capital asset, in respect of which deduction has been allowed under section 35AD, being demolished, destroyed, discarded or transferred shall be treated as income of the assessee and chargeable to income-tax under the head "Profits and Gains of Business or Profession".
4. Any loss computed in respect of the specified business shall not be set off except against profits and gains, if any, of any other specified business. To the extent the loss is unabsorbed, the same will be carried forward for set off against profits and gains from any specified business in the following Assessment Year and so on.
5. If the assessee owns two units one of them qualifies for deduction under section 35AD and the other one is not eligible for the same and there is inter-unit transfer of goods or services between the two units, then for the purpose of section 35AD calculation will be made as if such transactions are made at the market value.

   Any asset in respect of which a deduction is claimed and allowed under section 35AD, shall be used only for the specified business for a period of 8 years beginning with the previous year in which such asset is acquired or constructed. If such asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be business income of the assessee of the previous year in which the asset is so used (applicable from the assessment year 2015-16). However, this provision will not apply to a company which has become a sick industrial company under section 17(1) of the Sick Industrial Companies (Special Provisions) Act within the time period of 8 years as stated above.

EXPENDITURE BY WAY OF PAYMENT TO ASSOCIATION AND INSTITUTION FOR CARRYING OUT RURAL DEVELOPMENT PROGRAMME [SEC. 35CCA]

Where an assessee incurs any expenditure by way of payment of any sum- A) to an association or institution engaged in any programme of rural development, or B) to an association or institution which undertakes training of persons for implementing any programme of rural development or C) to National fund set up for rural development notified in this behalf by the Central Government or to the National Urban Poverty Eradication fund set up and notified by the Central Government, he will be allowed a deduction of the amount of such expenditure incurred during the Previous Year.

EXPENDITURE ON AGRICULTURAL EXTENSION PROJECT [SEC. 35CCC]

Section 35CCC provides that when an assessee incurs any capital or revenue expenditure for agricultural extension project notified by the CBDT, he will be allowed weighted deduction of 150% of such expenditure [w.e.f. AY 2013-14]

EXPENDITURE FOR SKILL DEVELOPMENT [SEC. 35CCD]

Section 35CCD provides that where a company incurs expenditure (other than expenditure on any land or building) on any skill development project notified by the CBDT, it will be allowed weighted deduction of 150% of such expenditure.[w.e.f. A.Y.2013-14]

AMORTISATION OF CERTAIN PRELIMINARY EXPENSES [SEC. 35D]

The deduction is allowed under this section only in case of an Indian company or a person (other than company) resident in India. The deduction is in respect of the expenditure incurred after 31.3.1970 and expenditure may be of the type which was incurred —

(i) before the commencement of the business, or

(ii) after the commencement of his business, in connection with the extension of existing industrial unit.

The following expenses shall be eligible for deduction u/s 35D(2):

(a) expenditure in connection with-

(i) preparation of feasibility report;

(ii) preparation of project report;

(iii) conducting market survey or any other survey necessary for the business of the assessee;

(iv) engineering services relating to the business of the assessee.

(b) Legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business of the assessee.

(c) The following expenses in case of company assessees :

(i) legal charges for drafting the Memorandum and Articles of Association of the company;

(ii) on printing of the Memorandum and Articles of Association;

(iii) by way of fees for registering the company under the provision of the Companies Act, 2013;

(iv) in connection with the issue, for public subscription, of shares in or debentures of the company being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus.

(d) Such other item of expenditure (not being expenditure eligible for any allowance or deduction under any other provision of this Act) as may be prescribed.

Mode of Deduction:

Deduction of qualified amount is allowed in 5 equal instalements beginning with the Previous Year in which the business is commenced.

Amount of expenditure qualifying for deduction :-

The aggregate amount of expenditure referred to clause (a) to (d) above shall not exceed 5% cost of project if such expenditure incurred after 1.4.1998. But in case of an Indian company, 5% of the cost of the project or 5% of the capital whichever is higher.

"Capital employed" means the aggregate of issued capital debentures and long term borrowings (repayable during a period of not less that 7 years) as on the last day of relevant Previous Year.

In case of an Indian company under amalgamation/demerger, no deduction shall be allowed to amalgamating/ demerged company for the Previous Year in which amalgamation/demerger takes place.

Deduction is allowed to the amalgamated company/ resulting company in the same manner as allowable to amalgamating/demerged company. Audit of accounts is necessary for claiming deduction where accounts are not audited under any other law.

SEC. 35D AMORTISATION OF PRELIMINARY EXPENSES

Illustration 19 :

Sleepwell Ltd. is an existing Indian Company, which sets up a new industrial unit. It incurs the following expenditure in connection with the new unit:

	₹
Preparation of project report	4,00,000
Market survey	5,00,000
Legal and other charges for issue of additional capital required for the new unit	2,00,000
Total	11,00,000
The following further data is given:	
Cost of project	30,00,000
Capital employed in the new unit	40,00,000

What is the deduction admissible to the company under section 35D for Assessment Year 2016 -17?

Solution:

The deduction admissible under section 35D is one-fifth of the expenditure incurred for the project. This works out to ₹2,20,000.

However, such expenditure should not exceed the following limits as prescribed in section (3):

(a) 5% of cost of the project or

(b) 5% of the capital employed in the new industrial undertaking (being a company) — whichever is higher.

In this case

(a) 5% of the project cost is ₹1,50,000 and

(b) 5% of the capital employed is ₹2,00,000.

Hence, the expenditure eligible for amortization under section 35D would be ₹ 2,00,000 and the admissible deduction for the current assessment year is 2,00,000 × 1/5 = ₹ 40,000.

AMORTISATION OF EXPENDITURE IN CASE OF AMALGAMATION OR DEMERGER [SEC. 35DD]

Where an Indian company incurs any expenditure on or after 1.4.1999, wholly and exclusively for the purposes of amalgamation or demerger of an undertaking, the assessee company is allowed deduction in respect of such expenditure over a period of five years equally beginning with the Previous Year in which amalgamation or demerger takes place.

AMORTISATION OF EXPENDITURE INCURRED UNDER VOLUNTARY RETIREMENT SCHEME [SEC.35DDA]

Where any expenditure is incurred by way of compensation to an employee under VRS in accordance with any scheme is allowed deduction over a period of 5 years equally from the year in which compensation is paid. W.e.f. Assessment Year 2001-02 inserted by the Finance Act, 2002 to provide that where an undertaking of an Indian company, entitled to deduction for amortisation of voluntary retirement expenses, is transferred before the expiry of the period specified to another Indian company in a scheme of amalgamation or

demerger, the deduction shall continue to be available to the amalgamated company or the resulting company as if the amalgamation or demerger had not taken place.

In case of reorganisation of certain form of business where by a firm for a proprietary concern is succeeded by a company, the deduction shall continue to be available to the successor company. Deduction is not available to amalgamating company or demerged company or to the firm or proprietary concern, as the case may be, in the year of transfer.

Illustration 20 :

Suppose the payment of voluntary retirement is made to X as under :

Previous Year	Amount paid (₹)
2010 -11	20,00,000
2011 -12	12,00,000
2012 -13	14,00,000
	46,00,000

In this case the deduction of expenses incurred under voluntary retirement scheme shall be allowed as under :

Assessment Year 2011 -12 : ₹ 4,00,000 (1/5th of ₹ 20,00,000) and balance ₹ 16,00,000 in 4 equal instalments in the next four Assessment Years i.e. Assessment Years 2012-13 to 2015 -16.

Assessment Year 2012-13 : ₹ 6,40,000 i.e. ₹ 4,00,000 on account of payment made in Previous Year 2010-11 and ₹ 2,40,000 (1/5th of ₹ 12,00,000 paid on Previous Year 2011-12).

Assessment Year 2013-14 : ₹ 9,20,000 i.e. ₹ 6,40,000 (₹ 4,00,000 + ₹ 2,40,000 for payment made in Previous Year 2010-11 and 2011-12 respectively) and ₹ 2,80,000 on account of payment made in Previous Year 2012-13.

Assessment Year 2014-15 : ₹ 9,20,000 (₹ 4,00,000 + ₹ 2,40,000 + ₹ 2,80,000)

Assessment Year 2015-16 : ₹ 9,20,000 (₹ 4,00,000 + ₹ 2,40,000 + ₹ 2,80,000)

Assessment Year 2016-17 : ₹ 5,20,000 (₹ 2,40,000 + ₹ 2,80,000)

Assessment Year 2017-18 : ₹ 2,80,000

Total amount allowed in various Assessment Years ₹ 46,00,000.

AMORTISATION OF EXPENDITURE ON PROSPECTING ETC. FOR CERTAIN MINERALS [SEC. 35E]

Where an assessee being a Indian company or a person other than a company who is resident in India, is engaged in any operation relating to prospecting for, extraction or production of any mineral and incurs after 31.3.1970 any expenditure during the period of 5 years ending with the year of commencement of commercial production is allowed as deduction over a period of 10 years in equal installments.

Audit of Accounts : The accounts of the assessee have got to be audited by a qualified Chartered Accountant and a copy of the audited report is to be sent as an accompaniment to the return of income. Companies and cooperative societies getting their accounts audited ordinarily need not get them audited specifically for this purpose.

Expenses amortised not deductible : Expenses which are included for amortisation will not be deducted while computing business profit or loss under any other section of this Act.

OTHER DEDUCTIONS [SEC. 36]

The deduction provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Sec. 28.

INSURANCE PREMIUMFOR STOCK AND STORES [SEC. 36(1)(i)]

The amount of any insurance premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purpose of the Business or Profession.

PREMIUM PAID BY FEDERAL MILK COOPERATIVE SOCIETY [SEC. 36(1)(ia)]

A federal milk cooperative will be allowed deduction in respect of any premium paid by it towards an insurance policy in the life of cattle owned by a member of a primary cooperative society, which is engaged in supply of milk (raised by its members) to the federal milk cooperative society.

PREMIUM FOR EMPLOYEES' HEALTH INSURANCE [SEC. 36(1)(ib)]

The amount of any premium paid by any mode of payment other than cash by the assessee as an employer to effect or to keep in force an insurance on the health of his employees under a scheme in this behalf by the General Insurance Corporation of India and approved by the Central Government.

BONUS OR COMMISSION TO EMPLOYEES [SEC. 36(1)(ii)]

Any sum paid to an employee as bonus or commission for services rendered is deductible provided it would not otherwise be payable to him as profits or dividend, before due date subject to section 43B.

INTEREST ON BORROWED CAPITAL [SEC. 36(1)(iii)]

The amount of the interest paid in respect of capital borrowed for the purposes of the business or profession subject to section 43B.

Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset "**for extension of existing business or profession"** (whether capitalised in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.

The Finance Act, 2015 has omitted the words **"for extension of existing business or profession" w.e.f. 1.4.2016.**

DISCOUNT ON ZERO COUPON BONDS [SEC. 36(1)(iiia)]

Applicability : Infrastructure Capital Company/Fund, Public Sector Company, Scheduled Bank issuing Zero

Coupon Bonds which are specified by the Central Govt. by notification in the Official Gazatte

Conditions :

(a) Life of the bond should be less than 10 years and not more than 20 years.

(b) The investor will not received or due to receive any payment or benefit before before the maturity redemption date

(c) Discount is the difference between Maturity/Redemption Value and the issue price.

(d) Discount can be written off on a pro rata basis over the period of the bond.

(e) No tax will be deducted at source under section 194 A by the payer company.

Illustration 21:

M Ltd. , an infrastructure capital company, issued 1,00,000 Zero Coupon Bonds (Face Value ₹ 100) on 5th September, 2014 at a price of ₹ 75. The redemption date of the bonds is 21st September, 2026. These bonds are notified by the Central Government as Zero Coupon Bond. You are required to compute the amount of discount allowable as deduction while computing business income of the M Ltd.

Solution :

Discount on Zero Coupon Bond is allowable to M Ltd. on pro-rata basis.

Total Amount of Discount = (₹100 - ₹75) × ₹1,00,000 = ₹ 25,00,000

Date of issue : 5th September, 2014 [as it is less than 15 days, it shall be ignored and date of issue will be taken as 1st September, 2014]

Date of redemption : 21st September, 2026 [if it is 15 days or more, it is taken as one month and so redemption date will be taken as 30th September, 2026]

Total life of the bond : 1st September, 2014 to 30th September, 2026 i.e. 145 months.

Prorated discount for one month = 25,00,000/145 = ₹17,241

Amount of discount allowable for the Previous Year 2014-15 = ₹ (17,241 × 7) = ₹ 1,20,687

Amount of discount allowable for the Previous Year 2015-16 to 2025-26 = ₹ (17,241 × 12) = ₹ 2,06,892

Amount of discount allowable for the Previous Year 2026-27 = ₹ (17,241 × 6) = ₹ 1,03,446

CONTRIBUTION TOWARDS RECOGNISED PROVIDENT FUND OR AN APPROVED SUPERANNUATION FUND [SEC.36(1)(iv)]

Any sum paid by the assessee as an employer by way of contribution to a recognized provident fund or an approved superannuation fund subject to limits prescribed in this regard in section. 43B.

EMPLOYER'S CONTRIBUTION TO NOTIFIED PENSION SCHEME [SEC. 36(1)(iva)]

Clause (iva) has been inserted in section 36(1) (with effect from the Assessment Year 2012-13) so as to provide that any sum paid by an assessee as an employer by way of contribution towards a pension scheme [as referred to in section 80CCD] on account of an employee shall be allowed as deduction in computing the income under the head "Profits and Gains of business or profession". Deduction will, however, be limited to the extent of 10 per cent of the "Salary" of the concerned employee in the Previous Year. "Salary" for this purpose means basic salary and includes dearness allowance, if terms of employment so provide. It also includes commission based on a fixed percentage of turnover achieved by an employee as per terms of contract of employment—Gestener Duplicators (P.) Ltd. vs. CIT [1979] 1 Taxman 1/117 ITR 1(SC). However, it does not include any other allowances and perquisities.

CONTRIBUTION TOWARDS AN APPROVED GRATUITY FUND [SEC. 36(1)(v)]

Any sum actually paid by an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrecoverable trust subject to Section. 43B.

CONTRIBUTIONS RECEIVED FROM EMPLOYEES TO A WELFARE OF THE EMPLOYEES [SEC. 36(1)(va)]

Deductions in respect of any sum received by the assessee as a contribution from his employees towards provident fund or any other welfare fund of such employees is allowed only if such sum is credited by the tax payer to the employees accounts in the relevant funds on or before due date i.e. the date by which the assessee is required as an employer to credit such contribution to the employee's account under the provisions of any law or term of contract of service or otherwise.

If payment is not made within the due date such contribution should be treated as income of the assessee.

DEDUCTION IN RESPECT OF ANIMALS USED FOR BUSINESS WHICH HAVE DIED OR BECOME PERMANENTLY USELESS [SEC. 36(1)(vi)]

In respect of animals used for the purpose of Business or Profession (but not stock in trade) who have died or become permanently useless, the difference between the actual cost to the assessee of the animals and the amount, if any, realised in respect of carcasses or animals, will be allowed as a deduction.

BAD DEBTS [SEC. 36(1)(vii)]

Any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the Previous

Year will be allowed as deduction if—

(i) the debt is incidental to business,

(ii) it should have been taken into account in computing income of the assessee, or it should represent money lent in the ordinary course of banking or money lending business,

(iii) it should be written off in the books of account

(iv) the business in respect of which the debt is incurred should be continued during, the Previous Year.

The successor of a business is entitled to claim deduction in respect of debt created by the predecessor CIT vs. T. Veerabhadra Rao, K. Koteswara Rao & Co. 155 ITR 152.

Following second proviso shall be inserted after the first proviso to clause (vii) of sub-section (1) of section 36 by the Finance Act, 2015, w.e.f. 1-4-2016:

Provided further that where the amount of such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standards notified under sub-section (2) of section 145 without recording the same in the accounts, then, such debt or part thereof shall be allowed in the previous year in which such debt or part thereof becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the purposes of this clause.

Explanation 2 : For the removal of doubts, it is hereby clarified that the purposes of the proviso to clause (vii) of Section 36(1) and clause (v) of Section 36(2), the account referred therein shall be only one account in respect of provision for bad and doubtful debts u/s 36(1)(viia) and such account shall relate to all types of advances, including advances made by rural branches.

PROVISION FOR BAD AND DOUBTFUL DEBTS [Sec. 36(1)(viia)]

Provision for bad and doubtful debts made by :

(i) Schedule bank (not incorporated outside India) or non-schedule bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, upto 7.5% of its total income and an addition at 10% average advances made by the rural branches of such bank. Option has also been given to bank to claim deduction in respect of any provision for doubtful or loss of assets as per RBI guidelines, upto a maximum of 5% of such assets at the end of the relevant Previous Year for the AY 2000-01 to 2002-03 and upto 10% of such assets for AY 2003-04 and 2004-05.

(ii) A bank incorporated outside India upto 5% of its total income.

(iii) A Public Financial Institution on a State Financial Corporation or a state industrial investment corporation, upto 5% of its total income. Option is also given to Financial Institution/Corporation to claim deduction in respect of any provision for doubtful or loss assets as per RBI guidelines, upto a maximum of 10% of such assets at the end of the Previous Year relevant to Assessment Year 2003-04 or 2004-05.

Total income for this purpose means income computed before making any deduction under Chapter VIA.

Deduction in the case of an assessee who is eligible for deduction under section 36(1)(vii) and (viia)- In the case of the above taxpayer, no deduction is allowed under section 36(1)(vii) in respect of bad debts unless the amount of bad and doubtful debt is debited to the provision for bad and doubtful debts account and the deduction admissible under section 36(1)(vii) is limited to the amount by which such debts or part thereof exceeds the credit balance in the provision for bad and doubtful debts account.

SPECIAL RESERVE CREATED AND MAINTAINED BY A FINANCIAL CORPORATION [SEC.36(1)(viii)]

Deduction under this section is allowed in respect of any special reserve created and maintained by :

(a) a financial corporation which is engaged in providing long time finance for industrial or agricultural development in India or for development for infrastructure facility in India; or

(b) a public company formed and registered in India with the main objective of carrying on the business of providing long time finance for construction of purchase of houses in India for residential purposes.

The deduction under this section shall be an amount transferred to reserve account or an amount not exceeding 20 % of the profits derived from such business which ever is less. If the amount of reserve is more than twice the paid up share capital and general reserve, the excess amount is not deducted.

Special deduction under section 36(1)(viii) allowed to National Housing Bank of an amount not exceeding 20% of the profits subject to creation of a reserve [Section 36(1)(viii)][W.e.f. A.Y. 2010-11]

Section 36(1)(viii) provides special deduction to financial corporations and banking companies of an amount not exceeding 20% of the profits subject to creation of a reserve.

National Housing Bank (NHB) is wholly owned by Reserve Bank of India and is engaged in promotion and regulation of housing finance institutions in the country. It provides re-financing support to housing finance institutions, banks, ARDBs, RRBs, etc., for the development of housing in India. It also undertakes financing of slum projects, rural housing projects, housing projects for EWS and LIG categories, etc. NHB is also a notified financial corporation under section 4A of the Companies Act(Corresponding section 2(72) of Companies Act, 2013).

A view has been expressed that NHB is not entitled to the benefits of section 36(1)(viii) on the ground that it is not engaged in the long-term financing for construction or purchase of houses in India for residential purpose. The amendment has been made in clause (b) of Explanation to section 36(1)(viii) to provide that corporations engaged in providing long-term finance (including re-financing) for development of housing in India will be eligible for the benefit under section 36(1)(viii).

EXPENDITURE INCURRED BY COMPANY FOR PROMOTING FAMILY PLANNING AMONGST ITS EMPLOYEES [SEC. 36(1)(ix)]

The company assessee is entitled to claim deduction in respect of bonafide revenue expenditure incurred by it in a Previous Year for the purposes of promoting family planning amongst its employees. In case of expenditure of a capital nature, the deduction is allowed in 5 equal yearly installments commencing from the Previous Year in which such expenditure is incurred.

The capital expenditure under this section is governed by the same conditions as are applicable to capital expenditure for scientific research. The unabsorbed expenditure under this section can be carried forward and set off in the following years like unabsorbed depreciation allowance.

CONTRIBUTION TOWARDS EXCHANGE RISK ADMINISTRATION FUND [SEC. 36(1)(x)]

The contribution made by the public financial institutions to the Exchange Risk Administration Fund will be allowed as a business deduction in computing their income up to the Assessment Year 2007-2008.

REVENUE EXPENDITURE INCURRED BY ENTITIES ESTABILSHED UNDER ANY CENTRAL, STATE OR PROVINCIAL ACT [SEC. 36(1)(xii)]

Any revenue expenditure incurred by a notified corporation or a body corporate (by whatever name called) constituted (or established) by a Central, State or Provincial Act for the objects and purposes authorised by the Act, shall be allowed as a deduction.

CONTRIBUTION TO CREDIT GUARANTEE TRUST FUND [SEC. 36(1)(xiv)]

From the Assessment Year 2008-09, a public financial institution can claim deduction in respect of its contribution to a notified credit guarantee trust fund for small industries (i.e., Credit Guarantee Fund Trust for Micro and Small Enterprises).

BANKING CASH TRANSACTION TAX : [SEC. 36(1)(xiii)]

Condition : Actual amount of BCTT paid during the Previous Year shall be allowed as deduction.

SECURITIES TRANSACTION TAX PAID [W.E.F. AY 2009-2010] : [SEC. 36(1)(xv)]

Condition :

(a) Taxable Securities transactions should be entered into in the course of his business during the Previous Year.

(b) Income arising from such transaction is included under the head Profit & Gains of Business or Profession.

COMMODITIES TRANSACTION TAX [SECTION 36(1)(xvi)]

An amount equal to the commodities transaction tax paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and Gains from Business on Profession".

In respect of the above section,

"Taxable Commodities Transaction" means a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognised associations.

"Commodities Transaction Tax" means tax leviable on the taxable commodities transactions.

Following clause (xvii) shall be inserted after clause (xvi) of sub-section (1) of section 36 by the Finance Act, 2015, w.e.f. 1-4-2016:

The amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Government.

GENERAL DEDUCTIONS [SEC. 37]

Any expenditure not being expenditure of the nature described in sec. 30 to 36, and not being in the nature of capital expenditure or personal expenses of the assessee paid out or expended wholly and exclusively for the purposes of the Business or Profession shall be allowed in computing the income chargeable under the head "Profits and Gains of Business or Profession"- Sec. 37(1).

The conditions to be fulfilled for general deductions u/s 37 are as follows—

(i) It should be in respect of a business carried on by an assessee;

(ii) It should have been paid out or expended wholly and exclusively for the purpose of the business;

(iii) It must have been incurred during the Previous Year; and

(iv) It should not be in the nature of capital expenditure or personal expenses of the assessee.

Thus expenses incurred on the occasion of Dewali or Mahurat subject to being satisfied that the expenses are not expenses of a personal, social or religious nature- allowed deduction u/s 37.

Loss through embezzlement by an employee or recurring expenses incurred on imparting basic training to apprentices under the Apprentices Act, 1961 are general deductions u/s 37.

Any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure [Explanation to Sec. 37(1)].

In section 37 of the Income tax Act, 1961, with effect from the 1st day of April, 2015, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

ADVERTISEMENT EXPENDITURE [Sec. 37(2B)]

No allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any Souvenir, Brochure, Pamphlet or the like published by a political party.

INADMISSIBLE EXPENDITURE [Sec. 40, 40A, 43B]

AMOUNT NOT DEDUCTIBLE [Sec. 40(a)]

Notwithstanding anything contained in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head profits and gains of business or profession.

(1) **In the case of any assessee [Section 40(a)]**

(a) Interest, royalty, fee for technical services or other sum payable outside India or in India to a non-resident [Section 40(a)(i)]: Any interest, royalty, fees for technical services, or other sum chargeable under Income-tax Act which is payable—

(i) outside India; or

(ii) in India to a non-resident, not being a company or to a foreign company

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under section 200(1), shall not be allowed as deduction.

However, where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under section 200(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

As per section 200(1) the tax deducted at source shall be paid within 7 days of the end of the month in which tax has been deducted. However, in respect of income credited during month of March the tax should be paid by 30th April of the subsequent financial year.

Chargeable under the Income-tax Act means that receipt of such income must be taxable in India.

Amendment made by the Finance (No. 2) Act, 2014

Time period for deposit of tax deducted at source in case of payment to non-resident also extended till due date of return u/s 139(1) [Section 40(a)(i)] [W.e.f. A.Y. 2015-16]

Section 40(a)(i) has been amended to provide that the deductor shall be allowed to claim deduction for payments made to non-residents in the previous year of payment, if tax is deducted during the previous year and the same is paid on or before the due date specified for filing of return under section 139(1) of the Act.

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

(b) Interest, commission, brokerage, etc. paid or payable to a resident [Section 40(a)(ia)]: Under certain circumstances of non-compliance with TDS provisions, the following amounts shall not be allowed as a deduction in computing the income chargeable under the head 'Profits and gains of business or profession',—

(i) any interest, commission or brokerage, rent, royalty, fees for professional services, fees for technical services payable to a resident;

(ii) any amount payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work).

The disallowance can be resorted to in case of above expenses if the tax deductible at source under Chapter XVIIB from such expenses has not been deducted or after deduction has not been paid on or before the due date specified in section 139(1).

However, where in respect of any such sum —

(a) tax has been deducted in any subsequent year, or

(b) has been deducted during the previous year but paid after the due date specified under section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Amendment made by the Finance Act, 2012, w.e.f. A.Y. 2012-13

In order to rationalize the provisions of disallowance on account of non-deduction of tax from the payments made to a resident payee, section 40(a)(ia) has been amended to provide as under:

Where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso of section 201(1), then, for the purpose of this sub-clause, it shall be deemed that the assessee has—

(a) deducted, and

(b) paid the tax on such sum

on the date of furnishing of return of income by the resident payee referred to in the said proviso.

The amended first proviso to section 201(1) provides as under:

Any person, including the Principal Officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident —

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income;

(iii) has paid the tax due on the income declared by him in such return of income; and

(iv) the person (the deductor) furnishes a certificate to this effect from an accountant in such form as may be prescribed.

Therefore, if the resident payee satisfies all the above 4 conditions and the deductor furnishes a certificate to this effect from a chartered accountant in such form as may be prescribed, then the deductor will be allowed the deduction of the expenses mentioned in 40(a)(ia) by assuming that the deductor has deducted and paid on such sum on the date of furnishing return of income by the resident payee aforesaid.

Amendment made by the Finance (No. 2) Act, 2014

Section 40(a)(ia) made applicable to all sum payable to a resident on which tax is deductable at source under Chapter XVII-B but disallowance restricted to 30% instead of 100% [w.e.f. A.Y. 2015-16]

In case of non-deduction or non-payment of tax deducted at source (TDS) from certain payments made to residents, the entire amount of expenditure on which tax was deductible is disallowed under section 40(a)(/a) for the purposes of computing income under the head "Profits and gains of business or profession".

In order to reduce the hardship, the Finance (No. 2) Act, 2014 has provided that in case of non-deduction or non-payment of TDS on payments made to residents as specified in section 40(a)(ia) of the Act, the disallowance shall be restricted to 30% of the amount of expenditure claimed.

However, where in respect of any such sum,—

(a) tax has been deducted in any subsequent year, or

(b) has been deducted during the previous year but paid after the due date specified under section 139(1), 30% of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

In order to improve the TDS compliance in respect of payments to residents which are currently not specified in section 40(a)(ia), the Act has provided that the disallowance under section 40(a)(ia) of the Act shall extend to all expenditure on which tax is deductible under Chapter XVII-B of the Act.

(c) Tax levied on profits or gains [Section 40(a)(ii)]: Any sum paid on account of any rate or 'tax' levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains shall not be eligible for deduction;

Tax which are not dedutible

(i) Indian income-tax

(ii) Agricultural income-tax

(iii) Interest payment in relation to income-tax

(iv) Foreign income-tax.

(d) Wealth Tax [Section 40(a)(iia)]: Any sum paid on account of wealth tax under the Wealth Tax Act and any tax of a similar character chargeable under any law in force in any country outside India shall not be eligible for deduction;

Amendment made by the Finance Act, 2013, w.e.f. A.Y. 2014-15

Disallowance of certain fee, charge, etc. in the case of State Government Undertakings [Section 40(a)(iib)] [w.e.f A. Y. 2014-15]

The Finance Act, 2013 has inserted sub-clause (iib) in section 40 of the Income-tax Act to provide that—

(a) any amount paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on, or

(b) any amount appropriated, directly or indirectly, from a State Government undertaking, by the State Government,

shall not be allowed as deduction for the purposes of computation of income of such undertakings under the head "Profits and gains of business or profession.

(e) Salary payable outside India or to a non-resident [Section 40(a)(iii)].

(f) Payment to provident fund or other funds [Section 40(a)(iv)].

(g) Tax paid by employer on non-monetary perquisites provided to employees [Section 40(a)(v)].

DISALLOWANCE IN THE CASE OF PARTNERSHIP FIRMS (INCLUDING LIMITED LIABILITY PARTNERSHIP)

[Sec. 40(b)] [w.e.f. A.Y. 2010-11]

(i) Interest to a partner by a firm is not deductible unless the following conditions are fulfilled:

1. It should be authorised by the partnership deed.
2. It should relate to a period falling after the date of the Partnership deed.
3. It should not exceed 12% p.a. simple rate of interest.

Explanation 1 : If a person is a partner in his representative capacity in the firm and if he receives interest in his individual capacity from the firm such interest should not be disallowed.

Explanation 2 : If a person who is a partner in his individual capacity receives interest for and on behalf of some one else from the firm in which he is a partner such interest should not be disallowed.

(ii) Any amount paid by way of salary, bonus, commission or remuneration by a firm to a partner is not deductible in the computation of income of the firm unless the following conditions are fulfilled :

1. It should be authorised by partnership deed.
2. It should relate to a period falling after the date of the partnership deed.
3. It should be within the prescribed limits as follows :–

The Act has made upward revision of the existing limits of the remuneration. Further, uniform limits have been prescribed for both professional and non-professional firms for simplicity and administrative case. The revised limits are as under :

(a) On the first ₹ 3,00,000 of the Book-profit or in case of a loss	₹1,50,000 or at the rate of 90% of the Book-profit, whichever is more;
(b) On the balance of the Book-profit	At the rate of 60%.

4. It should be paid to a working partner.

Explanation 3 : "Book Profit" means the net profit, as shown in the Profit and loss Account for the relevant Previous Year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been debited while computing the net profit.

Explanation 4 : "Working partner" means an individual who is actively engaged in conducting the affairs of the Business or Profession of the firm of which he is a partner.

CBDT issued circular no. 739 dt. 25.3.96 stating that disallowance of salary to partners shall be made in the case of a firm if the partnership deed does not specify the amount of remuneration payable to each individual working partner or it does not lay down the manner of quantifying such remuneration.

DISALLOWANCE IN THE CASE OF ASSOCIATION OF PERSONS AND BODY OF INDIVIDUALS [Sec. 40(ba)]

Any payment by way of interest, salary, bonus, commission or remuneration paid by an Association of Persons or Body of Individuals to any of its members shall be disallowed.

Explanation 1 : If the member who received interest from the AOP or BOI also pays interest to the AOP or BOI during the same Previous Year only the net excess interest paid by the AOP to such member should be disallowed.

Explanation 2 : If a person is a member in his representative capacity in the AOP or BOI and if he received interest in his individual capacity from the AOP or BOI such interest should not be disallowed.

Explanation 3 : If a person who is a member in his individual capacity received interest for and on behalf of some one else from the AOP or BOI in which he is a member such interest should not be disallowed.

SECTION 40A(1)

Expenses or payment as provided in subsection (2), (3), (7) and (9) of Section 40A are not deductible.

SECTION 40A(2)

Where an assessee incurs any expenditure, in respect of which payment has been made or is to be made to certain specified persons and in the opinion of Assessing Officer such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made, then so much of expenditure which is considered by the Assessing Officer to be excessive or unreasonable, shall not be allowed as deduction. As per Finance Act, 2012, this reasonable amount should be calculated at Arm's length Price.w

Assessee	**Specified persons**
(i) Individual	(a) any relative (i.e., spouse, any brother, sister, lineal ascendant descendant) of such individual; (b) any person in whose business or profession the assessee (i.e. individual) himself or his relative has substantial interest.
(ii) Company, Firm, AOP or HUF	(a) any director of the company, partner of the firm, or member of the association, or family, or any relative of such director, partner or member; (b) any person in whose Business or Profession the assessee or director, partner or member of the assessee or any relative of such person has a substantial interest.
(iii) All assessees	(a) any individual who has substantial interest in the Business or Profession of the assessee; (b) a company, firm, AOP or HUF [or any director, partner or member of any such person or any relative of such person] having a substantial interest in Business or Profession of the assessee (c) any other company carrying on Business or Profession in which the assessee has substantial interest.

Transfer Pricing Provisions to apply in respect of transactions covered u/s. 40A(2).

The provision of section 40A(2) empowers the Assessing Oficer to disallow unreasonable expenditure incurred between relared parties. The provisions of section 40A(2) has been amended as follows :

1. Disallowances on account of any expenditure being excessive or unreasonable having regard to the fair market value shall not be made in respect of a specified domestic transaction (as referred to section 92BA of the Act), if such transaction is at Arms Length Price as per section 92F of the Act.
2. Meaning of the term 'Related Party' under section 40A(2) has been modified to include any transaction between companies having the same holding / controlling company for the purpose of any expenditure incurred so.

DISALLOWANCE OF CASH EXPENDITURE EXCEEDING ₹ 20,000 [Sec. 40A(3), RULE 6DD]

Where the assessee incurs any expenditure over ₹ 20,000 otherwise than by account payee cheque drawn on a bank or account payee bank draft, 100% deduction will be disallowed in respect of such expenditure.

Enhancement of limit for disallowance of expenditure made otherwise than by an account payee cheque or account payee bank draft for plying, hiring or leasing goods carriages in the case of transporters to ₹ 35,000 from the existing limit of ₹ 20,000 (Section 40A(3) and (3A) applicable to transactions effected on or after 1-10-2009)

Under the existing provisions of the Income-Tax Act, where an assessee incurs any expenditure, in respect of which payment in excess of ₹ 20,000 is made otherwise than by an account payee cheque or account payee bank draft, such expenditure is not allowed as a deduction. Given the special circumstances of transport operators for incurring expenditure on long haul journeys for plying, hiring or leasing goods carriages, the Act has inserted proviso 2 to section 40A(3) and (3A) in order to raise the limit of payment to such transport operators otherwise than by an account payee cheque or account payee bank draft to ₹ 35,000 from the existing limit of ₹ 20,000.

The existing limit for other categories of payments will remain at ₹ 20,000 subject to the exceptions declared in Rule 6DD of the Income-Tax Rules.

Exceptions under Rule 6DD

(a) Payments made to banks, including cooperative bank or land mortgage bank, Life Insurance Corporation and financial institution like IDBI, UTI, Industrial Development Corporations and State Financial Corporations, Primary Agricultural Credit Society.

(b) Payments made to Government, where such payment is required to be made in legal tender e.g. payment of sales-tax, customs duty, excise duty, etc.

(c) Payments under contracts entered into before 1.4.1969.

(d) Payments made by way of any Letter of Credit, telegraphic transfer, transfer from one bank account to another, or through Bill of Exchange payable to a bank.

(e) Where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee.

(f) Payment for purchase of

  (i) agricultural or forest produce,

  (ii) the produce of animal husbandry (including hides and skins), dairy or poultry farming,

  (iii) fish or fish-products, or

  (iv) products of horticulture, or apiculture if the payment is made to the cultivator, grower or producer of such articles, produce or products.

(g) Payment made for purchase of products manufactured or processed without the aid of power in a cottage industry, if the payment is made to the producer of such products.

(h) Where the payment is made in a village or town, which is not served by any bank, to any person who ordinarily resides or is carrying on any business, profession or vocation in any village or town.

(i) Payment by way of gratuity, retrenchment compensation or similar terminal benefits made to an employee or his legal heirs, if the income under the head salary of the employee does not exceed ₹7500 for the current year as well as for the immediately preceding Previous Year.

(j) Payment made by way of salary to its employees after deducting the income-tax from the salary, when such an employee is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship and the employee does not maintain any account in any bank at such place.

(k) Where the payment is required to be made on a day on which the banks were closed, either on account of holiday or strike.

(l) Payments made by any person to his agent who is required to make payments in cash for goods or services on behalf of such person.

(m) Where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business. [Notification No. 11476, dated 6.9.2000 applicable retrospectively from 25.7.1995]

PROVISION FOR GRATUITY [Sec. 40A(7)]

No deduction shall be allowed in respect of any provision made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason. However, any provision made by the assessee for the purpose of payment of any contribution towards an approved gratuity fund or for the purpose of payment of any gratuity which has become payable during the Previous Year shall be allowed as deduction.

NON STATUTORY/UNRECOGNISED WELFARE FUND CONTRIBUTIONS [Sec. 40A(9)]

Any contribution made by the assessee to unrecognised or non-statutory welfare fund accounts is not deductible.

SPECIAL PROVISION FOR COMPUTING DEDUCTIONS IN THE CASE OF BUSINESS REORGANIZATION OF CO-OPERATIVE BANKS [SEC. 44DB]

After section 44DA of the Income Tax Act, the following section has been inserted with effect from the 1st day of April, 2008, namely :—

44DB: Special provision for computing deductions in the case of business reorganization of co-operative banks—

(1) The deduction under section 32, section 35D, section 35DD or section 35DDA shall, in a case where business reorganization of a co-operative bank has taken place during the financial year, be allowed in accordance with the provisions of this section.

(2) The amount of deduction allowable to the predecessor co-operative bank under section 32, section 35D, section 35DD or section 35DDA shall be determined in accordance with the formula—

$$A \times \frac{B}{C}$$

where, A = the amount of deduction allowable to the predecessor co-operative bank if the business reorganisation had not taken place;

B = the number of days comprised in the period beginning with the 1st day of the financial year and ending on the day immediately preceding the date of business reorganisation; and

C = the total number of days in the financial year in which the business reorganisation has taken place.

(3) The amount of deduction allowable to the successor co-operative bank under section 32, section 35D, section 35DD or section 35DDA shall be determined in accordance with the formula—

$$A \times \frac{B}{C}$$

where A = the amount of deduction allowable to the predecessor co-operative bank if the business reorganisation had not taken place;

B = the number of days comprised in the period beginning with the date of business reorganisation and ending on the last day of the financial year; and

C = the total number of days in the financial year in which the business reorganisation section is transferred before the expiry of the period specified therein to a successor co-operative bank on account of business reorganisation, apply to the successor co-operative bank in the financial years subsequent to the year of business reorganisation as they would have applied to the predecessor co-operative bank, as if the business reorganisation had not taken place.

SECTION 43B

Certain expenses are allowed only on payment basis within a stipulated time period irrespective of method of accounting and the evidence of such payment is furnished alongwith the return of income.

	Nature of Expense	**Stipulated time period**
1.	Any sum payable by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force.	Due amount should be paid on or before the due date of furnishing the return of income u/s. 139(1) in respect of the Previous Year.
2.	Any sum payable to an employee as bonus or commission for services rendered.	In which the liability to pay such sum was incurred and proof of payment should be attached alongwith the return of income.
3.	Any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or State Financial Corporation or State Industrial Investment Corporation like IDBI, IFCI, UPSIDC, Delhi Financial Corporation, etc. in accordance with the terms and conditions of the agreement governing such loan or borrowing.	However, in cases (1) to (5), if the payment of outstanding liability is made after the due date, deduction can be claimed in the year of payment.
4.	Any sum payable by the assessee as interest on any term loan from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan.	-do-
5.	Any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee (inserted w.e.f. AY 2002-03)	However, if the deduction has already been allowed on due basis before this amendment, the same will not be allowed again when the sum is actually paid.

6.	Any sum payable by the assessee as an employer by way of contribution to any provident fund of superannuation fund or gratuity fund or any other fund for the welfare of employees.	Payments should be made in cash or by issue of a cheque or draft, or by any other mode on or before the due date by which the employer is required to credit an employee's contribution to the employee's account in the relevant fund under the respective Act, Rule, Order or Notification. Where the payment has been made otherwise than in cash, the sum should be realised within fifteen days from the relevant due date

DEEMED PROFIT/DEEMED INCOME

[Sec 41(1)]

Where deduction has been made in respect of loss, expenditure or trading liability for any year and subsequently the assessee or successor of the business has obtained any amount in respect of such loss expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained or the value of benefit accrued shall be deemed to be income.

The provisions are applicable even to the successor who receives the amount/benefit. The 'successor in business', for this purpose, means—

(a) Where there has been an amalgamation of a company with another company, the amalgamated company;

(b) Where any person is succeeded by another person in carrying on the Business or Profession, such other person;

(c) Where a firm carrying on a Business or Profession is succeeded by another firm, such other firm;

(d) Where there has been a demerger, the resulting company;

If there is a remission or cessation of a trading liability which was earlier allowed as deduction, it is chargeable to tax. Even if the remission or cessation is effected by a unilateral Act of writing off of such liability by the assessee, the amount so written off is chargeable to tax.

The above mentioned sub-section covers loss, expenditure and trading liability.e.g.

(i) If stock is destroyed by fire and allowed as trading loss but later insurance compensation is received, the same is assessable u/s. 41(1).

(ii) If credit purchase of raw material is made and claimed as deduction but later, a lesser amount is settled to the supplier creditor, the benefit accruing on remission of the trading liability will be deemed as income u/s. 41(1).

SECTION 41(2)

In the case of an undertaking engaged in the generation or generation and distribution of power, option is available to claim depreciation on straight line method with reference to each individual asset. If such option is exercised, block of asset concept does not apply. In the case of such an assessee, where any building, machinery, plant or furniture is transferred for a consideration which is more than the depreciated value, the surplus to the extent of depreciation already allowed shall be assessed as business income. This is normally described as 'Balancing Charge'.

SECTION 41(3)

Any amount realised on transfer of an asset used for scientific research is taxable as business income to the extent of deduction allowed u/s. 35 in the year in which the transfer takes place.

SECTION 41(4)

Any amount recovered by the assessee against bad debt earlier allowed as deduction shall be taxed as income in the year in which it is received.

SECTION 41(4A)

Under Sec. 36(1)(viii) any special reserve created and maintained by a financial corporation or public company specified there under qualifies for deduction subject to the limit prescribed. Sub-section (4A) is introduced in Sec. 41 to make it clear that where a deduction has been so allowed, any amount subsequently withdrawn from such special reserve shall be deemed to be the profits of the year of such withdrawal and shall be charged to tax accordingly. The chargeability applies even if the business is no longer in existence during the relevant Previous Year.

SECTION 41(5)

In the case of an assessee who is chargeable to tax in respect of any amount deemed as profit u/s. 41 relating to a discontinued business, any loss incurred in the year in which the business was discontinued shall be allowed to be set off against such profit and only the balance, if any, shall be taxed.

SECTION 176(3A)

Where any business is discontinued in any year, any sum received after discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the person who carried on the business had such sum been received before such discontinuance.

SECTION 176(4)

Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, as if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance.

INCOME FROM UNDISCLOSED SOURCES

CASH CREDITS [Sec. 68]

Where any sum is found credited in the books of an assessee, maintained for any Previous Year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that Previous Year.

UNEXPLAINED INVESTMENTS [Sec. 69]

Where in the Financial Year immediately preceding the Assessment Year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such Financial Year.

UNEXPLAINED MONEY ETC. [Sec. 69A]

Where in any financial year, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the accounts, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable articles may be deemed to be the income of the assessee for such Financial Year.

INVESTMENTS, ETC. NOT FULLY DISCLOSED IN BOOKS OF ACCOUNT [Sec. 69B]

Where in any Financial Year, the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in his behalf in the books of account maintained by the assessee for any source of income and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such Financial Year.

UNEXPLAINED EXPENDITURE [Sec. 69C]

Where in any Financial Year, an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such Financial Year.

Further, notwithstanding anything contained in any other provision of the Income Tax Act, such unexplained expenditure which is deemed to be the income of the assessee, shall not be allowed as a deduction under any head of income.

UNEXPLAINED AMOUNT BORROWED OR REPAID ON HUNDI [Sec. 69D]

Where any amount is borrowed on a hundi from, or any amount due thereon is repaid to any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the Previous Year, in which the amount was borrowed or repaid, as the case may be, provided that, if in any case any amount borrowed on a hundi has been deemed under the provisions of this Section to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under the provisions of this Section on repayment of such amount.

Explanation : For the purposes of the Section, the amount repaid shall include the amount of interest paid on the amount borrowed.

EXCHANGE RATE FLUCTUATION [Sec. 43A]

Where an assessee acquires an asset from abroad and in consequence of the variation in exchange rate, the liability of the assessee in terms of payment towards the acquisition of that asset increases or decreases, then the actual cost of that asset shall be increased or decreased accordingly. The effect of exchange rate fluctuation shall be taken into consideration for the purpose of deduction u/s. 32, 35, 35A, 36(1)(ix) and for the purpose of computation of capital gains u/s. 48 or u/s. 50 as the case may be.

The increase or decrease in liability due to exchange rate fluctuation shall be taken into account at the time of making payment also.

COST OF ACQUISITION OF CERTAIN ASSETS [Sec. 43C]

	Mode of acquisition	**Cost of acquisition**
1)	Amalgamation	(a) Cost to the amalgamating company (b) Cost of improvement (c) Expenses incurred for transfer
2)	Gift	(a) Cost to the donor, (b) Cost of improvement (c) Expenses incurred for accepting the gift and the gift tax paid by the donor

3)	Partition of HUF	(a) Cost to the HUF (b) Cost of improvement (c) Expenses incurred for partition
4)	Will	(a) Cost to the previous owner (b) Cost of improvement (c) Expenses incurred for probating the will
5)	Irrevocable Trust	(a) Cost to the previous owner (b) Cost of improvement (c) Expenses incurred for establishing the Trust

SPECIAL PROVISIONS FOR FULL VALUE OF CONSIDERATION FOR TRANSFER OF ASSETS OTHER THAN CAPITAL ASSETS IN CERTAIN CASES [Sec. 43CA]

Where the consideration received or accruing as a result of the transfer of land or building or both, held as stock in trade, is less than the value adopted or assessed or assessable by any authority of a State Government for purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purpose of computing profits and gains from transfer of such asset, be deemed to be full value of consideration received or accruing as a result of such transfer.

The provisions of section 50C(2) and 50C(3) shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable.

In the case where the amount of consideration or a part thereof has been received by any mode other than case or before the date of agreement for transfer of the asset and the date of agreement for transfer of the asset and the date of registration of such transfer of asset are not same, the value may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of transfer on the date of the agreement.

SPECIAL PROVISIONS FOR DEDUCTION IN CASE OF TRADE, PROFESSIONAL OR SIMILAR ASSOCIATION [Sec.44A]

Amount received from members of trade, professional or similar associations by way of subscription or membership fee falls short of the expenditure incurred, such deficit will be allowed as deduction in computing the income under the head "Profits and Gains of Business or Profession". If there is no income under that head or if the income under that head is inadequate to absorb the deficit, it can be set off against the income of the association computed under any other head of income.

In any case any loss or allowance brought forward from earlier Assessment Year, the deduction permissible under this provision cannot exceed 50% of the total income for that Previous Year computed before allowing this deduction.

Sec. 44 is applicable only to the trade, professional or similar association the income of which or any part thereof is not distributed to its members except as grants to any association, or institution affiliated to it.

Excess over expenditure received by a club from facilities extended to members as part of advantages attached to such membership shall not be chargeable to tax on the principle of mutuality- CIT vs. Bankipur Club Ltd. 226 ITR 97

COMPULSORY MAINTENANCE OF ACCOUNTS [Sec. 44AA, RULE 6F]

Applicability of this section depends on the type of activity carried on by the person. For this purpose. Persons are classified as follows :-

Person

- Specified Profession
  - Legal
  - Medical
  - Engineering
  - Architechtural
  - Accountancy
  - Technical Consultancy
  - Interior Decoration
  - Authorised Representative
  - Film Artist Company Secretary
  - Information Technology
  - or Any Other Notified Profession
  - Producer of a Cinematograph film
- Non-specified Profession
  - Other than Specifiied Profession

Note : Film Artist Means
- An Actor / Actress;
- A Cameraman;
- A Music Director;
- An Art Director;
- A Dance Director
- An Editor;
- A Story Writer;
- A Screen play writer;
- A Dialogue writer;
- A Dress Designer;

Requirement of Compulsory maintenance of Books of Account :

Category	Classification	Condition
A	"Specified Person" ↓ Not Required to Maintain any Books of Account as prescribed in Rule 6F	Gross Receipts ≤ ₹1,50,000 in any of the three years immediately preceeding the Previous Year If newly set up in the Previous Year, then his gross total receipts in the profession for that year are not likely to exceed the said amount
B	"Specified Person" ↓ Required to maintain such Books of Account as prescribed in Rule 6F.	Gross Receipts ≥ ₹1,50,000 in all the three years immediately preceeding the Previous Year If newly set up in the previous year, then his gross total receipts in the profession for that year are likely to exceed the said amount

C	"Non-Specified Person" ↓ Not Required to Maintain any Books of Account	Income from such Business or Profession ≤ ₹1,20,000 or total sale or turnover or gross receipts there of are less than ₹ 10,00,000 in all the three years immediately preceeding the Previous Year If newly set up in the Previous Year, then his gross total receipts in the profession for that year are not likely to exceed the said amount
D	"Non-Specified Person" ↓ Required to maintain such Books of Account as prescribed in Rule 6F. This category includes an assessee covered u/s 44AD, 44AE, 44BB, 44BBB	Income from such Business or Profession ≥ 1,20,000 or total sale or turnover or Gross receipts there of are less than ₹ 10,00,000 in all the three years immediately preceeding the previous year If newly set up in the Previous Year, then his gross total receipts in the profession for that year are likely to exceed the said amount

Rule 6F(2) prescribes the books to be maintained are as follows :-

(a) Cash Book

(b) Ledger

(c) Journal (if mercantile system is adopted)

(d) Bills and vouchers in respect of expenses incurred

(e) Copies of bills issued for amounts exceeding ₹ 25.

In case of medical practitioner, the following additional books are to be maintained:–

(a) Daily case register (Form 3C)

(b) Inventory as on the first and last day of the Previous Year, showing the stock of medicines (where drugs and medicines are dispensed during the course of practice)

Rule 6F(5) provides that the books of account and documents are required to be kept for six years from the end of the relevant Assessment Year

In case of assessment relating to any Assessment Year reopened u/s. 147 of the I.T. Act within the period specified in section 149 of the Act, the books and documents relating to that year are required to be kept and maintained till the assessment so reopened has been completed.

AUDIT OF ACCOUNTS [Sec. 44AB]

In case of following person carrying on business or profession are required to get his accounts audited before the specified date by an accountant and to furnish such report in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed before the specified date.

- Carrying on business where total sales turnover or gross receipts exceeds ₹1 crore;
- Carrying on profession where gross receipts exceed ₹ 25,00,000; or
- Carrying on business referred to in section 44AD or 44AE or and claiming his income to be lower than the income prescribed under the relevant section.

Types of Audit Report [Rule 6G]

Form No. 3CA : For the person who carries on Business or Profession and who is required by or under any other law to get his accounts audited.

Form No. 3CB : For the person carrying on Business or Profession who are not required to get his account audited under any other law.

Form No. 3CD : The particulars of which are required to be furnished u/s. 44AB.

SPECIFIED DATE [EXPLANATION TO SEC. 44AB]

"Specified date" in relation to the accounts of the assessee of the Previous Year relevant to the Assessment Year, means the 30th September of the Assessment Year.

In case the assessee has undertaken any international transactions as per section 92B or specified domestic transaction as per newly inserted section 92BA, the 'Specified Date' is extended to 30th November.

It may also be noted that the requirement of Audit u/s 44AB does not apply to person who derives income referred to in Sec. 44B, 44BB, 44BBA and 44BBB.

In case of an agent who earns only commission income, the audit of accounts is required only if the commission exceeds ₹ 1 crore. [CBDT circular No. 452 dt. 17.3.1986]

Illustration 22:

Mukund is a person carrying on profession as film artist. His gross receipts from profession are as under :

Financial year	2013-2014	₹ 1,25,000
Financial year	2014-2015	₹ 1,60,000
Financial year	2015-2016	₹ 1,80,000

Is he required to maintain any books of account under Section 44AA of the Income-tax Act? If so, what are these books?

Solution :

Section 44AA requires every person carrying on any profession, notified by the Board of the Official Gazette (in addition to the professions already specified) to maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act. The CBDT has notified the profession of film artists as one such profession (S.O. No.17E/12-1-77). Hence section 44AA applies to Mukund.

Sub-section (3) of section 44AA authorizes the Board to prescribe by rules, the books of account and other documents (including inventories) to be kept and maintained under sub-section (1), the particulars to be contained therein etc. The prescribed rule is Rule 6F, under which every person carrying on the specified profession, including a film artist, is required to maintain the books of account and other documents specified in sub-rule (2).

However, under the proviso to Sub-rule (1), nothing contained therein shall apply in the case of a person, if his gross receipts do not exceed ₹1,50,000 in any one of the three years, immediately preceding the Previous Year.

The significance of this rule is that if the gross receipts from profession do not exceed ₹1,50,000 in any one of the previous 3 years, he is not required to maintain the books of account specified in sub-rule (2) of Rule 6F. Since in one of the three previous years the gross receipts are below ₹1,50,000, the assessee is not required to maintain books of account and other documents as he is not governed by section 44AA.

Presumptive Income

Computation of income on estimated basis in the case of taxpayers engaged in certain business [Section 44AD]- The provision of section 44AD will be applicable only if the following conditions are satisfied-

(i) Eligible assessee- The assessee should be an eligible assessee. Eligible assessee for this purpose is a resident individual, a resident Hindu Undivided Family or a resident partnership firm (not being a Limited Liability Firm).

(ii) Has not claimed some deduction- The assessee has not claimed any deduction under sections 10A, 10AA, 10B, 10BA, 80HH to 80RRB in the relevant Assessment Year.

(iii) Eligible business- The assessee should be engaged in any business (whether it is retail trading or wholesale trading or civil construction or any other business). However following person are not eligible to avail any benefit under section 44AD-

  (a) A profession referred in section 44AA,

  (b) Commission or Brokerage,

  (c) Any agency business,

  (d) A person who is in the business of plying, hiring or leasing goods carriages.

(iv) Total turnover/ gross receipt in the Previous Year of the eligible business should not exceed ₹ 1 crore.

If the above conditions are satisfied, the income from the eligible business is estimated at 8 percent of the gross receipt or total turnover.

Presumptive income for truck owners [Section 44AE]

Under the existing provisions of section 44AE, a presumptive scheme is available to assesses engaged in business of plying, hiring or leasing goods carriages. The scheme applies to an assessee, who owns not more than 10 goods carriages at any time during the Previous Year.

The Act has enhanced the presumed income per vehicle for the owners of—

Each goods carriage shall be an amount equal to ₹ 7500 p.m. or part of a month during which the goods carriage is owned by the assessee.

The Act has further provided an anti-avoidance clause stating that a prescribed fixed sum or a sum higher than the / aforesaid sum claimed to have been earned by the assessee shall be deemed to be profits and gains of such business.

SPECIAL PROVISIONS FOR COMPUTING PROFITS & GAINS FOR NON-RESIDENTS

Section	Nature of Business	Profit- % on Turnover
44B	Shipping business in case of non-resident.	$7\frac{1}{2}\%$
44BB	Business of providing services or facilities in connection with orsupplying plant and machinery on hire used in the prospecting for or extraction or production of mineral oils in case of non-resident.	10%
44BBA	Business of operation of aircraft in case of non-resident.	5%
44BBB	In case of foreign company engaged in :- (i) Civil construction (ii) erection of plant or machinery (iii) testing or commissioning thereof in connection with turnkey power project approved by the Central Government, income is determined at 10% of the gross amount.	10% of the gross amount paid or payable in India or out of India.

Stock Valuation :

Valuation of stock plays a vital role in determining the taxable income of an assessee from business as correct profits cannot be ascertained unless the opening and closing stocks are valued correctly. Though the valuation of stock does not generate funds, it does affect taxable income of the business.

Cost or market price whicever is less – Neither the Income-tax Act nor the Income-tax Rules prescribes or permits any particular method of valuation of stock. An assessee may value its stock either at cost price or at market price, whichever is less.

It is now well-settled law that the assessee has a right to value his closing stock at cost price or market price, whcihever is lower. Where the goods are saleable only in certain foreign markets and there is no demand for the goods in such foreign markets, the assessee is entitled to value the goods at nil. It such a case he is not bound to show that he had made efforts to sell the goods in other foreign markets or in the local market before valuing the stock at nil—K. Mohammad Adam Sahib vs. CIT [1965] 56 ITR 360 (Mad.)

Change of method of stock valuation – Once a particular method of valuation is adopted, the same should be continued in subsequent year—CIT vs. A.V. Appu Chettiar [1962] 45 ITR 152 (Mad.). The method of valuation of stock may, however, be changed. The new method of stock valuation cannot be rejected merely because there would be loss of revenue in the year of change. What is relevant is to consider whether the method adopted is one of the recognised methods and further whether the changed method of stock valuation is followed consistently year after year. Change in the method of stock valuation cannot be restricted to a particular year. If the new method of stock valuation is followed consistently year after year, the tax authorities have no option but to accept such method notwithstanding the fact that, in the initial year when the changed method is brought about, it may result in a prejudice or detriment to the revenue. The change of method must be bonafide and must not be restricted to a particular year — CIT vs. Delta Plantation Ltd. [1993] 71 Taxman 329 (Cal.). The change has to be affected by adopting the new method for valuing the closing stock of the current year (in which change takes place), which will, in its turn, become the value of the opening stock of the next year.

According to section 145, the books of account and financial statements is to be prepared in accordance with the regular method of accounting followed by the assessee. However, according to section 145A while determining the income chargeable under the head "Profits and gains of business or profession", valuation of purchase and sale of goods and inventory should be not only in accordance with the method of accounting regularly employed by the assessee but should also be further adjusted as follows :

(i) Sale and purchase of goods should be shown at gross amount including duty, tax, cess, etc.;

(ii) While valuing opening and closing inventory tax, duty, cess, etc., should be included as part of cost (or value) of the inventory.

Head office expenditure in the case of non-resident [Sec. 44C]

Head office expenditu re in the case of a n on- resident is allowed in accordance with the provision of section 44C. This section is a non obstante provision and anything contrary contained in sections 28 to 43A is not applicable. Deduction in respect of head office expenditure is restricted to the least of the following :

(a) an amount equal to 5 per cent of "adjusted total income", or in the case of loss, 5 per cent of "average adjusted total income", or

(b) the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India.

MEANING OF ADJUSTED TOTAL INCOME – "Adjusted total income" means the total income computed in accordance with the provisions of the Act without giving effect to the following :

- Allowance under section 44C
- Unabsorbed depreciation allowance under section 32(2)
- Expenditure incurred by a company for the purpose of promoting family planning amongst its employees under the first proviso to clause (ix) of section 36(1)
- Businrss loss brought forward under section 72(1)

- Speculation loss brought forward under section 73(2)
- Loss under the head "Capital gains" under section 74(1)
- Loss from certain specified sources brought forward under section 74A(2)
- Deductions under sections 80C to 80U.

Average Adjusted Total Income – Where the total income of the assessee is assessable for each of the three assessment years immediately preceding the relevant Assessment Year, one-third of the aggregate amount of the adjusted total income in respect of the Previous Years relevant to the aforesaid three Assessment Years is average adjusted total income.

- Where the total income of the assessee is assessable only for two of the aforesaid three Assessment years, one- half of the aggregate amount of the adjusted total income in respect of the Previous Years relevant to the aforesaid two assessment years is taken as average adjusted total income.
- Where the total income of the assessee is assessable only for one of the aforesaid three Assessment Years, the amount of the adjusted total income in respect of the previous year relevant to that Assessment Year is average adjusted total income.

Head Office Expenditure - "Head office expenditure" means executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of :

a) rent, rates, taxes, repairs or insurance of any premises outside India used for the purposes of the business or profession ;

b) salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India ;

c) travelling by any employee or other person employed in, or managing the affairs of, any office outside India ; and

d) such other matters connected with executive and general administration as may be prescribed.

Computatiqn of income by way of royalties and technical service fees in the case of foreign companies [Sec. 44D]

The provisions are given below :

AGREEMENT MADE BEFORE APRIL 1, 1976 – Where such income is received under an agreement made before April1, 1976, the deduction in respect of expenses incurred for earning such income is subject to a ceiling limit of 20 per cent of the gross amount of such income, as reduced by the amount, if any, of so much of the royalty income as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property.

The aforesaid ceiling limit is applicable in relation to all royalties and technical service fees received by foreign companies from Indian concerns, irrespective of whether such royalties or technical service fees are received under agreements which have been approved by the Central Government or not.

For this purpose, an agreement made by a foreign company with an Indian concern on or after April 1, 1976 is regarded as agreement made before that date if such agreement is made on the basis of proposals approved by the Central Government before that date and the foreign company has exercised an option in this behalf under section 9(1)(vi).

AGREEMENT MADE ON OR AFTER APRIL 1, 1976 NOT BEING COVERED BY SECTION 44DA [Sec.115A]

Royalties and technical service fees received under an agreement made on or after April 1, 1976 not being covered by section 44DA, are chargeable to tax @ 10 per cent (+SC+EC+SHEC) by virtue of section 115A in following four cases -

a) where such agreement is with the Government of India; or

b) where such agreement is with an Indian concern, the agreement is approved by the Central Government ;or

c) where such agreement relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy ; or

d) where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the proviso to sub-section (1A) of section 115A to the Indian concern or in respect of computer software referred to the second proviso to section 115A(1A) to a person resident in India.

In other words, the gross amount of income by way of royalties or fees for technical services received by a non- resident from an Indian concern is chargeable to tax. In the aforesaid four cases, the gross amount of such income is chargeable to tax at the flat rate of 30/20/10 per cent (plus surcharge plus education cess plus secondary and higher education cess) by virtue of section 115A. In other remaining cases, such gross income is taxable at the normal rate [i.e., 40 per cent (+SC+EC+SHEC)].

- According to section 440, while calculating the aforesaid income no deduction under sections 28 to 44C shall be allowed to foreign companies having income by way of royalty or fees for technical services received from Central Government or Indian concern for agreement with them after March 31, 1976 but before April 1, 2003 [applicable even if the agreement is not approved by the Central Government].
- Whether tax paid on behalf of foreign companies is to be grossed up - If tax is payable on the aforementioned income by the Indian counterpart on behalf of foreign companies, then in few cases tax shall not be grossed up in the hands of foreign company.
- Indian Concern - An 'Indian concern' in section 115A should be taken as a business carried on in India which may include a business carried on in India even by a non-resident.

Section 44DA

Section 44DA has been inserted to harmonise the provisions relating to the income from royalty or fees for technical services attributable to a fixed place of profession or a permanent establishment in India with similar provisions in the various Double Taxation Avoidance Agreements. The provisions of section 44DA are given below :-

When Section 44DA is applicable - Section 44DA is applicable if the following conditions are satisfied—

1. The taxpayer is a foreign company or non-resident non-corporate-assessee.
2. The taxpayer carries on a business in India through a permanent establishment situated in India. Alternately, the taxpayer performs professional services from a fixed place of profession situated in India. "Permanent establishment" includes a fixed place of business through which the business of an enterprise is wholly or partly carried on.
3. The taxpayer gets income by way of royalty or fees for technical services. One may refer to section 9(1) for meaning of "royalty" and "fees for technical services".
4. The aforesaid royalty or technical fees is received from—

   a. Government (i.e., the Central Government or a State Government); or

   b. an Indian concern.
5. The income mentioned in (3) is received in pursuance of an agreement made by the taxpayer with the Government or the Indian concern after March 31, 2003. If such agreement is made before April 1, 2003, then section 44D is applicable (not section 44DA).
6. The right, property or contract in respect of which the royalties or fees for technical services are paid to the taxpayer is effectively connected with permanent establishment or fixed place of profession [as mentioned in (2)].

Conclusion : The cumulative impact of sections 44D, 44DA and 115A is given below —

Royalty or fees for technical service received by a foreign company or a non-resident non-corporate assessee from Government or an Indian concern		Deductions under sections 28 to 44D and 57	Deductions under sections 80C to 80U	Rate of tax on such royalty or fees or fees [1-2-3]
	1	2	3	4
A	Such royalty is received under an agreement made before April 1, 1961 or such technical fee is received under an agreement made before March 1, 1964			
	A1 Where the agreement is approved by the Government	Note 1	Deduction is available	40 per cent
	A2 Where the agreement is not approved	Note 1	Deduction is available	40 per cent
B	Such royalty is received under an agreement made after March 31, 1961 but before April 1, 1976 or such technical fee is received under an agreement made after February 29, 1964 but before April 1, 1976			
	B1 Where agreement is approved by the Central Government	Note 1	Deduction is available	50 per cent
	B2 Where such agreement is not approved by the Central Government	Note 1	Deduction is available	40 per cent
C	Such royalty or technical fee is received under an agreement made after March 31, 1976 but before April 1, 2003			
	C1 Where such agreement is with the Government	No deduction	Deduction is available	10 per cent [See Note 5]
	C2 Where such agreement is with an Indian concern, the agreement is approved by the Central Government	No deduction	Deduction is available	10 per cent [See Note 5]
	C3 Where the agreement relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy	No deduction	Deduction is available	10 per cent [See Note 5]
	C4 Where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the proviso to sub-section (1A) of section 115A to the Indian concern or in respect of computer software referred to in the second proviso to section 115A(1A) to a person resident in India	No deduction	Deduction is available	10 per cent [See Note 5]
	C5 In any other case	No deduction in the case of foreign company. Deduction is, however, available if tax- payer is non- resident non-corporate assessee	Deduction is available	Applicable rate

Royalty or fees for technical service received by a foreign company or a non-resident non-corporate assessee from Government or an Indian concern		Deductions under sections 28 to 44D and 57	Deductions under sections 80C to 80U	Rate of tax on such royalty or fees or fees [1-2-3]
D	Such royalty or technical fee is received under an agreement made after March 31, 2003			
	D1 Where royalty or technical fees is effectively connected to Permanent Establishment in India	Deduction is available	Deduction is available	Applicable rate
	D2 Where PE is absent but the case is covered by section 115A(1) [i.e. C1 to C4]	No Deduction	Deduction is available	10 per cent [See Note 5]
	D3 In any other case	Deduction is available [Note 3]	Deduction is available	Applicable rate

Notes :

1. Deduction shall not exceed in the aggregate 20 per cent of the gross amount of such royalty or fees as reduced by so much of the gross amount of such royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property.
2. The tax rates given in the column 4 of the table *supra* are not applicable where a lower rate is prescribed under an Avoidance of Double Taxation Agreement entered into by the Central Government under section 90.
3. Neither section 44D (agreement is made after March 31, 2003) nor section 115A (3) (it is not agreement covered by C1 to C4) will apply in such a case. In other words, the computation will be governed by the normal provisions of the Act.
4. Provisions of sections 70, 71, 72 will be applicable before computing the aforesaid *income*.
5. Rate of tax is 30 percent if agreement is made before June 1, 1997 and 20 percent if agreement is made after May 31, 1997 but before June 1, 2005.

Computation of income and tax under sections 115A, 115AB, 115AC, 115AD, 115BBA and 115D - The chart given below highlights the provisions of sections 115A, 115AB, 115AC, 115AD, 115BBA and 115D regarding computation of income and tax thereon :

Section	Nature of income	Deductions under sections 28 to 44C and 57	Whether the benefit of computing Capital Gain in foreign currency as provided by the first proviso to section 48 and the rule of indexation as provided by the second proviso to section 48 are applicable	Dedutctions under section 80C to 80U	Tax rate	Is it necessary to submit return of income
115A (1)(*a*)	The following incomes in the case of a non-resident non-corporate assessee or a foreign company—					
	a. dividend (not being dividend covered under section 115-O)	Not available	—	Not available	20 per cent	Note 1
	b. interest received from Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	Not available	—	Not available	20 per cent	Note 1
	c. interest received from an infra- structure debt fund referred to in section 10(47) (applicable from June 1, 2011, i.e., Assessment Year 2012-13)	Not available	—	Not available	5 per cent	Note 1
	d. interest as referred to in section 194LC/194 D and [with effect from the A.Y. 2015-16 interest referred to in section 194LBA(2)]	Not available	—	Not available	5 per cent	Note 1
	e. income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India	Not available	—	Not available	20 per cent	Note 1
115A (1)(*b*)	Royalty or technical fees of a non- resident non-corporate assessee or a foreign company	As given in earlier chart	—	As given in earlier chart	20 per cent (+SC + EC + SHEC)	Yes
115AB	The following incomes of an assessee, being an overseas financial organization–					
	a. income received in respect of units purchased in foreign currency	Not available	—	Not available		Yes
	b. income by way of long-term capital gains arising from the transfer of units purchased in foreign currency	— —	First proviso is not relevant (as it is applicable only in the case of shares/ debentures Second proviso to section 48 is not applicable	Not available	10 per cent 10 per cent	Yes

Section	Nature of income	Deductions under sections 28 to 44C and 57	Whether the benefit of computing Capital Gain in foreign currency as provided by the first proviso to section 48 and the rule of indexation as provided by the second proviso to section 48 are applicable	Dedutctions under section 80C to 80U	Tax rate	Is it necessary to submit return of income
115AC	The following incomes of a nonresident:					
	a. income by way of interest or dividends (not being covered by section 115-O), on bonds or Global Depository Receipts of an Indian company issued in accordance with the notified scheme, i.e., Foreign Currency Convertible Bonds and Ordinarily Global Depository Receipts (Through Depository Receipt Mechanism) Scheme, 1993/Issue of Foreign Currency Exchangeable Bonds Scheme, 2008 or (with effect from October 1, 1996) on bonds/ Global Depository Receipts of a public sector company sold by the Government and purchased by him in foreign currency	Not available	—	Not available	10 per cent	Note 1
	b. income by way of Long-term Capital Gains arising from transfer of bonds or, as the case may be, Global Depository Receipts referred above	—	First and second proviso to section 48 are not applicable	Not available	10 per cent	Yes
115ACA	Income from Global Depository Receipts held by a resident individual who is an employee of an Indian company engaged in specified knowledge based industry or service or an employee of its subsidiary engaged in specified knowledge based industry or service					
	• Dividend (not being covered by section 115-O) on Global Depository Receipts of an Indian company engaged in specified knowledge based industry/service issued under notified employees stock option scheme and purchased in foreign currency	Not available	—	Not available		Yes
	• Long-term capital gain on transfer of such receipts	—	First and second proviso to section 48 are not applicable	Not available	10 per cent	

Section	Nature of income	Deductions under sections 28 to 44C and 57	Whether the benefit of computing Capital Gain in foreign currency as provided by the first proviso to section 48 and the rule of indexation as provided by the second proviso to section 48 are applicable	Dedutctions under section 80C to 80U	Tax rate	Is it necessary to submit return of income
115AD	The following income of a notified Foreign Institutional Investor :					
	a. income (not being dividend covered by section 115-O) received in respect of securities (other than units referred to in section 115AB)	Not available	—	Not available	20 per cent	Yes
	b. income by way of short-term or long-term capital gains arising from the transfer of such securities	—	First and second proviso to section 48 are not applicable	Not available	Long- term 10 percent short-term u/s 111A 15 per cent, any other short-term 30 per cent	Yes
	c. Interest referred to in Section 194LD (from the A.Y. 2014-15)	Not available	–	Not available	5 percent	Yes
115BBA(1) (a)	The following income of nonresident sportsman who is a foreign citizen					
	i. participation in India in any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport; or	Not available	—	Not available	20 per cent	Note 1
	ii. advertisement; or	Not available	—	Not available	20 per cent	Note 1
	iii. contribution of articles relating to any game or sport in India in newspapers, magazines or journals	Not available	—	Not available	20 per cent	Note 1
115BBA(1) (b)	Any amount guaranteed to be paid or payable to a nonresident sports association or institution in relation to any game (not being a game referred to in section 115BB) or sports played in India	Not available	—	Not available	20 per cent	Note 1
115BBA(1) (c)	Income of a non-resident foreign citizen entertainer (applicable from the Assessment Year 2013-14)	Not available	—	Not available	20 per cent	Note 1

Section	Nature of income	Deductions under sections 28 to 44C and 57	Whether the benefit of computing Capital Gain in foreign currency as provided by the first proviso to section 48 and the rule of indexation as provided by the second proviso to section 48 are applicable	Dedutctions under section 80C to 80U	Tax rate	Is it necessary to submit return of income
115D	The following incomes of a non-resident Indian					
	a. investment income from foreign exchange assets	No deduction under any provision	—	Not available	20 per cent	Note 1
	b. Long-term Capital Gain on transfer of foreign exchange assets	—	First proviso to section 48 is applicable but not the second proviso.	Not available	20 per cent	Note 1

Notes :

1. It is not necessary for an assessee referred to in sections 115A(1), 115AC(1), 115BBA or 115D to furnish his return of income under section 139(1).
2. Rate of tax is to be increased by Surcharge, Education Cess and Secondary and Higher Secondary Cess.

REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX

MODE OF TAKING OR ACCEPTING CERTAIN LOANS AND DEPOSITS [SEC. 269SS]

No person shall, after the 30th day of June, 1984, take or accept from any other person (hereafter in this section referred to as the depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account if—

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit is twenty thousand or more.

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid ; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more

Provided that the provisions of this section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by,—

(a) Government ;

(b) any banking company, post office savings bank or co-operative bank ;

(c) any corporation established by a Central, State or Provincial Act ;

(d) any Government company as defined in section 617 of the Companies Act, 1956 (Corresponding section 2(45)of Companies Act, 2013) ;

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette :

Provided further that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act.

As per amendment made by Finance Act, 2015, no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account-payee cheque/draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is ₹ 20,000 or more (w.e.f. 1st june 2015).

Mode of repayment of certain loans or deposits [Sec. 269T]

No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or by use of electronic cleaning system through a bank account if—

(a) the amount of the loan or deposit together with the interest, if any, payable thereon, or

(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, is twenty thousand rupees or more.

Provided that where the repayment is made by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid.

Provided further that nothing contained in this section shall apply to repayment of any loan or deposit taken or accepted from—

(i) Government;

(ii) any banking company, post office savings bank or co-operative bank;

(iii) any corporation established by a Central, State or Provincial Act;

(iv) any Government company as defined in section 617 of the Companies Act, 1956 (Corresponding Section 2(45) of Companies Act, aCT,2013;

(v) such other institution, association or body or class of institutions, associations or bodies which the Central

Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

As per amendment made by Finance Act, 2015, no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account-payee cheque/draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is ₹ 20,000 or more (w.e.f. 1st june 2015).

Mode of repayment of Special Bearer Bonds, 1991 [Sec. 269TT]

Notwithstanding anything contained in any other law for the time being in force, the amount payable on redemption of Special Bearer Bonds, 1991, shall be paid only by an account payee cheque or account payee bank draft drawn in the name of the person to whom such payment is to be made.

Income from Business or Profession and Tax Planning

Following are certain measures should be kept in mind for tax planning for income from business or profession.

1. **Nature of business:** Economic factors such as scope, profitability, feasibility factors, etc. are important for determining the nature of business but the benefits and concessions available to each line of business may also be presumed before expanding an existing line of business.
2. **Location of business:** Although certain factors such as nearness to the source of raw materials or markets or availability of infrastructure may be useful in taking decision on the location of business, tax consideration is also equally important. If an industry is located in backward area, deduction under section 80-IB is available.
3. **Sources of funds:** There are different sources of funds depending upon the needs, availability, terms, etc. However for availing the tax benefits, there should be proper debt- equity mix in the capital structure and a clear policy on return on capital employed.
4. **Travel Expenses:** The travel expenses of spouse were held as inadmissible, if such travel is not for business consideration. She may be made a partner in the firm to claim business expenditure on travel and further the share of profit of the spouse cannot be clubbed with that of the husband as the same is exempt u/s 10(2A).
5. **Employee welfare funds:** The contribution of the employees' welfare funds should be paid within time limits prescribed under the relevant Acts. It would be better to borrow and pay the tax liability on or before relevant due date. Contribution made to the welfare funds after the due date does not qualify for deduction even in the year of payment. However interest on money borrowed for meeting such liability qualifies as business expenses.

SHORT QUESTIONS & ANSWERS ON PROFITS AND GAINS FROM BUSINESS OR PROFESSION

State the deductibility of the following expenses :

(1) Anticipated hedging loss under a contract to purchase raw material.

(2) Non-recovery of a bill due to negligence of an employee.

(3) Initial expenditure incurred on installation of fluorescent tube lights.

(4) Non-recovery of advance allowed to 100% subsidiary company engaged in the business of financing subsidiary companies.

(5) Consultation fees paid to tax advisor.

(6) Lump sum payment made to acquire a licence regarding technical information to reduce the production cost.

(7) Payment made to catering agency for providing food/beverages to employees, working in overtime @ ₹ 75 per employee for 20 days.

(8) Subsidy received from the Government to compensate the loss suffered in exports under government sponsored scheme, has been directly credited to Capital Reserve A/c. The assessee claims it as exempt.

(9) Compensation paid to an employee under voluntary retirement scheme which does not conform to the guide lines under Sec. 10(10C).

(10) Commission accrued during the year but not credited in books as it has been held back due to breach of certain conditions, which may create liability to pay damages.

(11) Rent of quarters, located near factory, let out to the employees of the factory, was treated as income from house property.

(12) Fees of ₹ 40,000 were paid by the company to a lawyer to defend the company in a court case. Lawyer is the brother of the director of the company. The fees have been paid by a bearer cheque and it is found excessive to the extent of ₹ 20,000.

(13) Employees contribution to the recognised provident fund, ₹ 60,000 has been charged to the Profit and Loss Account but only ₹ 25,000 was credited to their accounts on due date and the balance was credited to their account on the due date fixed for furnishing return of income for the relevant Previous Year.

(14) Bonus/commission to employees was paid: (a) during the Previous Year; or (b) after the Previous Year but on or before the due date of return of income for that year, or (c) after the due date the return of income for that Previous Year.

(15) Salary has been paid to a resident employee outside India and non-resident employee in India but no tax has been paid thereon or deducted therefrom.

(16) Advertisement expanses incurred outside India in foreign currency. RBI permission has not been obtained.

(17) Municipal taxes and land revenue in respect of staff quarters were paid after due date of furnishing return of income for the relevant Previous Year.

(18) Foreign tour expanses of the managing director for 10 days. However, 2 days were devoted to personal work.

(19) Advertisement in a journal published by political party.

(20) 600 VIP brief cases, costing ₹1,500 each, presented to customers.

(21) Voluntary payment of gratuity paid on account of commercial expediency to an employee who died on business tour.

(22) Traveling expenses to explore the feasibility of new line of business.

(23) Annual payments in installments over a period of 10 years to seek assistance in technical know-how for improving quality of product.

(24) Expenses incurred for registration of trademarks.

(25) Employees were issued shares at par to protect business interest. Difference of market price and par value was charged as revenue expenditure.

(26) Expenditure incurred on neon-sign board for the business premises.

(27) Theft of stock-in-trade assuming (a) it is insured (b) it was uninsured

(28) Expenditure incurred for new telephone connection.

(29) Purchase of sanitary and pipeline for factory

(30) Legal charges incurred for framing the scheme of amalgamation of C company with the assessee company.

(31) Compensation paid to cancel the purchase order of a machine due to abnormal rise in its price. The assessee claims it as trading loss, or capital loss.

(32) Confiscation of goods, imported without a valid import licence. The assessee was also fined by Custom authorities. The assessee claims deduction for both of them under general deductions Sec. 37(1).

(33) The assessee claims the set-off unabsorbed depreciation of a discontinued business against the profits of another business.

(34) Whether the Transfer Pricing Provisions are applicable to any domestic transactions between related parties?

Solution :

(1) Anticipated hedging loss under a forward contract is not allowed to be deducted.

(2) Loss caused due to negligence of employee is allowed to be deducted.

(3) Initial expenditure on installation of fluorescent tube lights is a capital expenditure, not deductible [Sec. 37(1)].

(4) As the business of 100% subsidiary is to finance subsidiary company, loss on account of non-recovery of such advances relates carrying on business. Such loss is an allowable deduction.

(5) Consultation fee paid to tax-advisor is allowed under Sec. 37(1).

(6) Payment made to acquire licence regarding technical information is a capital expenditure. Depreciation is allowed under Sec. 32 on such cost.

(7) Payment made to catering agency to provide food/beverages to employees is allowed under Sec. 37(1).

(8) Subsidy granted by government against loss suffered by exporters under government-sponsored scheme, is a trading receipt. Recovery of loss is taxable under Sec. 41(1).

(9) Compensation paid under voluntary retirement scheme is allowed to be deducted in five equal annual instalments [Sec. 35DDA]. Scheme of voluntary retirement need not be in accordance with the guidelines of Sec. 10(10C).

(10) Commission accrued during the year is taxable under mercantile system. Liability to pay damages for breach of certain conditions is a contingent liability. No deduction can be allowed for such provision.

(11) Rent from quarters, let out to employees, is a business income provided the letting is subservient and incidental to the main business.

(12) Payment made by a company to the brother of the director of the company, is covered under Sec. 40A(2).

Therefore, excessive fees of ₹ 20,000 have to be disallowed. Provisions of Sec. 40A(3) apply to the balance payment since it has been made by bearer cheque. Accordingly, the balance of ₹20,000 shall have to be disallowed in computing taxable business profits, w.e.f. A.Y.2010-11.

(13) Deduction is allowed for employees' contribution credited to their account on the due date under provident fund rules. No deduction is allowed for such contribution credited to their account thereafter. Employees' contribution, deducted from their salaries, is first treated as business income. If the same has not been credited to their account, the same has to be treated business income first.

(14) Bonus/commission paid to the employees during the Previous Year or paid after the Previous Year but before the due date fixed for furnishing return of income for the Previous Year is allowed to be deducted in the same Previous Year in which the liability to pay such bonus/commission arose. Any bonus/ commission, paid to employees after such due date, is allowed to be deducted in the Previous Year in which the date of payment falls.

(15) Salary paid to any person outside India (resident or non-resident) or salary paid to a non-resident in India is not allowed to be deducted if tax has not been paid thereon nor deducted therefrom [Sec. 40(a)(iii)]. Thus, no deduction is allowed in the instant case. It is operative from the Assessment Year 2006-2007.

(16) Advertisement expenditure incurred in India or outside India is allowed to be deduction under Sec. 37(1) provided it is not of capital nature and it is incurred wholly and exclusively for the purposes of business. Permission of RBI is not relevant.

(17) Deduction of municipal taxes and land revenue in respect of staff quarters, will be deducted in the Previous year in which the date of payment falls (Sec. 43B).

(18) Proportionate foreign tour expenses of the director relating to personal work are not to be allowed; such expenditure has not been incurred wholly and exclusively for the purposes of business. However, air fare (both ways) will be fully allowed.

(19) No deduction can be allowed for advertisement in the journals published by a political party [Sec. 37(2B)].

(20) Presentation of VIP bags to customers is allowed as expenditure on advertisement under Sec. 37(1). There is no ceiling limit for gift articles.

(21) Voluntary payment of gratuity on account of commercial expediency is allowable deduction under Sec. 37(1).

(22) Travelling expenditure for exploring new line of business is a capital expenditure. It is not allowed under Sec.37(1). It may be capitalized for the purposes of Sec. 35D.

(23) Annual installment paid for technical know-how is a revenue expenditure. It is allowed under Sec. 37(1).

(24) Expenses incurred for registration of trademark is a revenue expenditure. It is, therefore, allowed under Sec.37(1).

(25) Waiver of premium while issuing shares to employees, is not a trading transaction. It is not deductible.

(26) Expenditure incurred on neon-sign board is a capital expenditure. It is not allowed in computing business income [(Sec. 37(1)]. However, depreciation can be claimed on it @ 15%.

(27) Loss of stock-in-trade due to theft is allowed under Sec. 29 as incidental to business. However, if it is insured insurance compensation will be a trading receipt.

(28) Expenditure on new telephone lines is allowed under Sec. 37(1). It is a revenue expenditure incurred for the purposes of business.

(29) Purchase of sanitary pipe-line is a capital expenditure, not allowable under Sec. 37(1). However, depreciation is allowed under Sec. 32 @ 15%.

(30) Amalgamation expenses are allowed to be deducted in computing taxable profits under Sec. 35DD in five equal annual instalments.

(31) Compensation paid to cancel the purchase order of a machine, is a capital expenditure. It avoids futile investment in machine. It cannot be deducted under Sec. 37(1). As there is no "transfer" of a capital asset, compensation paid cannot be claimed is a capital loss also.

(32) Explanation to Sec. 37(1) does not allow any illegal expense in computing taxable profit of business.

Therefore, fine imposed for illegal import cannot be allowed [Explanation to Sec. 37(1)]. However, loss by way of the confiscation of goods can be allowed as incidental to business under Sec. 29.

(33) Unabsorbed depreciation of a discontinued business now can be set-off against the profits of any other business and thereafter against the income of any other head. It is operative from the assessment year 2003-2004.

(34) Yes, the provisions of transfer pricing is also applicable to domestic transactions.

ILLUSTRATIONS ON PROFITS AND GAINS FROM BUSINESS OR PROFESSION

Illustration 23 : Mr Sameer, resident in India, for the year ending on 31st March 2016 providing the following P & L A/c. Compute his income from business and gross total income for the assessment year 2016-2017.

Profit & Loss Account for the year ended 31.3.16

Dr. Cr.

Expenditure	(₹)	Receipts	(₹)
To Purchases	1,90,000	By Sales less returns	5,69,300
To Salaries and wages	1,40,000	By Bad debts recovered, allowed in earlier years by the Assessing Officer	2,000
To Trade expenses	1,000	By Interest on securities (gross)	892
To Purchase of trademarks	50,000	By Dharmada, mandir and gaushala receipts	2,000
To Registration of trademarks	2,000	By Refund on Income Tax	1,008
To Rent, rates and taxes	5,000	By Proceeds of life insurance policy on maturity	43,500
To Discount allowed	1,500		
To Household expenses	6,000		
To Advertisement bill paid in cash	30,000		
To Income Tax	10,000		
To Sales tax paid	3,000		
To Purchased technical know-how	12,000		
To Expenses incurred on income tax and sales tax proceedings	15,100		
To Contribution paid to a trust for staff welfare	1,000		
To Staff welfare expenses incurred	700		
To OYT deposit	5,000		
To Postage and telegrams	1,300		
To Donation to National Defence Fund	2,500		
To Life insurance premium on the life of the assessee	2,000		
To Interest on capital	5,500		
To Interest on loan taken to pay Income Tax	500		
To Audit fee	1,000		
To Entertainment expenditure	30,000		
To Gifts and present to five customers, costing ₹ 3,000 each	15,000		
To Expenses on apprentice training	4,000		
To Emergency risk insurance	200		
To Fire insurance premium for stock	400		
To Provision for bad and doubtful debts	3,000		
To Reserve for pecuniary losses	5,000		
To Net Profit	76,000		
	6,18,700		**6,18,700**

Solution :

Assessee : Mr. Sameer **Computation of Gross Total Income** **A. Y : 2016-2017**

Particulars	₹	₹
Income from Business		
Net Profit as per Profit and Loss Account		76,000
Add: Expenses inadmissible in computing profits and gains from business or profession:		
Purchase of trademarks	50,000	
Household expenses [Sec. 37(1)]	6,000	
Advertisement bills paid in cash [Sec. 37(1) r.w. Sec. 40A(3)] @ 100% of ₹ 30,000	30,000	
Income tax [Sec. 40(a)(ii)]	10,000	
Purchase of technical know-how	12,000	
Contribution to a Trust for staff welfare fund [Sec. 40A(9)]	1,000	
Donation for National Defence Fund [Sec. 37(1)]	2,500	
Life Insurance premium [Sec. 37(1)]	2,000	
Interest on capital [Sec. 36(1)(iii)]	5,500	
Interest on loan taken to pay income tax [Sec. 37(1) r.w. 40(a)(ii)]	500	
Provision for bad and doubtful debts [Sec. 37(1) r.w. 36(1)(vii)(2)]	3,000	
Reserve for pecuniary losses [Sec. 37(1)]	5,000	
		1,27,500
		2,03,500
Less:		
Income not relating to business or profession: [Sec. 28(i)]		
(a) Interest on government securities	892	
(b) Dharada, mandir and gaushala receipts	2,000	
(c) Refund of income tax	1,008	
(d) Proceeds of L.I.P. : It is not a business receipt and exempt [Sec. 10(10)]	43,500	
(e) Depreciation on trademarks; 25% of ₹50,000	12,500	
(f) Depreciation on know-how: 25% of ₹ 12,000	3,000	62,900
Income from Business		**1,40,600**
Statement of Gross Total Income for the Assessment Year 2016-2017		
1. Income from Business		1,40,600
2. Income from Other Sources— Interest on securities		892
Gross Total Income		**1,41,492**

Notes :

1) Bad debts deducted in earlier years and now recovered, has been rightly included in the Profit and Loss Account as business income [Sec. 41(4)].

2) Since payment of income tax is not deductible, its refund cannot be taxed as deemed profits [Sec. 41(1)].

3) OYT (own your telephone) deposit is an allowable deduction in the year in which it is paid.

4) "Dharmada", "mandir" and "gaushala" receipts are customarily levies by trader for charitable purposes. Amount received under these heads are not trading receipts. The fact that the amount collected under

these heads are spent for other purposes would amount to breach of trust but it would not affect the initial nature and character of the receipt. Such receipts are not taxable.

5) The assessee is entitled to the deduction in respect of donation to National Defence Fund under Sec. 80G.

6) Life insurance premium paid by assessee on his life is allowed to be deducted u/s 80C in computing total income.

7) Any payment on advertisement exceeding ₹ 20,000 should be made by on account payee cheque or account payee bank draft. Since the payment has been made in cash, 100% of advertisement has been disallowed [Sec. 37(1) r.w. Sec. 40A(3)]. 'Crossed cheque' requirement has been amended by 'account payee' cheque. It is operative from 13-07-2008.

8) From the assessment year 2001-2002, intangible assets also fall within the scheme of depreciation. Hence, depreciation has been allowed on trademarks and know-how.

9) Registration expense of trademarks is revenue expenditure, allowed under Sec. 37(1).

Illustration 24 :

Dr L.Kochagaway is a renowned medical practitioner. He furnishes his receipts and payments account for the previous year 2015-2016:

Dr. Cr.

Receipts		₹	Payments		₹
To Balance b/d		35,000	By Rent of clinics:		
To Consultation fees :			2013-2014	13,600	
2013-2014	25,000		2014-2015	44,800	
2014-2015	1,80,000		2015-2016	26,600	85,000
2015-2016	2,62,000	4,67,000	By Electricity and water		12,000
To Visiting fees		1,30,000	By Purchase of professional books		18,000
To Loan from bank for professional purposes		2,25,000	By Household expenses		97,800
To Sale of medicines		1,73,000	By Municipal taxes paid in respect of property		12,000
To Gift/presents from patients		15,000	By Purchase of motor car		2,45,000
To remuneration from articles published in professional magazines		26,000	By Telephone Charges		10,000
To Rent from house property		96,000	By Fire insurance in respect of property		3,200
To Interest on Post Office National Savings Certificates		17,000	By Surgical equipment		44,700
			By Advance income tax		43,000
			By Salary and perquisite to compounder		72,000
			By Entertainment expenses		16,000
			By Purchase of X-ray machine		2,00,000
			By Expenses of income-tax proceedings		15,000
			By Life insurance premium		25,000
			By Gifts to wife		25,000
			By Interest on loan		12,000
			By Loan A/c—instalment paid		25,000
			By Donation to Political Party		2,500
			By Car expenses		36,000
			By Purchase of medicines		1,05,000
			By Balance c/d		79,800
		11,84,000			**11,84,000**

Compute his income from Profession and Gross Total Income for the Assessment Year 2016-2017 after taking into account the following additional information:

1. One-third of the car expenses are in connection with personal use.
2. Depreciation on motor car is allowed at the rate of 15%.
3. The construction of the house property was completed in March 2010. It was let out for residential purposes.
4. Expenses on income tax proceeding include ₹ 1,000 paid for the preparation of return of income.
5. Receipts outstanding from patients for 2015-2016, amount to ₹ 8,000.
6. Closing stock of medicines is ₹ 8,000 but its current market price is ₹ 12,000.
7. Books purchased include annual publications of ₹ 12,000, purchased in December 2015.

Solution :

(a) Computation of income from profession for the Assessment Year 2016-2017:

Particulars		₹	₹
Income from Profession :			
(a) Receipt from profession:			
(1) Consultation fees: [Sec. 28(i)]: (₹ 25,000 + ₹ 1,80,000 + ₹ 2,62,000)		4,67,000	
(2) Visiting fees [Sec. 28(i)]		1,30,000	
(3) Sale of medicines [Sec. 28(i)]		1,73,000	
(4) Gifts and presents from patients [Sec. 28(iv)]		15,000	
(5) Remuneration from articles published in professional magazines [Sec, 28(i)]		26,000	8,11,000
(b) Closing stock of medicines			8,000
Total receipts and closing stock			8,19,000
Less: Expenses allowable:			
(1) Rent of clinic [Sec. 30](₹13,600 + ₹44,800+ ₹26,600)		85,000	
(2) Electricity and water [Sec. 37(1)]		12,000	
(3) Salary of compounder [Sec. 37(1)]		72,000	
(4) Entertainment expenses [Sec. 37(1)]		16,000	
(5) Expenses on income-tax proceedings [Sec. 37(1)]		15,000	
(6) Interest on loan [Sec. 37(1)(iii)]		12,000	
(7) Purchase of medicines [Sec. 37(1)]		1,05,000	
(8) Car expenses [Sec. 37(1)] (2/3 x ₹ 36,000)		24,000	
(9) Depreciation on professional books :			
(i) Annual publications: 12,000 × 100% × 50%		6,000	
(ii) Other books: 6,000 × 60%		3,600	
(10) Depreciation on car [Sec. 32 r.w. Sec. 38] : 15% of 2,45,000 × 2/3		24,500	
(11) Depreciation on plant and machinery:			
(i) X-ray machine	2,00,000		
(ii) Surgical equipment	44,700		
Depreciation @ 15% of	2,44,700	36,705	
(12) Telephone Charges		10,000	(4,21,805)
Taxable Income from Profession			**3,97,195**

B/F		3,97,195
Computation of Income from House Property:		
Gross Annual value on the basis of rental valuation	96,000	
Less: Full municipal taxes paid by the owner	12,000	
Net Annual Value	84,000	
Less: Statutory deduction: 30% of net annual value	25,200	
Income from House Property		58,800
Gross Total Income		4,55,995
Less: Deduction u/s 80C (LIC premium paid assumed that the premium is 10% of the capital sum insured		25,000
Less: Deduction u/s 80GGC- Actual amount of donation to political party		2,500
Total Income		4,28,495
Total Income rounded off u/s 288A		4,28,490

Notes :

1. Purchase of motor car is capital expenditure. Hence, it is not deductible. Depreciation has been allowed on motor car.
2. Plant includes books and surgical equipment. Depreciation on professional books is allowed @ 60% but annual publications are written off @ 100%. However, as annual publications have been put to use for less than 180 days during the year, depreciation has been allowed @ 50%. The assessee can claim depreciation on surgical equipment at general rate.
3. Contribution of articles to periodicals and magazines constitutes income from vocation of the assessee.
4. Expenses in income-tax proceedings are wholly deductible [Sec. 37(1)].
5. One-third of car expenses and proportionate deprecation in respect of motor car have been disallowed as they are in connection with the personal use of the assessee.
6. Interest on Post Office National Saving Certificates is exempt from income tax [Sec. 10(15)].
7. Profits and gains of the business or profession are computed according to the method of the accounting regularly followed by the assessee (Sec. 145). Since the assessee has adopted cash system of accounting. "Income" is taxable on receipt basis and "expenditure" is allowed to be deducted on payment basis, irrespective of the previous year to which the receipt of payment belongs. Receipts outstanding for the previous year 2015-2016 will not be taken into consideration.
8. Profits and gains of business or profession is required to be computed according to the system of accounting regularly followed by the assessee but if the income cannot be properly deduced therefrom, the Assessing Officer may compute the income on such basis and in such manner as he may deem fit [Proviso to Sec. 145(1)].

   In view of this, the Assessing Officer may take into account the value of closing stock while determining profits even under cash system of accounting
9. Donation to Political Party is allowed to be deducted from gross total income under Sec. 80GGC.

Illustration 25 : The Profit and Loss Account of RAI & Co. for the previous year 2015-2016 is given as follows

Dr. Cr.

Particulars	₹	Particulars	₹
To Purchases of goods	10,00,000	By Sale of goods	26,00,000
" Salaries, bonus and commission	8,00,000	" Closing stock	50,000
" Rent, rates and taxes	60,000	" Interest on drawings	7,000
" Depreciation @ 16% on WDV	20,000	" Interest on Govt. securities	20,000
" Travelling expenses	1,50,000		
" Interest on capital	25,000		
" Advertisement	1,20,000		
" Entertainment expenses	60,000		
" Expenditure on neon-sign board	50,000		
" New telephone deposit under OYT scheme	5,000		
" Compensation for cancelling purchase order of an outdated machine	10,000		
" Expenses for promoting family planning among employees	20,000		
" Net profit	3,57,000		
	26,77,000		**26,77,000**

Additional Information :

(i) Salaries, bonus and commission include:

(a) Salary to the proprietor ₹ 1,50,000

(b) Bonus paid to employees on 15-10-2016 ₹ 75,000

(c) Salary of ₹ 1,20,000 was paid in India to B, a non-resident employee. Tax was deducted at source but not paid thereon. However, B is a PAN holder and has cleared his tax liability.

(d) Advertisement includes:

(i) a hoarding bill paid in cash ₹ 38,000

(ii) advertisement published in souvenir, published by a political party ₹10,000

(e) Depreciation has been charged on plants and machinery and furniture and fittings in proportion of 4:1.

Depreciation @ 15% on plant and @10% on furniture.

(f) Purchases include goods of ₹ 1,00,000, imported without a licence and confiscated by the customs authorities.

(g) Travelling expenses include a sum of ₹ 1,00,000 on foreign travel to purchase a machine. Negotiations have not been finalized.

(h) Annual stock taking revealed a theft of goods, costing ₹30,000.

(i) This year stock valuation was deviated from the market price to cost price which is 20% less than its market price.

Compute taxable business profits for the Assessment year 2016-17.

Solution :

Computation of Taxable Business Profits for the Assessment Year 2016-2017

Particulars	₹	₹
Income from Business		
Net Profit as per Profit and Loss account		3,57,000
Add: Inadmissible Expenses		
(a) Salary paid to Proprietor	1,50,000	
(b) Bonus paid to employees: Deduction will be allowed in Previous Year 2016-17 (Sec.43B, being disallowance of unpaid liability)	75,000	
(c) Salary paid to non-resident employee, without deducting or paying TDS [Sec. 40(a)(iii)]	1,20,000	
(d) Advertisement bills paid in cash [Sec. 37(1) r.w. Sec. 40A(3)] @100% of ₹ 38,000	38,000	
(e) Advertisement in sourvenir published by political party [Sec.37(2B)]	10,000	
(f) Depreciation to be treated separately	20,000	
(g) Expenses on family planning: allowable only to a company assessee [Sec. 36(1)(ix)]	20,000	
(h) Foreign travel to acquire a new machine, (being capital in nature, deal not yet finalized. It may be added to the cost of the asset when such asset is actually procured)	1,00,000	
(i) Interest on capital [Sec. 36(1)(iii)] [There is no borrowings]	25,000	
(j) Expenditure on neon sign board, being a capital expenditure on advertisement, hence disallowed.	50,000	
(k) Compensation paid to cancel a capital liability, capital in nature, hence disallowed u/s 37(1)	10,000	
(l) Under valuation of closing stock: [50,000/80% - 50,000]	12,500	6,30,500
		9,87,500
Less: Expenses allowed :		
Interest on Drawings		7,000
Depreciation u/s 32:		
(a) Plant and machinery:		
WDV on 01.04.2015 : [20,000 × 4/5 × 100/16]	1,00,000	
Add: Cost of neon-sign board	50,000	
	1,50,000	
Less: Depreciation @15% WDV as on 31.3.16	22,500	22,500
	1,27,500	
(b) Furniture and Fittings:		
WDV on 01/04/15 : [20,000 × 1/5 × 100/16]	25,000	
Less: Depreciation @10% WDV on 31.3.2016	2,500	2,500
	22,500	
Less: Incomes credited to Profit and Loss A/c to be treated under separate Head of Income		
Interest on Government Securities		20,000
Taxable Business Profits		**9,35,500**

Note :

(1) Loss due to theft of stock-in-trade is allowable in computing business profits u/s 29. Such loss is incidental to business operation. Since purchase of goods have already been debited to Profit and Loss Account, no separate adjustment is required.

(2) Loss in illegal business may be allowed u/s 29. Explanation to Sec.37(1) does not apply to Sec. 29.

(3) Deposit for new telephone connection is allowable u/s 37(1). Hence, no adjustment is required.

Illustration 26 : The Profit & Loss Account of Mr. Dipak Sinha for the previous year 2015-2016 is given below :

Dr. *Cr.*

Particulars	₹	**Particulars**	₹
To Cost of goods sold	16,00,000	By Sales	34,70,000
" Salaries & wages	9,00,000	" Rent of staff quarters	3,00,000
" Rent of business premises, owned by the assessee	2,50,000	" Sale price of machinery block on 31-03-2016	5,00,000
" Repairs and renewals	1,40,000		
" Income tax paid	60,000		
" Excise duty paid	1,00,000		
" Sales tax payable	2,00,000		
" Legal expenses	3,00,000		
" Municipal taxes payable for staff quarters	10,000		
" Provision for bad debts	60,000		
" Contingency reserve	1,00,000		
" Employees contribution to recognised fund	50,000		
" Net profit	5,00,000		
	42,70,000		42,70,000

Additional Information :

(i) Salaries include:

(a) ₹ 1,20,000 was paid outside India to an employee, "resident" in India but neither tax was deducted nor tax has been paid thereon,

(b) ₹ 90,000 was paid in India to an employee "resident" in India but neither tax deducted therefrom nor paid thereon.

(ii) Excise duty of ₹ 50,000 for the Assessment year 2015-2016 was paid on 1st January 2016 but it was not included in the Profit and Loss a/c.

(iii) Sales tax amounting ₹ 1,30,000 was paid on 31st July 2016 and the balance was paid on 1st August 2016, the due date of furnishing return of income is 31st July 2016.

(iv) Repairs/renewals include remodelling and renovation costing ₹ 80,000.

(v) Legal expenses include:

(a) Lawyer fee of ₹ 50,000 paid by bearer cheque to K, nephew of the proprietor. The Assessing Officer disallowed a sum of ₹ 10,000, being found in excess of the desired qualifications;

(b) Gift of ₹ 1,00,000, made to wife, a tax-advisor, but disallowed by the A.O.

(vi) Employees contribution include:

(a) ₹ 30,000 credited to their account on due date under Provident Fund rules,

(b) ₹ 20,000 credited to their account in November 2016.

(vii) Commission receipts of ₹ 1,00,000 have not been credited to the Profit and Loss Account as their recovery seems to be doubtful.

(viii) WDV of machinery on 01-04-2015 was ₹ 6,50,000.

(ix) WDV of business premises and staff quarters as on 01-04-2015 : ₹ 10,00,000 and ₹ 30,00,000, respectively. Depreciation @ 10% on Business Premises and @ 5% on staff quarters.

Compute taxable profits for the previous year 2015 -2016.

Solution :

Computation of Business Profits for the Assessment Year 2016-17

Particulars	₹	₹
Net profit as per Profits and Loss A/c		5,00,000
Add: Inadmissible Expenses/Unrecorded Incomes:		
(i) Rent of business premises owned by the assessee (Sec. 30)	2,50,000	
(ii) Remodelling and renovation, being repairs of capital nature	80,000	
(iii) Income tax paid [Sec. 40(a) (ii)]	60,000	
(iv) Sales tax remaining unpaid up to due date of furnishing return of income	70,000	
(v) Legal expense includes:		
(a) Gift made to wife, Sec. 37(1)	1,00,000	
(b) Fees paid to lawyer (being a relative) Sec. 40A(2) & Section 40A(3)	50,000	
(vi) Salaries paid outside India to a "resident" employee TDS [Sec. 40(a)(iii)]	1,20,000	
(vii) Salaries paid in India to a resident employer without TDS	—	
(viii) Municipal tax payable for staff quarters [Sec. 43B]	10,000	
(ix) Provision for bad debts [Sec. 36]	60,000	
(x) Contingency reserve [Sec. 37(1)]	1,00,000	
(xi) Employees' contribution credited to their account after due date	20,000	
(xii) Commission receipts which have accrued during the year but recovery seems doubtful	1,00,000	10,20,000
		15,20,000
Less: Inadmissible receipts/ admissible claims:		
(i) Excise duty (Sec. 43B)	50,000	
(ii) Sale price of machine, being capital receipts	5,00,000	
(iii) Depreciation: (a) Staff quarters: 5% of 30,00,000	1,50,000	
(b) Business Premises: 10% of 10,00,000	1,00,000	8,00,000
Taxable Business Profits		**7,20,000**

Note :

Sale of machinery block: Sale of machinery block results into short-term capital loss of ₹ 1,50,000 (₹ 6,50,000 – ₹ 5,00,000) under Sec. 50.

No capital loss, whether short-term or long term, can be set- off against any income. It is to be carried forward for next 8 assessment years.

Illustration 27 : The firm of M/s Amal & Associates is engaged in the business of growing and manufacturing tea. The Profit & Loss Account for the year 2015-2016 is given as follows:

Dr. Cr.

Particulars	₹	**Particulars**	₹
Cost of growing and manufacturing tea	40,00,000	Sales	95,00,000
Salaries and wages	15,00,000	Stock	13,50,000
Advertising	5,00,000		
Entertainment expenses	1,00,000		
Travelling expenses	3,00,000		
Fine and penalties	50,000		
Cost of patent rights	6,00,000		
Expenses on scientific research	6,00,000		
General and sundry expenses	2,00,000		
Net Profit	30,00,000		
	1,08,50,000		1,08,50,000

You are further informed :

(i) Advertising includes payment of ₹ 2,00,000 made to a political party for insertion of advertisement in party's journal. The payment has been made by bearer cheque,

(ii) Travelling expenses include a visit of the director to UK for 10 days (including 2 days for travelling). Five days were utilized for business purpose. Permission for foreign exchange was granted for ₹ 50,000. Total expenditure on the visit is ₹ 1,00,000 (including air fare of ₹ 40,000).

(iii) Expenses on scientific research include:

(a) Purchase of land ₹ 1,50,000

(b) Contribution to Agricultural Research Institute, New Delhi which is a National Laboratory ₹ 20,000.

(c) Contribution to Bhaba Atomic Research Centre (an approved research association)for statistical research, which is not related to business ₹ 30,000.

(iv) Refund of custom duty, deducted in the previous year, 2013-2014, amounting to ₹ 50,000, has not been credited to the Profit and Loss Account.

(v) Sundry expenses include a contribution of ₹ 60,000 to Kolkata Municipal Corporation for undertaking a Drinking Water Project for slum-dwellers. The Project has been approved by National Committee but KMC has not issued any certificate indicating the progress of the project.

(vi) A deposit of ₹ 12,00,000 was made in instalments with National Bank for Agriculture and Rural Development (a) ₹ 4,00,000 in September 2015, (b) ₹ 6,00,000 in July 2016 and (c) ₹ 2,00,000 in December 2016. It has not been included in the Profit and Loss account. Date of submitting return of income 30/09/2016.

(vii) (a) W.D.V. of machinery on 01-04-2015 (Rate of depreciation 15%) ₹ 15,00,000

(b) Machinery purchased in December 2015 for scientific research ₹ 4,00,000

(c) Purchase of five small drier machine, each costing ₹ 10,000

(d) Sale price of an old machinery (Rate of depreciation 15%) ₹ 5,00,000

(viii) Lump sum payment of ₹ 5,00,000 was made to acquire a licence regarding technical information to improve tea-flavour. It has not been charged to P & L A/c.

Compute the taxable business profits for the Assessment Year 2016-2017.

Solution :

Computation of Business Profits for the Assessment Year 2016-2017

Particulars	₹	₹
Net Profit		30,00,000
Add: Inadmissible Expenses:		
1. Advertisement payment to a political party [Sec. 37(2B)]	2,00,000	
2. Travelling outside India [Sec. 37(1)]. Proportionate expenses of foreign travel, (excluding air fare) not relating to business: 60,000 × 3/8	22,500	
3. Fine and penalties	50,000	
4. Cost of patent rights	6,00,000	
5. Expenditure on scientific research (Sec. 35): Purchase of land	1,50,000	
6. Contribution to Kolkata Municipal Committee (Sec. 35 AC): Since the Certificate indicating progress in the prescribed form has not been issued, no deduction is allowed.	60,000	10,82,500
		40,82,500
Add: Deemed profit: Refund of Customs Duty, deducted in earlier years, not credited in the Profit and Loss A/c [Sec.41(1)]		50,000
		41,32,500
Less: Admissible expenses:		
Capital expenditure on scientific research [Sec.35(1)(iv)(2)]	4,00,000	
Depreciation on Patent rights @ 25% of ₹ 6,00,000	1,50,000	
Depreciation on know-how: @ 25% of ₹ 5,00,000	1,25,000	
Depreciation on Machinery:		
WDV as on 01/04/2015: 15,00,000		
Add: Purchase of driers 50,000		
15,50,000		
Less: Sale of Old Machinery 5,00,000		
WDV as on 31/3/2016 **10,50,000**		
Depreciation @ 15% on ₹ 10,50,000		
Weighted Deduction for scientific research:	1,57,500	
(i) National Laboratory: @ 200% of ₹20,000 = ₹ 40,000 – ₹ 20,000 = ₹20,000		
(ii) Bhaba Atomic Research Laboratory: @ 175% of ₹ 30,000 = ₹52,500 – ₹ 30,000 = ₹ 22,500		
Therefore, total deduction ₹(20,000 + 22,500)	42,500	8,75,000
Composite Profits before making deduction u/s 33AB		**32,57,500**
Less: Deposit with NABARD (Sec.33AB)		
Least of the followings:		
(i) Deposit of ₹10,00,000 (within the due date of submission of return)	10,00,000	
(ii) 40% of Business Profits: 40% of ₹ 32,57,500	13,03,000	10,00,000
		22,57,500
Composite Profits after deduction u/s 33AB		
Apportionment of profits into agricultural income and business income (As per Rule 8) [since the assessee is engaged in the business of growing and manufacturing tea]		9,03,000
Taxable Business Income [40% of ₹ 22,57,500]		

Illustration 28 : State whether the provisions of Sec. 41(1) of the Act can be applied to a case, where refund of excise duty has been obtained by the assessee on the basis of a decision of the CEGAT and where the matter has been taken up in further appeal to the Court by the Central Excise Department.

Solution :

This question has been answered by the Apex Court in Polyflex (India) Pvt. Ltd. *vs.* CIT [2003] 257 ITR 343. (SC)

The refund of excise duty pursuant to the decision of the CEGAT would be subject to tax by virtue of Sec. 41(1) and it is not necessary that the revenue should await the verdict of a higher court.

Illustration 29 : In the course of an assessment proceeding, the Assessing Officer enhanced the value of the closing stock and added the difference to the total income.

In the assessment year subsequent to this, the assessee wants the Assessing Officer to enhance, by the same amount, the value of the opening stock of the year.

Discuss the validity of the claim.

Solution :

The value of the closing stock of the preceding year must be the value of the opening stock of the succeeding year. Hence, if the value of closing stock at the end of a year is enhanced, the enhanced value should be taken as the value of the opening stock of the next year for the purpose of income tax.

The claim of the assessee in this case is, therefore, valid.

Illustration 30 : What would be your advice regarding admissibility of the following items of expenditure in computing the business income:

(a) A donation of ₹ 1 lakh made to a University for starting a laboratory for scientific research (i) relating to the assessee's business, (ii) not relating to the assessee's business.

(b) Travelling expenses include a sum of ₹ 15,000 incurred by a director in travelling abroad for negotiating purchase of plant and purchase of plant and machinery.

(c) Amount payable as damages to Government on account of shortfall in export target.

(d) Overdraft from bank for payment of income tax: interest charged by the bank is ₹ 20,000.

(e) Payment of interest of ₹ 40,000 on monies borrowed from bank for payment of dividends to shareholders.

(f) ₹ 12,000 paid for shifting of business from the original site to the present place which is more advantageously located.

(g) Retrenchment compensation of ₹ 4 lakh paid to the workmen on the closure of one of the units.

(h) Fees paid to the Registrar of Companies for bringing about a change in the Memorandum and Articles of Association in regard to issue of Equity.

Solution :

(a) The donation has been made to University to be used for scientific research for starting a laboratory. If the University is approved for the purpose of Sec. 35(1)(ii), then irrespective of the consideration whether the scientific research is related to assessee's business or not, deduction could be claimed @ 175% of amount paid. If it is not approved, donation could not be claimed as a deduction under Sec. 35 in the computation of business income. However, the assessee could claim deduction from Gross Total Income under Sec. 80G, if the same is eligible.

(b) Travelling expenses incurred by the director for negotiating the purchase of plant and machinery is a capital expenditure and hence to be disallowed.

(c) The payment is not for any infraction of law but for failure to reach a target undertaken by the company being payment made wholly in the course of business, it is deductible.

(d) Interest on overdraft taken to pay income tax is not allowable under Sec. 36(1)(iii).

(e) Interest on borrowings utilized for payment of dividend is allowable under Sec. 36(1)(iii).

(f) Shifting expenses of business premises resulting in an expenditure of enduring benefit is a capital expenditure and is not allowable.

(g) Retrenchment compensation payable to workmen on the total closure of a business cannot be allowed as deduction as the expenses are not incurred for the purpose of carrying on of its business. When, however, the tax-payer closes one of its units and continues to carry on the same business as before, the compensation will be admissible under Sec. 37(1).

(h) Fee paid to Registrar of Companies for bringing about change in Memorandum and Articles of Association is a capital expenditure, where it relates to issue of equity shares. Where alterations are warranted by the changes made in the Companies Act, the expenses are allowable.

Illustration 31 : A company engaged in the manufacturing of fertilizer products, commenced its business on 01.04.2015. During the financial years 2012-2013 to 2014-2015 it had incurred ₹ 4.00 lakh annually as expenditure on salaries and purchase of raw material for the purpose of research connected with its business. During the previous year 2015 -2016 incurred on scientific research, revenue expenditure of ₹ 3.00 lakh and a capital expenditure of ₹ 4.50 lakh on purchase of plant and machinery. Since the result of the research was unsuccessful, the company sold its plant and machinery on 31.12.2015 for ₹ 8.00 lakh and closed its research activity. Compute the admissible deduction under Sec. 35 for the assessment year 2016-2017.

Solution :

Computation of deduction u/s 35 for Expenditure on scientific research

Particulars	₹	₹
Expenditure incurred during the earlier 3 years on salaries and purchase of raw material for the purpose of research connected with the business— fully allowed in the year of commencement of business by virtue of Explanation to Sec. 35(1)(i) : [₹ 4,00,000 × 3]		12,00,000
Revenue expenditure on scientific research incurred during the previous year 2015-2016	3,00,000	
Capital expenditure on scientific research incurred during the previous year 2015-2016	4,50,000	
	7,50,000	
Total Weighted deduction @ 200% on ₹ 7.50 lakh u/s 35(2AB)		15,00,000
Admissible deduction u/s 35 for the A.Y. 2016-2017		27,00,000

Illustration 32 : A company engaged in pharmaceuticals manufacturing, debited to its Profit and Loss Account a sum of ₹ 50,000, being the interest on loan of ₹ 5,00,000 taken for acquisition of Plant & Machinery. The plant and machinery purchased for the project with the loan were not received during the year and those were still in transit at the end of the year. A sum of ₹ 4,000 was paid to a broker who arranged the loan. Discuss the admissibility of the interest.

Solution :

As per sec 36(1)(iii), any amount of the interest paid, in respect of capital borrowed for acquisition of an aset (whether capitalised in the books of accounts or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction. In this case, the asset has not been put to use till the end of the Previous Year. Therefore, interest of ₹ 50,000 is not be allowed as deduction. However, the cost of the asset is to be increased by the amount of interest and depreciation is admissible on cost of assets [Proviso to Sec. 36(1)(iii)]. The deduction on brokerage of ₹ 4,000 paid to a broker for arranging the loan there is a bit controversial.

One view is that definition of the term "interest" u/s 2(28A) includes service fee or other charges in respect of monies borrowed, "brokerage" can be considered to fall under the scope of the term "other charges" and is therefore included under the definition of interest. Hence, brokerage of ₹ 4,000 for arranging the loan should be treated in the same way as interest. As per the other view, where brokerage or commission paid to an agent for arranging a loan for the purpose of business is not allowable as deduction u/s 36(1)(iii), but is allowable under Sec. 37(1). As per this view, ₹ 4,000 paid to a broker for arranging a loan is allowable as a deduction under Sec.37(1).

Illustration 33 : Apporva Shantilal filed his return of income for the Assessment Year 2015-16 on 29-1-2016 showing a loss of ₹ 11,42,000. The same represented unabsorbed depreciation of foundary business of ₹9,00,000 and the balance loss in foundry business. During the previous year relevant to the assessment year 2016-17, two businesses are carried on by him – a steel rolling mill at Kanpur and a fertilser manufacturing company at Cuttack. The foundry business was not carried on (discontinued). Separate books of account are being maintained for the two business carried on at different places. The following information is made available to you :

Relating to steel rolling mill at Kanpur

Particulars	₹
(a) Business Income prior to depreciation and following adjustments	5,60,000
(b) Opening WDV of factory building	6,20,000
This building, constructued 5 years back, was sold for	10,28,000
(c) Machinery (entitled to depreciation @ 15%) Opening WDV	3,20,000
All machines sold in March 2016 for	5,10,000
(d) Car Opening WDV	1,20,000

Relating to fertiliser unit at Cuttack

Particulars	₹
(a) Factory building (purchased in March, 2011) Opening WDV	2,80,000
(b) New Machinery (Rate of depreciation 15%) purchased in June, 2015	50,00,000
(c) Jeep Opening WDV	1,80,000
(d) Furniture Opening WDV	80,000
(e) Business income prior to above adjustments	7,16,000

Compute the total income of Mr. Apoorva Shantilal for the A.Y. 2016-17

Solution :

Computation of total income in the case of Mr. Apoorva Shantilal for the A.Y. 2016-17 :

Particulars	₹	₹
Profits and Gains of business		
Profits prior to depreciation of steel rolling mill	5,60,000	
Profits prior to depreciation of fertilizer unit	7,16,000	
	12,76,000	
Depreciation for the year (Note - 1)	7,74,500	
	5,01,500	
Less : Set-off of Brought Forward Unabsorbed Depreciation u/s 31(2) – related	5,01,500	
Capital Gains		Nil
Short-term Capital Gain on Sale of Building (Note-1)	1,28,000	
Less : Set-off of Brought forward Unabsorbed Depreciation for the A.Y. 2015-16 restricted to the amount of profits	1,28,000	Nil
Gross Total Income		**Nil**
Less : Deduction under Chapter-VIA		Nil
Total Income		Nil

Working Note :

1. Computation of Depreciation and Short Term Capital Gains

Particulars	**Block-I** **Factory Building**	**Block-II** **Furniture & Fixture**	**Block-III** **Plant & Machinery**	**Block-IV** **Moter Vehicles**
Rate of Depreciation	10%	10%	15%	15%
Opening WDV				
— Kanpur	6,20,000	Nil	3,20,000	1,20,000
— Cuttack	2,80,000	80,000	Nil	1,80,000
Total opening WDV	9,00,000	80,000	3,20,000	3,00,000
Add : Additions during the year	Nil	Nil	50,00,000	Nil
	9,00,000	80,000	53,20,000	3,00,000
Less : Sales during the year	10,28,000	Nil	5,10,000	Nil
Short term Capital Gains	1,28,000	N/A	N/A	N/A
Net Book Value	Nil	80,000	48,10,000	3,00,000
Less : Depreciation for the year	Nil	8,000	7,21,500	45,000
Closing WDV	Nil	72,000	40,88,500	2,55,000
Total Depreciation 8,000 + 7,21,500 + 45,000 = 7,74,500				

2. **Unabsorbed Depreciation** – to be carried forward from Assessment Year 2016-17 ₹ 2,70,500 (after Set-off of ₹ 6,29,500 against income during the year) relating to Assessment Year 2015-16.

3. Unabsorbed Business loss of ₹ 2,42,000 (= ₹ 11,42,000 – 9,00,000) of A.Y : 2015-16 cannot be brought forward for setting off as the return of income for that Assessment Year was filed after due date of furnishing return u/s 139(1).

Illustration 34 : A firm comprising of four partners A, B, C and D carrying on business in partnership, sharing profits/losses equally shows a profit of ₹ 2,00,000 in its books after deduction of the following amounts for the year :

Particulars	₹
(a) Remuneration to partner 'A' who is not actively engaged in business	60,000
(b) Remuneration to partners 'B' & 'C' actively engaged in business	
Partner 'B'	80,000
Partner 'C'	90,000
(c) Interest to partner 'D' on loan of ₹ 1,50,000	36,000

The deed of partnership provides for the payment of above remuneration and interest to partners. You are required to work out the taxable income of the firm as well as partners for assessment year 2016-17.

Solution :

Computation of Income under the head Profits and Gains of Business or Profession

Particulars	₹
Net profit as per P & L A/c	2,00,000
Add : **Inadmissible expenses** —	
(i) Remuneration to A (not an active partner) – disallowed u/s 40(b)	60,000
(ii) Remuneration to B and C – (considered separately [₹ 80,000 + ₹ 90,000])	1,70,000
(iii) Interest paid to D on Loan advanced	36,000
Net Profit before Interest and Remuneration to Partners	**4,66,000**
Less : Maximum Permissible Interest u/s 40(b) @ 12% on Loan from D = ₹ 1,50,000 × 12% p.a.	18,000
Book Profit	**4,48,000**
Less : Maximum Permissible Remuneration to **B** and **C** u/s 40(b)	
(i) upto ₹ 3,00,000 – ₹1,50,000 or 90% of Book Profits, whichever is higher = 2,70,000	
Balance of Book Profits – 60% of Book Profits = 60% of 1,48,000 = 88,800	
3,58,800	
(ii) Actual Remuneration paid 1,70,000	
lower of (i) & (ii), allowed as deduction	1,70,000
Taxable Income	**2,78,000**

Taxable income of the partners A.Y. 2016-17

Particulars	**A**	**B**	**C**	**D**
Remuneration	Nil	80,000	90,000	Nil
Interest	Nil	Nil	Nil	18,000
Taxable Income	Nil	80,000	90,000	18,000

Working notes :

(1) In the case of a firm, remuneration to a partner who is not a working partner is not eligible for deduction. In the case of working partners the remuneration paid is disallowed if it exceeds the limit prescribed u/s 40(b) with reference to "book profit".

Working partners remuneration is worked out as under :

	₹
First ₹ 3,00,000 of the book profit @ 90%	2,70,000
On the balance ₹ 1,48,000 of book profit @ 60%	88,800
Total	3,58,800

(2) Any interest and salary to partners disallowed in the firm's case shall not be included in the total income of the partner and shall not be chargeable to tax in the partner's hands.

(3) Share of profits of the partners is exempt u/s 10(2A) of the Income-tax Act and therefore, not included in the partner's taxable income.

Illustration 35 : X Ltd., carrying on business in manufacture and sale of textiles, showed a net profit of ₹ 10,50,000 in its Profit and Loss Account for the period ending March 31, 2016. On the basis of the following particulars noted from the company's accounts and ascertained on enquiry, compute, giving reasons, the total income of the company for the assessment year 2016-17. The company maintains books of account on the basis of mercantile system.

1. The General Reserve Account shows a credit of ₹ 2,75,000 under the head "Surplus on devaluation". The enquiries show that the company had exported textile to U.S.A. during the year 1997-98. The sale proceeds were placed in a separate bank account in U.S.A. which were utilized for import of cotton from time to time. After obtaining permission from the Reserve Bank of India, in January 2016 the company remitted to India a sum of ₹ 2 lakh, being the balance standing to its credit in the said bank account which included the above surplus realized on account of devaluation of the rupee in June 1998. The company claims that the said surplus is not taxable, firstly, on the ground that the said surplus did not relate to the previous year and secondly, the said surplus is not a trading receipt.
2. The company had imported automatic looms under a special permission granted by the Textile Commissioner under the Cotton Textile (Control) Order, 1948. One of the conditions laid down while granting the permission was that the company should execute a bond in favour of President of India agreeing to export an agreed quantity of cloth and in default pay a sum calculated at the rate of 10 paise per metre to cover the shortfall. The company fell short of the target during the previous year as a result of which it was required to pay a sum of ₹ 40,000 towards the shortfall. The company has debited the said amount to "General Expenses Account".
3. The company has set up a laboratory for conducting research in textile technology. It has incurred a capital expenditure of ₹ 1,00,000 for the said purpose. The amount is shown in the Balance Sheet as "Laborotory Equipment Account" but is claimed as deduction in the return of income for the Assessment Year 2016-17.
4. The interest account includes payments amounting to ₹ 50,000 on deposits made by non-resident buyers of textile manufactured by the company. The said payments were made outside India without deduction of tax.
5. The legal charge includes a sum of ₹ 60,000 paid to solicitors for framing a scheme of amalgamation of all other textile mill with the assessee-company. The scheme is approved by the Central Government in public interest.

6. Travelling expenses include a sum of ₹ 1,25,000 being expenditure incurred by the directors of the campany in connection with their tour to USA and UK for the purchase of new machinery for setting up a new plant for manufacture of caustic soda.

7. ₹ 1,00,000 (debited to Profit and Loss Account) is paid to an approved Notional Laboratory with a specific direction that it shall be used for an approved scientific research programme.

Solution : **Computation of Income from Business** **A. Y : 2016-17**

Particulars		₹
Net profit as per Profit and Loss Account		10,50,000
Adiustments :		
Surplus arose on conversion of foreign currency into Indian currency (since foreign currency was kept for purchasing stock-in-trade, it will be revenue receipt)		(+) 2,75,000
Payment of ₹ 40,000 towards the shortfall in export (allowable as deduction since the payment is not penalty)		—
Capital expenditure on scientific research		(–) 1,00,000
Interest to non-residents [not deductible under section 40(a) since payment was made without deducting tax at source]		(+) 50,000
Legal charges for framing amalgamation scheme [deductible u/s 35DD in five years)		(+) 48,000
Travelling expenses of directors [section 37(1) does not permit a deduction of capital expenditure]		(+) 1,25,000
Weighted deduction under section 35(2AA) in respect of ₹ 1,00,000 paid to a National Laboratory [amount deductible is 200% of ₹ 1,00,000,		
(–) Amount	2,00,000	
Show in P/L A/c	1,00,000	
Expenses not debited ealier	1,00,000	(–) 1,00,000
Net Income		13,48,000

Illustration 36 : D Ltd., carrying on business in manufacture, sale and export of tyres, tubes and accessories, has disclosed a net profit of ₹ 21,00,000 in its P & L Account for the period ending March 31, 2016. On the basis of the following particulars furnished by the company and ascertained on inquiry, compute, giving reasons, its total income for the assessment year 2016-17. The company follows the mercantile system of accounting :

(a) A sum of ₹ 20,000 is debited to compensation account. The company had placed an order for machinery to manufacture tyres with a UK company. However, due to a sudden increase in the price of machinery by the vendor, the assessee, had to cancel the contract, in liew of compensation The company claims the said amount as deduction on revenue account or, in the alternate, as loss under the head "Capital Gains" as the payment was made towards extinguishment of right to acquire a capital asset.

(b) "Loss on Export of Accessories Account" shows a debit of ₹ 4 lakh. In this connection it is explained that two trucks belonging to the company carrying tyres accessories were intercepted at the international border and seized by customs authorities for illegal export. The goods were confiscated by the customs authorities and a fine of ₹ 2 lakh was levied. The company claims the value of confiscated goods as a trading loss under section 28 and the payment of the fine of ₹ 2 lakh which is debited to rates and taxes account as an expenditure in the course of business under section 37(1).

(c) The company had set up a separate unit for manufacture of plastic tubes at Bangolore in 1998. The said unit suffered heavy losses. As a result the same was closed down and the plant and machinery were sold away. The company, however, claims unabsorbed depreciation amounting to ₹ 8 lakh in its return of income. It is not debited to the Profit and Loss Account.

(d) During the previous year 1998-99, the assessee-company acquired 5,000 shares of E Ltd., on Indian company, as a result, the entire share capital of the said company is now held by the assessee-company. In May 2015, the assessee-company sold to E Ltd. plant and machinery for ₹ 6,00,000. The actual cost is ascertained at ₹ 4,00,000 and written down value at ₹ 1,50,000.

(e) In the years 2003-2004 and 2004-05 the Government of India arranged exports of tyres and tubes through the Federation of Tyre Dealers of which the company was a member. The exports which were made to for Eastern countries resulted in loss which was shared by all members including the company. The Federation thereafter took up the questions of reimbursement of losses with the Government, which after protracted discussion and correspondence agreed to grant a subsidy calculated at a certain percentage of exports. The assessee-company received its share of subsidy amounting to ₹ 3 lakh in the previous year. The amount stands credited to the "Capital Reserve Account" and claimed as exempt.

(f) ₹ 28,00,000 was paid on voluntary retirement scheme. The company claims the full amount as deduction.

Solution : **Computation of Total Income for A.Y. 2016-17**

Particulars	₹
Net profit as per Profit and Loss Account	21,00,000
Adjustments :	
(i) Payment of compensation [not allowable since payment is in the nature of capital expenditure, being made to avoid unnecessary investment in capital asset; nor can it be allowed as capital loss as there is no transfer of capital asset]	(+) 20,000
(ii) Loss arising out of confiscation of stock by customs authorities [allowable as]	–
(iii) Fine [not allowable as penalty paid for breach of law is not normal incidence of business	(+) 2,00,000
(iv) Unabsorbed depreciation of a unit closed before the commencement of previous year [allowable as deduction]	(–) 8,00,000
(v) Recovery of loss [taxable under section 41(1)]	(+) 3,00,000
(vi) Compensation paid on voluntary retirement of employees [under section 35DDA, one-fifth of such compensation is deductible in the year in which the expenditure is incured and the balance is deductible in the next four years; section 35DDA is applicable even if the voluntary retirement scheme has not been framed in accordance with the guidelines given under section 10(10C)]	
[28,00,000 - 28,00,000 / 5]	(+) 22,40,000
Business Profit	**40,60,000**
Capital gain on sale of machinery to wholly owned subsidiary company [since transferee-company is wholly owned Indian subsidiary company of the assessee, the transaction is not treated as transfer under section 47(iv) and surplus arising on transfer is not taxable as capital gain]	–
Net Income	**40,60,000**

Note :

Loss arising out of confiscation of stock by customs authority allowable as deduction [Dr. T. A. Quereshi vs. CIT (2006) 157 Taxman 519 (SC)]

Illustration 37 : Bharat, owner of Great India Roadways, furnishes following details for the A.Y. 2016 -17.

	₹
Revenue from customers	31,00,000
Less : **Expenses**	
Rent of office premises	1,80,000
Rent of godown	2,40,000
Truck Driver salary	5,00,000
Allowance to truck driver	1,20,000
Cost of petrol, diesel, etc	7,50,000
Other expenses other than depreciation	2,00,000
Income from business without charging depreciation	11,10,000

Additional Information :

Great India Roadways have following details of its assets —

Assets	**Written down value as on 1.4.2015**
Office Premises	₹ 2,50,000
Machinery block (30%) consists of —	₹ 20,00,000
— 2 Diesel engine trucks of 13000 kgs each	
— 2 Diesel engine trucks of 10000 kgs each	
— 1 Petrol engine truck of 12000 kgs	

During the year, he purchased 2 medium-size-truck (petrol engine) for ₹ 3,50,000 each on 13.7.2015. However, one petrol engine truck of 12,000 kgs was sold on 9.9.2015 for ₹ 1,00,000.

Compute his income under the head Profits & Gains of Business or Profession.

Solution :

Computation of Profits & gains of business or profession of Shri Bharat for the A.Y. 2016-17

Particulars	**Amount (₹)**
Net profit as per Profit and Loss A/c	11,10,000
Less : **Expenditure allowed but not debited to P & L A/c**	
Depreciation u/s 32 (Note)	8,05,000
Profits & gains of business or profession	3,05,000

Note : Computation of depreciation allowed u/s 32

Particulars	Details	Amount (₹)
Block 1 : **Office Premises @ 10%**		
W.D.V. as on 1.4.2015	2,50,000	
Add : Purchase during the year	Nil	
	2,50,000	
Less : Sale during the year	Nil	
	2,50,000	
Depreciation @ 10% on ₹ 2,50,000		25,000
Block 2 : **Trucks @ 30%**	20,00,000	
W.D.V. as on 1.4.2015	7,00,000	
	27,00,000	
Add : Purchase during the year	1,00,000	
Less : Sale during the year	26,00,000	
Depreciation @ 30% on ₹ 26,00,000		7,80,000
Depreciation allowed u/s 32		8,05,000

Alternative II : Computation of income u/s 44AE

No. of vehicle	Type of goods carriage	Month including part of month	Details	Income ₹
2 Diesel engine trucks of 13000 kgs each	Heavy	12	7500×12×2	1,80,000
2 Diesel engine trucks of 10000 kgs each	Other vehicle	12	7500×12×2	1,80,000
1 Petrol engine truck of 12000 kg	Other vehicle	6	7500× 6 ×1	45,000
2 medium size truck	Other vehicle	9	7500× 9 ×2	1,35,000
Profit and Gains of Business or Profession				5,40,000

Income of the assessee under the head Profits & Gains of Business or Profession shall be ₹ 3,05,000 u/s 44AE.

Illustration 38 : During the previous year 2015-16, Profit and Loss Account of Shri Amarnath, proprietor of Free Bird Enterprises engaged in the business of readymade garments, shows profits of ₹ 4,50,000. With the following information, compute his taxable income from business -

(a) Interest on capital ₹ 5,000

(b) Purchases include goods of ₹ 42,000 from his younger brother in cash. However, market value of such goods is ₹ 35,000.

(c) Interest paid outside India ₹ 1,00,000 without deducting tax at source.

(d) Penalty paid to local government for non-filing of sales tax return ₹ 5,000

(e) Penalty paid to customer for non-fulfilling of order within time ₹ 10,000

(f) Bad debts ₹ 1,00,000 as per ICDS.

(g) Revenue expenditure on promoting family planning among employees ₹ 10,000.

(h) Premium paid on health of employees ₹ 6,000 in cash

(i) Premium paid on health of his relatives ₹ 6,000 in cheque

(j) Employer's contribution to RPF ₹ 12,000. One-half of the amount is paid after due date as per relevant Act but before 31.3.2016.

(k) Employees contribution to RPF ₹ 10,000. One-half of the amount is paid after due date as per relevant Act.

(l) Interest on late payment of sales tax ₹ 1,000 (yet to be paid).

(m) Interest on loan from State Bank of India ₹10,000 (₹ 5,000 is not paid till due date of filing of return).

(n) Interest on late refund from income tax department ₹ 500.

(o) Sale includes sale to Amarnath ₹ 10,000. (Cost of such goods ₹ 8,000; Market value of such goods ₹12,000).

(p) He received ₹ 80,000 from a debtor at a time in cash.

(q) Recovery of bad debt ₹10,000 (out of which ₹ 8,000 was allowed as deduction during AY. 2010-11)

(r) Depreciation (being not debited in accounts) ₹ 20,000 allowed as deduction u/s 32.

Solution :

Computation of Profits and gains of business or profession of Shri Amarnath for the AY. 2016-17

Particulars	**Note**	**Details**	**Amount (₹)**
Net profit as per Profit and Loss Account			4,50,000
Add : **Expenditure disallowed but debited in P &L A/c**			
Interest on capital	1	5,000	
Payment to relative in excess of market value of goods	2	42,000	
Interest paid outside India without deducting tax at source	3	1,00,000	
Penalty paid to local government for non-filling of sales tax return	4	5,000	
Bad debt as per Sec. 36(1)(vii) – allowed	6		
Premium paid on health of employees in cash	8	6,000	
Premium paid on health of his relatives in cheque	9	6,000	
Employees contribution to RPF	11	5,000	
Interest on loan from State Bank of India	13	5,000	
Cost of goods sold to himself	14	8,000	1,82,000
			6,32,000
Less : Expenditure allowed but not debited in P & L A/c			
Depreciation u/s 32		20,000	
Less : Income not taxable but credited to P & L A/c			
Sales to himself (goods withdrawn for personal purpose)	14	10,000	
Recovery of bad debts	15	2,000	
Less : Income taxable under other head but credited to P & L A/c			
Interest on late refund from income tax department	16	500	(32,500)
Profits and gains of business or profession			5,99,500

Notes :

(1) Interest on capital to proprietor is not allowed as no one can earn from a transaction with himself. The provider of loan and receiver of loan are same hence does not involves any actual expenses.

(2) Any unreasonable payment to relative is disallowed u/s 40A(2). Hence, ₹7,000 is disallowed. Cash payment towards allowed expenditure (i.e. ₹35,000) exceed ₹ 20,000, hence provision of Sec. 40A(3) is also applicable.

(3) Any interest paid outside India without deducting tax at source is disallowed u/s 40(a). Assume the payment is made to a non-resident.

(4) Any payment made for infringement of law is disallowed.

(5) Payment made for non-fulfilling of contract is not a payment for infringement of law. Hence, allowed u/s 37(1).

(6) Bad debt is allowed only when such debt has been irrecoverable as per ICDS [Sec. 36(1)(vii)]

(7) Any expenditure for promoting family planning is allowed to company assessee [Sec. 36(1)(ix)]. However, such expenditure (revenue in nature) incurred by assessee other than company shall be allowed u/s 37(1).

(8) Payment of insurance premium on health of employees in cheque is allowed u/s 36(1)(ib).

(9) Payment of insurance premium on health of relative is not related to business, hence disallowed.

(10) Employer's contribution towards RPF is allowed if payment is made before due date of filing of return irrespective of fact that such payment was made after due date prescribed in the relevant Act.

(11) Any sum received from employees as their contribution towards RPF is allowed only when such sum has been credited to such fund within the due date prescribed in the relevant Act [Sec. 36(1)(va)].

(12) Interest on late payment of sales tax is not a penalty but compensatory in nature. Hence, it is allowed u/s 37(1) Further such interest is not governed by the provisions of sec. 43B.

(13) Any interest payable to any scheduled bank is allowed on cash basis [Sec. 43B]. Hence, unpaid amount is disallowed.

(14) Any expenditure of personal nature is not allowed. Further, no one can earn from a transaction with himself. Hence, sale made to himself is not treated as income.

(15) Bad debt recovery is treated as income in the year of recovery to the extent of bad debt allowed in the earlier year [Sec. 41(4)]

(16) Interest on late refund of income tax is taxable under the head 'Income from other sources'.

(17) Receipt from debtor ₹ 80,000 in cash is not attracted by provision of sec. 40A(3).

Illustration 39 :

Discuss the admissibility or otherwise of the following claims in connection with assessment to income-tax. They do not necessarily relate to the same assessee:

(i) An expenditure of ₹ 1,00,000 was incurred on the occasion of the silver jubilee of the company for presentation of silver mementos to shareholders and directors, the value of each memento being ₹ 1,000 only.

(ii) An assessee carries on business in respect of which it holds tenancy rights. It carries out improvements to the said building at a cost of ₹ 2,00,000 and claims depreciation @ 10% thereon. The assessing officer rejects the claim on the ground that the assessee is not the owner of the building.

(iii) Excise duty amounting to ₹ 2,00,000 for the period 2015-16 was paid by the company by 30-9-2016 before furnishing the return of income for the Assessment Year 2016-17.

(iv) A criminal case was filed against a company under the Essential Commodities Act, 1955. The company incurred litigation expenses amounting to ₹ 50,000 to defend the directors. The directors were ultimately acquitted.

(v) A company was generating electricity privately for its factory. Later, at its expense, electric lines were laid from the trunk road to the factory. It paid ₹ 5,00,000 to the State Electricity Board as its contribution for this purpose. The ownership of the power-line was to vest with the State Electricity Board.

(vi) X and Y are two shareholders of Pooja Ltd., a closely held company. X holds 55% share capital on 30-1-2015, X transfers his shares to A. Pooja Ltd. wants to set of brought forward loss of ₹ 4,00,000 (business loss ₹ 1,00,000; unadjusted depreciation ₹ 3,00,000) of the Previous Year 2014-15 against the income of the previous year 2015-16 (i.e., ₹ 9,00,000). Can it do so?

Solution :

(i) As per the decision of the Apex Court in the case of *Aluminum Corporation of India Ltd.* vs. *CIT* (1972) 86 ITR 11 (SC) and various other decisions, where an expenditure is incurred for commercial expediency, the same shall be allowed as deduction under section 37(1). If at the time the expenditure is incurred, commercial expediency justifies it, it will be taken to be for the purpose of the business even though not supported by any prevailing practice.

Presentation of silver mementos to the directors and shareholders on the occasion of silver jubilee is to motivate both the directors and the shareholders. The expenditure has been incurred on account of commercial expediency and should qualify for deduction under section 37(1).

(ii) According to Explanation to section 32(1) where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work, in or in relation to, and by way of renovation or extension of, or improvement to the building, then, the provisions of section 32 shall apply as if the said structure or work is a building owned by the assessee. Hence, depreciation in this case will be allowable.

(iii) As the excise duty has been paid on or before the due date of furnishing return under section 139(1) in respect of the previous year in which the liability to pay such sum was incurred, the same shall be allowed as deduction on due basis as per section 43B.

(iv) Section 37(1) does not make any distinction between expenditure incurred in civil litigation and that incurred in criminal litigation. All that the court has to see is whether the legal expenses were incurred by the assessee in his character as a trader, in other words, whether the transaction in respect of which proceedings are taken arose out of and was incidental to assessee's business. Further, it is to be seen whether the expenditure was *bona fide* incurred wholly and exclusively for the purpose of the business. [*CIT* vs. *Birla Cotton Spg. & Wvg. Mills Ltd.* (1971) 82 ITR 166 (SC)]. In view of this, the litigation expenses of ₹ 50,000 incurred in detending directors is deductible under section 37(1).

(v) The new electric power lines were laid to run the factory efficiently but since the ownership of the power lines was to vest with the State Electricity Board, the contribution of ₹ 5,00,000 paid to the State Electricity Board shall be allowable as revenue expenditure under section 37(1).

(vi) According to section 79 the losses of a closely held company can be carried forward and set off in the subsequent assessment year only when at least 51% of the shares of the company carrying voting rights are held by the same persons as on the last day of the Previous Year in which the loss was incurred and the last day of the previous year in which the losses are set off. In this case business loss will not be allowed to be set off but unabsorbed depreciation is not a loss and shall be allowed to be set off.

Illustration 40 :

Discuss the correctness or otherwise of the following propositions with reasons therefore :

(a) Where a person draws from his own stock-in-trade for personal use, there can be no taxable profit.

(b) Even an outlay for acquiring an enduring advantage for business may be deductible as revenue expenditure.

Solution :

(a) The Supreme Court in *CIT* vs. *Kikabhai Premchand* (1953) 24 ITR 506 held that when a person draws from his own stock-in-trade for personal use, there can be no taxable profit as in this case the vendor and the vendee are not different. To constitute a sale these should be one buyer and seller. The buyer and seller has to be different entity to constitute a proper sale.

(b) Normally, an amount spent for acquiring an enduring advantage for business is of capital nature but there can be certain cases when the amount spent on acquiring an enduring advantage may be treated as revenue expenditure. The Supreme Court in *CIT* vs. *Empire Jute Co. Ltd.* (1980) 124 ITR 1 held that when a jute mill as a result of an arrangement with other Jute mil had undertaken to work only for specified hours during a week but exceeded the same and paid for such excess period to other members of the pooling arrangement, such payment is known as purchasing loom hours. Though looms are capital assets, the payment was for their operations. By the purchase of loom hours no new asset was created and there was no addition to or expansion of the profit-making apparatus of the company. Hence, such payment is of revenue nature.

Illustration 41 :

A Public Limited Company engaged in the generation and distribution of power had its business acquired by the Government in June 2013. Certain items of plant and machinery used by the Company in its business were taken over by the Government at a price which resulted in the Company realizing a surplus of ₹ 26,60,000 over its written down value. The compensation was received by the Company in April 2015 which was accepted by it under protest. The Company proceeded to initiate arbitration proceedings under law and was granted an additional compensation of ₹ 16 Lakhs. This was decided by the arbitrators in December 2015 and received by the Company in March 2016.

The Company claims that the assessment of the Company to tax should not be made since the business was completely taken over by the Government in June 2013 and at the time of final determination of compensation in March 2016 the Company did not exist.

Do you agree to the Company's claim? Discuss with reference to the Assessment Year(s) to which the claim to tax, if any, can be related.

Solution :

1. In case of acquisition of property under any law, the balancing charge u/s 41(2) is taxable as income of the previous year in which it becomes due and not in the year in which it was settled. [United Provinces Electric Supply Co. 110 Taxman 134 (SC)]

2. As per Explanation to Section 41(2), even when the business is not in existence, such balancing charge shall be taxable in its hands as if it is in existence in the relevant previous year.

3. **Conclusion :**

   (a) Surplus of ₹ 26,60,000 — taxable in A.Y. 2014-15 as Balancing Charge under the Business Income.

   (b) Additional Compensation of ₹16,00,000 determined in December 2015 taxable as Balancing Charge in AY 2016-2017 under Business Income.

Illustration 42:

Mr. Tony has estates in Rubber, Tea and Coffee. He derives income from them. He has also a nursery wherein he grows plants and sells. For the previous year ending 31.3.2016, he furnishes the following particulars of his sources of income from estates and sale of Plants. You are requested to compute the taxable income for the Assessment year 2016-2017.

(a) Manufacture of Rubber	₹ 5,00,000
(b) Manufacture of Coffee grown and cured	₹ 3,50,000
(c) Manufacture of Tea	₹ 7,00,000
(d) Sale of Plants from Nursery	₹ 1,00,000

Solution:

Assessee : Mr. Tony **Previous Year : 2015-16** **Assessment Year : 2016-2017**

From the words 'Mr. Tony has estates', it is presumed that he had grown Tea, Coffee and Rubber, and also Plants in his Estates, and the amount given is the Profits of the Business.

Computation of Taxable Income is as under —

Particulars	**Agricultural Income**	**Non-Agricultural Income**
Growing and Manufacture of Rubber **[Rule 7A]**	5,00,000 × 65% = ₹ 3,25,000	5,00,000 × 35% = ₹ 1,75,000
Grown and Cured Coffee **[Rule 7B]**	3,50,000 × 75% = ₹ 2,62,500	3,50,000 × 25% = ₹ 87,500
Growing and Manufactured of Tea **[Rule 8]**	7,00,000 × 60% = ₹ 4,20,000	7,00,000 × 40% = ₹ 2,80,000
Growing & Sale of Plant by Nursery **[See Note]**	₹ 1,00,000	—
Total	**₹ 11,07,500**	**₹ 5,42,500**
Taxable Income	**Exempt u/s 10(1)**	**₹ 5,42,500**

Illustration 43:

A firm of Cost Accountants earned a net profit of ₹ 8,00,000. Such profit is derived after charging interest @10% pa. ₹ 1,00,000 and after charging remuneration of ₹ 7,00,000. There is unabsorbed depreciation of ₹ 1,00,000 and brought forward losses of ₹ 2,00,000. Determine the amount of taxable income of the firm.

Solution:

Computation of taxable income of a firm of Cost Accountants

Particulars	₹
Net Profit as per Profit & Loss Account	8,00,000
Interest paid partners is allowable expenditure	—
Remuneration as per books of accounts (refer notes)	(+) 7,00,000
Profits & Gains from Business & Profession	15,00,000
Remuneration allowed to partners being minimum of the following:	
Maximum remuneration allowed to partners (note) ₹ 9,30,000	
Actual remuneration as per P & L Account ₹ 7,00,000	(–) 7,00,000
Profits & Gains from Business & Profession	8,00,000
Less : Brought Forward Loss	2,00,000
Less : Unabsorbed depreciation	1,00,000
Taxable Profits & Gians from Business & Profession	5,00,000

Working Note:

Computation of allowable remuneration to Partners	
Profits & Gains of Business & profession after interest	₹ 15,00,000
But before remuneration	
Less : Unabsorbed depreciation	₹ 1,00,000
Book Profit for the purpose of computation of remuneration	₹ 14,00,000
Maximum Remuneration allowed to partners (300000 x 90% + 1100000 x 60%)	₹ 9,30,000

Illustration 44:

R. Ltd. has a block of assets (consisting of Plants A, B and C, depreciation rate : 15 per cent). Depreciated value of the block on April 1, 2013 is ₹10 crore. After April 1, 2013, the company purchases the following new plants. Find out the amount of deduction under sections 32 and 32AC.

	Actual cost (₹ in crore)	Date of purchase	Date of installation	Date when it is put to use
Plant D	90	March 10, 2014	April 6, 2014	June 1, 2014
Plant E	15	January 1, 2015	March 15, 2015	April 10, 2015
Plant F	80	March 1, 2015	May 21, 2015	November 20, 2015
Plant G	10	February 1, 2016	March 12, 2016	April 1, 2016
Plant H	110	February 20, 2016	April 8, 2016	April 10, 2016

On May 1, 2015, Plant A is transferred for ₹ 158.725 crore.

Solution:

Investment allowance under section 32AC(1) is available if a new asset is purchased and installed on or after April 1, 2014 but on or before March 31, 2016. Both, acquisition and installation, should take place between April 1, 2014 and March 31, 2016. The date when the asset is first put to use is not relevant for the purpose of claiming investment allowance. As Plant D is acquired before April 1, 2014 and Plant H is installed after March 31, 2016, these assets would not qualify for the investment allowance under section 32AC(1).

Plants E, F and G are acquired and installed during April 1, 2014 and March 31, 2016 and the aggregate actual cost is more than, 100 crore. Investment allowance under section 32AC(1) will be available to X Ltd. as follows.

	₹ in crore
Assessment year 2015-16	
Actual cost of new asset acquired and installed during the previous year 2014-15 (Plant E is acquired and installed in the previous year 2014-15, Plant F is installed after the end of previous year 2014-15).	15
Whether deduction available (investment allowance deduction is available only if actual cost of new asset acquired and installed during the previous year 2014-15 exceeds ₹100 crore)	No
Amount of investment allowance	Nil
Assessment year 2016-17	
Actual cost of new asset acquired and installed during April 1, 2014 and March 31, 2016	105
[i.e., Plant E : ₹ 15 crore + Plant F : ₹ 80 crore + Plant G : ₹ 1 0 crore]	
Whether deduction available [the above investment is more than ₹ 100 crore]	Yes
15% of ₹105 crore	15.75
less: Deduction allowed in the assessment year 2015-16	Nil
Deduction available for the assessment year 2016-17	15.75

Deduction under section 32 will be as follows - ₹ in crore

Previous year	**2013-14**	**2014-15**	**2015-16**
Assessment year	**2014-15**	**2015-16**	**2016-17**
Depreciated value of the block on the first day of the previous year	10	8.5	65.725
Add: Actual cost of assets purchased and put to use during the previous year	Nil	90	15 + 80
less: Sale proceeds of asset sold during the previous year	Nil	Nil	158.725
Written down value on the last day of the previous year	10	98.5	2
Normal depreciation	1.5	14.775	0.3
Additional depreciation	Nil	18	11
Depreciated value of the block on the first day of the next previous year	8.5	65.725	Nil

Note: Plant H is installed in the previous year 2016-17. It is eligible for investment allowance under section 32AC(1A) for the assessment year 2017-18 (amount of investment allowance will be ₹16.5 crore, being 15% of ₹110 crore).

Study Note - 7

CAPITAL GAINS

This Study Note includes

7.1 Charging Section : 45 (1)
7.2 Provision for computation of Capital Gains and Related Exemptions

7.1 CHARGING SECTION: 45(1)

Any profits or gains arising from transfer of any capital asset shall be chargeable to Income-tax as Capital Gains and shall be deemed to be the income of the previous year in which the transfer took place.

7.2 PROVISION FOR COMPUTATION OF CAPITAL GAINS AND RELATED EXEMPTIONS

1. Capital Asset: [Section 2(14)]

Meaning of Capital Asset [Sec. 2(14)]

"Capital asset" is defined to include property of any kind, whether fixed or circulating, movable or immovable, tangible or intangible.

Positive list - It includes the following -

(i) "Property" includes any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

(ii) Property of any kind held by an assessee (whether or not connected with his business or profession).

(iii) Any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the SEBI Act **(applicable with effect from assessment year 2015-16).**

Negative list - The following assets are excluded from the definition of "capital assets"—

(a) any stock-in-trade [other than securities referred to in sub-clause (b)], consumable stores or raw material held for the purpose of business or profession;

(b) personal effects of the assessee, that is to say, movable property including wearing apparel and furniture held for his personal use or for the use of any member of his family dependent upon him (jewellery, archaeological collections, drawings, paintings, sculptures; or any work of art are treated as a capital asset even though it is meant for personal use of the assessee);

(c) agricultural land in rural area in India;

(d) per cent Gold Bonds, 1977 or 7 per cent Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government;

(e) Special Bearer Bonds, 1991; and

(f) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999.

Rural area - Rural area for the above purpose is as follows -

Any area which is outside the jurisdiction of a municipality or cantonment board having a population of 10,000 or more and also which does not fall within distance (to be measured aerially) given below -

2 kilometers from the local limits of municipality/ cantonment board	If the population of the municipality/ cantonment board is more than 10,000 but not more than 1 lakh
6 kilometers from the local limits of municipality/ cantonment board	If the population of the municipality/ cantonment board is more than 1 lakh but not more than 10 lakh
8 kilometers from the local limits of municipality/ cantonment board	If the population of the municipality/ cantonment board is more than 10 lakh

For the above purpose, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

Explanation.— For the purposes of this clause —

(a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

Definition of "Capital Asset" Amended Section 2(14)

With effect from Assessment Year 2013-14, the definition of Capital Asset (Property) includes any rights in or in relation to an Indian Company including rights of management or control or any other rights whatsoever.

This amendment has taken place with retrospective effect from 1st April 1962

2. Short-term Capital Asset (STCA) [Section 2(42A)]

(a) **For all Capital Assets other than financial assets:** Capital Assets held by an assessee for not more than 36 months immediately preceding the date of transfer are treated as Short-term Capital Assets.

(b) **For Financial Assets:**

A Security (other than a unit) listed in a recognised stock exchange in India,Unit of UTI or a unit of an equity oriented fund (whether quoted or not), Zero Coupon Bonds (whether quated or not) treated as STCA if they are not held for more than 12 months.

3. Long-term Capital Asset (LTCA) [Section 2(29A)] -Capital asset which not a short-term capital asset.

4. Capital Gains:

(a) **Long-term Capital Gain [Section 2(29B)]** - Capital Gain arising from transfer of Long Term Capital Asset.

(b) **Short-term Capital Gain [Section 2(42B)]** - Capital Gain arising from transfer of Short Term Capital Asset.

5. Zero Coupon Bond [Section 2(48)]

(a) Zero Coupon Bond means a bond —

(i) **Issued By:** (I) Any Infrastructure Capital Company, or

(II) Infrastructure Capital Fund, or

(III) Public Sector Company.

(ii) **Issue Date:** On or after 01.06.2006.

(iii) **Payment/Benefit:** No payment and benefit is received or receivable before maturity or redemption from Infrastructure Capital Company / Infrastructure Capital Fund Public Sector Company, and

(iv) **Notified by Central Government:** The Central Government may, by notification in the Official Gazette, specify in the behalf.

(b) **Treatment in the hands of Issuer u/s 36(1) (iiia) :** Discount on **Zero Coupon Bonds.**

(i) Is the difference between Maturity / Redemption Value and the Issue Price.

(ii) Can be written off on a pro-rata basis over the period of the bond.

(c) **Treatment in the hands of Investor:**

(i) **Financial Asset:** Zero Coupon Bond is a Financial Asset for the purpose of Capital Gains.

(ii) **Taxability:** Transfer or Maturity of Zero Coupon Bond will be taxable as Capital Gains.

Infrastructure Capital Company and Infrastructure Capital Fund for the purpose of Zero Coupon Bonds.

(a) **Infrastructure Capital Company [Sec.2 (26A)] :** It is a Company which makes investment by way of acquiring shares or providing long-term finance to any prescribed enterprise or undertaking.

(b) **Infrastructure Capital Fund [Sec.2 (26B)] :** It is a Fund operating under a Trust Deed established to raise monies by Trustee for investment by way of acquiring shares or providing long-term finance to any prescribed enterprise or undertaking.

(c) **Prescribed Undertaking/Enterprise :**

(i) Enterprise/Undertaking wholly engaged in the infrastructure business referred in Sec. 80-IA/80-IAB, or

(ii) Housing Projects referred in Section 80-IB, or

(iii) Project for constructing a Hotel (atleast of 3 Star Category) or Hospital with one hundred beds for patients.

6. Transfer u/s 2 (47)

Sec 2(47)	**Nature of Transaction**
(i)	Sale, exchange or relinquishment
(ii)	Extinguishment of any rights in an asset
(iii)	Compulsory acquisition thereof under any law
(iv)	Conversion of capital asset into stock-in-trade
(iva)	Maturity/Redemption of a Zero Coupon Bond
(v)	Part performance of a Contract u/s 53A of the Transfer of Property Act of possession of property
(vi)	Transactions, which have the effect of transferring/enabling the enjoyment of immovable property.
(vii)	Disposing of or parting with an asset or any interest therein, or
(viii)	Creating any interest in any asset in any manner whatsoever by way of an agrement or otherwise.

Note : The last two inclusion has come into effect from Assessment Year 2013-14

Sale: As per Sec. 54 of the Transfer of Property Act, "Sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised".

Exchange: As per the Transfer of Property Act, 1882, when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an exchange.

Relinquishment: Relinquishment means withdrawn from, abandoning or giving up anything. Where an assessee gives up the right to claim specific performance for purchase of immovable property, it is relinquishment of a capital-asset.

Extinguishment of any rights in an asset: It means total destruction, annihilation, termination or extinction of a capital asset. It refers to extinguishment of rights on account of transfer (Vania Silk Mills Ltd.)

7. Indexed Cost of Acquisition (ICA) and Indexed Cost of Improvement (ICI) [Section 48]

When asset is acquired by assessee himself

(a) **Acquired prior to 1.4.1981**

Indexed Cost Acquisition

Fair Market Value on 01.04.1981 or cost of acquisition whichever is high × Cost of Inflation Index for the year of transfer/100.

(b) **Acquired after 1.4.1981,**

Indexed cost of Acquisition =

$$\frac{\text{Cost of Acqusition x CII for year of transfer}}{\text{CII for year of Acqusition}}$$

Indexed Cost of Improvement =

$$\frac{\text{Cost of improvement x CII for year of transfer}}{\text{CII for year of Improvement}}$$

ICI can be computed **only if it is incurred after 01.04.1981.**

When assessee received the asset u/s 47

(c) **Asset acquired prior to 1.4.1981 by previous owner and received by the assessee prior to 1.4.1981.**

ICA = FMV on 1.4.81 or Cost of acquisition by previous owner whichever is high x CII for year of transfer/100.

(d) **Asset acquired prior to 1.4.81 by previous owner and received by the assessee after 1.4.81.**

$$\text{ICA} = \frac{\text{FMV on 1.4.81 or Cost of acquisition by previous owner whichever is high x CII for Year of transfer}}{\text{CII of year in which the asset is first held by the assessee}}$$

(e) **Asset acquired after 1.4.1981 by previous owner and received by assessee after 1.4.1981.**

$$\text{Indexed Cost of Acquisition} = \frac{\text{Cost of acquisition to the previous owner x CII for year of transfer}}{\text{CII of year in which the asset is first held by the assessee}}$$

In the above cases:

$$\text{Indexed Cost of Improvement} = \frac{\text{Cost of improvement x CII for year of transfer}}{\text{CII of year in which the asset is first held by the assessee}}$$

8. List the circumstances in which benefit *of* indexation is not available

Nature of LTCA Transferred	Assessee Not Eligible for Indexation benefit
Bonds/Debentures except Capital Indexed Bonds Issued by Govt.	All Assesses
Shares/Debentures of Indian Company acquired by using Convertible Forex under First Proviso to Section 48	Non Residents
Depreciable Assets	All Assesses
Slump Sale	All Assesses
Units Purchased in Foreign Currency u/s 115AB	Off Shore Fund
GDRs purchased in Foreign Currency u/s 115AC	Non Residents and Resident Individual
Securities u/s 115AD	Foreign Institutional Investors
Foreign Exchange Asset u/s 115 D	Non Resident Indian

9. Cost Inflation Index as notified by the Central Government is as under:

Financial Year	Cost Inflation Index (CII)	Financial Year	Cost inflation Index (CII)	Financial Year	Cost inflation Index (CII)
1981-1982	100	1993-1994	244	2005-2006	497
1982-1983	109	1994-1995	259	2006-2007	519
1983-1984	116	1995-1996	281	2007-2008	551
1984-1985	125	1996-1997	305	2008-2009	582
1985-1986	133	1997-1998	331	2009-2010	632
1986-1987	140	1998-1999	351	2010-2011	711
1987-1988	150	1999-2000	389	2011-2012	785
1988-1989	161	2000-2001	406	2012-2013	852
1989-1990	172	2001-2002	426	2013-2014	939
1990-1991	182	2002-2003	447	2014-2015	1024
1991-1992	199	2003-2004	463	2015-2016	1081
1992-1993	223	2004-2005	480		

10. Exceptions to transfer *u/s* 46 & 47

Section	Nature of transaction not considered as a Transfer
46(1)	Distribution of a capital asset in specie on liquidation of a company by a liquidator to its shareholders
47(i)	Any distribution of capital assets on the total or partial partition of a HUF.
47(iii)	Any transfer of a capital asset under a gift or will or an irrevocable trust. Exception is also applicable in case of shares or securities received by employees from the company free of cost or at a concessional rate. However, a provision has been added to provide that this clause shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under ESOS or ESOP of the company offered to such employees in accordance with the guidelines issued by the Central Government in this behalf.

47(iv)	Transfer of any capital asset by a holding company to its 100% subsidiary company which is an Indian company.
47(v)	When a transfer has been made by a 100% subsidiary to its Indian holding company. Both the sections 47(iv) and (v) are subject to the restrictive conditions imposed u/s 47A(1), which are as follows: (a) If within the course of 8 years from the date of transfer, holding company loses its 100% stake on the subsidiary company. (b) If the transferee company transfers this capital asset as their stock-in-trade within 8 Years. In both the above cases, the earlier exemption so granted shall be withdrawn and there would arise incidence of capital gains, in the original year of transfer, which would be initiated as per Sec.155 (7B) amendment proceedings.
47(vi)	Transfer of a capital asset in a scheme of amalgamation where the amalgamated company is an Indian company. The conditions of Sec.2(1B) of the Act, must be fulfilled: (a) All the property and liabilities of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of amalgamation. (b) Shareholders holding not less than 75% in the value of shares in amalgamating company or companies (other than shares held therein immediately before the amalgamation or by a nominee for the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of amalgamation. Amalgamation as per Income-tax includes merger and absorption, provided the conditions of Sec.2 (1B) are satisfied.
47(via)	Transfer of shares of an Indian company by an amalgamating foreign company to a foreign amalgamated company, provided the following conditions are satisfied : (a) The transfer of shares is under a scheme of amalgamation between two foreign companies; (b) At least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; (c) No tax is levied on such capital gain in the country where foreign amalgamating company is incorporated.
47(viaa)	Transfer of capital asset by a banking company to a banking institution in a scheme of amalgamation sanctioned by the Central Government u/s 45(7) of the Banking Act 1949. **Transfer of shares of a foreign company in a scheme of amalgamation not to be regarded as a transfer [Section 47(viab)] [W.e.f. A.Y. 2016-17]** Any transfer, in a scheme of amalgamation, of a capital asset, being a share of a foreign company, referred to in Explanation 5 to section 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company shall not be regarded as transfer, if— (a) at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and (b) such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated.

47(vib)	Transfer of a capital asset by the demerged company to the resulting Indian company, subject to the fulfillment of the following conditions : (a) Transfer of capital asset should be from demerged company to a resulting company; (b) Resulting company should be an Indian company; (c) Transfer of capital asset should be made in a scheme of demerger.
47(vic)	Transfer of shares of Indian company by a demerged foreign company in a demerger to a foreign company, shall not be treated as transfer provided the following conditions are fulfilled : (a) The shareholders holding not less than 75% in value of shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and (b) No tax is levied on capital gain in the foreign country in which the demerged company is incorporated. The provisions of Sections 391 to 394 of the Companies Act, 1956 **(Corresponding Section 230 to 239 of Companies Act, 2013)** shall not apply in case of demergers referred in this clause.
47(vica)	Any transfer, in a business reorganization, of a capital asset by the predecessor co-operative bank to the successor co-operative bank.
47(vicb)	Any transfer by a shareholder, in business reorganization, of a capital asset being a share or shares held by him in the predecessor co-operative bank if the transfer is made in consideration of allotment to him of any share or shares in the successor co-operative bank. **Transfer of shares of a foreign company in a scheme of demerger not to be regarded as a transfer [Section 47(vicc)] [W.e.f. A.Y. 2016-17]** Any transfer in a demerger, of a capital asset, being a share of a foreign company, referred to in Explanation 5 to section 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company shall not be regarded as transfer, if,— (a) the shareholders, holding not less than three-fourths in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and (b) such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated: Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 shall not apply in case of demergers referred to in this clause.
47(vid)	Transfer/allotment of shares by the resulting company to the shareholders of the demerged company in a scheme of demerger. Only shares must be exchanged against shares.
47(vii)	Allotment of shares in amalgamated company to the shareholders of amalgamating company, will not be considered as a transfer if : (a) The transfer is made in consideration of allotment to him of any share or share in the amalgamated company. As per Finance Act, 2012 [w.e.f. A.Y. 2013-14], it shall not be necessary for the amalgamated company to issue shares to the shareholders of the amalgamating company when a subsidiary company amalgamates with a holding company; and (b) The amalgamated company is an Indian company.

47(viia)	Transfer of shares/bonds or Global Depository Receipts (GDRs) referred to in Section 115AC (1), i.e., those bonds, shares or GDRs of a public company (being an Indian company) is purchased in foreign currency, outside India by a non-resident to another non-resident.
47(viib)	Any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident. **Explanation.—**For the purposes of this clause, "Government Security" shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956.
47(viii)	Transfer of urban agricultural land in India effected before 1.3.1970
47(ix)	Transfer of a capital asset being a work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print to Government or University or National Museum or National Art Gallery, National Archives or any other public museum or institution, as may be notified by the Central Government in the Official Gazette to be of national importance or to be of renown throughout any State or States.
47(x)	Conversion of bonds or debentures, debentures-stock or deposit certificates in any form, of a company into shares or debentures of that company
47(xi)	Transfer of membership of a recognized stock exchange in India by a person (not being a company) on or before 31st December 1998, to a company in exchange of shares allotted by that company, subject to the restrictions of Sec.47A(2)
47(xii)	Transfer of capital asset being land of a sick industrial company made under a scheme prepared and sanctioned u/s 18 of the Sick Industrial Companies (Special Provisions) Act, 1985, where such sick industrial company is being managed by its worker's co-operative. Transfer should be made during the period commencing from the Previous Year in which the said company has become a sick industrial company u/s 17(1) of the Act and ending with the Previous Year during which the entire net worth of such company become equal to or exceeds the accumulated losses.
47(xiii)	Transfer of capital assets or intangible assets in the course of demutualization or corporatisation of a recognized stock exchange in India, on succession of a firm concern by a company, provided the following conditions are fulfilled : (a) All the assets and liabilities of the erstwhile firm or AOP/BOI, relating to the business immediately before succession becomes the assets and liabilities of the company; (b) All the partners of the firm before the succession becomes the shareholders of the company in the same proportion in which their Capital Accounts stood in the books of the firm on the date of succession; (c) The partners are not in receipt of any other benefit, whether directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; (d) The aggregate of the shareholding in the company of the partners of the firm is not less than 50% of the total voting power in the company; (e) Their shareholding continues for a period of 5 years from the date of the succession; (f) The demutualization or corporatisation of a recognized stock exchange in India is carried out in accordance with a scheme of corporatisation which is approved by SEBI.

47(xiiia)	Transfer of a capital asset being a membership right held by a member of a recognized stock exchange in India for acquisition of shares and trading or clearing rights acquired by such member in that recognized stock exchange in accordance with a scheme of demutualization or corporatisation which is approved by SEBI.
47(xiv)	Transfer of capital asset or intangible assets where a sole proprietary concern is succeeded by a company, provided the following conditions are fulfilled: (a) All the assets and liabilities of the erstwhile sole proprietary concern, relating to the business immediately before succession becomes the assets and liabilities of the company; (b) The sole proprietor is not in receipt of any other benefit, whether directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; (d) The shareholding of the sole proprietor in the company is not less than 50% of the total voting power in the company; (e) His shareholding continues for a period of 5 years from the date of the succession;
47(xv)	Any transfer under the Securities Lending Scheme, 1997 for lending of any securities under an agreement or arrangement between the assessee and borrower of securities as per the guidelines issued by SEBI or RBI.
47(xvi)	Any transfer of capital asset in a reverse mortgage under a scheme notified by the Central Government.
47 (xvii)	Any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor. **Tax neutrality on merger of similar schemes of Mutual Funds [Section 47(xviii)] [Inserted w.e.f. A.Y. 2016-17]** Securities and Exchange Board of India has been encouraging mutual funds to consolidate different schemes having similar features so as to have simple and fewer numbers of schemes. However, such mergers/consolidations are treated as transfer and capital gains are imposed on unit holders under the Income-tax Act. In order to facilitate consolidation of such schemes of mutual funds in the interest of the investors, the Act has provided tax neutrality to unit holders upon consolidation or merger of mutual fund schemes by inserting clause (xviii) in section 47. Clause (xviii) provides as under: any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund shall not be regarded as transfer. Provided that the consolidation is of two or more schemes of equity oriented fund **or** of two or more schemes of a fund other than equity oriented fund.

11. Cost of acquisition u/s 55(2)

- The price paid by the assessee for the acquisition of the asset.
- Expenses incurred for completing the title is included in the cost of the asset.
- Expenses incurred in acquiring the asset or acquiring better voting rights
- Interest on capital borrowed for acquiring capital asset (however, expenditure incurred for acquiring loan amount for acquiring capital asset is not a part of cost of acquisition)
- Amount paid for discharge of mortgage, where the asset was mortgaged by the previous owner.
- Extra amount paid by coparcener for full ownership in specific property allotted to him by HUF.

12. Deemed cost of acquisition

(a) **Cost to the previous owner u/s 49(1):** Where the capital asset or intangible asset of a firm or a sole proprietary concern succeeded by company, the cost of acquisition of the asset shall be deemed to be cost for which the previous owner of the property acquired it, in the following cases:

(i) on any distribution of assets on the total or partial partition of a Hindu undivided family;

(ii) under a gift or will;

(iii) **(a)** by succession, inheritance or devolution, or

(b) on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or

(c) on any distribution of assets on the liquidation of a company, or

(d) under a transfer to a revocable or an irrevocable trust, or

(e) under any such transfer as is referred to in clause (iv) or clause (v) or clause (vi) or clause (via) **[**or clause (viaa) or clause (vica) or clause (vicb)**]** or clause (xiii) or clause (xiiib) or clause (xiv) of section 47;

(iv) such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section 64 at any time after the 31st day of December, 1969,

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

Explanation.—In this sub-section the expression "previous owner of the property" in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in clause (i) or clause (ii) or clause (iii) or clause (iv) of this sub-section.

(b) **Cost share of Amalgamated Company u/s 49(2):** Where the capital asset being a share or shares in an amalgamated company which is an Indian company became the property of the assessee in consideration of a transfer referred to in clause (vii) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the amalgamating company.

(c) **Cost of acquisition in case of shares/debentures acquired on conversion of debentures u/s 49(2A):** Where the capital asset, being a share or debenture of a company, became the property of the assessee in consideration of a transfer referred to in clause (x) or clause (xa) of section 47, the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock, bond or deposit certificate in relation to which such asset is acquired by the assessee.

(d) **Cost of acquisition of shares, debentures or warrants u/s 49(2AA):** Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in sub-clause (vi) of clause (2) of section 17, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purposes of the said sub-clause.

(e) **Section 49(2AA):** Where the capital asset, being rights of a partner referred to in section 42 of the Limited Liability Partnership Act, 2008, became the property of the assessee on conversion as referred to in clause (xiiib) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the company immediately before its conversion.

(f) **Cost of acquisition of specified security or sweat equity shares u/s 49(2AB) read with Sec. 115WC(1)(ba):** Where the capital gain arises from the transfer of specified security or sweat equity shares, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account while computing the value of fringe benefits under clause (ba) of sub-section (1) of section 115WC.

(g) **Following sub-section (2ABB) shall be inserted after sub-section (2AB) of section 49 by the Finance Act, 2015, w.e.f. 1-4-2016 :**

Where the capital asset, being share or shares of a company, is acquired by a non-resident assessee on redemption of Global Depository Receipts referred to in clause (b) of sub-section (1) of section 115AC held by such assessee, the cost of acquisition of the share or shares shall be the price of such share or shares prevailing on any recognised stock exchange on the date on which a request for such redemption was made.

Explanation.—For the purposes of this sub-section, "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of the Explanation 1 to sub-section (5) of section 43.

(h) **Section 49(2AC):** Where the capital asset, being a unit of a business trust, became the property of the assessee in consideration of a transfer as referred to in clause (xvii) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share referred to in the said clause.

(i) **Following sub-section (2AD) shall be inserted after sub-section (2AC) of section 49 by the Finance Act, 2015, w.e.f. 1-4-2016 :**

Where the capital asset, being a unit or units in a consolidated scheme of a mutual fund, became the property of the assessee in consideration of a transfer referred to in clause (xviii) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating scheme of the mutual fund.

(j) **Cost of acquisition of resulting company's shares on demerger u/s 49(2C):** The cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.

$$\frac{\text{Cost of acquisition of Demerged Company's Shares} \times \text{Net Book Value of assets transferred to Resulting Company}}{\text{Net Worth of the Demerged Company before demerger}}$$

Net Worth of demerged company = Paid up Share Capital and General Reserve as per books before demerger.

(k) **Cost of acquisition of demerged company's shares after demerger u/s 49(2D):** The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as so arrived at under sub-section (2C).

(l) **Business reorganization of Co-operative Bank u/s 49(2E):** The provisions of sub-section (2), sub-section (2C) and sub-section (2D) shall, as far as may be, also apply in relation to business reorganisation of a co-operative bank as referred to in section 44DB.

Explanation.— For the purposes of this section, "net worth" shall mean the aggregate of the paid up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.

(m) **Cost of acquisition to transferee company where section 47A is applicable u/s 49(3):** Notwithstanding anything contained in sub-section (1), where the capital gain arising from the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 47 is deemed to be income chargeable under the head "Capital gains" by virtue of the provisions contained in section 47A, the cost of acquisition of such asset to the transferee-company shall be the cost for which such asset was acquired by it.

(n) **Section 49(4):** Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under clause (vii) or clause (viia) of sub-section (2) of section 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (vii) or clause (viia).

(o) **Cost of acquisition of Bonus Shares u/s 55(2)(iiia)**

- Where bonus shares are issued prior to 1.4.81, the cost of acquisition shall be the fair market value as on 1.4.81.
- Where such bonus shares are issued on or after 1.4.81, the cost of acquisition shall be taken as NIL.

(p) **Cost of acquisition of Original Shares u/s 55(2)(b)**

- Where the original shares were acquired prior to 1.4.81, the cost of acquisition shall be the higher of the fair market value as on 1.4.81 or the original cost of acquisition.
- Where such shares were acquired on or after 1.4.81, the original cost of acquisition shall be considered.

(q) **Cost of Right Shares u/s55(2)(aa) read with Sec. 55(2)(b)**

- Cost of acquisition shall be the amount actually paid by the assessee to acquire such shares [Sec.55 (2)(aa)(iii)]
- If such shares were acquired prior to 1.4.81, the assessee shall be entitled to opt for fair market value on 1.4.81 as the cost of acquisition.
- If the rights entitlement is renounced, the cost of acquisition of renouncing the rights entitlement to the renouncer is nil.
- Where the renounce acquires the right entitlement, the cost of acquisition of right shares to the renounce is the aggregate of (i) the amount paid to the renouncer (ii) the amount paid by him to the company/institution for acquiring such right shares [Sec.55(2)(aa)(iv)].

(r) **Cost of acquisition of (i) shares allotted to a shareholder under a scheme of Demutualization or Corporatisation and (ii) Trading or Clearing Rights of a Recognized Stock Exchange [Sec. 55(2)(ab)]**

- The cost of acquisition is the cost of acquisition of his original membership of the stock exchange.
- Cost of Right is taken as NIL.

Period of holding of units of consolidated scheme of mutual funds [Explanation 1 to section 2(42A)] [W.e.f. A.Y. 2016-17]

"In the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer referred to in section 47(xviii), there shall be **included** the period for which the unit or units in the consolidating scheme of the mutual fund were held by the assessee".

13. Capital Gain in case of amount received from an insurer on account of damage or destruction of any capital asset u/s 45(1A)

Damage or destruction of assets as a result of	Chargeability
1. Flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature	1. Chargeable as income of the year in which money or other asset was received from the insurer.
2. Riot or civil disturbance	2. In case of receipt of other assets, the Consideration = the Fair Market Value (FMV) of the asset received.
3. Accidental fire or explosion	3. Capital Gain = Money received or FMV of asset received **Less** Cost of Acquisition or Indexed Cost of Acquisition.
4. Action by an enemy or action taken in combating an enemy (whether with or without a declaration of war)	

Note for Depreciable Assets :

1. The **compensation received** shall be **reduced from the WDV** of the block and any **surplus** shall be chargeable as **Short Term Capital Gains** and loss shall be treated as **Short Term Capital Loss**.
2. If some **asset still exists** in the block and **no surplus is available, then depreciation** may be **claimed on the balance**.

Illustration 1: Ria owns a house property which was purchased by her on 1.5.1979 for ₹ 3 lacs. The said property was destroyed by fire on 3.4.15 and she received a sum of ₹ 35 lacs from the insurance company during the year. The market value of the above property as on 1.4.81 was ₹ 4,50,000. Compute Capital Gains for the P.Y. 2015-16.

Solution :

Computation of Capital Gains **A. Y : 2016-17**

Consideration for Transfer	35,00,000
Less : Indexed Cost of Acquisition	
$4,50,000 \times \frac{1081}{100}$	48,64,500
Long Term Capital Loss	13,64,500

Illustration 2: The W.D.V. of the block of assets as on 1.4.2015 was ₹5 lacs. Rate of Depreciation @ 15%. An asset of the same block was acquired on 11.5.15 for ₹3 lacs. There was a fire on 18.9.2015 and the assets were destroyed by fire and the assessee received a sum of ₹ 12 lacs from the insurance company. Compute the Capital Gain assuming:

(a) All the assets were destroyed by fire

(b) Part of the block was destroyed by fire

Would your answer differ if the assessee received ₹ 7,00,000 from insurance company assuming:

(a) All the assets were destroyed by fire

(b) Part of the block was destroyed by fire

Solution :

If Compensation received ₹ 12,00,000

Block of Assets u/s 2(11)

	Particulars	All assets destroyed	Part of Block destroyed
1.4.15	W.D.V. of the Block	5,00,000	5,00,000
	Add : Cost of New Asset purchased relating to the Block	3,00,000	3,00,000
		8,00,000	8,00,000
	Less : Compensation received	12,00,000	12,00,000
	Short Term Capital Gains	4,00,000	4,00,000
		u/s 50(2)	u/s 50(1)

If Compensation Received ₹ 7,00,000

Block of Assets u/s 2(11)

	Particulars	All assets destroyed	Part of Block destroyed	
1.4.15	W.D.V. of the Block	5,00,000	5,00,000	
	Add : Cost of New Asset purchased relating to the Block	3,00,000	3,00,000	
		8,00,000	8,00,000	
	Less : Compensation received	7,00,000	7,00,000	
	Short Term Capital Loss	1,00,000	1,00,000	= WDV (Depreciation to be charged on WDV)
	Less : Depreciation @ 15%	u/s 50(2)	15,000	
			85,000	

14. Capital Gain on conversion of capital asset into stock-in-trade u/s 45(2)

- When a capital asset is converted into stock-in-trade, it is a transfer u/s 2(47).
- Transfer shall be deemed to have taken place in the year in which the asset is so converted.
- Capital Gain will arise in the Previous Year in which such converted asset is sold or otherwise transferred.
- Indexation of cost of acquisition and cost of improvement, if required, will be applicable for the Previous Year in which such conversion took place.
- **Full value of consideration** = Fair Market Value of the capital asset(on the date of conversion)
- There will also arise Business Income in the Previous Year in which such converted asset is being sold.
- **Business Income** = Sale Price - Fair Market Value of the asset on the date of conversion.

Illustration 3: Mr.B invested ₹ 2,00,000 on the purchase of gold ornaments on 10.1.90. He holds the gold ornaments as investments. On 16.1.2008, he started a business in dealing in jewellery and converts his holding into his stock-in-trade. The market value of the gold ornaments as on the date of conversion was ₹ 10,00,000 and therefore, B credited his Capital Account by ₹ 10,00,000 and debited Stock Account by ₹ 10,00,000. The gold ornaments are now reflected in the business of Mr. B. these gold ornaments were sold in the Previous Year 2015-16 for a sum of ₹ 15,00,000. Compute the Capital Gain and Business Income.

Solution :

The conversion of capital asset into stock-in-trade is treated as a trsnsfer as per sec. 2(47).

Capital asset was converted into stock-in-trade on 16.1.08 i.e. during the Previous Year 2007-08. Therefore, it will be treated as transfer of the Previous Year 2007-08. The taxability for Capital Gains shall arise only in the Previous Year in which the asset is sold i.e. Previous Year 2015-16.

Capital Gains for the Assessment Year 2016 -17

Consideration for Transfer (Market value as on the date of conversion)	10,00,000
Less : Indexed Cost of Acquisition 2,00,000 $\times \frac{551}{172}$	6,40,698
Long Term Capital Gains	**3,59,302**

Business Income for the A.Y. 2016 -17

Sale Price	15,00,000
Less : Fair Market Value as on the date of conversion	10,00,000
Business Income	**5,00,000**

Illustration 4: Romit acquired a plot of land on 1.6.75 for ₹4,00,000. He converts the plot into stock in trade of his real estate dealing business on 18.2.2007 when the fair market value of the plot was ₹ 35,00,000. The stock-in-trade is sold by him on 18.5.2015 for ₹ 40,00,000 (FMV as on 1.4.81 was ₹ 6,00,000 and FMV as on 1.4.76 ₹4,50,000).

Solution :

The conversion of capital asset into stock-in-trade is treated as a transfer as per Sec. 2(47). Capital asset was converted into stock-in-trade on 18.2.2007 i.e. Previous Year 2006-07.

Computation of Capital Gains

	₹
Consideration for Transfer (FMV)	35,00,000
Less : Indexed Cost of Acquisition 6,00,000 $\times \frac{519}{100}$	31,14,000
Long Term Capital Gains	**3,86,000**

Computation of Business Income

	₹
Sale Proceeds of HP	40,00,000
Less : FMV on the date of conversion	35,00,000
Business Income	**5,00,000**

15. Treatment of Depreciable Assets [Section 50]

Capital Gains on transfer of depreciable assets would results in "Short Term Capital Gains" only.

In other words, Capital Gains is derived as under :

Period of Holdings	Nature of Asset	Nature of Gains on Transfer
Held for more than 36 months	Long Term Capital Asset	Long Term Capital Gains
Held for less than 36 months	Short Term Capital Asset	Short Term Capital Gains

16. Chargeability of Capital Gain on Transfer of Beneficial interest in Securities by the Depository u/s 45(2A)

Section 45(2A) was inserted by the Depositories Act, 1996. The said Act provides that dematerialisation of securities to avoid physical movement of scrips is required in order to ensure faster settlement of trade. In the register of the issuing company, the depository (a company registered with SEBI) appears to be a registered owner of the dematerialised securities. In the books of the depository, the real owner of the securities appears as the beneficial owner.

A depository interacts with the investors through participants (agents of depository). For this purpose investors have to enter into an agreement and open an Account (which is just like a Bank Account) with the participant. An investor may hold his dematerialised holdings in more than one Account with one or more depositories. All the transactions of sale and purchase of dematerialised securities are through the participants and are entered in the respective accounts. The ownership is transferred through book entries in the statement of Accounts.

- Capital Gain accrues to the beneficial owner (i.e. the investor)-taxable as the income of the beneficial owner of the Previous Year in which the transfer took place.
- Cost of Acquisition and period of holding is to be determined on FIFO Method

Illustration 5: The Depository Account shows the following details of M's holdings:

Date of Credit	Particulars	Quantity
10.11.2001	Shares of XYZ LTD. purchased in physical form on 10.11.2001 @ ₹ 20 per share	300
30.11.2002	Purchased dematerialised shares of Y Ltd. on 25.11.2002 @ ₹ 70 per share	500
06.12.2004	Shares of XYZ LTD. held in physical form, were got dematerialised on 01.12.2004	

M sold 600 dematerialised shares on 6th June 2015 @ ₹ 200 per share. Brokerage is paid @2% of sale price. Compute Capital Gains.[Ignore the exemption available u/s10/(38)]

Solution :

(a) Person Liable : The sale of shares held under dematerialized format with a depository is chargeable to tax as the income of the beneficial owner.

(b) Cost of Acquisition and period of holdings : The cost of acquisition and the period of holding shall be determined on FIFO Method. [Circular No. 768 dated 24.6.1998]

(i) FIFO Method will be applied for each Account independently.

(ii) When physical stock is dematerialized, the date of credit into the Depository Account shall be considered for the purpose of FIFO Method, but indexed cost of acquisition shall be computed on the basis of year of acquisition.

	₹
Consideration for Transfer	
600 Share @ ₹ 196 per share	1,17,600
Less : Indexed Cost of Acquisition	
(i) $500 \times 70 \times \frac{1081}{447}$	(84,642)
(ii) $100 \times 20 \times \frac{1081}{426}$	(5,075)
Long Term Capital Gain	**27,883**

17. Capital Gain on transfer of capital asset by a partner/member to a firm/AOP/BOI as capital contribution u/s 45(3)

- There shall arise Capital Gain from the transfer of capital asset held by a person, to a firm or AOP or BOI in which he is or becomes a partner or member. Such transfer of capital asset may be by way of capital contribution or otherwise.
- It shall be chargeable to tax as his income of the Previous Year in which such transfer took place.
- **Full value of consideration** (for computing Capital Gains) = the amount recorded in the books of accounts of the firm.
- **Market value of the asset on the date of transfer is not relevant.**
- Cost of acquisition and cost of improvement shall be allowed to be indexed accordingly.

Illustration 6: Nisith acquired a property by way of gift from his father in the Previous Year 1988-89 when its FMV was ₹3 lacs. His father had acquired the property during 1981-82 for ₹ 4 lacs. This property was introduced as capital contribution to a partnership firm in which Nisith became a partner on 15.6.2015. The market value of the asset as on that date was ₹ 20 lacs, but it was recorded in the books of account of the firm at ₹ 17 lacs. Is there any Capital Gain chargeable in the hands of Mr. Nisith?

Solution :

Computation of Capital Gains A.Y : 2016-17

	₹
Consideration for Transfer	17,00,000
Less : Indexed Cost of Acquisition	
$4,00,000 \times \frac{1081}{161}$	26,85,714
Long Term Capital Loss	**9,85,714**

(a) Full value of consideration is taken as the value at which it is recorded in the books of accounts of the firm.

(b) Cost of acquisition is taken as cost to the previous owner but indexation has been done from the date it was first held by the assessee.

(c) Market value of the asset on the date of transfer is not relevant.

LTCL shall be carried forward for adjustment only against LTCG arising within the next 8 years.

Illustration 7: Ayan has two motor cars which are used by him exclusively for his personal purposes. The cost of the cars was ₹ 6,50,000 and ₹ 8,00,000. The first car was transferred by him on 15.1.2016 to a firm in which he is a partner as his capital contribution. The market value of the car as on 15.1.2016 is ₹ 5,00,000, but it was recorded in the books of account of the firm at ₹ 6,00,000. Compute the Capital Gain if any, chargeable for the A.Y. 2016-17.

Solution :

Since the car is a moveable property and was used by Mr. Ayan for his perosnal purposes only, it will be treated as a personal effect and not a "Capital asset'' , Hence question of Capital gain does not arise.

W.e.f. A.Y. 2008-09, "Personal effect" means moveable property including wearing apparels and furniture held for personal use by the assessee or any member of his family dependent on him but excludes :

(i) Jewellery (ii) Archaeological collections (iii) Drawings (iv) Paintings (v) Sculptures (vi) Any work or art.

18. Capital Gain on transfer of a capital asset by way of distribution on the dissolution of a Firm/AOP/ BOI u/s 45(4)

- **Transfer:** Distribution of a capital asset by a Firm / AOP / BOI on its dissolution or otherwise **is a** transfer.
- **Year of Taxability: Capital Gain** shall be chargeable to tax **in the hands of Firm/ AOP /BOI** in the **Previous Year** in which such **transfer** takes place.
- **Capital Gain** = Fair Market Value on the date of transfer **Less** Cost or Indexed cost of acquisition.
- **Depreciable Assets:** Transfer of **depreciable asset** results in **Short-term Capital Gain or Loss** u/s 50.

Illustration 8. PQR & Co. is a partnership firm, consisting 3 partners P, Q and R. the firm is dissolved on 31.12.15. The assets of the firm were distributed to the partners as under :

Particulars	Block of Machinery (given to P)	Stock (given to Q)	Land (given to R)
Year of acquisition	1990-91	2002-03	1978-79
Cost of acquisition (₹)	7,20,000	4,00,000	10,000
Market value as on 31.12.15	15,00,000	6,00,000	27,00,000
WDV as on 31.12.15	10,40,000	—	—
Value at which given to partners as per agreement	10,00,000	4,50,000	18,00,000
Market value as on 1.4.81	—	—	2,70,000

Compute the income taxable in the hands of the firm for the Assessment Year 2016-17. What shall be the cost of acquisition of such assets to the partners of the firm?

Solution :

Computation of Short Term Capital Gains on Block of Machinery

	₹
Sale consideration (i.e. the market value)	15,00,000
Less : Cost of Acquisition (WDV of the block)	10,40,000
Short Term Capital Gains	**4,60,000**

Income from Business (on transfer of stock)

	₹
Market value of stock	6,00,000
Less : Cost of Acquisition	4,00,000
Business Income	**2,00,000**

Computation of Capital Gains on transfer of land

	₹
Consideration for transfer	27,00,000
Less : Indexed cost of Acquisition : $2,70,000 \times \frac{1081}{100}$	29,18,700
Long Term Capital Gains	**(2,18,700)**

Cost of acquisition of assets to the partners

	₹
Partner "P"	10,00,000
Partner "Q"	4,50,000
Partner "R"	18,00,000
Less : Indexed cost of Acquisition : 2,70,000 × $\frac{1081}{100}$	29,18,700
	3,31,300

Illustration 9: A firm consists of 3 partners X, Y & Z. Z retires from the firm on 15.10.2015. His capital balance and the profits till the date of retirement stood at ₹ 16 lacs. The firm transferred its land to Z in settlement of his Account. The market value of the land as on that date was ₹ 30 lacs. The land was acquired by the firm on 1.5.93 for ₹ 4 lacs.

Compute the Capital Gains in the hands of the firm.

Solution :

Computation of Long Term Capital Gains for the A.Y. 2016-17

	₹
Consideration for Transfer	30,00,000
Less : Indexed Cost of Acquisition	
4,00,000 × $\frac{1081}{244}$	17,72,131
Long Term Capital Gain	**12,27,869**

19. Capital Gain on transfer by way of compulsory acquisition of an asset u/s 45(5)

- **Chargeability:** It is a **transfer u/s 2(47)** chargeable to tax under the head **Capital Gains.**
- **Taxability of Normal/Original Compensation [Section 45(5)(a)]**
  - Normal or **original compensation** is taxable in the Previous **Year in which it is first received.**
  - **Whole of the compensation is taxable** even if a portion of the amount is received.
- Capital Gain = Whole of the normal compensation Less Cost or Indexed cost of Acquisition.
- **Indexation** shall be applied for the **year in which the asset is compulsorily acquired.**
- **Taxability of Enhanced Compensation [Section 45(5)(b)]**
  - **Enhanced compensation** shall be **taxable** in the Previous **Year in which it is received.**
  - The Cost of acquisition and the cost of improvement shall be taken as 'NIL'.
  - Capital Gain = Enhanced Compensation received Less Expenses on Receipt of Enhanced Compensation
- **Compensation received by Legal Heirs:** The **Compensation** received subsequent to the **death of the assessee is taxable** in the hands of **his legal heirs.**
- **Reduction of Compensation:** Where normal compensation / enhanced compensation is reduced by Court or Tribunal, then the **Capital Gain shall be recomputed** accordingly.
- **Interest on enhanced compensation** on account of compulsory acquisition is chargeable under the head "Income from Other Sources".

Interim order of a Court, Tribunal or Other Authority

Any amount of compensation received in pursuance of an interim order of a court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which the final order of such court, Tribunal or other authority is made.

Illustration 10: Mr. B acquired a house property for ₹ 50,000 in 1969-70. On his death in October 1985 the house was acquired by his son C. The market value of the house as on 1/4/81 was ₹ 3,00,000. This house was acquired by the Government on 15.3.2009 and a compensation of ₹ 16 lacs is paid to him on 25.3.2015. C filed a suit against the Government challenging the quantum of compensation and the court ordered for giving additional compensation of ₹ 14,00,000 on 22.10.15. He incurred an expenditure of ₹ 40,000 as an expenditure in connection with the suit. The additional compensation was received on 25.3.2017. Compute Capital Gains chargeable to tax.

Solution :

Capital Gain on initial compensation shall be chargeable in the A.Y. 2015-16, i.e. for the Previous Year 2014-15.

Computation of Long Term Capital Gains for the A.Y. 2015-16

	₹
Consideration for transfer (being the compensation)	16,00,000
Less : Indexed Cost of Acquisition 3,00,000 × $\frac{1024}{133}$	23,09,774
Long Term Capital Loss	**7,09,977**

Note : This loss shall be carried forward for adjustment only against Long Term Capital Gains arising within the next 4 Assessment Years.

Computation of Long Term Capital Gains for the A.Y. 2016-17

Particulars		₹
Court order for Enhanced Compensation		14,00,000
Less :	Cost of Acquisition	NIL
	Cost of Improvement	NIL
	Expenses on Transfer	(40,000)
	Long Term Capital Gains	**13,60,000**
Less :	Long Term Capital loss – Set off from the A.Y. 2015-16	(7,09,774)
	Balance of LTCG	**6,50,266**

Note: As per Finance (No.2) Act, 2014, any amount of compensation received in pursuance of an interim order of a court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which the final order of such court, Tribunal or other authority is made.

20. Capital Gain on conversion of debentures into shares

(i) Conversion of debentures into shares is exempted u/s 47(x)

(ii) In case of subsequent transfer by the transferee, the holding period in the hands of the transferee u/s 2(42A) shall not include the holding period of the earlier asset.

(iii) Cost of new asset in the hands of the transferee u/s 49 shall be the cost at which old asset is converted.

Illustration 11: R acquired 400 listed debentures of ₹100 each on 15.9.2010. 50% value of the debentures was converted into 4 listed equity shares of the face value of ₹ 10 each on 20.8.2015. R therefore, received 800 shares of face value of ₹ 10 each and left with 200 debentures. The shares were sold on 25.12.15 @ ₹ 100 per share through recognized stock exchange and R paid ₹ 200 as securities transaction tax. Compute the Capital Gains chargeable for the Assessment Year 2016-17.

Solution :

Convertion of Debentures into shares is exempted from Transfer u/s 2(47)(x).

Now these shares are sold within a period of 12 months. It is a Short-term Capital Asset.

Computation of Capital Gains for the A.Y. 2016 -17

		₹
Consideration for transfer of 800 shares @ ₹ 100 each		80,000
Less :	Cost of Acquisition (200 × 100)	20,000
	Short Term Capital Gains	**60,000**

21. Capital Gains on distribution of assets by companies in liquidation u/s 46

No Capital Gain to company on distribution of assets to shareholders on liquidation u/s 46(1) provided the distribution of assets in specie (i.e. in the same form).

22. Shareholders liable to Capital Gain tax on receiving money and asset on the liquidation of the company

Where a shareholder on the liquidation of a company, receives any money or other asset from the company in lieu of the shares held by him, such a shareholder shall be chargeable to Income Tax under the head Capital Gains in respect of the excess money and the assets so received over the cost of the shares held by him.

In this case, the consideration price for Capital Gain purposes shall be money received and/or the market value of the other assets on the date of distribution minus deemed dividend within the meaning of Sec. 2(22)(c).

Deemed Divided means any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalized or not.

Accumulated profits for a company in liquidation includes all profits of the company upto the date of liquidation.

Accumulated profits should include the credit balance of Profit and Loss Account, General Reserves, Investment Allowance Reserve, capitalized profits and profits of the year upto the date of distribution/ liquidation.

However, provisions and reserves meant for specific liability, to the extent of the liability shall not be included. Provision for Income Tax, Provision for Dividend, Reserve for Depreciation do not form part of the accumulated profits. Securities premium is not accumulated profits. It may consist of exempted incomes, like agricultural income. It will include current profits and all profits of the company till the date of liquidation, subject to the exception provided therein.

Illustration 12: A holds 15,000 shares (10% of total share holding) in B Ltd. which he had purchased on 10.2.96 for ₹ 6,00,000. The company went into liquidation on 16.7.2015 and paid a sum of ₹ 20 per share in cash and an asset whose market value as on the date of distribution i.e. 5.10.15 was ₹ 19,20,000 to A. The accumulated profits of the company were ₹ 15 lacs.

(a) Compute the income of A for the A.Y. 2016-17 assuming that he has no other income.

(b) Compute the Capital Gain chargeable to tax if the asset of B Ltd. is sold by A for ₹ 20 lacs on 28.3.16.

Solution :

Computation of Capital Gains of Mr. B for the A.Y. 2016-17

	₹
(a) (i) **Capital Gain on transfer of shares**	
Total consideration (15,000×20+19,20,000)	22,20,000
Less : Proportionate amount of deemed dividend (10% of ₹ 12,82,106)	(1,28,211)
Less : Indexed Cost of Acquisition 6,00,000 x $\frac{1081}{281}$	23,08,185)
Long Term Capital Gains	**(2,16,396)**
(ii) **Income from others Sources**	
Dividend from Indian Company	Exempted
	(2,16,396)
(b) **Capital Gain on transfer of asset (B Ltd.)**	
Full Value of Consideration	20,00,000
Less : Cost of Acquisition (being the market value as on the date of distributions)	19,20,000
Short Term Capital Gains	**80,000**

Accumulated Profit = ₹ 15,00,000

Dividend tax @ 16.995% (15% + 10% + 2% Education cess + 1% SHEC)

Hence, the amount to be distributed plus tax @ 16.995%

on such amount should be ₹ 15,00,000

∴ Amount of tax = ₹ 15,00,000 x $\frac{16.995}{116.995}$ = 2,17,894

∴ Profits available for distribution = ₹ (15,00,000 – 2,17,894) = ₹ 12,82,106.

23. Capital Gain on sale of goodwill of a business, trademark or brand name, tenancy rights, route permits or loom hours, right to manufacture or right to carry on any business.

The following are chargeable to tax as Capital Gains:

(i) Goodwill of a business. There will not arise any Capital Gain on the goodwill of a profession;

(ii) Trademark or brand name associated with the business;

(iii) Right to manufacture, produce or process any article or thing, for a consideration e.g. patent, copyright, formula, design;

(iv) Right to carry on any business;

(v) Tenancy rights;

(vi) Route permits;

(vii) Loom hours.

Cost of Acquisition u/s 55(2) (a)

(a) If the assets are purchased- original cost of acquisition.

(b) In any other case- nil

Cost of Improvement

(a) In case of goodwill of a business, right to manufacture, produce or process any article or thing and right to carry on any business (whether self generated or purchased), shall always be taken as nil.

(b) For the other assets as mentioned above, it shall be taken as the actual capital expenditure incurred by the assessee on the improvement of that asset, whether such asset is self generated or purchased.

Computation of Capital Gains in case of Self Generated Goodwill of a Business (Not of a profession), Right to Manufacture/Produce/Process an article or Right to Carry on any business.

Particulars	₹	₹
Sale Consideration (Actual Amount)		xxx
Less: Expenses of Transfer (Actual Amount)		xxx
Net Consideration		**xxx**
Less: Cost of Acquisition	NIL	
Less: Cost of Improvement	NIL	NIL
Taxable Capital Gains		xxx

Computation of Capital Gains in case of Self Generated Tenancy Rights, Route Permits, Loom Hours, Trade Marks, Brand Name related with business —

Particulars	₹	₹
Sale Consideration (Actual Amount)		xxx
Less: Expenses of Transfer (Actual Amount)		xxx
Net Consideration		**xxx**
Less: Cost of Acquisition	NIL	
Less: Cost of Improvement (Actual Amount)	XXX	xxx
Taxable Capital Gains		**xxx**

Illustration 13: (a) P commenced a business on 10.5.92. The said business is sold by P on 25.8.15 and he received ₹ 10 lacs towards goodwill.

(b) What will be your answer in the above case, if P had acquired the goodwill for this business for a consideration of ₹ 3,00,000.

Solution :

Computation of Long Term Capital Gains for the A.Y. 2016-17

	₹
(a) Consideration for transfer	10,00,000
Less : Indexed Cost of Acquisition (Self-Generated)	NIL
Long Term Capital Gains	**10,00,000**
(b) Consideration for transfer	10,00,000
Less : Indexed Cost of Acquisition = 3,00,000 × $\frac{1081}{100}$	32,43,000
Long Term Capital Loss	**22,43,000**

Illustration 14: R has been living in a rented accommodation since August 1983, and he is paying a rent of ₹ 4000 per month. The landlord got the house vacated from R on 16.7.2015 and paid a sum of ₹ 15 lacs for vacating the house.

Compute Capital Gains, if any, in the hands of R.

Solution :

Computation of Long Term Capital Gains for the A.Y. 2016-17

	₹
Consideration for transfer	15,00,000
Less : Indexed Cost of Acquisition (Self-generated Asset)	NIL
Long Term Capital Gains	**15,00,000**

Illustration 15: Mr. Nitin is a Chartered Accountant practicing in Delhi since January 1983. He transfers the practice to another Chartered Accountant on 15.7.2015 and charges ₹ 10 lacs for goodwill.

Solution :

Since the asset transferred is Goodwill of a profession and not of a business, it is treated as self-generated asset and there is no Capital Gain on self-generated asset.

Illustration 16: R purchased tenancy right on 1.4.1980 for ₹ 4,60,000. The same was sold by him on 14.8.2015 for ₹ 50 lacs. FMV of tenancy right as on 1.4.81 ₹ 6,50,000.

Solution :

Computation of Long term Capital Gains for the A.Y. 2016-17

	₹
Consideration for transfer	50,00,000
Less : Indexed Cost of Acquisition 4,60,000 × $\frac{1081}{100}$	49,72,600
Long Term Capital Gains	**27,400**

Illustration 17: R purchased 1200 shares on 1.4.80 for ₹ 40 each. He was allotted 1200 right shares on 1.5.80 for ₹ 50 each. He was also allotted 2,400 bonus shares on 1.3.81. Again, on 4.5.91, he was further allotted 4,800 right shares for ₹ 80 each. Further on 27.9.01, he was allotted 4,800 bonus shares. The fair market value of these shares on 1.4.81 was ₹60 each. All the above shares are sold by R on 16.10.15 for ₹ 400 per share. Compute the Capital Gains assuming :

(a) The above shares are not sold through recognized stock exchange.

(b) The above share is sold through recognized stock exchange and necessary securities transaction tax was paid by R.

Solution :

(a) Where Shares were not sold through recognised stock exchange

Computation of Capital Gains for the A.Y. 2016-17

	₹
Consideration for transfer (14,400×400)	57,60,000
Less : Indexed Cost of Acquisition	
(i) 1,200 × 60 × $\frac{1081}{100}$	(7,78,320)
(ii) 1,200 × 60 × $\frac{1081}{100}$	(7,78,320)
(iii) 2,400 × 60 × $\frac{1081}{100}$	(15,56,640)
(Bonus shares issued prior to 1.4.81 shall opt for Fair market value as on 1.4.81 and shall be allowed to be indexed)	(20,85,950)
(iv) 4,800 × 80 × $\frac{1081}{199}$	
(v) Cost of Acquisition for Bonus shares after 1.4.81	(NIL)
Long term Capital Gains	**5,60,770**

(b) Where shares are sold through recognised stock exchange and securities transaction tax has been paid by the assessee, entire Long Term Capital Gain on the share shall be exempted u/s 10(38).

24. Capital Gains u/s 50B in case of slump sale u/s 2(42C)

Slump Sale means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

Cost of acquisition and cost of improvement in case of slump sale: "Net Worth" of the undertaking or the division. (NO INDEXATION OF SUCH COSTS WILL BE ALLOWED).

Note : Cost of acquisition of assets in case of slump sale of business specified under section 35AD [Section 50B] [w.e.f. A.Y. 2010-11]

Section 50B relating to slump sale amended: While computing the net worth in case of slump sale for the purpose of computing Capital Gain, in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, its cost shall be taken as NIL.

NET WORTH = AGGREGATE VALUE OF TOTAL ASSETS of the undertaking or division as reduced by the VALUE OF LIABILITIES of such undertaking or division as appearing in its books of account.

Aggregate value of total assets:

(a) In case of depreciable assets- the written down value of the block of assets.

(b) In case of any other assets- the book value of such assets.

Note :

(1) Any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.

(2) Benefit of unabsorbed losses and unabsorbed depreciation of the undertaking transferred shall not be available to the transferee company.

(3) If the business is transferred on "severable sale" basis, the surplus will be Short-term Capital Gains in case of depreciable assets. While in case of other assets, it may be short-term or long-term depending upon the holding period.

(4) No profit under the head Profit or Gains from Business or Profession shall arise even if the stock of the said undertaking is transferred along with other assets.

(5) Determination of value for stamp duty, registration fees shall not be regarded as assigning values to individual assets or liabilities.

(6) Report of a Chartered Accountant in prescribed Form 3CEA shall be enclosed.

Illustration 18: X Ltd. has two divisions namely A and B. The Balance Sheet as at 31.3.2016 is as follows:

	₹		A ₹	B ₹	Total ₹
Paid up capital	6,00,000	Fixed Assets (W.D.V. as on 31.3.16)	—	6,00,000	6,00,000
		Land & Building	—	1,50,000	1,50,000
Reserve	8,40,000	Plant & Machinery	—	2,50,000	2,50,000
Surplus		Investments	—	2,00,000	2,00,000
Creditors :					
Division A	3,00,000	Debtors	2,00,000	3,00,000	5,00,000
		Stock-in-trade	1,50,000	4,00,000	5,50,000
Division B	6,00,000	Other current assets	50,000	40,000	90,000
	23,40,000				**23,40,000**

The company decides to sell division A which was established in 1983 to another company G Ltd. on 1.5.2015 for a lump sum of ₹ 14 lacs. The fixed assets of the company includes land and building whose W.D.V. as on 1.4.16 is ₹ 15 lacs, but it has been valued as ₹ 5 lacs for the purpose of stamp duty. Compute the Capital Gain taxable in the aforesaid case assuming that the market value of the stock transferred is ₹ 2 lacs.

Solution :

Computation of Capital Gains for the A.Y. 2016-17

		₹	₹
Consideration for transfer			14,00,000
Less :	Net worth of the division		
	Land and Building (WDV)	—	
	Plant & Machinery (WDV)	—	
	Debtors (Book Value)	2,00,000	
	Stock (Book Value)	1,50,000	
	Others Current Assets (Book Value)	50,000	
		4,00,000	
Less :	Liabilities	3,00,000	1,00,000
	Long Term Capital Gains		**13,00,000**

25. Capital Gain on re-purchase of units of Mutual Funds under Equity Linked Savings Scheme u/s 45(6)

1. Where a shareholder receives any consideration from the company for purchase of its own units, it is a **transfer chargeable under the head Capital Gains**.
2. The Capital Gain is **chargeable to tax in the Previous Year** in which the units are purchased **by the Company**.
3. **Capital Gains** = Value of Consideration Received **Less** Cost of Acquisition or Indexed Cost of Acquisition.

   In case of buy back of shares, there is no question of deemed dividend u/s 2(22) (d).

26. Capital Gains on purchase by company of its own shares or other specified securities u/s 46A

Capital Gain = (Value of consideration received by the shareholder) - (Cost of acquisition of shares or specified securities)

The capital Gain is chargeable to tax in the Previous Year in which the shares or specified securities are purchased by the company.

Specified securities has been defined as per Sec.77A of the Companies Act, 1956 (Corresponding Section 68 of Companies Act, 2013).

Specified securities include employees' stock option or other securities as may be notified by the Central Government from time to time.

27. Capital Gains on violation of the provision of Sec. 47(iv) and 47(v) due to withdrawal of exemption u/s 47A.

Any transfer of capital asset by a company to its wholly owned Indian subsidiary company [Section 47(iv)] or by a wholly owned company to its Indian holding company [Section 47(v)], subject to certain condition as mentioned in point 10, is not a transfer and hence, does not arise any Capital Gains.

If any of the conditions is failed, the earlier exemption so granted shall be withdrawn and the transfer of capital asset is chargeable to tax u/s 47A. Cost of acquisition in this case is the cost for which asset was acquired.

Illustration 19: R Ltd. is a wholly owned subsidiary company of S Ltd. Both R Ltd. and S Ltd. are Indian companies. R Ltd. transferred a plot of land to S Ltd. on 21.10.1982 for ₹ 3 lacs. R Ltd. had acquired this land on 1/1/76 for ₹ 80,000. The market value as on 1.4.81 was ₹ 1,50,000. What would be the Capital Gains if any, chargeable in the hands of R Ltd and S Ltd. in the following situations:

(a) S Ltd. sells the land on 12.9.15 for ₹ 12 lacs. S Ltd. continues to hold 100% shares of R Ltd.

(b) S Ltd. converted the land as its stock-in-trade on 5.10.88 and then sold it on 12.9.15 for ₹ 12 lacs. The market value of the asset on 5.10.88 was ₹ 8 lacs.

Solution :

Assessee – S. Ltd.

Computation of Capital Gains for the A.Y. 2016-17

	₹
(a) (i) Consideration for Transfer	12,00,000
Less : Indexed Cost of Acquisition	
$1,50,000 \times \frac{1081}{100}$	16,21,500
Long Term Capital Loss	**4,21,500**

(ii) There will be no Capital Gains for R Ltd. either in the year of transfer to S Ltd. or in the year of sale by S Ltd., as the land has not been converted into stock and it remains a wholly owned subsidiary company.

(b) (i) **In the case of R Ltd.**

Since the land has been converted into stock-in-trade on 05.10.88 which falls within eight years of the original transfer, there will be Capital Gains to R Ltd. and its assessment for the A. Y. 1983-84 (P. Y: 82-83) will be rectified u/s 155 as under :

Consideration for transfer (amount at which it is transferred to S Ltd.)	3,00,000
Less : Cost of Acquisition	80,000
Long Term Capital Gains	**2,20,000**

The LTCG of ₹ 2,20,000 will be included in the total income for the A.Y. : 83-84 and taxed according to the provisions applicable at that time.

(ii) Although the land was converted into stock-in-trade on 5.10.88, it will be regarded as transfer, but Capital Gain on such transfer will be taxable in the Previous Year in which such converted land was sold. The cost of acquisition in this case will be the value at which the asset was transferred to it.

Computation of Capital Gain for the A.Y. 2016-17

	₹
Consideration for transfer (being the Market value as on the date of conversion)	8,00,000
Less : Indexed Cost of Acquisition $\left(3,00,000 \times \frac{161}{109} \right)$	4,43,119
Long Term Capital Gains	3,56,881

Business Income = 12,00,000 – 8,00,000 = 4,00,000

28. Exemptions of Capital Gains

1. Capital Gain on transfer of units of US 64 exempt if transfer takes place on or after 1.4.02 u/s **10(33)** w.r.e.f. A.Y. 2005-06.

2. Long-term Capital Gain on eligible equity shares exempt if the shares are acquired within a certain period u/s **10(36)** w.e.f. A.Y. 2006-07. These assets must have been acquired on or after 1.3.03 but before 1.3.04 and held for a period of more than 12 months.

3. Exemption of Capital Gains on compensation received on compulsory acquisition of agricultural land situated within specified urban limits u/s **10(37)** w.e.f. A.Y. 2005-06.

(a) Where the compulsory acquisition has been taken place before 1.4.04 but the compensation is received after 31.3.05, it shall be exempted.

(b) If the part of the original compensation in the above case has already been received before 1.4.04, then the exemption shall not be available even though the original compensation is received after 31.3.05.

(c) If enhanced compensation is received on or after 1.4.04 against agricultural land compulsorily acquired before 1.4.04 shall be exempted.

4. Exemption of Long Term Capital Gain arising from sale of shares or a unit of an equity oriented fund or a unit of a business trust u/s **10(38)**. Any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust shall be exempted provided:

(a) Such equity shares are sold through recognized stock exchange, whereas units of an equity oriented fund may either be sold through the recognized stock exchange or may be sold to the mutual fund.

(b) Such transaction is chargeable to securities transaction tax.

Provided that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

Provided further that the provisions of this clause shall not apply in respect of any income arising from transfer of units of a business trust which were acquired in consideration of a transfer referred to in clause (xvii) of section 47.

5. Exemption of Capital Gain on transfer of an asset of an undertaking engaged in the business of generation, etc of power u/s 10(41), provided such transfer is effected on or before 31.3.07 to the Indian company notified u/s 80 IA(v)(a)

29. Explain the tax treatment of Capital Gain on transfer of shares, debentures of Indian Company held by Non Residents. [Section 48 (Proviso) read with Rule 115A].

1. Applicability: All Non Residents including Foreign Companies except persons covered u/s 115AC & 115AD.
2. Assets Transferred: Shares or Debentures in an Indian Company.
3. Nature of Capital Gain: Short term or long term
4. Average TT Rate = (Buying Rate + Selling Rate adopted by State Bank of India)/2

Computation of Capital Gains

Particulars	Value in ₹	Conversion Rate	Value in Foreign Curr.
Sale Consideration		Avg. TT Rate on the date of Transfer	
Less: Expenses on Transfer	xxx	Avg. TT Rate on the date of Transfer	xxx
Net Consideration	xxxx		xxxx
Less: Cost of Acquisition	(xxxx)	Avg. TT Rate on the date of Acquisition	xxx
Capital Gain in Foreign Currency			xxxx

Capital Gain in ₹	Capital Gain In Foreign Currency × Buying Rate on the date of Transfer	xxx
Less: Exemption u/s 115F, wherever applicable	Capital Gains × Amount invested / Net Consideration	(xxx)
Taxable Capital Gain		xxx

Note : Indexation Benefit is not available.

30. What are the conditions and exemption from Long-term Capital Gains on transfer of foreign exchange asset by a Non Resident Indian [Section 115F]

1. **Condition :** Long-term Capital Gain on transfer of foreign exchange asset is entitled for exemption if the whole or part of the net consideration is invested within 6 months after the date of such transfer in prescribed assets.
2. **Prescribed Assets:**
   (a) Shares of an Indian Company or debentures of an Indian Public Limited Company.
   (b) Deposit with an Indian Public Limited Company.
   (c) Central Government securities.
   (d) National Savings Certificates VI and VII issue.
3. **Exemption:** If the **whole of the net consideration** is invested, then entire Capital Gain is exempt.
   If a part of the net consideration is invested, then the deduction shall be computed as follows:
   Amount Exempted = Capital Gains × Amount Invested/Net Consideration
4. **Holding period of the asset:** 3 years from the date of acquisition.
5. **Sale/conversion within the holding period:** Amount exempted shall be chargeable to tax as Long Term Capital Gain in the year of transfer.

31. Explain the tax treatment of income from Deep Discount Bonds (DDBs).

1. **Income based on Market Value:**
   (a) **Market Value:** Market Value of DDBs will be determined at the end of every financial year, 31st March, that is, as per the values declared by RBI or Primary Dealers Association of India, jointly with the Fixed Income Money Market and Derivatives Association of India.
   (b) **Income:** The difference between market values on the opening and closing dates of that financial year constitutes income of that year.
   (c) **Computation of Income:** The income chargeable will be computed as under
      - **For Original Subscribers:** Difference between market values on 31st March (Closing date) and 1st April (Opening date) of that financial year.
      - **For Subsequent purchasers:** Difference between market values on 31st March (Closing date) and **cost of Purchase** of bond.
   (d) **Taxable as-** this income will be treated as interest in case of investors and business income in case of traders.

2. **Transfer before maturity:** If the bondholder transfers the bond before maturity

(a) **In case of Investors:**

Capital Gains = Sale Price **Less** Cost of Acquisition of the Bond

Nature of Capital Gain: Capital Gain is always **Short Term** since income is offered upto 31st March of the Previous Year and the holding period will always be less than 12 months.

Cost of Bond = Cost of Acquisition (subscription price paid by original investor or purchase price paid by intermediate purchaser) and the income already offered to tax by the bondholder upto the date of transfer.

(b) **In case of Traders:** Business Income = Sale Price **Less** Cost of Acquisition of the Bond

3. **Redemption on Maturity:**

(a) If the **original subscriber redeems the DDB**

- **In case of Investors:**

  Interest Income = Redemption Price **Less** Market Value as on the last valuation date immediately preceding the maturity date

- **In case of Traders:**

  Business Income = Redemption Price **Less** Market Value as on the last valuation date immediately preceding the maturity date

(b) **If an intermediate purchaser redeems the DDB**

Interest or Business Income = Redemption Price **Less** Cost of the Bond to such Purchaser Cost = Cost of Acquisition (subscription price paid by original investor or purchase price paid by intermediate purchaser) and the income already *offered* to tax by the bondholder upto the date of redemption.

32. Capital Gains on Sale of Property at less than Government Value. [Sec. 50C]

1. **Nature of Asset:** Land or Building or both
2. **Consideration for transfer:** Amount is less than the value adopted or assessed by the State Government Authority (referred to as the "Stamp Valuation Authority" for the purpose of payment of stamp duty.)
3. **Value to be adopted for Capital Gains:** Value **adopted by the Stamp Valuation Authority.**

Provisions for deemed valuation of immovable property in certain cases of Transfer [Section 50C] [W.e.f. A.Y. 2010-11] — Further, new Explanation 2 has been inserted to section 50C(2) so as to clarify the meaning of the term 'assessable'.

Explanation 2 — For the purposes of this section, the expression "assessable" means the price which the Stamp Valuation Authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of 'stamp duty'.

4. **Reference to Valuation Officer:**

(a) The assessee can claim that the value adopted or assessed by the Stamp Valuation Authority exceeds the Fair Market Value of the property as on the date of transfer.

(b) Value adopted by the Stamp Valuation Authority is **not disputed before any authority or Court.**

(c) In such case, the Assessing *Officer* may refer the case to the Valuation *Officer.*

(d) Where the value determined by the Valuation *Officer* **exceeds the value adopted by the Stamp Valuation Authority,** the Capital Gain shall be considered as follows–

Capital Gains = Value adopted by Stamp Valuation Authority **Less** Cost or Indexed Cost of Acquisition.

33. Consideration for transfer of capital asset cannot be ascertained *[Section 50D]*

As per Finance Act, 2012, section 50D (w.e.f. A.Y. 2013-14) provides that where the consideration received or accrued for transfer of a capital asset is not ascertainable or cannot be determined, then the fair market value of the said asset shall be deemed to be the full value of the consideration on the date of transfer for computing the Capital Gain. This situation may arise in a case where the capital asset is transferred in exchange of another capital asset.

34. Advance money received on Capital Gains [Section 51]

1. **Reduce from Cost/WDV/FMV :** Any advance money or any other sum **received and retained by the assessee** is to be reduced either from
   (a) Cost of Acquisition; or
   (b) Written Down Value; or
   (c) Fair Market Value.
2. **Applicability:** This provision is applicable only when the transfer as per the original agreement does not take place and the advance money is received and forfeited by the assessee as per the agreement.

   Provided that where any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year in accordance with the provisions of clause (ix) of sub-section (2) of section 56, then, such sum shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

Illustration 20 : Rohit purchased a house in Delhi in December 2004 for ₹ 2,50,000. In March 2015, he entered into an agreement to sell the property to Z for a consideration of ₹ 5,00,000 and received an earnest money of ₹ 50,000. As per the terms of agreement, the balance payment was to be made within 30 days of the agreement. If the intending purchaser does not make the payment within 30 days, the earnest money would be forfeited. As Z could not make the payment within the stipulated time the amount of ₹ 50,000 was forfeited by Rohit. Subsequently, on 16.6.15, Rohit sold the house to Mohit for ₹ 6,00,000. He paid 3% brokerage on sale of the house. Compute Capital Gains chargeable to tax for the Assessment Year 2016-17.

Solution :

Computation of Capital Gains for the A.Y. 2016-17

		₹
Consideration for transfer		6,00,000
Less : Expenses on transfer (Brokerage @ 3% on 6,00,000)		18,000
Net Consideration		**5,82,000**
Less : **Indexed Cost of Acquisition**		
Cost of Acquisition	2,50,000	
Less : Amount received and forfeited (u/s 51 to be adjusted against cost)	50,000	
Net Cost of Acquisition	2,00,000	
∴ Indexed Net cost of Acquisition		
$= 2,00,000 \times \frac{1081}{480}$		4,50,417
Long Term Capital Gains		**1,31,583**

35. Reference to Valuation Officer [Section 55A]

Under the following circumstances the Assessing Officer may refer the valuation of the capital asset to the Valuation Officer and his valuation report shall be binding on the Assessing Officer-

1. Where the value of the asset is estimated by the registered valuer but the Assessing Officer is of the opinion that the **value so determined is less than its fair market value.**
2. In any other case, the Assessing Officer is of the opinion that
   (a) The **fair market value** of the asset **exceeds the value of the** assets declared by the assessee either **by more than 15% or by ₹ 25,000** (Rule 11AA); or
   (b) The nature of the asset and other relevant circumstances are such that, it is necessary to do so.

Amendment:

This section is amended w.e.f. 1-7-2012. Under this section, the AO can make a reference to the Valuation Officer with a view to ascertain the fair market value of the capital asset. At present, such reference can be made when the AO is of the view that the value disclosed by the assessee is less than the fair market value. In some cases it is held that when the assessee exercises his option to substitute fair market value of the capital asset as on 1-4-1981, for the cost of the asset, and if the AO is of the view that such market value as declared by the assessee was more, he cannot make a reference to the Valuation Officer. To overcome this position, this amendment provides that w.e.f. 1-7-2012 the AO can make such reference to the Valuation Officer. This amended provision will apply w.e.f. 1-7-2012 but will have retroactive effect, in as much as, the AO can make such a reference to the Valuation Officer in respect of all pending assessments of earlier years.

36. Exemptions from Capital Gains for transfer of residential house property u/s 54

Applicability	Individual / HUF
Asset Transferred	Residential House Property
Nature of the Asset	Long Term Capital Asset
New Asset to be acquired	One Residential House Property

Amount to be invested in New Asset	Long Term Capital Gain on Transfer
Amount of Exemption	**Least of:** (a) Amount invested in New Residential House, or (b) Capital Gain
Time Limit for Investment	(a) **For Purchase:** Within **one year before or two years after** the date of transfer (b) **For Construction:** Within **three years after** the date of transfer.
Unutilized Amount	(a) Amount **not utilized before the due date of filing return** shall **be kept in Capital Gain Account Scheme** of a Nationalized Bank. (b) The amount should be **utilized within the prescribed period.** (c) Amount **not utilized** within the prescribed period shall be **treated as LTCG of the Previous Year in which prescribed period expires.**
Holding Period of New Asset	**Three years** from the date of acquisition or construction
Sale of New Asset within holding period	Short Term Capital Gain computed as follows - Sale Consideration of New Asset **Less:** Cost of Acquisition reduced by Capital Gains exempted u/s 54

Illustration 21: Ravi owns a residential house which was purchased by him in 1975 for ₹ 80,000. The FMV as on 1.4.81 was ₹ 2,00,000. This house is sold by him on 16.7.2015 for a consideration of ₹ 25,00,000. The brokerage and expenses on transfer was ₹ 25,000. Compute Capital Gains for the Assessment Year 2015-16.

If he invests ₹ 5,00,000 for purchase of a new house on 15.3.2016.

If the HP so purchased in 15.3.2016 is again sold in 21.10.16 for ₹ 9 lacs, what will be the tax liability?

Solution :

Computation of Capital Gains for the A.Y. 2016-17

	₹
Consideration for transfer	25,00,000
Less : Expenses on transfer	(25,000)
Net Consideration	**24,75,000**
Less : Indexed Cost of Acquisition $\left[2,00,000 \times \frac{1081}{100}\right]$	(21,62,000)
Long Term Capital Gain	**3,13,000**
Less : **Exemption u/s 54**	
Cost of New HP Purchased ₹ 5,00,000	
(exemption restricted upto the balance of LTCG)	(3,13,000)
Taxable Long Term Capital Gain	**NIL**

If the HP purchased in 15.3.2016 is again sold on 21.10.16 for ₹ 9 lacs, there arise Short Term Capital Gain. The cost of acquisition shall be adjusted to the extent of Long Term Capital Gain exemption already availed.

Computation of Capital Gains for the A.Y. 2016-17

		₹
Consideration for transfer		9,00,000
Less : **Cost of Acquisition**		
Cost of purchase	5,00,000	
Less : Exemption u/s 54 availed during A.Y. 2016-17 now withdrawn	NIL	5,00,000
Short Term Capital Gains		**4,00,000**

37. Exemptions available for Capital Gains on transfer of urban agricultural land u/s 54B

Applicability	Individual
Asset Transferred	Urban Agricultural Land **used for agriculture** by him or by his parents **for two years immediately prior to the date of transfer**. Finance Act, 2012 provides that even if such land was used by the HUF in which the assessee or his parent was a member, this exemption can also be claimed.
Nature of the Asset	Long Term or Short Term Capital Asset
New Asset to be acquired	Agricultural Land
Amount to be invested in New Asset	Capital Gain on Transfer
Amount of Exemption	Least of: (a) Amount invested in New Agricultural Land, or (b) Capital Gain
Time Limit for Investment	Within **Two Years** from the date of transfer.
Unutilized Amount	(a) The **amount not utilized** before the due date of filing return shall be **kept in Capital Gain Account Scheme** of a Nationalized Bank. (b) The amount should be utilized within the prescribed period. (c) Amount **not utilized within the prescribed period** shall be treated as **LTCG of the Previous Year in which prescribed period expires**.
Holding Period of New Asset	**Three Years** from the date of acquisition
Sale of New Asset within holding period	Short Term Capital Gain computed as follows: Sale Consideration of New Asset Less: Cost of Acquisition reduced by Capital Gains exempted u/s 54B

Illustration 22: On 16th January 2016, Suman sold agricultural land for ₹25 lacs. He incurred selling expenses for ₹50,000. Compute Capital Gains :

If the land sold, was purchased on 1st February 1995 for ₹ 4 lacs, and the land was used for agricultural purposes by his mother.

He again purchased agricultural land of ₹ 7 lacs on 25th January 2016.

Amount deposited in a scheduled bank under "Capital Gains Deposit Scheme" ₹ 4 lacs on 6th April 2016.

Solution :

Computation of Capital Gains for the A.Y. 2016-17

	₹
Consideration for transfer	25,00,000
Less : Expenses on transfer	(50,000)
Net Consideration	**24,50,000**
Less : Indexed Cost of Acquisition 4,00,000 × $\frac{1081}{259}$	(16,69,498)
Long-term Capital Gains	7,80,502
Less : **Exemption u/s 54B** Cost of New Land purchased	(7,00,000)
Less : Amount deposited in "Capital Gains Account Scheme" before due date of furnishing return specified u/s 139(1) ₹ 4,00,000 or the balance amount of Capital Gains, ₹ (7,80,502 – 7,00,000) = ₹ 80,502 whichever is less	(80,502)
Taxable Long Term Capital Gains	**NIL**

38. Exemptions available for Capital Gains on compulsory acquisition of land and building used for industrial purposes u/s 54D

Applicability	All Assesses
Asset Transferred	Land and Building used by an Industrial undertaking which is compulsorily acquired and such land and building were used for business purpose during the two years before the date of transfer
Nature of the Asset	Long Term or Short Term Capital Asset
New Asset to be acquired	Land and Building for Industrial Purpose
Amount to be invested in New Asset	Capital Gain on Transfer
Amount of Exemption	Least of: (a) Amount invested in New Land and Building, or (b) Capital Gain
Time Limit for Investment	Within **Three Years** from the date of transfer.
Investment of Unutilized Amount	(a) The amount not utilized before the due date of filing return shall be **kept in Capital Gain Account Scheme** of a Nationalized Bank. (b) The amount should be **utilized within the prescribed period**. (c) **Amount not utilized** within the prescribed period shall be **treated** as LTCG **of the Previous Year in which prescribed period expires.**

Holding Period of New Asset	Three Years from the date of acquisition
Sale of New Asset within holding period	Short Term Capital Gain computed as follows: Sale Consideration of New Asset Less: Cost of Acquisition reduced by Capital Gains exempted u/s 54D

Illustration 23 : ABC Ltd. purchased a building for an industrial undertaking on 1.1.08 for ₹5 lacs. Prior to this the company had taken this building on rent for the last 3 years and was using it for its industrial activities. There is no other building in the block. This property was compulsorily acquired by the State Government on 16.7.15 and a compensation of ₹ 7 lacs was given to the company on 31.3.16. The company purchased another building for shifting its Industrial undertaking for ₹ 4 lacs on 20th November 2016. Compute the Capital Gain for the Assessment Year 2016-17. Rate of Dep. of Building 5%.

Solution :

Computation of Capital Gains for the A.Y. 2016-17

	₹
Consideration for transfer	7,00,000
Less : **Cost of Acquisition**	
WDV as on 1.4.2013	(3,58,357)
Short Term Capital Gains	**3,41,643**
Less : **Exemption u/s 54D**	
Cost of Building purchased ₹ 4 lacs or the Short Term Capital Gains ₹ 3,41,643 whichever is less	(3,41,643)
Taxable Short Term Capital Gains	**NIL**

Working :	
W.D.V as on 1.4.14:	
Purchase price (07-08)	5,00,000
Less : Dep. for 2007-08 (less than 180 days)	
Rt. of Dep. @ 50% of 5% = 2.5% on 5,00,000	(12,500)
	4,87,500
Less : Dep. for 2008-09 @ 10%	(48,750)
	4,38,750
Less : Dep. for 2009-10 @ 10%	(43,875)
	3,94,875
Less : Dep. for 2010-11 @ 10%	(39,488)
	3,55,388
Less : Dep. for 2011-12 @ 10%	(35,539)
	3,19,849
Less : Dep. for 2012-13 @ 10%	(31,985)
	2,87,864
Less : Dep. for 2013-14 @ 10%	(28,786)
W.D.V. as on 1.4.14	2,59,078
Less : Dep. for 2014-15 @ 10%	25,908
W.D.V. as on 1.4.15	2,33,170

39. Exemptions from Capital Gains for investments in notified bonds u/s 54EC

Applicability	All Assessees
Asset Transferred	Any Long Term Capital Asset
Nature of the Asset	Long Term Capital Asset
New Asset to be acquired	Bonds redeemable after 3 years issued on or after 01.04.2007 by National Highway Authorities of India (NHAI) or Rural Electrification Corporation Limited (RECL).However, deductions against these investments, once availed u/s 54EC cannot be availed u/s 80C.
Amount to be invested in New Asset	Long Term Capital Gain on Transfer. Maximum amount that can be invested by the Assessee during any Financial Year is ₹50 lakhs
Amount of exemption	Least of the followings:(a) Amount invested in bonds; or, (b) Capital Gains
Time limit for investment	Within six months from the date of transfer
Holding period of new asset	Three years from the date of acquisition
Sale of new asset within holding period	Long Term Capital Gains already exempted u/s 54EC shall be charged as LTCG of the assessee in the year of sale or creation of charge on the new asset

Illustration 24: Saptarshi acquired shares of G Ltd. on 15.12.99 for ₹5 lacs which were sold on 14.6.15 for ₹ 16 lacs. Expenses on transfer of shares ₹ 20,000. He invests ₹ 8 lacs in the bonds of Rural Electrification Corporation Ltd. on 16.10.2015.

(a) Compute Capital Gain for the Assessment Year 2016-17.

(b) State the period for which the bonds should be held by the assessee. What will be the consequences if such bonds are sold within the specified period?

(c) What will be the consequences if Saptarshi takes a loan against the security of such bonds?

Solution :

(a) **Computation of Capital Gains for the A.Y. 2016-17**

	₹
Consideration for transfer	16,00,000
Less : Expenses on Transfer	20,000
Net Consideration	**15,80,000**
Less : **Indexed Cost of Acquisition** 5,00,000 × $\frac{1081}{389}$	(13,89,460)
Long-term Capital Gains	1,90,540
Less : **Exemption u/s 54EC**	(1,90,540)
Taxable Long-term Capital Gain	NIL

(b) Saptarshi should not transfer or convert (otherwise than transfer) into money such bonds within 3 years from the date of their acquisition.

If these bonds are transfered or converted into money within 3 years, Capital Gain of ₹ 1,90,540 exempted earlier shall attract taxability towards Long-term Capital Gain of the Previous Year in which such asset is transferred or converted into money.

(c) If any loan is taken against security of such bonds, it shall be taxable as Long-term Capital Gains of the Previous Year in which such loan is taken against the security of such bonds.

Illustration 25 :

Anand sold a residential building at Kolkata for ₹ 28,60,000 on 1.11.2015. The building was purchased during 1979-80 for ₹ 1,45,000. FMV as on 1.4.81 ₹ 2,55,000. Brokerage paid on sales @ 2%. He deposited ₹ 8 lakhs in NHAI Capital Gains Bond in February 2016. Compute Taxable Capital Gains.

Solution:

Assessee: Anand

Computation of Taxable Capital Gains for the A.Y. 2016-17

Particulars	**Amount (₹)**
Consideration for Transfer	28,60,000
Less: Expenses on Transfer (i.e. Brokerage 2% on ₹25,60,000)	(51,200)
Net Consideration	28,08,800

Less: Indexed Cost of Acquisition = $\frac{\text{Cost of Acquisition x CII of ear of Transfer}}{\text{CII of the year of Acquisition}}$ = ₹ 2,55,000 × $\frac{1081}{100}$	(27,56,550)
Long Term Capital Gains	52,250
Less: Exemption u/s 54 EC Amount invested in NHAI Bonds ₹8 lakhs. Deduction restricted upto the balance of LTCG	(52,250)
Taxable Capital Gains	Nil

40. Exemptions from Capital Gains for transfer of any long term capital asset other than a residential house property u/s 54F

Applicability	Individual / HUF
Asset Transferred	Any Long Term Capital Asset other than Residential House Property
Nature of the Asset	Long Term Capital Asset
Condition	On the date of transfer of the LTCA, the assessee **should not own more than one Residential House Property**
New Asset to be acquired	One Residential House Property
Amount to be invested in New Asset	Net Consideration
Amount of Exemption	Long Term Capital Gain × Amount invested in Residential House Net Consideration
Time Limit for Investment	(a) **For Purchase:** Within **One Year before or Two Years after** the date of transfer (b) **For Construction:** Within **Three Years after** the date of transfer.
Unutllized Amount	(a) The **amount not utilized** before the due date of filing return shall be **kept in Capital Gain Account Scheme** of a Nationalized Bank (b) The amount should be **utilized within the prescribed period** (c) Amount **not utilized** within the prescribed period shall be **treated as LTCG** of the Previous **Year in which the prescribed** period expires
Holding Period of New Asset	**Three Years** from the date of acquisition or construction
Sale of New Asset within holding period	(a) Short Term Capital Gain on New Asset shall be taxed separately. (b) Long Term Capital Gain exempted u/s 54F shall be chargeable to tax as Long Term Capital Gain in the year of transfer.

Illustration 26: Bipasha purchased jewellery worth ₹ 2,20,000 during 1985-86. During the year 1990-91, she further purchased jewellery worth ₹ 3,50,000. All the jewellery was sold by her on 15.6.15. The jewellery purchased in 1985-86 was sold for ₹ 20 lacs and that purchased in 1990-91 was sold for ₹ 32 lacs.

On 26.6.15 she deposited ₹50 lacs in Capital Gains Scheme Account.

On 21.10.15 withdrawing from the Deposit Account, she utilised ₹ 48 lacs for purchase of a residential house property in Kolkata.

On the date of transfer she owns only one residential house.

Solution :

Computation of Capital Gains for the A.Y. 2016-17

	₹
(a) **On transfer of jeweller purchased during 85-86**	
Consideration for transfer	20,00,000
Less : **Indexed Cost of Acquisition**	
$2,20,000 \times \frac{1081}{133}$	(17,88,120)
Long-term Capital Gains	2,11,880
(b) **On transfer of jewellery purchased during 1990-91**	
Consideration for transfer	32,00,000
Less : **Indexed Cost of Acquisition**	
$3,50,000 \times \frac{1081}{182}$	(20,78,846)
Long-term Capital Gains	**11,21,154**

In order to avail the maximum benefit u/s 54F, the exemption should be computed as follows :

	₹
Total long-term Capital Gain (2,11,880 + 11,21,154)	13,33,034
Less : Exemption u/s 54F $\left[\frac{\text{Cost of New House + Amount Deposited}}{\text{Net Consideration}} \times \text{LTCG}\right]$	
$= \frac{50,00,000}{52,00,000} \times 13,33,034$	12,81,763
Taxable Long-term Capital Gains	**51,271**

Note :

1. In this case, Bipasha has not fully utilised the deposit account for acquiring a residential house property. Out of ₹ 50 lacs deposited for acquiring the house, it is utilised to the extent ₹ 48 lacs.

Tax treatment of unutilised amount, will be as follows :-

		₹
(a)	Unutilised amount	2,00,000
(b)	Net sale consideration	52,00,000
(c)	Original Capital Gain	13,33,034
(d)	Notional Long-term Capital Gain $\left[\frac{2,00,000}{52,00,000} \times 13,33,034\right]$	51,271
(e)	Effective exemption u/s 54F	12,30,492
	[₹ 12,81,763 – 51,271]	

₹ 51,271 will be chargeable to tax as Long-term Capital Gain after expiry of 3 years from the date of transfer of jewellery (i.e. 15.6.15). Consequently it will be taxable for the Assessment Year 2019-20.

2. The unutilised amount of ₹ 2 lacs can be utilised by Bipasha at any time after 15.6.15.
3. If Bipasha sells this new house property before 21.10.18, then ₹ 12,81,763 (exemption u/s 54F) will be charged to tax as Long-term Capital Gain of the year in which the house is sold.
4. If Bipasha purchases another house before 15.6.17 or constructs any other house (income of which is taxable u/s 22) before 15.6.18, then ₹ 12,81,763 (exemption u/s 54F) will be deemed as Long-term Capital Gain of the year in which another house is purchased or constructed.

41. Exemptions available for Capital Gains on shifting of industrial undertaking from urban to rural area u/s 54G

Applicability	All Assesses
Asset Transferred	Land and Building, Plant and Machinery used by Industrial Undertaking and shifting of such undertaking from Urban Area to Non-urban Area
Nature of the Asset	Any Capital Asset
New asset to be acquired	Land, Building, Plant and Machinery for Industrial Undertaking in Non-urban Area or to meet the expenses of shifting
Amount to be invested in New Asset	Capital Gain on Transfer
Amount of Exemption	Least of - (a) Amount invested in New Land and Building or New Plant and Machinery, or (b) Capital Gain
Time Limit for Investment	Within **one year prior** to the date of transfer or **within three years after** the date of transfer.
Unutilized Amount	(a) **Amount not utilized** before the due date of filing return shall **be kept in Capital Gain Account Scheme** of a Nationalized Bank. (b) The amount should be **utilized within the prescribed period.** (c) **Amount not utilized** within the prescribed period shall be treated as **LTCG of the Previous Year in which the prescribed period expires.**
Holding Period of New Asset	**Three years** from the date of acquisition
Sale of New Asset within holding period	Short Term Capital Gain computed as follows: Sale Consideration of New Asset **Less:** Cost of Acquisition reduced by Capital Gains exempted u/s 54G

Illustration 27: P Ltd. owns an industrial undertaking manufacturing chemicals in Bangalore owns the following assets-

(a) Plant and Machinery (WDV ₹5 lacs) sold for ₹15 lacs.

(b) Building (WDV ₹ 12 lacs) sold for ₹ 60 lacs.

(c) Furniture and Fixtures (WDV ₹ 50,000) sold for ₹ 1,80,000.

(d) Land cost of acquisition ₹ 5,00,000 during 1984-85 and sold for ₹ 30 lacs.

The industrial undertaking was shifted as per policy of the Government from urban area to other area. The new assets acquired during the period 1.1.16 to 31.3.16 are as under:

Plant and machinery ₹20 lacs; Buildings ₹40 lacs.

Compute Capital Gain chargeable to tax for the Assessment Year 2016-17.

Solution :

Computation of Capital Gains for the A.Y. 2016-17

	₹	₹
Short-term Capital Gains on Depreciable assets		
(i) Plant & Machinery (15,00,000 – 5,00,000)	10,00,000	
(ii) Buildings (60,00,000 – 12,00,000)	48,00,000	
(iii) Furniture & Fixtures (1,80,000 – 50,000)	1,30,000	59,30,000
Long-term Capital Gains on Industrial Land :		
Consideration for transfer	30,00,000	
Less : **Indexed Cost of Acquisition**		
$5,00,000 \times \frac{1081}{125}$	(43,24,000)	(13,24,000)
Total Capital Gains		**46,06,000**
Less : **Exemption u/s 54G**		
Plant & Machinery	20,00,000	
Building	40,00,000	
but restricted to ₹ 44,76,000	60,00,000	44,76,000
[= ₹ 46,06,000 — 1,30,000, being STCG on furniture, not eligible for the purpose of claiming exemption u/s 54G]		
Short Term Capital Gains (on furniture)		**1,30,000**

42. Exemption available to an undertaking which shifts its base to a special economic zone and in the course makes gain on transfer of asset u/s 54GA

Applicability	All Assesses
Asset Transferred	(a) Land and Building, Plant and Machinery or any right in Land or Building used by Industrial Undertaking. (b) Transfer as a result of shifting of such undertaking from Urban Area to Special Economic Zone (which may be situated in Urban or Any other area).
Nature of the Asset	Any Capital Asset
New Asset to be acquired	(a) Plant and Machinery for use in the Undertaking in the SEZ. (b)Acquired Land and Acquired/Constructed Building for purpose of business in SEZ (c) Shifted the undertaking to the SEZ. (d) Expenses incurred for such purposes as specified by under the Scheme by the Central Government is also eligible for claiming exemption.

Amount to be invested in New Asset	Capital Gain on Transfer
Amount of Exemption	Least of : (a) Amount invested in any Land and Building or any Plant and Machinery and Expenses incurred in relation to transfer, or (b) Capital Gain
Time Limit for Investment	Within **one year prior to the date** of transfer or **within three years after the date of transfer**
Unutilized Amount	• **Amount not utilized** before the due date of filing return shall be **kept in Capital Gain Account Scheme** of a Nationalized Bank. • The amount should be utilized within the prescribed period. • Amount not utilized within the prescribed period shall be treated as LTCG of the Previous Year in which the prescribed period expires.
Holding Period of New Asset	**Three years** from the date of acquisition
Sale of New Asset within holding period	Short Term Capital Gain computed as follows: Sale Consideration of New Asset Less: Cost of Acquisition Less: Capital Gains exempted u/s 54GA

Illustration 28: The factory building of A is compulsorily acquired by the Government for ₹ 10,00,000 on 31.01.2009 *vide* Notification issued on 12.3.2005. A had purchased the building in 1986-87 for ₹ 2,00,000. The compensation is received on 15.4.2009. The compensation is further enhanced by an order of the court on 15.5.2015 and a sum of ₹ 2,00,000 is received as enhanced compensation on 21.10.2015. A wants to claim full exemption of the Capital Gains, advise A in this respect. Compute the Capital Gain and determine the year in which it is taxable. Also specify the period upto which the investment in the new building should be made by the assessee.

Solution :

Although the factory building is compulsorily acquired on 12.3.2005, the Capital Gain will arise in the Previous Year in which full or part of the compensation is first received *i.e.* Previous Year 2009-10. However, indexation will be done till the year of compulsory acquisition. Therefore, Capital Gains will be calculated as under :

Computation of Capital Gains for the A.Y. 2010-11

Assessment Year 2010-11	₹
Full value of consideration	10,00,000
Less : Indexed cost of acquisition — ₹ 2,00,000 $\times \frac{480}{140}$	6,85,714
Long-term Capital Gains	3,14,286

The assessee should either invest at least ₹ 3,14,286 for the purchase/construction of a factory building on or before 30.1.2012 (relevant due date) and /or deposit the amount under the Capital Gain Scheme on or before 30.9.2010, to be utilised for purchase of building by or construction of the building by 30.1.2012.

Computation of Capital Gains for the A.Y. 2016-17

	₹
Enhanced compensation Received	2,00,000
Less : Cost/Indexed cost of acquisition	Nil
Long-term Capital Gains	2,00,000

The assessee should either invest at least ₹ 2,00,000 for the additional construction of the building already acquired for claiming under section 54D on or before 20.10.2018 (relevant due date) and/or deposit the amount under the Capital Gain Scheme on or before 30.9.2016.

43. Exemption available to an individual or HUF for investment in equity shares of SME company U/S 54GB:

Applicability	Individual or HUF
Asset Transferred	**Residential Property** (a house or plot of land) transferred **on or before 31.03.2017**
Nature of Asset	Long Term Capital Asset
New Asset to be acquired	**Equity Shares** of a **Small or Medium Enterprise (SME) Company**
Conditions	(i) The investee company should qualify as a **Small or Medium Enterprise** under the Micro, Small and Medium Enterprises Act, 2006. (SME). (ii) The company should be engaged in the business of manufacture of an article or a thing. (iii) SME company should be incorporated within the period from 1st of April of the year in which Capital Gain arises to the assessee and before the due date for filing the return by the assessee u/s.139(1). (iv) The **assessee should hold more than 50% of the share capital or the voting right** after the subscription in the shares of a SME company. (v) The company will have to utilise the amount invested by the assessee in the purchase of new plant and machinery. If the entire amount is not so invested before the due date of filing the return of income by the assessee u/s.139, then the company will have to deposit the amount in the notified scheme by the Central Government. (vi) The above new plant and machinery acquired by the company cannot be sold for **a period of 5 years**.
Amount of Exemption	$\frac{\text{Long Term Capital Gain} \times \text{Amount invested in Equity Shares of SME Company}}{\text{Net Consideration}}$
Time Limit for Investment	**Before the due date of furnishing of Return of Income** under section 139(1)
Holding Period of the Investment	**Five Years** from the date of subscription

Consequence if the amount so subscribed is not utilized by the company	If the amount of net consideration which has been received by the company for the issue of equity shares by the individual or HUF is not utilized by the company for the purchase of a new asset (eligible plant and machinery) before the due date of furnishing the return of income under Section 139, **Capital Gain so exempted** in the year of purchased is **taxable**. Where the **amount so deposited** in deposit scheme is **not utilized**, wholly or partly for the purchase of new asset **within a *period of one year*** *from the date of subscription* in equity shares by the individual or HUF, then the difference between: (a) the exemption allowed under section 54GB earlier; And (b) the exemption that should have been allowed based on the amount actually utilized, in the purchase of new asset/ shall be taxable as Long Term Capital Gain in the hands of individual or HUF in which the period of one year from the date of subscription in equity share by the assessee expires and the company shall be entitled to withdraw such amount in accordance with the scheme,
Consequence if equity shares or new asset is transferred within a period of 5 years from the date of its acquisition	(a) If the equity shares acquired by the individual or HUF are sold or otherwise transferred within a period of 5 years from the date of its acquisition, the Capital Gain shall arise as under: (i) The Capital Gain arising from the transfer or equity shares shall be taxable in the Previous Year in which such shares are transferred, which can be short term or long-term depending upon the period of holding. And (ii) The amount of Capital Gain arising from the transfer of residential property not charged under section 45(1) earlier shall be deemed to be the Long-term Capital Gain of the Previous Year in which such shares are sold or otherwise transferred and hence taxable. (b) Similarly, if the new asset (eligible plant and machinery) is sold or otherwise transferred by the company within a period of 5 years from the date of its acquisition, the Capital Gain shall arise as under: (i) The Capital Gain, if any arising from the transfer of such asset will be taxable in the hands of company, which will be short-term as asset is a depreciable asset forming part of block of asset. And (ii) The amount of Capital Gain which was exempt under section 45(1) earlier shall be taxable as Long-term Capital Gain in the hands of such individual or HUF in the Previous Year in which such asset is sold or otherwise transferred. The unutilized amount should be deposited before the said due date under a deposit scheme, notified by the Central Government in this behalf and the return furnished by the assessee shall be accompanied by proof of such deposit having been made. The amount so *utilized* and the *amount so deposited* in the deposit scheme shall be *deemed to be the cost of a new asset* (eligible plant and machinery).

Illustration 29: Ravi transferred a plot of land situated in Patna for ₹ 70,00,000 on 14th July, 2015. The land was purchased by him on 1.2.1984 for ₹ 1,00,000. Ravi paid stamp duty of ₹ 6,00,000. On 11th December, 2015 he purchased 60,000 equity shares of T Ltd. @ ₹ 100 per share and thereby he gained 57% voting power of that company. T Ltd. is incorporated on 1st December, 2015 for manufacture of chemical

goods in Andhra Pradesh. T Ltd. purchased new plant for ₹ 70,00,000 on 10th January, 2016. Find out the amount of Long Term Capital Gains chargeable to tax in the hands of Ravi.

What will be the implication of tax, if on 12th December, 2016, T Ltd. sold the plant for ₹ 80,00,000.

Solution:

Assessee : Ravi **Previous Year: 2015-16** **Assessment Year: 2016-17**

Computation of Capital Gains

	₹
Sale Consideration	70,00,000
Less: Stamp duty paid	(6,00,000)
Net Sale Consideration	64,00,000
Less: Index cost of acquisition	
$1,00,000 \times \frac{1081}{125}$	(8,64,800)
Long Term Capital Gains	55,35,200
Less: Exemption u/s 54GB	
$\frac{60,000 \times 100}{70,00,000} \times 55,35,200$	(47,44,457)
Taxable Long Term Capital Gains	7,90,743

T Ltd. sold the plant for ₹ 80,00,000 on 12th December, 2016

Assessee : T Ltd. **Previous Year: 2016-17** **Assessment Year: 2017-18**

Computation of Capital Gains

	₹
Sale Consideration	80,00,000
Less: Cost of acquisition	70,00,000
Short Term Capital Gains	10,00,000

For Ravi, ₹ 47,44,457 (claimed deduction u/s 54GB in the A.Y. 2016-17) will be taxed as Long Term Capital Gain in the Assessment Year 2017-18.

44. Extension of time limit for acquiring new asset, when enhanced compensation is paid u/s 54H

(a) **Initial Compensation:** If initial compensation is **received in parts**, then the **entire initial compensation is taxable in the year in which a part is first received. Time limit for acquiring the new asset** u/s 54, 54B, 54D, 54EC and 54F shall be determined **on the basis of dates of receipt of different parts** of initial compensation.

(b) **Enhanced Compensation:** If any enhanced compensation is received, it is **taxable in the year in which such compensation is received** and for **acquiring the new asset** u/s 54, 54B, 54D, 54EC and 54F, the time limit shall be determined **from the date of receipt of additional (enhanced) compensation**.

Illustration 30 : Mr. Sahani was the owner of a residential house property which was purchased by him on 1.8.1981 for ₹ 50,000. The Government acquired the house as per notification on 1.4.2009 against the

compensation of ₹ 10,00,000 out of which ₹ 6,00,000 was received by Mr. Sahani on 31st December, 2015 and ₹ 4,00,000 was received on 30th April, 2016. On his appeal, the court enhanced its compensation from ₹ 10,00,000 to ₹ 12,00,000. Mr. Sahani received the additional compensation on 21st January, 2019. Ascertain the amount of investment and time of investment for availing the maximum exemption u/s 54.

Solution :

Assessee : Mr. Sahani **Previous Year : 2015-16** **Assessment Year : 2016-17**

Computation of Capital Gains

	₹
Consideration received	10,00,000
Less: Index cost of acquisition $50,000 \times \frac{1081}{125}$	(5,40,500)
Long Term Capital Gains	4,59,500

In order to avail the exemption u/s 54, Mr. Sahani has to purchase a house property of ₹ 4,59,500 or more within one year before the date of receipt of initial compensation or upto the due date of filing the Income Tax Return u/s 139 for the A.Y. – 2016-17. Otherwise he can also deposit the amount in the deposit account with a nationalized bank within the due date of filing return. However in this case he has to purchase the house property within 2 years or constructed it within 3 years from the date of receipt of the part of the initial compensation, which can be shown as follows:

Date of part received	31/12/2015	30/04/2016
Amount of part received	6,00,000	4,00,000
Minimum investment to get full exemption u/s 54	88,000	4,00,000
Date by which a house should be purchased by withdrawing from deposit account	31/12/2017	29/04/2018
Date by which a house should be constructed by withdrawing from deposit account	30/12/2018	29/04/2019

Additional compensation received on 21st January, 2019 :

Assessee : Mr. Sahani **Previous Year : 2018-19** **Assessment Year : 2019-20**

Computation of Capital Gains

	₹
Consideration received	2,00,000
Less: Cost of acquisition	NIL
Long Term Capital Gains	2,00,000

Ravi should purchase a new house property of ₹ 2,00,000 or more within one year beore the additional compensation received or upto the due date of filing the Income Tax Return u/s 139 for the A.Y. 2019-20. Otherwise, he can also deposit the amount in the deposit account with a nationalized bank within the due date of filing return but in this case he has to purchase the house within 20th January, 2021 or constructed it within 20th January, 2022.

45. PROVISIONS RELATING TO CLAIMING OF EXMPTION IN ORDER TO REDUCE TAX LIABILITY ON SHORT TERM CAPITAL GAINS

Exemption u/s	Applicable for
54B	Transfer of Agricultural Land
54D	Transfer by way of compulsory acquisition by Government
54G	Shifting of Industrial Undertaking from Urban to Rural Area
10(37)	Compulsory acquisition of Agricultural Land by Central Government/ RBI.
10(41)	Transfer by companies engaged in Power Sector Business

46. Cost in relation to certain financial assets u/s 55

	Particulars of asset	Date of Acquisition/ Holding	Cost of Acquisition Period
1.	Shares originally purchased :		
(a)	Primary Market	Date of Allotment	Allotment price
(b)	Secondary Market		
(i)	Transactions through share brokers	Date of broker's note	Amount paid + Brokerage Charges + Adjustment for ex. & cum. dividend/ interest
(ii)	Transactions between parties directly	Date of contract of sale	As above (excluding Brokerage)
2.	Shares acquired in different lots at different points of time	FIFO Method	FIFO Method
3.	Shares held in depository system (taxable in hands of beneficial owner)	FIFO Method	FIFO Method
4.	Right shares offered to existing shareholders and subscribed by him	Date of allotment	Offer Price
5.	Right shares acquired by a person by way of renouncement	Date of allotment	Offer Price + Amount paid for renouncement
6.	Renouncement of right shares in favour of another person	Holding period is date of offer of such right to the date of renouncement **(always STCG)**	NIL
7.	Financial asset acquired without any payment/consideration	Date of allotment of such financial assets	NIL
8.	Bonus share acquired be 1.4.81	1.4.1981	Fair Market Value as on 1.4.1981

Other Points :

1. Splitting of shares is not a transfer.
2. Debentures and Bonds are not entitled for benefit of Indexation u/s 48.

47. "DIVIDEND STRIPPING" enforced by Section 94(7) of the Income-tax Act, 1961.

(a) Purchase: The securities or units are purchased within 3 months prior to the record date.

(b) Sale: Sale or transfer is done within –

(I) 3 Months for Securities, and

(II) 9 Months for Units, after the record date.

(c) Exempt Income: Dividend / Income on such securities/units is exempted from tax.

(d) Dividend Stripping : Loss arising out of such purchase and sale is ignored to the extent of dividend income.

(e) Record Date means such date as fixed by

(i) A Company for the purposes of entitlement of the holder of the securities to receive dividend.

(ii) A Mutual Fund or the Administrator of the Undertaking / Company specified u/s 10(35) Explanation, for the purposes of entitlement of the holder of the units to receive income or additional units, without any consideration.

48. "BONUS STRIPPING" as per Section 94(8):

(a) Applicability: All Assesses

(b) Transaction: Any person who purchases Units (Original Units) within a period of 3 months prior to record date and sells such units within a period of 9 months after such record date. On the record date, he was allotted Bonus Units (additional units without any payment)

(c) Tax Implication:

(i) The loss on sale of such original units shall be ignored for the purpose of computing his income.

(ii) Loss so ignored will be deemed as the Cost of Acquisition of such additional units, on their subsequent sale/transfer.

49. Rates of capital gain tax - Section 112

(a) Short-term Capital Gain is taxed at normal rate or slab

(b) Long-term Capital Gain other than gains arising out of transfer of security including Zero Coupon Bonds are taxed as follows :

Kind of Assessee	Tax %
(a) Individual and HUF Resident	20%
Non-Resident [not covered in (d)]	20%
(b) Venture Capital Company on transfer of equity shares of Venture Capital Undertaking	20%
(c) Company [not covered in (b)]	
Domestic Company	20%
Foreign Company (not covered in (d)]	20%
(d) Offshore funds	15%
Non-resident Assesses, Foreign Institutional Investors covered by Sections 115AB /115AC /115AD	
(e) Any others (Firm, AOP, BOI etc.)	
• Resident	20%
• Non-Resident [not covered in (d)]	20%

Note : The rates given above are Basic Rates. Appropriate Surcharge, Education Cess and Secondary and Higher Education Cess are also applicable in addition to the tax rate mentioned above.

(c) Long-term Capital Gain arising from transfer of security **listed in a Recognized Stock Exchange, not covered by Securities Transaction Tax:**

(i) Compute Capital Gain **without indexation** and charge tax @ 10%.

(ii) Compute Capital Gain **with indexation** and charge tax @ 20% as per Section 112

(iii) The assessee has the option to choose either of the above whichever is beneficial to him.

(iv) Long Term Capital Gain arising on listed securities being Equity Shares and Units of Equity Oriented Fund

Notes :

With effective from the Assessment Year 2013-2014, tax would be applicable at the rate of 10% plus Education cess and Higher Education cess in any such above cases where Long-term Capital Gain arising from transfer of security listed in a Recognized Stock Exchange, not covered by Securities Transaction Tax and no benefit of Indexation shall be available

(i) **No deduction** shall be allowed **under Chapter VIA** in respect of income from Long-term Capital Gain.

(ii) **Special Benefit for Resident Individuals or HUF**

Applicability: Resident Individual or Resident HUF

Condition: Total income excluding Long-Term Capital Gains is **less than the basic exemption.**

Benefit: Tax on Long-term Capital Gain is determined as follows–

Tax on LTCG = 20% [Total Income including LTCG - Basic Exemption]

Only that amount of Long-term Capital Gains which is included in the total income would be subject to tax at a prescribed flat rate u/s 112. **[Cir. No. 721/13.9.95}**

(d) Tax on Short Term Capital Gain on Listed Securities - Section 111A (w.e.f. 1.10.2005)

(i) Applicability: All Assesses

(ii) Source of Income:

- Income from Short Term Capital Gains arising from any Equity Shares of a Company or unit of an Equity Oriented Fund or transfer of units of a business trust which were acquired by the assessee in exchange of the share of a specific purpose vehicle.
- The transfer has been affected on or after 1.10.2005
- Such transaction is liable for Securities Transaction Tax.

(iii) Rate of Tax: 15% of Short-term Capital Gains (w.e.f 2009-10)

Notes :

(i) Chapter VI-A deduction shall not be allowed in respect of income from such Short Term Capital Gain.

(ii) **Special Benefits for Resident Individuals or Resident HUF**

Applicability: Resident Individual or Resident HUF

Condition: Total income excluding Short -Term Capital Gains is less than the basic exemption.

Benefit: Tax on Short-Term Capital Gain is determined as follows:

Tax on STCG = 15% [Total Income including STCG - Basic exemption]

Funds transferred on or after 1.10.2005 is exempt from tax u/s 10(38).

(e) Securities Transaction Tax (STT):

(I) Section 98 of the Finance (No. 2) Act, 2004, providing for rates of STT has been amended w.e.f. 1-7-2012. The revised rates of STT in Cash Delivery Segment are reduced from 0.125% to 0.1%. Therefore, in the case of delivery-based transaction relating to equity shares of a company or units of equity oriented fund of a mutual fund entered into through a recognised Stock Exchange, the STT payable by

(i) a purchaser is reduced from 0.125% to 0.1% and

(ii) a seller is reduced from 0.125% to 0.1% w.e.f. 1-7-2012.

(II) In order to encourage unlisted companies to get them listed in recognised Stock Exchange, it is now provided that sale of unlisted equity shares by any holder of such shares, under an offer for sale to the public included in an Initial Public Offer (IPO), if subsequently such shares are listed on the recognised Stock Exchange, will be liable for payment of STT at 0.2%. If such STT is paid, Long-term Capital Gain on such sales will be exempt from tax and tax on Short-term Capital Gain will be payable at concessional rate of 15% u/s.111A.

50. Set off and carry forward of losses under the head Capital Gains.

(a) Treatment for Current Year Loss: (Section 70 &. 71)

(i) **Current year Short Term Capital Loss** can be **set off against any Capital Gain** accrued during the Previous Year, but It **cannot be set off against income under any other head.**

(ii) Current year Long **Term Capital Loss** shall be **set off only against Long Term Capital Gains.**

(b) Treatment for Carry Forward Loss: (Section 74)

(i) **Unabsorbed Loss** under the head Capital Gains shall be **carried forward** for a period of 8 **Assessment Years** immediately following the Assessment Year in which such loss was incurred.

(ii) The **carry forward Short-term** Capital Loss can be set off **against any capital gains.**

(iii) The **carry forward Long Term Capital Loss** can be set off **only against Long Term Capital Gains.**

Study Note - 8

INCOME FROM OTHER SOURCES

This Study Note includes

8.1 INCOME FROM OTHER SOURCES - BASIS OF CHARGE [SEC. 56]

This is the residual head of charge of income. Where a source of income does not specifically fall under any one of the other heads of income viz. Salaries, Income from House Property, Profits and Gains of Business or Profession and Capital Gains, such income is to be brought to charge under Sec. 56 under the head 'Income from Other Sources'- S.G. Mercantile Corp. P. Ltd. vs. CIT 83 ITR 700(SC).

This residuary head of income would be invoked only if all the following conditions are fulfilled:

1. There is a taxable income- Sec. 2(24) read with Sec. 4 & 5
2. The income is not exempt from tax under - Sec. 10 to 13A
3. Income should not fall under any of the four specific heads of income viz. Salaries, Income from House Property, Profits and Gains of Business or Profession and Capital Gains.

8.2 CHARGEABLE INCOME [SEC. 56(2)]

As per Sec. 56(2), the following incomes are expressly stated to be chargeable to tax under the head "Income from Other Sources"—

(i) Dividend [Sec. 56(2)(i)]

(ii) Any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or form, gambling or betting of any form or nature whatsoever [Sec. 56(2)(ib)]

(iii) Any sum received by assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 or any other fund for the welfare of the employees, if such income is not chargeable under the head "Profits and Gains of Business or Profession" [Sec. 56(2)(ic)].

(iv) Income by way of interest on securities, if it is not chargeable as Profits and Gains of Business i.e. where securities are held as investments [Sec. 56(2)(id)].

(v) Income from machinery, plant or furniture belonging to the assessee let on hire, if the income is not chargeable to Income-tax under the head "Profits and Gains of Business or Profession" [Sec. 56(2)(ii)].

(vi) Where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to Income-tax under the head "Profits and Gains of Business or Profession" [Sec. 56(2)(iii)].

(vii) Any sum received under "Key man insurance policy" including bonus, if not charged under the head "Profits and Gains of Business or Profession" [Sec. 56(2)(iv)].

(viii) Gifts aggregating to more than ₹ 50,000 in a year on or after 1st Day of April, 2006 [Sec. 56(2)(vi)].

(ix) **Taxation of property acquired without consideration or for an inadequate consideration as 'Income from Other Sources' (Section 56(2)(vii)) [W.e.f. 1-10-2009]**

Section 56(2)(vi) provides that any 'sum of money' (in excess of the prescribed limit of ₹ 50,000) received without consideration by an individual or HUF will be chargeable to Income Tax in the hands of the recipient under the head 'Income from Other Sources'.

However, receipts of money (a) from relatives or (b) on the occasion of marriage or (c) under a will or inheritance or (d) in contemplation of death of payee or donor are outside the scope of the provisions of Section 56(2)(vi) of the Income-tax Act.

Similarly, anything which is received in kind having 'money's worth' i.e. property is also outside the purview of the existing provisions.

The Act has amended Section 56 of the Income-tax Act by inserting a new clause (vii) to Section 56(2) w.e.f. 1-10-2009 to provide that the value of any property received without consideration or for inadequate consideration will also be included in the computation of total income of the recipient. Such properties will include: (i) immovable property being land or building or both, (ii) shares and securities, (iii) jewellery, (iv) archaeological collections, (v) drawings, (vi) paintings, (vii) sculptures (viii) any work of art.

In a case where an immovable property is received without consideration and the stamp duty value of such property exceeds ₹ 50,000, the whole of the stamp duty value of such property shall be taxed as the income of the recipient. If an immovable property is received for a consideration which is less than the stamp duty value of the property and the difference between the two exceeds ₹ 50,000 (inadequate consideration), the difference between the stamp duty value of such property and such consideration shall be taxed as the income of the recipient.

It shall noted that in a case where the amount of consideration referred to therein or a part there of has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property and where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not same, the stamp duty value on the date of the agreement may be taken for the purpose of calculation of income of the recipient.

If the stamp duty value of immovable property is disputed by the assessee, the Assessing Officer may refer the valuation of such property to a Valuation Officer. In such cases, the provisions of existing Section 50C and Section 155(15) of the Income-tax Act shall, as far as may be, apply for determining the value of such property.

In a case, where movable property is received without consideration and the aggregate fair market value of such property exceeds ₹ 50,000, the whole of the aggregate fair market value of such property shall be taxed as the income of the recipient. If a movable property is received for a consideration which is less than the aggregate fair market value of the property and the difference between the two exceeds ₹ 50,000, the difference between the fair market value of such property and such consideration shall be taxed as the income of the recipient.

It has also been provided that :

(a) The value of moveable property shall be the fair market value as on the date of receipt in accordance with the method prescribed; and

(b) In the case of immovable property, the value of the property shall be the 'stamp duty value' of the property.

(c) 'Relative' shall have the meaning assigned to it in the Explanation to Clause (vi) of Section 56(2).

Further, Section 56(2)(vii) shall not apply to any sum of money or any property received—

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer or donor, as the case may be; or

(e) from any local authority as defined in the Explanation to Subsection 20 of Section 10; or

(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in Subsection 23C of Section 10; or

(g) from any trust or institution registered under Section 12AA; or

(h) an HUF received money or any property from its members.

It may, however, be noted here that as per Section 64(2), if a member of the HUF converts his separate property into the property belonging to the family otherwise than for adequate consideration, the income derived from the converted property shall be deemed to arise to the individual and not the family.

Related amendments :

1. Section 2(24) relating to definition of income amended: The Act has inserted Clause (xv) to Section 2(24) to provide that any sum of money or value of property referred to in Section 56(2)(vii) shall also form part of income.

2. Cost of disquisition of the property required in a manner given under Section 56(2)(vii): The Act has inserted Sub-section (4) to Section 49 to provide that where the Capital Gain arises from the transfer of a property, the value of which has been subject to Income-tax under Section 56(2)(vii), the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said Clause (vii).

(x) **Share Premium in excess of the Fair Market Value to be treated as income [Section 56(2) (viib)] [w.e.f. A.Y. 2013-14]**

In Finance Act, 2012 a new Clause (viib) has been inserted to Section 56(2) to provide that where a company, not being a company in which the public are substantially interested, receives, in any Previous Year, from any person being a resident, any consideration for issue of shares and if the consideration received for issue of shares exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to Income-tax under the head "Income from Other Sources".

However, the above provision shall not apply where the consideration for issue of shares is received:

(a) by a Venture Capital Undertaking from a Venture Capital Company or a Venture Capital Fund; or

(b) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Further, an opportunity has been provided to the company to substantiate its claim regarding the fair market value. Accordingly, an Explanation has been inserted to the above Sub-clause to provide that for the purpose of this clause the fair market value of the shares shall be the value-

(a) as may be determined in accordance with such method as may be prescribed; or

(b) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets, being goodwill, know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature (i.e. the value shall be determined as per the net asset method including the value of intangible assets which are specified) whichever is higher.

(xi) **Interest received on delayed compensation or enhanced compensation shall be deemed to be income of the year in which it is received [Section 56(2)(viii), Section 57(iv) and Section 145A] [w.e.f. A.Y. 2010-11]**

The existing provisions of Income-tax Act provide that income chargeable under the head "Profits and Gains of Business or Profession" or "Income from Other Sources", shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Further, the Hon'ble Supreme Court, in the case of Rama Bai *vs.* CIT (1990) 181 ITR 400 (SC) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to tax payers.

With a view to mitigating the hardship, the following changes have been made in this regard :

(1) Clause (b) to Section 145A inserted: The Act has amended Section 145A to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee.

(2) Interest on compensation or on enhanced compensation to be taxed under other sources: Clause (viii) in Sub-section (2) of Section 56 has been inserted to provide that income by way of interest received on compensation or on enhanced compensation referred to in Sub-clause (b) of Section 145A shall be assessed as "Income from Other Sources" in the year in which it is received.

(3) 50% deduction to be allowed from such interest: Clause (iv) has been inserted to Section 57 to provide that in the case of income of the nature referred to in section 56(2)(viii), a deduction of a sum equal to 50% of such income shall be allowed and no deduction shall be allowed under any other clause of this section.

(xii) The following clause (ix) shall be inserted after clause (viii) of sub-section (2) of section 56 by the Finance (No. 2) Act, 2014 w.e.f. A.Y. 2015-16 – "Any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if, -

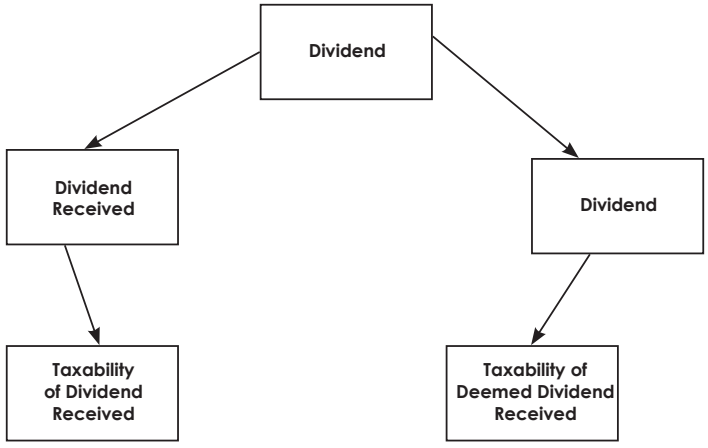
(a) Such sum is forfeited; and

(b) The negotiations do not result in transfer of such capital asset."

Some important items of income stated above are hereunder discussed :

DIVIDEND [Sec. 56(2)(i)]

Dividend means the sum paid to or received by a shareholder proportionate to his shareholding in a company out of the total sum distributed. The definition of "Dividends" under Section 2(22) is an inclusive definition and it means dividend as normally understood and include in its connotation several other receipts set out in the definition- Kantilal Manilal *vs.* CIT 41 ITR 275(SC).



The term "Dividends" includes deemed dividends of the following nature :

(i) Any distribution of accumulated profits entailing the release of company's assets - Sec. 2(22)(a).

(ii) Any distribution of debenture stock, deposit certificates to shareholders and bonus to preference shareholder - Sec. 2(22)(b).

(iii) Any distribution to shareholders on liquidation of company to the extent to which the distribution is attributable to the accumulated profits of the company, other than distribution in respect of any share issued for full cash consideration where the shareholder is not entitled to participate in the surplus assets in the event of liquidation - Sec. 2(22)(c).

(iv) Any distribution on reduction of share capital to the extent to which the company possesses accumulated profit except a distribution in respect of any share issued for full cash consideration where the shareholder is not entitled to participate in the surplus asset in the event of liquidation - Sec. 2(22)(d).

(v) Any payment by way of advance or loan by a closely held company to :

(a) a shareholder, being a person who is the beneficial owner of shares (other than shares entitled to a fixed rate of dividend) holding not less than 10% of voting power; or

(b) any concern in which such shareholder is a member or partner and in which he has a substantial interest; or

(c) a person acting on behalf or for the individual benefit of any such shareholder - Sec. 2(22)(e)]

Note:

(i) An advance or loan to a shareholder of the said concern in the ordinary course of the business of the company where the lending of money is a substantial part of the company's business will not be regarded as dividend.

(ii) Any payment made by a company on purchase of its own shares from a shareholder in accordance with Sec. 77A of the Companies Act, 1956,(Corresponding Section 68 of Companies Act, 2013) is not treated as dividend.

(iii) Distribution of shares by the resulting company to the shareholder of the demerged company is also not to be treated as dividend.

Dividend exempt

(i) Dividend declared/distributed/paid by domestic company including deemed dividend (i.e. other than the dividend u/s. 2(22)(e) or dividend from a foreign company) is exempt in the hands of shareholder. However, the company has to pay dividend distribution tax on it under Section 115-O [Sec. 10(34)]

(ii) any dividend : (*a*) on units of a Mutual Fund specified under Clause (*23D*); or (*b*) in respect of units from the Administrator of the specified undertaking; or *(c)* in respect of units from the specified company [Sec. 10(35)]

EMPLOYEES' CONTRIBUTIONS TO PROVIDENT FUND ETC, [Sec. 56(2)(IC)]

It has to be remembered that any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 or any other fund for the welfare of such employees is income in the hands of the assessee and is chargeable as Income from Other Sources if not chargeable as Profits and Gains on Business or Profession [Sec. 2(24)(x)]

However, the tax payer is entitled to deduction of the sum of such contributions received from his employees if such sum is credited by the taxpayer to the employee's account in the relevant fund on or before the due date. Here, the due date means the date by which the assessee is required as an employer to credit an employees' contribution to the employees' account in the relevant fund under an Act, rule, etc. issued in that behalf [Sec. 36(1)(va)].

Therefore, any sum received by the assessee from his employees as contributions to any fund as aforesaid and is not deposited or deposited belatedly to the employee's account, it becomes income of the assessee.

INTEREST ON SECURITIES

Interest on securities is chargeable as Income from Other Sources if it is not chargeable as Profits and Gains of Business or Profession, i.e. when the securities are held as investment.

(a) Basis of Charge – If the books of account are maintained on cash basis the interest on securities will be chargeable on receipt basis. However, where books of account are maintained on mercantile system or where no method of accounting is regularly employed by the assessee, such interest will be chargeable on "accrual basis" i.e. as the income of the Previous Year in which such interest is due to the assessee – Second Proviso to Sec. 145(1).

(b) Interest on Securities Exempt – The interest on securities of the following description is exempt from tax –

(i) Interest on notified securities, bonds or certificates issued by the Central Govt. Interest on Post Office Savings Bank Account will be exempted only to the extent of ₹ 3,500 in case of an individual and ₹ 7,000 in case of joint account w.e.f. AY 2012-13

(ii) Interest to an individual or a HUF on 7% Capital Investment Bond or on notified Relief Bonds.

(iii) Interest to non-resident Indians on notified bonds.

(iv) Interest on securities held by Issue Department of the Central Bank of Ceylon.

(v) Tax planning - Taxpayer is entitled to the deduction of any reasonable sum paid as commission or remuneration to a banker or any other person for the purpose of realizing interest on securities. Similarly, he will also be entitled to the deduction of interest on capital borrowed for investing in securities.

INCOME FROM INSEPARABLE LETTING OF MACHINERY, PLANT OR FURNITURE WITH BUILDING

If an assessee lets on hire machinery, plant or furniture and also buildings and the letting of building is inseparable from the letting of machinery, plant or furniture, the income from such letting would be chargeable to tax under the residuary head where it is not chargeable under the 'Profits and Gains of Business or Profession".

What is therefore, necessary to examine is whether the letting is by way of business. Whether a particular letting is of business has to be decided in the circumstances of each case. Each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of business or the exploitation of his property by the owner. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is carried on- Sultan Bros. (P) Ltd. vs. CIT (1964) ITR 353 (SC).

Example : Mr. A let out his building along with air conditioning plant, tube-wells, refrigerators, etc. Though separate rent is fixed in the lease deed refers to them collectively as "demised premise", it will be a case of inseparable letting and the entire rental income will be assessable as Income from Other Sources.

GIFT

Now gift received during the Previous Year shall be included in the income if the aggregate of the gifts received exceeds ₹ 50,000.

However, the following gifts are not included in taxable income, viz.

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer; or

(e) from any local authority as defined in the Explanation to clause (20) of section 10; or

(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in Sub-section (23C) of Section 10; or

(g) from any trust or institution registered under Section 12AA; or

(h) received money or any property by an HUF from its members.

For these purposes of this clause, "relative" means—

(i) spouse of the individual;

(ii) brother or sister of the individual;

(iii) brother or sister of the spouse of the individual;

(iv) brother or sister of either of the parents of the individual;

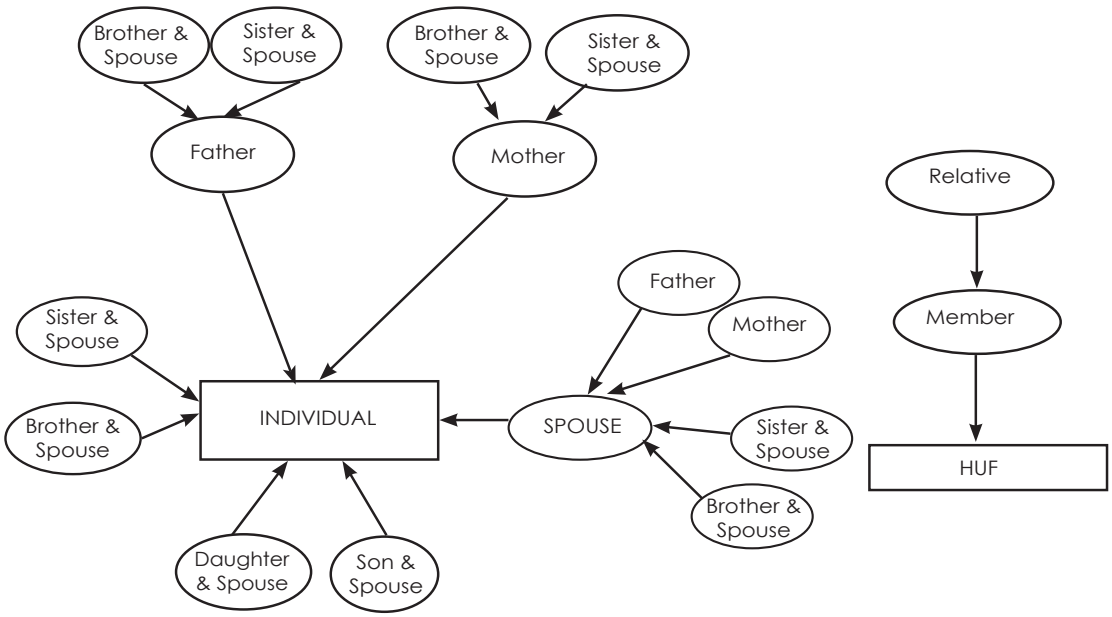
(v) any lineal ascendant or descendant of the individual;

(vi) any lineal ascendant or descendant of the spouse of the individual;

(vii) spouse of the person referred to in clauses (ii) to (vi).

Gifts from relatives, although exempt from tax, in respect of income earned from such a gift, provisions relating to clubbing of income apply in certain cases e.g. gift received from spouse and father-in-law.

Gift from the following relatives is tax free



OTHER INCOMES INCLUDIBLE UNDER THE HEAD

Apart from the incomes specified in Sec. 56(2) of the Act, as mentioned above, courts have held that incomes of the following nature will be chargeable as Income from Other Sources:

- Income of company in winding-up. Vijay Laxmi Sugar Mills Ltd. vs. CIT.
- Gratuity received by a director who is not an employee of the company- CIT vs. Lady Navajbai R.J. Tata.

- Interest is assessed under the head 'Income from Other Sources', if it not taxed as business or professional income- CIT vs. Govinda Choudhury & Sons .
- Interest on tax refunds- Smt. B. Seshamma vs. CIT.
- Interest earned prior to commencement of business - CIT vs. Modi Rubber Ltd. / Goa Carbon Ltd. vs. CIT.
- Interest earned on short-term investment of funds borrowed for setting up of factory during construction of factory before commencement of business has to be assessed as Income from Other Sources and it cannot be held to be non-taxable on ground that it would go to reduce interest on borrowed amount which would be capitalized - Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT.
- Tax on salary of assessee borne by payer, for whom assessee was working under a contract, under a legal obligation - Emil Webber vs. CIT
- Sale receipts prior to commencement of business - CIT vs. Rassi Cement Ltd.
- If the business as a whole is let out the income i.e. the rent, would not be liable to be assessed as income from business. If only the commercial assets are leased out the income would continue to be income from business- CIT vs. Biswanath Roy, CIT vs. Kuya & Khas Kuya Colliery Co.
- Reimbursement of taxes on salary – Z. Zizlaw Skakuz vs. CIT
- Interest on employee's contribution to unrecognised provident fund- CIT vs. Hyatt
- Interest on bank deposits of idle business funds - Collis Line P. Ltd. vs. ITO
- Interest deposit of share capital in bank before commencement of business—Traco Cable Co. Ltd. vs. CIT
- Interest on realizations put by liquidator of company in fixed deposits- Vijay Lakshmi Sugar Mills Ltd. vs. CIT
- Interest received from Government u/s. 214/243/244/244A of the Income Tax Act, 1961- Smt. B. Seshmma vs. CIT
- Income from subletting of a house property by a tenant.
- Insurance commission, if it is not assessable as income from business.
- Family Pension
- Director's Sitting Fees for attending board meeting
- Income from undisclosed sources
- Income received after discontinuance of business
- Examinorship fee received by a teacher.

INCOME NOT CHARGEABLE UNDER RESIDUARY HEAD

Income of the following nature will not be chargeable as Income from Other Sources but on business income –

I. Interest on short-term deposit with State Bank received by a cooperative society carrying on banking business- Bihar State Cooperative Bank Ltd. vs. CIT

II. Income to the principal from business carried on through an agent- CIT vs. S.K. Sahana and Sons Ltd.

III. Portion of business received by beneficiary from trust or wakf- CIT vs. P. Krishna Warier.

IV. Income from temporary letting out of business assets as a part of exploitation is to be assessable as Business Income and not as Income from Other Sources- CIT vs. Vikram Cotton Mills Ltd.

INCOME FROM LETTING OF MACHINERY, PLANT OR FURNITURE

The income from machinery, plant or furniture belonging to the assessee and let out on hire is chargeable as Income from Other Sources, if it is not chargeable as Profits and Gains of Business or Profession. - Sec. 56 (2) (ii).

DEDUCTIONS [Sec. 57]

The income chargeable under the head "Income from Other Sources" shall be computed after the following deductions, namely –

(a) In the case of dividend income and interest on securities—

  (i) Any reasonable sum paid by way of remuneration or commission for the purpose of realizing dividend or interest, and

  (ii) Interest on borrowed capital if required for investment in shares or securities.

(b) In the case of income from machinery, plant or furniture let on hire

  (i) Current repairs to building - Sec. 30(a)(iii);

  (ii) Current repairs to machinery, plant or furniture and insurance premium - Sec. 31;

  (iii) Depreciation on building, machinery, plant or furniture - Sec. 32 subject to Sec.38; and

  (iv) Unabsorbed depreciation - Sec. 32(2).

(c) In the case of income in the nature of family pension- ₹ 15,000 or 33.33% of such income whichever is less.

(d) In the case of income specified in Sec. 2(24)(x) i.e. deductions from employee salary for any fund, expenses of nature specified in – Sec. 36(1)(va) i.e. contribution to such fund on or before the due date.

(e) Any other expenditure (not being a personal or capital expenditure) expended wholly and exclusively for the purpose of earning such income. However, this deduction is not available to a foreign company in respect of dividend income.

AMOUNTS NOT DEDUCTIBLE [Sec. 58]

The following amounts are not deductible while computing Income from Other Sources—

- Personal expenses of the assessee – Sec. 58(1)(a)(i)
- Interest payable outside India on which tax has not been paid or deducted at source Sec. 58(1)(a)(ii)
- Salary payable outside India on which no tax has been paid or deducted at source – Sec. 58(1)(a)(iii)
- Any sum paid on account of Wealth Tax - Sec. 58(1A).
- any expenditure referred to Sec. 40A i.e. excessive payment to relatives u/s. 40A(2) & 100% of cash payment where it exceeds ₹ 20,000 u/s. 40A(3).

Enhancement of limit for disallowance of expenditure made otherwise than by an account payee cheque or account payee bank draft for plying, hiring or leasing goods carriages in the case of transporters to ₹ 35,000 from the existing limit of ₹ 20,000 [(Section 40A(3) and (3A)] (applicable to transactions effected on or after 1-10-2009)

The existing limit for other categories of payments will remain at ₹ 20,000 subject to the exceptions declared in Rule 6DD of the Income-tax Rules.

- Where an assessee has income from other sources no deduction of any expenditure or allowance in connection with such income shall be allowed under any other provisions of the Act in

computing the income by way of any winnings from lotteries, crossword puzzles, races including horse races, and games – Sec. 58(4). However, this prohibition will not apply to the owner of the horse maintained by him in horse race in computing his income from the activity of owning and maintaining such horses – Proviso to Sec. 58(4).

PROFITS CHARGEABLE TO TAX [Sec. 59]

Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and subsequently during any Previous Year he has obtained any amount or benefit in any form in respect of such loss or expenditure or trading liability, the amount or value of benefit obtained by such person shall be deemed to be Income from Other Sources. If any amount or benefit is obtained by a successor it shall be chargeable to Income-tax as income of such a successor.

In short, provision of Sec. 41(1) of the Act are made applicable while computing the income of an assessee under the head Income from Other Sources, as they apply in computing the income of an assessee under the head 'Profits and Gains of Business or Profession".

METHOD OF ACCOUNTING [Sec. 145]

(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time **[income computation and disclosure standards]** to be followed by any class of assessees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) [has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2)], the Assessing Officer may make an assessment in the manner provided in section 144.

ILLUSTRATION ON INCOME FROM OTHER SOURCES

Illustration 1: A Company, incorporated for the manufacture of steel, had not commenced production. The plant and machinery was in the stage of erection. During the Previous Year ending 31.3.2016, it paid interest on borrowings, amounting to ₹ 20 Lakhs. It also received interest of ₹ 1.50 Lakhs on investment in short-term deposits of moneys not immediately required for business. The Assessing Officer assessed the interest income under other sources. Discuss the correctness of the assessment.

Solution :

(a) Interest on surplus funds: Interest income earned on deposits made out of surplus funds before commencement of business is taxable as "Income from Other Sources".

(b) In view of the above judgment, the sum received as interest on deposits shall be charged to tax under the head 'Income from Other Sources'.

(c) No part of the interest paid on the loan borrowed shall be allowed as deduction u/s 57 as the same was not borrowed wholly and exclusively for the purpose of earning such interest. Whole of such interest shall be capitalised.

(d) Therefore, the action of the Assessing Officer is correct.

Illustration 2 : A Chartered Accountant handles the moneys belonging to his clients and maintains a separate account for these moneys. Part of these moneys, in excess of current requirements, is kept in deposit on which interest is earned. The Assessing Officer proposes to assess the interest income in the hands of the Chartered Accountant. How would you contest the action of the Assessing Officer?

Solution :

(a) Under the Chartered Accountants Act, 1949, a Chartered Accountant has to keep the monies belonging to a client in a separate bank account. He holds these funds only in a fiduciary capacity. Therefore, the Chartered Accountant cannot make use of such monies for his own benefit.

(b) The beneficial interest in the monies so deposited in a separate bank account lies with the owner of the funds, i.e. the clients. Therefore, the interest accrued on such funds also belongs to the clients.

(c) In view of the above, the interest do not accrue in the hands of the Chartered Accountant and hence not chargeable to tax in his hands.

(d) Therefore, action of the Assessing Officer is not correct.

Illustration 3 : Discuss the correctness or otherwise of the following proposition: Kumar took part in a motor-car rally and is awarded a prize money of ₹ 10,000 for winning a race. He claims that the amount of ₹ 10,000 is exempt from tax.

Solution :

(a) Winnings from motorcar rally are a return for skill and endurance. It is taxable as income.

(b) In view of the above Supreme Court ruling, the amount of ₹ 10,000 won by Mr. Kumar shall be treated as income and chargeable to tax under the head Income from Other Sources.

(c) Therefore, contention of Mr. Kumar is not correct and valid in law.

Illustration 4 : Discuss the taxability of gifts received by an Assessee.

Solution :

1. Applicability: Gifts received by Individual and HUF irrespective of Residential Status.

2. Taxability: Any sum of **money, aggregate value of which exceeds ₹ 50,000,** is received during the Previous Year without consideration, by an Individual or a HUF from any person(s) on or after 1.4.2007, then the **whole of the aggregate of such sum** will be taxable.

3. **Exceptions:**
   (a) Gifts received from the following persons not taxable -
      - From a relative, or
      - On the occasion of the marriage of the individual, or
      - Under a will or by way of inheritance, or
      - In contemplation of death of the payer, or
      - From any Local Authority, or
      - From any Fund/Foundation/University/Educational Institution or Hospital or other Medical Institution or Trust or Institution referred u/s 10(23C), or
      - From any Trust / Institution registered u/s 12AA, or
      - By an HUF from its member.
   (b) Gifts received in kind not taxable.
4. **Relative means:**
   (a) Spouse of the individual,
   (b) Brother or sister of the individual,
   (c) Brother or sister of the spouse of the individual,
   (d) Brother or sister of either of the parents of the individual,
   (e) Any lineal ascendant or descendant of the individual,
   (f) Any lineal ascendant or descendant of the spouse of the individual,
   (g) Spouse of the person referred to in clauses (b) to (f) above.

Illustration 5 : B an individual, gets ₹ 70,000 as a birthday gift from his Grandfather. Is the receipt taxable under the Income Tax Act?

Solution : B has received the gift from his grandfather. Grandfather is a relative. Hence, the receipt is not taxable.

Illustration 6 : Discuss the taxability or otherwise of the following gifts received by H, an individual, during the Financial Year 2015-16:

(a) ₹ 25,000 each from his four friends on the occasion of his birthday.

(b) Wrist watch valued at ₹ 40,000 from his friend.

Solution :

(a) ₹ 1,00,000 (i.e. ₹ 25,000 × 4) from his four friends on the occasion of his birthday, is taxable as Income from Other Sources, since friends are not relatives and the amount has exceeded ₹ 50,000.

(b) Gift in kind is not taxable. Hence, wrist watch of ₹ 40,000 received as a gift from friend is not taxable.

Illustration 7 : Fiona received the following gifts during the year ending 31.03.2016:

(a) ₹ 40,000 from her elder sister.

(b) ₹ 60,000 from the daughter of her elder sister.

(c) ₹ 1,25,000 from various friends on the occasion of her marriage,

Discuss the taxability or otherwise of these gifts in the hands of Fiona.

Solution :

(a) ₹ 40,000 received from elder sister, is not taxable, as elder sister is a relative.

(b) ₹ 60,000 received from the daughter of her elder sister, is taxable, as the donor, in this case, is not a relative as per the definition of the Act.

(c) ₹ 1,25,000 is not taxable as it is received on the occasion of her marriage.

Illustration 8 : Discuss the taxability of Family Pension.

Solution :

Family pension means pension received by the family members of the deceased employee.

It is chargeable to tax under the head 'Income from Other Sources'.

Deduction u/s 57: Least of the following is allowed as a deduction -

(a) $33\frac{1}{3}$ % of gross pension

(b) ₹ 15,000

Exemptions :

(a) Family pension received by family members of Army personnel who are recipient of gallantry awards [Section 10(18)].

(b) Family pension received by the widow or children or nominated heirs of a member of the armed forces (including para-military forces) whose death has occurred in the course of operational duties [Section 10(19)].

Illustration 9 : V. G. had placed a deposit of ₹ 10 Lakhs in a bank on which he received interest of ₹ 80,000. He had also borrowed ₹ 5 Lakhs from the same bank on the security of the deposit and was liable to pay ₹ 50,000 by way of interest to the bank. He therefore offered the difference between two amounts of ₹ 30,000 as Income from Other Sources. Is this correct?

Solution :

(a) U/s 57, any expenditure (not being capital expenditure) expended to earn income chargeable under the head "Income from Other Sources" will be allowed as deduction against such income.

(b) Interest on Bank FD was the income in the hands of the assessee and the interest on the loan taken from bank on that deposit is not an allowable expenditure.

Therefore, in the given case, the interest of ₹ 50,000 paid by V.G. is not allowable as deduction, and the entire interest of ₹ 80,000 is fully taxable.

Illustration10 : Shrey purchased in 2004, 10,000 Shares of Hero Ltd. for ₹ 5 Lakhs by borrowing money from a bank. He holds them as 'Investments'. He received dividend during the Previous Year 2015-16. He has paid interest of ₹ 85,000 on the loan to the bank during the Previous Year. Please advise Shrey, how should he deal with these facts in computing his income?

Solution :

(a) In computation of total income under the Income Tax Act, the expenditure incurred in relation to income, which does not form part of Total Income, shall not be allowed as deduction. [Section 14A]

(b) Dividend Income is exempt u/s 10(34) and hence does not form part of Total Income.

Therefore, the interest payment is not an allowable expenditure.

Illustration 11 : Mr. JK gets the following gifts during the Previous Year 2015-2016.

	Date of Gift	Name of the Donor	Amount of Gift (₹)
1.	01.07.2015	Gift from R, a friend, by cheque	50,000
2.	01.09.2015	Cash gift from N, nephew	1,00,000
3.	01.12.2015	Gift of diamond ring on his birthday, by a friend, C	75,000
4.	15.12.2015	Cash gifts of ₹ 31,000 each made by four friends on the occasion of his marriage	1,24,000
5.	21.12.2015	Cash gift made by wife's sister on house opening ceremony	51,000
6.	15.01.2016	Cash gift from a close friend of father-in-law.	1,51,000
7.	31.01.2016	Cash gift made by great-grandfather	1,51,000
8.	01.02.2016	Cash gift received under the Will of a friend, who is seriously ill.	1,65,000
9.	15.02.2016	Cash gift made by a business friend on his birthday	51,000
10.	31.03.2016	Cash gifts made by three friends of ₹ 25,000 each	75,000

Besides this, JK is engaged in the business of sale and purchase of retail goods.

He maintains no account books. Gross turnover from retail trading is ₹ 35,00,000.

Compute his total income for the Assessment Year 2016-2017.

Solution : Computation of Taxable Income for the AY 2016-2017

Particulars		Amount (₹)
1.	Income from retail trading business [Sec. 44 AD] 8% ₹ 35,00,000	2,80,000
2.	Income from Other Sources (money gifts):	
(i)	Cash gift from a friend, by cheque	50,000
(ii)	Cash gift from nephew, not covered by the definition of relative	1,00,000
(iii)	Gift of diamond ring — Jewellery gift taxable	75,000
(iv)	Cash gifts on the occasion of marriage are not chargeable even if such gifts are made by unrelated persons	—
(v)	Cash gift made by wife's sister, a relative, not taxable	—
(vi)	Cash gift by a friend of father-in-law, unrelated person	1,51,000
(vii)	Cash gift made by great-grand father, a relative	—
(viii)	Cash gift received under Will in contemplation of death of a friend	—
(ix)	Cash gift made by a business friend on his birthday	51,000
(x)	Cash gifts, made by three friends, of ₹ 25,000 each	75,000
Total Income		**7,82,000**

Illustration 12 : Mr Ayan Goel receives the following gifts of money:

S.No.	Date of Gift	Donor	Form of Gift	Amount of Gifts	Remarks
1.	31.03.2015	Friend	Cheque	25,000	Cheque is encashed on 03.04.2016
2.	01.05.2015	Brother	Bank draft	50,000	
3.	30.07.2015	Non-resident friend	Cheque	30,000	
4.	01.10.2015	Brother-in-law	Cash	10,000	
5.	15.11.2015	Great-grandfather-in-law	Cash	40,000	
6.	05.12.2015	Cousin brother	Cash	21,000	On the occasion of the marriage
7.	01.01.2016	Neighbour	NSC-VIII Issue	10,000	Maturity date 31.03.2016
8.	31.03.2016	Friend	Cash	10,000	

Determine the chargeability of the aforesaid gifts. Would it make any difference if the amount of gift made on 31.03.2016 is ₹ 10,001?

Solution : Computation of Taxable Gifts for the AY 2016-2017.

	Particulars	Case – I ₹	Case – II ₹
1.	Gift of cheque dated 31.03.2015 from a friend but encashed on 03.04.2015 is not taxable since it does not exceed ₹ 50,000. Chargeability is governed by the date of receipt and not by date of encashment.	—	—
2.	Gift from brother is exempt	—	—
3.	Gift from friend	30,000	30,000
4.	Gift from brother-in-law—Exempt	—	—
5.	Gift from great grandfather-in-law — Exempt	—	—
6.	Gift on the occasion of the marriage	—	—
7.	Gift from neighbour	10,000	10,000
8.	Gift from friend	10,000	10,001
	Total	50,000	50,001
	Taxable Gift	Exempt	50,001

Study Note - 9

CLUBBING OF INCOME

This Study Note includes

9.1 Clubbing of Income

9.1 CLUBBING OF INCOME

Certain provisions are included in the act as anti tax avoidance measures. Provisions for inclusion in assessee's income, income of some other person, which is not at arm's length, are a kind of such provisions. Such provisions arrest tax leakage likely to result from certain transactions with relatives or diversion of title without losing control over the same, etc.

ENCOMPASS OF CLUBBING PROVISIONS

1	Clubbing of income where control over assets or income is retained while title is transferred	Sections 60, 61, 64(1)(iv),(vi),(vii),(viii)
2	Clubbing of income of relatives under certain circumstances.	Sections 64(ii)
3	Clubbing of income of minor child	Section 64(1A)

TRANSFER OF ASSETS [Sec. 60]

Where any person transfers income without transferring the ownership of the asset, such income is taxable in the hands of the transferor. Such transfer may be revocable or irrevocable. The provision applies irrespective of the time when the transfer has been made i.e. it may be before or after the commencement of the Income-tax Act.

REVOCABLE TRANSFER OF ASSETS [Sec. 61]

Any income arising to any person by virtue of revocable transfer of assets is chargeable to tax as the income of transferor. For this purpose, transfer may include any settlement or agreement.

The transfer is said to be revocable if it contains any provision for the re-transfer of the whole or any part of the income or assets to the transferor or a right to re-assume power over the whole or any part of the income or assets.

If any settlement contains a clause for forfeiture of rights of beneficiaries under certain circumstances, the settlement will be regarded as revocable – CIT *vs.* Bhubaneshwar Kuer 53 ITR 195 (SC).

IRREVOCABLE TRANSFER OF ASSETS FOR SPECIFIED PERIOD [Sec. 62]

(1) The provisions of Section 61 shall not apply to any income arising to any person by virtue of a transfer—

(i) by way of trust which is not revocable during the lifetime of the beneficiary, and, in the case of any other transfer, which is not revocable during the lifetime of the transferee ; or

(ii) made before the 1st day of April, 1961, which is not revocable for a period exceeding six years.

Provided that the transferor derives no direct or indirect benefit from such income in either case.

(2) Notwithstanding anything contained in Sub-section (1), all income arising to any person by virtue of any such transfer shall be chargeable to Income-tax as the income of the transferor as and when the power to revoke the transfer arises, and shall then be included in his total income.

TRANSFER AND REVOCABLE TRANSFER DEFINED UNDER SECTION 63

For the purposes of sections 60, 61 and 62 and of this section,—

(a) A transfer shall be deemed to be revocable if—
  (i) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or
  (ii) it, in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets ;

(b) "Transfer" includes any settlement, trust, covenant, agreement or arrangement.

REMUNERATION OF SPOUSE [Sec. 64(1)(ii)]

An individual assessee is chargeable to tax in respect of any remuneration received by the spouse from a concern in which the individual has substantial interest. However, remuneration, which is solely attributable to technical or professional knowledge and experience of the spouse, will not be clubbed. Where both the spouses have a substantial interest in the concern and both are in receipt of the remuneration for such concern, such remuneration will be included in the total income of the husband or wife whose total income excluding such remuneration is greater.

The individual is deemed to have substantial interest, if the beneficiary holds equity share carrying not less than 20% voting power in the case of a company or is entitled to not less than 20% of the profits, in any other concern, not being a company at any time during the Previous Year.

INCOME FROM ASSETS TO SPOUSE [Sec. 64(1)(iv)]

Where an asset (other than house property) is transferred by an individual to his or her spouse directly or indirectly otherwise than for adequate consideration or in connection with an agreement to live apart any income from such asset will be deemed to be the income of transferor.

However, this section is not applicable in the following cases—

(a) if assets are transferred before marriage.

(b) if assets are transferred for adequate consideration.

(c) if assets are transferred in connection with an agreement to live apart.

(d) if on the date of accrual of income, the transferee is not spouse of the transferor.

(e) if property is transferred by the Karta of HUF, gifting co-parcenary property to his wife.

(f) the property is acquired by the spouse out of the pin money (i.e., an allowance given to the wife by her husband for her dress and usual household expenses).

INCOME FROM ASSETS TRANSFERRED TO SON'S WIFE OR MINOR CHILD [Sec. 64(1)(vi)]

If an individual directly or indirectly transfers the assets after 1.6.73 without adequate consideration to son's wife or son's minor child (including son's minor step child or son's minor adopted child), income arising from such assets will be included in the total income of the transferor from the Assessment Year 1976-77 onwards.

INCOME FROM ASSETS TRANSFERRED TO A PERSON FOR THE BENEFIT OF SPOUSE OR MINOR CHILD [Sec. 64(1)(vii)]

Where an asset is transferred by individual, directly or indirectly, without adequate consideration to a person or persons for the immediate or deferred benefits of his or her spouse or minor child, income arising from the transferred assets will be included in the total income of the transferor to the extent of such benefit. If no income is accrued out of the property transferred by an individual, then nothing will be included in the income of the individual.

INCOME FROM ASSET TRANSFERRED TO A PERSON FOR THE BENEFIT OF SON'S WIFE [Sec. 64 (1)(viii)]

Where an asset is transferred by an individual, directly or indirectly, or after 1.6.73 without adequate consideration to a person or an Association of Persons for the immediate or deferred benefits of son's wife, income arising directly or indirectly from transferred asset will be included in the total income of the transferor to the extent of such benefit with effect from the Assessment Year 1985-86.

INCOME OF MINOR CHILD [Sec. 64(1A)]

In computing the total income of any individual, there shall be included all such income as arises or accrues to his minor child. However, income of the following types will not be included in the total income of the individual where income arises or accrues to the minor child on account of any—

(a) manual work done by him; or

(b) activity involving application of his skill, talent or specialised knowledge and experience.

Person in whose hands to be clubbed :

(i) 1st year : that parent whose income is higher. Subsequent years : the same parent – unless the AO is satisfied that it should be clubbed with the other parent.

(ii) Where marriage does not subsist, in the hands of the custodian parent.

However, a deduction — Upto ₹ 1,500 per minor child [Sec. 10(32)] shall be allowed against such income which is clubbed in the hands of the parent.

CONVERSION OF SELF-ACQUIRED PROPERTY INTO JOINT FAMILY AND SUBSEQUENT PARTITION [Sec. 64(2)]

Where a member of a HUF has converted his self-acquired property into joint family property after 21.12.1969, income arising from the converted property will be dealt with as follows :-

(i) For the Assessment Year 1976-77 onwards, the entire income from the converted property is taxable as the income of the transferor.

(ii) If the converted property is subsequently partitioned amongst the members of the family, the income derived from such converted property, as is receivable by the spouse and minor child of the transferor will be taxable in his hands.

INCOME FROM THE ACCRETION TO ASSETS

In the above mentioned cases the income arising to the transferee from the property transferred, is taxable in the hands of the transferor. However, income arising to the transferee from the accretion of such property or from the accumulated income of such property is not includible in the total income of the transferor. Thus, if Mr. A transfers ₹ 60,000 to his wife without any adequate consideration and Mrs. A deposits the money in a bank, the interest received from the bank on such deposits is taxable in the hands of Mr. A. If, however, Mrs. A purchases shares in a company from the accumulated interest, the dividend received by Mrs. A, will be taxable in her hands and will not be clubbed with the income of Mr. A.

CLUBBING OF NEGATIVE INCOME [EXPLANATION TO Sec. 64]

The income of a specified person is liable to be included in the total income of the individual in the circumstances mentioned earlier. For the purposes of including income of the specified person in the income of the individual, the word "income" includes a loss.

RECOVERY OF TAX u/s. 60 TO 64 [Sec. 65]

As per incomes belonging to Sec.s 60 to 64 to other persons are included in the total income of the assessee in such cases, by virtue of sec. 65, the actual recipient of income is liable, on the service of notice of demand, to pay the tax assessed in respect of income included in the income of other person (where the Income Tax Officer so desires).

ILLUSTRATIONS ON CLUBBING OF INCOME

Illustration 1: Mrs.G holds 7% equity shares in B Ltd., where her married sister, Mrs. N also holds 14% equity shares. Mr.G is employed with B Ltd., without holding technical professional qualification. The particulars of their income for the Previous Year 2015-2016 are given as follows:

		Income of Mr G ₹	Income of Mrs G ₹
(i)	Gross Salary from B Ltd.	1,02,000	—
(ii)	Dividend from B Ltd.	—	6,000
(iii)	Income from House Property	90,000	—

Solution : Computation of Total Income of Mr. G & Mrs. G for the A.Y. 2016-2017

Particulars	**Mr. G ₹**	**Mrs. G ₹**
Gross Salary	1,02,000	
Taxable Salary to be included in the total income of Mrs G	—	1,02,000
[Sec. 64(1)(ii)]		
Add: Income from House Property	90,000	
Add: Income from Other Sources : Dividends to Mrs G, but exempt under Sec. 10(34)	—	—
		Nil
Total Income	90,000	1,02,000

Note:

1. In the instant case, Mrs. G along with his sister, holds substantial interest in B Ltd. and Mr. G does not hold professional qualification. Accordingly, remuneration of Mr.G has been included in the total income of Mrs. G.
2. If the requisite conditions of clubbing are satisfied, clubbing provision will apply even if their application results into lower incidence of tax.

Illustration 2: Mrs. C, a law graduate, is legal advisor of L Ltd. She gets salary of ₹ 1,80,000. Mr. C is holding 20% shares in L Ltd. His income from business, during the Previous Year 2015-2016 is ₹ 4,00,000. Compute their Total Income.

Solution :

Computation of Total Income of Mr. C & Mrs. C for the A.Y. 2016-2017

Particulars	**Mr. C ₹**	**Mrs. C ₹**
1. Gross salary	—	1,80,000
2. Business profits	4,00,000	—
Total Income	4,00,000	1,80,000

Note: Since Mrs. C holds professional qualification, salary income is assessable in her hands.

Illustration 3: Mr. B holds 5% shares in A Ltd., where his brother and nephew hold 11% and 6% shares, respectively. Mrs. B gets commission of ₹ 1,00,000 from A Ltd. for canvassing orders. She holds no technical/professional qualification. Mr. B earns income of ₹ 5,00,000 from sugar business.

Compute their Total Income for the Assessment Year 2016-17.

Solution :

Computation of Total Income for the AY 2016-17

Particulars of income	Mr. B ₹	Mrs. B ₹
Income from sugar business	5,00,000	—
Commission for canvassing orders from A Ltd.	—	1,00,000
Total Income	5,00,000	1,00,000

Note: In the instant case, Mr. B holds 5% and his brother holds only 11% shares in A Ltd. The total of their shareholding is less than 20%. They have no substantial interest.

Therefore, commission income is assessable as income of Mrs. B.

Illustratio 4: The shareholding of Mr. K and Mrs. K in S Ltd, is given as follows:

(i) Shareholding of K 7%

(ii) Shareholding of Mrs. K 9%

(iii) Shareholding of M, brother of K 8%

(iv) Shareholding of F, father of Mrs. K 5%

Mr. K and Mrs. K are employed with S Ltd. None of them hold technical qualification. Mr. K gets salary @ ₹ 10,000 p.m and Mrs. K gets @ ₹ 12,000 p.m.

Income from Other Sources:	₹
Mr. K	80,000
Mrs. K	1,00,000

Compute total income for the Assessment Year 2016-2017

Solution :

Computation of Total Income for the A.Y. 2016-17

Particulars	Mr. K (₹)	Mrs. K ₹ (₹)
1. Gross Salary	1,20,000	1,44,000
Salary income of Mr. K to be included in the total income of Mrs. K as her Income from Other Sources is greater and both of them have substantial interest along with their relative in S Ltd.		1,20,000
2. Income from Other Sources	80,000	1,00,000
Total Income	**80,000**	**3,64,000**

Illustration 5: Mr. A gifts ₹ 4,00,000 to Mrs. A on 1st February 2016. Mrs. A starts crockery business and invests ₹ 1,00,000 from her account also. She earns profit of ₹ 60,000 during the period ending on 31 March 2016. How would you tax the business profits?

Solution :

Proportionate profits, in proportion to the gifted amount from the spouse on the first day of the Previous Year bears to the total investment in the business on the first day of the Previous Year, will be taxable in the income of the transferor spouse.

As Mrs. A has started the new business, the first Previous Year will begin on the date of setting up and will end on 31st March, immediately following. Thus, the first Previous Year will consist a period of 2 months from 1st February 2016 to 31st March, 2016. Therefore, proportionate profit of ₹ 48,000, computed as below, will be included in the income of Mr. A:

$$\frac{4,00,000}{5,00,000} \times 60,000 = 48,000$$

Illustration 6: Mr. A gifts ₹ 3,00,000 to Mrs. A on 1st February 2015. Mrs. A invests the same in the existing crockery business where she has already invested ₹ 5,00,000. Mrs. A earns ₹ 3,00,000 from the business during the year 2015-2016 ending on 31st March, 2016. How would you assess the profits?

Solution :

The Previous Year of the existing business is April to March. On the first day of the Previous Year (i.e. 1st April 2015), total investment has come from Mrs. A account. As the proportion of the gifted amount from spouse on 1st April 2015 to the total investment in business on the same day is **NIL**, the whole of the profits of ₹ 3,00,000 for the year 2015-2016 will be included in the total income of Mrs A.

From the Previous Year 2016-2017, 60% [3,00,000/5,00,000 × 100] of the business profits will be included in the total income of Mr. A.

Illustration 7: Mrs. Z is the owner of the business units A and B. A unit has been started with capital contribution from Mr. Z and B unit has been started out of capital contribution from Mrs. Z. The particulars of their income for the Previous Year 2015-2016 are as follows:

	Particulars	**Mrs. Z**	**Mr. Z**
(i)	Income from A unit	—	(–) 6,00,000
(ii)	Income from B unit	4,00,000	—
(iii)	Income from House Property	—	2,50,000

How would you assess them for the Assessment Year 2016-2017?

Solution :

(a) Mrs. Z is assessable on the profits from B unit. She cannot set-off the loss from A unit against the profits of B unit. Thus, she would be assessed on ₹ 4,00,000.

(b) The loss from A unit will be included in the total income of Mr Z in view of Sec. 64(1)(iv). "Income" includes "loss" also. Mr Z is entitled to set-off business loss of A's unit against Income from House Property. Thus, loss of ₹ 3,50,000 would be carried forward but could be set-off only against business profits.

Illustration 8: Mr. Goutam, out of his own funds, had taken a FDR for ₹ 1,00,000 bearing interest @ 10% p.a. payable half-yearly in the name of his wife Latika. The interest earned for the year 2015-2016 of ₹ 10,000, was invested by Mrs. Latika in the business of packed spices which resulted in a net profit of ₹ 55,000 for the year ended 31st March, 2016. How shall the interest on FDR and income from business be taxed for the Assessment Year 2016-2017?

Solution :

Where an individual transfers an asset (excluding house property), directly or indirectly to his/her spouse, otherwise than for adequate consideration, or in connection with an agreement to live apart, income from such asset is included in the total income of such individual [Sec. 64(1)(iv)].

Accordingly, interest on FDR, accruing to wife, is included in the total income of her husband. However, business profits cannot be clubbed with total income of husband. Clubbing applies only to the income from assets transferred without adequate consideration. It does not apply to the income from accretion of the transferred assets. Hence, business profit is taxable as the income of wife.

Illustratio 9: Sawant is a fashion designer having lucrative business. His wife is a model. Sawant pays her a monthly salary of ₹ 20,000. The Assessing Officer, while admitting that the salary is an admissible deduction, in computing the total income of Sawant, had applied the provisions of Sec. 64(1) and had clubbed the income (salary) of his wife in Sawant's hands.

Discuss the correctness of the action of the Assessing Officer.

Solution :

Where an individual has got substantial interest in a concern and his spouse derives any income from such concern by way of salary, commission, fees or by any other mode, such income is clubbed with the total income of such individual [Sec. 64(1)(ii)].

However, clubbing provision does not apply if the earning spouse holds technical or professional qualification and the income is solely attributable to the application of such knowledge and experience.

Salary earned by wife as model from the concern where her husband holds substantial interest is assessable as her income.

Illustration 10: Discuss whether the loss could be set-off in the following case:

Smt. Vatika carried on business with the gifted funds of her husband Mr. Dabbu. For the Previous Year ending 31.3.2016, Vatika incurred loss of ₹ 5 lakh which Dabbu wants to set-off from his taxable income.

Solution :

Funds for business were gifted by husband to wife. Accordingly, income from business should be clubbed with the income of husband [Sec. 64(1)(iv)].

"Income" includes "loss" also. Hence, husband is entitled to set-off the business loss of wife against his taxable income.

Study Note - 10

SET OFF OR CARRY FORWARD AND SET OFF OF LOSSES

This Study Note includes

10.1 INTRODUCTION

If income is one side of the coin, loss is the other side. When a person earns income, he pays tax. However, when he sustains loss, law affords him to have benefit in the form of reducing the said loss from income earned during the subsequent years. Thus, tax liability is reduced at a later date, if loss is sustained. Certain provisions govern the process of carry forward and set off of loss.

This will be discussed on :

1. Set off of Loss in the Same Year
2. Carry forward and Set off of Loss in Subsequent Years
   - i) Basic Conditions for carry forward of loss.
   - ii) Conditions applicable to each Head of Income

As stated in Section 14 of the Act computation of total income is made under certain heads viz. (i) Salaries (ii) Income from House Property (iii) Profits and Gains of Business or Profession (iv) Capital Gains and (v) Income from Other Sources.

In case computation results in to a positive figure, it is "Income." Likewise, if the computation results into a negative figure, it is 'Loss". Therefore, there cannot be loss from the head 'Salary'. Loss can occur from all the remaining heads.

10.2 SET-OFF OF LOSS IN THE SAME YEAR

For the purpose of computing total income and charging tax thereon, income from various sources is classified under the following heads :

A. Salaries

B. House Property

C. Profits and Gains of Business or Profession

D. Capital Gains

E. Other Sources

These five heads of income are mutually exclusive. If any income falls under one head, it cannot be considered under any other head. Income under each head has to be computed as per provisions under that head. Then, subject to provisions of Set off of Losses (Sec. 70 to Sec. 80) between the heads of income, the income under various heads has to be added to arrive at a Gross Total Income. From this Gross Total Income, deductions under Chapter VIA are to be allowed to arrive at the total income.

In this part, the provisions relating to set off, carry forward and set off of losses are categorised as under:

Set off of losses within the same head [Section 70]

Where the net result for any Assessment Year in respect of any source falling under any head of income is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head of income for the Assessment Year.

(1) Where the result of the computation made for any Assessment Year under sections 48 to 55 in respect of any short-term capital asset is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the Assessment Year in respect of any other capital asset.

(2) Where the result of the computation made for any Assessment Year under sections 48 to 55 in respect of any capital asset (other than a short-term capital asset) is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the Assessment Year in respect of any other capital asset not being a short-term capital asset.

(3) Where result of the computation made for the Assessment Year in respect of speculative business is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived under a similar computation made for the Assessment Year in respect of speculative business only.

(4) Where result of the computation made for the Assessment Year in respect of a specified business as per Section 35AD is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived under a similar computation made for the Assessment Year in respect of other specified business covered by Section 35AD.

(5) Where any loss made in the business of owning and maintaining race horses, the assessee shall not be entitled to have the amount of such loss set off against any income except income from the business of owning and maintaining race horses.

Set off of losses among different head of income [Section 71]

Where the net result of the computation under any head of income in respect of any Assessment Year is a loss, the assessee shall be entitled to have such amount of loss set off against his income assessable for that Assessment Year under any other head of income.

Exceptions to provisions of Sections 70 and 71 are as follows:

(a) **Loss from Speculation Business**: "Speculation transaction" means a transaction in which a contract for the purchase or sale of any commodity including stocks and shares is periodically or ultimately settled otherwise than by actual delivery or transfer of the commodity or scripts [Sec. 43(5)]. Loss from speculative transaction, if it is in the nature of business, can be set off only against income of another speculative business.

(b) **Loss under the head Long Term Capital Gains:** Long Term Capital Loss arising from transfer of long-term capital assets will be allowed to be set off only against Long Term Capital Gains.

Note:

1. Loss can be set off against deemed income.
2. Inter head adjustment is made only when the net income computed under a head is a loss.
3. The scheme of inter source and inter head adjustment is mandatory.

(c) **Loss from owning and maintaining race horses:** Loss from owing and maintaining race horses can be set off only against income of that activity.

(d) **Loss from lottery, card games, races, etc:** No expenditure or allowance is allowed from wining from lotteries, crossword puzzles, card games etc. similarly, no loss from any lottery, card games, races, etc. is allowed to be set off from the income of such sources. [Sec. 58(4)]

(e) **Loss from exempt Income:** Loss incurred by an assessee from a source, income from which is exempt cannot be set off against income from a taxable source.

(f) **Loss from business specified in Section 35AD**: Any loss arising from specified business u/s 35AD, cannot be set off against any other income.

(g) **Loss from business**: Loss from business and profession including unabsorbed depreciation cannot be set off against Income from Salary.

10.3 CARRY FORWARD AND SET-OFF OF LOSS IN SUBSEQUENT YEARS

Basic conditions for carry forward of loss

Section 80: loss returns

In order to carry forward loss under section 72, 73, 74 and 74A, return of income to be submitted within the due date as prescribed in Section 139(1). No loss which has not been determined in pursuance of a return filed within the date in accordance with the provisions of Section 139(3) shall be carried forward under the provisions of section.

The condition for filing of return in accordance with the provisions of Sec. 139(3) shall not apply to loss from House Property carried forward u/s. 71B and unabsorbed depreciation u/s. 32(2).

Brought forward loss of earlier Assessment Year in accordance with Sec.s 72, 73, 74, 74A can be set off against the income of that Assessment Year and can be carried forward further, even if the return is not filed within the due date specified in Section 139(1) of the Act.

CBDT has issued Circular vide No. 8 of 2001 dated 16.5.2001 clarifying that the power has been delegated to Commissioner to condone delay in filing return and carry forward losses in cases where the claim for loss does not exceed ₹ 10,000 for each Assessment Year and to Chief Commissioner/ Director General upto ₹ 1 lakh and beyond such limit CBDT will exercise the power.

Conditions applicable to each head

Sec. 71B: Carry forward and set off of loss from House Property

Where for any Assessment Year the net result of computation under the head "Income from House Property" is a loss to the assessee and such loss cannot be or is not wholly set off against income from any other head of income in accordance with the provisions of Section 71 so much of the loss as has not been so set-off or where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following Assessment Year and—

(i) be set off against the income from House Property assessable for that Assessment Year; and

(ii) the loss, if any, which has not been set off wholly, the amount of loss not so set off, shall be carried forward to the following Assessment Year, not being more than eight Assessment Years immediately succeeding the Assessment Year for which the loss was first computed.

Sec 72A: Carry forward and set off of accumulated loss in Scheme of Amalgamation or Demerger or Business Re- organization.

Where there has been an amalgamation of -

(a) a company owning an industrial undertaking or a ship or a hotel with another company; or

(b) a banking company referred to in Clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949) with a specified bank; or

(c) one or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business.

Accumulated loss and the unabsorbed depreciation of such company shall be deemed to be the loss of such amalgamated company for the Previous Year in which the Scheme of Amalgamation was brought into force if the following conditions are satisfied:

1. The amalgamating company should have been engaged in the business for three years or more.
2. The amalgamating company should have continuously held at least three-fourths of the book value of fixed assets for at least two years prior to the date of amalgamation.
3. The amalgamated company will hold continuously for a period of five years at least three-fourths of the book value of the fixed assets of the amalgamated company acquired on amalgamation.
4. The amalgamated company will continue the business of the amalgamated company for a period of at least 5 years.
5. The amalgamated company, which has acquired an industrial undertaking of the amalgamated company by way of amalgamation, shall achieve the level of production of at least 50% of the installed capacity of the amalgamated industrial undertaking before the end of four years from the date of amalgamation and continue to maintain the minimum level of production till the end of five years from the date of amalgamation [this condition may be relaxed by Central Government on an application made by the amalgamated company].
6. The amalgamated company shall furnish a certificate in Form 62, duly verified by an accountant, to the Assessing Officer.

If any of the aforesaid conditions are not fulfilled, then the amount of brought forward business loss or unabsorbed depreciation so set off in any Previous Year in the hands of the Amalgamated Company will be deemed to be the income chargeable to tax, the hands of that Amalgamated Company, for the year in which such conditions are not fulfilled.

In case of Demerger, the amount of set off of the accumulated loss and unabsorbed depreciation, if any, allowable to the assessee being a resulting company shall be –

(i) the accumulated loss or unabsorbed depreciation of the demerged company if the whole of the amount of such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company; or

(ii) The amount which bears the same proportion to the accumulated loss or unabsorbed depreciation of the demerged company as the assets of the undertakings transferred to the resulting company bears to the assets of the demerged company if such accumulated loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company.

Unabsorbed loss can be carried forward for the unexpired period of out of total 8 years. Conditions specified in Section 72A are applicable to amalgamation only and not to demerger. However, the Central Government may, for the purposes of this section, by notification in the Official Gazette, specify such other conditions as it considers necessary to ensure that the demerger is for genuine business purposes.

In case of Business Re-organisation, set off of the accumulated loss and unabsorbed depreciation, if any, allowable to the assessee being the successor company for a period of 8 years commencing from the Previous Year of such business re-organisation.

Sec 72AA: Provision relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in a scheme of amalgamation of banking company in certain cases

Notwithstanding anything contained in Section 72(2)(1B)(i) to (iii) where there has been an amalgamation of a banking company with any other banking institution under a scheme sanctioned and brought into force by the Central Government under Sec 45(7) of Banking Regulation Act , 1949 the accumulated loss and the unabsorbed depreciation of such banking company shall be deemed to be the loss or, as the case may be, allowance for depreciation of such banking institution for the Previous Year in which the scheme of amalgamation was brought into force and other provision of this Act relating to

set off and carry forward of loss and allowance for depreciation shall apply accordingly. In this case conditions u/s 2(1B) or 72A may or may not be satisfied.

For the purposes of this section :

(i) "Accumulated loss" means so much of the loss of the amalgamating banking company, under the head "Profits and Gains from Business" (not being a loss sustained in a speculation business) which such amalgamating banking company, would have been entitled to carry forward and set off under the provision of Section 72 if the amalgamation had not taken place;

(ii) "Banking company" shall have the same meaning as assigned to it in Sub-section (15) of Section 45(15) of the Banking Regulation Act, 1949.

(iii) "Banking institution" shall have the same meaning as assigned to it in Sub-section (15) of Section 45(15) of the Banking Regulation Act, 1949.

(iv) "Unabsorbed depreciation" means so much of the allowance for depreciation of the amalgamating banking company which remains to be allowed and which would have been allowed to such banking company if amalgamation had not taken place.

Reverse Merger

One may see that Sec. 72A is an exception of the general rule that the benefit of carry forward of loss and unabsorbed depreciation allowance is available to the same person who incurred the loss or suffered depreciation. However, one may also find that Sec. 72D is not available to him as the entity in which the loss is incurred does not qualify as an industrial undertaking or that some of the conditions of Sec. 72D are onerous to fulfil. Therefore, to get over these problems, the concept of reverse merger gained momentum. Under a normal merger, it is a sick industrial undertaking that is wound up and merged with a healthy undertaking. Under a reverse merger, a healthy company is merged with the sick company that has losses and unabsorbed depreciation allowances carried forward. Thus, the profits of the healthy company after amalgamation will be available for set off to the losses and unabsorbed depreciation allowances. The sick company that incurred the losses and suffered depreciation allowance will be the same person as the person who will carry them forward and adjust against the profits. Thus, Sec. 72D will not apply and the purpose of set off of losses and unabsorbed depreciation allowances will still be achieved. Based on facts in given cases the route merger of reverse merger will suit some companies.

Sec. 72AB: Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in Business Re-organisation of Co-operative Banks

(1) The assessee, being a successor co-operative bank, shall, in a case where the amalgamationhas taken place during the Previous Year, be allowed to set off the accumulated loss and the unabsorbed depreciation, if any, of the predecessor co-operative bank as if the amalgamation had not taken place, and all the other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

(2) The provisions of this section shall apply if—

(a) the predecessor co-operative bank—

(i) has been engaged in the business of banking for three or more years; and

(ii) has held at least three-fourths of the book value of fixed assets as on the date of the business re-organisation, continuously for two years prior to the date of business re-organisation;

(b) the successor co-operative bank—

(i) holds at least three-fourths of the book value of fixed assets of the predecessor co-operative bank acquired through business re-organisation, continuously for a minimum period of five years immediately succeeding the date of business re-organisation;

(ii) continues the business of the predecessor co-operative bank for a minimum period of five years from the date of business re-organisation; and

(iii) fulfils such other conditions as may be prescribed to ensure the revival of the business of the predecessor co-operative bank or to ensure that the business re-organisation is for genuine business purpose.

(3) The amount of set-off of the accumulated loss and unabsorbed depreciation, if any, allowable to the assessee being a resulting co-operative bank shall be,—

(i) the accumulated loss or unabsorbed depreciation of the demerged co-operative bank if the whole of the amount of such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting co-operative bank; or

(ii) the amount which bears the same proportion to the accumulated loss or unabsorbed depreciation of the demerged co-operative bank as the assets of the undertaking transferred to the resulting co-operative bank bears to the assets of the demerged co-operative bank if such accumulated loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting co-operative bank.

(4) The Central Government may, for the purposes of this section, by notification in the Official Gazette, specify such other conditions as it considers necessary, other than those prescribed under Sub-clause (*iii*) of Clause (*b*) of Sub-section (2), to ensure that the business re-organisation is for genuine business purposes.

(5) The period commencing from the beginning of the Previous Year and ending on the date immediately preceding the date of business re-organisation, and the period commencing from the date of such business re-organisation and ending with the Previous Year shall be deemed to be two different Previous Years for the purposes of set off and carry forward of loss and allowance for depreciation.

(6) In a case where the conditions specified in Sub-section (2) or notified under Sub-section (4) are not complied with, the set off of accumulated loss or unabsorbed depreciation allowed in any Previous Year to the successor co-operative bank shall be deemed to be the income of the successor co-operative bank chargeable to tax for the year in which the conditions are not complied with.

Section 73A: Set of off loss of the specified business (w.e.f A.Y. 2010-11)

With reference to newly inserted Section 35AD (w.e.f A.Y. 2010-11), any loss computed in respect of the specified business shall not be set off except against profits and gains, if any, of any other specified business. To the extent the loss is unabsorbed the same will be carried forward for set off against profits and gains from any specified business in the following Assessment Year and so on.

Section	Losses
71B	Brought forward loss from House Property
32(2)	Brought forward unabsorbed depreciation
72	Carried forward and set-off of business losses other than speculative business.
73	Losses in speculation business.
73A	Brought forward loss from Specified Business u/s 35AD
74	Losses under the head Capital Gains.
74A	Losses from owning and maintaining race horses.

Sec.	Nature of loss	Details of set off	Conditions / Exceptions
32(2)	Brought forward unabsorbed depreciation	Set off against any head of income	Unabsorbed depreciation loss can be carried forward for any number of years until it is fully set off.
71B	Brought forward loss from House Property	Set off only against income from House Property	Carry forward and set off is permissible for 8 Assessment Years immediately succeeding the Assessment Year for which such loss was computed
72	Brought forward unabsorbed business loss other than Speculation Loss	Set off only against income under the head Profits and Gains of Business or Profession.	1. Carry forward and set off is permissible for 8 Assessment Years immediately succeeding the Assessment Year for which the loss was computed. 2. Loss can be carried forward only if the return is filed u/s 139(1) and it is determined and communicated u/s 157.
73	Brought forward unabsorbed Speculation Business Loss	Set off only against income under Speculation Business	1. Carry forward and set off is permissible for 4 Assessment Years immediately succeeding the Assessment Year for which the loss was computed. 2. Loss can be carried forward only if the return is filed u/s 139(1) and it is determined and communicated u/s 157.
73A	Brought forward unabsorbed loss from Specified Business u/s 35AD	Set off only against income from any other Specified Business only	Carry forward for any number of years until it is fully set off
74	Brought forward unabsorbed loss under the head Capital Gains	Set off only against income under the head Capital Gains	1. Carry forward and set off is permissible for 8 Assessment Years immediately succeeding the Assessment Year for which the loss was computed. 2. STCL can be set off against any Capital Gain. However, LTCL can be set off only against LTCG. 3. Loss can be carried forward only if the return is filed u/s 139(1) and it is determined and communicated u/s 157.
74A	Brought forward unabsorbed loss from activity of owning and maintaining race horses	Set off only against income from owning and maintaining race horses	1. Carry forward and set off is permissible for 4 Assessment Years immediately succeeding the Assessment Year for which the loss was computed. 2. Loss can be carried forward only if the return is filed u/s 139(1) and it is determined and communicated u/s 157.

Special provisions

Section 78(1) :

Where a change has occurred in the constitution of the firm, the firm shall not be entitled to carry forward and set off so much of the loss proportionate to the share of a retired or deceased partner remaining unabsorbed. This restriction shall not apply to unabsorbed depreciation.

Change in constitution of the firm for the purpose of this section takes place –

If one or more of the partners cease to be partners due to retirement or death of anyone or more partners, in such circumstances that one or more of the persons who were partners of the firm before the change, continue as partner or partners after the change (provided the firm is not dissolved on the death of any of its partners).

This section does not cover change in constitution of the firm due to change in the profit sharing ratio or admission of new partners.

Section 78(2) :

Where any person carrying on any Business or Profession has been succeeded in such capacity by another person otherwise than by inheritance, then the successor cannot have the loss of predecessor carried forward and set off against his income.

Section 79 :

Losses (other than unabsorbed depreciation) in case of closely held company:

In case of a company in which public are not substantially interested (defined in Sec. 2(18) of the Act), the unabsorbed business loss relating to any Assessment Year can be carried forward and set off against the income in a subsequent Assessment Year only if the shares of the company carrying not less than 51% of the voting power were beneficially held by the same persons both on the last day of the Previous Year(s) in which the loss claimed to be set off and on the last day of the Previous Year in which loss was incurred.

Exceptions:

The provisions stated supra shall not apply if —

(a) the change in the voting power takes place due to the following reasons :
   (i) the death of a shareholder; or
   (ii) transfer of shares by way of gift to any relative of the shareholder making such gift.

(b) W.e.f. AY 2000-01, this section shall not apply to any change in the shareholding of an Indian company which is subsidiary of a foreign company arising as a result of amalgamation or demerger of a foreign company subject to the condition that 51% of the shareholders of the amalgamating or demerged foreign company continue to remain the shareholders of the amalgamated or the resulting foreign company.

Notes : Unabsorbed business losses can be carried forward and set off against profits from any business from A.Y. 2000-01. There is no need to continue the same business in which the loss was incurred.

For example:

FY	Shareholders and their holding of shares with voting power as at close of each year	Amount of business profit/loss
2013-2014	Ali 11% Bony 19% Cady 30% Dany 40%	Profit ₹ 2,00,000
2014-2015	Ali 5% Bony 29% Cady 30% Dany 36%	Loss ₹ 1,00,000
2015-2016	Adi 5% Sony 19% Rani 26% Dany 50%	Profit ₹ 4,00,000

In this case, the loss of financial year 2014-15 will not be set off against the profit of financial year 2015-16, since the persons, Bony and Cady, or Bony and Dany or Cady and Dany who hold between them as a pair 51% shares as at the end of financial year 2014-15 do not hold 51% shares at the end of financial year 2015-16.

Order of Priority in carry forward and set-off of losses

Depreciation can be carried forward and set off against the profits from any business in the succeeding Assessment Year upto A.Y. 2001-02. The business in which the loss was incurred need not be continued in that year.

The effect of depreciation and business loss should be given in the following order:

- Current year's Depreciation
- Unabsorbed Business loss
- Unabsorbed Depreciation

A return of loss is required to be furnished for determining the carry forward of such losses, by the due date prescribed for different assesses under section 139(1) of the Act. (Sec. 80).

ILLUSTRATIONS ON SET-OFF AND CARRY FORWARD OF LOSSES

Illustration 1. Following are the particulars of the income of Mr. Srikant for the Previous Year 2015-2016

Particulars	₹
1. Income from House Property	
(a) Property R	(+) 12,000
(b) Property J	(-) 20,000
2. Profits and Gains from Business:	
(A) Non-speculation:	
(i) Business X	40,000
(ii) Business Y	(-) 50,000
(B) Speculation:	
(i) Silver	40,000
(ii) Bullion	(-) 10,000
3. Capital Gains:	
(i) Long-term Capital Gains	(+) 30,000
(ii) Short-term Loss	(-) 10,000
4. Income from Other Sources:	
(i) Card games-loss	(-)10,000
(ii) From the activity of owing and maintaining race horses:	
(a) Loss at Mumbai	(-) 50,000
(b) Profit at Kolkata	(+) 40,000
(iii) Dividend from Indian companies	10,000
(iv) Income by letting out plant and machinery	1,11,000
The following losses have been carried forward:	
(i) Long-term Capital Loss from the Assessment Year 2010-2011	18,000
(ii) Loss from silver speculation from the Assessment Year 2012-2013 and which was discontinued in the Assessment Year 2013-2014	25,000

Compute the Gross Total Income for the Assessment Year 2016-2017.

Solution : Computation of Gross Total Income for the Assessment Year 2016-2017

	Particulars	₹	₹
1.	Income from House Property (12,000 - 20,000)		(-) 8,000
2.	Profits from speculation:		
	(i) Profit from Silver Business	40,000	
	Less: Current year loss from bullion	(-) 10,000	
		30,000	
	Less: Carried forward silver speculative loss	(-) 25,000	
	Surplus from Speculation Business	5,000	
	(ii) Add: Business profit from X business	40,000	
	(iii) Less: Business loss from Y business	(-) 50,000	(-) 5,000
3.	Capital Gains:		
	Long-term Capital Gains	30,000	
	Less : Short-term Capital Loss	(-) 10,000	
	Long-term Capital Gain		20,000
4.	Income from Other Sources:		
	(i) Income by letting out plant and machinery		1,11,000
	(ii) Card game-loss	(-)10,000	
	Neither it can be set-off nor it can be carried forward	(+)40,000	
	(iii) Profit from race horses at Kolkata	(-) 50,000	
	Less : Loss from race horses at Mumbai	(-) 10,000	
	Less : to be carried forward for next four Assessment Year		
	(iv) Dividend from Indian companies: Exempt under Sec. 10(34)		Nil
	Aggregated income after setting-off current year losses from house property, profit and business against income from other sources:		1,18,000
	Less : Carried forward Long-term Capital Loss, from the Assessment Year 2010-2011 to be set-off against Long-term Capital Gains		18,000
	Gross Total Income or total income as there is no deduction available from GTI		1,00,000

Unabsorbed business loss may be set-off against the income of any other head except 'salaries' and 'winnings from lottery, card games, crossword puzzle, betting on race horses', etc.

Illustration 2. Mr. Dey furnishes the following particulars of his income for the Previous Year 2015-2016:

Particulars	₹
Unit "A": Business loss	(-) 4,00,000
Unabsorbed depreciation	(-) 2,00,000
Unit "B": Business profit	10,00,000
Income from House Property	2,00,000
Apart from the above mentioned, the following are unabsorbed Carried forward losses and allowance:	
Unit "C" business was discontinued on 31-12-2009:	
1. Business loss	(-) 3,00,000
2. Unabsorbed depreciation	(-) 2,00,000
These are occurred during the Previous Year 2009-2010	
Unit "D" business was discontinued on 1-3-2011:	
1. Business loss	(-) 3,00,000
2. Unabsorbed depreciation	(-) 1,00,000
These are occurred during the Previous Year 2010-2011	

Compute his total income for the Assessment Year 2016-17.

Solution :

Computation of Total Income for the AY 2016-2017

Particulars	₹	₹
Income from House Property		2,00,000
Business - Profession		
Profit of B Business	(+) 10,00,000	
Less: Business loss of A Business	(-) 4,00,000	
Depreciation of A Business	(-) 2,00,000	
	(+) 4,00,000	4,00,000
Aggregated Income		6,00,000
Less: Carried forward business loss:		
(i) Loss of C Business to be set-off against business profits	(-) 3,00,000	
(ii) Loss of D Business	(-) 3,00,000	(-) 6,00,000
Total Income		Nil

Note : Where business loss and depreciation both are being carried forward, business loss has got priority, over depreciation. Unabsorbed depreciation is carried forward without time-limit.

Illustration 3. XYZ & Co., a partnership firm, submits the following particulars of its income and carry forward losses for the Previous Year 2015-2016:

Particulars	**Betting on race horses made lawfully (₹)**	**Betting on race horses made illegally (₹)**
1. Gross prize on race horses	15,00,000	5,00,000
2. Expenses incurred:		
(i) Horses purchased during the year	6,00,000	75,000
(ii) Medical expenses	1,00,000	20,000
(iii) Animal trainer fees	50,000	15,000
(iv) Fodder expenses	2,60,000	50,000
(v) Stable-rent/insurance	1,20,000	36,000
(vi) Depreciation in the value of horses	4,60,000	1,50,000
(vii) Staff salaries	1,00,000	40,000
3. Loses brought forward from the Assessment Year 2012-2013	6,00,000	2,00,000

Solution :

Computation of Total Income for the Assessment Year 2016-17

Particulars	**Betting on race horses made lawfully (₹)**	**Betting on race horses made illegally (₹)**
Gross prize	15,00,000	5,00,000
Less: Expenses incurred :		
(i) Horses purchased—not allowed	—	—
(ii) Medical expenses	(-) 1,00,000	(-) 20,000
(iii) Animal trainer fees	(-) 50,000	(-) 15,000
(iv) Fodder expense	(-) 2,60,000	(-) 50,000
(v) Stable rent/insurance	(-) 1,20,000	(-) 36,000
(vi) Staff salaries	(-) 1,00,000	(-) 40,000
(vii) Depreciation in the value of horses—not allowed	—	—
	8,70,000	**3,39,000**
Less: Brought forward loss	6,00,000	Nil
Total Income of the firm = ₹ 6,09,000	**2,70,000**	**3,39,000**

Note:

"Horse race" means a horse race upon which wagering or betting may be lawfully made [Explanation (b) to Sec. 74A]. Thus, where wagering or betting is not lawfully made on race horses, any loss incurred on such betting can neither be set off nor carried forward. Hence, the carried forward loss of ₹ 2,00,000 cannot be set-off.

Illustration 4. Mr. N discloses the following incomes for the Previous Year 2015-2016:

House Property	Business or Profession		Capital Gains		Income from Other Sources
₹	Speculation ₹	Non-speculation ₹	STCG ₹	LTCG ₹	
A 50,000	P 3,00,000	X 5,00,000	C 6,00,000	F 7,00,000	Family pension 95,000
B (-) 40,000	S (-)2,00,000	Y (-) 3,00,000	D (-) 3,00,000	E (-)5,00,000	Loss (-) 50,000 letting out from machinery/plant

Determine income under head of income for the A. Y. 2016-2017

Solution : Aggregation of income under each head of income: A. Y. 2016-2017

House Property	Business or Profession		Capital Gains		Income from Other Sources
₹	Speculation ₹	Non-speculation ₹	STCG ₹	LTCG ₹	₹
A 50,000	P 3,00,000	X 5,00,000	C 6,00,000	F 7,00,000	Family pension 95,000
B (-)40,000	S (-)2,00,000	Y (-)3,00,000	D (-)3,00,000	E (-)5,00,000	Loss (-) 50,000 letting out machinery/ plant
10,000	1,00,000	2,00,000	3,00,000	2,00,000	45,000

Illustration 5. A discloses the following incomes from business or profession for the Previous Year 2015-2016:

		₹
(i)	Profit from X business	6,00,000
(ii)	Loss from Y business	(-) 2,00,000
(iii)	Loss from profession Z	(-) 2,50,000
(iv)	Profit from speculation business – M	2,00,000
(v)	Loss from speculation business – N	(-) 3,00,000

Determine the Income from Business or Profession for the Assessment Year 2016-2017

Solution : Income from Business or Profession for the AY 2016-2017

Particulars	₹
(i) X	6,00,000
(ii) Y	(-) 2,00,000
(iii) Z	(-) 2,50,000
Total Income from Non Speculation Business and Profession	1,50,000
Income from Speculation Business	
(i) M	2,00,000
(ii) N	(-)3 ,00,000
Loss from Speculation Business	(-) 1,00,000

Speculation loss cannot be set-off against the income from business profit, though both of them fall under the same head of income.

Thus, taxable business profits for the Assessment Year 2016-2017 is ₹ 1,50,000. The speculation loss will be carried forward for future set-off for 4 Assessment Years, immediately succeeding the Assessment Year for which it was first computed [Sec. 73(4)].

The time-limit of 4 years is applicable from the Assessment Year 2017-2018 and subsequent year.

Illustration 6. D has earned income of ₹ 5,60,000 from speculation business during the PY 2015-2016. However, he has suffered losses in business and profession ₹ 3,20,000 and ₹ 1,70,000, respectively during the same period. Determine his income from business profession for the Assessment Year 2016-2017.

Solution : Income from Business and Profession for the AY 2016-2017 :

Particulars	₹
Profits from Speculation Business	5,60,000
Less: (i) Loss from Non Speculation Business	(-) 3,20,000
(ii) Loss from Profession	(-) 1,70,000
Income from Business and Profession	70,000

Illustration 7. Mr. Samir submits the following information for the A.Y. 2016-17.

Particulars	₹
Taxable Income from Salary	1,64,000
Income from House property :	
House 1 Income	37,000
House 2 loss	(53,000)
Textile Business (discontinued on 10.10.2015)	(20,000)
Brought forward loss of textile business - A.Y. 2012-13	(80,000)
Chemical Business (discontinued on 15.3.2015)	
– b/f loss of Previous Year 2012-13	(25,000)
– unabsorbed depreciation of Previous Year 2012-13	(15,000)
– Bad debts earlier deducted recovered in July '2015	40,000
Leather Business	62,000
Interest on securities held as stock in trade	10,000

Determine the Gross Total Income for the Assessment Year 2016-17 and also compute the amount of loss that can be carried forward to the subsequent years.

Solution :

Computation of Gross Total Income A.Y. 2016-17

Particulars			₹	₹
I.	Income from Salary			1,64,000
II.	Income from House property :			
	House 1 Income		37,000	
	House 2 Loss		(53,000)	(16,000)
III.	Profits and Gains of Business or Profession :			
	(i) Textile business loss		(20,000)	
	(iii) Chemical business – Bad debts recovered taxable u/s 41(4)	40,000		
	Less : (i) Set off of brought forward loss of P.Y. 2012-13 u/s. 72	(25,000)	15,000	
			(5,000)	
	(iii) Leather Business Income	62,000		
	(iv) Interest on securities held as stock-in-trade	10,000	72,000	
			67,000	
	Less: B/f business loss ₹ 80,000 restricted to		67,000	Nil
	Gross Total Income			**1,48,000**

Notes :

1. The unabsorbed loss of ₹ 13,000 (80,000-67,000) of Textile business can be carried forward to A.Y. 2017-18 for set-off u/s. 72, even though the business is discontinued.
2. The unabsorbed depreciation of ₹ 15,000 is eligible for set-off against any income other than salary income. Since, Gross Total Income contains the balance of Income from Salary only, unabsorbed depreciation cannot be adjusted, and hence, carried forward for adjustment in the subsequent years.

Illustration 8: An assessee has filed a belated return showing a business loss. What is the remedy available to him for carry forward and set off of the said loss? OR

AG Ltd. filed its return of loss for the Assessment Year 2016-2017 on 10.01.2017 beyond the time prescribed u/s 139(3) declaring a total loss of ₹ 12,00,000. It approaches you for your advice regarding the course of action to be taken to secure the benefit of carry forward of the business loss for set off against future profits. Advise the company suitably.

Solution :

A. CBDT's Powers: CBDT has the powers to condone the delay in filing return in cases having claim of carry forward of losses. **[Associated Electro Ceramics vs. CBDT 201 ITR 501 (Kar.)]**

B. Monetary limits prescribed for the condonation of delay are as under – **[Cir. No. 8/2001 dt. 16.5.2001]**

Refund claimed	Authority empowered to condone
Upto ₹ 10,000	Assessing Officer with the prior approval of the CIT
₹ 10,001 - ₹ 1,00,000	Assessing Officer with the prior approval of the CCIT / DGIT
₹ 1,00,001 and above	Central Board of Direct Taxes

C. Analysis and conclusion: Here, since the loss of AG Ltd. is ₹ 12,00,000, the authority empowered to condone the delay is CBDT. Hence, AG Ltd. has to file a condonation petition to the CBDT to carry forward the business loss.

Study Note - 11

DEDUCTION IN COMPUTING TOTAL INCOME

This Study Note includes

11.1 INTRODUCTION

In order to further the Government Policy of attracting investment and activity in the desired direction and to provide stimulus to growth or to meet social objectives, concession in the form of 'deduction' from Taxable Income is allowed. Chapter VI-A of the Income-tax Act, 1961 contains such deduction provisions.

With the advent of new philosophy of giving direct assistance to the desired goal and avoiding indirect route of tax concessions, the numbers of deductions are being omitted. This is also with a view to avoid complexity of tax law.

In computing Total Income of an assessee deductions under sections 80CCC to 80U are permissible from "Gross Total Income". [Section 80A (1)]

Deduction not to be allowed unless return furnished [Sec. 80AC]

Where in computing the Total Income of an assessee of the Previous Year relevant to the Assessment Year commencing on the 1st day of April, 2006 or any subsequent Assessment Year, any deduction is admissible under Section 80-IA or Section 80-IAB or Section 80-IB or Section 80-IC or Section 80-ID or Section 80-IE, no such deduction shall be allowed to him unless he furnishes a return of his income for such Assessment Year on or before the due date specified under sub-section (1) of section 139.

"Gross Total Income" means the aggregate of income computed under each head as per provisions of the Act, after giving effect to the provisions for clubbing of incomes (Sections 60 to 64) and set off of losses and but before making any deductions under this chapter. [Section 80B(5)]

The deductions under Chapter VIA are not available from the following incomes though these are included in the "Gross Total Income":

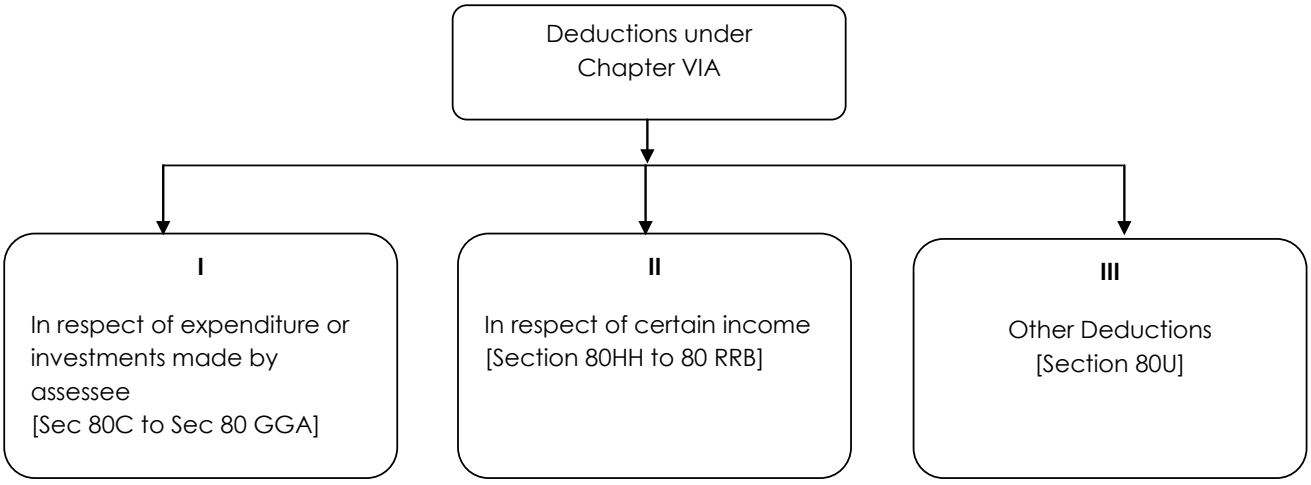
(i) Long Term Capital Gains;

(ii) Winnings from lotteries, cross word puzzles etc.;

(iii) Incomes referred to in Sections 115A to AD, 115BBA and 115D.

The aggregate amount of deductions under Chapter VIA [Sections 80CCC to 80U] shall not exceed the "Gross Total Income" of the assessee. [Section 80A (2)]

11.2 DEDUCTIONS FROM GROSS TOTAL INCOME



DEDUCTION IN RESPECT OF LIP, CONTRIBUTIONS TO PF, ETC [SEC. 80C]:

1	Eligible Assessee	Individual and HUF
2	Condition	Investment or application of funds during the Previous Year
3	Maximum Deduction	₹ 1,50,000 in a Previous Year
4	Special Provisions	Withdrawal of deductions for certain premature exit from certain investments or application of funds

Rate of deduction [Section 80C(1)]

This deduction shall be admissible only to an assessee, being an Individual or a Hindu Undivided Family. The amount of deduction shall be actual amount paid or deposited during the Previous Year in prescribed saving schemes [to be calculated] as qualifying amount for deduction u/s 80C or ₹ 1,50,000 whichever is less.

Qualifying Amount For Deduction u/s 80C

Any sums paid or deposited in the previous year by the assessee:

(i) to effect or to keep in force an insurance on the life of persons specified in sub-section (4);

Note: Insurance premium on the life of an insured / premium payer, spouse and any children is allowable as deduction within the overall limit of ₹ 1,50,000. However, if the premium payable for any year is more than 20% of the actual sum assured, the excess amount does not qualify for any deduction.

With effect from the Assessment Year 2013-14, if the premium payable for any year is more than 10% of the actual sum assured, the excess amount does not qualify for any deduction.

According to Finance Act, 2013, if the policy, issued on or after 01.04.2013, is for insurance on life of any person, who is —

(a) a person with disability or a person with severe disability as referred in Section 80U, or

(b) suffering from discase or aliment as specified in the rules made u/s 80DDB,

the premium payable for any year should not be in excess of 15% of the actual sum assured.

The revised / amended provision is as follows :

1. The above provisions shall be applicable in case of policies issued on or after 1st April 2012.

2. In respect of the old policies, the earlier provision of 20% ceiling shall be applicable

3. Actual sum assured in relation to any life insurance policy shall mean the minimum amount assured under that policy on the happening of the insured event at any time during the term of the policy, not taking into account-

   (a) the value of any premiums agreed to be returned, or

   (b) any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

(ii) to effect or to keep in force a contract for a deferred annuity, not being an annuity plan referred to in Clause (*xii*), on the life of persons specified in sub-section (4)

Provided that such contract does not contain a provision for the exercise by the insured of an option to receive a cash payment in lieu of the payment of the annuity;

(iii) by way of deduction from the salary payable by or on behalf of the Government to any individual being a sum deducted in accordance with the conditions of his service, for the purpose of securing him a deferred annuity or making provision for his spouse or children, in so far as the sum so deducted does not exceed one-fifth of the salary;

(iv) as a contribution by an individual to any provident fund to which the Provident Funds Act, 1925 applies;

(v) as a contribution to any provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette, where such contribution is to an account standing in the name of any person specified in sub-Section (4);

(vi) as a contribution by an employee to a recognised provident fund;

(vii) as a contribution by an employee to an approved superannuation fund;

(viii) as subscription, in the name of any person specified in sub-section (4), to any such security of the Central Government or any such deposit scheme as that Government may, by notification in the Official Gazette, specify in this behalf;

Tax benefits under section 80C for the girl child under the Sukanya Samriddhi Account Scheme [Section 80C] [W.r.e.f. A.Y. 2015-16]

The Act has formulized the above benefits envisaged in the Sukanya Samriddhi Account scheme by making the following amendments in the Income Tax Act:

(1) **Deduction under section 80C:** As per section 80C(2), subscription made to Sukanya Samriddhi Account scheme by the individual in the name of any of the following persons referred to in section 80C(4)(ba) shall be eligible for deduction under section 80C:

   (i) individual, or

   (ii) any girl child of that individual, or

   (iii) any girl child for whom such person is the legal guardian, if the scheme so specifies.

(2) Withdrawal from the Sukanya Samriddhi Account shall be exempt under section 10(11A).

(3) The interest accruing on deposits in such account will be exempt from income tax.

The Scheme has been notified under section 80C(2)(viii) vide Notification number 9/2015 S.O.210(E), F. No. 178/3/2015-ITA-I dated 21.01.2015.

(ix) as subscription to any such savings certificate as defined in clause (c) of Section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(x) as a contribution, in the name of any person specified in sub-section (4), for participation in the Unit-linked Insurance Plan, 1971 (hereafter in this Section referred to as the Unit-linked Insurance Plan) specified in Schedule II of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(xi) as a contribution in the name of any person specified in sub-section (4) for participation in any such unit-linked insurance plan of the LIC Mutual Fund *referred to in* clause (*23D*) of Section 10, as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(xii) to effect or to keep in force a contract for such annuity plan of the Life Insurance Corporation or any other insurer as the Central Government may, by notification in the Official Gazette, specify;

(xiii) as subscription to any units of any Mutual Fund referred to in clause (*23D*) of Section 10 or from the Administrator or the specified company under any plan formulated in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(xiv) as a contribution by an individual to any pension fund set up by any Mutual Fund referred to in clause (*23D*) of Section 10 or by the Administrator or the specified company, as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(xv) as subscription to any such deposit scheme of, or as a contribution to any such pension fund set up by, the National Housing Bank established under Section 3 of the National Housing Bank Act, 1987 (53 of 1987) (hereafter in this Section referred to as the National Housing Bank), as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(xvi) as subscription to any such deposit scheme of—

(a) a public sector company which is engaged in providing long-term finance for construction or purchase of houses in India for residential purposes; or

(b) any authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both, as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(xvii) as tuition fees (excluding any payment towards any development fees or donation or payment of similar nature), whether at the time of admission or thereafter,—

(a) to any university, college, school or other educational institution situated within India;

(b) for the purpose of full-time education of any of the persons specified in sub-section (4);

(xviii) for the purposes of purchase or construction of a residential house property the income from which is chargeable to tax under the head "Income from House Property" (or which would, if it had not been used for the assessee's own residence, have been chargeable to tax under that head), where such payments are made towards or by way of—

(a) any installment or part payment of the amount due under any self-financing or other scheme of any development authority, housing board or other authority engaged in the construction and sale of house property on ownership basis; or

(b) any installment or part payment of the amount due to any company or co-operative society of which the assessee is a shareholder or member towards the cost of the house property allotted to him; or

(c) repayment of the amount borrowed by the assessee from—

(1) the Central Government or any State Government, or

(2) any bank, including a co-operative bank, or

(3) the Life Insurance Corporation, or

(4) the National Housing Bank, or

(5) any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes which is eligible for deduction under clause (*viii*) of sub-section (1) of Section 36, or

(6) any company in which the public are substantially interested or any co-operative society, where such company or co-operative society is engaged in the business of financing the construction of houses, or

(7) the assessee's employer where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or

(8) the assessee's employer where such employer is a public company or a public sector company or a university established by law or a college affiliated to such university or a local authority or a co-operative society; or

(d) stamp duty, registration fee and other expenses for the purpose of transfer of such house property to the assessee, but shall not include any payment towards or by way of—

(A) the admission fee, cost of share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming such shareholder or member; or

(B) the cost of any addition or alteration to, or renovation or repair of, the house property which is carried out after the issue of the completion certificate in respect of the house property by the authority competent to issue such certificate or after the house property or any part thereof has either been occupied by the assessee or any other person on his behalf or been let out; or

(C) any expenditure in respect of which deduction is allowable under the provisions of Section 24;

(xix) as subscription to equity shares or debentures forming part of any eligible issue of capital approved by the Board on an application made by a public company or as subscription to any eligible issue of capital by any public financial institution in the prescribed form;

Explanation — For the purposes of this clause,—

(i) "eligible issue of capital" means an issue made by a public company formed and registered in India or a public financial institution and the entire proceeds of the issue are utilised wholly and exclusively for the purposes of any business referred to in sub-Section (4) of Section 80-IA;

(ii) "public company" shall have the same meaning assigned to it in Section 3 of the Companies Act, 1956 (Corresponding Section 2 (20), 2(67), 2(68), & 2(71) of Companies Act, 2013);

(iii) "public financial institution" shall have the same meaning assigned to it in Section 4A of the Companies Act, 1956(Corresponding Section 2(72) of Companies Act, 2013);

(xx) as subscription to any units of any mutual fund referred to in clause (*23D*) of Section 10 and approved by the Board on an application made by such mutual fund in the prescribed form;

(xxi) *as term deposit—*

(a) for a fixed period of not less than five years with a scheduled bank; and

(b) which is in accordance with a scheme framed and notified, by the Central Government, in the Official Gazette for the purposes of this clause.

(xxii) as subscription to such bonds issued by the National Bank for Agriculture and Rural Development, as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(xxiii) deposit in an account under the Senior Citizens Savings Scheme Rules,2004;

(xxiv) deposit in an account under the Post Office Time Deposit Rules,1981 for a period of five years;

Taxability of Amount Received

1. In following cases the assessee shall have to pay tax on any amount received on:
   (i) Termination of his contract of insurance referred to at point (i) above by notice to that effect or where the contract ceases to be in force by reason of failure to pay any premium, by not reviving contract of insurance :
      (a) in case of any single premium policy, within two years after the date of commencement of insurance; or
      (b) in any other case, before premiums have been paid for two years; or
   (ii) Termination of his participation in any unit-linked insurance plan referred to above in point (x) and (xi) by notice to that effect or where he ceases to participate by reason of failure to pay any contribution, by not reviving his participation, before contributions in respect of such participation have been paid for five years; or
   (iii) Transfer of the house property before the expiry of five years from the end of financial years in which possession of such property is obtained by him, or receives back, whether by way of refund or otherwise, any sum specified in that clause, then :
      (a) no deduction shall be allowed to the assessee under 80C(1) with reference to any of the sums referred to in point (i), (x), (xi) and (xviii), paid in such Previous Year; and
      (b) the aggregate amount of the deductions of income so allowed in respect of the Previous Year or years shall be deemed to be the income of the assessee of such Previous Year and shall be liable to tax in the Assessment Year relevant to such Previous Year.

DEDUCTION IN RESPECT OF CONTRIBUTION TO PENSION FUND OF LIC OR ANY OTHER PENSION FUND [SEC. 80CCC]

1	Eligible Assessee	Individual
2	Condition	Investment or application of funds during the Previous Year
3	Maximum Deduction	₹ 1,50,000 in a Previous Year
4	Special Provisions	Withdrawal of deductions for certain premature exit from certain investments or application of funds

Deduction of a maximum amount of ₹ 1,50,000 is allowed to an individual assessee for the amount paid or deposited by the assessee during Previous Year to effect or keep in force a contract for annuity plan of LIC or any other insurer for receiving pension from the fund referred to in Sec. 10(23AAB). The whole of the amount received by an assessee or his nominee shall be taxable in the year in which the amount is so received. It may be mentioned that where deduction is claimed in respect of any amount paid or deposited, under this Section, no rebate u/s. 88 shall be allowed with reference to the same amount. However, any payment in commutation of pension received from the fund referred to in Section 10(23AAB) is exempt u/s.10(10A)(iii).

Where any amount paid or deposited by the assessee has been taken into account for the purposes of this Section :

(a) a rebate with reference to such amount shall not be allowed under Sec. 88 for any Assessment Year ending before the 1st day of April, 2006;

(b) a deduction with reference to such amount shall not be allowed under Section 80C for any Assessment Year beginning on or after the 1st day of April, 2006.

IN RESPECT OF CONTRIBUTION TO PENSION SCHEME OF CENTRAL GOVERNMENT [SEC. 80CCD]

1	Eligible Assessee	Individual
2	Condition	Investment or application of funds during the Previous Year
3	Maximum Deduction	Up to 10% of his salary or gross total Income subject to maximum of ₹ 1,50,000 u/s 80CCD(i)
4	Special Provisions	Withdrawal of deductions for certain premature exit from certain investments or application of funds

Following sub-section (1B) shall be inserted after sub-section (1A) [as so omitted w.e.f. 1-4-2016] of section 80CCD by the Finance Act, 2015, w.e.f. 1-4-2016 :

(1B) An assessee referred to in sub-section (1), shall be allowed a deduction in computation of his total income, whether or not any deduction is allowed under sub-section (1) to the extent of

(a) of the whole of the amount paid or deposited in the previous year in his account under a pension scheme notified or as may be notified by the Central Government,

(b) ₹ 50,000

Whichever is less.

Provided that no deduction under this sub-section shall be allowed in respect of the amount on which a deduction has been claimed and allowed under sub-section (1).

Where any amount paid or deposited by the assessee has been allowed as a deduction under sub-Section (1) or sub-Section (1B).

(a) No rebate with reference to such amount shall be allowed under Section 88 for any Assessment Year ending before the 1st day of April, 2006;

(b) No deduction with reference to such amount shall be allowed under Section 80C for any Assessment Year beginning on or after the 1st day of April, 2006.

Tax benefits for New Pension System - extended also to "any employee or self-employed", and tax treatment of savings under this system as "exempt-exempt-taxed" [Section 10(44), 115-0,197A and 80CCD W.r.e.f. A.Y. 2009-10]

New Pension System has been extended to employee as well as self- employed Individual .

Further, in the case of an employee of Central Government or of any other employer, the deduction of employees' contribution shall be limited to 10% of his salary. Whereas in the case self-employed persons, it shall be limited to 10% of his Gross Total Income in the Previous Year.

For the purposes of the said Section the assessee shall be deemed not to have received any amount in the Previous Year if such amount is used for purchasing an annuity plan in the same Previous Year.

RESTRICTION ON THE OVERALL LIMIT OF DEDUCTION [SEC. 80CCE]

The aggregate amount of deductions under Sec. 80C, Sec. 80CCC and Sec. 80CCD shall not, in any case, exceed ₹1,50,000.

DEDUCTION IN RESPECT OF SUBSCRIPTION TO LONG-TERM INFRASTRUCTURE BONDS [SEC. 80CCF]

1	Eligible Assessee	Individual and HUF
2	Condition	Subscription paid or deposited in notified long-term infrastructure bonds
3	Maximum Deduction	₹ 20,000.

However, this Section is discontinued from the Assessment Year 2013-14

DEDUCTION IN RESPECT OF INVESTMENT MADE UNDER AN EQUITY SAVINGS SCHEME [SEC. 80CCG] [W.E.F. A.Y. 2013-14]

1	Eligible Assessee	Individual who is resident in India has, in a Previous Year, acquired listed equity shares or invested in listed units of an equity oriented fund in accordance with a scheme, as may be notified by the Central Government in this behalf
2	Conditions	(i) The Gross Total Income of the assessee for the relevant Assessment Year *should not exceed* ₹ 12,00,000 (ii) The assessee is a *new retail investor* as may be specified under the scheme notified in this behalf; (iii) The investment is made in such listed equity shares or Listed units of equity oriented fund as may be specified under the notified scheme; (iv) The investment is locked-in for a period of three years from the date of acquisition in accordance with the notified scheme; and (v) Such other condition as may be prescribed.
3	Maximum Deduction	The assessee shall be allowed a deduction, in the computation of his Total Income of the Assessment Year relevant to such Previous Year to the extent of - (a) 50% of the amount invested in such equity shares (b) ₹ 25,000 Whichever is less.

If any amount of deduction is claimed by any assessee in any year, the assessee would not be allowed to any other deduction under this section.

If any assessee after claiming the deduction fails to satisfy any of the conditions, the deduction originally allowed, shall be deemed to be income of the assessee of that year in which the condition so violated.

DEDUCTION IN RESPECT OF MEDICAL INSURANCE PREMIUM [SEC.80D]

1	Eligible Assessee	Individual and HUF
2	Condition	Investment or application of funds during the Previous Year by any mode of payment other than cash
3	Maximum Deduction	Up to ₹ 25,000. If they medical insurance premium is paid for senior citizen, then maximum deduction is up to ₹ 30,000

Essential conditions for claiming deduction under this section: Deduction is permissible, under this section, only to an individual or HUF.

Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:—

(a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family or any contribution made to the Central Government Health Scheme or such other scheme as may be notified by the Central Government in this behalf or any payment made on account of preventive health check-up of the assessee or his family as does not exceed in the aggregate ₹ 25,000; **and**

(b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee or any payment made on account of preventive health check-up of the parent or parents of the assessee as does not exceed in the aggregate ₹25,000.

However, where the amounts referred to in clauses (a) and (b) above are paid on account of preventive health check-up, the deduction for such amount shall be allowed to the extent it does not exceed in the aggregate ₹ 5,000.

Following clauses (c) and (d) shall be inserted after clause (b) of sub-section (2) of section 80D by the Finance Act, 2015, w.e.f. 1-4-2016.

Deduction on account of medical expenditure incurred (instead of sum paid to effect any insurance of the health) to be allowed in case of very senior citizen;

(c) the whole of the amount paid on account of medical expenditure incurred on the health of the assessee or any member of his family as does not exceed in the aggregate ₹ 30,000; **and**

(d) the whole of the amount paid on account of medical expenditure incurred on the health of any parent of the assessee, as does not exceed in the aggregate ₹ 30,000:

Provided that the amount referred to in clause (c) or clause (d) is paid in respect of a very senior citizen and no amount has been paid to effect or to keep in force an insurance on the health of such person.

Provided further that the aggregate of the sum specified under clause (a) and clause (c) or the aggregate of the sum specified under clause (b) and clause (d) shall not ₹ 30,000.

Explanation.—For the purposes of clause (a), "family" means the spouse and dependant children of the assessee.

Where the amounts referred to in clauses (a) and (b) of sub-section (2) are paid on account of preventive health check-up, the deduction for such amounts shall be allowed to the extent it does not exceed in the aggregate five thousand rupees.

For the purposes of deduction under sub-section (1), the payment shall be made by—

(i) any mode, including cash, in respect of any sum paid on account of preventive health check-up;

(ii) any mode other than cash in all other cases not falling under clause (i).

Following sub-section (3) shall be substituted for the existing sub-section (3) of section 80D by the Finance Act, 2015, w.e.f. 1-4-2016 :

Where the assessee is a Hindu undivided family, the sum referred to in sub-section (1), shall be the aggregate of the following, namely:—

(a) whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in the aggregate ₹ 25,000; and

(b) the whole of the amount paid on account of medical expenditure incurred on the health of any member of the Hindu undivided family as does not exceed in the aggregate ₹30,000.

Provided that the amount referred to in clause (b) is paid in respect of a very senior citizen and no amount has been paid to effect or to keep in force an insurance on the health of such person.

Provided further that the aggregate of the sum specified under clause (a) and clause (b) shall not exceed ₹ 30,000.

Additional deduction of ₹ 5,000: Where the sum specified in the above para of quantum of deduction is paid to effect or keep in force an insurance on the health of any person specified therein, and who is a senior citizen, an additional deduction of ₹ 5,000 shall be allowed.

DEDUCTION IN RESPECT OF MEDICAL TREATMENT OF HANDICAPPED DEPENDENT [SEC. 80DD]

Section 80DD of the Income Tax Act provides for a deduction to an individual or HUF, who is a resident in India, in respect of the following:

(a) Expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; and

(b) Amount paid to LIC or other insurance in respect of a scheme for the maintenance of a disabled dependant.

1	Eligible Assessee	Individual and HUF
2	Condition	Expenditure for medical treatment during the Previous Year
3	Maximum Deduction	₹75,000, but where dependent is a person with severe disability, maximum deduction is ₹ 1,25,000.

If the handicapped dependent predeceases the individual or the member of HUF in whose name money has been deposited or paid, an amount equal to the amount paid or deposited under the scheme shall be deemed to be the income of the assessee of the Previous Year in which sum amount is received by the assessee and chargeable to tax in that Previous Year.

For the purpose of this Section dependent means a person who is not dependent for the suspect or main term on any person other than the assessee.

DEDUCTION IN RESPECT OF MEDICAL TREATMENT, ETC. [SEC. 80DDB]

1	Eligible Assessee	Individual and HUF
2	Condition	The amount should be actually paid for the medical treatment of specified disease
3	Maximum Deduction	Actual or ₹ 40,000 whichever is less but if the amount paid is for senior citizen (aged 60 years or more) then the ceiling limit is ₹ 60,000 and if the person for whom such expenditure is incurred happens to be a very senior citizen, the maximum deduction shall be allowed for a sum of ₹ 80,000.
4	Special Provisions	The assessee is required to furnish with the return of income, a certificate is prescribed Form No. 10-I

Deduction is allowed to a resident individual or Hindu Undivided Family in respect of expenditure actually incurred during the P.Y., for the medical treatment of specified disease or ailment as specified in the Rules 11DD for himself or a dependent relative or a member of an HUF.

Conditions :

(i) The assessee has to furnish a certificate in Form 10 – I from any doctor registered with Indian Medical Association with postgraduate qualifications.

(ii) "Dependent" means a person who is dependent for his support or maintenance on the assessee and on no other person.

A deduction of ₹ 40,000 is allowed as reduced by the amount received, if any, from an insurer or reimbursed by an employer for the medical treatment of such person.

Specified diseases and ailments under Section 80DDB and Rule 11DD –

(i) Neurological Diseases i.e.
   (a) Dementia;
   (b) Dystonia Musculorum Deformans
   (c) Motor Neuron Disease;
   (d) Atanxia;
   (e) Chorea;
   (f) Hemiballismus
   (g) Aphasia
   (h) Parkinsons Desease

(ii) Cancer

(iii) AIDS

(iv) Chronic Renal Failure

(v) Hemophilia

(vi) Thalassalmia

Note: Age for Senior Citizen ≥ 60 year and age for very Senior Citizen ≥ 80 years.

DEDUCTION IN RESPECT OF INTEREST ON LOAN TAKEN FOR HIGHER EDUCATION [SEC. 80E]

1	Eligible Assessee	Individual
2	Condition	The amount is paid by the assessee out of his income as interest on loan taken for higher education.
3	Maximum Deduction	100% of the interest paid on loan taken without any monetary ceiling limit.
4	Special Provisions	The assessee can claim the amount of interest in the initial Assessment Year & carry forward up to 7 Assessment Years.

In computing the Total Income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this Section, any amount paid by him in the Previous Year, out of his income chargeable to tax, by way of interest on loan taken by him from any financial institution or any approved charitable institution for the purpose of his higher education or his relative [Section 80E(1)]

The deduction specified above shall be allowed in computing the Total Income in respect of the initial Assessment Year and seven Assessment Years immediately succeeding the initial Assessment Year or until the interest referred above is paid by the assessee in full, whichever is earlier [80E(2)]

Meaning of "relative" enlarged: The Act has enlarged the definition of "relative" given in clause (e) of sub-Section (3). As per the new definition "relative", in relation to an individual, means the spouse and children of that individual or the student for whom the individual is the legal guardian.

DEDUCTION IN RESPECT OF INTEREST ON LOAN FOR RESIDENTIAL HOUSE PROPERTY [SEC. 80EE]

1	Eligible Assessee	Individual
2	Condition	• Assessee has taken a loan from a financial institution during Financial Year 2013-14, for acquiring residential house property. • Amount of loan does not exceed ₹ 25 lakhs. • Value of house property does not exceed ₹ 40 lakhs. • Assessee does not own any residential house property on the date of sanction of loan
3	Maximum Amount of deduction	Interest payable for the previous year shall be deductible for the Assessment Year 2014-15 subject to a maximum of ₹ 1 lakh
4	Special Provision	If interest payable during the previous year 2013-14 is less than ₹1 lakh, the balance amount shall be allowed as deduction in the Assessment Year 2015-16.

From the Assessment Year 2014-15, any individual, not owning any residential house property on the date of sanction of loan, has taken loan for acquiring residential house property during the Financial Year 2013-14, is eligible for deduction u/s 80EE for the amount of interest paid on the loan upto a maximum of ₹ 1 lakh. If, however, interest payable is less than ₹ 1 lakh, the balance amount shall be allowed as deduction in Assessment Year 2015-16.

Conditions :

(i) The amount of loan sanctioned for acquisition of the residential house propertly does not exceed ₹25 lakh.

(ii) The value of residential house property does not exceed ₹ 40 lakh.

The interest allowed u/s 80EE can not be deductible under any other provision of the Act for the same or any other assessment year.

DEDUCTION IN RESPECT OF DONATIONS TO CERTAIN FUNDS, CHARITABLE INSTITUTIONS, ETC. [SEC. 80G]

Deduction under this Section is available to all assessees.

Conditions for claiming deduction:-

(i) The donation should be of a sum of money and not in kind.

(ii) The donation should be to specified funds/institutions.

(iii) Amount paid by any mode of payment other than cash and if paid in cash the amount should not exceed ₹ 10,000.

	Eligible Donation	**Qualifying Deduction**	**Permissible Amount**
1.	PM's National Relief Fund;	From item Nos. 1 to 23 there is no maximum limit (i.e. 100% of the amount will qualify for deduction)	Quantum of deduction for item Nos. 1 to 18, 20, 24, 30, 31, 32 & 33 = 100% of the qualifying amount. For other items, quantum of deductions = 50% of the qualifying amount.
2.	PM's Armenia Earthquake Relief Fund;		
3.	The Africa (Public Contributions India) Fund;		
4.	The National Foundation for Communal Harmony		
5.	A university or any educational institution of national eminence as may be approved;		
6.	The National Illness Assistance Fund;		
7.	Any Zila Saksharta Samiti for improvement of primary education in villages and towns and for literacy activities;		
8.	National Blood Transfusion Council or to any State Blood Transfusion Council;		
9.	Any fund set up by the State Government for medical relief to the poor;		
10.	The Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Airforce Central Welfare Fund established by the armed forces of the Union for the welfare of the past and present members of the such forces or their dependants;		
11.	The Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union Territory, as the case may be;		
12.	The National Sports Fund to be set up by the Central Government;		

13. The National Cultural Fund set up by the Central Government; 14. The Fund for Technology Department and Application setup by the Central Government; 15. The National Defence Fund; 16. Any fund setup by the State Government of Gujarat exclusively for providing relief to the victims of earthquake in Gujarat; 17. Any sum paid during the period beginning with 26.1.2001 and ending on 30.9.2001 to any trust, institutions or fund recognised under Section 80G for providing relief to the victims of earthquake in Gujarat; 18. National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple disabilities constituted under the relevant Act of 1999; 19. PM's Drought Relief Fund; 20. The National Children's Fund; 21. Jawaharlal Nehru Memorial Fund; 22. Indira Gandhi Memorial Trust; 23. Rajiv Gandhi Foundation; 24. Contribution by a company as donations to the Indian Olympic Association or to any other Association notified by the Central Government u/s. 10(23); 25. Any approved fund or institution established for charitable purposes; 26. Government or local authority to be used for charitable purpose; 27. Any authority set up for providing housing accommodation or town planning; 28. Any corporation established by Government for promoting interest of schedules caste/ scheduled tribe/backward class; 29. Renovation of notified temple mosque, church, or gurudwara or any other notified place of national importance; 30. Government or local authority or approved institution/association for promotion of family planning;	From Sl. Nos. 24 to 30 qualifying amount shall be restricted to 10% of Adjusted Total Income (i.e. G.T.I. as reduced by deductions u/s. 80CCC to 80U other than 80G and other income on which no tax is payable and other incomes on which deductions under Chapter VIA are not allowed)	

31. The Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013 **[w.e.f. A.Y. 2015-16]**; or 32. The Clean Ganga Fund, set up by the Central Government, where such assessee is a resident and such sum is other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013 **[w.e.f. A.Y. 2015-16]**; or 33. The National Fund for Control of Drug Abuse constituted under section 7A of the Narcotic Drugs and Psychotropic Substances Act, 1985 **[w.e.f. A.Y. 2016-17]**.		

DEDUCTION IN RESPECT OF RENTS PAID [SEC. 80GG]

1	Eligible Assessee	Individual
2	Condition	The condition for deduction in respect of rents paid is given below.
3	Maximum Deduction	Amount of deduction is also given below.

The deduction in respect of rent paid is available to Individual with effect from Assessment Year 1998-99.

Conditions :

(i) The assessee is not being in receipt of any house rent allowance following under clause (13A) of Section 10 from his employer.

(ii) The expenditure incurred (for the purpose of his own residence) by way of rent for any furnished or unfurnished accommodation is in excess of 10% of his Total Income after allowing all deductions except deduction under this Section.

(iii) The assessee or his spouse or minor child or an HUF of which he is a member, does not own any accommodation at the place where he ordinarily resides or performs duties of his office or employment or carries on his business/profession.

(iv) If the assessee owns any accommodation at any place other than the place of employment or business and such accommodation is not in the occupation of the assessee and shall not be assessed in his hands as self occupied property.

Deduction : Least of the following :–

(i) Rent paid minus 10% of Adjusted Total Income

(ii) 25% of Adjusted Total Income

(iii) ₹ 2,000 p.m.

Adjusted Total Income : Gross Total Income as reduced by :

(a) Long Term Capital Gain, if any, included in the Gross Total Income

(b) Short Term Capital Gain under section 111A, if any, included in the Gross Total Income

(c) All deduction under Chapter VIA (Section 80CCC to 80U) other than the deduction under this Section.

(d) Any income referred to in Sections 115A to D included in the Gross Total Income.

DEDUCTION IN RESPECT OF CERTAIN DONATIONS FOR SCIENTIFIC RESEARCH OR RURAL DEVELOPMENT [SEC. 80GGA]

In computing the Total Income of an assessee whose Gross Total Income does not include income from "Profits and Gains of Business or Profession", deduction shall be allowed of an amount paid by him to—

(a) an approved scientific research association or University or College or other institution to be used for scientific research, research in social science or statistical research.

(b) an approved association or institution to be used for carrying out any approved programme or rural development,

(c) an approved institution or association which has the object of training of persons for implementing programmes of rural development [Sec. 35CCA]

(d) public sector company or local authority or an approved association or institution for carrying out any eligible project or scheme u/s 35AC.

(e) association/institution/fund which has the object of carrying out any programme of conservation of natural resources or afforestation [Sec. 35CCB]

(f) National Urban Poverty Eradication Fund (NUPEF).

Section 80GGA (2A) provides that no deduction shall be allowed under section 80GGA in respect of any sum exceeding ₹ 10,000 unless such sum is paid by any mode other than cash.

DEDUCTIONS BY COMPANIES TO POLITICAL PARTIES [SEC. 80GGB]

Allowable to : An Indian Company

Condition : Amount should be contributed by any mode other than cash.

Amount of Deduction : 100% of sum contributed during a Previous Year to any political party, registered u/s 29A of Representation of the People Act, 1951.

DONATIONS TO POLITICAL PARTIES [SEC. 80GGC]

Allowable to : Any person except local authority and an artificial juridical person wholly or partly funded by the Government.

Condition : Amount should be contributed by any mode other than cash.

Amount of Deduction : 100% of sum contributed during a Previous Year to any political party, registered u/s 29A of Representation of the People Act, 1951.

Contributions to an Electoral Trust also eligible for deduction under Section 80GGB and 80GGC

DEDUCTIONS IN RESPECT OF PROFITS & GAINS FROM INDUSTRIAL UNDERTAKINGS OR ENTERPRISES ENGAGED IN INFRASTRUCTURE DEVELOPMENT [SEC. 80IA]

The deduction under this Section is applicable to all assessees whose Gross Total Income includes any profits and gains derived from any business of an industrial undertaking or an enterprise as below :

Sl. No.	Classification of Industries	Period of commencement	Deduction
(i)	Any enterprise carrying on the business of developing or maintaining and operating or developing, maintaining and operation any infrastructure facility	On or after 1.4.1995	100% for 10 consecutive Assessment Years.
(ii)	Any undertaking providing telecommunication services whether basic or cellular including radio paging, domestic satellite service or network of trunking and electronic data interchange services.	From 1.4.95 to 31.3.2005	100% for first 5 years & 30% for the next 5 years.
(iii)	Any undertaking which develops or develops and operates or maintains and operates an industrial park notified by the Central Government.	From 1.4.97 to 31.3.2011	100% for 10 consecutive Assessment Years.
(iv)	An Industrial undertaking set up in any part of India for the generation or generation and distribution of power.	From 1.4.93 to 31.3.2017	100% for 10 consecutive Assessment Years.
(v)	An industrial undertaking which starts transmission or distribution of power by laying a network of new transmission or distribution lines.	From 1.4.99 to 31.3.2017	100% for 10 consecutive Assessment Years.
(vi)	An industrial undertaking starts business of substantial renovation and modernisation of existing transmission / distribution lines in Power Sector.	From 1.4.2004 to 31.3.2017	100% for 10 consecutive Assessment Years.
(vii)	Undertaking established for reconstruction / revival of Power Generation Plant	Established before 30.11.2005 to 31.3.2011	100% for 10 consecutive Assessment Years.

The deduction under this Section is available at the option of the assessee for any 10 consecutive Assessment Years out of 15 years beginning from the year in which the undertaking or enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication services or develops an industrial part or generates power or commences transmission or distribution of power. However, in case of an infrastructure facility being a high way project including housing or other activities being an integral part of a high way project, the assessee can claim deduction for any 10 consecutive Assessment Years out of 20 years beginning from the year of operation.

Other Conditions :

(i) For the purpose of completing deduction under this Section, the profits and gains of the eligible business shall be computed as if such eligible business were the only source of income during the relevant Previous Year.

(ii) Where housing or other activities are an integral part of the high way project and the profits and gains of which have been calculated in accordance of the provision of the Section, the profits have not been liable to tax if the following conditions are not fulfilled :–

(a) The profits have been transferred to a special reserve account

(b) The same is actually utilised for the high way project excluding housing and other activities before the expiry of 3 years following the year of transfer to the reserve account.

(c) The amount remaining unutilised shall be chargeable to tax as income of the year in which such transfer to reserve account took place.

(iii) Where the assessee is a person other than a company or a cooperative society, the deduction shall not be admissible unless the accounts of the industrial undertaking for the Previous Year relevant to the Assessment Year for which the deduction is claimed have been audited by an accountant and the report in Form No. 10CCB (Rule 18BBB) is furnished along with the return of income.

(iv) Where any goods or services held for purposes of the eligible business are transferred to any other business carried on by the assessee or vice versa and if the consideration for such transfer does not correspond to the market value of such goods of services as on the date of transfer, the profits and gains of the eligible business shall be computed as if the transfer had been made at the market value of such goods or services as on that date. However, if the computation of profits and gains presents any difficulty in the opinion of the Assessing Officer, he may compute such profits and gains on such reasonable basis as he may deem fit. Similarly, where due to close connection between the assessee and other person for any other reason it appears to the Assessing Officer that the profits of the eligible business is increased to more than the ordinary profit, the Assessing Officer shall compute the profit on a reasonable basis for allowing the deduction.

(v) If the profits and gains are allowed as deduction under this Section for any Assessment Year, no deduction under Sections 80HH to 80RRA to the extent of such profits and gains shall be allowed.

(vi) Where any undertaking of an Indian company which is entitled to the deduction under this Section is transferred before expiry of the period of deduction to another Indian company in a scheme of amalgamation or demerger, no deduction has been admissible to the amalgamating or demerged company for the Previous Year in which amalgamation or demerger expressed and the amalgamated or the resulting company shall be entitled to the deduction as if the amalgamation or demerger had not been taken place.

(vii) The Act has amended Section 80-IA(4) so as to enable an authority or a board or a corporation or any other body established or constituted under a Central or State Act which is not incorporated under the Companies Act, 2013 also to take advantage of the benefits provided under the said Section.

DEDUCTIONS IN RESPECT OF PROFITS AND GAINS BY AN UNDERTAKING OR ENTERPRISE ENGAGED IN DEVELOPMENT OF SPECIAL ECONOMIC ZONE [SEC. 80IAB]

(1) Where the Gross Total Income of an assessee, being a Developer, includes any profits and gains derived by an undertaking or an enterprise from any business of developing a Special Economic Zone, notified on or after the 1st day of April, 2005 under the Special Economic Zones Act, 2005, there shall, in accordance with and subject to the provisions of this Section, be allowed, in computing the Total Income of the assessee, a deduction of an amount equal to one hundred per cent of the profits and gains derived from such business for ten consecutive Assessment Years.

(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive Assessment Years out of fifteen years beginning from the year in which a Special Economic Zone has been notified by the Central Government

Provided that where in computing the Total Income of any undertaking, being a Developer for any Assessment Year, its profits and gains had not been included by application of the provisions of sub-section (13) of Section 80-IA, the undertaking being the Developer shall be entitled to deduction referred to in this Section only for the unexpired period of ten consecutive Assessment Years and thereafter it shall be eligible for deduction from income as provided in sub-section (1) or sub-section (2), as the case may be

Provided further that in a case where an undertaking, being a Developer who develops a Special Economic Zone on or after the 1st day of April, 2005 and transfers the operation and maintenance of such Special Economic Zone to another Developer (hereafter in this Section referred to as the transferee Developer), the deduction under sub-section (1) shall be allowed to such transferee Developer for the remaining period in the ten consecutive Assessment Years as if the operation and maintenance were not so transferred to the transferee Developer.

(3) The provisions of sub-section (5) and sub-sections (7) to (12) of Section 80-IA shall apply to the Special Economic Zones for the purpose of allowing deductions under sub-section (1).

DEDUCTION IN RESPECT OF PROFITS AND GAINS FOR CERTAIN INDUSTRIAL UNDERTAKING OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKINGS [SEC. 80IB]

The deduction is available to the following undertaking or enterprises etc.

Sl. No.	Undertaking	% of Profit deductible	Period of deduction
A.	Ship- brought into use between 1.4.91 & 31.3.95	30	For the first 10 years
B.	Hotel commenced between 1.4.97 and 31.3.2001 approved hotel in hilly are or rural area or a place of pilgrimage or in a notified area	50	For the first 10 years
C.	Any other approved hotel (Hotels in the cities of Calcutta, Chennai, Delhi and Mumbai are not eligible) commenced between 1.4.97 and 31.3.2001	30	For the first 10 years

D.

Sl. No.	Classification of Industries	Period of Commencement between	Deduction of profits dividend
1	Industrial undertaking located in an industrially backward state specified in the Eighth Schedule;	1.4.1993 and 31.3.2004 (1.4.1993 and 31.3.2012 for an industrial undertaking in the State of Jammu and Kashmir)	100% for initial 5 years. Thereafter 30% for 5 years in case of company otherwise 25%. For cooperative society deduction is 100% of initial 5 years and thereafter 25% of 7 years.
2	Industrial undertaking located in industrially backward district notified by the Central Government		
	-Category A	1.10.1994 and 31.3.2004	100% for 5 years and 30% for next 5 years in case of companies (25% for others). For cooperative society 25% for 7 years. after 100% for initial 5 years.
	-Category B	1.10.1994 and 31.3.2004	100% for 3 years and 30% for next 5 years in case of company (25% for others). For cooperative society 25% for 9 years after 100% for initial 3 years.

Sl. No.	Classification of Industries	Period of Commencement between	Deduction of profits dividend
3	Any company engaged in scientific and industrial research and development.	Approved by the prescribed authority after business for 31.3.2000 but before 1.4.2007	100% of the profits derived from such business for 10 years starting from the initial Assessment year.
4	Undertaking which begins commercial production of mineral oil –		100% for the first 7 consecutive Assessment Years starting from the initial Assessment Years.
	a) in North Eastern Region.	Before 1.4.97	
	b) in other Regions	On or after 1.4.97	
	Undertaking which begins refining of mineral oil.	On or after 1.10.98 but before 1.4.2012	
	Undertaking which begins production of natural gas	On or after 1.4.2009	
5	Undertaking engaged in developing and building housing projects approved by a local authority: profits derived from of the plot of land minimum 1 acre area and residential unit built up to 1000 sq. ft. where such residential units are in Delhi/Mumbai or within 25 kms. for the municipal limits of these cities and 1500 sq. ft. at any other place. The build-up area of the shops and other commercial establishments included in the housing project should not exceed 3% of the total build-up area of the housing project or 5,000 sq.ft., whichever is more. [see note]	1.10.98 and 31.3.2008 [In case where housing project has been approved by local authority during 2004-05, the construction should be completed within 4 years from the end of the financial year in which the project is approved and if the project is approved on or after 1st April, 2005, the construction should be completed within 5 years from the end of the financial year in which the project is approved]	100% of the profit derived from such business.
6	Industrial undertaking deriving profit from the business of setting up and operating a cold chain facility for agricultural produce.	1.4.1999 and 31.3.2004	100% for initial 5 years and thereafter 30% for 5 years in case of company (25% for others). For Co-operative Society after initial 5 years @100%, the next 7 years @ 25%
7	Undertaking engaged in integrated business of handling, storage and transportation of food grains.	On or after 1.4.2001	100% for initial 5 years. Thereafter 30% for 5 years for company (25% for others).
	Processing, preservation and packaging of meat and meat products or poultry/marine/dairy products	On or after 1.4.2009	

Sl. No.	Classification of Industries	Period of Commencement between	Deduction of profits dividend
8	Finance Act, 2002, inserted Sec. 80IB(7A) and Sec. 80IB(7B) allowing deduction in case of any multiplex theatre and convention centers w.e.f. AY 2003-04 as under :		
	- Multiplex theatre other than located within the municipal jurisdiction of Chennai, Delhi, Mumbai or Kolkata.	1.4.2002 and ending 31.3.2005	50% of the profits of 5 consecutive years beginning from the initial Assessment Year.
	- Convention Centre	1.4.2002 and ending 31.3.2005	50% of the profits of 5 consecutive years beginning from the initial Assessment Year.
9	Operating and maintaining a hospital		100% of the profits derived from such business for 5 consecutive years beginning from the initial Assessment Year.
	-in rural area	From 1.10.2004 to 31.3.2008	
	-in anywhere in India other than excluded area (w.e.f. AY 2009-10)	From 1.4.2008 to 31.3.2013	

Note: The objective of the tax benefit for housing projects is to build housing stock for low and middle income households. This has been ensured by limiting the size of the residential unit. However, this is being circumvented by the developer by entering into agreement to sell multiple adjacent units to a single buyer. Accordingly, the Act has inserted new clauses viz. clause (e) and (f) to Section 80-IB(10) to provide that the undertaking which develops and builds the housing project shall not be allowed to allot more than one residential unit in the housing project to the same person, not being an individual, and where the person is an individual, no other residential unit in such housing project is allotted to any of the following person:—

(i) The individual or the spouse or minor children of such individual;

(ii) The Hindu Undivided Family in which such individual is the Karta;

(iii) Any person representing such individual, the spouse or minor children of such individual or the Hindu Undivided Family in which such individual is the Karta.

This amendment will take effect from 1-4-2010 and shall accordingly, apply in relation to Assessment Year 2010-11 and subsequent years.

Further, as per the Finance (No. 2) Act, 2009 the deduction will be available if the project is approved by the local authority before 31-3-2008 instead of 31-3-2007.

SPECIAL PROVISIONS IN RESPECT OF CERTAIN UNDERTAKINGS OR ENTERPRISES IN CERTAIN SPECIAL CATEGORY STATES [SEC. 80-IC]

(1) Where the Gross Total Income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and subject to the provisions of this Section, be allowed, in computing the Total Income of the assessee, a deduction from such profits and gains, as specified in sub-section (3).

(2) This Section applies to any undertaking or enterprise,—

(a) which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, or which manufactures or produces any article or thing, not being any article or thing specified in the Thirteenth Schedule and undertakes substantial expansion during the period beginning—

(i) on the 23rd day of December, 2002 and ending before the 1st day of April, 2007 in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial

Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Sikkim; or

(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttaranchal; or

(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in any of the North-Eastern States;

(b) which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule and undertakes substantial expansion during the period beginning—

(i) on the 23rd day of December, 2002 and ending before the 1st day of April, 2007, in the State of Sikkim; or

(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in the State of Himachal Pradesh or the State of Uttaranchal; or

(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any of the North-Eastern States.

(3) The deduction referred to in sub-Section (1) shall be—

(i) in the case of any undertaking or enterprise referred to in sub-clauses (i) and (iii) of clause (a) or sub-clauses (i) and (iii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for ten Assessment Years commencing with the initial Assessment Year;

(ii) in the case of any undertaking or enterprise referred to in sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for five Assessment Years commencing with the initial Assessment Year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains.

(4) This Section applies to any undertaking or enterprise which fulfils all the following conditions, namely:—

(i) *it is not formed by splitting up, or the reconstruction, of a business already in existence*

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in Section 33B, in the circumstances and within the period specified in that Section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation : The provisions of *Explanations 1* and *2* to sub-Section (3) of Section 80-IA shall apply for the purposes of clause (*ii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section.

(5) Notwithstanding anything contained in any other provision of this Act, in computing the Total Income of the assessee, no deduction shall be allowed under any other Section contained in Chapter VIA or in Section 10A or Section 10B, in relation to the profits and gains of the undertaking or enterprise.

(6) Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking or enterprise under this Section, where the total period of deduction inclusive of the period of deduction under this Section, or under the second proviso to sub-section (4) of Section 80-IB or under Section 10C, as the case may be, exceeds ten Assessment Years.

(7) The provisions contained in sub-section (5) and sub-sections (7) to (12) of Section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this Section.

(8) Deduction u/s 80-IC will not be allowed if the assessee does not furnish the Return of Income u/s 139(1).

(9) For the purposes of this Section,—

(i) "Industrial Area" means such areas, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(ii) "Industrial Estate" means such estates, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(iii) "Industrial Growth Centre" means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(iv) "Industrial Park" means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(v) "Initial Assessment Year" means the Assessment Year relevant to the Previous Year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion;

(vi) "Integrated Infrastructure Development Centre" means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(vii) "North-Eastern States" means the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura;

(viii) "Software Technology Park" means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry;

(ix) "Substantial Expansion" means increase in the investment in the plant and machinery by at least fifty per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the Previous Year in which the substantial expansion is undertaken;

(x) "Theme Park" means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government.

DEDUCTION IN RESPECT OF PROFITS AND GAINS FROM BUSINESS OF HOTELS AND CONVENTION CENTRES IN SPECIFIED AREA [SEC. 80ID]

(1) Where the Gross Total Income of an assessee includes any profits and gains derived by an undertaking from any business referred to in sub-section (2) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this Section, be allowed, in computing the Total Income of the assessee, a deduction of an amount equal to one hundred per cent of the profits and gains derived from such business for five consecutive Assessment Years beginning from the initial Assessment Year.

(2) This Section applies to any undertaking,—

(i) engaged in the business of hotel located in the specified area, if such hotel is constructed and has started or starts functioning at any time during the period beginning on the 1st day of April, 2007 and ending on the 31st day of July, 2010; or

(ii) engaged in the business of building, owning and operating a convention centre, located in the specified area, if such convention centre is constructed at any time during the period beginning on the 1st day of April, 2007 and ending on the 31st day of July, 2010; or

(iii) engaged in the business of hotel located in specified district having a World Heritage Site, if such hotel is constructed and has started or starts functioning at any time during the period beginning on the 1st day of April, 2008 and ending on 31st day of March, 2013.

(3) The deduction under sub-section (1) shall be available only if —

(i) the eligible business is not formed by the splitting up, or the reconstruction, of a business already in existence;

(ii) the eligible business is not formed by the transfer to a new business of a building previously used as a hotel or a convention centre, as the case may be;

(iii) the eligible business is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

(iv) the assessee furnishes along with the return of income, the report of an audit in such form and containing such particulars as may be prescribed, and duly signed and verified by an accountant, as defined in the Explanation to sub-section (2) of Section 288, certifying that the deduction has been correctly claimed.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the Total Income of the assessee, no deduction shall be allowed under any other Section contained in Chapter VIA or Section 10AA, in relation to the profits and gains of the undertaking.

(5) The provisions contained in sub-section (5) and sub-sections (8) to (11) of Section 80-IA shall, so far as may be, apply to the eligible business under this Section.

(6) For the purposes of this Section, -

(i) "Convention Centre" means a building of a minimum 25,000 square metre covered plinth area with centralised air-conditioner comprising of at least 10 conventional halls to be used for the purpose of holding conference and seminars having other specified facilities and amenities.

(ii) "Hotel" means two-star, three-star or four-star category hotels as classified by the Central Government.

(iii) "Specified Area" means the National Capital Territory of Delhi and the district of Budh Nagar, Faridabad, Gurgaon, Gautam and Ghaziabad.

SPECIAL PROVISIONS IN RESPECT OF CERTAIN UNDERTAKINGS IN NORTH- EASTERN STATES [SEC. 80IE]

(1) Where the Gross Total Income of an assessee includes any profits and gains derived by an undertaking, to which this Section applies, from any business referred to in sub-section (2), there shall be allowed, in computing the Total Income of the assessee, a deduction of an amount equal to one hundred per cent of the profits and gains derived from such business for ten consecutive Assessment Years commencing with the initial Assessment Year.

(2) This Section applies to any undertaking which has, during the period beginning on the 1st day of April, 2007 and ending before the 1st day of April, 2017, begun or begins, in any of the North-Eastern States,—

(i) to manufacture or produce any eligible article or thing;

(ii) to undertake substantial expansion to manufacture or produce any eligible article or thing;

(iii) to carry on any eligible business.

(3) This Section applies to any undertaking which fulfils all the following conditions, namely:—

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in Section 33B, in the circumstances and within the period specified in the said Section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation : The provisions of *Explanations 1* and 2 to sub-Section (3) of Section 80-IA shall apply for the purposes of clause (*ii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the Total Income of the assessee, no deduction shall be allowed under any other Section contained in Chapter VIA or in Section 10A or Section 10AA or Section 10B or Section 10BA, in relation to the profits and gains of the undertaking.

(5) Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking under this Section, where the total period of deduction inclusive of the period of deduction under this Section, or under Section 80-IC or under the second proviso to sub-section (4) of Section 80-IB or under Section 10C, as the case may be, exceeds ten Assessment Years.

(6) Deduction u/s 80-IE will not allowed if the assessee does not furnish the Return of Income u/s 139(1)

(7) The provisions contained in sub-section (5) and sub-sections (7) to (12) of Section 80-IA shall, so far as may be, apply to the eligible undertaking under this Section.

(8) For the purposes of this Section, -

(i) "Substantial Expansion" means increase in the investment in the Plant and Machinery by at least 25% of the book value of Plant and Machinery as on the 1st day of the Previous Year in which substantial expansion is undertaken.

(ii) "Eligible Article or Thing" means the article or thing other than tobacco, manufactured tobacco substitute, plastic carry bag (Less than 20 Microns), and goods produced by petroleum oil or gas refineries.

(iii) "Eligible Business" includes –

- Hotel (Not Below 2 Star Category),
- Adventure & Leisure Sports including Ropeways,
- Nursing Homes (Minimum 25 Beds),
- Old-age Home,
- Information Technology related Training Centre,
- Manufacturing Information Technology related Hardware,
- Vocational Training Institute for Hotel Management, Food Craft, Entrepreneurship Development, Nursing & Para Medical, Civil Aviation & Fashion Design & Industrial Training.
- Bio-technology

DEDUCTION IN RESPECT OF PROFITS AND GAINS FROM BUSINESS OF COLLECTING AND PROCESSING OF BIO- DEGRADABLE WASTE. [SEC. 80JJA]

With effect from Assessment Year 1999-2000, where the Gross Total Income of an assessee include profits and gains derived from the business of collecting and processing or treatment of bio-degradable waste for generating power, or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure these shall be allowed in computing the Total Income of the assessee, a deduction of an amount equal to the whole of such profits and gains for a period of five consecutive Assessment Years beginning with the Assessment Year relevant to the Previous Year in which such business commences.

DEDUCTION IN RESPECT OF EMPLOYMENT OF NEW WORKMEN [SEC 80JJAA]

All assessee having manufacturing units is allowed for deduction provided the following conditions are satisfied :

(i) The Gross Total Income of the assessee includes profits and gains derived from the manufacture of goods in a factory.

(ii) The factory is not hived off or transferred from another existing undertaking or amalgamation with another industrial undertaking or as a result of any business re-organization.

(iii) The assessee employs new regular workmen in the Previous Year in such factory.

(iv) The assessee furnishes the report of a Chartered Accountant in Form No. 10DA [Rule 19AB]

Deduction is available for 3 Previous Years commencing from the Previous Year in which such employment is provided.

Amount of deduction

(i) **New industrial undertaking :** 30% of the wages paid to new regular workmen in excess of 50 regular workmen employed during the year.

(ii) **Existing undertaking :** 30% of the wages paid to new regular workmen provided these is at least 10% increase in number of regular workmen over the existing member of workmen employed in such undertaking, as on the last day of the preceding year.

Regular workmen

It does not include :–

(a) a casual workmen or

(b) a workmen employed through contract labour; or

(c) any other workman employed for a period of less than 300 days during the Previous Year.

For the purpose of this section, factory shall have the same meaning as assigned to it in clause (m) of Section 2 of the Factories Act, 1948.

DEDUCTIONS IN RESPECT OF CERTAIN INCOMES OF OFFSHORE BANKING UNITS AND INTERNATIONAL FINANCIAL SERVICES CENTRE [SEC. 80LA]

(1) Where the Gross Total Income of an assessee,—

(i) being a scheduled bank, or, any bank incorporated by or under the laws of a country outside India; and having an Offshore Banking Unit in a Special Economic Zone; or

(ii) being a Unit of an International Financial Services Centre, includes any income referred to in sub-section (2), there shall be allowed, in accordance with and subject to the provisions of this Section, a deduction from such income, of an amount equal to—

(a) one hundred per cent of such income for five consecutive Assessment Years beginning with the Assessment Year relevant to the Previous Year in which the permission, under clause (*a*) of sub-section (1) of Section 23 of the Banking Regulation Act, 1949 (10 of 1949) or permission or registration under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or any other relevant law was obtained, and thereafter;

(b) fifty per cent of such income for next five Assessment Years.

(2) The income referred to in sub-section (1) shall be the income—

(a) from an Offshore Banking Unit in a Special Economic Zone; or

(b) from the business referred to in sub-section (1) of Section 6 of the Banking Regulation Act, 1949 (10 of 1949) with an undertaking located in a Special Economic Zone or any other undertaking which develops or develops and operates or develops, operates and maintains a Special Economic Zone; or

(c) from any Unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a centre in a Special Economic Zone.

(3) No deduction under this Section shall be allowed unless the assessee furnishes along with the return of income,—

(i) the report, in the form specified by the Central Board of Direct Taxes under clause (*i*) of sub-Section (2) of Section 80LA, as it stood immediately before its substitution by this Section, of an accountant as defined in the *Explanation* to sub-section (2) of Section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this Section; and

(ii) a copy of the permission obtained under clause (*a*) of sub-section (1) of Section 23 of the Banking Regulation Act, 1949 (10 of 1949).

Explanation : For the purposes of this Section,—

(a) "International Financial Services Centre" shall have the same meaning as assigned to it in clause (*q*) of Section 2 of the Special Economic Zones Act, 2005;

(b) "Scheduled Bank" shall have the same meaning as assigned to it in clause (*e*) of Section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);

(c) "Special Economic Zone" shall have the same meaning as assigned to it in clause (*za*) of Section 2 of the Special Economic Zones Act, 2005;

(d) "Unit" shall have the same meaning as assigned to it in clause (*zc*) of Section 2 of the Special Economic Zones Act, 2005.

DEDUCTION IN RESPECT OF CO-OPERATIVE SOCIETIES [SEC. 80P]

The following amounts are allowed as deduction under this Section –

(i) 100% of the profits attributable to any or more of the following activities in the case of a cooperative society engaged in –

(a) carrying on business of banking or providing credit facilities to its members; or

(b) a cottage industry; or

(c) the marketing of the agricultural produce of its members; or

(d) the purchase of agricultural implements, seeds, live stock or other articles intended for agriculture for the purpose of supplying them to its members; or

(e) processing, without aid of power, of the agricultural produce of its members; or

(f) the collective disposal of the labour of its members; or

(g) fishing or allied activities; or

(h) primary cooperative society engaged in supplying milk raised by its member to a Federal Milk Coop. Society or to the Government or a local authority or a Govt. Company or Corporation established under Central/State or Provincial Act. Similar benefit is also extended to a primary Cooperative Society engaged in supplying oilseeds, fruits and vegetables raised or grown by its members.

(ii) The whole of interest and dividend income derived by a Cooperative Society from its investments in any other Cooperative Society;

(iii) The whole of interest income from securities and property income in the case of a Cooperative Society other than housing society or an urban Consumer Society or a Society carrying on transport business where Gross Total Income does not exceed ₹ 20,000.

Urban Consumer Cooperative Society means a society for the benefit of consumers within the limits of Municipal Corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(iv) The whole of the income from letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

(v) In respect of other activities carried on either independently or in addition to above activities upto a sum of ₹ 50,000 (₹ 1,00,000 in case of Consumer Corporation Society) – U/s. 80P(2)(c).

DEDUCTION IN RESPECT OF ROYALTY OF AUTHORS [SEC. 80QQB]

Allowable to : Any resident individual, being an author/joint author, in respect of any income by way of lump sum consideration or otherwise as royalty or copyright fees for assignment or grant of any of his interests in the copyright of any book.

Amount of Deduction: 100% of the royalty income etc. subject to a maximum of ₹ 3,00,000.

In case of royalty or copyright fees, not in lump sum consideration, deduction shall be restricted to 15% of the value of books sold during the Previous Year.

Conditions:

(1) The assessee shall furnish a certificate in Form 10CCD.

(2) In case of income received from a source outside India, the assessee shall furnish a certificate in Form 10H.

DEDUCTION IN RESPECT OF ROYALTY ON PATENTS [SEC. 80RRB]

1	Eligible Assessee	Any resident individual
2	Condition	He must be registered under the Patents Act, 1970 on or after 1.4.2003, as the true and first inventor in respect of an invention, including a co-owner of the patent. The deduction is not available to assignees or mortgagees in respect of all or any rights of the patent
3	Maximum Cap	100% of such income subject to a maximum ₹ 3,00,000.
4	Special Provisions	(a) a certificate in Form 10CCE duly signed by the Controller under Patents Act. (b) a certificate in Form 10H, in case of income received from abroad, certifying that the deduction has been correctly claimed in accordance with this Section.

DEDUCTION IN RESPECT OF INTEREST ON DEPOSITS IN SAVINGS ACCOUNTS TO THE MAXIMUM EXTENT OF ₹ 10,000 [SECTION 80TTA] [W.E.F. A.Y. 2013-14]

Allowable to: an *individual or a Hindu Undivided Family*

Conditions: Where the Gross Total Income of an assessee, includes any income by way of interest on deposits (not being time deposits) in a saving account with-

(a) a banking company to which the Banking Regulation Act, 1949 applies (including any bank of banking institution referred to in Section 51 of that Act);

(b) a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or

(c) a Post Office as defined in clause (k) of Section 2 of the Indian Post Office Act, 1898.

Allowable Deduction: A deduction of such interest shall be allowed to the maximum extent of ₹ 10,000.

However, where the income referred to in this Section is derived from any deposit in a savings account held by, or on behalf of, a Firm, an Association of Persons or a Body of Individuals, no deduction shall be allowed under this Section in respect of such income in computing the Total Income of any partner of the firm or any member of the association or any individual of the body.

Exemption U/s. 10(15)(i) – Post Office Savings Bank Account exempt upto ₹ 3,500 (in an individual account) and ₹ 7,000 (in a joint Account) by virtue of notification number 32/ 2011

A consolidated study of Section 10(15)(i) and Section 80TTA provides (from Assessment Year 2013-14) as follows :

(i) Exemption upto ₹ 3,500 in a single account or / and ₹ 7,000/- in a joint account as deduction u/s. 10(15)(i)

(ii) Deduction upto ₹ 10,000 under Section 80TTA

DEDUCTION IN RESPECT OF TOTALLY BLIND OR MENTALLY RETARDED OR PHYSICALLY HANDICAPPED PERSON [SEC. 80U]

A resident individual suffering from permanent physical disability or total blindness or partial blindness or mental retardation reducing his capacity substantially for gainful employment is allowed a deduction of ₹ 75,000 or ₹ 1,25,000 in case of severe disability. The extent of blindness or other physical disability has to be certified by a Registered Medical Practitioner of the concerned discipline.

Such certificate has to be obtained from a physician, surgeon, etc. working in a Govt. Hospital. For the purpose of Sec. 80U of the Income Tax Act, 1961 any of the following disabilities shall be regarded as a permanent physical disability [Rule 11DD] e.g.–

(i) permanent physical disability of more than 50% in one limb; or

(ii) permanent physical disability of more than 60% in two or more limbs; or

(iii) permanent deafness with hearing impairment of 71 decibels and above; or

(iv) permanent and total loss of voice.

ILLUSTRATIONS ON DEDUCTIONS FROM GROSS TOTAL INCOME

Illustration 1 : Mr. N is employed at a gross salary of ₹ 8,00,000. He gets ₹ 15,000 interest on bank deposit. He has made the following investment/deposit during the year 2015-2016:

		₹
1.	Life insurance premium:	
	(i) Own life, insured for ₹ 80,000	15,000
	(ii) Brother's life, dependent on him	5,000
	(iii) Major son, not dependent on him	4,000
2.	Contribution to unrecognised provident fund	60,000
3.	Contribution to public provident fund	20,000
4.	Contribution to ULIP	5,000
5.	Repayment of loan to SBI to purchase a residential house: 50% repayment is towards interest.	1,20,000
He has paid education fees for his 3 children:		
	A	12,000
	B	9,000
	C	6,000

Besides, interest of ₹ 1,632 on NSC-VIII, (purchased during the year 2009-2010) has been credited on them during the year 2015-2016.

Compute deduction u/s 80C for the Assessment Year 2016-2017.

Solution :

Computation of Deduction u/s 80C of Mr. N for the Assessment Year 2016-2017

	Particulars	₹	₹
Deduction in respect of contribution to approved savings (Sec. 80C) :			
1.	Life insurance premium(assumed issued before 1st April, 2012);		
	(i) Own life	15,000	
	(ii) Brother's life	—	
	(iii) Major son	4,000	
2.	Contribution to unrecognised provident fund	—	
3.	Contribution to ULIP	5,000	
4.	Contribution to public provident fund	20,000	
5.	Repayment of housing loan to SBI	60,000	
6.	Accrued interest on NSC- VIII issue	1,632	
7.	Education fees for two children:		
	A	12,000	
	B	9,000	
		1,26,632	
Deduction available upto ₹ 1,50,000			**1,26,632**

Illustration 2 : Mr. Jamal resident in India, has paid ₹ 60,000 for medical expenses during the Previous Year 2015-2016 for his wife suffering from cancer. Mrs. Jamal is also resident in India and turns 60 years of age on 31st March 2016. The full treatment cost has been reimbursed by the General Insurance Corporation of India. Please determine if Mr. Jamal is entitled to any deduction under Sec. 80DDB and if the answer is yes, determine the quantum of deduction. Also, please work out the quantum of deduction in the following circumstances :

I. Mrs. Jamal turns 60 years of age on 1 April 2016 and the amount reimbursed by the insurer is ₹ 25,000. Payment of medical treatment was made out of exempted income.

II. Mr. Jamal turns 60 years of age on 1 April 2015 but Mrs. Jamal is 59 years, 11 months and 30 days as on 31 March 2016 and the insurer has not reimbursed any expenditure.

III. Mrs. Jamal is 61 years of age, a non-residential in India and the insurer has reimbursed ₹ 35,000

IV. Mr. Jamal, though having assessable income in India, is actually resident in Sri Lanka and is getting his wife treated in India for sake of better and more advanced medical facilities Mrs. Jamal is residential in India and the insurer has reimbursed ₹ 20,000.

V. The expenditure is incurred by the assessee on cancer treatment of his 25 year old grandson who is dependent on him and is resident in India. The insurer has not reimbursed the claim.

VI. Mr. Jamal is able to produce the receipt of the medical expenditure only to the extent of ₹ 10,000 as he misplaced other receipts and the certificate in Form 10-I regarding the treatment of his wife does not mention the total amount incurred by him during the Previous Year. The insurer has reimbursed only ₹ 5,000.

Solution :

Amount of deduction under Sec. 80DDB : PY 2015-2016 / AY 2016-2017

Particulars	Existing	I	II	III	IV	V	VI
Gross deduction u/s 80DDB in respect of specified ailment of dependant wife.	60,000	40,000	40,000	40,000	Nil	Nil	10,000
Less : Insurance claim received	60,000	25,000	Nil	35,000	20,000	Nil	5,000
Net deduction allowable u/s 80DDB	**Nil**	**15,000**	**40,000**	**5,000**	**Nil**	**Nil**	**5,000**

Working Notes :

1. In order to be a senior citizen, a person should be a resident in India and be 60 years of age at any time during the Previous Year, be it one the last day of the Previous Year or at any time during the Previous Year. Therefore, except when Mrs. Jamal turns 60 after the end of the Previous Year or when she is a non-resident in India, the gross amount of deduction will be ₹ 40,000.
2. The assessee individual must be resident in India in order to be eligible to the deduction.
3. A grandson is not covered by the definition of "dependant".
4. Form No. 10-I does not require the doctor to certify the amount incurred.

Illustration 3 : Mr. C, manager of L Ltd., has paid ₹ 38,000 during the Previous Year 2015-2016 by way of medical insurance under GIC approved medical policies. The details are given as below:

(i) For himself ₹ 6,000

(ii) For Mrs. C, a Canadian citizen, resident in Toronto and not dependent on him ₹ 5,000

(iii) For B, married son living with him and dependent on him ₹ 3,000

(iv) For D, minor son resident in Toronto and not dependent on him ₹ 3,000

(v) For Mrs. B, daughter-in-law, dependent on him ₹ 5,000

(vi) For E, a minor grandson dependent on him ₹ 3,000

(vii) For K, father, 67 years, resident and dependent on him ₹ 3,000

(viii) For M, mother, 66 years, resident in Toronto and dependent on him ₹ 6,000

(ix) For Grandfather, dependent on him, 95 years of age and resident in India ₹ 4,000.

C has earned gross salary of ₹ 2,50,000 during the year and also earns ₹ 95,000 as interest from 7% Capital Investment Bonds, purchased on 31 May 2005. Compute his eligible deduction u/s 80D for the Previous Year 2015-2016 assuming the following situations:

I. Premium is paid by cheque from his salary income.

II. Premium is paid in cash from his salary income. He holds a valid receipt for cash payment.

III. Premium is paid by cheque out of interest from 7% Capital Investment Bonds, acquired on 31-5-2005.

IV. Premium is paid in cash out of interest from 7% Capital Investment Bonds, acquired on 1-6-2005.

Solution :

Computation of Deduction for Medical Insurance Premium u/s 80D

Particulars of Medical Insurance premium paid	**I** ₹	**II** ₹	**III** ₹	**IV** ₹
For himself	6,000	Nil	Nil	Nil
For Mrs. C, a Canadian citizen, resident in Toronto and not dependent on him	5,000	Nil	Nil	Nil
For B, married son living with him and dependent on him	3,000	Nil	Nil	Nil
For D, minor son resident in Toronto and not dependent on him	Nil	Nil	Nil	Nil
For Mrs. B, daughter-in-law, dependent on him	Nil	Nil	Nil	Nil
For E a minor grandson, dependent on him	Nil	Nil	Nil	Nil
For K, father, 67 years, resident in India, a senior citizen and dependent on him	3,000	Nil	Nil	Nil
For M, mother, 66 years, resident in Toronto -not a senior citizen but dependent on him	6,000	Nil	Nil	Nil
For Grandfather, 95 years of age, dependent on him, resident in India, and senior citizen (not a parent, hence not eligible)	Nil	Nil	Nil	Nil
Eligible premium for Deduction u/s 80D	23,000	Nil	Nil	Nil

Working Notes :

1. Medical insurance premium on spouse's health is always eligible irrespective of whether the spouse is dependent on the assessee or not. The condition of dependency applies only in case of children and parents.
2. Medical premium on health of grandson, grandparents, daughter-in-law or son-in-law are not eligible for deduction u/s 80D.
3. Only the premium on health of dependent father will qualify for relaxation as a senior citizen. Since dependent mother is non-resident and, therefore, outside the purview of being a "senior citizen". However, the premium for health of mother will qualify for the normal limit irrespective of the residential status.
4. Any premium paid in cash or by cheque or out of exempted income does not quality for deduction u/s 80D.

Illustration 4 : Mr. Maity, a resident individual, furnishes the following particulars of his income/expenditure for the Previous Year 2015-2016 :

		₹
(i)	Gross Salary	3,00,000
(ii)	Income from House Property	1,70,000
(iii)	Share of profit from an AOP	25,000
(iv)	Long-term Capital Gain	50,000

He has paid medical insurance on his life, his wife and his dependent children. Total premium paid under GIC approved policies is ₹ 10,000 but a sum of ₹ 1,000 was paid in cash due to a prolonged bank clearing strike. He has spent ₹ 20,000 on the treatment of his brother, a dependant with disability. He has also deposited ₹ 25,000 with a specified company u/s 2(h) of Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2003 for maintenance of his brother.

He has paid the following donations during the year:

Particulars of donations made during the year	₹
• Donation to P.M.'s National Relief Fund	10,000
• Donation to Jamia Milia University	5,000
• Donation to National Cultural Fund, set up by Central Government	5,000
• Donation to Delhi Municipal Corporation for Family Planning	12,000
• Donation to Birla Temple (notified):	
(i) for repair and renovation of the temple	2,000
(ii) for religious ceremonies, prasad, etc. for the benefit of devotees in general	5,000
• Donation to a temple managed by the Residents Welfare Association for its much needed repair and maintenance. The Association is a non-profit entity registered with the Registrar of Societies.	5,000
• Following donations to Pt. Pyare Lal Charitable Trust recognised by the Commissioner u/s 80G(5)(vi):	
(i) Donation in form of equity shares of blue chip companies: The shares were sold by the Trust at their market value of ₹ 75,000 and used wholly towards its charitable objectives. However, shares were transferred at cost,	25,000
(ii) Donation paid in cash,	5,000
(iii) Donation made by cheque,	7,000
(iv) 50 blankets costing ₹ 100 each.	5,000
• Donation made to Indian Olympic Association 80G(2)(c) paid by A/c payee cheque,	7,500
• Donation for developing low cost homes for slum-dwellers, paid	
(i) Delhi Development Authority,	3,000
(ii) Delhi Slum-dwellers Rehabilitation Society duly registered with the Registrar,	2,500
• The Rajiv Gandhi Foundation	6,000
• National Children's Fund	3,000

Mr. Maity borrowed a sum of ₹ 2,00,000 in 2004 @9% interest from Harsh Vardhan Charitable Trust (registered under Sec. 80G) to complete his B.Tech. degree from Nalanda University. In March 2016, he repaid a sum of ₹ 75,000 (including ₹ 20,000 interest) to the said trust.

Compute his Total Income for the Assessment Year 2016-2017.

Solution :

Computation of Total Income of Mr. Maity for the Assessment Year 2016-2017

Particulars	₹	₹
1. Income from Salary		3,00,000
2. Income from House Property		1,70,000
3. Share of profits from an AOP : Exempt (Sec. 86)		Nil
4. Long-term Capital Gains		50,000
		5,20,000
Gross Total Income		
5. Deduction from Gross Total Income :		
(i) Medical insurance premium (Sec. 80D)	9,000	
(ii) Expenditure on medical treatment and deposit for maintenance of a handicapped dependent relative (Sec. 80DD)	75,000	
(iii) Repayment of interest on loan for higher studies (Sec. 80E) (No deduction is allowed for repayment of principal amount of educational loan w.e.f. A.Y. 2008-2009)	20,000	
	1,04,000	
(iv) Charitable donations Sec. 80G – [See Note below]	44,000	**1,48,000**
Total Income		**3,72,000**

Working Note :

	₹	₹
Goss Total Income		5,20,000
Less : Aggregate of :		
(i) Share of profit in AOP entitled to rebate u/s 86.	Nil	
(ii) Any amount qualifying for deduction from GTI exempt for deduction for donation u/s 80G itself.	1,04,000	
(iii) Long-term Capital Gain	50,000	
(iv) Any to a NRI from dividend and interest etc. on foreign currency investment referred to u/s 115A, 115AB, 115AC, 115ACA, 115AD.	Nil	1,54,000
Adjusted Gross Total Income		**3,66,000**

Computation of Deduction for Donations u/s 80G

		₹	₹
A.	Donations not subject to qualifying amount, eligible for deduction @ 100% of the amount donated :		
	(i) Donation to P.M.'s National Relief Fund	10,000	
	(ii) Donation to National Cultural Fund, set up by Central Government	5,000	
	(iii) National Children's Fund	3,000	18,000
B.	Donation not subject to qualifying amount, eligible for deduction @ 50% of the amount donated :		
	The Rajiv Gandhi Foundation	6,000	
	Only 50% of the amount of donation available as deduction	6,000	3,000
C.	Donation subject to qualifying amount :		
	(i) Donation to Delhi Municipal Corporation for Family Planning	12,000	
	(ii) Donation made to Indian Olympic Association 80G (2)(C) (available only to a company assessee)	Nil	
	(iii) Donation to Jamia Milia University	5,000	
	(iv) Donation to Birla Temple (notified) for repair and renovation of the temple.	2,000	
	(v) Monetary donation to Pt. Pyare Lal Charitable Trust recognized by the Commissioner u/s 80G (5) (vi).	12,000	
	(vi) Donation to Delhi Development Authority	3,000	
	Aggregate of donations subject to qualifying amount	**34,000**	
	Qualifying amount :		
	Lower of the following :		
	(a) 10% of Adjusted Gross Total Income, i.e. ₹ 36,600, or		
	(b) Aggregate of donations, ₹ 34,000		
	Whichever is less, is qualifying amount = 34,000		
	100% of ₹ 12,000 out of the QA of 34,000	12,000	
	50% of the balance of the QA i.e. 50% of (34,000-12,000)	11,000	23,000
	Total deduction for donations u/s 80G		44,000

1. Medical Insurance Premium paid in cash is not allowable as a deduction.
2. Donation to a notified temple is allowed only if it is towards its repairs or maintenance and not otherwise.
3. Only donations paid in monetary terms that is, either in cash or by cheque are eligible for deduction. Conversion of donations in kind into cash by the donee or mere possibility of their conversion is immaterial.
4. Temple managed by the Resident Welfare Association is not a notified temple.

Illustration 5 : Mr. Jamal, a resident assessee, runs a manufacturing business in Delhi. For the Previous Year 2015-2016, he disclosed his Taxable Income as below:

	₹
Business Profits	2,55,000
Long-term Capital Gains	25,000
Short-term Capital Gain	15,000

He has hired furnished accommodation for his own use and pays ₹ 4,000 p.m. He has paid donation amounting to ₹ 10,000 to National Defence Fund. He has deposited ₹ 50,000 under a scheme framed by the Life Insurance Corporation for maintenance of his dependant brother with a disability. The disability is certified by the medical authority. Compute his Total Income for the Assessment Year 2016-2017.

Solution :

Computation of Total Income of Mr Jamal — Assessment Year 2016-2017

Particulars	₹	₹
Income from Business (computed)		2,55,000
Long-term Capital Gain (computed)		25,000
Short-term Capital Gain (computed)		15,000
Gross Total Income		2,95,000
Deductions from Gross Total Income:		
(i) Deposit for maintenance of a dependent with disability [Sec. 80DD]	75,000	
(ii) Charitable donations to National Defence Fund [Sec. 80G]:		
Amount of Deduction @ 100% of ₹ 10,000	10,000	
	85,000	
(iii) Expenditure incurred on rent [Sec. 80GG] [W.N.1]	24,000	1,09,000
Total Income		1,86,000

Workings Note :

Particulars	₹	₹
Expenditure incurred on rent [Sec. 80GG]:		
• [Rent paid -10% of AGTI], i.e. 48,000 – 18,500 = 29,500, or		
• 25% of AGTI, i.e. 25% of 1,85,000 = 46,250, or		
• ₹ 2,000 p.m. = ₹ 24,000		
whichever is less, is to be deducted, i.e. ₹ 24,000		
Adjusted Gross Total Income for Sec. 80GG:		2,95,000
Gross Total Income		
Less: Aggregate of		
2. All permissible deduction from GTI except for deduction for u/s 80GG	85,000	
(ii) Any Long-term Capital Gain	25,000	1,10,000
Adjusted Gross Total Income [AGTI] for Sec. 80GG		**1,85,000**

Illustration 6 : M, resident in India, furnishes the following particulars of his receipts and outgoings during the Previous Year 2015-2016.

		₹
Receipts:		
(i)	Income from Salary	2,00,000
(ii)	Income from House Property	3,00,000
(iii)	Gross winning from crossword puzzle	3,50,000
Outgoing :		
(i)	Contribution to LIC annuity plan	15,000
(ii)	Medical insurance premium:	
	(a) For himself	4,000
	(b) His wife, not dependent	3,000
	(c) Mother, non-resident, 67 years, dependent	5,000
	(d) Nephew, wholly dependent with disability	3,000
	(e) Grandson, dependent	2,000
(iii)	Expenditure on medical treatment and maintenance of the nephew referred to	30,000
(iv)	Medical treatment for grandson, suffering from a disease specified under Income-tax Rules(v)	50,000
(v)	Donation to Gujarat Government for family planning	50,000
(vi)	Scholarship to a poor but meritorious student	20,000
(vii)	Contribution to approved scientific research association	30,000
(viii)	Contribution to Delhi Municipal Corporation for sewage scheme for slum-dwellers, approved by National Committee	50,000
(ix)	Donation to Political party paid during November 2015	20,000

Compute his Total Income for the Assessment Year 2016-2017. Make necessary assumptions and clarify them.

Solution :

Computation of Total Income for AY 2016-2017

Particulars		₹	₹
Income from Salary			2,00,000
Income from House Property			3,00,000
Gross winnings from crossword puzzle			3,50,000
Gross Total Income			**8,50,000**
Less: Deductions under Chapter VIA :			
Contribution to LIC annuity plan [Sec. 80CCC]		15,000	
Medical insurance premium [Sec, 80D]			
Self	4,000		
His wife	3,000		
Mother, 67 years old	5,000		
Nephew dependent with disability	Nil		
Grand son	Nil	12,000	
Maintenance and medical treatment of a dependent with disability [Sec. 80DD]		Nil	
Expenditure for medical treatment of grandson [Sec. 80DDB]		Nil	
Donations for scientific research or rural development [Sec. 80-GGA]			
(a) Donation to approved scientific research association		30,000	
(b) Contribution to MCD for slum-dwellers scheme, approved by National Committee		50,000	
Donations to political party [Sec. 80GGC w.e.f. 22.9.2004]		20,000	
Charitable donations [Sec. 80G]			
(a) Scholarship to a poor meritorious student		Nil	
(b) Gujarat government for family planning: 100% of qualifying amount			
1. Actual donation = 50,000, or			
2. 10% of specified GTI = 37,300			
8,50,000 – (3,50,000 + 15,000 + 12,000 + 30,000 + 50,000 + 20,000) = ₹ 3,73,000			
whichever is less, is QA 37,300= 100% of 37,300		37,300	1,64,300
Total Income			**6,85,700**

Illustration 7 : SK Industries, a diversified group, discloses profit from the following sources for the Previous Year 2015-2016 :

(₹ in lakhs)

(i)	Profits from industrial undertaking located in backward district notified by Central Govt. (Catagory A), started in 2004-2005	6.00
(ii)	Profit from industrial undertaking 1999-2000, in Vidisha, a B-class industrially backward district.	10.00
(iii)	Profit from multiplex theatre, started in 2008-2009	
	(a) Delhi	4.00
	(b) Allahabad	2.00
(iv)	Profits from convention centre, started in 2010-2011	
	(a) Delhi	5.00
	(b) Allahabad	3.00

(v) Profits from Hill View, a hotel started in 2005-2006 at Manali in Himachal Pradesh. Hotel is approved by prescribed authority — 10.00

(vi) Profits from undertakings engaged in refining of mineral oil since 1st January 2008 in Uttar Pradesh, not listed in backward state in Eighth Schedule. — 10.00

Compute the Total Income for the Assessment Year 2016-2017.

Solution : **Computation of Total Income**

Assessee: S.K Industries **Previous Year-2015-16** **Assessment Year- 2016-17**

Particulars	**(₹ lakhs)**	**(₹ lakhs)**
(i) Profits from industrial undertaking located in backward district		6.00
(ii) Profits from undertaking located in industrially backward B-class district		10.00
(iii) Profits from multiplex theatre: (4 + 2)		6.00
(iv) Profits from convention centre: (5+3)		8.00
(v) Profits from Hill View Hotel		10.00
(vi) Profits from refining undertaking		10.00
Gross Total Income		**50.00**
Less : Deduction in respect of profits and gains from certain industrial undertaking, other than infrastructure undertakings (Sec. 80-IB) :		
1. Profits from industrial undertaking located in backward district [Sec. 80-IB] [No deduction is available]	Nil	
2. Profits from undertaking in B-class industrially backward district [Sec. 80-IB (4)] [No deduction is available]	Nil	
3. Profits from multiplex theatre [Sec. 80-IB(7A) 50% of ₹ 2 lakh (No deduction is available)	Nil	
4. Profits from convention centre [Sec. 80-IB(7B)] [No deduction is available]	Nil	
5. Profits from Hill View Hotel [Sec. 80-IB(7)] Allowed only for Indian company	Nil	
6. Profits from refining undertaking [Sec. 80-IB(9)]-100% of profits for 7 Assessment Years	10.00	**10.00**
Total Income		**40.00**

Illustration 8 : Mekon Ltd., an Indian company, starts an industrial undertaking on 1st April, 2015. During the Previous Year, it earns profits of ₹ 80 lakh before allowing any deduction for wages. Compute its Total Income for the Previous Year 2015-2016 taking into account the following employment schedules of workers:

Date of employment	Number of workers	Status of workers	Rate of wages
1-5-2015	90	Regular	3000 p.m.
1-6-2015	20	Regular	4000 p.m.
1-7-2015	10	Regular	4000 p.m.

Solution :

Computation of Total Income for the AY 2016-2017

Particulars	₹	₹
Profits before allowing deduction for wages		80,00,000
Less: Wages paid to workers [Sec. 37(1)] :		
(i) 90 × ₹ 3000 × 11	29,70,000	
(ii) 20 × ₹ 4000 × 10	8,00,000	
(iii) 10 × ₹ 4000 × 9	3,60,000	(-) 41,30,000
Business Profits and Gross Total Income		38,70,000
Less: Deduction in respect of employment of new regular workmen U/s Sec. 80 JJAA - 30% of earned wages in excess of 50 regular workmen:		
1.5.2015 – 40 regular worker [₹3,000 × 40×11× 30%] = 3,96,000		
1.6.2015 – 20 regular worker [₹4,000 × 20×10× 30%] = 2,40,000		
1.7.2015 – Nil, as employed for less than 300 days = Nil		(-) 6,36,000
Total Income		32,34,000

Illustration 9 : Mr. R has developed an improved economical model of a motor cycle and got it patented on 31-3-2015 under the Patent Act, 1970. He allowed Z Ltd. to use his patent rights and licenses has been granted to it under the Patent Act, 1970. He has received royalty of ₹ 8,00,000 during the Previous Year 2015-2016. However, the royalty in accordance with the terms and conditions of the license settled by the Controllers under the said Act is ₹ 2,80,000.

He has incurred ₹ 1,00,000 expenses in developing his invention and getting it patented.

Compute his Total Income for the Assessment Year 2016-2017 (i) if he is resident in India, (ii) non-resident India.

Solution : Computation of Total Income for the Assessment Year 2016-2017

Particulars	**(i) ₹**	**(ii) ₹**
Income from Other Sources	8,00,000	8,00,000
Less : Expenses	1,00,000	1,00,000
Gross Total Income (GTI)	7,00,000	7,00,000
Less: Deduction for respect of royalty on patent (Sec. 80-RRB)		
Least of the followings:		
(a) Income from royalty ₹ 8,00,000; or		
(b) Royalty under the terms of license settled by the Controller ₹ 2,80,000;		
(c) Maximum limit ₹ 3,00,000 Whichever is less, is to be deducted	2,80,000	Nil
Total Income	**4,20,000**	**7,00,000**

Illustration 10 : Mr. J is suffering with 60% locomotor disability which is certified by medical authority. He is employed as Technical Supervisor with Airtel at a salary of ₹ 20,000 p.m.

	Particulars	₹
(i)	Income from Government securities	20,000
(ii)	Long-term Capital Loss	(-) 40,000
(iii)	Short-term Capital Gain (Sec. 111A)	1,00,000
(iv)	Insurance commission (gross)	1,00,000
(v)	Interest on Saving Fund A/c from Bank	10,000

He has incurred the following expenses:

(i)	Medical insurance paid by cheque for his father, resident in India and 70 years	18,000
(ii)	Deposit with LIC for maintenance of father, mainly dependant on him for support and maintenance and suffering from low-vision with a severe disability of 80%, as per certificate of the medical authority	1,00,000
(iii)	Rent paid for the year 2015-2016 for accommodation hired by him.	40,000

Compute his Total Income for the Assessment Year 2016-2017.

Solution :

Computation of Total Income for the Assessment Year 2016-2017

Particulars	₹	₹
1. Income from Salaries		2,40,000
2. Income from Capital Gains :		
(a) Short-term Capital Gains (Sec. 111A)		1,00,000
(b) Long-term Capital Loss to be carried forward		Nil
3. Income from Others Sources :		
(a) Interest from Government securities	20,000	
(b) Interest on Savings Fund A/c with Bank	10,000	
(c) Insurance commission	1,00,000	1,30,000
Gross Total Income		**4,70,000**
Less : Deductions under Chapter VIA:		
Medical insurance (Sec. 80D)	18,000	
Deduction in respect of maintenance including medical treatment of a dependant, a person with severe disability (Sec. 80DD)	1,25,000	
Deduction in respect of Interest on Savings Fund A/c (Sec. 80TTA)	10,000	
Deduction in case of a person with disability (Sec. 80U)	75,000	
Deduction u/s 80GG : (Least of the followings)		
(a) (i) Rent paid less 10% of Adjusted Gross Total Income 40,000-14,200 = 25,800,		
(b) (ii) 25% of 1,42,000 Adjusted Gross Total Income = 35,500,		
(iii) 2,000 p.m. × 12 = 24,000		
Whichever is less, is or be deducted	24,000	2,52,000
Total Income		**2,18,000**

Illustration 11 : Mr. Krishna is a lawyer of Allahabad High Court. He keeps his accounts on cash basis. His Receipts and Payments A/c for the year ended 31-03-2016 is given below :

Dr. Cr.

Receipts	₹	Payments	₹
Balance b/d	3,820	Purchase of Infrastructure Bonds	20,000
Legal fees	3,45,000	Subscription and membership	4,500
Special commission fees	5,500	Purchase of legal books	17,500
Salary from Law College as part time lecture	87,000	Rent	47,500
		Municipal Tax paid on H. P.	3,000
Exam. Remuneration	1,480	Car expenses	44,000
Interest on Bank Deposit	3,500	Office expenses	38,500
Sale proceeds of residential property	3,01,000	Electricity Exps.	4,000
		Income Tax	8,000
Dividend from Co-operative society	1,000	Gift to daughter	12,000
Dividend received from the units of UTI	2,000	Domestic expenses	85,000
Rent from house property	15,000	Donation to Institutions approved u/s 80G	12,000
		Car purchased	3,27,000
		Life Insurance premium	16,000
		Balance c/d	1,26,300
	7,65,300		7,65,300

Following information are available :

1. The Rent and Electric expenses are related to a house, of which half portion in used for self residence and remaining half portion in used for office.
2. Car is used only for professional purposes.
3. Outstanding legal fees ₹ 10,000.
4. Rent has been paid for 10 months only.
5. Car was purchase on 25-09-2015. Law books purchased are annual publications out of which books of ₹ 2,000 were purchasd on 6-4-2015 and balance on 31-10-2015.
6. The house was purchased in January 1988 for ₹ 45,000 and sold on 1-7-2015.
7. Rent of the property which has been sold was ₹ 5,000 p.m. The property was vacated by the tenant on 30-6-2015.

   Compute his Total Income for the Assessment Year 2016-17.

Solution :

Computation of Total Income of Mr. Sen for the Assessment Year 2016-17

Particulars			₹	₹
1.	*Income from Salary*			
	Salary as a part time lecturer		87,000	
	Less: Deduction		Nil	87,000
2.	*Income from House Property*			
	Annual Rent		60,000	
	Less: Vacancy Allowance		45,000	
	Gross Annual Value (GAV)		15,000	
	Less: Municipality Tax paid		3,000	
	Net Annual Value (NAV)		12,000	
	Less: Standard deduction @ 30% of NAV		3,600	8,400
3.	*Income from Profession*			
	Professional Earnings:			
	(i) Legal fees		3,45,000	
	(ii) Special commission		5,500	
			3,50,500	
	Less: Allowable expenses			
	(i) Subscription etc.	4,500		
	(ii) 1/2 Rent (Office)	23,750		
	(iii) Car expenses	44,000		
	(iv) 1/2 electric charges	2,000		
	(v) Office expenses	38,500		
	(vi) Depreciation on car @ 15% on 3,27,000	49,050		
	(vii) Depreciation on books :			
	@ 100% on Annual Publication of ₹ 2,000 = 2,000			
	@ 50% on Others of 15,500 = 7,750	9,750	1,71,550	1,78,950
4.	*Capital Gains :*			
	Sale consideration		3,01,000	
			3,24,300	
	Less: Indexed cost of acquisition 45,000 × $\frac{1081}{150}$		(23,300)	
5.	*Income from Other Sources* :		3,500	
	Interest on bank deposit		1,480	
	Examiner's fees		1,000	
	Dividend from Co-operative Society		Exempt	5,980
	Dividend from UTI			2,80,330
	Gross Total Income			
	Less : Deductions			
	(i) 80C - LIP		16,000	
	(ii) 80G - Donation @ 50% of ₹ 12,000		6,000	
	(iii) 80CCF - Purchase of Infrastructure Bonds (discontinued)		Nil	
	(iv) 80TTA – Interest on bank deposit (assumed savings deposit)		3,500	25,500
	Total Income			2,54,830

Notes :

1. As the assessee follows the cash system of accounting, amount actually received and payment actually made on account of expenditure, during the year, shall be considered for computing the income. Therefore, any outstanding receipts will not be included in the Total Income. Similarly, rent not paid for two months will not be allowed as deduction.
2. The system of accounting does not affect the computation of Income from Salary, House Property and Capital Gains. Therefore, in this case, rent for three months, though not received (as it has not been shown in the Receipt and Payment Account) shall be taken into account in computing the income under the head House Property.
3. Car was purchased and put to use for more than 180 days. Therefore, full depreciation @15% has been claimed.
4. Law books worth ₹ 2,000 were purchased and put to use for more than 180 days and are, therefore, eligible for depreciation @100%. The balance books worth ₹ 15,500 were purchased on 31-10-2015; therefore, 50% of the normal depreciation will be allowed as the books were purchased and put to use for less than 180 days. The total depreciation shall, therefore, be ₹ 2,000 + 50% of ₹ 15,500 = ₹ 9,750.
5. Long term capital loss of ₹6,200 is carried forward for adjustment in subsequent A.Y.

Illustration 12 : Dr. Paul is running a Nursing Home with his wife Dr. (Mrs.) Paul as a partnership firm Paul & Co. On the basis of the following particulars, compute the Total Income of Dr. Paul and Dr. (Mrs.) Paul for the Assessment Year 2016-17.

			₹
(A)	Particulars of income of the Nursing Home		
	(i)	Income as per Income and Expenditure Account	3,20,000
	(ii)	Firm's tax not provided in the account	48,000
	(iii)	Dontation to Public Charitable Trust exempt u/s 80G debited in the A/c	35,000

(B) Particulars of Income of Dr. Paul :

(i) 40% of profit from Nursing Home as per books ₹ 1,28,000

(ii) Dr. Paul had purchased 500 shares of Laha (P) Ltd. at ₹ 110 each in May 1991. On 14-5-2015 Dr. Paul sold 300 shares at ₹ 400 per share. He invested ₹ 40,000 out of the net sale proceeds in Bonds of RECL in June, 2015. The balance of 200 shares were sold in December, 2015 at ₹ 380 per share.

(iii) Dr. Paul is a Director in Raha (P) Ltd. from which he received director's fees amounting to ₹ 4,000.

(iv) Dr. Paul has obtained a loan of ₹ 50,000 from the said company for renovating the Nursing Home. The balance sheet of Raha (P) Ltd. for the Accounting year, *inter alia*, disclosed the following particulars.

(*a*)	General Reserve	40,000
(*b*)	Profit & Loss Account (Cr. Balance)	20,000
		60,000

(v) Share of income from property belonging to HUF of which Dr. Paul is the Karta amounts to ₹ 30,000.

			₹
(C)	Particulars of Income of Dr. (Mrs.) Paul :		
	(i)	60% share of profit from Nursing Home as per books	1,92,000
	(ii)	Income from dividend from UTI	18,000
	(iii)	Income from house property (as computed under Income-tax Act)	48,000

(D) Particulars of Income of Master Pritam :

Pritam minor son of Dr. Paul and Dr. (Mrs.) Paul has been admitted to the benefits of partnership in Paul & Co. which is carrying on business as Chemists & Druggists. The said firm has two other partners Soham (brother of Dr. Paul) and Priya [sister of Dr. (Mrs.) Paul]. Pritam's share of profits is determined at ₹ 20,000.

Solution :

Computation of Total Income of Paul & Co. **A.Y : 2016-17**

	₹
Income as per Income and Expenditure Account	3,20,000
Add : Donation to public charitable trust	35,000
Gross Total Income	3,55,000
Donation to public charitable trust being restricted to 10% of Gross Total Income (3,55,000) i.e. 50% of ₹ 35,000	17,500
Total Income	3,37,500
Total tax *plus* education cess *plus* SHEC payable by the firm ₹ 1,04,288.	

Computation of Total Income of Dr. Paul **A.Y.: 2016-17**

Particulars		₹	₹
1.	His income from the Nursing Home is not taxable. (as tax is already paid by the firm)		Nil
2.	**Capital Gains**		
	Sale proceeds : 300 shares of ₹ 400 each	1,20,000	
	200 shares of ₹ 380 each	76,000	
		1,96,000	
	Less : Indexed cost : $55,000 \times \frac{1081}{182}$	3,26,676	
	Long term Capital Loss	(–) 1,30,676	
3.	Income from other sources :		
	(a) Director's fees	4,000	
	(b) Deemed dividends u/s 2(22)(*e*) for having taken a loan from the company in which the assessee has substantial holding	50,000	54,000
	Gross Total Income		54,000
	Deduction under Chapter VI A		Nil
	Total Income		54,000

Computation of Total Income of Dr. (Mrs.) Paul **A.Y.: 2016-17**

		₹
1.	60% share from Nursing Home is not taxable (as tax is already paid by the firm)	Nil
2.	Income from house property (net).	48,000
3.	Income from other sources — dividends from UTI	Exempt
Gross Total Income		48,000
Less : Deduction under Chapter VI A		Nil
Total Income		48,000

Notes :

1. Share of profit from the firm accruing to minor is not included in the Total Income of parent as share of profit to a partner is exempt.
2. Long-term Capital Loss cannot be set off against other income and therefore has to be carried forward.

Illustration 13 : From the following details compute the Total Income of Mr. X, a resident of Delhi, for the A.Y. 2016-17.

Particulars		₹
(a)	Salary including Dearness Allowance	6,30,000
(b)	Bonus	57,600
(c)	Contribution to a Recognised Provident Fund	36,000
(d)	Life Insurance Premium	57,000
(e)	Rent paid by the Employer for flat provided to Mr. X	90,000
(f)	Cost of Furniture provided by the employer at the aforesaid flat	80,000
(g)	Rent recovered from Mr. X by employer	36,000
(h)	Bills paid by the employer for gas, electricity and water provided free of cost at the above flat	18,000
(i)	Mr. X was provided with Company's car (with driver) also for personal use, not possible to determine expenditure on personal use and all expenses were borne by the employer.	

Particulars	₹
Mr. X owns a house. The particulars are :	
Rent received (12 months)	72,000
Municipal valuation	48,000
Municipal taxes paid	12,000
Ground rent	2,000
Insurance charges	1,000
Collection charges	3,400
Interest on borrowing used for construction of house (constructed in June 2004)	48,000
Other Information :	
Dividend received from UTI	14,000
Deposits under National Saving Certificate	20,000

Solution :

Assessee : Mr. X **Previous Year : 2015-16** **Assessment Year : 2016-17**

Computation of Total Income

Particulars	₹	₹
Income under the head Salary		
Salary including Dearness Allowance		6,30,000
Bonus		57,600
Gross Salary before including value of perquisites		**6,87,600**
Value of Concessional Furnished Accommodation [Rule 3(1)]		
Least of Rent Paid by employer		
[₹ 90,000 or 15% of Salary ₹ 6,87,600]	90,000	
Add : 10% of Furniture Value		
[₹ 80,000 × 10%]	8,000	
Less : Rent recovered from Mr. X	(36,000)	62,000
Gas, Electricity and Water provided by the employer		18,000
Motor Car provided to the employee for use (assumed capacity upto 1.6 liitres) [(₹ 1,800 p.m. + ₹ 900 p.m. for chauffeur) × 12 Months)] as per Rule 3		32,400
Gross Income from Salary		**8,00,000**
Income from House Property :		
Gross Annual Value u/s 23(1) Higher of Municipal Value ₹ 48,000		
or Rent Received ₹ 72,000	72,000	
Less : Municipal Taxes paid	(12,000)	
Net Annual Value	**60,000**	
Less : Deduction		
Standard deduction @ 30% of Net Annual Value u/s 24(a)	(18,000)	
Interest on borrowed capital u/s 24(b)	(48,000)	**(6,000)**
Income from Other Sources :		
Income from UTI	14,000	
Exemption u/s 10(35)	(14,000)	Nil
GROSS TOTAL INCOME		**7,94,000**
Less : Deduction under Chapter VIA - Section 80C		
- Contribution to RPF	36,000	
- LIC Premium	57,000	
- Deposits in NSC	20,000	
	1,13,000	
Deduction u/s 80C restricted to ₹ 1,50,000 [Sec. 80CCE]		(1,13,000)
TOTAL INCOME (Rounded Off u/s 288A)		**6,81,000**

Illustration 14 : Mr. X, Finance Manager of K Ltd. Mumbai, furnishes the following particulars for the Previous Year 2015-2016.

		₹
(a)	Gross Salary (per month) [Tax deducted from Salary ₹ 1,09,000]	64,000
(b)	Valuation of medical facility in a hospital maintained by the Company	7,000
(c)	Rent Free Accommodation owned by the Company	
(d)	Housing Loan of ₹ 6,00,000 at the interest rate of 5% p.a. (no repayment made during the year, to be repaid within 10 years) [Standard Rate of SBI is 10% p.a.]	
(e)	Gift made by the Company on the occassion of wedding anniversary of X	4,750
(f)	A wooden table and 4 Chairs were provided to X at his residence (Dining Table). This was purchased on 1.5.2012 for ₹ 60,000 and sold to X on 1.8.2015 for ₹ 30,000	
(g)	Personal purchases through Credit Card provided by the Company amounting to ₹ 20,000 was paid by the Company. No part of the amount was recovered from X.	
(h)	A Maruti Esteem Car which was purchased by the Company on 16.7.2011 for ₹ 5,50,000 was sold to the assessee on 14.8.2015 for ₹ 1,30,000.	
(i)	Other income received by the assessee during the Previous Year 2015-2016 are :	₹
	Interest on Fixed Deposits with a Company	5,000
	Income from specified mutual fund	3,000
	Interest on bank deposits of a minor married daughter	3,000
	Income from UTI received by his handicapped minor son	1,200
(j)	Contribution to LIC towards Premium u/s 80CCC	10,000
(k)	Deposit in PPF Account made during the year 2015 -2016	75,000
(l)	Bonds of ICICI (Tax Savings) eligible for tax deduction	25,000

Compute the Taxable Income of Mr. X and the tax liability for the A.Y. 2016-2017.

Solution :

Assessee : Mr. X **Previous Year : 2015-16** **Assessment Year : 2016-17**

Computation of Total Income

Particulars		₹	₹
Income from Salaries :			
Basic Salary (₹ 64,000 × 12)			7,68,000
Add : **Value of Perquisities :**			
1. Value of Medical Facility in hospital maintained by K Ltd.			
— Treatment in hospital maintained by Employer — Fully Exempt			Nil
2. Rent Free Accommodation owned by Company — Explanation 1 to Sec.17(2) 15% of salary = 15% of ₹ 7,68,000 (Population > 25 Lakhs)			1,15,200
3. Housing Loans at concessional rate – Rule 3(7)(i) = ₹ 6,00,000 × (10% – 5%)			30,000
4. Use of Furniture & Fittings upto 1.8.2015 - Rule 3(1)(vii) = 10% × ₹ 60,000 × 4/12			2,000
5. Transfer of Assets - Rule 3(7)(viii)			
— Dining Table as per WN 1 (a)		12,000	
Motor Car as per WN 1 (b)		95,280	
			1,07,280
6. Gifts made by the Company on the occasion of the Wedding Anniversary			Nil
7. Credit Card Purchases taxable as perquisite u/s 17(2)			20,000
Gross Income from Salary			**10,42,480**
Less : Deduction u/s 16			Nil
Net Income from Salaries			**10,42,480**
Income from Other Sources :			
Interest on Fixed Deposits with a Company		5,000	
Income from specified mutual fund	3,000		
Less : Exempt u/s 10(35)	(3,000)	Nil	
Interest on Bank Deposits of minor married daughter	3,000		
Less : Exempt u/s 10(32)	(1,500)	1,500	
Income received by handicapped minor son - not clubbed u/s 64(IA)		Nil	6,500
GROSS TOTAL INCOME			**10,48,980**
Less : **Deduction under Chapter VI-A**			
U/s 80CCC – Contribution towards Pension Fund		10,000	
U/s 80C – Contribution towards PPF		75,000	
– Bonds of ICICI (Tax Savings)		25,000	
		1,10,000	
TOTAL INCOME			1,10,000
TAX PAYABLE			**9,38,980**
Add : Education Cess @ 2%			**1,12,796**
Add : Secondary and Higher Education Cess @ 1%			2,256
Gross Tax Payable			1,128
Less : Tax Deducted at source			**1,16,180**
Net Tax Liability			1,09,000
			7,180

Working Notes :

1. **Valuation of Perquisites on transfer of Movable Assets :**

(a)	**Transfer of Assets : Dining Table**	(₹)
	Purchase Price	60,000
	Less : Depreciation till date of Sale	
	(₹ 60,000 × 3 × 10%)	(18,000)
	WDV as at date of transfer	42,000
	Less : Deduction for collection from Employee	(30,000)
	Value of Perquisite	**12,000**
(b)	**Motor Car**	₹
	Cost of Purchase (16.7.2011)	5,50,000
	Less : Depreciation @ 20% (16.7.2011 - 15.7.2012)	1,10,000
	16.7.2012 WDV	4,40,000
	Less : Depreciation for 16.7.2012 - 15.7.2013	88,000
	16.7.2013 WDV	3,52,000
	Less : Depreciation for 16.7.2013 - 15.7.2014	70,400
	16.7.2014 WDV	2,81,600
	Less : Depreciation for 16.7.2014 - 15.7.2015	56,320
	16.7.2015 WDV	2,25,280
	Less : Amount Recovered on Transfer	1,30,000
	Value of Perquisite	**95,280**

2. Gifts received from the employer on the occasion of the wedding anniversary
   (a) Taxable as perquisite u/s 17(2).
   (b) As per Rule 3(7)(vi), value of any gift or voucher or token (other than made in cash) or convertible ; in cash on ceremonial occasion or otherwise shall be taxable if the the aggregate value of Gift during the Previous Year is ₹ 5,000 or more. Since the value of gifts received is less than ₹ 5,000, it shall be exempt from tax.
3. As the total income of Mr. X is more than ₹ 5,00,000, rebate u/s 87A is not available.

Illustration 15 : M, an individual, retired from the services of a Company on 31.10.2015. He joined another employer on 1.11.2015 and was in service till end of March 2016, when he furnishes the following details and information —

1. Salary and Allowances for the period

From First Employer	₹ Per month
Basic Salary	30,000
Dearness Allowance	16,000
Conveyance Allowance	6,000
From Second Employer	₹ Per month
Basic Salary	35,000
Fixed Conveyance Allowance	8,000

2. While he was with the first employer, M contributed 10% of his basic salary to a Provident Fund Account with the Regional Provident Fund Commissioner. He did not become a member of the Provident Fund maintained by the second employer.
3. M was permitted by the second employer to encash 15 days leave he had accumulated during his service and received ₹ 12,500 from his employer.
4. M had constructed a residential house in Chennai in February 2011 for ₹ 30 Lakhs. Part of the costs of construction was met by borrowals of ₹ 20 lakhs from the Housing Development Corporation, at interest of 12.5% p.a. The loan was taken on June 2010. The loan outstanding at the beginning of the current year was ₹ 12,00,000. The rate of interest applicable for the current year was reduced to 9% p.a. due to reduction in rates. He had also borrowed from some relatives ₹ 4,00,000 on which interest at 15% p.a. was due. The property had been let-out soon after completion.
5. In the Assessment Year 2011-12, M was allowed a deduction of ₹ 50,000 for irrecoverable rents. The annual value decided by the Corporation of Channai for the property is ₹ 80,000. The property was let-out in the current year to a Company on a rent of ₹ 20,000 p.m. The half-yearly municipal taxes on the property were fixed by the Corporation of Channai only in August 2015 at ₹ 15,000 for every half year from 1.4.2012. M paid the taxes due in September 2015 upto the year ending 31.3.2015.
6. M also received from the previous tenant ₹ 40,000 (out of the dues of ₹ 50,000).
7. After retirement from the first employer, M received ₹ 4,50,000 from the Regional Provident Fund Commissioner, money was fully invested by him in the 15% Non-Redeemable Debentures issued by the Indian Oil Corporation interest on these had not come in by the end of March 2016.
8. M received interest of ₹ 60,000 on long-term fixed deposits with Banks, ₹ 2,500 as interest on Post Office Savings Bank Accounts and ₹ 20,000 as income from units.
9. M owns a car which is used for office purposes also and it is found that the entire conveyance allowance from his employer had been fully spent on travel for official purposes.
10. One of the policies of insurance taken by M had matured for payment and ₹ 8,00,000 received by him in June 2015 from the LIC was invested by him, in the name of his 16-year old son, in fixed deposits with companies. Interest received uplo 31.3.2016 on these deposits was ₹ 90,000. On one of the continuing policies of insurance, M paid a premium of ₹ 60,000 in the year.

Compute M's Total Income for the Assessment Year 2016-17.

Solution :

Assessee : Mr. M **Previous Year : 2015-16** **Assessment Year : 2016-17**

Computation of Total Income

		₹	₹	₹
Income under the head Salaries				
From First Employer				
Basic Pay	(₹ 30,000 × 7)		2,10,000	
Dearness Allowance	(₹ 16,000 × 7)		1,12,000	
Conveyance Allowance	(₹ 6000 × 7)	42,000		
Less: Exempt u/s 10(14)		(42,000)	Nil	3,22,000
Amount received from Regional Provident Fund Commissioner		4,50,000		
Less: Exempt u/s 10(12)		(4,50,000)	Nil	

From Second Employer			
Basic Salary (₹ 35,000 × 5)		1,75,000	
Conveyance Allowance (₹ 8,000 × 5)	40,000		
Less: Exempt u/s 10(14) (incurred for official performance of duties)	(40,000)	Nil	
Leave Encashment - Fully taxable while in service		12,500	1,87,500
Gross Income from Salary			**5,09,500**
Income from House Property :			
Gross Annual Value u/s. 23(1) — Higher of Municipal Value of ₹ 80,000 or Actual Rent of ₹ 2,40,000		2,40,000	
Less: Municipal Taxes paid during the year @ ₹ 15,000 for every half year from 1.4.2012 upto 31.3.2015 (Current Year - Not Paid)		(90,000)	
Net Annual Value (NAV)		1,50,000	
Less: Deduction @ 30% of NAV u/s 24(a)		(45,000)	
Interest on Borrowed Capital u/s 24(b)			
Loan from Housing Development Corporation:			
Current Period Interest: ₹ 12,00,000 × 9%	1,08,000		
Prior Period Interest (Interest upto 31.3.2011)			
[(₹ 20,00,000 × 12.5%) +(4,00,000 × 15%)] × 10/12 × 1/5	51,667		
Loan from Relative - Current Period Interest (₹ 4,00,000 x 15%)	60,000	(2,19,667)	
Add: Unrealised Rent recovered (taxable in the year of recovery u/s 25AA]		40,000	**(74,667)**
Income from Other Sources			
Interest on Long-term Fixed Deposits with Bank		60,000	
Interest on Post Office Savings Bank A/c	2,500		
Less: Exempt u/s 10(15)	(2,500)	Nil	
Income from Units of UTI	20,000		
Less: Exempt u/s. 10(35)	(20,000)	Nil	
LIC Policy matured	8,00,000		
Less: Exempt u/s. 10(1D)	(8,00,000)	Nil	
Interest from Fixed Deposits with Companies in the name of minor son	90,000		
Less: Exemption u/s. 10(32)	(1,500)	88,500	**1,48,500**
Gross Total Income			**5,83,333**
Less: Deduction under Chapter VIA:			
u/s 80C – LIC Premium		(60,000)	
– RPF – 10% of ₹ 2,10,000		(21,000)	81,000
Total Income			**5,02,333**
Total Income (Rounded Off u/s 288A)			**5,02,330**

Assumptions :

1. It is presumed that Mr. M accounts for his interest income on receipt basis.
2. Assumed that there has been no repayment of Housing Loan Principal during the year ending 31.3.2010 for the purpose of calculation of prior period interest.
3. Recognised Provident Fund received on retirement shall not be taxable u/s 10 (assuming conditions are satisfied).
4. **Unrealised Rent recovered :** Since the assessee has been allowed a deduction of ₹ 50,000 from his house property income in ealier years in respect of Unrealised Rent, entire ₹ 40,000 recovered during current year becomes taxable.
5. **Deduction of Interest** u/s 24 shall be allowed even if the amount is borrowed from any person other than the Banks/Financial Institutions in respect of Let Out property.

Illustration 16 : Mr. A, a Senior Citizen, has furnished the following particulars relating to his House Properties —

Particulars	**House I — ₹**	**House II — ₹**
Nature of Occupation	Self Occupied	Let-out
Municipal Valuation	60,000	1,20,000
Fair Rent	90,000	1,50,000
Standard Rent	75,000	1,40,000
Actual Rent per month	—	12,000
Municipal Taxes paid	6,000	12,000
Interest on Capital borrowed	90,000	80,000

Loan for both Houses were taken on 1.4.2009. House II remained vacant for 4 months.

Besides the above two house, A has inherited during the year 1989-90 an old house from his grandfather. Due to business commitments, he sold the house for a sum of ₹ 250 Lakhs during the year. The house was purchased in 1963 by his grandfather for a sum of ₹ 2 Lakhs. However, the Fair Market Value as on 1.4.1981 was ₹ 30 Lakhs. With the sale proceeds, A purchased a new house in March 2016 for a sum of ₹ 140 Lakhs and the balance was used in his business.

The other income particulars of Mr. A besides the above are as follows (AY 2016–2017) —

- Business Loss ₹ 12 Lakhs
- Income from Other Sources (Bank Interest) ₹ 1 Lakh
- Investments made during the year PF ₹ 70,000
- ICICI Infrastructure Bond Purchased ₹ 30,000

Compute Total Income of Mr. A and his Tax Liability for the Assessment Year 2016–2017.

Solution :

Assessee : Mr. A **Previous Year : 2015-16** **Assessment Year : 2016-17**

Computation of Total Income

Particulars			₹	₹
1.	Income from House Property :			
	(a) **House I :** Self Occupied — Annual Value u/s 23(2)	Nil		
	Less : Deduction u/s 24(b) = Interest on Housing Loan taken on 1.4.2009 (Note 3)	90,000	(90,000)	
	(b) **House II :** Let-out – (Note 6)		(21,200)	(1,11,200)
2.	**Profits and Gains of Business or Profession** – Loss			(12,00,000)
3.	**Capital Gains** — Sale of Residential House Property — Long Term Asset			
	Sale Consideration		2,50,00,000	
	Less : Expenses on Transfer		Nil	
	Net Consideration		2,50,00,000	
	Less : Indexed Cost of Acquisition — Fair Market Value as on 1.4.81 × CII of year of Sale /CII of year of first holding (₹ 30 Lakhs × $\frac{1081}{161}$)		2,01,42,857	
	Long Term Capital Gain		48,57,143	
	Less : Exemption u/s 54 — New House purchased		(1,40,00,000)	
				Nil
4.	**Income from Other Sources :** Bank Interest			1,00,000
	Gross Total Income (assuming this balance is out of Income from other sources only)			**(12,11,200)**
	Less : Deduction under Chapter VI-A			
	u/s 80C – Deposits in PPF		70,000	
	u/s 80TTAA – Interest on Savings Bank Interest		10,000	
	However, i.e. Deduction restricted upto the balance of Gross Total Income		80,000	
				Nil
	Total Income			**(12,11,299)**

Notes :

1. Assumed that loss from House Property & Loss from Business are at first adjusted inter-head, against Long Term Capital Gains and then against Income from Other Sources since it is beneficial to the assessee.
2. Deduction under Chapter VIA cannot be done against LTCG.
3. It is assumed that the construction of the house was completed **within 3 years** from the end of the financial year in which the loan was taken.
4. Deduction in respect of Investment in Long Term Infrastructure Bond u/s 80CCF is discontinued.
5. It is assumed that Bank Interest represents Interest from Savings Bank Account.

6. **Annual Value of House Property II** is computed as under —

(i)	Municipal Value (MV)	1,20,000
(ii)	Fair Rental Value (FRV)	1,50,000
(iii)	Higher of MV + FRV	1,50,000
(iv)	Standard Rent	1,40,000
(v)	Reasonable Expected Rent (RER) [lower of (iii) + (iv)]	1,40,000
(vi)	Annual Rent @ ₹ 12,000 pm	1,44,000
(vii)	Unrealised Rent	Nil
(viii)	Actual Rent [(vi) – (vii)] [Higher than RER]	1,44,000
(ix)	Vacancy Allowance $\left[\frac{1,44,000}{12} \times 4\right]$	48,000
(x)	Gross Annual Value [(viii) – (ix)]	96,000
	Less : Municipal Tax paid	12,000
	Net Annual Value (NAV)	**84,000**
	Less : Standard deduction @ 30% of NAV u/s 24(a)	25,200
	Less : Interest on borrowed Capital u/s 24(b)	80,000
	Income for House II	**(21,200)**

Illustration 17 : Mr. Ashok a senior citizen, owns a property consisting of two blocks of identical size. The first block is used for business purposes. The other block has been let out from 1.4.2015 to his cousin for ₹ 20,000 p.m. The cost of construction of each block is ₹ 5 lacs (fully met from bank loan), rate of interest on bank loan is 10% p.a. The construction was completed on 31.3.2014. During the year ended 31.3.2015, he had to pay a penal interest of ₹ 2,000 in respect of each block on account of delayed payments to the bank for the borrowings. The normal interest paid by him in respect of each block was ₹ 42,000. Principal repayment for each block was ₹ 23,000. An identical block in the same neighbourhood fetches a rent of ₹ 25,000 per month. Municipal Tax paid in respect of each block was ₹ 12,000.

The income from business prior to adjustment towards depreciation on any asset is ₹ 2,20,000. He follows Mercantile System of Accounting. Depreciation on equipments used for business is ₹ 30,000.

On 23.2.2016, he sold shares of B Ltd., a listed share in BSE for ₹ 2,30,000. The share had been purchased 10 months back for ₹ 1,80,000. Security transaction tax paid may be taken as ₹ 220.

Brought forward business loss of a business discontinued on 12.1.2013 is ₹ 90,000. This loss has been determined in pursuance of a return of income filed in time and the current year is the seventh year.

The following payments were affected by him during the year :

1. LIP of ₹ 20,000 on his life and ₹ 12,000 for his son aged 22, engaged as a software engineer and drawing salary of ₹ 25,000 per month.
2. Mediclaim premium of ₹ 6,000 for himself & ₹ 5,000 for above son. The premiums were paid by cheque.

You are required to compute the Total Income for the Assessment Year 2016-17 and the tax payable. The various heads of income should be properly shown. Ignore the interest on bank loan for the period prior to 1.4.2015, as the bank had waived it.

Solution :

Computation of Total Income of Mr. Ashok for A.Y. 2016-17

Particulars			Amount (₹)	Amount (₹)
(1)	**Income from House Property (Let out)**			
	Gross Annual Value (being Fair rent)		3,00,000	
	Less: Municipal Tax		12,000	
	Net Annual Value (NAV)		2,88,000	
	Less: Deduction:-			
	u/s 24(a) Standard Deduction (30% of NAV)	86,400		
	u/s 24(b) Interest on loan	42,000	(1,28,400)	1,59,600
(2)	**Profits and Gains of Business or Profession**			
	Net Profit before depreciation		2,20,000	
	Less: Expenditure allowed but not debited in P & L Account			
	Depreciation on equipment	30,000		
	Depreciation on building i.e. 10% of ₹ 5,00,000	50,000	80,000	
	Profits and Gains of Business or Profession of current year		1,40,000	
	Less: Brought forward losses set off u/s 72		(90,000)	50,000
(3)	**Capital Gains**			
	Consideration for Transfer		2,30,000	
	Less: Cost of acquisition		(1,80,000)	
	Short Term Capital Gains			50,000
	Gross Total Income			2,59,600
	Less: Deduction u/s			
	80C: LIC Premium paid	32,000		
	Repayment of bank loan	23,000	55,000	
	80D: Medical insurance premium		6,000	61,000
	Total Income			**1,98,600**
	Tax Payable			Nil

Notes :

1. Penal interest is not allowed u/s 24(b)
2. It has been assumed that interest, municipal tax on property used for business have already being charged while computing "Business Income Before Depreciation" i.e. ₹ 2,20,000.
3. STT is not allowed as expenditure on transfer.

Illustration 18: Thomas aged 56 years, took voluntary retirement from State Bank of India on 1st April, 2015 under the Voluntary Retirement Scheme (VRS) and received a sum of ₹ 25 lakh on account of VRS benefits. At the time of his retirement, Thomas was having 47 months of service left and had served the organisation for 18 years 11 months. His last drawn Basic Pay ₹ 60,000, D.A. @ 60% of B/Pay (80% of which forming part of salary). Later, he started a business of plying, hiring and leasing of goods carriages from 1st June, 2015 by acquiring 3 heavy vehicles for ₹ 12 lakh, 2 medium goods vehicle for ₹ 5 lakh and 3 light commercial vehicles for ₹ 6 lakh. Although, he did not maintain regular books of account for his business, the diary maintained by him revealed gross receipts of ₹ 3,12,000 for the financial year ended 31st March, 2016 and he incurred an expenditure of ₹ 1,68,500 on the business towards salaries of drivers, repairs, fuel, etc. Depreciation on vehicle is not included in the said expenditure.

During the financial year 2015-16, he received a sum of ₹ 3,00,000 on account of pension from bank and he contributed a sum of ₹ 65,000 to his PPF account maintained with the said bank in the same year. His PPF account was credited with interest of ₹ 35,000 during the financial year 2015-16. He also purchased long-term infrastructure bonds for ₹ 20,000; Repayment of educational loan interest for the year ₹ 50,000. He also paid medical insurance premium of ₹ 14,000.

Further, he had two residential properties, one is self occupied and other is let out. During the financial year 2015-16, Thomas was able to let out his property for 12 months on a monthly rent of ₹ 17,000. The total municipal taxes on the let out property was ₹ 18,000, 50% of which was paid by the tenant and 50% by him. The interest on loan taken for renovation of the self occupied property paid by him during the year was ₹ 34,000. The insurance premium on the house and actual repairs and collection charges paid are ₹ 1,600 and ₹ 18,000 respectively and the entire expenditure is borne by him. During the financial year 2015-16, he was able to recover the unrealized rent of ₹ 33,000 from old tenant who vacated the house during the August, 2012 after spending litigation expenses of ₹ 15,000. During the financial year 2015-16, Thomas suffered short term capital loss on account of sale of shares on various dates amounting to ₹ 8,50,000.

From the aforesaid information, you are required to compute the Total Income of Thomas for the A.Y. 2016-17 giving reasons in respect of each and every item and indicate the relief/rebate/deduction which he is entitled to claim.

Solution :

Assessee : Mr. Thomas **Previous Year : 2015-2016** **Assessment Year : 2016-2017**

Computation of Total Income

Particulars			₹	₹
(1)	**Income from Salary**			
	Pension Received			3,00,000
	Voluntary Compensation			
	Actual Amount Received		25,00,000	
	Less : Exemption u/s 10(10C)			
	Least of the following :			
	(i) Actual Amount Received	25,00,000		
	(ii) Maximum limit	5,00,000		
	(iii) Higher of the following :			
	(a) Last Drawn Salary × 3 × No. of Fully completed year of service = 88,800 × 3 × 18 = 47,95,200			
	(b) Last Drawn Salary × Balance of number of months of service left = 88,800 × 47 = 41,73,600	47,95,200		
			5,00,000	20,00,000
	Last Drawn Salary = B/ Pay + D.A (forming part)			
	= ₹ [60,000 + 60% of 80% of 60,000]			
	= ₹ [60,000 + 28,800]			
	= ₹ 88,800			

Particulars		₹	₹
(2) **Income from House Property**			
(a) **Self occupied :**			
Annual Value	Nil		
(–) Interest on Loan u/s 24(b) ₹ 34,000			
– restricted upto ₹ 30,000	(30,000)	(30,000)	
(b) **Let-out House Property**			
Gross Annual Value			
(being the Rental Value) = 17,000 ×12	2,04,000		
Less : Municipal Tax Paid by the assessee during the year			
= 18,000 × 50%	9,000		
Net Annual Value (NAV)	**1,95,000**		
Less : Standard deduction @ 30% of NAV u/s 24(a)	58,500		
Less : Interest on loan u/s 24(b)	Nil	1,36,500	1,06,500
(3) **Income from Business or Profession**			
Presumptive Income u/s 44AE			
In the Business of plying, leasing or hiring trucks			
No. of goods Vehicles = 3 + 2 + 3 = 8			
Goods Vehicle (8 x 7500 x 10)			
			6,00,000
(5) **Income from Captal Gains**			(8,50,000)
Short Term Capital Loss			**21,56,500**
Gross Total Income			
Less : **Deductions under Chapter VIA**			
u/s 80C – Deposits in PPF	65,000		
u/s 80D – Medical Insurance Premium	14,000		
u/s 80E – Interest paid on Education loan	50,000		1,29,000
Total Income			**20,27,500**
Tax on Total Income of ₹ 20,27,500			4,33,250
(+) E/C @ 2%			8,665
(+) SHEC @ 1%			4,332
Tax Payable			4,46,247
Tax Payable (Rounded off u/s 288B)			4,46,250

Illustration 19:

R borrowed a sum of ₹25,00,000 from the State Bank of India @ 12% p.a. on 1.5.2015 and purchased a house property for ₹36,00,000 on the same day. He does not own any residential house property on the date of taking the loan. He has been using the house property for his own residence since its acquisition.

(a) Compute the total income of R assuming he has salary income of ₹9,60,000 and he deposited ₹1,30,000 in PPF during the previous year 2015-16.

(b) What shall be the answer if the total interest on borrowed money is ₹2,40,000 instead of ₹2,75,000.

Solution:

Computation of total income of R for Assessment Year 2015-16

	₹	₹
Income from salary		9,60,000
Income from house properly		
Annual value	Nil	
Less: Deduction		
Interest limited to	2,00,000	(–) 2,00,000
Gross total income		7,60,000
Less: Deduction u/s 80C restricted to ₹1,50,000	1,50,000	
U/s 80EE	1,00,000	2,50,000
Total income		5,10,000

Working Note:

Total interest @ 12% on ₹25,00,000 for 11 months

₹25,00,000 × 12 x×11/100 x 12 = 2,75,000

(b) The deduction under section 80EE in this case shall be allowed to the extent of ₹900,000 and the balance ₹10,000 shall allowed in financial year 2016-17 (Assessment Year 2017-18).

Study Note - 12

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

This Study Note includes

12.1 Incomes not included in Total Income [Sec.10]

12.2 Special Provisions

12.3 Expenditure incurred in relation to income not included in Total Income [Sec.14A]

12.1 INCOMES NOT INCLUDED IN TOTAL INCOME [SEC. 10]

In computing the Total Income of a Previous Year of any person, any income falling within any of the following clauses shall not be included—

1. Agricultural Income [Section 10(1)]

Any income arising from agricultural activities;

2. Income received by a member of HUF out of Family income [Section 10 (2)]

Any sum received by an individual as a member of a Hindu Undivided Family, where such sum has been paid out of the income of the Family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the Family.

Case Laws:

(i) *Amount must be received in position as member of HUF* - If a person who is a member of a HUF received an allowance not because he is such a member but wholly apart from that position, the exemption does not apply. It is only if the assessee has received the sum in question by virtue of his position as a member of the undivided family to which he claims to belong, that the application of section 14(1) of the Act is attracted - *Maharaj Kumar of Vizianagaram,* 2 ITR 186 */Vijayananda Galapati, Maharaj Kumar of Vizianagaram* vs. *CIT* 9 ITC 73.

(ii) *Member must be entitled to demand partition or maintenance* - Only those members of a HUF can claim exemption who either on partition would be entitled to demand a share or are entitled to maintenance under the Hindu law and who, therefore, might be said to have an interest in the joint income of the family - *Kedar Narain Singh* vs. *CIT* 6 ITR 157.

3. Share of Income of a Partner [Section 10(2A)]

In the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm.

4. Income by way of interest on such securities or bonds as may be notified by the Central Government

Section 10(4):

In the case of a non-resident, any income by way of interest on such securities or bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf, including income by way of premium on the redemption of such bonds.

Case Law :

Interest on deposit of foreign currency not covered by declaration - The foreign currency, for which no declarations under section 13 of FEMA had been produced by the respondent-assessee but only ex-

change vouchers issued by the exchange centres outside the country were produced, even if deposited in the NRE account cannot be said to be moneys standing to the credit of the respondent in the NRE account in accordance with the FEMA and the rules made there under and the income by way of interest on such moneys would not be exempt from inclusion in the total income of the respondent under section 10(*4*)(*ii*) - *CIT* vs. *Purshottam Khatri* 155 Taxman 399.

Section 10(4B):

In the case of an individual, being a citizen of India or a person of Indian origin, who is a non-resident, any income from interest on such savings certificates issued before the 1st day of June, 2002 by the Central Government as that Government may, by notification in the Official Gazette, specify in this behalf.

Provided that the individual has subscribed to such certificates in convertible foreign exchange remitted from a country outside India in accordance with the provisions of the Foreign Exchange Regulation Act, 1973, and any rules made there under.

Explanation — For the purposes of this clause,—

(a) a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India;

(b) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973, and any rules made there under;

5. Leave Travel Allowance / Concession [Section 10(5)]

In the case of an individual, the value of any travel concession or assistance received by, or due to him —

(a) from his employer for himself and his family, in connection with his proceeding on leave to any place in India ;

(b) from his employer or former employer for himself and his family, in connection with his proceeding to any place in India after retirement from service or after the termination of his service;

subject to such conditions as may be prescribed (including conditions as to number of journeys and the amount which shall be exempt per head) having regard to the travel concession or assistance granted to the employees of the Central Government.

Explanation — For the purposes of this clause, "family", in relation to an individual, means—

(i) the spouse and children of the individual ; and

(ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual

Case Law :

Employer must preserve evidence about correctness of leave travel concession availed by employee - An employer, discharging his statutory obligation under section 192, is not only required to satisfy himself that payment made by him to his employees in respect of leave travel concession is not taxable, as envisaged under section 10(*5*), but also has to preserve evidence in relation thereto so as to demonstrate and establish to the satisfaction of officer to whom return prescribed under section 206 has been filed that he has not neglected to discharge his statutory obligation of deducting tax at source - *C.E.S.C. Ltd.* vs. *ITO* 134 Taxman 511.

6. Remuneration received by a Non Resident [Section 10(6)]

(I) In the case of an individual who is not a citizen of India,—

the remuneration received by him as an official, by whatever name called, of an embassy, high commission, legation, commission, consulate or the trade representation of a foreign State, or as a member of the staff of any of these officials, for service in such capacity [Sec.10(6)(ii)].

Provided that the remuneration received by him as trade commissioner or other official representative in India of the Government of a foreign State (not holding office as such in an honorary capacity), or as a member of the staff of any of those officials, shall be exempt only if the remuneration of the corresponding officials or, as the case may be, members of the staff, if any, of the Government resident for similar purposes in the country concerned enjoys a similar exemption in that country.

Provided further that such members of the staff are subjects of the country represented and are not engaged in any business or profession or employment in India otherwise than as members of such staff.

(II) the remuneration received by him as an employee of a foreign enterprise for services rendered by him during his stay in India [Sec.10(6)(vi)], provided the following conditions are fulfilled—

(a) the foreign enterprise is not engaged in any trade or business in India;

(b) his stay in India does not exceed in the aggregate a period of ninety days in such Previous Year; and

(c) such remuneration is not liable to be deducted from the income of the employer chargeable under this Act ;

(III) any income chargeable under the head "Salaries" received by or due to any such individual being a non-resident as remuneration for services rendered in connection with his employment on a foreign ship where his total stay in India does not exceed in the aggregate a period of ninety days in the Previous Year [Sec.10(6)(viii)];

(IV) As per Sec.10(6)(xi), the remuneration received by him as an employee of the Government of a foreign State during his stay in India in connection with his training in any establishment or office of, or in any undertaking owned by,—

(i) the Government ; or

(ii) any company in which the entire paid-up share capital is held by the Central Government, or any State Government or State Governments, or partly by the Central Government and partly by one or more State Governments ; or

(iii) any company which is a subsidiary of a company referred to in item (ii); or

(iv) any corporation established by or under a Central, State or Provincial Act; or

(v) any society registered under the Societies Registration Act, 1860, or under any other corresponding law for the time being in force and wholly financed by the Central Government, or any State Government or State Governments, or partly by the Central Government and partly by one or more State Governments.

7. Income by way of royalty or fees for technical services by a foreign company [Section 10(6A)]

Where in the case of a foreign company deriving income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or the Indian concern after the 31st day of March, 1976 but before the 1st day of June, 2002 and,—

(a) where the agreement relates to a matter included in the industrial policy, for the time being in force, of the Government of India, such agreement is in accordance with that policy ; and

(b) in any other case, the agreement is approved by the Central Government, the tax on such income is payable, under the terms of the agreement, by Government or the Indian concern to the Central Government, the tax so paid.

Explanation — For the purposes of this clause and clause (6B)—

(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) "foreign company" shall have the same meaning as in section 80B

(c) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9

8. Income other than by way of royalty or fees for technical services by a non-resident [Section 10(6B)]

Where in the case of a non-resident (not being a company) or of a foreign company deriving income (not being salary, royalty or fees for technical services) from Government or an Indian concern in pursuance of an agreement entered into before the 1st day of June, 2002 by the Central Government with the Government of a foreign State or an international organisation, the tax on such income is payable by the Government or the Indian concern to the Central Government under the terms of that agreement or any other related agreement approved by the Central Government, the tax so paid.

9. Income from the business of operating aircraft by a foreign State or a foreign enterprise [Section 10(6BB)]

Where in the case of the Government of a foreign State or a foreign enterprise deriving income from an Indian company engaged in the business of operation of aircraft, as a consideration of acquiring an aircraft or an aircraft engine (other than payment for providing spares, facilities or services in connection with the operation of leased aircraft) on lease under an agreement entered into after the 31st day of March, 1997 but before the 1st day of April, 1999, or entered into after the 31st day of March, 2007 and approved by the Central Government in this behalf and the tax on such income is payable by such Indian company under the terms of that agreement to the Central Government, the tax so paid.

Explanation — For the purposes of this clause, the expression "foreign enterprise" means a person who is a non-resident.

10. Income by way of royalty or fees for technical services by the specified foreign company [Section 10(6C)]

Any income arising to such foreign company, as the Central Government may, by notification in the Official Gazette, specify in this behalf, by way of royalty or fees for technical services received in pursuance of an agreement entered into with that Government for providing services in or outside India in projects connected with security of India.

11. Allowances or Perquisite paid outside India [Section 10(7)]

Any allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India.

12. Income in connection with any co-operative technical assistance programmes and projects [Section 10(8)]

In the case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of a foreign State (the terms whereof provide for the exemption given by this clause)—

(a) the remuneration received by him directly or indirectly from the Government of that foreign State for such duties, and

(b) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the Government of that foreign State ;

Section 10(8A)

In the case of a consultant —

(a) any remuneration or fee received by him or it, directly or indirectly, out of the funds made available to an international organisation [hereafter referred to in this clause and clause (8B) as the agency] under a technical assistance grant agreement between the agency and the Government of a foreign State ; and

(b) any other income which accrues or arises to him or it outside India, and is not deemed to accrue or arise in India, in respect of which such consultant is required to pay any income or social security tax to the Government of the country of his or its origin.

Explanation — In this clause, "consultant" means—

(i) any individual, who is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India; or

(ii) any other person, being a non-resident, engaged by the agency for rendering technical services in India in connection with any technical assistance program or project, provided the following conditions are fulfilled, namely :—

(A) the technical assistance is in accordance with an agreement entered into by the Central Government and the agency; and

(B) the agreement relating to the engagement of the consultant is approved by the prescribed authority for the purposes of this clause.

Section 10(8B)

In the case of an individual who is assigned to duties in India in connection with any technical assistance programme and project in accordance with an agreement entered into by the Central Government and the agency —

(a) the remuneration received by him, directly or indirectly, for such duties from any consultant referred to in clause (8A) ; and

(b) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the country of his origin, provided the following conditions are fulfilled, namely :—

(i) the individual is an employee of the consultant referred to in clause (*8A*) and is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India; and

(ii) the contract of service of such individual is approved by the prescribed authority before the commencement of his service.

Exemption u/s. 10(9)

The income of any member of the family of any such individual as is referred to in clause (*8*) or clause (*8A*) or, as the case may be, clause (*8B*) accompanying him to India, which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such member is required to pay any income or social security tax to the Government of that foreign State or, as the case may be, country of origin of such member.

13. Death-cum-retirement gratuity [Section 10(10)]

(i) Any death-*cum*-retirement gratuity received under the revised Pension Rules of the Central Government or, as the case may be, the Central Civil Services (Pension) Rules, 1972, or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the

civil services of a State or holders of civil posts under a State or to the employees of a local authority or any payment of retiring gratuity received under the Pension Code or Regulations applicable to the members of the defence services ;

(ii) Any gratuity received under the Payment of Gratuity Act, 1972, to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act ;

(iii) Any other gratuity received by an employee on his retirement or on his becoming incapacitated prior to such retirement or on termination of his employment, or any gratuity received by his widow, children or dependants on his death, to the extent it does not, in either case, exceed one-half month's salary for each year of completed service, calculated on the basis of the average salary for the ten months immediately preceding the month in which any such event occurs, subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government.

Case Laws:

(i) In cases not governed by section 10(*10*)(*i*) or 10(*10*)(*ii*), section 10(*10*)(*iii*) applies which excludes the gratuity amount up to rate of 15 days' wages for every year of completed service subject to a maximum in this regard. Therefore, the prescribed limit of gratuity which is to be excluded under section 10(*10*) is the same irrespective of whether it is paid under the 1972 Act or any other scheme and, therefore, the limit of 15 days' wages for completed services, as prescribed under section 10(*10*)(*iii*), is not discriminatory and violative of article 14 - *Gwalior Rayons Staff Association* vs. *UOI* 152 Taxman 520.

(ii) '*Salary' includes dearness allowance and special allowance* - Dearness allowance and special allowance must be treated as 'salary' for computing exemption on gratuity - *Addl. CIT* vs. *P. Krishna Kamat* 99 ITR 74.

(iii) '*Salary' need not be given a wide meaning* - The expression 'salary' found in section 10(*10*) and 10(*10AA*) cannot be given a wider meaning than found in clause (*h*) of Rule 2 of Part A of the Fourth Schedule - *K. Gopalakrishnan* vs. *CBDT* 206 ITR 183/73 Taxman 220.

14. Payment in commutation of pension received [Section 10(10A)]

(i) Any payment in commutation of pension received under the Civil Pensions (Commutation) Rules of the Central Government or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the defence services or to the members of the civil services of a State or holders of civil posts under a State or to the employees of a local authority or a corporation established by a Central, State or Provincial Act;

(ii) Any payment in commutation of pension received under any scheme of any other employer, to the extent it does not exceed—

(a) in a case where the employee receives any gratuity, the commuted value of one-third of the pension which he is normally entitled to receive; and

(b) in any other case, the commuted value of one-half of such pension, such commuted value being determined having regard to the age of the recipient, the state of his health, the rate of interest and officially recognised tables of mortality;

(iii) Any payment in commutation of pension received from a fund under clause (*23AAB*)

Case Law:

Commuted pension - It cannot be said that entire commuted pension is not taxable; it is taxable subject to the provisions of section 10(*10A*) (*iib*) - *CIT* vs. *K.A. Narayan* 124 Taxman 880/254 ITR 683.

15. Cash equivalent of the leave salary [Section 10(10AA)]

(*i*) Any payment received by an employee of the Central Government or a State Government as the cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise ;

(*ii*) Any payment of the nature referred to in sub-clause (*i*) received by an employee, other than an employee of the Central Government or a State Government, in respect of so much of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise as does not exceed ten months, calculated on the basis of the average salary drawn by the employee during the period of ten months immediately preceding his retirement whether on superannuation or otherwise, subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government.

Provided that where any such payments are received by an employee from more than one employer in the same Previous Year, the aggregate amount exempt from Income-tax under this sub-clause shall not exceed the limit so specified.

Provided further that where any such payment or payments was or were received in any one or more earlier Previous Years also and the whole or any part of the amount of such payment or payments was or were not included in the total income of the assessee of such Previous Year or Years, the amount exempt from Income-tax under this sub-clause shall not exceed the limit so specified as reduced by the amount or, as the case may be, the aggregate amount not included in the total income of any such Previous Year or Years.

Explanation — For the purposes of sub-clause (*ii*),—

The entitlement to earned leave of an employee shall not exceed thirty days for every year of actual service rendered by him as an employee of the employer from whose service he has retired;

Case Law:

Leave encashment while in service is not exempt - The words 'or otherwise' in section 10(*10AA*) must draw the restricted meaning *qua* the immediately preceding word 'superannuation which signifies an employee's severance of relationship with his employer in terms of the contract of employment. Therefore, the words 'or otherwise' will not cover cases where the assessee continues to be under the employment of the same employer and receives leave encashment receipt. Such a receipt will not be exempt from tax - *CIT* vs. *Ram Rattan Lal Verma* 145 Taxman 256 /*CIT* vs. *Vijai Pal Singh*144 Taxman 504 /*CIT* vs. *Ashok Kumar Dixit* 273 ITR 126.

16. Compensation received by a workman under the Industrial Disputes Act [Section 10(10B)]

Any compensation received by a workman under the Industrial Disputes Act, 1947, or under any other Act or Rules, orders or notifications issued there under or under any standing orders or under any award, contract of service or otherwise, at the time of his retrenchment.

Provided that the amount exempt under this clause shall not exceed —

(i) an amount calculated in accordance with the provisions of clause (b) of section 25F of the Industrial Disputes Act, 1947; or

(ii) such amount, not being less than fifty thousand rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf(currently it is ₹5,00,000);

(iii) Actual amount of compensation received, whichever is less

Provided further that the preceding proviso shall not apply in respect of any compensation received by a workman in accordance with any scheme which the Central Government may, having regard to the need for extending special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances, approve in this behalf.

Explanation — For the purposes of this clause—

(a) Compensation received by a workman at the time of the closing down of the undertaking in which he is employed shall be deemed to be compensation received at the time of his retrenchment;

(b) Compensation received by a workman, at the time of the transfer (whether by agreement or by operation of law) of the ownership or management of the undertaking in which he is employed from the employer in relation to that undertaking to a new employer, shall be deemed to be compensation received at the time of his retrenchment if—

  (i) the service of the workman has been interrupted by such transfer; or

  (ii) the terms and conditions of service applicable to the workman after such transfer are in any way less favourable to the workman than those applicable to him immediately before the transfer ; or

  (iii) the new employer is, under the terms of such transfer or otherwise, legally not liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer;

(c) The expressions "employer" and "workman" shall have the same meanings as in the Industrial Disputes Act, 1947.

17. Amount received in connection with the Bhopal Gas Leak Disaster [Section 10(10BB)]

Any payments made under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, and any scheme framed there under except payment made to any assessee in connection with the Bhopal Gas Leak Disaster to the extent such assessee has been allowed a deduction under this Act on account of any loss or damage caused to him by such disaster;

18. Compensation on account of disaster [Section10(10BC)]

Any amount received or receivable from the Central Government or a State Government or a local authority by an individual or his legal heir by way of compensation on account of any disaster, except the amount received or receivable to the extent such individual or his legal heir has been allowed a deduction under this Act on account of any loss or damage caused by such disaster.

Explanation — For the purposes of this clause, the expression "*disaster*" shall have the meaning assigned to it under clause (d) of section 2 of the Disaster Management Act, 2005.

19. Amount received on Voluntary Retirement Scheme (VRS) Section 10(10C)

Any amount of compensation received or receivable at the time of voluntary retirement as per the Voluntary Retirement Scheme by an employee of—

(i) a public sector company ; or

(ii) any other company ; or

(iii) an authority established under a Central, State or Provincial Act ; or

(iv) a local authority ; or

(v) a co-operative society ; or

(vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act,1956;or

(vii) an Indian Institute of Technology within the meaning of clause (g) of section 3 of the Institutes of Technology Act,1961 ; or

(viia) any State Government; or

(viib) the Central Government; or

(viic) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette, specify in this behalf; or

(viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf.

However, the amount so received should not exceed ₹ 5,00,000.

Double benefit under Section 10(10C) and Section 89 not allowed [Section 10(10C) and section 89] [w.e.f. A.Y. 2010-11]

Very often, a person receives arrears or advance of salary due to him. Since arrears and advance salary is liable to tax, the total income (including such arrears and advance) is assessed at a rate higher than that at which it would otherwise have been assessed if the total income did not include arrears and advance of salary. In other words, arrears and advance salary result in bracket creeping and higher tax burden. With the view to mitigating this excess burden, the provisions of section 89 of the Income-tax Act provide for backward spread of the arrears and forward spread of the advance.

Under the voluntary retirement scheme, the retiree employee receives lump-sum amount in respect of his balance period of service. Such amount is in the nature of advance salary. Section 10(10C) provides for an exemption of ₹ 5 lakhs in respect of such amount. This exemption is provided to mitigate the hardship on account of bracket creeping as a result of the receipt of the amount in lump sum upon voluntary retirement. However, some taxpayers have claimed both the benefit under section 10(10C) and section 89. The courts have also upheld their claims. To nullify the judgement of Courts, the following changes have been made in this regard:

(a) Insertion of proviso to section 89: With the view to preventing the claim of double benefit, the Act has inserted a proviso to section 89 to provide that no relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in case of a public sector company referred to in section 10(10C)(i), a scheme of voluntary separation, if an exemption in respect of such voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee under section 10(10C) in respect of such or any other Assessment Year.

(b) Insertion of third proviso to section 10(10C): Correspondingly, the Act has inserted a third proviso to section 10(10C) to provide that where any relief has been allowed to any assessee under section 89 for any Assessment Year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under section 10(10C) shall be allowed to him in relation to such or any other Assessment Year.

Case Law:

Provision is not discriminatory - Under section 10(*10C*) there is neither invidious distinction between public sector employees and private sector employees in the matter of taxation nor is it arbitrary and unintelligible amounting to hostile discrimination - *Shashikant Laxman Kale* vs. *Union of India* 52 Taxman 352/185 ITR 104

20. Individual deriving income in the nature of a perquisite [Section10(10CC)]

In the case of an employee, being an individual deriving income in the nature of a perquisite, not provided for by way of monetary payment, within the meaning of clause (2) of section 17, the tax on such income actually paid by his employer, at the option of the employer, on behalf of such employee.

21. Exemption of any amount received from Life Insurance Policies [Section 10(10D)]

Any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than—

(a) any sum received under sub-section (3) of section 80DD or sub-section (3) of section 80DDA ; or

(b) any sum received under a Keyman insurance policy; or

(c) any sum received under an insurance policy issued on or after the 1st day of April, 2003 but before 1st day of April, 2012 in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent or ten per cent if the policy is issued on or after 1st day of April, 2012 of the actual capital sum assured.

(d) any sum including the sum allocated by way of bonus received under an insurance policy issued on or after 01.04.2013 for the insurance on the life of any person who is —

(i) a person with disability or a person with severe disability as referred to in section 80U; or

(ii) suffering from disease or ailment as specified in the rules make u/s 80DDB.

shall be exempt u/s 10(10D) if the premium payable for any of the years during the term of the policy does not exceed 15% of the actual capital assured instead of 10%.

Provided that the provisions of this sub-clause shall not apply to any sum received on the death of a person.

Explanation — *For the purposes of this clause, the expression "actual capital sum assured" means* the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account-

(i) the value of any premiums agreed to be returned, or

(ii) any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

Keyman insurance policy means a life insurance policy taken by a person on the life of another person who is or was the employee of the first mentioned person or is connected in any manner whatsoever with the business of the first mentioned person and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration.

22. Payment from Provident Fund [Section 10(11)]

Any payment from a provident fund to which the Provident Funds Act, 1925, applies or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette.

23. Amount received or receivable by an employee participating in a Recognized Provident Fund [Section 10(12)]

The accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule;

24. Payment from Approved Superannuation Fund [Section 10(13)]

Any payment from an approved superannuation fund made—

(i) on the death of a beneficiary ; or

(ii) to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement ; or

(iii) by way of refund of contributions on the death of a beneficiary ; or

(iv) by way of refund of contributions to an employee on his leaving the service in connection with which the fund is established otherwise than by retirement at or after a specified age or on his becoming incapacitated prior to such retirement, to the extent to which such payment does not exceed the contributions made prior to the commencement of this Act and any interest thereon;

Case Law :

Amount received on retirement before specified age is not exempt - Clause (*13*) of section 10 exempts only the payments received on retirement at or after a specified age. Payments made on resignation will be exempt only if it is after the specified age. Thus, amount received from superannuation fund on resignation before specified age is not eligible for exemption under section 10(*13*) - *Yogesh Prabhakar Modak,* 268 ITR 26/138 Taxman 121.

25. House Rent Allowance [Section 10(13A)]

Any special allowance specifically granted to an assessee by his employer to meet expenditure actually incurred on payment of rent (by whatever name called) in respect of residential accommodation occupied by the assessee, to such extent as may be prescribed having regard to the area or place in which such accommodation is situate and other relevant considerations.

Explanation — For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply in a case where—

(a) the residential accommodation occupied by the assessee is owned by him ; or

(b) the assessee has not actually incurred expenditure on payment of rent (by whatever name called) in respect of the residential accommodation occupied by him ;

Case Law:

Where the assessee was residing in his own house and there was no payment of rent, the provisions of sub-section (13A) of section 10 were not attracted - *CIT* vs. *P.D. Singhania*156 Taxman 504.

26. Exemption of any Special Allowances [Section 10(14)]

(i) Any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (2) of section 17 specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit as may be prescribed, to the extent to which such expenses are actually incurred for that purpose;

(ii) Any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, as may be prescribed and to the extent as may be prescribed.

Provided that nothing in sub-clause (*ii*) shall apply to any allowance in the nature of personal allowance granted to the assessee to remunerate or compensate him for performing duties of a special nature relating to his office or employment unless such allowance is related to the place of his posting or residence.

27. Income by way of interest, premium on redemption or other payment on such securities [Section 10(15)]

(i) Income by way of interest, premium on redemption or other payment on such securities, bonds, annuity certificates, savings certificates, other certificates issued by the Central Government and deposits as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such conditions and limits as may be specified in the said notification ;

(iib) In the case of an Individual or a Hindu Undivided Family, interest on such Capital Investment Bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(iic) in the case of an individual or a Hindu undivided family, interest on such Relief Bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(iid) interest on such bonds, as the Central Government may, by notifications in the Official Gazette, specify, arising to-

(a) a non- resident Indian, being an individual owning the bonds, or

(b) any individual owning the bonds by virtue of being a nominee or survivor of the non- resident Indian; or

(c) any individual to whom the bonds have been gifted by the nonresident Indian.

Provided that the aforesaid bonds are purchased by a non- resident Indian in foreign exchange and the interest and principal received in respect of such bonds, whether on their maturity or otherwise, is not allowable to be taken out of India.

Provided further that where an individual, who is a non- resident Indian in any previous year in which the bonds are acquired, becomes a resident in India in any subsequent year, the provisions of this sub-clause shall continue to apply in relation to such individual.

Provided also that in a case where the bonds are uncashed in a previous year prior to their maturity by an individual who is so entitled, the provisions of this sub- clause shall not apply to such individual in relation to the assessment year relevant to such Previous Year.

Provided also that the Central Government shall not specify, for the purposes of this sub-clause, such bonds on or after 1st June, 2002.

Explanation - For the purposes of this sub- clause, the expression" non- resident Indian" shall have the meaning assigned to it in clause (e) of section 115C;

(iii) interest on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949 ;

(iiia) interest payable to any bank incorporated in a country outside India and authorised to perform central banking functions in that country on any deposits made by it, with the approval of the Reserve Bank of India, with any scheduled bank.

Explanation - For the purposes of this sub- clause," scheduled bank" shall have the meaning assigned to it in 2 clause (ii) of the Explanation to clause (viia) of sub- section (1) of section 36;

(iiib) interest payable to the Nordic Investment Bank, being a multilateral financial institution constituted by the Governments of Denmark, Finland, Iceland, Norway and Sweden, on a loan advanced by it to a project approved by the Central Government in terms of the Memorandum of Understanding entered into by the Central Government with that Bank on the 25th November, 1986;

(iiic) interest payable to the European Investment Bank, on a loan granted by it in pursuance of the framework-agreement for financial co-operation entred into on the 25th November, 1993 by the Central Government with that Bank;

(iv) interest payable-

(a) by Government or a local authority on moneys borrowed by it before the 1st June, 2001 from, or debts owed by it before 1st June, 2001 to, sources outside India;

(b) by an industrial undertaking in India on moneys borrowed by it under a loan agreement entered into before 1st June, 2001 with any such financial institution in a foreign country as may be approved in this behalf by the Central Government by general or special order;

(c) by an industrial undertaking in India on any moneys borrowed or debt incurred by it before 1st June, 2001 in a foreign country in respect of the purchase outside India of raw materials or components or capital plant and machinery, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or debt and its repayment.

Explanation 1 - For the purposes of this item, "purchase of capital plant and machinery" includes the purchase of such capital plant and machinery under a hire- purchase agreement or a lease agreement with an option to purchase such plant and machinery;

Explanation 2 – For the removal of doubts, it is hereby declared that the usance interest payable outside India by an undertaking engaged in the business of ship-breaking in respect of purchase

of a ship from outside India shall be deemed to be the interest payable on a debt incurred in a foreign country in respect of the purchase outside India;

(d) by the Industrial Finance Corporation of India established by the Industrial Finance Corporation Act, 1948, or the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 , or the Export- Import Bank of India established under the Export- Import Bank of India Act, 1981, or the National Housing Bank established under section 3 of the National Housing Bank Act, 1987, or the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989, or the Industrial Credit and Investment Corporation of India a company formed and registered under the Indian Companies Act, 1913, on any moneys borrowed by it from sources outside India, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;

(e) by any other financial institution established in India or a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act), on any moneys borrowed by it from sources outside India under a loan agreement approved by the Central Government where the moneys are borrowed either for the purpose of advancing loans to industrial undertakings in India for purchase outside India of raw materials or capital plant and machinery or for the purpose of importing any goods which the Central Government may consider necessary to import in the public interest, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;

(f) by an industrial undertaking in India on any moneys borrowed by it in foreign currency from sources outside India under a loan agreement approved by the Central Government before 1st June, 2001 having regard to the need for industrial development in India, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;

(fa) by a scheduled bank to a non- resident or to a person who is not ordinarily resident within the meaning of sub- section (6) of section 61, on deposits in foreign currency where the acceptance of such deposits by the bank is approved by the Reserve Bank of India.

Explanation - For the purposes of this item, the expression" scheduled bank" shall have the meaning assigned to it in clause (ii) of the Explanation to clause (viia) of subsection (1) of section 36;

(g) by a public company formed and registered in India with the main object of carrying on the business of providing long- term finance for construction or purchase of houses in India for residential purposes, being a company approved by the Central Government for the purposes of clause (viii) of sub- section (1) of section 36 on any moneys borrowed by it in foreign currency from sources outside India under a loan agreement approved by the Central Government before 1st June, 2003, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment.

Explanation - For the purposes of items (f), (fa) and (g), the expression "foreign currency" shall have the meaning assigned to it in the Foreign Exchange Regulation Act, 1973;

(h) by any public sector company in respect of such bonds or debentures and subject to such conditions, including the condition that the holder of such bonds or debentures registers his name and the holding with that company, as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(i) by Government on deposits made by an employee of the Central Government or a State Government, or a public sector company in accordance with such scheme as the Central Government may, by notification in the Official Gazette, frame in this behalf, out of the moneys due to him on account of his retirement, whether on superannuation or otherwise.

(v) interest on-

(a) securities held by the Welfare Commissioner, Bhopal Gas Victims, Bhopal, in the Reserve Bank's SGL Account No. SL/DHO 48;

(b) deposits for the benefit of the victims of the Bhopal gas leak disaster held in such account, with the Reserve Bank of India or with a public sector bank, as the Central Government may, by notification in the Official Gazette, specify, whether prospectively or retrospectively but in no case earlier than the 1st April, 1994 in this behalf;

(vi) Interest on Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government;

(vii) Interest on bonds-

(a) issued by a local authority or by a State Pooled Finance Entity; and

(b) specified by the Central Government by notification in the Official Gazette.

(viii) any income by way of interest received by non-resident or a person who is not ordinarily resident, on a deposit in India on or after 1st April, 2005, in an Offshore Banking Unit referred to in clause (u) of section 2 of the Special Economic Zones Act, 2005.

Case Law:

Interest on terminal benefits - Under the Income-tax Act, if any income is liable to be taxed, it is not open for High Court to issue a direction to employer (Government of India/Income Tax Department) not to levy Income-tax on interest earned by assessees (employees) on their retirement/terminal benefits - *R.K. Srivastava* vs. *Union of India* 141 Taxman 84.

28. Payment made by Indian Company engaged in the business of operation of aircraft [Section 10(15A)]

Any payment made, by an Indian company engaged in the business of operation of aircraft, to acquire an aircraft or an aircraft engine (other than a payment for providing spares, facilities or services in connection with the operation of leased aircraft) on lease from the Government of a foreign State or a foreign enterprise under an agreement, not being an agreement entered into between the 1st day of April, 1997 and the 31st day of March, 1999 and approved by the Central Government in this behalf.

Provided nothing contained in this clause shall apply to any such agreement entered into on or after the 1st day of April, 2007.

Case Law:

Application for approval of lease agreement - Rejection of application for approval of agreement by Central Government without a speaking order is not justified - *AFT Trust-Sub1* vs. *Chairman, CBDT* 192 CTR 406.

29. Scholarships granted to meet the cost of education [Section 10(16)]

Any scholarship granted to meet the cost of education.

Case law:

Scholarship granted by employer to son of employee could not be treated as perquisite but would be exempt under section 10(*16*) - *CIT* vs. *B.L. Garg*155 Taxman 189.

30. Payment to Parliament or of any State Legislature or of any Committee thereof [Section 10(17)]

Any income by way of—

(i) daily allowance received by any person by reason of his membership of Parliament or of any State Legislature or of any Committee thereof;

(ii) any allowance received by any person by reason of his membership of Parliament under the Members of Parliament (Constituency Allowance) Rules, 1986;

(iii) any constituency allowance received by any person by reason of his membership of any State Legislature under any Act or rules made by that State Legislature;

31. Any payment made as a reward [Section10(17A)]

Any payment made, whether in cash or in kind,—

(i) in pursuance of any award instituted in the public interest by the Central Government or any State Government or instituted by any other body and approved by the Central Government in this behalf; or

(ii) as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest.

32. Pension received by an individual who has been in the service of the Central Government or State Government and has been awarded "Param Vir Chakra" etc. [Section 10(18)]

Any income by way of—

(i) pension received by an individual who has been in the service of the Central Government or State Government and has been awarded "Param Vir Chakra" or "Maha Vir Chakra" or "Vir Chakra" or such other gallantry award as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(ii) family pension received by any member of the family of an individual referred to in sub-clause (*i*).

Explanation — For the purposes of this clause, the expression "family" shall have the meaning assigned to it in the *Explanation* to clause (*5*);

33. Family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including Para-military forces) of the Union [Section 10(19)]

Family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including Para-military forces) of the Union, where the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed.

34. Annual Value of Palace of a Ruler [Section 10(19A)]

The annual value of any one palace in the occupation of a Ruler, being a palace, the annual value whereof was exempt from Income-tax before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, by virtue of the provisions of the Merged States (Taxation Concessions) Order, 1949, or the Part B States (Taxation Concessions) Order, 1950, or, as the case may be, the Jammu and Kashmir (Taxation Concessions) Order, 1958.

Provided that for the Assessment Year commencing on the 1st day of April, 1972, the annual value of every such palace in the occupation of such Ruler during the relevant Previous Year shall be exempt from Income-tax.

35. Income of Local Authority from House Property [Section 10(20)]

The income of a local authority which is chargeable under the head "Income from House Property", "Capital Gains" or "Income from Other Sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area.

Explanation — For the purposes of this clause, the expression "local authority" means—

(i) Panchayat as referred to in clause (d) of article 243 of the Constitution; or

(ii) Municipality as referred to in clause (e) of article 243P of the Constitution; or

(iii) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or

(iv) Cantonment Board as defined in section 3 of the Cantonments Act, 1924.

Case Laws:

(i) *State Road Transport Corporation is not a local authority* - A State Transport Corporation is not a 'local authority' and is, therefore, not entitle to claim exemption of its income by virtue of section 10(*20*) calculate - *Calcutta State Transport Corpn.* vs. *CIT* 85 Taxman 402/219 ITR 515.

(ii) *Forest Corporation* - U.P. State Forest Corporation established for preservation of forest could not be treated as local authority merely because the Act which has created the Corporation has called it a local authority **-** *CIT vs. U.P. Forest Corpn.* 97 Taxman 259/230 ITR 945.

36. Income of a Research Association for the time being approved for the purpose of clause (*ii*) of sub-section (1) of section 35 [Section 10(21)]

Any income of a research association for the time being approved for the purpose of clause (*ii*) or clause (iii) of sub-section (1) of section 35:

Provided that the research association—

(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established, and the provisions of sub-section (2) and sub-section (3) of section 11 shall apply in relation to such accumulation subject to the following modifications, namely :—

  (i) in sub-section (2),—

    (1) the words, brackets, letters and figure "referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section" shall be omitted;

    (2) for the words "to charitable or religious purposes", the words "for the purposes of scientific research or research in social science or statistical research" shall be substituted;

    (3) the reference to "Assessing Officer" in clause (*a*) thereof shall be construed as a reference to the "prescribed authority" referred to in clause (*ii*) of sub-section (1) of section 35;

  (ii) in sub-section (3), in clause (a), for the words "charitable or religious purposes", the words "the purposes of scientific research or research in social science or statistical research" shall be substituted; and

(b) does not invest or deposit its funds, other than—

  (i) any assets held by the research association where such assets form part of the corpus of the fund of the association as on the 1st day of June, 1973;

  (ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the research association before the 1st day of March, 1983;

  (iii) any accretion to the shares, forming part of the corpus of the fund mentioned in sub-clause (i), by way of bonus shares allotted to the research association;

  (iv) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify, for any period during the Previous Year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11.

Provided further that the exemption under this clause shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (*b*) of the first proviso to this clause, subject to the condition that such voluntary contribution is not held by the research association, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the Previous Year in which such asset is acquired or the 31st day of March, 1992, whichever is later.

Provided also that nothing contained in this clause shall apply in relation to any income of the research association, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business.

Provided also that where the research association is approved by the Central Government and subsequently that Government is satisfied that—

(i) the research association has not applied its income in accordance with the provisions contained in clause (a) of the first proviso; or

(ii) the research association has not invested or deposited its funds in accordance with the provisions contained in clause (b) of the first proviso; or

(iii) the activities of the research association are not genuine; or

(iv) the activities of the research association are not being carried out in accordance with all or any of the conditions subject to which such association was approved, it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association and to the Assessing Officer;

37. Income of Specified News Agency [Section 10(22B)]

Any income of such news agency set up in India solely for collection and distribution of news as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Provided that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members;

Provided further that any notification issued by the Central Government under this clause shall, at any one time, have effect for such Assessment Year or Years, not exceeding three Assessment Years (including an Assessment Year or Years commencing before the date on which such notification is issued) as may be specified in the notification;

Provided also that where the news agency has been specified, by notification, by the Central Government and subsequently that Government is satisfied that such news agency has not applied or accumulated or distributed its income in accordance with the provisions contained in the first proviso, it may, at any time after giving a reasonable opportunity of showing cause, rescind the notification and forward a copy of the order rescinding the notification to such agency and to the Assessing Officer.

38. Income received for rendering any specific services or income by way of interest or dividends [Section 10(23A)]

Any income (other than income chargeable under the head "Income from House Property" or any income received for rendering any specific services or income by way of interest or dividends derived from its investments) of an association or institution established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or such other profession as the Central Government may specify in this behalf, from time to time, by notification in the Official Gazette.

Provided that—

(i) the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established; and

(ii) the association or institution is for the time being approved for the purpose of this clause by the Central Government by general or special order.

Provided further that where the association or institution has been approved by the Central Government and subsequently that Government is satisfied that—

(i) such association or institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(ii) the activities of the association or institution are not being carried out in accordance with all or any of the conditions subject to which such association or institution was approved, it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association or institution and to the Assessing Officer.

39. Any income received on behalf of any Regimental Fund or Non-Public Fund [Section 10(23AA)]

Any income received by any person on behalf of any Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants.

40. Income received by any person on behalf of a fund established [Section 10(23AAA)]

Any income received by any person on behalf of a fund established, for such purposes as may be notified by the Board in the Official Gazette, for the welfare of employees or their dependants and of which fund such employees are members if such fund fulfils the following conditions, namely :—

(a) The fund—
  (i) applies its income or accumulates it for application, wholly and exclusively to the objects for which it is established; and
  (ii) invests its funds and contributions and other sums received by it in the forms or modes specified in sub-section (5) of section 11;

(b) The fund is approved by the Principal Commissioner or Commissioner in accordance with the rules made in this behalf

Provided that any such approval shall at any one time have effect for such Assessment Year or years not exceeding three Assessment Years as may be specified in the order of approval.

41. Income of a Fund [Section 10(23AAB)]

Any income of a fund, by whatever name called, set up by the Life Insurance Corporation of India on or after the 1st day of August, 1996 or any other insurer under a pension scheme —

(i) to which contribution is made by any person for the purpose of receiving pension from such fund;

(ii) which is approved by the Controller of Insurance or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999, as the case may be.

Explanation — For the purposes of this clause, the expression "Controller of Insurance" shall have the meaning assigned to it in clause *(5B)* of section 2 of the Insurance Act, 1938.

42. Income of an institution solely for development of Khadi or Village Industries or both [Section 10(23B)]

Any income of an institution constituted as a public charitable trust or registered under the Societies Registration Act, 1860, or under any law corresponding to that Act in force in any part of India, and existing solely for the development of khadi or village industries or both, and not for purposes of profit, to the extent such income is attributable to the business of production, sale, or marketing, of khadi or products of village industries.

Provided that —

(i) the institution applies its income, or accumulates it for application, solely for the development of khadi or village industries or both; and

(ii) the institution is, for the time being, approved for the purpose of this clause by the Khadi and Village Industries Commission.

Provided further that the Commission shall not, at any one time, grant such approval for more than three Assessment Years beginning with the Assessment Year next following the Financial Year in which it is granted;

Provided also that where the institution has been approved by the Khadi and Village Industries Commission and subsequently that Commission is satisfied that—

(i) the institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(ii) the activities of the institution are not being carried out in accordance with all or any of the conditions subject to which such institution was approved.

However, it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such institution and to the Assessing Officer.

Explanation — For the purposes of this clause,—

(i) "Khadi and Village Industries Commission" means the Khadi and Village Industries Commission established under the Khadi and Village Industries Commission Act, 1956;

(ii) "Khadi" and "village industries" have the meanings respectively assigned to them in that Act

43. Income of an Authority established for the development of Khadi or Village industries [Section 10(23BB)]

Any income of an authority (whether known as the Khadi and Village Industries Board or by any other name) established in a State by or under a State or Provincial Act for the development of khadi or village industries in the State.

Explanation — For the purposes of this clause, "khadi" and "village industries" have the meanings respectively assigned to them in the Khadi and Village Industries Commission Act, 1956.

44. Income of any body or authority provides for the administration of any public religious or charitable trusts or endowments or societies for religious or charitable [Section 10(23BBA)]

Any income of any body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the administration of any one or more of the following, that is to say, public religious or charitable trusts or endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860, or any other law for the time being in force.

Provided that nothing in this clause shall be construed to exempt from tax the income of any trust, endowment or society referred to therein.

45. Income of the European Economic Community [Section 10(23BBB)]

Any income of the European Economic Community derived in India by way of interest, dividends or capital gains from investments made out of its funds under such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation — For the purposes of this clause, "European Economic Community" means the European Economic Community established by the Treaty of Rome of 25th March, 1957.

46. Income of SAARC Fund [Section 10(23BBC)]

Any income of the SAARC Fund for Regional Projects set up by Colombo Declaration issued on the 21st day of December, 1991 by the Heads of State or Government of the Member Countries of South Asian Association for Regional Cooperation established on the 8th day of December, 1985 by the Charter of the South Asian Association for Regional Cooperation.

47. Income of ASOSAI-SECRETARIAT [Section 10(23BBD)]

Any income of the Secretariat of the Asian Organisation of the Supreme Audit Institutions registered as "ASOSAI-SECRETARIAT" under the Societies Registration Act, 1860 for ten *Previous Years relevant to the Assessment Years beginning on the 1st day of April, 2001 and ending on the 31st day of March, 2011*.

48. Income of Insurance Regulatory Development Authority (IRDA) [Section 10(23BBE)]

Any income of the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999.

49. Income of the Central Electricity Regulatory Commission [Section 10(23BBG)]

Any income of the Central Electricity Regulatory Commission constituted under *sub-section (1) of section 76 of the Electricity Act, 2003;*

50. Income of Prasar Bharati (Broadcasting Corporation of India) [Section 10(23BBH)]

Any income of the Prasar Bharati (Broadcasting Corporation of India) established under sub-section(1) of section 3 of the Prasar Bharati (Broadcasting Corporation of India)Act,1990, from Assessment Year 2013-14 is exempted from tax.

51. Exemption in Special Cases [Section 10 (23C)]

Any income received by any person on behalf of —

(*i*) the Prime Minister's National Relief Fund; or

(*ii*) the Prime Minister's Fund (Promotion of Folk Art); or

(*iii*) the Prime Minister's Aid to Students Fund; or

(*iiia*) the National Foundation for Communal Harmony; or

(iiiaa) the Swachh Bharat Kosh, set up by the Central Government; or

(iiiaaa) the Clean Ganga Fund, set up by the Central Government; or

(*Iiiab)* any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(*iiiac*) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

The following Explanation shall be inserted after sub-clause (iiiac) of clause (23C) of section 10 by the Finance (No. 2) Act, 2014, w.e.f. A.Y. 2015-16.

Explanation.—For the purposes of sub-clauses (iiiab) and (iiiac), any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds such percentage of the total receipts including any voluntary contributions, as may be prescribed, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year.

(*iiiad*) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

(*iiiae*) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed; or

(*iv*) any other fund or institution established for charitable purposes *which may be approved by the prescribed authority*, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

(*v*) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, *which may be approved by the prescribed authority*, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof; or

(*vi*) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (*iiiab*) or sub-clause (*iiiad*) and which may be approved by the prescribed authority; or

(*via*) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (*iiiac*) or sub-clause (*iiiae*) and which may be approved by the prescribed authority.

Provided that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*).

Provided further that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf.

Provided also that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*)—

(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years; and

(b) does not invest or deposit its funds, other than—

(*i*) any assets held by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of the fund, trust or institution or any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1973;

(*ia*) any asset, being equity shares of a public company, held by any university or other educational

institution or any hospital or other medical institution where such assets form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;

(*ii*) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution before the 1st day of March, 1983;

(*iii*) any accretion to the shares forming part of the corpus mentioned in sub-clause (*i*) and sub-clause (*ia*), by way of bonus shares allotted to the fund, trust or institution or any university or other educational institution or any hospital or other medical institution;

(*iv*) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify, for any period during the Previous Year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11.

Provided also that the exemption under sub-clause (*iv*) or sub-clause (*v*) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 1993.

Provided also that the exemption under sub-clause (*vi*) or sub-clause (*via*) shall not be denied in relation to any funds invested or deposited before the 1st day of June, 1998, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 2001.

Provided also that the exemption under sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (*b*) of the third proviso to this sub-clause, subject to the condition that such voluntary contribution is not held by the trust or institution or any university or other educational institution or any hospital or other medical institution, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the Previous Year in which such asset is acquired or the 31st day of March, 1992, whichever is later.

Provided also that nothing contained in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) shall apply in relation to any income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business.

Provided also that any notification issued by the Central Government under sub-clause (iv)or sub-clause(v), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President (i.e. 13.07.2006), shall, at any time, have effect for such Assessment Year or Years, not exceeding three Assessment Years (including an Assessment Year or Years commencing before the date on which such notification is issued) as may be specified in the notification.

Provided also that where an application under the first proviso is made on or after the date of which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President (i.e. 13.07.2006), every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of 12 months from the end of the month in which such notification was received.

Provided also *that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (v) or sub-clause (*vi*) or sub-clause (*via*), without giving effect to the provisions of the said sub-*

clauses, exceeds the maximum amount which is not chargeable to tax in any Previous Year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation to sub-section (2) of section 288 and furnish along with the return of income for the relevant Assessment Year, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Provided also that any amount of donation received by the fund or institution in terms of clause (*d*) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (*v*) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the Previous Year and shall accordingly be charged to tax.

Provided also that where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established.

Provided also that where the fund or institution referred to in sub-clause (*iv*) or trust or institution referred to in sub-clause (*v*) is notified by the Central Government or is approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (*vi*) or any hospital or other medical institution referred to in sub-clause (*via*), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—

(*i*) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

  (*A*) applied its income in accordance with the provisions contained in clause (*a*) of the third proviso; or

  (*B*) invested or deposited its funds in accordance with the provisions contained in clause (*b*) of the third proviso; or

(*ii*) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

  (*A*) are not genuine; or

  (*B*) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved;

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer;

Provided also that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or

after the 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made on or before the 30th September of relevant Assessment Year from which the exemption is sought;

Provided also that any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of the said section shall be included in the total income;

Provided also that all pending applications, on which no notification has been issued under sub-clause (iv) or sub-clause (v) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day.

Provided also *that the income of a trust or institution referred to in sub-section (iv) or sub-section (v) shall be included in its total income of the previous year if the provision of the first proviso to clause (15) of section 2 become applicable to such trust or institution in the said previous year, whether or not any approval granted or notification issued in respect of such trust or institution has been withdrawn or rescinded.*

Provided also *that where the fund or institution referred to in sub-clause (iv) or the trust or institution referred to in sub-clause (v) has been notified by the Central Government or approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), has been approved by the prescribed authority, and the notification or the approval is in force for any previous year, then, nothing contained in any other provision of this section [other than clause (1) thereof] shall operate to exclude any income received on behalf of such fund or trust or institution or university or other educational institution or hospital or other medical institution, as the case may be, from the total income of the person in receipt thereof for that previous year.*

Explanation.—*In this clause, where any income is required to be applied or accumulated, then, for such purpose the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this clause in the same or any other previous year.*

Amendment to Section 10(23C) (iv) & (v) - Assessment of charitable organization in case commercial receipts exceed the specified threshold of ₹25,00,000 [w.e.f. A.Y. 2009-10]

Section 2(15) provides that if the object of advancement of general public utility involves carrying on of any activity in the nature of trade, commerce or business, etc. and the aggregate value of the receipts from such activity exceeds ₹ 25,00,000, the trust will not be considered as charitable trust. New sub-section (8) has been inserted in section 13 and a proviso has been added in section 10(23C), with retrospective effect from A.Y. 2009-10, to provide that the trust or institution will not be granted exemption only for the year in which such receipts exceed ₹ 25,00,000. Such loss of exemption in that year will not affect the registration of the trust or institution u/s12AA. The exemption can be claimed in subsequent years when such receipts do not exceed ₹ 25,00,000.

Extension of time limit to 30th September for filing application for approval under section 10(23C) for fund or trust or institution or any university or other educational institution or any hospital or other medical institution [Section 10(23C)] [For the financial year 2008-09 and subsequent years]

Section 10(23C) stipulates that income of institutions specified under its various sub-clauses (fund or trust or institution or any university or other educational institution or any hospital or other medical institution) shall be exempt from income tax. For trusts or institutions covered under section 10(23C)(iv), (v), (vi) and (via), approvals are required to be taken from prescribed authorities, in the prescribed manner, to become eligible for claiming exemption. Under the existing provisions, any institution (having receipts of more than rupees one crore) has to make an application for seeking exemption at any time during the financial year for which the exemption is sought. In practice, an eligible institution has to anticipate

its annual receipts in decide whether the application for exemption is required to be filed or not. This has often led to avoidable hardship.

In order to mitigate this hardship, the Act has extended the time limit for filing such application to the 10th day of September in the succeeding financial year. This relaxation has been provided for the financial year 2008-09 and subsequent years. In other words, where the gross receipts of a trust or institution exceeds rupees one crore in the financial year 2008-2009, it can file the application for exemption up till 30th September 2009.

52. Income of Mutual Fund [Section 10(23D)]

Subject to the provisions of Chapter XII-E, any income of

(*i*) a Mutual Fund registered under the Securities and Exchange Board of India Act, 1992 or regulations made there under;

(*ii*) such other Mutual Fund set up by a public sector bank or a public financial institution or authorised by the Reserve Bank of India and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation — For the purposes of this clause,—

(a) the expression "public sector bank" means the State Bank of India constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new Bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and a Bank included in the category "other public sector banks" by the Reserve Bank of India;

(b) the expression "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (Corresponding Section 2(72) of Companies Act,2013);

(c) the expression "Securities and Exchange Board of India" shall have the meaning assigned to it in clause (*a*) of sub-section (1) of section 2 of the Securities and Exchange Board of India Act, 1992.

Amendment to section 10(23) of the Income Tax Act, 1961- Incorporating "Other Public Sector Banks" under the expression "Public Sector Bank" [Section 10(23D)] [W.e.f.A.Y.2010 - 11]

Income of a mutual fund set up by a Public Sector Bank is exempt under section 10(23D). The expression "public sector banks" has been defined in the Explanation to section 10(23D). Reserve Bank of India has categorized a new sub-group called "other public sector banks". The Central Government holds more than 51% shareholding in IDBI Bank Limited, which has been categorized under "other public sector banks" by RBI.

Since "other public sector banks", has not been included in the expression "public sector banks" as defined in the Explanation to section 10(23D), the Act has amended the relevant provisions of the Income-tax Act, 1961 to do so. Hence, income of a mutual fund set up by other public sector banks shall also be exempt.

53. Income of a securitisation trust [Section 10(23DA)]

Any income of a securitisation trust from the activity of securitisation is exempt u/s 10(23DA).

54. Contribution received from Recognised Stock Exchange [Section 10(23EA)]

Any income by way of contributions received from recognised stock exchanges and the members thereof, of such Investor Protection Fund set up by recognised stock exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any Previous Year is shared, either wholly or in part, with a recognised stock exchange, the

whole of the amount so shared shall be deemed to be the income of the Previous Year in which such amount is so shared and shall accordingly be chargeable to Income-tax.

55. Income of the Credit Guarantee Fund Trust for Small Industries [Section 10(23EB)]

Any income of the Credit Guarantee Fund Trust for Small Industries, being a trust created by the Government of India and the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989), for five Previous Years relevant to the Assessment Years beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2007.

56. Contributions received from Commodity Exchanges [Section 10(23EC)]

Any income, by way of contributions received from commodity exchanges and the members thereof, of such Investor Protection Fund set up by commodity exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Provided that where any amount standing to the credit of the said Fund and not charged to Income-tax during any Previous Year is shared, either wholly or in part, with a commodity exchange, the whole of the amount so shared shall be deemed to be the income of the Previous Year in which such amount is so shared and shall accordingly be chargeable to income tax.

57. Income of Investor Protection Fund of depositor [Section 10(23ED)]

Any income, by way of contribution received from a depository, of such Investor Protection Fund set up in accordance with the regulation by a depository as the Central Government may notified in this behalf.

Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with a depository, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is shared.

Following clause (23EE) shall be inserted after clause (23ED) of section 10 by the Finance Act, 2015, w.e.f. 1-4-2016 :

58. Exemption to income of Core Settlement Guarantee Fund (SGF) set up by the recognised Clearing Corporations [Section 10(23EE)] [Inserted w.e.f. A.Y. 2016-17]

any specified income of such Core Settlement Guarantee Fund, set up by a recognised clearing corporation in accordance with the regulations, as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with the specified person, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall, accordingly, be chargeable to income-tax.

Explanation.—For the purposes of this clause,—

(i) "recognised clearing corporation" shall have the same meaning as assigned to it in clause (o) of sub-regulation (1) of regulation 2 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(ii) "regulations" means the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(iii) "specified income" shall mean,—

(a) the income by way of contribution received from specified persons;

(b) the income by way of penalties imposed by the recognised clearing corporation and credited to the Core Settlement Guarantee Fund; or

(c) the income from investment made by the Fund;

(iv) "specified person" shall mean,—

(a) any recognised clearing corporation which establishes and maintains the Core Settlement Guarantee Fund;

(b) any recognised stock exchange being a shareholder in such recognised clearing corporation or a contributor to the Core Settlement Guarantee Fund; and

(c) any clearing member contributing to the Core Settlement Guarantee Fund;

59. Dividend income or long term capital gain of a venture capital fund or a venture capital company [Section 10(23F)]

Any income by way of dividends or long-term capital gains of a venture capital fund or a venture capital company from investments made by way of equity shares in a venture capital undertaking.

Provided that such venture capital fund or venture capital company is approved for the purposes of this clause by the prescribed autho¬rity in accordance with the rules made in this behalf and satisfies the prescribed conditions.

Provided further that any approval by the prescribed authority shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years, as may be specified in the order of approval.

Provided also that nothing contained in this clause shall apply in respect of any investment made after the 31st day of March,1999.

Explanation.—For the purposes of this clause,—

(a) "venture capital fund" means such fund, operating under a trust deed registered under the provisions of the Registration Act, 1908, established to raise monies by the trustees for investments mainly by way of acquiring equity shares of a venture capital undertaking in accordance with the prescribed guidelines;

(b) "venture capital company" means such company as has made investments by way of acquiring equity shares of venture capital undertakings in accordance with the prescribed guidelines;

(c) "venture capital undertaking" means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the business of generation or generation and distribution of electricity or any other form of power or engaged in the business of providing telecommunica¬tion services or in the business of developing, maintaining and operating any infrastructure facility or engaged in the manufac¬ture or production of such articles or things (including computer software) as may be notified by the Central Government in this behalf; and

(d) "infrastructure facility" means a road, highway, bridge, airport, port, rail system, a water supply project, irrigation project, sani¬tation and sewerage system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette and which fulfils the conditions specified in sub¬-section (4A) of section 80-IA.

60. Dividends income [other than dividends referred to in section 115-O], or long-term capital gains of a venture capital fund or a venture capital company [Section 10(23FA)]

Any income by way of dividends[other than dividends referred to in section 115-O], or long-term capital gains of a venture capital fund or a venture capital company from investments made by way of equity shares in a venture capital undertaking.

Provided that such venture capital fund or venture capital company is approved, for the purposes of this clause, by the Central Govern¬ment on an application made to it in accordance with the rules made in this behalf and which satisfies the prescribed conditions.

Provided further that any approval by the Central Government shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years, as may be specified in the order of approval.

Provided also that nothing contained in this clause shall apply in respect of any investment made after the 31st day of March, 2000.

Explanation.—For the purposes of this clause,—

(a) "venture capital fund" means such fund, operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908), established to raise monies by the trustees for investments mainly by way of acquiring equity shares of a venture capital undertaking in accordance with the prescribed guidelines;

(b) "venture capital company" means such company as has made investments by way of acquiring equity shares of venture capital undertakings in accordance with the prescribed guidelines; and

(c) "venture capital undertaking" means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the—

(i) business of—

(A) software;

(B) information technology;

(C) production of basic drugs in the pharmaceutical sector;

(D) bio-technology;

(E) agriculture and allied sectors; or

(F) such other sectors as may be notified by the Central Government in this behalf; or

(ii) production or manufacture of any article or substance for which patent has been granted to the National Research Laboratory or any other scientific research institution approved by the Department of Science and Technology.

61. Income of a Venture Capital Company or Venture Capital Fund [Section 10(23FB)]

Any income of a venture capital company or venture capital fund from investment in a venture capital undertaking.

Explanation—For the purposes of this clause,—

(a) **"venture capital company"** means a company which—

(A) has been granted a certificate of registration, before the 21st day of May, 2012, as a Venture Capital Fund and is regulated under the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 (hereinafter referred to as the Venture Capital Funds Regulations) made under the Securities and Exchange Board of India Act, 1992; or

(B) has been granted a certificate of registration as Venture Capital Fund as a sub-category of Category 1 Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (hereinafter referred to as the Alternative Investment Funds Regulations) made under the Securities and Exchange Board of India Act, 1992, and which fulfils the following conditions, namely:—

(i) it is not listed on a recognised stock exchange;

(ii) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity

linked instruments of venture capital undertaking; and

(iii) it has not invested in any venture capital undertaking in which its director or a substantial shareholder (being a beneficial owner of equity shares exceeding ten per cent of its equity share capital) holds, either individually or collectively, equity shares in excess of fifteen per cent of the paid-up equity share capital of such venture capital undertaking;

(b) **"venture capital fund"** means a fund—

(A) operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908), which—

(I) has been granted a certificate of registration, before the 21st day of May, 2012, as a Venture Capital Fund and is regulated under the Venture Capital Funds Regulations; or

(II) has been granted a certificate of registration as Venture Capital Fund as a sub-category of Category I Alternative Investment Fund under the Alternative Investment Funds Regulations and which fulfils the following conditions, namely:—

(i) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking;

(ii) it has not invested in any venture capital undertaking in which its trustee or the settler holds, either individually or collectively, equity shares in excess of fifteen per cent of the paid-up equity share capital of such venture capital undertaking; and

(iii) the units, if any, issued by it are not listed in any recognised stock exchange; or

(B) operating as a venture capital scheme made by the Unit Trust of India established under the Unit Trust of India Act, 1963;

(c) **"venture capital undertaking"** means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the —

(i) business of —

(A) nanotechnology;

(B) information technology relating to hardware and software development;

(C) seed research and development;

(D) bio-technology;

(E) research and development of new chemical entities in the pharmaceutical sector;

(F) production of bio-fuels;

(G) building and operating composite hotel-cum-convention centre with seating capacity of more than three thousand;

(H) developing or operating and maintaining or developing, operating and maintaining any infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of section 80-IA;

(ii) dairy or poultry industry;

From Assessment Year 2013-14, "Venture Capital Undertaking" means a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act,1992.

62. Income of Investment Fund other than the income chargeable under the head PGBP to be exempt [Section 10(23FBA)] [W.e.f. A.Y. 2016-17]

any income of an investment fund other than the income chargeable under the head D.—"Profits and gains of business or profession";

63. Proportionate income received by unit holder from investment fund which was taxable under PGBP in the hands of the investment fund to be exempt [Section 10(23FBB)] [Inserted w.e.f. A.Y. 2016-17]

any income referred to in section 115UB, accruing or arising to, or received by, a unit holder of an investment fund, being that proportion of income which is of the same nature as income chargeable under the head D.—"Profits and gains of business or profession".

Explanation.—For the purposes of clauses (23FBA) and (23FBB), the expression "investment fund" shall have the meaning assigned to it in clause (a) of the Explanation 1 to section 115UB;

64. any income of a business trust by way of interest received or receivable from a special purpose vehicle **[Section 10(23FC)]**.

Explanation.—For the purposes of this clause, the expression "special purpose vehicle" means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration;]

65. Income by way of renting or leasing or letting out any real estate asset owned directly by a real estate investment trust to be exempt in the hands of real estate investment trust [Section 10(23FCA)] [Inserted w.e.f. A.Y. 2016-17]

any income of a business trust, being a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust.

Explanation.—For the purposes of this clause, the expression "real estate asset" shall have the same meaning as assigned to it in clause (zj) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992;

66. any distributed income, referred to in section 115UA, received by a unit holder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in clause (23FC). **[Section (23FD)]**;

67. Income from House Property and from Other Sources of a Registered Union and an Association of Registered Union [Section 10(24)]

Any income chargeable under the heads "Income from House Property" and "Income from Other Sources" of —

(*a*) a registered union within the meaning of the Trade Unions Act, 1926, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen;

(*b*) an association of registered unions referred to in sub-clause (*a*)

Case Law:

Ancillary and incidental objects are not barred - Section 10(24) does not lay down that the association must be formed *wholly and exclusively* for the purposes enumerated in that provision. An association registered under the Trade Unions Act, having other ancillary and incidental objects apart from the primary object of regulation between its members and their employees, is also entitled to exemption - *CIT* vs. *Calcutta Hydraulic Press Association* 121 ITR 414.

68. Income of Provident Fund or Income received by the Trustees [Section 10(25)]

(*i*) Interest on securities which are held by, or are the property of, any provident fund to which the Provident Funds Act, 1925, applies, and any capital gains of the fund arising from the sale, exchange or transfer of such securities;

(*ii*) Any income received by the trustees on behalf of a recognised provident fund;

(*iii*) Any income received by the trustees on behalf of an approved superannuation fund;

(*iv*) Any income received by the trustees on behalf of an approved gratuity fund;

(*v*) Any income received —

(*a*) by the Board of Trustees constituted under the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948, on behalf of the Deposit-linked Insurance Fund established under section 3G of that Act; or

(*b*) by the Board of Trustees constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, on behalf of the Deposit-linked Insurance Fund established under section 6C of that Act.

69. Income of the Employees' State Insurance Fund [Section 10(25A)]

Any income of the Employees' State Insurance Fund set up under the provisions of the Employees' State Insurance Act, 1948.

70. Exemption in respect of Scheduled Tribe of Specified Area [Section 10(26)]

In the case of a member of a Scheduled Tribe as defined in clause (*25*) of article 366 of the Constitution, residing in any area specified in Part I or Part II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura or in the areas covered by notification No. TAD/R/35/50/109, dated the 23rd February, 1951, issued by the Governor of Assam under the proviso to sub-paragraph (3) of the said paragraph 20 as it stood immediately before the commencement of the North-Eastern Areas (Reorganisation) Act, 1971 or in the Ladakh region of the State of Jammu and Kashmir, any income which accrues or arises to him —

(*a*) from any source in the areas or States aforesaid, or

(*b*) by way of dividend or interest on securities.

Case Law:

Provision is constitutionally valid - Section 10(*26*)(*a*) is constitutionally valid. The classification therein for the purpose of exemption from tax between income from a specified area and income from outside that specified area is not discriminatory and does not offend article 14 of the Constitution - *ITO* v. *N. Takin Roy Rymbai* 103 ITR 82.

71. Income of an individual being a Sikkimese [Section 10(26AAA)]

In case of an individual, being a Sikkimese, any income which accrues or arises to him

(*a*) from any source in the State of Sikkim; or

(*b*) by way of dividend or interest on securities:

Provided that nothing contained in this clause shall apply to a Sikkimese woman who, on or after the 1st day of April, 2008, marries an individual who is not a Sikkimese.

***Explanation* —** For the purposes of this clause, Sikkimese shall mean

(*i*) an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (hereinafter referred to as the Register of Sikkim Subjects), immediately before the 26th day of April, 1975; or

(*ii*) an individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No. 26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or

(*iii*) any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individuals father or husband or paternal grandfather or brother from the same father has been recorded in that register;

72. Income of an agricultural produce market committee [Section 10(26AAB)]

Any income of an agricultural produce market committee or board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce.

73. Income of a Corporation established for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or backward classes [Section 10(26B)]

Any income of a corporation established by a Central, State or Provincial Act or of any other body, institution or association (being a body, institution or association wholly financed by Government) where such corporation or other body or institution or association has been established or formed for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or backward classes or of any two or all of them.

Explanation — For the purposes of this clause,—

(*a*) "Scheduled Castes" and "Scheduled Tribes" shall have the meanings respectively assigned to them in clauses (*24*) and (*25*) of article 366 of the Constitution;

(*b*) "Backward Classes" means such classes of citizens, other than the Scheduled Castes and the Scheduled Tribes, as may be notified—

(*i*) by the Central Government; or

(*ii*) by any State Government,

as the case may be, from time to time.

74. Income of a corporation established for promoting the interests of the members of a minority community [Section 10(26BB)]

Any income of a corporation established by the Central Government or any State Government for promoting the interests of the members of a minority community.

Explanation - For the purposes of this clause, "minority community" means a community notified as such by the Central Government in the Official Gazette in this behalf.

75. Income of a corporation established for the welfare and economic upliftment of ex-servicemen being the citizens of India [Section 10(26BBB)]

Any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen being the citizens of India.

Explanation - For the purposes of this clause, "ex-serviceman" means a person who has served in any rank, whether as combatant or non-combatant, in the armed forces of the Union or armed forces of the Indian States before the commencement of the Constitution (but excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Lok Sahayak Sena, Jammu and Kashmir Militia and Territorial Army) for a continuous period of not less than six months after attestation and has been released, otherwise than by way of dismissal or discharge on account of misconduct or inefficiency, and in the case of a deceased or incapacitated ex-serviceman includes his wife, children, father, mother, minor brother, widowed daughter and widowed sister, wholly dependent upon such ex-serviceman immediately before his death or incapacitation.

76. Income of a co-operative society formed for promoting interest of the members of the Scheduled Castes or Scheduled Tribes [Section 10(27)]

Any income of a co-operative society formed for promoting the interests of the members of either the Scheduled Castes or Scheduled Tribes or both referred to in clause (*26B*).

Provided that the membership of the co-operative society consists of only other co-operative societies formed for similar purposes and the finances of the society are provided by the Government and such other societies.

77. Income of certain specified Board or Authority [Section 10(29A)]

Any income accruing or arising to—

(*a*) the Coffee Board constituted under section 4 of the Coffee Act,1942 in any Previous Year relevant to any Assessment Year commencing on or after the 1st day of April, 1962 or the Previous Year in which such Board was constituted, whichever is later;

(*b*) the Rubber Board constituted under sub-section (1) of section 4 of the Rubber Board Act, 1947 in any Previous Year relevant to any Assessment Year commencing on or after the 1st day of April, 1962 or the Previous Year in which such Board was constituted, whichever is later;

(*c*) the Tea Board established under section 4 of the Tea Act, 1953 in any Previous Year relevant to any Assessment Year commencing on or after the 1st day of April, 1962 or the Previous Year in which such Board was constituted, whichever is later;

(*d*) the Tobacco Board constituted under the Tobacco Board Act, 1975 in any Previous Year relevant to any Assessment Year commencing on or after the 1st day of April, 1975 or the Previous Year in which such Board was constituted, whichever is later;

(*e*) the Marine Products Export Development Authority established under section 4 of the Marine Products Export Development Authority Act, 1972 in any Previous Year relevant to any Assessment Year commencing on or after the 1st day of April, 1972 or the Previous Year in which such Authority was constituted, whichever is later;

(*f*) the Agricultural and Processed Food Products Export Development Authority established under section 4 of the Agricultural and Processed Food Products Export Development Act, 1985 in any Previous Year relevant to any Assessment Year commencing on or after the 1st day of April, 1985 or the Previous Year in which such Authority was constituted, whichever is later;

(*g*) the Spices Board constituted under sub-section (1) of section 3 of the Spices Board Act, 1986 in any Previous Year relevant to any Assessment Year commencing on or after the 1st day of April, 1986 or the Previous Year in which such Board was constituted, whichever is later;

(h) the Coir Board established under section 4 of the Coir Industry Act,1953.

Case Law:

Retrospective effect of introduction provisions of section 10(29A)(d) - In view of the provisions of section 10(*29A*)(*d*) introduced by the Finance Act, 1999, the assessee-Tobacco Board's income would become exempt from Income-tax for any Assessment Year with effect from 1-4-1975 or the Previous Year in which the Board was constituted and the assessments already made would stand set aside by virtue of section 10(*29A*)(*d*) with retrospective effect, and the assessee will also be entitled to refund consequent to the retrospective amendment passed by Parliament - *Tobacco Board* vs. *CIT* 243 ITR 4.

78. Income from the business of growing and manufacturing tea in India [Section 10(30)]

In the case of an assessee who carries on the business of growing and manufacturing tea in India, the amount of any subsidy received from or through the Tea Board under any such scheme for replantation or replacement of tea bushes or for rejuvenation or consolidation of areas used for cultivation of tea as the Central Government may, by notification in the Official Gazette, specify.

Provided that the assessee furnishes to the Assessing Officer, along with his return of income for the Assessment Year concerned or within such further time as the Assessing Officer may allow, a certificate from the Tea Board as to the amount of such subsidy paid to the assessee during the Previous Year.

Explanation — In this clause, "Tea Board" means the Tea Board established under section 4 of the Tea Act, 1953.

Case Law:

Scope of deduction - Since expression 'or for rejuvenation or consolidation of areas used for cultivation

of tea' was inserted in section 10(*30*) by Finance Act, 1984 with effect from 1-4-1985, benefit of deduction in respect of rejuvenation subsidy granted by Tea Board to assessee would be available only from Assessment Year 1985-86 and not for Assessment Year 1984-85 - *Kil Kotagiri Tea & Coffee Estate Co. Ltd.* vs. *CIT* 108 Taxman 125.

79. Income of assessee who carries on the business of growing and manufacturing rubber, coffee etc. [Section 10(31)]

In the case of an assessee who carries on the business of growing and manufacturing rubber, coffee, cardamom or such other commodity in India, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the amount of any subsidy received from or through the concerned Board under any such scheme for replantation or replacement of rubber plants, coffee plants, cardamom plants or plants for the growing of such other commodity or for rejuvenation or consolidation of areas used for cultivation of rubber, coffee, cardamom or such other commodity as the Central Government may, by notification in the Official Gazette, specify.

Provided that the assessee furnishes to the Assessing Officer, along with his return of income for the Assessment Year concerned or within such further time as the Assessing Officer may allow, a certificate from the concerned Board, as to the amount of such subsidy paid to the assessee during the Previous Year.

Explanation — In this clause, "concerned Board" means,—

(*i*) in relation to rubber, the Rubber Board constituted under section 4 of the Rubber Act, 1947.

(*ii*) in relation to coffee, the Coffee Board constituted under section 4 of the Coffee Act, 1942.

(*iii*) in relation to cardamom, the Spices Board constituted under section 3 of the Spices Board Act, 1986.

(*iv*) in relation to any other commodity specified under this clause, any Board or other authority established under any law for the time being in force which the Central Government may, by notification in the Official Gazette, specify in this behalf.

80. Exemption in respect of Clubbing of Income [Section 10(32)]

In the case of an assessee referred to in sub-section (1A) of section 64, any income includible in his total income under that sub-section, to the extent such income does not exceed one thousand five hundred rupees in respect of each minor child whose income is so includible.

81. Income arising from the transfer of a Capital Asset, being a unit of the Unit Scheme, 1964 [Section 10(33)]

Any income arising from the transfer of a capital asset, being a unit of the Unit Scheme, 1964 referred to in Schedule I to the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 and where the transfer of such asset takes place on or after the 1st day of April, 2002.

82. Dividend received [Section 10(34)]

Any income received by way of dividends referred to in section 115-O.

83. Income to the shareholder on account of buy back of shares [Section 10(34A)]

Any income arising to an assessee, being a shareholder, on account of buy back of shares (not being listed on a recognised stock exchange) by the company as referred to in Section 115QA.

84. Income received in respect of the units of a Mutual Fund [Section 10(35)]

Any income by way of —

(*a*) income received in respect of the units of a Mutual Fund specified under clause (*23D*); or

(*b*) income received in respect of units from the Administrator of the specified undertaking; or

(*c*) income received in respect of units from the specified company.

Provided that this clause shall not apply to any income arising from transfer of units of the Administrator of the specified undertaking or of the specified company or of a mutual fund, as the case may be.

Explanation — *For* the purposes of this clause —

(*a*) "Administrator" means the Administrator as referred to in clause (*a*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

(*b*) "Specified Company" means a company as referred to in clause (*h*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

85. Distributed income received from a Securitisation Trust by an investor [Section 10(35A)]

Any income by way of distributed income referred to in Section 115TA received from a secritisation trust by any person being an investor of the said trust.

86. Income arising from the transfer of a Long-term Capital Asset, being an Eligible Equity Share [Section 10(36)]

Any income arising from the transfer of a long-term capital asset, being an eligible equity share in a company purchased on or after the 1st day of March, 2003 and before the 1st day of March, 2004 and held for a period of twelve months or more.

Explanation — For the purposes of this clause, "Eligible Equity Share" means —

(*i*) any equity share in a company being a constituent of BSE-500 Index of the Stock Exchange, Mumbai as on the 1st day of March, 2003 and the transactions of purchase and sale of such equity share are entered into on a recognised stock exchange in India;

(*ii*) any equity share in a company allotted through a public issue on or after the 1st day of March, 2003 and listed in a recognised stock exchange in India before the 1st day of March, 2004 and the transaction of sale of such share is entered into on a recognised stock exchange in India.

87. Income of any HUF in respect of Capital Gains from the transfer of agricultural land [Section 10(37)]

In the case of an assessee, being an individual or a Hindu Undivided Family, any income chargeable under the head "Capital Gains" arising from the transfer of agricultural land, where —

(*i*) such land is situate in any area referred to in item (*a*) or item (*b*) of sub-clause (*iii*) of clause (*14*) of section 2;

(*ii*) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu Undivided Family or individual or a parent of his;

(*iii*) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(*iv*) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

Explanation — For the purposes of this clause, the expression "compensation or consideration" includes the compensation or consideration enhanced or further enhanced by any court, Tribunal or other authority.

88. Income arising from the transfer of a long-term capital asset, being an equity share [Section 10(38)]

Any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust where:

(*a*) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(*b*) such transaction is chargeable to securities transaction tax under that Chapter.

Provided that the income by way of Long-term Capital Gain of a company shall be taken into account in computing the Book Profit and Income-tax payable under section 115JB.

Explanation — For the purposes of this clause, equity oriented fund means a fund

(*i*) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than sixty-five per cent of the total proceeds of such fund; and

(*ii*) which has been set up under a scheme of a Mutual Fund specified under clause (*23D*).

Provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average or the monthly averages of the opening and closing figures.

89. Income arising from any International Sporting Event [Section 10(39)]

Any specified income, arising from any international sporting event held in India, to the person or persons notified by the Central Government in the Official Gazette, if such international sporting event–

(*a*) is approved by the international body regulating the international sport relating to such event;

(*b*) has participation by more than two countries;

(*c*) is notified by the Central Government in the Official Gazette for the purposes of this clause.

Explanation - For the purposes of this clause, the specified income means the income, of the nature and to the extent, arising from the international sporting event, which the Central Government may notify in this behalf.

90. Income of any subsidiary company by way of grant or otherwise received from an Indian Company [Section 10(40)]

Any income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation or transmission or distribution of power if receipt of such income is for settlement of dues in connection with reconstruction or revival of an existing business of power generation.

Provided that the provisions of this clause shall apply if reconstruction or revival of any existing business of power generation is by way of transfer of such business to the Indian company notified under sub-clause (*a*) of clause (*v*) of sub-section (4) of section 80-IA.

91. Income arising from transfer of a Capital Asset, being an asset of an undertaking engaged in the Business of Generation or Transmission or Distribution of Power [Section 10(41)]

Any income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation or transmission or distribution of power where such transfer is effected on or before the 31st day of March, 2006, to the Indian company notified under sub-clause (*a*) of clause (*v*) of sub-section (4) of section 80-IA.

92. Specified income arising to a Body or Authority [Section 10(42)]

Any specified income arising to a body or authority which—

(*a*) has been established or constituted or appointed under a treaty or an agreement entered into by the Central Government with two or more countries or a convention signed by the Central Government;

(*b*) is established or constituted or appointed not for the purposes of profit;

(*c*) is notified by the Central Government in the Official Gazette for the purposes of this clause.

Explanation — For the purposes of this clause, "specified income" means the income, of the nature and to the extent, arising to the body or authority referred to in this clause, which the Central Government may notify in this behalf.

93. Amount received as a loan [Section 10(43)]

Any amount received by an individual as a loan, either in lump sum or in installment, in a transaction of reverse mortgage referred to in clause (*xvi*) of section 47.

Reverse Mortgage Scheme means a scheme under which generally a senior citizen, who owns a house property but does not have any regular source of income, can mortgage his house property with a scheduled bank or a housing finance company for a lump sum or periodic installment during his lifetime. The borrower (i.e. the senior citizen) can continue to stay in the property during his lifetime and as well continue to receive regular income from the lender. The borrower does not pay the principal as well as interest to the lender during his lifetime. The lender will recover the loan along with the accumulated interest by selling the house after the death of the borrower. Any excess amount after recovering the total dues will be remitted back to the legal heirs of the borrower. However, before resorting to disposal of the property, an option will be given to the legal heirs to repay the loan amount including the interest and to get the mortgaged property released.

94. Income received for or on behalf of New Pension System Trust [Section 10(44)]

Any income received by any person for, or on behalf of, the New Pension System Trust established on the 27th day of February, 2008 under the provisions of the Indian Trusts Act, 1882.

95. Allowance or perquisite, paid to the Chairman or Retired Chairman or Member or Retired Member of Union Public Service Commission (UPSC) [Section 10(45)]

Any allowance or perquisite, as notified by the Central Government, paid to the Chairman or Retired Chairman or Member or Retired Member of Union Public Service Commission (UPSC).

The allowances and perquisites notified by the Central Government are:

(a) In case of serving Chairman and members of UPSC:

  (i) The value of Rent Free Accommodation;

  (ii) The value of conveyance facilities including transport allowance;

  (iii) The Sumptuary Allowance;

  (iv) The value of Leave Travel Concession provided to the serving Chairman and members of UPSC and members of their family;

(b) In case of retired Chairman and retired members of UPSC:

  (i) Maximum amount of ₹ 14,000 p.m. for discharging the service of an orderly and for meeting the expenses incurred towards Secretarial Assistance on contract basis;

  (ii) The value of a residential telephone free of cost subject to a maximum of ₹ 1,500 p.m. over and above the number of free calls per month allowed by the telephone authorities.

96. Specified income of notified Body or Authority or Board or Commission [Section 10(46)]

Specified income of notified Body or Authority or Board or Commission if such Body or Authority or Board or Commission is constituted by a Central, State or Provincial Act or constituted by the Central Government or a State Government with the object of regulating or administering any activity for the benefit of general public.

Provided –

(a) The notified Body or Authority or Board or Commission is not engaged in any commercial activity;

(b) The notified Body or Authority or Board or Commission is notified by the Official Gazette for the purpose of this clause.

97. Income of an Infrastructural Debt Fund [Section 10(47)]

Income of an Infrastructural Debt Fund set up in accordance with the prescribed guidelines given under Rule 2F which is notified by the Central Government in the Official Gazette for the purposes of this clause. Even if the income is exempted, such fund will have to submit return of income u/s 139.

Amendments:

Any interest received by a non-resident from the aforesaid fund shall be taxable @ 5% on the gross amount of such interest income and tax shall be deducted at source @ 5% by the fund in respect of any interest paid to non-resident by it.

98. Exemption in respect of Income received by a Foreign Companies in Indian Currency for import of Oil [Section 10(48)] [w.e.f. 01.04.2012]

Any income of a foreign company received in India, in Indian currency, on account of sale of crude oil, any other goods or rendering of services notified by the Central Governmentin this behalf, to any person in India.

Provided –

(i) the receipt of money is under an agreement which is entered into by the Central Government or approved by it,

(ii) the foreign company and the arrangement or agreement has been notified by the Central Government and

(iii) the receipt of the money is the only activity carried out by the foreign company in India.

(iv) This provision is mainly introduced in view of the mechanism devised by the Government to make payment to certain foreign companies in Indian currency for import of crude oil.

99. Income of National Financial Holdings Company Limited [Section 10(49)]

Any income of the National Financial Holdings Company Limited, being a company set up by the Central Government, of any previous year relevant to any assessment year commencing on or before 1.4.2014.

12.2 SPECIAL PROVISIONS

12.2.1 Tax Exemption in case of newly established industrial undertakings in Free Trade Zones, etc. [Sec. 10A (Rule - 16D)]

Profits or gains from exports of newly established Industrial undertakings set up in Free Trade Zones, Electronic Hardware Technology Park or Software Technology Park in Special Economic Zone are fully exempt for ten consecutive Assessment Years beginning with the Assessment Year relevant to the Previous Year in which the industrial undertakings begin to manufacture or produce articles or things or computer software specified by the assessee. No deduction under this section is available for the Assessment Year beginning on 1.4.2012 and subsequent years. Exemptions will also be available to successor company w.e.f. AY 2003-04 in case of business reorganisation – Sec. 10A(9A) for Assessment Year 2003-04 exemption is restricted to 90% of the profit.

Sec. 10A (1A): The Finance Act, 2005 has inserted a proviso to provide that no deduction shall be allowed under this section to an assessee who does not furnish a return of his income on or before the due date specified under sub- section (1) of section 139.

Return of income of SEZ undertakings to be filed on or before due date for claiming benefit under section 10A, w.e.f. from A.Y. 2006-07. Sub-section (1A) of section 10A provides that an undertaking which begins to manufacture or produce articles or things or computer software during the Previous Year relevant to any Assessment Year commencing on or after 1st April , 2003 in any Special Economic Zone (SEZ), is eligible for a deduction , 100% of the profits and gains derived from export of such articles or things or computer software for the first five consecutive years and 50% of such profits and gains for the next two consecutive years followed by a deduction to the extent of 50% of profits credited to a reserve account, to be utilized for the purpose of the business, for the next three consecutive years.

12.2.2 Tax Exemption in respect of 100% Exports Oriented Undertaking [Sec. 10B]

Profit or gains of export derived from 100% Export Oriented Unit (EOU) is exempt from tax for 10 consecutive years beginning with the initial Assessment Year in which the undertaking begins to

manufacture or produce articles or things or computer software. This tax concession is available to all tax payers including companies in lieu of all other tax concessions.

Conditions for tax exemptions are that:

(i) It is a manufacturing undertaking;

(ii) It is not formed by splitting up or the reconstruction of a business already in advance;

(iii) It should not use old machinery valued more than 20% of the value of total plant and machinery;

(iv) No deduction under section 80HH, 80HHA, 80-I and 80-IA shall be allowed in relation to the profits and gains of the undertaking. Exemption is also available to Successor company in case of reorganization – Section 10B (9A) w.e.f. AY 2003-04. For the Assessment Year 2003-04, exemption is restricted to 90% of the profit;

Case Law:

Scope of exemptions - Since section 10B provides 100 per cent exemption for export income and not for other income, assessee cannot adjust unabsorbed depreciation against other income so as to take exemption from payment of tax even for other income - *CIT* vs. *Himatasingike Seide Ltd.* 156 Taxman 151.

Extension of sunset clause for units in Free Trade Zone under section 10A and for Export Oriented Undertakings under section 10B by one year i.e., the deduction will be available up to Assessment Year 2011-12 [Section 10Aand 10B]

Under the existing provisions, the deductions under section 10A and section 10B of the Income Tax Act are available only up to the Assessment Year 2010-11. The Act has amended sections 10A and 10B to extend the tax benefit under both these sections by one year i.e., the deduction will be available up to Assessment Year 2011-12 or for a period of 10 years whichever expires earlier.

12.2.3 Tax exemption in respect of newly established units in Special Economic Zone [Section 10AA]

Section 10AA has been inserted to give deduction for units newly established in Special Economic Zone subject to the following conditions:

(i) The assessee is an entrepreneur who is granted a latter of approval by the Development Commissioner, to set up a unit in a Special Economic Zone.

(ii) The unit in SEZ begins to manufacture or produce articles or things or provide services on or after 1st April, 2006.

(iii) It should not be formed by splitting up or by reconstruction of an existing business. However, rehabilitation u/s 33B is permitted.

(iv) It should not be formed by the transfer, to a new business, of machinery or plant previously used for any purpose.

(v) The assessee has income from export of articles or thing or from services from such unit out of India from SEZ by land, sea, air or by any other mode, whether physical or otherwise.

(vi) The books of account of the assessee should be audited and Audit Report should be furnished in Form No. 56F along with the return of income.

(vii) Deduction u/s 10AA is not available unless it is claimed in the return of income.

A deduction of –

(i) 100% of profits derived from the exports for a period of 5 consecutive Assessment Years beginning with the Assessment Year relevant to the Previous Year in which the unit begins to manufacture or produce articles or things or provide services.

(ii) 50% of such profits for the next 5 Assessment Years.

(iii) so much of the amount not exceeding 50% of such profit in respect of which the deduction is to be allowed and credited to Special Economic Zone Re-investment Allowance Reserve A/c.

Under section 10AA(7) of the Income-tax Act, the exempted profit of a SEZ unit is the profit derived from the export of articles or things or services and same is required to be calculated as under :

The exempted profit of the SEZ unit is equal to

$$\text{Profits of the business of the unit} \times \frac{\text{Export turnover of the unit}}{\text{Total Turnover of the business carried on by the undertaking}}$$

This method of computation of the profits of business with reference to the total turnover of the assessee is perceived to be discriminatory in so far as those assessees are concerned who were having multiple units in both the SEZ and the Domestic Tariff Area (DTA) vis-a-vis those assessees who were having units in only the SEZ. With a view to remove the anomaly, the Act has amended the provisions of section 10AA(7) of the Income Tax Act so as to provide that the deduction under section 10AA shall be computed with reference to the total turnover of the undertaking.

Utilisation of Reserve so created:

(i) The amount available in Special Economic Zone Re-investment Allowance Reserve A/c should be utilised for the purpose of acquiring new plant and machinery and such new plant and machinery should be first put to use before the expiry of 3 years from the end of the year in which such reserve is created.

(ii) The amount available in Special Economic Zone Re-investment Allowance Reserve A/c should not be used for distribution by way of dividends or profits/for remittance outside India as profit/ for creating asset outside India.

(iii) The assessee should submit details of new machinery and plant along with the return of income for the Previous Year in which such machinery and plant was first put to use in Form No. 56FF.

If the amount available in Special Economic Zone Re-investment Allowance Reserve A/c is misutilised, then the deduction would be taken back in the year in which the amount misutilised. Again, if the Reserve is not utilised within the prescribed period, it shall be treated as income of the Previous Year immediately following the period of three years.

Consequence of Amalgamation and Demerger:

Where the undertaking, entitled to deduction u/s 10AA, is transferred under a scheme of amalgamation or demerger, the deduction u/s 10AA shall be allowable in the hands of amalgamated or the resulting company for the unexpired period. However, no deduction is available to the amalgamating or demerged company for the Previous Year in which amalgamation or demerger takes place.

Impact of availing deduction u/s 10AA:

(i) Unabsorbed depreciation allowance or unabsorbed capital expenditure on scientific research or unabsorbed family planning expenditure or unabsorbed business loss or unabsorbed loss under the head Capital Gains are not allowed to be carried forward and set off against the income of Assessment Years following the period of deduction. However, this restriction is not applicable to losses in respect of other business.

(ii) Depreciation will be deemed to have been allowed and the WDV of the assets after exemption period will be computed accordingly.

(iii) Deduction u/s 80IA and 80IB shall not be allowed.

(iv) Provisions of Sec. 80IA(8) relating to inter-unit transfer and provisions of Sec. 80IA(10) relating to showing excess profit from such unit apply to this undertaking.

Double deduction under sections 10AA and 35AD not possible:

Where a deduction under this section is claimed and allowed in respect of profits of any of the specified business, referred to in clause (c) of sub-section (8) of section 35AD, for any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year.

12.2.4 Meaning of computer programmes in certain cases [Sec.10BB]

The profits and gains derived by an undertaking from the production of computer programmes under section 10B, as it stood prior to its substitution by section 7 of the Finance Act, 2000, shall be construed as if for the words "computer programmes", the words "computer programmes or processing or management of electronic data" had been substituted in that section.

12.2.5 Special provision in respect of certain industrial undertakings in North- Eastern Region [10C]

(1) Subject to the provisions of this section, any profits and gains derived by an assessee from an industrial undertaking, which has begun or begins to manufacture or produce any article or thing on or after the 1st day of April, 1998 in any Integrated Infrastructure Development Centre or Industrial Growth Centre located in the North-Eastern Region (hereafter in this section referred to as the industrial undertaking) shall not be included in the total income of the assessee.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely :—

(*i*) It is not formed by the splitting up, or the reconstruction of, a business already in existence;

Provided that this condition shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(*ii*) It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of ten consecutive Assessment Years beginning with the Assessment Year relevant to the Previous Year in which the industrial undertaking begins to manufacture or produce articles or things.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of any Previous Year relevant to any subsequent Assessment Year —

(*i*) section 32, section 35 and clause (*ix*) of sub-section (1) of section 36 shall apply as if deduction referred to therein and relating to or allowable for any of the relevant Assessment Years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the industrial undertaking in the Previous Year relevant to such Assessment Year or any expenditure incurred for the purposes of such business in such Previous Year had been given full effect to for that Assessment Year itself and, accordingly, sub-section (2) of section 32, sub-section (4) of section 35 or the second proviso to clause (*ix*) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such deduction;

(*ii*) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the industrial undertaking, shall be carried forward or set off where such loss relates to any of the relevant Assessment Years;

(*iii*) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB or section 80JJA in relation to the profits and gains of the industrial undertakings; and

(*iv*) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the industrial undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant Assessment Years.

(5) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the industrial undertaking referred to in this section as they apply for the purposes of the industrial undertaking referred to in section 80-IA or section 80-IB, as the case may be.

(6) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee before the due date for furnishing the return of his income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him in any of the relevant Assessment Years.

Provided that no deduction under this section shall be allowed to any undertaking for the Assessment Year beginning on the 1st day of April, 2004 and subsequent years.

12.2.6 Income of Trusts or Institutions from contributions [Sec. 12]

(1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.

(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (*a*) or clause (*b*) or clause (*c*) or clause (*cc*) or clause (*d*) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the Previous Year in which such services are so provided and shall be chargeable to Income-tax notwithstanding the provisions of sub-section (1) of section 11.

(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (*d*) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (*v*) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the Previous Year and shall accordingly be charged to tax.

Case Law:

Specific directive to apply for charitable/religious purposes is necessary - The most relevant condition is that the contributions are applicable solely to charitable or religious purposes. It is implied that there has to be a specific directive for applying the donations solely for charitable or religious purposes - *R.B. Shreeram Religious & Charitable Trust* vs. *CIT* 172 ITR 373.

12.2.7 Incomes of Political Parties [Section 13A]

Any income of a political party which is chargeable under the head "Income from House Property" or "Income from Other Souces or "Capital Gains" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the Previous Year of such political party subject to the following conditions:

1. The political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduced its income from there.
2. The political party keeps and maintains a record of each voluntary contribution in excess of ₹ 20,000 and of the names and addresses of the persons who have made such contribution.
3. The accounts of the political party are audited by an accountant as defined in the Explanation to sub-section 2 of section 288.
4. The treasurer of such political party or any other person authorized by the political party in this behalf shall in each financial year prepares a report in respect of contribution received by the political

party in excess of ₹20,000 from any person or company in that year and submit it, before the due date of submission of return of income, to the Election Commission.

12.2.8 Voluntary contribution received by Electoral Trust [Section 13B]

Any voluntary contribution received by an electoral trust shall not be included in the total income of the Previous Year of such electoral trust if –

(a) such electoral trust distributes to any political party, registered under section 29A of the Representation of the People Act, 1951, during the said Previous Year, 95 percent of the aggregate donations received by it during the said Previous Year along with the surplus, if any, brought forward from any earlier Previous Year; and

(b) such electoral trust functions in accordance with the rules made by the Central Government.

12.3 EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDED IN TOTAL INCOME [SEC. 14A]

1. In computation of Total Income under the Income Tax Act, the expenditure incurred in relation to income, which does not form part of Total Income, will not be allowed as deduction.

2. Power of AO to determine expenditure [w.e.f. A.Y.2007-08]:

   Having regard to the accounts of the assessee, if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to exempt income, Assessing Officer shall determine the amount of expenditure incurred in relation to such exempt income in accordance with method prescribed in Rule 8D.

3. **Prescribed Method (Rule 8D):** Expenditure will be the aggregate of-

   (a) Amount of expenditure directly relating to income which does not form part of Total Income.

   (b) If **interest** expenditure is **not** directly attributable to any particular income or receipt, then

   $$\text{interest disallowed} = A \times \frac{B}{C}$$

   where, A= Amount of Interest

   B= Average of the Value of Investment, income from which is exempt. [Average of Opening and Closing Balance as appearing in the Balance Sheet of the Assessee for the Previous Year]

   C=Average of the Total Assets appearing in the Balance Sheet of the Assessee of the first and last day of the Previous Year.

   (c) **0.5%** of the Average Value of Investment income from which is exempt.

Note: Total Assets means Total Assets as appearing in the Balance Sheet excluding the increase on account of revaluation of assets, but including the decrease on account of revaluation of assets.

Case Laws:

(i) Where it is found that for earning exempted income no expenditure has been incurred, disallowance under Section 14A cannot stand - CIT vs. Hero Cycles Ltd, November 4, 2009 (P&H)

(ii) Condition precedent for disallowance of expenditure in relation to exempt income is proximate cause between expenditure and exempt income. Where purchase of securities "cum-dividend" is sold at a loss, the claim to set off of loss is permissible. The loss is not an "expenditure" relating to dividend - CIT vs. Walfort Share and Stock Brokers Private Ltd 326 ITR 1 (SC)

(iii) In the absence of any material or basis to hold that interest expenditure directly or indirectly was attributable for earning dividend income, Interest expenditure could not be disallowed u/s 14A - CIT vs. K Raheja Corporation P Limited (2011) (Bom)

ILLUSTRATIONS ON INCOME EXEMPT FROM TAX

Illustration 1: H Bros., an HUF, started an undertaking in "Special Economic Zone" during the Previous Year 2009-2010. From the following particulars relating to the Previous Year 2015-2016, compute the Total Income for the Assessment Year 2016-2017:

	₹ (in lakh)
(i) Total Turnover	30
(ii) Export Sales	25
(iii) Business Profits	15
(iv) Receipt of convertible foreign exchange in India up to 30th September 2016	16
(v) Convertible foreign exchange kept outside India with the permission of RBI for importing a new machinery	4
(vi) Receipt of convertible foreign exchange in December 2016	3
(vii) Convertible foreign exchange received for reimbursement for freight, insurance attributable to export	2

Solution : Computation of Total Income

	₹ (in lakhs)
Business Profits	15
Less : Deduction for Export Profits : $15 \times \frac{20}{30}$ [Sec. 10AA]	10
Total Income	5

Note :

1. Convertible foreign exchange received in December, 2016 has not been included in Export turnover, because it is received after the prescribed time limit without approval of the competent authority.
2. Convertible foreign exchange kept outside India with the permission of RBI is included in Export turnover.
3. Reimbursement of freight and insurance in convertible foreign exchange is not included in Export turnover.

Illustration 2: The books of account maintained by a National Political Party registered under the Representation of the People Act, 1951 for the year ended on 31-3-2016 disclose the following receipts:

(a) Rent of property let out to a departmental store at Chennai	10,00,000
(b) Interest on deposits other than banks	2,00,000
(c) Contribution from 100 persons (who have secreted their names) of ₹ 33,000 each	33,00,000
(d) Contribution @ ₹ 22 each from 1,00,000 members in cash	22,00,000
(e) Net Profit of cafeteria run in the premises at Delhi	3,00,000

Compute the total income of the political party for the Assessment Year 2016-2017, with reason for inclusion or otherwise.

Solution : Computation of income of National Political Party for the AY 2016-2017.

Particulars	₹
(a) Rent from property: Exempt under Sec. 13A	—
(b) Income from Business—Profits of cafeteria	3,00,000
(c) Income Other Sources:	
(i) Interest on deposit other than banks: Exempt under Sec. 13A	—
(ii) Contributions from 100 persons exceeding ₹ 22,000 each (See Note below)	33,00,000
(iii) Contributions from 1,00,000 members: Exempt Sec. 13A.	—
Total Income	**36,00,000**

Note : Any income of a political party received by way of voluntary contributions is exempt, provided:

(i) it keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income there from;

(ii) it keeps and maintains a record, name and address of the person who has contributed in excess of ₹ 20,000; and

(iii) its accounts are audited by an accountant defined in Explanation to Sec. 288(2).

Thus, in order to claim exemption in respect of voluntary contributions exceeding ₹ 20,000, a political party is required to keep and maintain a record, and names, addresses of persons who have made such contributions. The legislative intention is to ensure that there is transparency in the process of collection of funds [Common Cause *vs.* Vol. 222 ITR 260 (SC)]. Hence, no exemption can be allowed in respect of contributions exceeding ₹ 20,000 from persons who have secreted their names.

Illustration 3: A company is engaged in the development and sale of computer software applications. It has started a new undertaking in SEZ. It furnishes the following data and requests you to compute the deduction allowable to it under Sec. 10AA in respect of Assessment Year 2016-2017.

Particulars	₹ (in lakh)
Total Profit of the Company for the Previous Year	50
Total Turnover, i.e. Export sales and Domestic sales for the Previous Year	500
Consideration received in respect of export of software received in convertible foreign exchange within 6 months of the end of the Previous Year	250
Sale proceeds credited to a separate account in a bank outside India with the approval of RBI	50
Telecom and insurance charges attributable to export of software	10
Staff costs and travel expenses incurred in foreign exchange to provide technical assistance outside India to a client	40

Solution: Computation of Income of an Undertaking in SEZ for the A.Y. 2016-2017

Particulars	₹ (in lakh)
Total Profit	50
Less: Deduction under Sec. 10AA: Total Profit × $\frac{\text{Export Turnover}}{\text{Total Turnover}}$ = 50 × $\frac{250}{500}$	25
Taxable Profits	25

Note :

		(₹ in lakh)
Export Turnover		
	(i) Sale proceeds of software received in convertible foreign exchange within the prescribed period	250
	(ii) Sale proceed in convertible foreign exchange kept outside India with the approval of RBI	50
		300
Less :	(i) Telecom and insurance charges attributable to Export Turnover	(-) 10
	(ii) Expenses incurred in foreign exchange outside India to provide technical assistance to a client there	(-) 40
Export Turnover		**250**

Illustration 4: XY & Co., a partnership concern had established an undertaking for manufacturing computer software in Special Economic Zone. It furnishes the following particulars of its second year operations, ended on 31-03-2016:

Particulars	₹ (in lakh)
Total Sales of business	100.00
Export Sales	80.00
Profit of the business	10.00

Out of the total export sales, realisation of sale of ₹ 5 lakh is difficult because of the deficiency of the buyer. Realisation of rest of the sales is received in time.
The plant and machinery used in the business had been depreciated @ 15% on SLM basis of depreciation and depreciation of ₹ 3 lakh was charged to the Profit and Loss Account.
Compute the taxable income of XY & Co for the Assessment Year 2016-2017.

Solution: Computation of Taxable Income for the A.Y. 2016-17

Particulars	₹ (in lakh)
Profit of business	10,00,000
Add : Depreciation charged on SLM basis	3,00,000
	13,00,000
Less : Depreciation on WDV basis @ 15% of 17,00,000 – [See Note below]	2,55,000
	10,45,000
Less : Deduction under Sec. 10AA : 10,45,000 × 75 ÷ 100	7,83,750
Taxable Income	**2,61,250**

Note :

	₹
1. Computation of Depreciation:	
Total purchase price of machine : [3,00,000 ÷15] × 100	20,00,000
Less: Depreciation in the first year @ 15%	3,00,000
WDV at the end of first year	17,00,000
Less: Depreciation for second year @ 15%	2,55,000
WDV at the end of second year	14,45,000

2. Export Turnover:

Export Sales	80,00,000
Less: Remittance not received due to insolvency of buyer	5,00,000
	75,00,000

Illustration 5: Mr. Anurag is a Cost Accountant in practice. The Income & Expenditure Account for the year ended March 31, 2016 read as follows :

Income & Expenditure Account

Dr. ***Cr.***

Expenses	₹	Income	₹
To, Employees cost	1,50,000	By, Professional earnings	16,00,000
To, Travelling & Conveyance	50,000	By, Dividend income	
To, Administration & Office exp.	4,00,000	– from shares	2,00,000
To, Interest	1,50,000	– from equity oriented mutual	
To, Demat charges	10,000	funds	1,00,000
To, Excess of Income over Expenditure [Profit]	11,40,000		
Total	19,00,000	**Total**	19,00,000

Other Information :

(a) Entire Dividend income is claimed as exempt from taxation by virtue of Section 10(34) and 10(35).

(b) Anurag claims that no expenditure has been incurred against the dividend income, which is claimed as exempt from tax.

(c) The value of investment in shares as on the first day and the last day of the Previous Year is ₹ 7,50,000 and ₹ 9,00,000 respectively.

(d) The value of investment in units of Mutual Funds as on the first day and the last day of the Previous Year is ₹ 5,00,000 and 2,00,000 respectively.

(e) All expenditure including interest expenditure of ₹ 1,50,000 incurred by Anurag are relating to taxable and non-taxable Income. Demat charges are directly attributable to exempt income.

(f) The value of the total assets as appearing in the Balance Sheet of the assessee as on the first day and last day of the Previous Year is ₹ 60,00,000 and ₹ 80,00,000 respectively.

You are required to compute the Taxable Income of Anurag for the Assessment Year 2016-17.

Solution :

Computation of Taxable Income A.Y. 2016-17

Particulars	₹
Income from Profits & Gains of Business or Profession	
– as per Working Note 1	8,40,000
Income from Other Sources	
– as per Working Note 2	Nil
Total	**8,40,000**
Add : Disallowance u/s 14A	
– as per Working Note 3	41,054
Taxable Income	**7,98,946**

Working Note 1 — Profits & Gains of Business or Profession

	₹	₹
Net profit as per Income & Expenditure Account		11,40,000
Less : Income considered under other heads		
– Dividend Income from shares	2,00,000	
– Income from UTI	1,00,000	3,00,000
Taxable Income from Profession		**8,40,000**

Working Note 2 — Income from other sources

		₹	₹
1.	Dividend Income from Shares	2,00,000	
	Less : Exemt under sec 10(34)	2,00,000	Nil
2.	Income from units in Mutual funds	1,00,000	
	Less : Exempt under sec 10(35)	1,00,000	Nil
	Taxable Income from Other Sources		**Nil**

Working Note 3 — Disallowance u/s 14A

	₹
(a) Amount of expenditure directly relating to exempt income (Other than interest) — Demat charges	10,000
(b) Amount of interest incurred by way of expenditure other than those included above (1,50,000 × 11,75,000 / 70,00,000)	25,179
(c) Amount equal to 0.5% of the average value of Investments (11,75,000 × 0.5%)	5,875
Total amount disallowed u/s 14A (a) + (b) + (c)	**41,054**

Notes :

1. Average value of Investment = [(7,50,000 + 9,00,000) / 2] + [(5,00,000 + 2,00,000)/2]
   = ₹ 11,75,000
2. Average value of Total Assets = (60,00,000 + 80,00,000) / 2 = ₹ 70,00,000.

Study Note - 13

AGRICULTURAL INCOME AND AGGREGATION OF INCOMES

This Study Note includes

13.1 Agricultural Income and Tax Liability

13.1 AGRICULTURAL INCOME AND TAX LIABILITY

Article 270 of the Constitution of India empowers Government of India to collect tax on income other than agricultural income. Agricultural income has been placed in the State list and as such the Central Government cannot levy tax on agricultural income.

Sec. 2(1A) provides definition of the term. '**Agricultural Income'** means –

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes.

(b) any income derived from such land by-

  (i) agriculture; or

  (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

  (iii) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, in respect of which no process has been raised or received by him, in respect of which no process has been performed other than a process of the nature described in para (ii) of the sub-clause:

(c) any income derived from any building owned and occupied by the receiver of rent or revenue of any such land provided the following conditions are satisfied -

  (i) the building should be on or in the immediate vicinity of land and is used for agricultural purposes;

  (ii) the cultivator or receiver of rent-in-kind uses the building as a dwelling house or a store house; and

  (iii) the land is assessed to land revenue or local rate or the land is not situated within the jurisdiction of municipality/cantonment having a population of not less than 10,000 persons according to the last preceeding cencus of which the relevant figures have been published before the first day of the previous year or any area within the distance, measured aerially—

    (a) being more than 2 km., from the local limits of any municipality or cantonment board and which has a population of more than 10,000 but not exceeding 1,00,000;

    (b) being more than 6 km. from the local limits of any municipality or cantonment board and which has a population of more than 1,00,000 but not exceeding 10,00,000;

    (c) being more than 8 km. from the local limits of any municipality or cantonment and which has population of more than 10,00,000.

It may be pointed out that Sec.10(1) exempts, from Income-tax, 'Agricultural Income' covered by the aforesaid definition.

However, in case of certain category of assessees e.g. individuals, HUFs, having income more than maximum amount not liable for tax, 'Agricultural Income' is taken into consideration to determine tax on non-agricultural income.

Case Laws:

Essential Conditions:

Agriculture not involving any basic operation like tilling, sowing or dissemination of seeds and planting on land would not constitute agriculture merely because they have relation or connection with land. Term agriculture does not include breeding and rearing of live stock, dairy farming, butter, cheese making, poultry, etc.- CIT vs. Raja Benoy Kumar Sahas Roy 32 ITR 466 (SC).

Agricultural Income:

Where the owner himself performs slaughter tapping and then sells the rubber, the income is agricultural income. Jacob(K.C.) vs. Ag. ITO 110 ITR 402.

Lease rent received for leasing out land for grazing of cattle required for agricultural pursuits, is agricultural income. CIT vs. Rai Shamsherjang Bahadur 24 ITR 1.

Compensation received from an insurance company on account of damaged caused to the crop is an agricultural income.- CIT vs. B. Gupta Tea Pvt. Ltd. 74 ITR 337.

Seeds are clearly a product of agriculture and the income derived from the sale of seeds derived on account of cultivation by the assessee is an agricultural income.- CIT vs. Soundharya Nursury 241 ITR 530.

Income from nursery operation is an agricultural income.

Miscellaneous income from plantation: Miscellaneous income from plantation should also be agricultural income except in respect of sale of trees of spontaneous growth. Thus, where a state had received income by sale of firewood, grazing permits and compounding fee for trespasses into the plantation, the same shall be treated as agricultural income.-CIT vs. Tamil Nadu Forest Plantation Corporation 248 ITR 331.

Income from sale of trees replanted in denuded part of forest is an agricultural income.

Salary, share of profit and interest on capital received by partner from a firm engaged in agricultural operation is an agricultural income.

Income derived by growing special quality of grass required for creating golf course is an agricultural income.

Non-agricultural Income :

Dividend received from company having only agricultural income is not agricultural income for a shareholder-CIT vs. Mrs. Bacha F. Guzdar 27 ITR 1 (SC).

Conversion of sugarcane into Gur-No Agriculture income - Seth Banarasi Dass Gupta vs. CIT. 106 ITR 804.

Income from agricultural lands situated outside India is not agricultural income within the meaning of the Indian Income-tax. Similarly if there is a figure of loss from agricultural lands, situated outside India, it has got to be deducted while computing the total income of the resident assessee in India - *CIT* vs. *Carew & Co. Ltd.* 120 ITR 540.

Compensation for acquisition of land - Where land of assessee-tea company was requisitioned by State Government and same was given to refugees who carried on cultivation thereon and at time of requisition assessee too was carrying on agricultural operations on land, compensation received by assessee was to be treated as agricultural income - *CIT* vs. *All India Tea & Trading Co. Ltd.* 85 Taxman 391/219 ITR 544.

Following are certain instances defining the scope of agricultural income:

Rent or revenue should be derived from land:

— Any loan obtained by a shareholder out of accumulated profits of the company having only agricultural income, which is liable to be treated as 'deemed dividend', is not agricultural income in the hands of recipient.

— Interest on arrears of cess or rent payable by a tenant to his landlord is no doubt revenue but it is not revenue derived from land and hence it is not agricultural income.

— Commission earned by a broker for selling agricultural produce of an agriculturist is not agricultural income.

— Any capital gain arising from the transfer of agricultural land is not treated as revenue derived from land and hence it is not agricultural income.

Income held as not derived from land:

— Mutation fees paid by tenant on succession to a holding by inheritance.

— Fees paid by tenants for renewal of leases and fees paid for recognising the distribution of holding on partition would not be income derived from land, since there are payments made for administrative services rendered by the landlord, akin to registration fees.

— Receipts from the supply of water tank in an agricultural land

Use of building or land for agricultural purpose:

— Any income arising from the use of land or building for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture shall not be agricultural income.

— Any income attributable to farm house situated in urban areas will not be treated as agricultural income unless the land on which the farm house is situated is assessed to land revenue or any local rate. On the other hand, in case of farm house situated in rural areas, the income will be treated as agricultural income even where the land on which farm house is situated is not assessed to land revenue or any local rate.

Other cases:

— Any income arising from Stone Quarries is not an agricultural income.

— Any income from sale of salt produced by flooding of land with sea water is not an agricultural income.

— Remuneration of fixed percentage of Net Profit received by Managing Agent from a company earning agricultural income is not an agricultural income.

— Interest received by a money lender in the form of agricultural product is not an agricultural income.

— Income from business of growing mulberry leaves and feeding them to silk worms and obtaining silk cocoons is not a agricultural income.

Agriculture Income and Income-tax [Section 10(1)]:

Agricultural Income –

(i) Section 10(1) provides that agricultural income is not to be included in the total income of the assessee. The reason for totally exempting agricultural income from the scope of central income tax is that under the Constitution, the Parliament has no power to levy a tax on agricultural income.

(ii) Indirect way of taxing agricultural income - However, since 1973, a method has been found out to levy tax on agricultural income in an indirect way. This concept is known as partial integration of taxes. It is applicable to individuals, HUF, unregistered firms, AOP, BOI and artificial persons.

Two conditions which need to be satisfied for partial integration are:

1. The net agricultural income should exceed ₹5,000 for the year and

2. Non-agricultural income should exceed the maximum amount not chargeable to tax. (e. g. ₹ 3,00,000 for senior citizens aged 60 years or not more but below 80 years, ₹ 5,00,000 for senior citizens above 80 years of age, ₹ 2,50,000 for all other individuals and HUFs.)

It may be noted that aggregation provisions do not apply to company, firm assessed as such (FAS), co-operative society and local authority. The object of aggregating the net agricultural income with non-agricultural income is to tax the non-agricultural income at higher rates.

Tax calculation in such cases is as follows:

Step 1: Add non-agricultural income with net agricultural income. Compute tax on the aggregate amount.

Step 2: Add net agricultural income and the maximum exemption limit available to the assessee (e.g. ₹ 2,50,000/ ₹ 3,00,000 / ₹ 5,00,000, etc. as applicable). Compute tax on the aggregate amount.

Step 3: Deduct the amount of income tax calculated in step 2 from the income tax calculated in step 1 i.e. Step 1 – Step 2.

Step 4: Deduct any applicable rebate from the amount of tax obtained in step 3.

Step 5: Add surcharge, if applicable, to the amount obtained in step 4 above.

Step 6: The sum so arrived at shall be increased by education and higher secondary cess.

These steps are applicable whenever tax liability is to be worked out e.g. self-assessment tax, advance tax, tax on regular assessment.

ILLUSTRATIONS ON AGRICULTURAL INCOME AND TAX LIABILITY

Illustration 1. Mr. X furnishes the return of income for the financial year 2015-2016. His total income (non-agricultural) is ₹ 12,10,000 and net agricultural income is ₹ 1,90,000. Compute the amount of tax payable by Mr. X for the Assessment Year 2016 -2017.

Solution :

Computation of tax for the Assessment Year 2016-2017.

(a) Income tax on the aggregate of non-agricultural income and net agricultural income (i.e. ₹ 14,00,000) as if it is the total income.

On the first	2,50,000	Nil	Nil
On the next	2,50,000	10%	25,000
On the next	5,00,000	20%	1,00,000
On the balance	4,00,000	30%	1,20,000
	14,00,000		2,45,000

(b) Income tax on net agricultural income plus the basic exemption limit i.e. ₹ 2,50,000 (i.e. ₹ 4,40,000) as if it is the total income.

On the first	2,50,000	Nil	Nil
On the next	1,90,000	10%	19,000
	4,40,000		19,000

Net Income Tax : (a) – (b) = ₹ 2,45,000 – 19,000 =	**2,26,000**
Add:	
(i) Education cess @ 2%	4,520
(ii) SHEC @ 1%	2,260
Tax Payable	**2,32,780**

Illustration 2. Mr. Gangaprasad, resident in India, turns out 60 years of age on 31st December 2015. He furnishes the following particulars of his income for the Previous Year 2015-2016 :

Particulars	₹
(i) Rent from agriculture land, located in a village of Jharkhand district	2,50,000
(ii) Rent from building, located in the vicinity of agriculture land, which is assessed to land to revenue and the tenant, cultivating the agricultural land, occupies it for his dwelling and storing purposes	60,000
(iii) Income from business	3,00,000
(iv) Long-term Capital Gain	1,00,000

He maintains a motor car which is used 70% for business purpose, 10% for collecting rent from building and 20% for collecting rent from agriculture land. He has incurred an expenditure of ₹1,00,000 by way of petrol, repair and salary of the driver. He also claims depreciation on the written down value of the motor car on 1.4.2015, ₹ 2,00,000 @ 15%. He has paid ₹ 2000 as local tax to the village panchayat in respect of the building. He also paid ₹ 30,000 land revenue to the Government on account of agriculture land.

Determine his total income and tax liability in the following cases:

(i) Agriculture produce goes under marketing process to fetch better rates in the market,

(ii) Agriculture produce goes under marketing process to make it saleable in the local market.

Solution :

Computation of Total Income for the Assessment Year 2016-2017

(i) Income from House Property:		
Gross annual value based on rent	60,000	
Less : Local tax to village panchayat: No deduction is allowed as— it is not a municipal tax	Nil	
Net Annual Value (NAV)	**60,000**	
Less: Statutory deduction @ 30% of NAV	18,000	42,000
Income from House Property		
Income from house property to be treated as agriculture income provided the agriculture produce is not subjected to marketing produce to fetch better rates [Sec. 2(1A)(c)]		
(ii) Income from Business		3,00,000
(iii) Long-term Capital Gain		1,00,000
(iv) Income from other sources :		
Rent from agriculture land	2,50,000	
Less: Permissible deduction (Sec. 57) :		
(a) Land revenue	(-) 30,000	
(b) Realisation expenses	(-) 20,000	
(c) Depreciation: Not admissible Sec. 57(ii) (see Note below)	Nil	
Income from agriculture [Sec. 2(1A)(a)]	**2,00,000**	
Total income, subject to increase by ₹ 42,000 when produce is subjected to marketing process to fetch better rates.		**4,42,000**

Computation of Tax Liability for the Assessment Year 2016-2017

Particulars	**Senior citizen**	
	Case I Produce subjected to marketing process for better rates ₹	**Case II** Produce subjected to marketing process to make it saleable ₹
Non-agriculture income	4,42,000	4,00,000
Agriculture income	2,00,000	2,42,000
Total Income	**6,42,000**	**6,42,000**
(a) Tax on non-agriculture income + agriculture income as if it is the total income:		
(i) Tax on long-term capital gain @20%	20,000	20,000
(ii) Tax on balance of total income at slab rates [i.e. ₹ 6,42,000 – ₹ 1,00,000]	33,400	33,400
Gross Tax Liability (i) + (ii)		
(b) Tax on agriculture income + basic exemption limit [i.e. ₹ 2,50,000]	53,400 20,000	53,400 24,200
(c) Tax payable: (a) – (b)	33,400	29,300
Add: Education cess @ 2%	668	584
SHEC @ 1%	334	292
Tax Payable	**34,402**	**30,076**
Tax payable to be rounded off to the nearest multiple of ₹ 10 (Sec. 288B)	34,400	30,080

Note :

While computing income under "other sources" depreciation is allowed only in case where plant, machinery or furniture is let out on hire or building along with plant, machinery or furniture is let out on hire [Sec. 57(ii)]

Hence no depreciation is allowed in respect of motor car.

Proportionate depreciation on motor car is permissible under the head "business or profession".

It is assumed it has been allowed as the expression "income from business" refers to taxable income after permissible deductions.

Illustration 3. RP (HUF), furnishes the following particulars of its income and outgoing for the Previous Year 2015-2016.

Receipts :		
(i)	Short-term Capital Gain	4,00,000
(ii)	Gross winning from lottery	1,00,000
(iii)	Sale consideration of 3/4th of agriculture produce, derived from land located in India, the balance produce has been kept for family use.	12,00,000
(iv)	Net sale proceeds of wild grass and fruits from trees of spontaneous growth	50,000

Payments:		
(i)	Repair of tube-well	60,000
	WDV of tuble-well on 1-4-2015	10,00,000
(ii)	Wages paid to agriculture labour	6,00,000
(iii)	Manuring and spraying charges	50,000
(iv)	Rent of the building, used for storing agriculture produce on site	50,000
(v)	Petrol, repair, salary of driver and insurance of motor car.	1,50,000
	WDV of motor car on 1-4-2015	2,00,000
	50% use of the motor car is for personal purpose of the family	
(vi)	LIP paid to insure members of the family	20,000
(vii)	School fees paid for 3 children of the family @ ₹ 15,000 per child	45,000
(viii)	Purchase of infrastructure bonds	90,000
(ix)	Deposit with LIC for maintenance of a dependant member with disability	
	Unabsorbed losses brought forward:	
	AY: 2005-2006	40,000
	AY: 2008-2009	1,00,000
	AY: 2010-2011	45,000

Determine the Total Income of the HUF and its tax liability for the Assessment Year 2016-2017.

Solution:

Assessee : R P (HUF) **Computation of Total Income** **AY 2016-2017**

Particulars	₹	₹
Computation of net agriculture income for the purpose of aggregation to determine the rate of tax applicable to non-agriculture income of the HUF.		
Such computation is done under the head business profession:		
(1) Sale proceeds of agriculture produce		
Add: Market value of produce kept for family use:		12,00,000
12,00,000 × (4/3) × (1/4)		4,00,000
Less: Permissible deductions:		16,00,000
(i) Repair of tube-well	60,000	
(ii) Wages	6,00,000	
(iii) Rent	50,000	
(iv) Petrol, repair, salary of driver— 50%	75,000	
(v) Manuring and spraying	50,000	
(vi) Depreciation on tube-well @ 10% on WDV	1,00,000	
(vii) 50% depreciation on motor car: (15% of 2,00,000) × 50%	15,000	9,50,000
Less: Adjustment for Carry Forward Losses :		
(i) Loss 2005-2006-not allowed	Nil	
(ii) Loss from AY 2008-2009	1,00,000	
(iii) Loss from AY 2010-2011	45,000	1,45,000
Net Agriculture Income		**5,05,000**
(2) Computation of Total Income		
(a) Short-term Capital Gain		4,00,000
(b) Income from Other Sources:		
(i) Winnings from lottery	1,00,000	
(ii) Net sale proceeds of non-agriculture produce	50,000	1,50,000
Gross Total Income (excluding Agricultural Income)		**5,50,000**
Less 1: Contributions paid for approved savings [Sec. 80C(2)]:		
(i) LIP on the life of members	20,000	
(ii) School fees for 3 children of the HUF [Sec. 80C(4)(c)]	Nil	
	20,000	
But deduction restricted upto a maximum of ₹1,00,000		20,000
2. Deposit for maintenance (including medical treatment) of a dependant with disability (Sec. 80DD)		50,000
Total Non-Agricultural Income		**4,80,000**

Computation of Tax Liability		
(i) Income tax on winnings 30% on ₹ 1,00,000		30,000
(ii) Income tax on non-agriculture + agriculture income:		-
3,80,000 + 5,05,000 at slab rates		
(Non-agricultural income = 3,80,000 = 5,50,000 – 1,00,000		
– 20,000 – 50,000)		
(a) Income tax on 8,85,000 as if it is the total income	1,02,000	
(b) Income tax on agriculture income + exemption limit as if it is the Total Income: 5,05,000 + 2,50,000 = 7,55,000	76,000	
Income tax on non-agriculture income: (a) – (b)		26,000
Tax on Total Income		**56,000**
Add:		
(i) Education cess @ 2%		1,120
(ii) SHEC @ 1%		560
Tax Payable		**57,680**

Note : Deduction u/s 80CCF in respect of purchase of infrastructure bond is discontinued from the AY 2013-14.

Illustration 4. B Ltd. grows sugarcane to manufacture sugar. The data for the financial year 2015-16 is as follows :

Cost of cultivation of sugarcane	₹ 6,00,000
Market value of sugarcane when transferred to factory	₹ 10,00,000
Other manufacturing cost	₹ 6,00,000
Sales of sugar	₹ 25,00,000
Salary of Managing Director who looks after all operations of the Company	₹ 3,00,000

Determine its Business Income and Agricultural Income.

Solution :

(1) **Business Income :**

Sales of Sugar	₹ 25,00,000
Less: Market value of sugarcane when transferred to factory	₹ 10,00,000
Other manufacturing cost	₹ 6,00,000
Salary of Managing Director	₹ 3,00,000
	₹ 6,00,000

(2) **Agricultural Income :**

Market value of sugarcane when transferred to factory	₹ 10,00,000
Less: Cost of cultivation	₹ 6,00,000
	₹ 4,00,000

Illustration 5. Mr. P has estates in Rubber, Tea and Coffee. He has also a nursery wherein he grows plants and sells. For the Previous Year ending 31.3.2016, he furnishes the following particulars of his sources of income from estates and sale of Plants. You are requested to compute the taxable income for the Assessment Year 2016-2017:

Manufacture of Rubber	₹ 5,00,000
Manufacture of Coffee grown and cured	₹ 3,50,000
Manufacture of Tea	₹ 7,00,000
Sale of Plants from Nursery	₹ 1,00,000

Solution :

Computation of Taxable Income for the Assessment Year 2016-17

Rule	Nature of Business	Agl Inc.	Non-Agl. Inc.
7A	Sale of centrifuged latex or cenex manufactured from rubber [65% is Agricultural Income]	3,25,000	1,75,000
7B	Sale of grown and cured coffee by seller in India [75% is Agricultural Income]	2,62,500	87,500
8	Growing and Manufacturing Tea [60% is Agricultural Income]	4,20,000	2,80,000
	Sale of plants from nursery	1,00,000	—
	Total	**11,07,500**	**5,42,500**

Computation of Tax Liability :

	₹
(a) Total Income (Agricultural Income + Non-agricultural Income)	16,50,000
(b) Tax on (a) above	3,20,000
(c) Total of (Agricultural Income + Basic Exemption Limit)	13,57,500
(d) Tax on (c) above	2,32,250
(e) Tax Payable (b) – (d)	87,750
Add: Education Cess @ 2%	1,755
Add: SHEC @ 1%	878
Total Tax Liability	90,383
Tax payable rounded off u/s 288B	90,380

Study Note - 14

MINIMUM ALTERNATE TAX (MAT) AND ALTERNATE MINIMUM TAX (AMT)

This Study Note includes

14.1 Minimum Alternate Tax (MAT) [Sec. 115JB]

14.2 Alternate Minimum Tax (AMT) [Sec. 115JC to 115JF]

14.1 MINIMUM ALTERNATE TAX (MAT) [SEC.115JB]

1. Section 115JB provides that, in the case of a company, if the tax payable on the total income as computed under the Income-tax Act in respect of any Previous Year is less than 18.5 per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant Previous Year shall be 18.5% of such book profit.
2. The Profit and Loss Account should be prepared in accordance with Parts II and III of Schedule III of the Companies Act, 2013.

The Accounting Policies and the Accounting Standards adopted for preparing such accounts and the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts and laid before the company at its AGM.

"**Book Profit"** means the net profit as shown in the Profit and Loss Account, 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, other than a reserve specified under section 33AC; 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 *(other than the provisions contained in clause (38) thereof) or* section 11 *or* section 12 *apply; or*

Following clauses (fa), (fb) and (fc) shall be inserted after clause (f) in Explanation 1 below sub-section (2) of section 115JB by the Finance Act, 2015, w.e.f. 1-4-2016 :

(fa) the amount or amounts of expenditure relatable to, income, being share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86; or

(fb) the amount or amounts of expenditure relatable to income accruing or arising to an assessee, being a foreign company, from,—

(A) the capital gains arising on transactions in securities; or

(B) the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,

if the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, it is a rate less than the rate specified in sub-section (1); or

(fc) the amount representing notional loss on transfer of a capital asset, being share or a special purpose vehicle to a business trust in exchange of units allotted by the trust referred to in clause (xvii) of section 47 *or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units referred to in clause (xvii)* ofsection 47; or

(g) the amount of depreciation,

(h) the amount of deferred tax and the provision therefor,

(i) the amount or amounts set aside as provision for diminution in the value of any asset,

(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset,

Following clause (k) shall be inserted after clause (j) in Explanation 1 below sub-section (2) of section 115JB by the Finance Act, 2015, w.e.f. 1-4-2016:

(k) the amount of gain on transfer of units referred to in clause (xvii) of section 47 *computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be;*

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited 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 1st 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 1st 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 the 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 *(other than the provisions contained in clause (38) thereof) or* section 11 *or* section 12 *apply, if any such amount is credited to the profit and loss account; or*

(iia) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or

(iib) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iia); or

Following clauses (iic), (iid), (iie) and (iif) shall be inserted after clause (iib) in Explanation 1 below sub-section (2) of section 115JB by the Finance Act, 2015, w.e.f. 1-4-2016 :

(iic) the amount of income, being the share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86, if any, such amount is credited to the profit and loss account; or

(iid) the amount of income accruing or arising to assessee, being a foreign company, from,—

(A) the capital gains arising on transactions in securities; or

(B) the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,

if such income is credited to the profit and loss account and the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, is at a rate less than the rate specified in sub-section (1); or

(iie) the amount representing,—

(A) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47; or

(B) notional gain resulting from any change in carrying amount of said units; or

(C) gain on transfer of units referred to in clause (xvii) of section 47,

if any, credited to the profit and loss account; or

(iif) the amount of loss on transfer of units referred to in clause (xvii) of section 47 *computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be;*

(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) to (vi) **[***]Omitted**

(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); or

(viii) the amount of deferred tax, if any such amount is credited to the profit and loss account.

Explanation 2.—For the purposes of clause (a) of Explanation 1, the amount of income-tax shall include—

(i) any tax on distributed profits under section 115-O *or on distributed income under* section 115R;

(ii) any interest charged under this Act;

(iii) surcharge, if any, as levied by the Central Acts from time to time;

(iv) Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and

(v) Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.

Explanation 3.—For the removal of doubts, it is hereby clarified that for the purposes of this section, the assessee, being a company to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 (1 of 1956) is applicable, has, for an assessment year commencing on or before the 1st day of April, 2012, an option to prepare its profit and loss account for the relevant previous year either in accordance with the provisions

of Part II and Part III of Schedule VI to the Companies Act, 1956 or in accordance with the provisions of the Act governing such company.

Following Explanation 4 shall be inserted after Explanation 3 to sub-section (2) of section 115JB by the Finance Act, 2015, w.e.f. 1-4-2016:

Explanation 4.—For the purposes of sub-section (2), the expression "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

(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.

(5A) The provisions of this section shall not apply to any income accruing or arising to a company from life insurance business referred to in section 115B.

(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be.

Provided that the provisions of this sub-section shall cease to have effect in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012.

Provided that the provisions of this sub-section shall cease to have effect in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012.

3. Provisions shall not affect carried forward of depreciation and losses under the applicable provisions mentioned in sub-section (3) of section 115JB.
4. Profits of an Entrepreneur in SEZ or Developer of SEZ are not liable for MAT.
5. Tax paid under section 115JB for A.Y. 2012-13 and any subsequent year would be allowed as a credit from the normal tax payable for any subsequent year in accordance with the provisions contained in section 115JAA. However, the amount of tax credit cannot be carried forward for set off beyond the tenth Assessment Year immediately succeeding the Assessment Year in which tax credit becomes allowable.
6. A report in prescribed form (Form No. 29B as per Rule 40B) from an accountant as defined in the section 288 shall be furnished along with the return of income.
7. All companies are liable for payment of advance tax having regard to the provisions contained in new section 115JB. Consequently, the provisions of sections 234B and 234C for interest on defaults in payment of advance tax and deferment of advance tax would also be applicable where facts of the case warrant. - Circular : No. 13/2001, dated 9-11-2001.

Sunset provisions inserted regarding exemption from Minimum Alternate Tax (MAT) and Dividend Distribution Tax (DDT) in case of Special Economic Zones [Sections 115JB(6), 115-O(6) read with section 10AA & 80-IAB]

Under the existing provisions of section 10AA of the Income-tax Act, a deduction of 100% is allowed in respect of profits and gains derived by a unit located in a Special Economic Zone (SEZ) from the

export of articles or things or services for the first five consecutive Assessment Years; of 50% for further five Assessment Years; and thereafter, of 50% of the ploughed back export profit for the next five years.

Further, under section 80-IAB of the Income-tax Act, a deduction of 100% is allowed in respect of profits and gains derived by an undertaking from the business of development of an SEZ notified on or after 1.4.2005 from the total income for any ten consecutive Assessment Years out of fifteen years beginning from the year in which the SEZ is notified by the Central Government.

Under the existing provisions of section 115JB(6), an exemption is allowed from payment of Minimum Alternate Tax (MAT) on book profit in respect of the income accrued or arising on or after 1.4.2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone (SEZ), as the case may be.

Further, under the existing provisions of section 115-O(6), an exemption is allowed from payment of tax on distributed profits [Dividend Distribution Tax (DDT)] in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any Assessment Year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after 1.4.2005 out of its current income. Such distributed income is also exempt from tax under section 10(34) of the Act.

The above provisions were inserted in the Income-tax Act by the Special Economic Zones Act, 2005 (SEZ Act) with effect from 10th February, 2006.

Currently, there is no sunset date provided for exemption from MAT in the case of a developer of an SEZ or a unit located in an SEZ. Similarly, there is no sunset date for exemption from DDT in the case of a developer of an SEZ.

The Finance Act, 2011 has sunset the availability of exemption from Minimum Alternate Tax in the case of SEZ Developers and units in SEZs in the Income-tax Act as well as the SEZ Act w.e.f. A.Y. 2012-13. Hence, units of SEZ and developers of SEZ shall be liable to MAT w.e.f. A.Y. 2012-13.

It has further discontinued the availability of exemption from dividend distribution tax in the case of SEZ Developers under the Income-tax Act as well as the SEZ Act for dividends declared, distributed or paid on or after 1.6.2011 which shall be taxable @ 16.223% [15% + 5% SC + 3% (EC + SHEC)].

Consequential amendments have also be made by omitting *Explanation* to section 10(34) of the Income-tax Act w.e.f. 1.6.2011.

14.2 ALTERNATE MINIMUM TAX (AMT) [SEC.115JC TO 115JF]

Where the regular Income Tax payable for a Previous Year by a person (other than a company) is less than the Alternate Minimum Tax payable for such Previous Year, the Adjusted Total Income shall be deemed to be the total income of such person and he shall be liable to pay Income-tax on such Total Income at the rate of 18.5% [Section115JC (1)]

To whom Alternate Minimum Tax shall be applicable [Section 115JEE (1)]

The provisions of Alternate Minimum Tax shall apply to a non-corporate assessee who has claimed any deduction under:

(a) Sections 80-IA to 80RRB other than section 80P; or

(b) Section 10AA; Or

(c) Section 35AD

To whom Alternate Minimum Tax shall not be applicable [Section 115JEE (2)]

The provisions of Alternate Minimum Tax under Chapter XII-BA *shall not apply to-*

(a) an Individual; or

(b) a Hindu Undivided Family; or

(c) an Association of Persons or a Body of Individuals (whether incorporated or not) or

(d) an Artificial Juridical Person referred to in section 2(31) (vii),

if the Adjusted Total Income of such person does not exceed ₹ 20,00,000

The following sub-section (3) shall be inserted after sub-section (2) of section 115JEE by the Finance (No. 2) Act, 2014, w.e.f. A.Y. 2015-16.

"Notwithstanding anything contained in sub-section (1) or sub-section (2), the credit for tax paid under section 115JC shall be allowed in accordance with the provisions of section 115JD.

Steps involving calculation of Tax where Alternate Minimum Tax provisions applies:

Step 1: Calculate the regular Income-tax liability of the non-corporate assessee ignoring the provisions of Sections 115JC to 115JF.

Step 2: Calculate Adjusted Total Income of the non-corporate assessee.

Step 3: Calculate Alternate Minimum Tax by applying 19.055 percent (18.5 % + 2% EC + 1% SHEC) or 20.9605 percent (18.5% + 10% Surcharge + 2% EC + 1% SHEC) in case Adjusted Total Income exceeds ₹ 1 crore, on Adjusted Total Income computed under Step 2.

Step 4: Compare tax liability computed under Step 1 and Alternate Minimum Tax computed under Step 3. If amount computed under Step 1 is equal to or more than amount computed under Step 3, then the provisions of Alternate Minimum Tax will not apply.

Step 5: If amount computed under Step 1 is less than amount computed under Step 3, then amount computed under Step 3 will be deemed as tax liability of the non-corporate assessee for such Previous Years. In this case, the excess amount computed under Step 3 over the amount computed under Step 1 will be available as credit and can be carried forward and set off against regulars tax liability of the non-corporate assessee of the next year or subsequent years.

Report from an accountant [Section 115JC (3)]: Every non-corporate assessee to whom this section applies shall obtain a report, in such form as may prescribed, from an accountant, certifying that the Adjusted Total Income and the Alternate Minimum Tax have been computed in accordance with the provisions of this Chapter and furnish such report on or before the due date of furnishing of return of income under section 139(1).

Tax credit for AMT: Section 115JD provides the credit for tax (tax credit) paid by a non-corporate on account of AMT under Chapter XII-BA shall be allowed to the extent of the excess of *the AMT paid over the regular Income-tax.* This tax credit shall be allowed to be carried forward up to the tenth Assessment Year immediately succeeding the Assessment Year for which such credit becomes allowable. It shall be allowed to be set off for an Assessment Year in which the regular income-tax exceeds the AMT to the *extent of the excess of the regular Income-tax over the AMT.* No interest shall be payable on tax credit allowed under section 115JD.

For the purpose of the given sections:

"**Adjusted Total Income**" means the Total Income or Net Income of the non-corporate assessee as increased by –

(a) Amount claimed as deduction by the non-corporate assessee under sections 80H to 80RRB other than section 80P; and

(b) Amount claimed as deduction by the non-corporate assessee under section 10AA: and

(c) deduction claimed, if any, under section 35AD as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction under section 35AD was allowed in respect of the assets on which the deduction under that section is claimed.

"**Alternate Minimum Tax**" shall be the amount of tax computed on Adjusted Total Income at a rate of eighteen and one-half per cent.

Application of other provisions of this Act [Section 115JE]: Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to a non-corporate referred to in this Chapter. Hence, all other provisions relating to Advance tax, interest under sections 234A, 234B and 234C penalty, etc. shall apply to such non-corporate also.

ILLUSTRATIONS ON ALTERNATE MINIMUM TAX

Illustration 1:

The following particulars are furnished for the Previous Year 2015-16

	₹
Net Profit as per Profit & Loss A/c (after deducting Depreciation of ₹ 5,80,000)	88,97,000
Depreciation allowable u/s 32 of Income Tax Act	6,27,000
Disallowable expenses	75,000
Deduction received u/s 10AA (as calculated)	80,00,000
Long Term Capital Gains (on sale of land)	2,00,000
Deduction received under Chapter VI A(as calculated):	
80G	35,000
80IB	60,000

Calculate Tax Liability assuming that the Assessee is an LLP, Firm, Individual, HUF, AOP and BOI

Solution:

Statement showing computation of Total Income (applicable for all types of Assessee)

Particulars	₹	₹
Net Profit as per Profit & Loss A/c		88,97,000
Add: Depreciation	5,80,000	
Disallowable expenses	75,000	6,55,000
		95,52,000
Less: Depreciation allowable u/s 32 of Income Tax Act.		6,27,000
		89,25,000
Less: Deduction received u/s 10AA		80,00,000
Business Profit		9,25,000
Add: Long Term Capital Gains		2,00,000
Gross Total Income		11,25000
Deduction received under Chapter VI A :		
80G	35,000	
80IB	60,000	95,000
Total Income		10,30,000

Computation of Adjusted Total Income (applicable for all types of Assessee)

Particulars	₹
Total Income (as computed above)	10,30,000
Add: Deduction claimed u/s 80IB	60,000
Add: Deduction claimed u/s 10AA	80,00,000
Adjusted Total Income	**90,90,000**

Statement showing computation of Tax Liability and Alternate Minimum Tax and Credit on Alternate Minimum Tax for the Assessment Year 2016-17

Particulars	Firm/ LLP ₹	Individual/ HUF/AOP/BOI ₹
Tax on Long Term Capital Gains (@ 20% of ₹ 2,00,000)	40,000	40,000
Tax on balance Total Income (@ 30% for Firm or LLP and at Slab Rate for Individual or HUF or AOP or BOI)	2,49,000	91,000
	2,89,000	1,31,000
Add: Education Cess @ 2%	5,780	2,620
Add: Secondary and Higher Secondary Education Cess @ 1%	2,890	1,310
Tax Liability (a)	2,97,670	1,34,930
Tax on Adjusted Total Income @ 18.5%	16,81,650	16,81,650
Add: Education Cess @ 2%	33,633	33,633
Add: Secondary and Higher Secondary Education Cess @ 1%	16,817	16,817
Alternate Minimum Tax (b)	**17,32,100**	**17,32,100**
Tax Payable [Higher than (a) and (b)]	17,32,100	17,32,100
Alternate Minimum Tax credit [(a) – (b)]	**14,34,430**	**15,97,170**

Illustration 2 : The following is the Profit and Loss Account for the year ended 31.3.2016 of XYZ (LLP) having 3 partners :

Dr. **Profit and Loss Account for the year ended 31.3.2016** **Cr.**

	₹	₹		₹	₹
Establishment & other expenses		48,00,000	Gross Profit		68,20,000
Interest to partner @ 15%			Profit on sales of equity shares sold after 2 years through Recognized Stock Exchange		1,40,000
X	90,000				
Y	1,20,000				
Z	60,000	2,70,000	Rent from house property		60,000
Salary to designated partners			Interest on bank deposits		10,000
			Profit on equity shares sold after 10 months through Recognized Stock Exchange		1,20,000
X	2,40,000				
Y	1,80,000				
		4,20,000			
Net Profit		16,60,000			
		71,50,000			71,50,000

Additional information:

(1) Establishment expenses include ₹ 1,20,000 on account of bonus which was due on 31.3.2016.

(2) The LLP is eligible for 100% deduction under section 80-IC as it is established in notified area in Himachal Pradesh.

(3) Shares were sold through recognized stock exchange and securities transaction tax of ₹1,000 is included in the establishment expenses on account of the same.

Compute the tax payable by the Limited Liability Firm.

Solution:

Computation of Total Income of XYZ (LLP) for the A.Y. 2016-17

Particulars	₹	₹	₹
Income under the head House Property			
Actual Rent		60,000	
Less : Deduction 30%		18,000	42,000
Business Income			
Net Profit as per P&L A/c		16,60,000	
Less : Income credited but either exempt or taxable under other head			
Rent	60,000		
Profit on sale of shares sold after 2 years	1,40,000		
Interest on bank deposit	10,000		
Profit on sale of shares sold after 10 months	1,20,000	3,30,000	
		13,30,000	
Add : Expenses disallowed			
Bonus as per section 43B	1,20,000		
Securities Transaction Tax	1,000		
Interest to partners in excess of 12%	54,000		
Salary to partners	4,20,000	5,95,000	
Book profit		19,25,000	
Less : Salary as per section *40(b) (See* working note)		4,20,000	15,05,000
Short-term Capital Gain on sale of equity shares			1,20,000
Income from Other Sources			10,000
Gross Total Income			16,77,000
Less : Deduction under section 80-IC		15,05,000	
Deduction under section 80TTA [Assumed interest is from Savings Account]		10,000	15,15,000
Total Income			**1,62,000**

Regular Income Tax Payable on Total Income

(1)	Short-term Capital Gain of ₹ 1,20,000 @ 15%	18,000
(2)	Balance total income ₹ 42,000 @ 30%	12,600
		30,600

Adjusted Total Income

Total Income	1,62,000
Add : Deduction u/s Chapter VIA	15,05,000
	16,67,000

Alternate Minimum Tax (AMT) 18.5% on ₹ 16,67,000 = ₹ 3,08,395 [Higher of ₹ 30,600]

Hence, adjusted total income shall be total income and the tax (payable shall be the Alternate Minimum Tax) *i.e.* on ₹ 16,67,000 @ 18.5% + 3% (EC + SHEC).

Tax Payable

	₹
Alternate minimum tax 18.5% on ₹ 16,67,000	3,08,395
Add : 3% Education Cess & SHEC	9,252
	3,17,647
Rounded off	3,17,650

Working Note

1.	Book Profit	19,25,000
Maximum salary allowed		
First 3,00,000 of book profit — 90%		2,70,000
Balance ₹ 16,25,000 of book profit 60%		9,75,000
		12,45,000

Salary allowed shall be ₹ 12,45,000 or ₹ 4,20,000 whichever is lower i.e. ₹ 4,20,000.

2. Long term Capital Gains arising from transfer of Equity Shares through Recognized Stock Exchange, on which STT is paid, is exempted from Tax [Sec.10(38)]

ILLUSTRATIONS ON MINIMUM ALTERNATE TAX (MAT)

Illustration 3: D Ltd., a closely-held Indian company, is engaged in the business of manufacture of chemical goods (value of plant and machinery owned by the company is ₹ 55 lakh). The following informations for the financial year 2015-16 are given :

D Ltd. is engaged in the business of manufacture of garments.

	₹
Sale proceeds of goods (domestic sale)	25,00,000
Sale proceeds of goods (export sale)	7,00,000
Amount withdrawn from general reserve (reserve was created in 1997-98 by debiting P&L A/c)	2,00,000
Amount withdrawn from revaluation reserve	1,50,000
Total	**35,50,000**
Less : Expenses	
Depreciation (normal)	6,16,000
Depreciation (extra depreciation because of revaluation)	2,70,000
Salary and wages	2,10,000
Wealth tax	10,000
Income-tax	3,50,000
Outstanding customs duty (not paid as yet)	17,500
Proposed dividend	60,000
Consultation fees paid to tax expert	21,000
Other expenses	1,39,000
Net Profit	**18,56,500**

For tax purposes the company wants to claim the following :

—Deduction under section 80-IB (30 per cent of ₹ 14,56,500).

—Depreciation under section 32 (₹ 5,36,000)

The company wants to set off the following losses/allowances :

	For tax purposes ₹	**For accounting purposes** ₹
Brought forward loss of 2009-10	14,80,000	4,00,000
Unabsorbed depreciation	—	70,000

Compute the net income and tax liability of D Ltd. for the Assessment Year 2016-17 assuming that D Ltd. has a (deemed) Long-term Capital Gain of ₹ 60,000 under proviso (i) to section 54D(2) which is not credited in Profit and Loss Account.

Solution :

Computation of Book Profit & Minimum Alternate Tax for the Assessment Year 2016-17

Particulars	Amount (₹)
Net Profit as per P&L A/c	18,56,500
Add :	
Excess depreciation [i.e., ₹ 6,16,000 + ₹ 2,70,000 – ₹ 5,36,000]	3,50,000
Wealth tax	10,000
Income tax	3,50,000
Customs duty which is not paid	17,500
Proposed dividend	60,000
Total	26,44,000
Less : Amount withdrawn from reserve (i.e., ₹ 2,00,000+₹ 1,50,000)	3,50,000
Business income	22,94,000
Less : Unabsorbed loss	14,80,000
Business Income	8,14,000
Long-term Capital Gain	60,000
Gross Total Income	**8,74,000**
Less : Deductions under section 80-IB [30% of ₹ 4,14,000] =[₹ (8,14,000 – 4,00,000)]	1,24,200
Net Income (rounded off)	**7,49,800**
Tax liability (under normal provisions)	2,25,508
[20% of ₹ 60,000 + 30% of ₹ 6,89,800, plus 3% of tax as Cess]	
Book Profit	
Net Profit	18,56,500
Add :	
Depreciation (i.e. ₹ 6,16,000 + ₹ 2,70,000)	8,86,000
Wealth tax	Nil
Income-tax	3,50,000
Proposed dividend	60,000
Less : Amount withdrawn from general reserve	(–) 2,00,000
Unabsorbed depreciation	(–) 70,000
Depreciation (normal)	(–) 6,16,000
Amount withdrawn from revaluation reserve to the extent it does not exceed extra depreciation because of revaluation	(–) 1,50,000
Book Profit	**21,16,500**
Tax liability (19.055% of 21,16,500)	4,03,299

D Ltd. will pay ₹ 4,03,299 as tax for the Assessment Year 2016-17 as per section 115JB. Tax credit is however, available in respect excess tax (i.e., ₹ 1,77,791) under section 115JB.

Study Note - 15

RETURN OF INCOME

This Study Note includes

15.1 Return of Income
15.2 Obligation to furnish Statement of Financial Transaction or Reportable account [Section 285BA]

15.1 RETURN OF INCOME

The starting point for assessment of income is furnishing of return of income. Filing of return of income is mandatory for certain category of assessees. Incidental provisions for accompaniments to the return of income, error correction and belated returns have been made. Now filing of the return electronically has been made mandatory for certain category of assessees.

Return of income is the format in which the assessee has to furnish information as to his total income and tax payable. The format for filing of returns by different assessees is notified by the CBDT.

15.1.1 Compulsory Filing of Return of Income [Section 139(1)]

(1) As per section 139(1), it is compulsory for companies and firms to file a return of income for every Previous Year.

(2) In case of a person other than a company or a firm, filing of return of income is mandatory, if his total income or the total income of any other person in respect of which he is assessable under this Act during the Previous Year exceeds the basic exemption limit.

(3) Such persons should, on or before the due date, furnish a return of income in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

(4) Further, every person, being an individual or a HUF or an AOP or BOI or an artificial juridical person–

– whose total income or the total income of any other person in respect of which he is assessable under this Act during the Previous Year

– without giving effect to the provisions of section 10A or 10B or 10BA or Chapter VI-A - exceeded the basic exemption limit is required to file a return of his income or income of such other person.

Every Individual, HUF, etc. must file their return of income if it's Gross Total Income exceeds the exempted income ceiling :

Assessee	Exempted Ceiling
Resident Super Senior Citizen	₹ 5,00,000
Resident Senior Citizen	₹ 3,00,000
Resident or Non-resident Individual	₹ 2,50,000
HUF	₹ 2,50,000

(5) For company and certain other assessees like firm having tax audit, filing of return in an electronic form is mandatory. (Section 139D)

(6) **Compulsory filing of return in relation to assets, etc. located outside India [Fourth proviso to section 139(1)] [W.e.f. A.Y. 2016-17]**

A person, being a resident other than not ordinarily resident in India within the meaning of section 6(6), who is not required to furnish a return under this sub-section and who at any time during the previous year,—

(a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or

(b) is a beneficiary of any asset (including any financial interest in any entity) located outside India,

shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed.

Provided also that nothing contained in the fourth proviso shall apply to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India when income, if any, arising from such asset is includible in the income of the person referred to in clause (a) of that proviso in accordance with the provisions of this Act.

Note:-

"Beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

"Beneficiary" in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

(7) **Political Parties :** Political parties are under a statutory obligation to file return of income in respect of each Assessment Year in accordance with the provisions of the Income-tax Act and the total income for this purpose has to be computed without giving effect to the provision of section 13A and Chapter VI-A of the Act.

(8) **Liquidator :** Under the Companies Act,1956, (Corresponding Companies Act, 2013)a liquidator is not exempt from making an Income-tax return on business managed by him for the beneficial winding up of the company.

(9) **Charitable Trust :** Submission of return by charitable trust is essential even if its income is exempt. If the total income of a charitable trust (without claiming exemption under section 11 and 12) exceeds the maximum amount not chargeable to tax, then submission of return by the trust is essential.

(10) No need to file return if Non-agricultural income is less than the amount of exemption limit in the case of an Individual/ HUF.

Exemption provided by the Government when taxable income of an individual is up to ₹ 5,00,000 : If the following conditions are satisfied, the taxpayer has an option to submit his return of income or not to submit his return of income –

(i) The taxpayer is an individual. He may be resident or non-resident.

(ii) His taxable income does not exceed ₹5,00,000. Taxable income should consist of salary and/ or saving bank account interest (but interest should not be more than ₹10,000).

(iii) The individual has reported to his employer his Permanent Account Number (PAN).

(iv) The individual has reported to his employer his saving bank interest for the purpose of calculating tax deductible under section 192.

(v) The Individual has received a certificate of tax deduction in Form No. 16 from his employer which mentions the PAN, details of income, tax deducted at source by the employer and deposited to the credit of the Central Government.

(vi) The individual has no claim of refund of taxes due to him for the income of the Assessment Year.

(vii) The individual has received salary from only one employer for the Assessment Year.

However, in case notice under section 142(1), 148, 153A or 153C has been issued for filing a return of income for the relevant Assessment Year, exemption is not available.

'Due date' means –

(a) ***30th November of the Assessment Year,*** where the assessee is required to furnished a report in Form No. 3CEB under section 92E pertaining to international transactions.

(b) 30th September of the Assessment Year, where the assessee is -

(i) a company; or

(ii) a person (other than a company) whose accounts are required to be audited under the Income-tax Act, 1961 or any other law in force; or

(iii) a working partner of a firm whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force.

(c) ***31st July of the Assessment Year,*** *in the case of any assessee other than those covered in (a) & (b) above.*

15.1.2 Interest for Default in Furnishing Return of Income [Section 234A]

(1) Interest under section 234A is attracted where an assessee furnishes the return of income after the due date or does not furnish the return of income.

(2) The interest is payable for the period commencing from the date immediately following the due date and ending on the following dates -

When the return is furnished after due date: the date of furnishing of the return

Where no return is furnished: the date of completion of assessment

(3) The interest has to be calculated on the amount of tax on total income as determined under section 143(1) or on regular assessment as reduced by the advance tax paid and any tax deducted or collected at source @ 1% for every month or part of the month.

15.1.3 Option to Furnish Return of Income to Employer [Section 139(1A)]

(1) This section gives an option to a person, being an individual who is in receipt of income chargeable under the head "Salaries", to furnish a return of his income for any Previous Year to his employer, in accordance with such scheme as may be notified by the CBDT and subject to such conditions as may be specified therein.

(2) Such employer shall furnish all returns of income received by him on or before the due date, in such form, including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media and manner as may be specified in that scheme.

(3) In such a case, any employee who has filed a return of his income to his employer shall be deemed to have furnished a return of income under sub-section (1).

15.1.4 Income Tax Return through Computer Readable Media [Section 139(1B)]

(1) This sub-section enables the taxpayer (company or a person other than company) to file his return of income in computer readable media, without interface with the department.

(2) Such person may, on or before the due date, furnish a return of income in accordance with such scheme as may be notified by the CBDT, in such form, including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media and manner as may be specified in that scheme.

(3) In such case, the return furnished under such scheme shall be deemed to be return furnished under sub-section (1) of section 139.

15.1.5 Return of Loss [Section 139(3)]

(1) This section requires the assessee to file a return of loss in the same manner as in the case of return of income within the time allowed under section 139(1).

(2) Under section 80, an assessee cannot carry forward or set off his loss against income in the same or subsequent year unless he has filed a return of loss in accordance with the provisions of section 139(3).

(3) A return of loss has to be filed by the assessee in his own interest and the non-receipt of a notice from the Assessing Officer requiring him to file the return cannot be a valid excuse under any circumstances for the non-filing of such return.

(4) In particular, a return of loss must be filed by an assessee who has incurred a loss under the heads "Profits and Gains from Business or Profession", "Capital Gains", and income from the activity of owning and maintaining race horses taxable under the head "Income from Other Sources".

(5) However, loss under the head "Income from House Property" under section 71B and unabsorbed depreciation under section 32 can be carried forward for set-off even though return of loss has not been filed before the due date.

Synopsis of Loss filing of return is as follows :

Section Ref.	Nature of Loss	Filing of Return
71B	Loss under the head Income from House Property	Loss return must be filed
72	Business or Profession Loss	Loss return should be filed timely
73	Speculative Business Loss	Loss return should be filed timely
74	Loss under the head Capital Gains	Loss return should be filed timely
74A	Loss from the activity of owning and maintaining race horse	Loss return should be filed timely
32(2)	Unabsorbed Depreciation Allowance	Loss return should be filed

If return of Loss is not filed timely, the losses under section 72, 73, 74, and 74A could not be carried forward to subsequent years for set off.

15.1.6 Belated Return [Section 139(4)]

(1) Any person who has not furnished a return within the time allowed to him under section 139(1) or within the time allowed under a notice issued under section 142(1) may furnish the return for any Previous Year at any time -

  (i) before the expiry of one year from the end of the relevant Assessment Year; or

  (ii) before the completion of the assessment, whichever is earlier.

(2) Interest is required to be paid under section 234A, as stated earlier.

(3) A penalty of ₹ 5,000 may be imposed under section 271F if belated return is submitted after the end of Assessment Year.

15.1.7 Return of Income of Charitable Trusts and Institutions [Section 139(4A)]

(1) Every person in receipt of income –

  (i) derived from property held under a trust or any other legal obligation wholly or partly for charitable or religious purpose; or

  (ii) by way of voluntary contributions on behalf of such trust or institution must furnish a return of income if the total income in respect of which he is assessable as a representative assessee, computed before allowing any exemption under sections 11 and 12 exceeds the basic exemption limit.

(2) Such persons should furnish the return in the prescribed form and verified in the prescribed manner containing all the particulars prescribed for this purpose.

(3) This return must be filed by the representative-assessee voluntarily within the time limit. Any failure on the part of the assessee would attract liability to pay interest and penalty.

15.1.8 Return of Income of Political Parties [Section 139(4B)]

(1) Under this section, a political party is required to file a return of income if, before claiming exemption under section 13A, the party has taxable income.

(2) The grant of exemption from Income-tax to any political party under section 13A is subject to the condition that the political party submits a return of its total income within the time limit prescribed under section 139(1).

(3) The chief executive officer of the political party is statutorily required to furnish a return of income of the party for the relevant Assessment Year, if the amount of total income of the Previous Year exceeds the basic exemption limit before claiming exemption under section 13A.

15.1.9 Return of Income of Research Associations etc. [Section 139(4C)]

Every—

(a) research association referred to in clause (21) of section 10;

(b) news agency referred to in clause (22B) of section 10;

(c) association or institution referred to in clause (23A) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (iiiab) or sub-clause (iiiad) or sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (iiiac) or sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10;

(ea) Mutual Fund referred to in clause (23D) of section 10;

(eb) securitisation trust referred to in clause (23DA) of section 10;

(ec) venture capital company or venture capital fund referred to in clause (23FB) of section 10;

(f) trade union referred to in sub-clause (a) or association referred to in sub-clause (b) of clause (24) of section 10;

(g) body or authority or Board or Trust or Commission (by whatever name called) referred to in clause (46) of section 10;

(h) infrastructure debt fund referred to in clause (47) of section 10,

shall, if the total income in respect of which such research association, news agency, association or institution, fund or trust or university or other educational institution or any hospital or other medical institution or trade union or body or authority or Board or Trust or Commission or infrastructure debt fund [or Mutual Fund or securitisation trust or venture capital company or venture capital fund] is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

15.1.10 Return of Income of University or College or Other Institution [Section 139(4D)]

Every university or college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35, which is not required to furnish return of income or loss under any other provision of this section, shall furnish the return in respect of its income or loss in every Previous Year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

15.1.11 Return of income of business trust which is not covered in any other provision of the Act [Section 139(4E)]

Every business trust, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of its income in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply if it were a return required to be furnished under sub-section (1).

15.1.12 Investment fund referred to in section 115UB mandatory required to furnish return of income [Section 139(4F)] [Inserted w.e.f. A.Y. 2016-17]

Every investment fund referred to in section 115UB, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of income in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under section 139(1).

15.1.13 Revised Return [Section 139(5)]

(1) If any person having furnished a return under section 139(1) or in pursuance of a notice issued under section 142(1), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant Assessment Year or before completion of assessment, whichever is earlier.

In other words :

Such return can be submitted at any time :-

(a) before the expiry of one year from the end of the relevant Assessment Year; or

(b) before the completion of assessment

Whichever is earlier

(2) It may be noted that a belated return cannot be revised. It has been held in Kumar Jagdish Chandra Sinha vs. CIT 1996 86 Taxman 122 (SC) that only a return furnished under section 139(1) or in pursuance of a notice under section 142(1) can be revised. A belated return furnished under section 139(4), therefore, cannot be revised.

15.1.14 Particulars required to be furnished with the Return [Section 139(6)]

The prescribed form of the return shall, in certain specified cases, require the assessee to furnish the particulars of -

(i) income exempt from tax

(ii) assets of the prescribed nature, value and belonging to him

(iii) his bank account and credit card held by him

(iv) expenditure exceeding the prescribed limits incurred by him under prescribed heads

(v) such other outgoings as may be prescribed.

(vi) assets of the prescribed nature and value, held by him as a beneficial owner or otherwise or in which he is a beneficiary.

15.1.15 Defective Return [Section 139(9)]

(1) Under this sub-section, the Assessing Officer has the power to call upon the assessee to rectify a defective return.

(2) Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation. The Assessing Officer has the discretion to extend the time period beyond 15 days, on an application made by the assessee.

(3) If the defect is not rectified within the period of 15 days or such further extended period, then the return would be treated as an invalid return. The consequential effect would be the same as if the assessee had failed to furnish the return.

(4) Where, however, the assessee rectifies the defect after the expiry of the period of 15 days or the further extended period, but before assessment is made, the Assessing Officer can condone the delay and treat the return as a valid return.

(5) A return can be treated as defective if it is not properly filled in or the necessary enclosures are not accompanying the return or it is filed without payment of self-assessment tax.

Specific defects are only illustrative and not exhaustive - CIT vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust 195 ITR 825.

15.1.16 Permanent Account Number (PAN) [Section 139A]

(1) Where any person in the following category has not been allotted a Permanent Account Number (PAN), he should apply to the Assessing Officer within the prescribed time for allotment of a PAN -

(i) Every person whose total income or the total income of any other person in respect of which the person is assessable under this Act during any Previous Year exceeded the basic exemption limit; or

(ii) Every person carrying on any business or profession whose total sales, turnover or gross receipts exceeds or is likely to exceed ₹5 lakhs in any Previous Year; or

(iii) Every person who is required to furnish a return of income under section 139(4A); or

(2) The CBDT had introduced a new scheme of allotment of computerized 10 digits PAN. Such PAN comprises of 10 alphanumeric characters and is issued in the form of a laminated card.

(3) All persons who were allotted PAN (Old PAN) earlier and all those persons who were not so allotted but were required to apply for PAN, shall apply to the Assessing Officer for a new series PAN within specified time.

(4) Once the new series PAN is allotted to any person, the old PAN shall cease to have effect. No person who has obtained the new series PAN shall apply, obtain or process another PAN.

(5) On receipt of allotment of PAN it must be mentioned on all tax payment challans, returns, correspondence.

(6) Where TDS or TCS is made, the person from whom it is made must communicate his PAN to the person deducting or collecting tax.

(7) Every person receiving any document relating to a transaction prescribed under clause (c) of sub-section (5) shall ensure that the Permanent Account Number or the General Index Register Number has been duly quoted in the document.

15.1.17 Scheme for Submission of Returns through Tax Return Preparers [Section 139B]

(1) The Tax Return Preparer shall assist the specified class or classes of person in furnishing the return in a manner that will be specified in the Scheme, and shall also affix his signature on such return. The

"specified class or classes of persons" for this purpose means any person other than a company or a person whose accounts are required to be audited under section 44AB (tax audit) or under any other existing law, who is required to furnish a return of income under the Act.

(2) A Tax Return Preparer can be an individual, other than

(i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.

(ii) any legal practitioner who is entitled to practice in any civil court in India.

(iii) a chartered accountant.

(iv) an employee of the 'specified class or classes of persons'.

(3) The Scheme notified under the said section may provide for the following —

(i) The manner in which and the period for which the Tax Return Preparers shall be authorised,

(ii) The educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer,

(iii) The code of conduct for the Tax Return Preparers,

(iv) The duties and obligations of the Tax Return Preparers,

(v) The circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn, and

(vi) Any other relevant matter as may be specified by the Scheme.

15.1.18 Power of Board to dispense with furnishing documents, etc. with the Return [Sec. 139C]

(1) The Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificates, reports of audit or any other documents, which are otherwise under any other provisions of this Act, except section 139D, required to be furnished, along with the return but on demand to be produced before the Assessing Officer.

(2) Any rule made under the proviso to sub-section (9) of section 139 as it stood immediately before its omission by the Finance Act, 2007 shall be deemed to have **been made under the provisions of this section.**

15.1.19 Filing of return in electronic from [Sec. 139D]

The Board may make rules providing for —

(a) the class or classes of persons who shall be required to furnish the return in electronic form;

(b) the form and the manner in which the return in electronic form may be furnished;

(c) the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return in electronic form but shall be produced before the Assessing Officer on demand;

(d) the computer resource or the electronic record to which the return in electronic form may be transmitted.

15.1.20 Return by whom to be signed [Section 140]

The return under **section 139** shall be verified as under:

Sr. No.	Assessee Category	Who can Verify
1	Individual	*(i)* By the individual himself; (*ii*) Where he is absent from India, by the individual himself or by some person duly authorised by him in this behalf; (*iii*) Where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf; and *(iv)* Where, for any other reason, it is not possible for the individual to Verify the return, by any person duly authorised by him in this behalf
2	Hindu Undivided Family (HUF)	By the Karta or where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family
3	Company	Managing Director or where for any unavoidable reason, Managing Director is not able to Verify or where there is no Managing Director, by any director thereof. Exceptions : (*a*) Where the company is being wound up : by the liquidator (*b*) Where the management of the company has been taken over by the Government : the principal officer thereof (*c*) Company is not resident in India : a person who holds a valid power of attorney
4	A Firm / Limited Liability Partnership (w.e.f. A.Y 2010-11)	Managing Partner or where for any unavoidable reason Managing Partner is not able to verify the return, or where there is no Managing Partner, by any partner thereof
5	A Local Authority	The Principal Officer thereof
6	A Political Party	The Chief Executive Officer of such party
7	Any other Association	Any Member of the Association or the Principal Officer thereof
8	Any other Person	By that person or by some person competent to act on his behalf

15.1.21 Prescribed Forms:

Forms	Applicability
ITR-1 (SAHAJ)	For individual having income from salary/ one house property (not being brought forward loss from Previous Years)/ income from other sources (except winning from lotteries and income from race horses)
ITR-2	For individuals and HUFs not having business or professional income
ITR-3	For individual or HUFs being partners in firms and not carrying out business or profession under any proprietorship
ITR-4	For individual and HUFs having income from a proprietary business or profession
ITR-4S(SUGAM)	For individual or HUF deriving business income and such income is computed in accordance with special provision referred to in sections 44AD and 44AE

ITR-5	For firms, AOPs and BOIs or any other person (not being individual or HUF or company or to whom ITR-7 is applicable)
ITR-6	For companies other than companies claiming exemption under section 11
ITR-7	For persons including companies required to furnished return under section 139(4A)/(4B)/(4C)/(4D)
ITR-V	Where the data of the return of income in forms ITR-1, ITR-2, ITR-3, ITR-4, ITR-5 and ITR-6 transmitted electronically without digital signature.

15.1.22 Self Assessment Tax Payment [Section 140A]

(1) Where any tax is payable on the basis of any return required to be furnished under section 139 or section 142 or section 148 or section 153A or, as the case may be, section 158BC, *after taking into account taxes paid earlier*. The assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.

(2) If assessee fails to pay the whole or any part of such tax or interest or both on self assessment, the assessee shall be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid. Penalty can be imposed on any assessee who is in default.

(3) **With effect from the Assessment Year 2013-14,** the amount of credit available to be set off according to the provisions of section 115JD (Alternative Minimum Tax) will also be taken into account u/s 140A for the purpose of computing the amount of tax payable and interest chargeable under section 234A, 234B and 234C before filing the return of income.

15.2 OBLIGATION TO FURNISH STATEMENT OF FINANCIAL TRANSACTION OR REPORTABLE ACCOUNT [SECTION 285BA]

(1) Any person, being—

(a) an assessee; or

(b) the prescribed person in the case of an office of Government; or

(c) a local authority or other public body or association; or

(d) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or

(e) the registering authority empowered to register motor vehicles under Chapter IV of the Motor

(f) the Post Master General as referred to in clause (i) of section 2 of the Indian Post Office Act, 1898; or

(g) the Collector referred to in clause (g) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or

(h) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or

(i) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934; or

(j) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or

(k) a prescribed reporting financial institution,

who is responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction or any reportable account as may be prescribed under any law for the time being in force, shall furnish a statement in respect of such specified

financial transaction or such reportable account which is registered or recorded or maintained by him and information relating to which is relevant and required for the purposes of this Act, to the income-tax authority or such other authority or agency as may be prescribed.

(2) The statement referred to in sub-section (1) shall be furnished for such period, within such time and in the form and manner, as may be prescribed.

(3) For the purposes of sub-section (1), "specified financial transaction" means any—

(a) transaction of purchase, sale or exchange of goods or property or right or interest in a property; or

(b) transaction for rendering any service; or

(c) transaction under a works contract; or

(d) transaction by way of an investment made or an expenditure incurred; or

(e) transaction for taking or accepting any loan or deposit,

which may be prescribed:

Provided that the Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction.

Provided further that the value or, as the case may be, the aggregate value of such transactions during a financial year so prescribed shall not be less than fifty thousand rupees.

(4) Where the prescribed income-tax authority considers that the statement furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such statement and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said income-tax authority may, in his discretion, allow; and if the defect is not rectified within the said period of thirty days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such statement shall be treated as an invalid statement and the provisions of this Act shall apply as if such person had failed to furnish the statement.

(5) Where a person who is required to furnish a statement under sub-section (1) has not furnished the same within the specified time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such statement within a period not exceeding thirty days from the date of service of such notice and he shall furnish the statement within the time specified in the notice.

(6) If any person, having furnished a statement under sub-section (1), or in pursuance of a notice issued under sub-section (5), comes to know or discovers any inaccuracy in the information provided in the statement, he shall within a period of ten days inform the income-tax authority or other authority or agency referred to in sub-section (1), the inaccuracy in such statement and furnish the correct information in such manner as may be prescribed.

(7) The Central Government may, by rules made under this section, specify—

(a) the persons referred to in sub-section (1) to be registered with the prescribed income-tax authority;

(b) the nature of information and the manner in which such information shall be maintained by the persons referred to in clause (a); and

(c) the due diligence to be carried out by the persons for the purpose of identification of any reportable account referred to in sub-section (1).

QUESTIONS & ANSWERS ON RETURN OF INCOME

Question 1. What is the due date of filling of return of income in case of a non-working partner of a firm whose accounts are not liable to be audited?

Answer : Due date of furnishing return of income in case of non-working partner shall be 31st July of the Assessment Year whether the accounts of the firm are required to be audited or not.

A working partner for the above purpose shall mean an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner and is drawing remuneration from the firm.

Question 2. What do you mean by annexure less return? What is the manner of filling the return of income?

Answer : The return of income required to be furnished in Form No.ITR-1,ITR-2,ITR-3,ITR-4, ITR-5, ITR-6 or ITR-7 shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self-assessment, if any, claimed to have been paid or any document or copy of any account or Form or report of audit required to be attached with the return of income under any of the provisions of the Act.

Manner of filling the return: The return of income referred to in sub-rule (1) may be furnished in any of the following manners, namely:-

(i) Furnishing the return in a paper form;

(ii) Furnishing the return electronically under digital signature;

(iii) Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V;

(iv) Furnishing a bar-coded return in paper form.

Question 3. Is e-filling of return mandatory? State the assessee's for whom e-filling of returns is mandatory?

Answer : CBDT has vide notification No. 34/2013 dated 01.05.2013 has made it mandatory for the following category of the Assesses to file their Income Tax Return Online from A.Y. 2013-14 :-

(a) It is mandatory for every person (not being a co. or a person filing return in ITR 7) to e-file the return of income if its total income exceeds ₹5,00,000

(b) an individual or a Hindu Undivided Family, being a resident, having assets (including financial interest in any entity) located outside India or signing authority in any account located outside India and required to furnish the return in Form ITR-2 or ITR-3 or ITR-4, as the case may be.

(c) Every person claiming tax relief under Section 90, 90A or 91 shall file return in electronic mode.

(d) Those who are required to get their Account audited under Section 44AB, 92E, 115JB.

(e) A company required to furnish the return in Form ITR-6.

However, as per instruction of ITR 7 From assessment year 2013-14 onwards in case an assessee who is required to furnish a report of audit under section 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(via), 10A, 12A(1)(b), 44AB, 80-IA, 80-IB, 80-IC, 80-ID, 80JJAA, 80LA, 92E or 115JB he shall file the report electronically on or before the date of filing the return of income.

Question 4. Can unabsorbed depreciation be carried forward even if the return is filed after due date?

Answer : Unabsorbed depreciation can be carried forward even if the return of loss is submitted after the due date, as it is not covered under Chapter VI of set off or carry forward of losses but covered u/s 32(2). [East Asiatic Co.(India) Pvt. Ltd. vs.CIT (1986) 161 ITR 135(Mad.)]

Question 5. Can a belated return of income filed u/s 139(4) be revised?

Answer : There was a difference of opinion among various courts regarding filling of revised return in respect of belated returns. However, it has been held that a belated return filed u/s 139(4) cannot be revised as section 139(5) provides that only return filed u/s 139(1) or in pursuance to a notice u/s 142(1) can be revised [Kumar Jagdish Chandra Sinha vs.CIT(1996) 220 ITR 67(SC)].

Question 6. Can a revised return be further revised?

Answer : If the assessee discovers any omission or any wrong statement in a revised return, it is possible to revise such a revised return provided it is revised within the same prescribed time [Niranjan Lal Ram Chandra vs.CIT (1982) 134 ITR 352 (All.)]

Question 7. Can an Assessing Officer himself allot Permanent Account Number to an assessee?

Answer: The Assessing Officer having regard to the nature of the transactions as may be prescribed may also allot a Permanent Account Number to any other person(whether any tax is payable by him or not) in the manner and in accordance with the procedure as may be prescribed.

Question 8. What are the consequences if a person fails to comply with the provisions of Sec.139A i.e. quoting of PAN?

Answer : As per Sec.272B(2), if a person fails to comply with the provisions of Sec.139A, the Assessing Officer may direct that such person shall have to pay, by way of penalty, a sum of ₹10,000.

Question 9. Who can Verify the return of HUF, if HUF does not have a major member?

Answer : If the HUF has no major members as its Karta, a return may validly be verified by the eldest minor member of the family who manages the affairs of the family.

Study Note - 16

ASSESSMENT PROCEDURE

This Study Note includes

16.1 Assessment Procedure

16.1 ASSESSMENT PROCEDURE

16.1.1 Inquiry before assessment [Section 142]

Inquiry :

(1) The Assessing Officer has power to make inquiry from any person (a) who has made a return under section 139 or (b) in whose case the time allowed under sub-section (1) or sub-section (4) of section 139 for furnishing the return has expired. For this purpose a notice can be issued for :

(i) where such person has not made a return within the time allowed under section 139(1) or 139(4), to furnish a return of his income, or

(ii) to produce such accounts or documents as the Assessing Officer may require, or

(iii) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters including a statement of all assets and liabilities of the assessee, whether included in the accounts or not, as the Assessing Officer may require

Provided that –

(i) Previous approval of Joint Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts.

(ii) The Assessing Officer shall not require the production of any accounts relating to a period more than three years prior to the Previous Year.

(2) For the purpose of obtaining full information in respect of the income or loss of any person, the Assessing Officer may make such inquiry as he considers necessary.

Audit

If the Assessing Officer, having regard to the nature and complexity of the accounts volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee and the interests of the revenue, opines that it is necessary so to do, he may with the prior approval of the Chief Commisioner or Commisioner, direct the assessee to get the accounts audited by an accountant, as defined in the *Explanation* below section 288(2) and to furnish an audit report, within such period as may be specified, in the prescribed form. The expenses of such audit shall be paid by the assessee.

These provisions of audit shall have effect notwithstanding that the accounts of the assessee have been already audited.

Opportunity to Assessee :

The assessee shall be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry or any audit and proposed to be utilised for the purposes of the assessment. Such opportunity need not be given where the assessment is made under section 144.

16.1.2 Estimation of value of assets by valuation officer [Section 142A]

(1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.

(2) The Assessing Officer may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.

(3) The Valuation Officer, on a reference made under sub-section (1), shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section 38A of the Wealth-tax Act, 1957.

(4) The Valuation Officer shall, estimate the value of the asset," property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

(5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgement, if the assessee does not co-operate or comply with his directions.

(6) The Valuation Officer shall send a copy of the report of the estimate made under sub-section (4) or sub-section (5), as the case may be, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made under sub-section (1).

(7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957.

Case Law :
Assessing Officer can look into documents other than books of account for issuing directions - Submission of audited accounts per se would not oust the jurisdiction of the Assessing Officer to pass a direction for special audit. While applying his mind, the Assessing Officer need not confine himself only to the books of account submitted by the assessee, but can take into consideration such other documents related thereto which would be part of the assessment proceedings - Rajesh Kumar Ors. vs. Dy. CIT.287 ITR 91.

16.1.3 Assessment [Section 143]

16.1.3.1 Summary Assessment [Section 143(1)]

Assessing Officer can complete the assessment without passing a regular assessment order. The assessment is completed on the basis of return submitted by the assessee.

Assessing Officer has adopted a two-stage procedure of assessment as part of risk management strategy. In the first stage, all tax returns are processed to correct arithmetical mistakes, internal inconsistencies, tax calculation and verification of tax payment. At this stage, no verification of the income is undertaken. In the second stage, certain percentage of the tax returns are selected for scrutiny/ audit on the basis of the probability of deducting tax evasion. At this stage, the tax administration is concerned with the verification of the income.

Total income of the assessee shall be computed under section 143(1) after making the following adjustments to the total income in the return -

(i) any arithmetical errors in the return; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return.

An intimation shall be sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee after the aforesaid corrections. The amount of refund due to the assessee shall be granted to him. No intimation shall be sent after the expiry of one year from the end

of the financial year in which the return is made. The acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee, and where no adjustment has been made.

"An incorrect claim" apparent from any information in the return has been defined. It means claim on the basis of an entry, in the return -

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) information required to be furnished to substantiate such entry, has not been furnished under the Act; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.

As per amendment in section 143(1D) provides that processing of a return under section 143(1) shall not be necessary, where a scrutiny notice has been issued to the assessee under sub-section (2) of Section 143 (w.e.f. July 1, 2012).

Adjustment through computerised processing only : All the adjustments such as arithmetical error, incorrect claim, etc. are made only in the course of computerised processing. For this purpose, a system of centralised processing of returns has been established by the Department. A software will be designed to detect arithmetical inaccuracies and internal inconsistencies and make appropriate adjustments in the computation of total income.

To facilitate this, the Board has formulated a scheme with view to expeditiously determine the tax payable by, or refund due to, the assessee.

16.1.3.2 Notice under section 143(2)

A notice shall be served on the asessee within a period of 6 months from the end of the financial year in which return is furnished. The notice requires the assessee to produce any evidence which the assessee may rely in support of the return.

If notice is sent to the assessee by registered post on last day of the period of limitation and it is served on the assessee a few days later, beyond period of limitation, it cannot be said to be validly served.

16.1.3.3 Regular Assessment [Section 143(3)]

Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him under section 143(2)(ii), either to attend his office or to produce, any evidence on which the assessee may rely in support of the return.

On the day specified in the notice issued under section 143(2) or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points and after taking into account all relevant material which Assessing Officer has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Tax has to be determined and such determination is to be made in the assessment order or computation sheet to be annexed with the assessment order. [Kalyan Kumar Ray vs. CIT]

The assessed income may be lower than the returned income. The boards circular no 549 para 5.12 dt. 31.10.1989 has been held to be ultra-vires [Gujarat Gas Co Ltd vs. JCIT(A)]

16.1.4 Best Judgement Assessment [Section 144]

Best judgement assessment that is popularly known as ex-parte assessment can be made if the assessee fails to comply with the requirement of law as following :-

(1) The assessee fails to file a return u/s 139 and has not made a return or a revised return under sub-section (4) or (5) of Section 139.

(2) He fails to comply with the terms of the notice issued u/s 142(1) or fails to comply with a direction issued u/s 142(2A).

(3) After filing a return he fails to comply with all the terms of the notice issued u/s 143(2).

The non-compliances are independent and not cumulative. A single non compliance can lead to best judgement u/s 144. In such a situation the A.O. after taking into account all relevant materials which he has gathered and after giving the assessee an opportunity of being heard shall make an assessment of income or loss to the best of his judgement and determine the sum payable by him. However, where a notice u/s 142(1) has already been issued to the assessee it will not be necessary to give him such opportunity of being heard.

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to shaw cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment.

Best judgement assessment is mandatory for any one of the defaults u/s 144 - CIT vs. Segn. Buchiah Sethy [1970] 77 ITR 539 (SC).

Where Assessing Officer, on finding that assessee had not maintained and kept any quantitative details/ stock register for goods traded in by it; that there was no evidence on record or document to verify basis of valuation of closing stock shown by assessee; and that GP rate declared by assessee during Assessment Year did not match result declared by assessee itself in previous Assessment Years, rejected assessee's books of account and resorted to best judgment assessment under section 144, it was held that since cogent reasons had been given by Assessing Officer for doing so, there was no reason to take a different view - Kachwala Gems vs. Jt. CIT 158 Taxman 71.

The assessments made on the basis of the assessee's accounts and those made on 'best judgment' basis are totally different types of assessments - *CST* vs. *H.M. Esufali H.M. Abdulai* 90 ITR 271.

The mere fact that the material placed by the assessee before the Assessing Officer is unreliable does not empower the officer to make an arbitrary order. The power to make a best judgment assessment is not an arbitrary power - *State of Orissa* vs. *Maharaja Shri B.P. Singh Deo* 76 ITR 690.

16.1.5 Power of Joint Commissioner to issue directions in certain cases [Sec. 144A]

A Joint Commissioner may, on his own motion or on a reference being made to him by the Assessing Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and such directions shall be binding on the Assessing Officer.

Provided that no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

16.1.6 Reference to Commissioner in certain cases [Section 144BA] [Applicable w.e.f. 1.4.2014]

(1) If, the Assessing Officer, at any stage of the assessment or reassessment proceedings before him having regard to the material and evidence available, considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement and to determine the consequence of such an arrangement within the meaning of Chapter X-A, then, he may make a reference to the Commissioner in this regard.

(2) The Commissioner shall, on receipt of a reference u/s 144BA (1), if he is of the opinion that the provisions of Chapter X-A are required to be invoked, issue a notice to the assessee, setting out the reasons and basis of such an opinion, for submitting objections, if any, and providing an opportunity

of being heard to the assessee within such period, not exceeding sixty days, as may be specified in the notice.

(3) If the assessee does not furnish any objection to the notice within the time specified in the notice issued under sub-section (2) of this section, the Commissioner shall issue such directions as it deems fit in respect of declaration of the arrangement to be an impermissible avoidance arrangement.

(4) In case the assessee objects to the proposed action, and the Commissioner, after hearing the assessee in the matter, is not satisfied by the explanation of the assessee, then, he shall make a reference in the matter to the Approving Panel for the purpose of declaration of the arrangement as an impermissible avoidance arrangement.

(5) If the Commissioner is satisfied, after having heard the assessee that the provisions of Chapter X-A are not to be invoked, he shall by an order in writing communicate the same to the Assessing Officer with a copy to the assessee.

(6) The Approving Panel, on receipt of reference from the Commissioner u/s 144BA (4) shall issue such directions, as it deems fit, in respect of the declaration of the arrangement as an impermissible avoidance arrangement in accordance with the provisions of Chapter X-A including specifying the Previous Year or Years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.

(7) No direction under sub-section (6) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, as the case may be.

(8) The Approving Panel may, before issuing any direction u/s 144BA (6),—

(i) if it is of the opinion that any further inquiry in the matter is necessary, direct the Commissioner to make such further inquiry or cause to make such further inquiry to be made by any other income-tax authority and furnish a report containing the results of such inquiry to it; or

(ii) call for and examine such records related to the matter as it deems fit; or

(iii) require the assessee to furnish such document and evidence as it may so direct.

(9) No direction u/s 144BA (6) shall be issued after a period of six months from the end of the month in which the reference u/s 144BA (4) was received by the Approving Panel.

(10) The Board shall, for the purposes of this section constitute an Approving Panel consisting of not less than three members, being—

(i) income-tax authorities not below the rank of Commissioner; and

(ii) an officer of the Indian Legal Service not below the rank of Joint Secretary to the Government of India.

16.1.7 Provision for constitution of alternate dispute resolution mechanism for order of the Transfer Pricing Officer, and foreign company (Section 144C) [W.e.f. 1-10-2009]

The dispute resolution mechanism presently in place is time consuming and finality in high demand cases is attained only after a long drawn litigation till Supreme Court. Flow of foreign investment is extremely sensitive to prolonged uncertainty in tax related matter. Therefore, the Act has amended the Income-tax Act to provide for an alternate dispute resolution mechanism, which will facilitate expeditious resolution of disputes in a fast track basis.

The salient features of the alternate dispute resolution mechanism are as under:—

1. The Assessing Officer shall not withstanding anything to the contrary contained in this Act, forward a draft of the proposed order of assessment (hereinafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after 1-10-2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

2. On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,
   (a) File his acceptance of the variations to the Assessing Officer; or
   (b) File his objections, if any, to such variation with,—
      (i) The Dispute Resolution Panel; and
      (ii) The Assessing Officer.
3. The Assessing Officer shall complete the assessment on the basis of the draft order, if—
   (a) The assessee intimates to the Assessing Officer the acceptance of the variation; or
   (b) No objections are received within the period specified in sub-section (2) i.e. 30 days of the receipts of draft order by the eligible assessee.
4. The Assessing Officer shall, notwithstanding anything contained in section 153 or section 153B, pass the assessment order under section 144C(3) within one month from the end of the month in which,—
   (a) The acceptance is received; or
   (b) The period of filing of objections under sub-section (2) expires.
5. The Dispute Resolution Panel shall, in a case where any objections are received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.
6. The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—
   (a) Draft order;
   (b) Objections filed by the assessee;
   (c) Evidence furnished by the assessee;
   (d) Report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
   (e) Records relating to the draft order;
   (f) Evidence collected by, or caused to be collected by, it; and
   (g) Result of any enquiry made by, or caused to be made by it.
7. The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—
   (a) Make such further enquiry, as it thinks fit; or
   (b) Cause any further enquiry to be made by any Income Tax Authority and report the result of the same to it.
8. The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

   Explanation- For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.
9. If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

10. Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

11. No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

12. No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

13. Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 or section 153B, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which the direction is received.

14. The Board may make rules for the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed, under subsection (2), by the eligible assessee.

15. According to sub-section 14A of section 144C [w.e.f. 1.4.2013], the provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing officer with the prior approval of the commissioner u/s 144BA(12).

16. For the purposes of this section,—

    (a) "Dispute Resolution Panel" means a collegium comprising of 3 Commissioners of Income Tax constituted by the Board for this purpose;

    (b) "eligible assessee" means,—

        (i) Any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

        (ii) any foreign company.

    Further, the following consequential amendments have been made—

    (i) Section 131(1) so as to provide that "Dispute Resolution Panel" shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908;

    (ii) Section 246(1)(a) has been amended so as to exclude the order of assessment passed under section 143(3) or order of re-assessment under section 147 in pursuance of directions of "Dispute Resolution Panel" as an appealable order.

    (iii) Section 253(1) has been amended to insert clause (d) so as to include an order of assessment passed under section 143(3) or order of re-assessment under section 147 in pursuance of directions of "Dispute Resolution Panel" as an appealable order.

An order passed under section 154 rectifying such order shall also be appealable to IT Act.

16.1.8 Income Escaping Assessment [Sec. 147]

If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any Assessment Year, he may, subject to the provisions of section 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the Assessment Year concerned.

Where an assessment under section 143(3) or section 147 has been made for the relevant Assessment Year, no action shall be taken under this section after the expiry of four years from the end of the relevant Assessment Year, unless any income chargeable to tax has escaped assessment for such Assessment Year by reason of the failure on the part of the assessee to make a return under section 139 or in response to the notice issued under section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that Assessment Year.

Nothing contained in the first proviso shall apply in a case where any income in relation to any assets (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any Assessment Year.

The Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Reassessment of income in relation to any asset located outside India :

The existing time limit for reassessment of 4 years from the end of the Assessment Year, shall not apply in a case where any income in relation to any asset (including financial interest in any asset located outside India) which is chargeable to tax, has been escaped assessment for any Assessment Year.

Assessing Officer empowered to touch upon any other issue for which no reasons have been recorded notwithstanding that the reasons for such issue have not been included in the reasons recorded [Section 147] [w.r.e.f. Assessment Year 1989-90]

The existing provisions of section 147 provides, inter alia, that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any Assessment Year, he may assess or reassess such income after recording reasons for re-opening the assessment. Further, he may also assess or reassess such other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section.

Sonic Courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.

With a view to further clarifying the legislative intent, the Act has inserted Explanation 3 in section 147 to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under section 148(2).

Case Law :

(i) A writ petition challenging reassessment, cannot be thrown out at the threshold on the ground that it is not maintainable - Techspan India (P.) Ltd. vs. ITO 283 ITR 212 .

(ii) If the direction by the Commissioner is to reopen the assessment under section 147 by passing the statutory formalities, that would probably amount to dictating his subordinate to act in a particular way thereby taking away the discretion vested in the subordinate - CIT vs. Abdul Khader Ahamed 156 Taxman 206.

(iii) Disclosure in wealth-tax proceedings will not suffice - Arun Kumar Maheshwari vs. ITO 144 Taxman 651.

16.1.9 Issue of notice where income has escaped assessment [Section 148]

(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within specified period, a return of his income or the income of any other person in respect of which he is assessable.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

Legal Notes

- Notice under this section is to be mandatorily served by the Assessing Officer before initiating proceedings u/s 147. The notice is served on the assessee when it is received by him.
- Notice is to be issued within the time limits prescribed by section 149. Section 149(2) states that issue

of such notice is subject to the provisions of section 151. Thus, approval for the issue of such notice is to be taken u/s 151 before its issue.

- Such notice can be issued by the Assessing Officer only after he records his reasons for doing so.
- The return to be furnished in response to such notice is treated as a return required to be furnished u/s 139 and the provisions of this Act, so far as may be, apply accordingly.
- Return in response to a notice under this section is to be furnished even if a return has been furnished earlier by the assessee under other provisions of the Act.
- Notice under this section can be issued even where an assessment u/s 143(3) has not been made but related intimations have been sent. [Ranchi Club Ltd. vs. CIT214 ITR 643]

Case Law :

(i) If reasons are supplied along with the notice under section 148(2), it shall obviate unnecessary harassment to the assessee as well as to the revenue by avoiding unnecessary litigation which will save courts also from being involved in unproductive litigation. Above all, it shall be in consonance with the principles of natural justice - *Mitilesh Kumar Tripathi* vs. *CIT* 280 ITR 16.

(ii) The notice prescribed by section 148 cannot be regarded as a mere procedural requirement. It is only if the said notice is served on the assessee that the ITO would be justified in taking proceedings against the assessee. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the ITO would be illegal and void - *Y. Narayana Chetty* vs. *ITO* 1959 35 ITR 388; *CIT* vs. *Thayaballi Mulla Jeevaji Kapasi* 66 ITR 147 ; *CIT* vs. *Kurban Hussain Ibrahimji Mithiborwala* 82 ITR 821.

(iii) Where the Appellate Assistant Commissioner set aside the reassessment on the only ground that the assessee was not afforded opportunity to put forward his case, but did not hold that the notice issued under section 148 was invalid, there would be no need for the ITO to issue a fresh notice to the assessee - *CIT* vs. *T.S.PL.P. Chidambaram Chettiar* 80 ITR 467.

(iv) Notice cannot be issued unless the return which has already been filed has been disposed of - *CIT* vs. *M.K.K.R. Muthukaruppan Chettiar* 78 ITR 69 ; *Bhagwan Das Sita Ram (HUF)* vs. *CIT* 146 ITR 563.

16.1.10 Time limit for notice [Section 149]

(1) No notice under section 148 shall be issued for the relevant Assessment Year —

(a) if four years have elapsed from the end of the relevant Assessment Year, unless the case falls under clause (b) or clause (c);

(b) if four years, but not more than six years, have elapsed from the end of the relevant Assessment Year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

(c) If four years, but not more than sixteen years, have elapsed from the end of the relevant Assessment Year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

- Time-limit applies for 'Issue' and not for service - R.K. Upadhyaya vs. Shanabhai P Patel 1987 166 ITR 163 (SC).
- Amended law will apply only if limitation has not already expired - Chandiram vs. ITO 1996 87 Taxman 418 (Raj.).

The word 'issued' in section 149 should be given its natural meaning and not the strained wider meaning of 'served'. Consequently, where the notice was issued within time but was served on the assessee after the expiry of the time-limit, it could not be held to be invalid - *R.K. Upadhyaya* vs. *Shanabhai P. Patel* 166 ITR 163 (SC); *CIT* vs. *Sheo Kumari Debi* 157 ITR 13 and *Jai Hanuman Trading Co. (P.) Ltd.* vs. *CIT* 110 ITR 36.

16.1.11 Provision for cases where assessment is in pursuance of an order on appeal, etc. [Section 150]

(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give an effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an Assessment Year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

- This section prescribes the time limit for issuance of notice u/s 148 in a special case. This section overrides the provisions of section 149. Section 149 vide sub-section (2) provides that issue of notice u/s 148 is subject to the provisions of section 151. Thus, approval u/s 151 for issue of notice u/s 148(1) is not required in a case covered by section 150 [Sukhdayal Pahwa vs. CIT [1983] 140 ITR 206 (MP)].
- Notwithstanding the time limits prescribed by section 149, notice u/s 148 can be issued at any time for making assessment, etc., to give effect to any finding or direction referred to in sub-section (1). The order referred to therein may be an order u/s 250, 254, 260, 262, 263 or 264.
- The power conferred by sub-section (1) to the revenue for making assessment, etc., is withdrawn in a special case covered by sub-section (2). This covers a case where the order for an Assessment Year is made such order being the subject matter of an appeal, reference or revision, the finding or direction of which results in an assessment, etc., referred to in sub-section (1). However, at the time such order is made, the assessment etc, in respect of that A.Y. is itself time barred by virtue of any other provision of this Act. Sub-section (2) applies to such cases.
- Also see Explanations 2 and 3 to section 153.

16.1.12 Sanction for issue of notice [Section 151]

(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself

16.1.13 Other provisions [Section 152]

(1) In an assessment, reassessment or recomputation made under section 147, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment.

(2) Where an assessment is reopened under section 147, the assessee may, if he has not impugned any part of the original assessment order for that year either under sections 246 to 248 or under section 264, claim that the proceedings under section 147 shall be dropped on his showing that he had been assessed on an amount or to a sum not lower that what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made.

Provided that in so doing he shall not be entitled to reopen matters concluded by an order under section 154, 155, 260, 262 or 263.

16.1.14 Time limit for completion of assessment and reassessment [Section 153]

Regular assessment u/s 143 or 144 must be made within two years of the relevant Assessment Year or one year from the end of the Financial Year in which the return was filed whichever is later.

The provisions of Section 153 and 153B has been amended to provide an additional 3 months time limit for completion of assessment over the previous time line. The present position is appended below :

Proceeding under section	Previous allowed time limit	Amended time limit
143 or 144	21 months from the end of the Assessment Year	24 months from the end of the Assessment Year
143 or 144 and 92CA (Transfer pricing)	33 months from the end of the Assessment Year	36 months from the end of the Assessment Year
148	9 months from the end of the financial year in which notice was issued	12 months from the end of the financial year in which notice was issued
148 & 92CA	21 months from the end of the financial year in which notice was issued	24 months from the end of the financial year in which notice was issued
250, 254 or 263	9 months from the end of the financial year in which order was received	12 months from the end of the financial year in which order was received
250,254,263 & 92CA	21 months from the end of the financial year in which order was received	24 months from the end of the financial year in which order was received

Time limit and exclusion of time in computing the period of limitation for completion of assessments and reassessments [Section 153 & 153B] [w.e.f. 1.6.2013]

The Finance Act, 2013 has made the following changes in sections 153 and 153B:

(i) Where a reference is made to TPO under section 92CA(1) during the course of proceeding for assessment of A.Y. 2009-10 and subsequent assessment years, the period of completion of assessment under section 143(3)/144 shall be 3 years whether reference is made to TPO before or after 1.7.2012.

(ii) Where notice under section 148 was served on or after 1.4.2010 and during the course of proceeding for the assessment/reassessment, etc. a reference in made to T.P.O. under section 92CA(1), the period of completion of assessment/ reassessment shall be two years whether reference is made to T.P.O. before or after 1-7-2012.

(iii) Where fresh assessment/reassessment has to be made on directions given under sections 254, 263 or 264 and during the course of such assessment or reassessment a reference is made to T.P.O. under section 92CA the period of completion of assessment/reassessment shall be two years whether reference to T.P.O. is made before or after 1.7.2012.

(iv) Clause (iii) of Explanation 1 to section 153 has been amended so as to provide that the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 142(2A) and

(a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or

(b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner,

shall be excluded in computing the period of limitation for the purposes of section 153.

(v) Clause (iv) of Explanation 1 to section 153 has been newly inserted by Finance (No. 2) Act, 2014 so as to provide that the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer, or".

(vi) Clause *(viii)* of *Explanation* 1 to section 153 has also been amended so as to provide that the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less, shall be excluded in computing the period of limitation for the purposes of section 153.

Similar amendments have also been made in the *Explanation* to section 153B of the Income-tax Act relating to time limit for completion of search assessment and exclusion of time.

16.1.15 Assessment in case of search or requisition [Section 153A]

Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(*a*) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each Assessment Year falling within six Assessment Years referred to in clause (*b*), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(*b*) assess or reassess the total income of six Assessment Years immediately preceding the Assessment Year relevant to the Previous Year in which such search is conducted or requisition is made.

The Assessing Officer shall assess or reassess the total income in respect of each Assessment Year falling within such six Assessment Years.

It is provided that assessment or reassessment, if any, relating to any Assessment Year falling within the period of six Assessment Years referred to in section 153A(1) pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in case where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six Assessment Years immediately preceding the Assessment Year relevant to the Previous Year in which search is conducted or requisition is made.

Except as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

In an assessment or reassessment made in respect of an Assessment Year under this section, the tax shall be chargeable at the rate or rates as applicable to such Assessment Year.

Assessment of income of any other person [Section 153C]

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A.

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153Ashall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

16.1.16 Prior approval necessary for assessment in cases of search or requisition [Section 153D]

No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each Assessment Year referred to in clause (*b*) of section 153A or the Assessment Year referred to in clause (*b*) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner."

QUESTIONS & ANSWERS ON ASSESSMENT PROCEDURE

Question 1: What is a protective assessment under Income-tax law? What is the procedure followed for the recovery of tax in such cases?

Answer: A protective assessment is made in a case where there are doubts relating to the true ownership of the income. If there is an uncertainty about the taxing of an income in the hands of Mr. A or Mr. B, then at the discretion of the Assessing Officer, the same may be added in the hands of one of them on protective basis. This is to ensure that on finality, the addition may not be denied on the ground of limitation of time. Once finality regarding the identity of the tax payer to be taxed is established, the extra assessment is cancelled. But the Department cannot recover the tax from both the assessees in respect of the same income. Penalty cannot be imposed on the strength of a protective assessment.

Question 2: Joseph, engaged in profession, filed his return of income for Assessment Year 2016-17 on 15th November, 2016. He disclosed an income of ₹4,00,000 in the return. In February, 2017 he discovered that he did not claim certain expenses and filed a revised return on 3rd February, 2017 showing an income of ₹1,80,000 and claiming those expenses. Is the revised return filed by Joseph acceptable?

Answer: Joseph is engaged in profession. The due date for filing income tax return for Assessment Year 2016-17 as per section 139(1) of the Income-tax Act is 30th September, 2016 if his accounts are required to be audited under any law. The due date is 31st July, 2016 if the accounts are not required to be audited under any law.

The return was filed beyond the due date prescribed in section 139(1). The return so filed is covered by section 139(4) and the time limit is one year from the end of the relevant Assessment Year. The Apex court in *Kumar Jagadish Chandra Sinha vs. CIT 220 ITR 67 (SC)* has held that a return filed under section 139(4) is not eligible for revision and hence a revised return cannot be filed.

Hence, the revised return filed by Joseph is not valid as the original return was not filed before the due date mentioned in section 139(1).

Question 3: An assessee filed a return of income on 31.8.2016 in respect of Assessment Year 2016-17 disclosing an income of ₹5 lakhs from business. It was not accompanied by proof of payment of tax due on self-assessment. Discuss the validity of such a return.

Answer : As per Explanation to sub-section (9) of section 139 a return is regarded as defective unless it is accompanied by proof of tax deducted at source, advance tax and tax on self-assessment, if any, claimed to have been paid. Therefore, the return is prima facie defective. It is not invalid at that stage. On receipt of the return, the Assessing Officer has to intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation or within such further period which, on application by the assessee, he may, in his discretion, allow. If the defect is not rectified within the said period, the return will be treated as an invalid return and the provisions of the Income-tax Act shall apply, as if the assessee has failed to furnish the return.

Also, it may be noted that section 140A(3) says that if an assessee fails to pay tax or interest on self assessment he shall be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid and all the provisions of the Act shall apply accordingly.

Question 4: If an assessment is remanded back to Assessing Officer, can he introduce new sources of income for assessment?

Answer: Where the assessment is set aside by the Tribunal and the matter remanded to the Assessing Officer, it is not open to him to introduce into the assessment new sources of income so as to enhance the assessment. Any power to enhance is confined to the old sources of income which were the subject matter of appeal [Kartar Singh vs.CIT (1978) 111 ITR 184 (P &H)].

Question 5: Can Department make fresh computation, once the assessment is made final?

Answer: It is now a well settled principle that an assessment once made is final and that it is not open to the department to go on making fresh computation and issuing fresh notices of demand to the end of all time. [ITO vs.Habibullah (S.K.) (1962) 44 ITR 809 (SC)]

Question 6: Can an Assessing Officer make an assessment for a year other than the assessment year for which the return is filed?

Answer: It is not open to the Assessing Officer to make assessment in respect of a year other than the Assessment Year for which the return is filed. Thus, in respect of a return filed for Assessment Year 2014-15, assessment cannot be made for the Assessment Year 2015-16. [CIT vs. Amaimugan Transports Pvt. Ltd. (1995) 215 ITR 553 (Mad.)]

Question 7: Can an Assessing Officer assess the income below the returned income or assess the loss higher than the returned loss?

Answer: The Assessing Officer cannot assess income under section 144 for an assessment below the returned income or cannot assess the loss higher than the returned loss.

Question 8: Can incomplete, unsigned or unverified return lead to best judgement assessment?

Answer: Incomplete, unsigned or unverified return may lead to best judgement assessment. A best judgement assessment can be made when the return is filed woefully incomplete or not signed and verified. [Behari Lal Chatterji vs.CIT (1934) 2 ITR 377 (All.)]

Question 9: Can assessee follow different method of accounting for different businesses?

Answer: If an assessee is carrying on more than one business, he can follow cash system of accounting for one business and mercantile system (accrual system) of accounting for other business. Similarly, if he had more than one sources of income under the head Income from Other Sources, he can follow accrual system for one source of income under the head Income from Other Sources, and cash system for other sources of income.

Question 10: What can Assessing Officer do when the assessment is not set aside for fresh assessment but annulled?

Answer: Where an assessment is not set aside for fresh assessment but annulled, no extended limitation is available. However, if the original time limit is available, the Assessing Officer may proceed from the stage at which illegality which resulted into the annulment of the assessment supervened and make the assessment afresh. [CIT vs.Mrs.Ratanbai N.K. Dubhash (1998) 230 ITR 495(Bom.)]

Study Note - 17

ASSESSMENT OF VARIOUS ENTITIES & TAX PLANNING

This Study Note includes

17.1 ASSESSMENT OF INDIVIDUALS

Tax incidence on Individuals

While computing taxable Income of an Individual following points should be considered.

Nature of Income	Tax Treatment
Income earned by the taxpayer	Except the following all other incomes shall be included (a) Income exempt under sections 10 to 13A (b) Incomes to be included in income of others by virtue of section 60 to 64.
Share of Profit from Hindu Undivided Family	It is exempt under section 10(2)
Share of Profit from a firm assessed as firm	It is exempt under section 10(2A)
Salary and Interest from the aforesaid firm	These are taxable as business Income
Share of profit from an Association of Persons/Body of Individuals	If the association/body is taxable at the maximum marginal rate (or at higher rate), then share of profit is not taxable in hands of recipient.
Income earned by others and included in the income of the taxpayer by virtue of section 60 to 64	Such income shall be included in the income of the taxpayer.

Special Provisions for persons governed by Portuguese Civil Law (Section 5A)

This Section is applicable for the appropriation of income between spouses governed by the Portuguese Civil Code which is in force in the state of Goa and Union territories of Dadra and Nagar Haveli and Daman and Diu. By virtue of this section, income from all other sources, except from salary, should be apportioned equally between husband and wife. The income so apportioned will be included separately in the total income of the husband and of the wife and the remaining provisions of act shall apply accordingly. Salary Income is, however, taxable in the hands of the spouse who has actually earned it.

Even the income from profession will be apportioned equally between the husband and the wife- CIT vs. Datta vs. Gaitonde [2002] 241 ITR 241/108/ taxman 533(Bom).

Taxable income shall be computed as follows :

Step 1 - Income under the different heads of income -First find out income under the five heads of income

Step 2 - Adjustment of losses of the current year and earlier years- Losses should be set off according to the provisions of sections 70 to 78. The income after adjustment of losses is the gross total income.

Step 3 - Deduction from gross total income- Deductions specified under Chapter VI A should be considered while calculating the gross total income.

Step 4 - Rounding off- The balance should be rounded off to the nearest ₹ 10. It is called as net income or taxable income or total income.

Tax Liability :

Normal Rates of Income Tax

I. In the case of every Individual (including Non Resident) or Hindu Undivided Family or AOP/BOI (other than a co-operative society) whether incorporated or not, or every Artificial Judicial Person

Upto ₹ 2,50,000	Nil
₹ 2,50,001 to ₹ 5,00,000	10%
₹ 5,00,001 to ₹ 10,00,000	20%
Above ₹ 10,00,000	30%

II. In the case of every individual, being a resident in India, who is of the age of 60 years or more at any time during the Previous Year. [Senior Citizen]

Upto ₹ 3,00,000	Nil
₹ 3,00,001 to ₹ 5,00,000	10%
₹ 5,00,001 to ₹ 10,00,000	20%
Above ₹ 10,00,000	30%

III. In the case of every individual, being a resident in India, who is of the age of 80 years or more at any time during the Previous Year. [Super Senior Citizen]

Upto ₹ 5,00,000	Nil
₹ 5,00,001 to ₹ 10,00,000	20%
Above ₹ 10,00,000	30%

Note : The amount of income tax computed applying the above rates and special rates u/s 111A and 112 shall be increased by a surcharge at the rate of 12% of such income tax in case the total income exceeds ₹ 1 crore.

'Education Cess' @ 2%, and 'Secondary and Higher Education Cess (SHEC)' @ 1% on income tax shall also be chargeable.

Calculation of Tax Liability:

Step 1 – Determine Net Income and tax payable thereon at the slab rate.

Step 2 – Less rebate u/s 87A.

Step 3 – Add surcharge @ 12% if the total income exceeds ₹ 1 crore.

Step 4 – Add education cess and secondary and higher secondary education cess.

Step 5 – Deduct rebate u/s 86, 89, 90,90A and 91

Step 6 – Add interest payable (if any)

Step 7 – Deduct amount of prepaid taxes paid (Advance Tax, Tax Deducted at Source, etc.)

The Balance so arrived is the amount of tax to be paid.

Note: (i) From the Assessment Year 2013-14, tax payable (i.e. amount arrived at Step 3) cannot be less than 18.5 percent of "Adjusted Total Income" in some Specified Cases.

(ii) The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Special Provisions relating to non-residents [Section 115C to 115-I]

The benefit of special provisions can be claimed by non-resident Indians. The following are non-resident Indians for the purpose:

(a) citizen of India who is a non-resident ;

(b) a person of Indian origin who is a non-residen

A person shall be deemed to be of Indian origin if he or either of his parents or any of his grandparents, was born in an undivided India.

The Provisions of Section 115C to 115-I are applicable only in respect of the following incomes derived by a non resident Indian:

(a) Investment income derived from a "foreign exchange assets"; and

(b) Long Term Capital Gains on sale or transfer of "foreign exchange assets".

Foreign Exchange Asset - It means those "specified asset" which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange;

The following are the "specified assets":

(a) shares in an Indian Company (public or private)

(b) debentures issued by an Indian Company which is not a Private Company ;

(c) deposits with an Indian Company which is not a Private Company, it may be even deposit with SBI or any other Banking Company;

(d) any security of the Central Government ; and

(e) such other asset as the Central Government may specify in this behalf by notification in the Official Gazette.

Investment Income

In computing the Investment income of a non-resident Indian, no deduction in respect of any expenditure or allowance shall be allowed under any provision of the Act. Moreover, no deduction under Sections 80C to 80U shall be allowed in respect of investment income of non–resident Indians.

Long Term Capital Gain

Long Term Capital Gain on sale or transfer of foreign exchange assets shall be calculated subject to:

1. The benefit of Indexation is not available for the sale or transfer of foreign exchange assets.
2. The non-resident Indian can claim exemption under section 115F by investing sale consideration in another asset.
3. No deduction is permissible under section 80C to 80U in respect of Long Term Capital Gain.

Tax treatment on Investment and Long Term Capital Gain:

Non-resident Indians are chargeable to tax on investment and Long Term Capital Gain at the rate of 20 percent and 10 percent respectively. (plus surcharge, education cess and secondary and higher secondary education cess)

General Provisions —

Rate of Tax — Similar to resident assessees.

Special rates of tax on Dividends, interest income from units of Mutual Fund and UTI, bonds or shares purchased in foreign currency and Capital Gains arising from their transfer :

- 20% of the dividends [which have not been subjected to additional Income Tax u/s 115-O] [other than dividends mentioned in clause (iv)];
- 5% of interest received from an infrastructure debt fund referred to in Section 10(47) or interest of the nature and extent referred to in Section 194LC/194LD.
- 20% of the interest received from Government or an Indian concern on monies borrowed or debt incurred in foreign currency;
- 20% of the income received in respect of units purchased in foreign currency, of a Mutual Fund specified u/s 10(23D) or of the Unit Trust India;
- 10% of the interest or dividends [which have not been subjected to additional income tax u./s 115-O], in respect of bonds or Global Depository Receipts in an Indian company purchased in foreign currency and issued under the Foreign Currency Convertible Bonds and Ordinary shares (Through Depository Receipt Mechanism) Scheme, 1993 (commonly known as Euro Issues/Euro Bonds) or in respect of bonds or Global Depository Receipts issued against shares of a public sector company sold by the Government to the non-resident in foreign currency; and
- 10% of the income by way of royalty or fees for technical services, if any, included in the total income.
- 10% of the Long-term Capital Gains arising from the transfer of the aforesaid bonds or Global Depository receipts.

Filing of return — Similar to resident assessees :

However, a non-resident shall not be required to file a return of income u/s. 139(1), if his total income consists only of income subject to special rates of tax as mentioned in rate of tax under clauses (iv) supra and the tax has been deducted there from at source.

Return of Income not to be filled in certain cases:

Where a non-resident Indian has income only from a foreign exchange asset or income by way of Long Term Capital Gains arising on transfer of a foreign exchange asset, or both, and tax deductible at source from such income has been deducted, he is not required to file the return of income under section 139(1).

The income from foreign exchange assets and Long Term Capital Gains arising on transfer of such assets would be treated as separate block and charged to tax at a flat rate as explained above.

If the non-resident Indian has other Income in India, such other income is treated as an altogether separate block and charged to tax in accordance with other provisions of the Act.

Benefit available even after the assessee becomes resident – These provisions are as follows:

1. A non-resident Indian in any Previous Year becomes assessable as resident in India in any subsequent year.
2. He may furnish to the Assessing Officer a declaration in writing(along with his return of income under section 139 for the Assessment Year for which he is so assessable to the effect that the special

provisions shall continue to apply to him in relation to the investment income derived from any foreign exchange asset.

3. The foreign exchange assets for this purpose are debentures and deposit with an Indian public limited company and Central Government securities.

The special provisions shall continue to apply for that Assessment Year and for every subsequent Assessment Year till the transfer or conversion (otherwise than by transfer) into money of such assets.

Special Provisions not to apply if the assessee so chooses (Section 115-I)

A non-resident Indian may opt that the special provisions should not apply to him by making a declaration to that effect in his return of income for the relevant Assessment Year. In such case the whole of his Income (including income from foreign exchange assets and Long Term Capital Gains arising on transfer of a foreign exchange asset) is chargeable to tax under the general provisions of the Act.

17.2 ASSESSMENT OF HINDU UNDIVIDED FAMILY (HUF)

U/s 4 of the Income Tax Act, 1961, Income-tax is payable by 'every person'. 'Person' includes a 'Hindu Undivided Family' as defined in sec. 2(31). The definition of 'Hindu Undivided Family' is not found in the Income-tax Act. Therefore the expression 'Hindu Undivided Family' must be construed in the sense in which it is understood under the 'Hindu Law' [Surjit Lal Chhabda vs. CIT 101 ITR 776(SC)].

According to Hindu Law, 'Hindu Undivided Family' is a family which consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. A 'Hindu Undivided Family' is neither the creation of law nor of a contract but arises from status.

A Hindu coparcenary includes those persons who acquire by birth an interest in joint family property. Only a male member of a family can be a coparcener while the membership of a HUF consists of both males and females. All the coparceners of the family constitute what is called a 'Coparcenery'. All the coparceners are members of a HUF but all members of a HUF are not coparceners. A coparcener of a joint family, who acquires by birth an interest in the joint property of the family, whether inherited or otherwise acquired by the family, may have a right to enforce partition whereas the members of the family who are not coparcenars have no right to enforce partition. When a partition takes place, member (mother or widow) of the joint family may get a share equal to the sons and also it is necessary to provide for maintenance and marriage of the unmarried daughter out of family property.

There are two schools of Hindu Law- (1) Mitakshara and (2) Dayabhaga. Under the Mitakshara school, each son acquires by birth an equal interest with his father in the ancestral property. Under the Dayabhaga School which prevails in West Bengal and Assam, a son does not acquire by birth in ancestral property. He acquires interest only on the death of his father. Father enjoys an absolute right to dispose of the property of the family according to his desire. After the death of father, his son does not, by operation of law, become members of the joint family. The sons remain as co-owners with definite shares in the properties left by father unless they decide to live as a joint family.

Case Laws:

(i) A single person, male or female, cannot constitute a Hindu Undivided Family. An individual, who has obtained a share on partition of a joint family, has potentialities of creating a joint family; but until he marries, he alone cannot be considered as a joint family [C. Krishna Prasad vs. CIT97 ITR 493].

(ii) A joint family may consist of a single male member with his wife and daughter(s) and it is not necessary that there should be two male members to constitute a joint family [Gowli Buddanna vs. CIT 60 ITR 193].

Jain & Sikh families are not governed by Hindu Law. However, for the purpose of Income tax Act, such families are treated as 'Hindu Undivided Families'.

The income of a joint Hindu family may be assessed in the status of HUF if the following conditions are satisfied:-

(i) There should be a coparcenership

(ii) There should be a joint family property which consists of ancestral property, property acquired with the aid of ancestral property and property transferred by its members. It may be pointed out that once a joint family income is assessed as that of Hindu Undivided Family, it will continue to be assessed as such in future years till partition is claimed by its coparceners.

Under the Hindu Law, ancestral property is the property which a person inherits from any of these three immediate male ancestors, i.e. his father, grandfather and great grandfather. Income of ancestral property is taxable as income of HUF in the following cases:

(i) family of husband and wife without any children;

(ii) family of two widows of deceased brothers;

(iii) family of two or more brothers;

(iv) family of uncle and nephew;

(v) family of mother, son and son's wife;

(vi) family of a person and his late brother's wife;

(vii) family of widow mother and her sons.

While computing income of a Hindu Undivided Family one should give due consideration of the following:

(i) Where a member of HUF converts his self acquired property into joint family, income from such property shall not be treated as income of HUF u/s. 64(2). It shall continue to be taxed in the hands of the transferor who is the member of the HUF.

(ii) Income from an impartible estate is taxable in the hands of the holder of the estate and not in the hands of HUF.

(iii) Income from Stridhan of a woman is not taxable in the hands of HUF.

(iv) Personal income of members cannot be treated as income of HUF.

(v) Where the funds of HUF are invested in a company or a firm, fees or remuneration received by the member as a director or a partner in the company or a firm may be treated as income of HUF in case the fees and remuneration is earned essentially as a result of investment funds.

(vi) Where remuneration is paid by HUF to Karta or any other member for services rendered by him in conducting family's business, the remuneration is deductible provided the remuneration is paid :

  (a) under a valid bonafide agreement;

  (b) in the interest of, and expedient for the family business, and

  (c) genuine and not unreasonable.

Case law:

Remuneration and commission received by the Karta of HUF on account of his personal qualifications and exertions and not on account of investments of the family funds in the company cannot be treated as income of HUF [Subbiah Pillai (K.S.) vs. CIT 103 Taxman 400/237 ITR 11].

Taxable income shall be computed as follows :

Step 1 - Income under the different heads of income - First find out income under the five heads of income

Step 2 - Adjustment of losses of the current year and earlier years - Losses should be set off according to the provisions of sections 70 to 78. The income after adjustment of losses is the gross total income.

Step 3 - Deduction from gross total income - Deductions specified under Chapter VI A should be considered while calculating the gross total income.

Step 4 - Rounding off - The balance should be rounded off to the nearest ₹ 10. It is called as net income or taxable income or total income.

Calculation of Tax Liability:

Step 1 – Determine Net Income and tax payable thereon at the slab rate.

Step 2 – Add surcharge @12% if the total income exceeds ₹ 1 crore

Step 3 – Add education cess and secondary and higher secondary education cess

Step 4 – Deduct rebate u/s 86, 90,90A and 91

Step 5 – Add interest payable (if any)

Step 6 – Deduct amount of prepaid taxes paid (Advance Tax, Tax Deducted at Source, etc.)

The Balance so arrived is the amount of tax to be paid.

Note: (i) From the Assessment Year 2013-14, tax payable (i.e. amount arrived at Step 3) cannot be less than 18.5 percent of "Adjusted Total Income" in some Specified Cases.

(ii) The total amount payable as income-tax and surcharge on total inocme exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more then the amount of income that exceeds ₹ 1 crore.

PARTITION OF HUF

'Partition' may be a (i) total or complete partition (ii) partial partition.

Where all the properties of the family are divided amongst all the members of the family, and the family ceases to exist as an undivided family, it is known as total or complete partition.

On the other hand, where one or more coparceners of the HUF may separate from others and the remaining coparceners may continue to be joint or some of the properties are divided and the balance remain joint it is known as partial partition.

W.e.f. 31st December, 1978 partial partition is not recognised for tax purposes and as such the joint family shall continue to be liable to be assessed as if no such partial partition had taken place. Each member of such family, immediately before such partial partition and the family shall be jointly and severally liable for any sum payable under the Act. [Sec. 171(9)]

17.3 ASSESSMENT OF FIRMS

From the Assessment Year 1993-94 partnership firm has been classified for the purpose of computation of income and its assessment as under:

(a) Partnership Firm assessed as such (PFAS)

(b) Partnership Firm assessed as an Association of Person (PFAOP).

Provisions relating to assessment of firms and partners are analyzed as under :

Specific provisions to firm assessed as an AOP

Particulars	Sections
Disallowance of salary and interest to partner	40(ba)
Method of computing partner's share in the income of PFAOP	67A
Rate of tax in respect of income of AOP/BOI	167B
Taxability of partner's share of income	86, 110

Assessment of firms and conditions to be fulfilled to avail the status of PFAS [Sec. 184]

Where a firm wants to avail the status of PFAS, it has to satisfy the following conditions:-

(i) The firm shall be evidenced by an instrument and the individual shares of the partner shall be specified therein. [Sec. 184(1)]

(ii) A certified copy of the instrument of partnership shall accompany the return of income of the Previous Year relevant to the Assessment Year 1993-94 or subsequent year in respect of which assessment of the firm is first sought. [Sec.184(2)]

(iii) Wherever during a Previous Year a change takes place in the constitution of the firm or in the sharing ratio of partners, a certified copy of the revised instrument of partnership be submitted along with the return of income of the concerned year of assessment. [Sec. 184(4)]

(iv) There should not be any failure on the part of the firm as is specified in Sec. 144 [Sec. 184(5)]

It may be mentioned that once a firm is assessed as PFAS after fulfillment of the above conditions, it will be assessed as PFAS, for every subsequent year provided there is no change in either firm's constitution or partner's profit sharing ratio. However, there should not be any failure mentioned in Sec. 144. [Sec. 184(3)]

A partnership deed shall be certified in writing by all the major partners. Where, however, the firm is dissolved and the return is filed after its dissolution, then the copy of deed may be certified by all the major partners in the firm immediately before its dissolution. Where a partner is dead, then it will have to be certified by his legal representative. [Sec. 184(2) Expl.]

Computation of Income

The following provisions should be given due consideration while computing income of a firm-

(i) Provision relating to deductibility of remuneration paid to partners by firm.

(ii) Provision relating to deductibility of interest paid to partners by firm.

Taxable income shall be computed as follows :

Step 1 - Income under the different heads of income - First find out income under the five heads of income

Step 2 - Adjustment of losses of the current year and earlier years - Losses should be set off according to the provisions of sections 70 to 78. The income after adjustment of losses is the gross total income.

Step 3 - Deduction from gross total income - Deductions specified under Chapter VI A should be considered while calculating the gross total income.

Step 4 - Rounding off - The balance should be rounded off to the nearest ₹ 10. It is called as net income or taxable income or total income.

Calculation of Tax Liability:

Step 1 – Determine Net Income and tax payable thereon at a normal rate of 30%.

Step 2 – Add surcharge @ 12% if the total income exceeds ₹ 1 crore.

Step 3 – Add education cess and secondary and higher secondary education cess

Step 4 – Deduct rebate u/s 86, 90, 90A and 91

Step 5 – Add interest payable (if any)

Step 6 – Deduct amount of prepaid taxes paid (Advance Tax, Tax Deducted at Source, etc.)

The Balance so arrived is the amount of tax to be paid.

Note: (i) From the Assessment Year 2013-14, tax payable (i.e. amount arrived at Step 3) cannot be less than 18.5 percent of "Adjusted Total Income" in some Specified Cases.

(ii) The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

17.4 ASSESSMENT OF LIMITED LIABILITY PARTNERSHIP (LLP)

A Limited Liability Partnership (LLP) is a body corporate formed or incorporated under the Limited Liability Partnership Act, 2008. It is a legally separate entity from its partners. It has perpetual succession i.e. any change in its partners will not have any impact on its existence, rights and liabilities. It is a corporate business form which gives benefits of limited liability of a company and the flexibility of a partnership. It contains elements of both a company as well as a partnership firm and thus it is called a hybrid between a partnership and a company. The Income-tax Act provides for the same taxation regime for a Limited Liability Partnership as is applicable to a partnership firm. It also provides tax neutrality (subject to fulfilment of certain conditions) to conversion of a Private Limited Company or an Unlisted Public Company into an LLP. However, Presumptive Tax Scheme u/s 44AD is not applicable to LLP.

An LLP being treated as a firm for taxation, has the following tax advantages over a company under the Income-tax Act :–

(i) it is not subject to Minimum Alternate Tax;

(ii) it is not subject to Dividend Distribution Tax (DDT);

(iii) It is not subject to Wealth Tax.

In order to preserve the tax base vis-a-vis profit-linked deductions, a new Chapter XII-BA has been inserted in the Income-tax Act containing special provisions relating to certain Limited Liability Partnerships.

Calculation of Total income:

Step 1 - Income under the different heads of income - First find out income under the five heads of income

Step 2 - Adjustment of losses of the current year and earlier years - Losses should be set off according to the provisions of sections 70 to 78. The income after adjustment of losses is the gross total income.

Step 3 - Deduction from gross total income - Deductions specified under Chapter VI A should be considered while calculating the gross total income.

Step 4 - Rounding off - The balance should be rounded off to the nearest ₹ 10. It is called as net income or taxable income or total income.

Remuneration and interest to partners are deductible if condition of section 40(b) and 184 are satisfied.

Taxability:

Step 1 – Determine Net Income and tax payable thereon at a normal rate of 30%.

Step 2 – Add surcharge @ 12% if the total income exceeds ₹ 1 crore.

Step 3 – Add education cess and secondary and higher secondary education cess

Step 4 – Deduct rebate u/s 86, 90, 90A and 91

Step 5 – Add interest payable (if any)

Step 6 – Deduct amount of prepaid taxes paid (Advance Tax, Tax Deducted at Source, etc.)

The Balance so arrived is the amount of tax to be paid.

Note: (i) From the Assessment Year 2013-14, tax payable (i.e. amount arrived at Step 3) cannot be less than 18.5 percent of "Adjusted Total Income" if certain conditions are satisfied.

(ii) The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Share of profit in LLP is not taxable in the hands of partners. However, remuneration and interest are taxable under section 28 under the "Profits and Gains of Business or Profession" in the hands of partners to the extent these are allowed as deduction in the hands of LLP.

17.5 ASSESSMENT OF ASSOCIATION OF PERSONS / BODY OF INDIVIDUALS

Association of Persons :

Where two or more persons voluntarily joint together in a common purpose or action with the object of producing income, Profits and Gains, they are said to have formed an Association of Persons.

Body of Individuals:

It is a conglomerate of individuals who happen to have come together to carry on sum activity with a view to earn income i.e. co-heirs inheriting shares or securities.

Distinction between AOP & BOI :

(i) AOP may consist of non-individuals but BOI has to consist of individuals only

(ii) An AOP is a voluntary combination of persons in a joint enterprise or common action to produce income whereas in case of BOI will only consist of two or more persons, may or may not have any common object.

(iii) A BOI may become an AOP, but not vice versa.

Share of members of AOP/BOI shall be deemed to be indeterminate or unknown, if such shares (in relation to the whole or any part of the income) are indeterminate or unknown on the date of formation of such AOP/BOI or any time thereafter.

Any payment of interest, salary, bonus, commission or remuneration by the AOP/BOI to a member is not allowable as deduction. Where interest is paid by AOP/BOI to a member who has also paid interest to the AOP/BOI, the amount of interest to be disallowed will be limited to the net amount of interest paid by the AOP/BOI. [Sec. 40(ba)]

Tax Rates :

	Where shares of members are determinate and known	Where shares of members are indeterminate or unknown
1. None of the members having taxable income	At the rates applicable to individual	At the maximum marginal rate.
2. Any member having income.	At the maximum marginal rate	At the maximum taxable marginal rate.

The amount of tax calculated shall be increased by a surcharge at the rate of 12% of such income tax in case the total income exceeds ₹1 crore.

However, total amount payable as income tax and surcharge on total income exceeding ₹1 crore shall not exceed the total amount payable as income-tax on a total income of ₹1 crore by more than the amount of income that exceeds ₹1 crore.

Maximum Marginal Rate means the rate of tax (including surcharge, if any) applicable to the highest slab of income in case of individuals. [Sec.2(29C)]

From the Assessment Year 2013-14, tax payable (i.e. tax liability) cannot be less than 18.5 percent of "Adjusted Total Income" in some specified cases.

Ascertainment of member's share in AOP/BOI where shares are determinate and its taxability [Sec. 67A, 86 & 110]

(i) Ascertainment of share in AOP/BOI [Sec. 67A]	₹
Total income of the AOP/BOI	***
Less: Interest, salary, commission or other remuneration paid to any member	***
Balance apportionable to the members in proportion to their shares	***
Share of income allotted to a member	***
Add: Salary, interest, commission or other remuneration received by the member of the AOP or BOI	***
Total share	***
Less: Interest paid on capital borrowed for the purpose of investment in the AOP/BOI	***
Net assessable share income	***

(ii) Tax treatment of share income of members [Sec. 86 and Sec. 110]

In computing total income of an assessee, there shall be included share income of a member of an AOP or BOI subject to Sec. 86 and 110 of the I.T. Act.

The assessment of the members of AOP or BOI depends on whether the AOP or BOI is chargeable to tax at the maximum marginal rate or at slab rate or is not chargeable to tax at all.

Tax-treatment in the three cases is discussed below:

(i) Where AOP or BOI is chargeable to tax at a maximum marginal rate or any higher rate, the share of profit of a member is exempt from tax. Thus, it is not to be included in the total income of the member [Sec. 86(a)]

(ii) Where AOP or BOI is not taxed at the maximum marginal rate but it is taxed at slab rates, the share of profit of a member from AOP or BOI is to be included in the total income of the member only for rate purposes. The member is entitled to a rebate of tax on the entire share of profit at the average rate of tax applicable to total income. [Sec. 86(b)].

(iii) Where AOP or BOI is not chargeable to tax at all, the share of profit of a member from AOP or BOI is included in his total income and he will pay tax on it. He is not entitled to any rebate of tax on such profits [Proviso to Sec. 86(b)].

Taxation of AOP/BOI [Sec 167B]	**Tax treatment of share income in the hands of members of AOP/BOI [Sec. 86 & 110]**
1. AOP or BOI is taxed at maximum marginal rate or at a higher rate.	Share income of the member is not taxable.
2. AOP or BOI is taxed at normal rates applicable	Share income computed u/s 67A is included into an Individual. The total income of the member but rebate u/s 110 at the average of tax in respect of such share income has to be allowed.
3. AOP or BOI is not taxed at all.	Share income will be included in the total income of the member and taxed at the rates applicable to him.

"Average rate of Income-tax" is defined u/s. 2(10) to mean the rate arrived at by dividing the amount of Income-tax calculated on the total income, by such total income.

17.6 ASSESSMENT OF COMPANIES

In computing tax incidence companies are classified as follows :

(i) Domestic Company

(ii) Foreign Company

'Company' means —

(i) any Indian company; or

(ii) body corporate incorporated outside India under the laws of a foreign country; or

(iii) any institution, association or a body which is assessed or was assessable/assessed as a company for any Assessment Year commencing on or before 1.4.1970; or

(iv) any institution, association or body whether incorporated or not and whether Indian or non-Indian which is declared by general or special order of the Central Board of Direct Taxes to be a company. [Sec. 2(17)]

'Domestic Company' means —

(i) an Indian company; or

(ii) any other company which, in respect of its income liable to tax under the Act, has made the following prescribed arrangements for the declaration and payment of dividends within India in accordance with Sec. 194 read with Rule 27 of the Rules:

  (a) The share register of the company for all shareholders should be regularly maintained at its principal place of business in India, in respect of any Assessment Year, from 1st April of the relevant Assessment Year.

  (b) The general meeting for passing of accounts of the relevant Previous Year and for declaring dividends in respect thereof should be held only at a place within India.

  (c) The dividends declared, if any, should be payable only within India to all shareholders. [Sec. 2(22A)]

'Foreign Company' means company which is not a domestic company. [Sec. 2(23A)]

'Indian Company' means a company formed and registered under the Companies Act, 1956 or Companies Act, 2013. Besides, it includes the following:-

(a) a company formed and registered under any law relating to companies formerly in force in any part of India;

(b) a corporation established by or under a Central, State or Provincial Act;

(c) any institution, association or body which is declared by the Board to be a company u/s. 2(17).

(d) a company formed and registered under any law in force in the State of Jammu and Kashmir;

(e) a company formed and registered under any law for the time being in force in the Union territories of Dadra and Nagar Haveli, Daman and Diu, Pondicherry and State of Goa.

In the aforesaid cases, a company, corporation, institution, association or body will be treated as an Indian company only if its registered or principal office is in India. [Sec. 2(26)]

"Company in which the public are substantially interested"[Section 2(18)] –

A company is said to be a company in which the public are substantially interested, if-

(a) a company owned by Government or Reserve Bank of India or in which not less than 40% shares are held singly or taken together by the Government or the Reserve Bank or a corporation owned by the Reserve Bank; or

(b) it is a company registered u/s. 25 of the Companies Act, 1956 (corresponding section 8 of companies Act, 2013), i.e., companies incorporated for promotion of Commerce, Arts, Science, Religion, Charity and prohibiting the payment of any dividends to its members; or

(c) it is a company having no share capital and it is declared by the CBDT to be a company in which the public are substantially interested; or

(d) it is a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government u/s. 620A of the Companies Act, 1956 (corresponding section 406 of companies Act, 2013) to be a Nidhi or Mutual Benefit Society; or

(e) it is a company which is not a private company and its equity shares are, as on the last day of Previous Year, listed in a recognised stock exchange in India; or

(f) it is a company which is not a private company and its shares carrying not less than 50% of the voting power (40% in the case of Indian companies whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power)have been allotted unconditionally to or acquired unconditionally to, or acquired unconditionally by, and were throughout the relevant Previous Year beneficially held by-

  (i) the Government; or

  (ii) a Statutory Corporation; or

  (iii) a company in which the public are substantially interested or any wholly owned subsidiary of such company.

(g) it is a company, wherein equity shares carrying not less than 50% of the voting power have been unconditionally allotted to or acquired by and were throughout the relevant Previous Year beneficially held by, one or more cooperative societies.

Rate of tax

For Domestic Company, income will be taxed @ 30% subject to increase by surcharge @ 7% if the total income exceeds ₹ 1 crore and @ 12% if the total income exceeds ₹ 10 crore, Education Cess @ 2% and Secondary and Higher Education Cess @ 1%.

In case of Foreign Companies :

Royalty received from Indian Government or an Indian Concern in pursuance of an agreement made by it with the Indian concern after March 31, 1961 but before April1, 1976 or fees for rendering technical services in pursuance of an agreement made by it after February 29, 1964 and where such agreement has, in either case been approved by the Central Government, will be taxed @ 50% subject to increase by surcharge @ 2% if the total income exceeds ₹ 1 crore and @ 5% if the total income exceeds ₹ 10 crore, Education Cess @ 2% and Secondary and Higher Education Cess @ 1%.

Other income will be taxed @ 40% subject to increase by surcharge @ 2% if the total income exceeds ₹ 1 crore and @ 5% if the total income exceeds ₹ 10 crore, Education cess @ 2% and Seconday and Higher Education Cess @ 1%

However, the total amount payable as income tax and surcharge on total income exceeding ₹ 1 crore but not exceeding ₹ 10 crore, shall not exceed the total amount payable as income tax on a total income of ₹ 1 crore, by more than the amount total income exceeds ₹ 1 crore. In case, the total income exceeds ₹ 10 crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income tax and surcharge on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

In case an Indian Company dividend from a specified foreign company for the previous year relevant to the assessment year beginning on the 1st day of Apri, 2013 or begging on the 1st day of April, 2014 or beginning on the 1st day of April, 2015, the amount of dividend will be taxed at the special rate of 15%.

Minimum Alternative Tax on certain companies

A company is liable to pay tax on the total income computed in accordance with the provisions of the Income Tax Act, but the Profit and Loss Account is prepared as per provisions of the Companies Act. There were large number of companies who had book profits as per Profit and Loss Account but the total income as per provision of the Income-tax Act was either nil or negative or insignificant and as a result such companies were not paying any Income-tax though sometimes, such companies were paying dividends to shareholder. These companies are popularly known as "Zero Tax Companies".

In order to being these companies under the Income-tax Act, the following sections were included time to time from Assessment Year 1997-98.

According to Sec. 115JB, in case of Companies, if the tax payable on the total income as computed under Income Tax Act in respect of any Previous Year is less than 18.5% of its book profit, such book profit shall be deemed to be total income of the assessee and tax payable for the relevant Previous Year shall be 18.5% of such book profit.

Amalgamation [Sec. 2(1B)]

Amalgamation in relation to companies means the merger of one or more companies with another company, or merger of two or more companies to form a new company. The company so merged goes out of existence is "amalgamating company." The company into which the amalgamating company merges, or the new company that is formed to effect amalgamation, is "amalgamated company" in such a manner that :–

(a) All property of amalgamating company, immediately before amalgamation, should become the property of amalgamated company,

(b) All liabilities of amalgamating company, immediately before amalgamation, should become the liabilities of amalgamated company,

(c) Shareholders holding 75% in value of the shares in amalgamating company should become shareholders of the amalgamated company. However, if the amalgamated company or its subsidiary/nominee already holds some shares in the amalgamating company, value of such shares is excluded for calculating 75% of the value of shares of the amalgamating company.

A merger of companies will not be treated as amalgamation in case of sale or liquidation of company.

The effective date in a scheme of amalgamation is the date of transfer specified in the scheme and not the date of high court's order approving the scheme. So long as the court does not modify the date specified in the scheme, amalgamation takes effect on date of transfer specified in the scheme. The income of the amalgamating company from such date of transfer shall be assessed as income of the amalgamated company and shall be assessed accordingly. [Marshall Sons and Co. (India) Ltd. vs. ITO (SC), 223 ITR 809]

Certain concessions are provided under various provisions of the Income-tax Act in respect of amalgamation which are as under:

(a) To amalgamating company

1) Sec. 47 (vi): In a scheme of amalgamation if an Indian Company satisfies the condition of Sec. 2(1B), Capital Gains tax is not attracted in case of transfer of capital asset by the amalgamating company to the amalgamated company.

2) Sec. 47(via): Tax concession to foreign amalgamating company.

By virtue of Sec. 47(via), transfer of shares in an Indian Company held by a foreign company to another foreign company in a scheme of amalgamation is not treated as transfer if the following conditions are satisfies :-

(i) Shares in an Indian company held by a foreign company.

(ii) Business of the foreign company is taken over by another company in a scheme of amalgamation.

(iii) Atleast 25% of the shareholders of amalgamation foreign company continue to remain shareholders of the amalgamated company.

(iv) Such transfer does not attract tax on Capital Gains in the company in which the amalgamating company is incorporated.

(b) To shareholders of an amalgamating company

Sec. 47(vii) : Transfer by a shareholder in a scheme of amalgamation of a capital asset being a share or shares held by him in amalgamating company if such transfer is made in consideration of allotment to him of shares in the amalgamated company and the amalgamated company is an Indian Company.

(c) To amalgamated company

The following benefits in the hands of amalgamating company are available to the amalgamated company:

Sec. 35(5) : Expenditure on scientific research

Sec. 35A(6) : Expenditure on acquisition of patent right or copy right

Sec. 35AB(3) : Expenditure on know how

Sec. 35ABB(6) : Expenditure for obtaining license to operate telecommunication services

Sec. 35D(5) : Amortisation of preliminary expenses

Sec. 36E(7) : Deduction for expenditure on prospecting etc. for certain minerals

Sec. 36(ix) : Expenditure incurred for the purpose of promoting family planning.

Sec. 72A : Carry forward and set off of accumulated and unabsorbed depreciation

Further, the amalgamated company is entitled for :

Sec. 35DD : Amortisation of expenditure in case of amalgamation or demerger

Demerger [Sec. 2(19AA)]

"Demerger" in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (corresponding section 230 to 232 of Companies Act, 2013), by a demerged company of its one or more undertakings to any resulting company in such a manner that —

(i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;

(ii) all the liabilities relatable to the undertaking being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;

(iii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;

(iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;

(v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger. Otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(vi) the transfer of the undertaking is on a going concern basis;

(vii) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

For the purpose of this definition, "undertaking" shall include any part of an undertaking, or a unit of division of an undertaking or a business activity taken as a whole, but does not include individual assets and/or liabilities or a combination of these not constituting a business activity. For determining the value of the property which is subject matter of demerger, any change in the value of assets on account of revaluation shall be ignored.

Splitting up or the reconstruction of any authority or a body constituted or established under any Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies shall be deemed to be the demerger if such split up or reconstruction fulfils the conditions as may be notified by the Central Government.

- **Demerged Company [Section 2(19AAA)] :** It means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company.
- **Resulting Company :** means one or more companies (including wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and the resulting company in consideration of such transfer of undertaking, issues shares to shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.

Provisions applicable to Company — Amalgamation/Demerger

Capital Gain - Gains arising on transfer of a capital asset in a scheme of amalgamation / demerger to the amalgamated/resulting company being an Indian Company is exempt.

Carry forward of accumulated loss and/or unabsorbed depreciation

- Accumulated loss and unabsorbed depreciation of an amalgamating company owning an industrial undertaking or a ship or a hotel or a banking company can be transferred to the amalgamated company provided:

1. It continuously holds 3/4th value of the assets acquired in a scheme of amalgamation for at least five years from the date of amalgamation.
2. It continues to carry on business of amalgamating company for at least five years from the date of amalgamation and the amalgamating company.

- Accumulated loss and unabsorbed depreciation of a demerged company will be transferred to resulting company:
  1. Where it is directly relatable to undertaking transferred, it should be such relatable amount.
  2. Where it is not directly relatable to the undertaking transferred, it should be apportioned in the ratio of assets retained by the demerged company and transferred to resulting company.

Carry forward of accumulated loss and/or unabsorbed depreciation of the Banking Company in a Scheme of Amalgamation with Banking Institution.

Allowability of expenditure relating to amalgamation/demerger

An Indian company will be allowed a deduction of 1/5th of the expenditure incurred for the purposes of amalgamation or demerger after 1st April, 1999 for five years from the years of amalgamation/ demerger. (Sec. 35DD)

Depreciation in the year of amalgamation/demerger

Depreciation to amalgamated company and amalgamating company in the year of amalgamation and depreciation to demerged company and the resulting company in the year of demerger shall be apportioned in the ratio of the number of days for which the assets were used (Sec. 32) (5th proviso).

Actual Cost

Actual cost of the capital asset transferred to amalgamated/resulting company shall be the actual cost in the hands of the amalgamating/demerged company provided it does not exceed WDV of such assets in the hands of the demerged company.

Written Down Value

- WDV in the hands of amalgamated company shall be the WDV of the block of assets in the hands of the amalgamating company less depreciation allowed in the year of amalgamation.
- WDV in the hands of the resulting company shall be the WDV of transferred assets as per books of the demerged company immediately before demerger.
- WDV in the hands of the demerged company shall be the WDV of the block of assets before demerger less book value of assets transferred to the resulting company.
- Deduction claimed under Section 33AC (Reserve for shipping business) would not be withdrawn on sale or transfer of a ship in any scheme of demerger.
- Transfer of patent rights or copyrights (Sec. 35A) or transfer of licence to operate telecommunication services (Sec. 35ABB) or transfer of business for prospecting etc. mineral oil (Sec. 42) in a scheme of amalgamation/demerger will not be treated as either sale or transfer.
- The deductions hitherto granted to amalgamating/demerged company relating to patent rights and copyrights (Sec. 35A) / Expenditure on know-how (Sec.35AB) / Licence fees to operate telecommunication services (Sec. 35ABB) / Preliminary expenses (Sec. 35D) / expenditure for prospecting etc., for certain minerals (Sec. 35E) / business for prospecting etc., for mineral oil (Sec. 42) would be available for balance period to the amalgamated/resulting company.

Provisions applicable to Shareholders

- Gains arising on transfer of shares of amalgamating company in exchange of shares of amalgamated company, being an Indian Company is exempt from tax.

- Acquisition of shares of the resulting company by the shareholders in demerger will not be taxed either as Capital Gain or deemed dividend.
- Cost of acquisition of shares of :
  - The amalgamated company will be the cost incurred for acquiring shares of amalgamating company.
  - The resulting company will be the :

    Original cost of shares of demerged company X net book value of assets transferred to resulting company/ net worth of the demerged company before demerger (net worth is equal to Paid-up Share Capital + General Reserve as per books).
  - The demerged company will be the original cost of shares of demerged company – cost of shares of the resulting company as computed above.

17.7 ASSESSMENT OF CO-OPERATIVE SOCIETIES

Introduction

Cooperative society is a society registered under the Cooperative Societies Act, 1912, or under any other law for the time being in force in any State for registration of cooperative societies.

A cooperative society is entitled, to some deduction u/s. 80P of the Income-tax Act.

Steps in computing tax liability of Cooperative Societies

The steps are-

Step- I : Compute gross total income, ignoring income exempt from tax u/s. 10 to 13A

Step-II : Deduct permissible deductions u/ss. 80G, 80GGA, 80I, 80I-A 80IB, 80JJA, etc. and 80P as applicable.

Step-III : Apply the tax rates for the relevant Assessment Year to arrive at the tax incidence.

The tax rates applicable are as follows :– The rates of Income-tax are —

Income Range	Rates of tax
1. Where the total income does not exceed ₹ 10,000	10% of the total income
2. Where the total income exceeds ₹ 10,000 but which the does not exceed ₹ 20,000	₹ 1,000 plus 20% of the amount by total income exceeds ₹10,000
3. Where the total income exceeds ₹ 20,000	₹ 3,000 plus 30%, of the amount by which the total income exceeds ₹ 20,000

However, the tax payable by every cooperative society shall be increased by surcharge @ 12% if the total income exceeds ₹1 crore, education cess @2% and secondary and higher education cess @ 1%.

The total amount payable as income-tax and surcharge on total inocme exceeding ₹1 crore shall not exceed the total amount payable as income-tax on a total income of ₹1 crore by more than the amount of income that exceeds ₹1 crore.

However, from the Assessment Year 2013-14, tax payable cannot be less than 18.5% of "Adjusted Total Income" in some specified cases.

17.8 ASSESSMENT OF TRUSTS

Introduction

Trust	A "Trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.
Author of Trust	The person who reposes or declares the confidence is called the "author of the trust".
Trustee	The person who accepts the confidence is called the "trustee".
Beneficiaries	The person for whose benefits the confidence is accepted is called the "beneficiary".

In order to ascertain the incidence of tax it is essential to know the nature and character of trusts and also the mode of computation of its income and conditions for exemptions. For the purpose of levy of income-tax, trusts may be of the following types :-

1. Charitable Trust
2. Private Discretionary Trust
3. Oral Trust

Charitable Trusts

A charitable trust is a trust established in accordance with law for charitable purpose. Charitable purpose includes relief of the poor, education, medical relief and the advancement of any other object of general public utility. [Sec. 2(15)]

Promotion of sports and games is considered to be a charitable purpose and as such an association or institution engaged in promotion of sports and games can claim exemption u/s.11, although it is not approved u/s. 10(23).

Conditions for exemption

The following essential conditions are to be fulfilled for claiming exemption u/s. 11 :–

(i) The property from which income of the trust is derived should be held for charitable or religious purposes.

(ii) The exemption is confined to such portion of the trust's income as is applied to charitable or religious purposes in India except in cases enumerated in Sec.11(1)(c)

(iii) If the trust property comprises of a business undertaking, the income shown in the books of account should not be less than the income determined by the A.O. according to provisions of the Income-tax Act. From A.Y. 1992-93, trusts or institution can carry out business activities if such business activities are incidental to the attainment of its objectives and separate books of accounts are maintained.

(iv) The trust should make an application in Form No. 10A to the Commissioner of Income Tax within one year of creation of trust or the institution and such trust or institution get registered u/s. 12AA.

(v) Limit for audit of charitable institutions rationalized [Section 12A]

- Trusts and institutions covered under sections 11 and 12 to get their accounts audited only when their total income, before giving effect to the provisions of sections 11 and 12,exceeds ₹1,00,000.

(vi) The funds of the trust should be invested or deposited in any one or more of the modes or forms [Sec. 11(5)] such as —

- investment in Government Savings Certificate;
- deposits in any Post Office Savings Bank Account;
- deposit in any account with any Scheduled or Cooperative Bank;
- investment in any Central Government or State Government securities or in the units of the Unit Trust of India;
- investment in debentures of any corporate body, guaranteed by the Central Government or a State Government ;
- investments in immovable property or deposit in any public sector company ;
- deposit or investments in any Bond issued by a public company having main object of carrying on business of providing long term finance for urban infrastructure in India;
- any other form or mode of investment/deposit as may be prescribed in this behalf.

(vii) Where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

(viii) Where a trust or an institution has been granted registration under clause (b) of sub-section (f) of section 12AA or has obtained registration at any time under section 12A and the said registration is in force for any previous year, then, nothing contained in section 10 [other than clause (7) and clause (23C) thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year.

In order to claim exemption, a charitable trust or institution will have to apply at least 85% of, the income to charitable and religious purposes. Where 85% of the income is not applied to charitable or religious purposes the trust or institution may accumulate or set apart either the whole or part of its income for future application for such purposes in India.

Special rates of tax on Certain Income of Charitable Institutions.

Taxation of certain anonymous donations under section 115BBC

Income of wholly or partly charitable or religious trust etc. is exempt subject to certain conditions.

Unaccounted contribution to those institutions by way of anonymous donation a new section 115BBC has been inserted so as to provide that any income by way of anonymous donation shall be included in the total income and taxable @ 30%.

Note :

Anonymous donation means any voluntary contribution referred to Sec 2(24)(iia).

Anonymous donations to be taxed in certain cases

(1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution or any hospital or other institution or any fund or institution or any trust or institution or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of —

(i) the amount of income-tax calculated at the rate of 30% on the aggregate of anonymous donation received in excess of the higher of the following, namely:-

(A) 5% of the total donations received by the assessee; or

(B) ₹1,00,000, and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i), as the case maybe.

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by—

(a) any trust or institution created or established wholly for religious purposes;

(b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) Anonymous Donation" means any voluntary contribution, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

Forfeiture of Exemption [Sec. 13]

The following incomes of charitable or religious trusts and institutions will not qualify for exemption u/s. 13 :–

(i) income from property held under a trust for private religious purpose which does not ensure for the benefit of the public. [Sec. 13(1)(a)]

(ii) income of a charitable trust/institution established on or after 1.4.1962 for the benefit of any particular religious community or caste. [Sec. 13(1)(b)]

(iii) income of religious/charitable trust/institutions established after 31.3.1962 for the benefit of any person specified in Sec. 13(3) viz. author, founder or substantial contributor of the trust or any relative of them. Where the income is used or applied during the relevant year for the direct or indirect benefit of the above mentioned persons. [Sec. 13(1)(c)(i) and (ii)]

(iv) income of a trust/institution, if its funds are invested/deposited otherwise than as specified u/s. 11(5). [Sec. 13(1)(d)]

However, the provisions of section 13(1)(d) shall not apply in relation to following :-

- any asset forming part of the corpus of the trust as on 1.6.1973;
- any accretion to the corpus shares by way of bonus shares allotted to the trust;
- debentures issued by or on behalf of any company or corporation and acquired by the trust before March 1, 1983;
- any asset not covered u/s. 11(5) where such asset is held for not more than 1 year from the end of the Previous Year in which such asset is acquired;
- any fund representing the profits and gains of business, being profits and gains of any Previous Year relevant to the Assessment Year 1984-85 or any subsequent Assessment Year. But such relaxation of the restriction will be denied unless the trust keeps separate accounts for the business. As already noted, subject to certain exceptions, such business profits no longer enjoy exemption u/s. 11.

Changes Relating To Income of Charitable Institutions.

Anonymous donations to form part of income of trust [Section 13]

As per the new section 115BBC, anonymous donation shall now be taxable at the maximum marginal rate of 30%. Consequently, a new sub-section (7) has been inserted in section 13 to provide that nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the Previous Year of the person in receipt thereof, any anonymous donation referred to in the new section 115BBC on which tax is payable in accordance with the provisions of that section. In other words anonymous donation shall not be excluded from the total income of the assessee.

Taxation of Trust

A. Public Trust u/s. 164(2) —

(i) If income is not exempt u/s. 11 or 12, income of Trust is taxable at the rates applicable to an Association of Person.

(ii) If the exemption is forfeited due to contravention of Sec. 13(1)(c) or 13(1)(d), such income of trust is taxable at maximum marginal rate.

B. Private Trust (shares of beneficiaries are determinate or known) —

(i) If income does not include business Profits, the trustee is assessable at the rates applicable to each beneficiary. [Sec. 161(1)]

(ii) If income includes profits from business, the whole income is taxable at maximum marginal rate. [Sec. 161(1A)]

C. Private Trust (share of beneficiaries in determinate or unknown) [Sec. 164(1)] —

(i) If income does not include business profits, income is taxable at the rates applicable to an AOP if –

- none of the beneficiaries has taxable income or is a beneficiary in any other trust.

  the trust is non-testamentary trust created before 1.3.1970

- exclusively for the relative dependents of the settle; or
- it is the only trust declared by a WILL exclusively for the benefit of any dependent relative. In any other case, income is taxable of maximum marginal rate.

(ii) If income includes business profits, the whole income is taxable at maximum marginal rate.

D. Oral Trust [Sec. 160(1)(v), Sec. 164A] : "Oral Trust" means a trust which is not declared by a duly executed instrument in writing including any wakf deed which is valid under the Mussalman wakf validating Act, 1913 and which is not deemed to be trust by virtue of Explanation 1 to Sec. 160.

(i) Income of Oral trust is taxable at maximum marginal rate.

(ii) If Oral trust is declared to be a trust by furnishing a statement in writing containing purposes, particulars and details of trust, beneficiaries and property to the assessing officer within 3 months from the date of declaration of the trust, indicating the share of beneficiaries, the income of the trust is assessable in the hands of trustee at the rates applicable to beneficiaries.

E. Income from property held under Trust partly for religious purposes and partly for other purposes [Sec. 164(3)]

Where property is held under trust partly for religious purposes and partly for other purposes and the individual share of the beneficiaries in the income applicable to purposes other than charitable purposes, is not known, the Income-tax liability will be aggregated as follows :

(i) the tax which would be chargeable on the part of the relevant income which is applicable to charitable or religious purposes (as reduced by the income which is exempt u/s. 11 as if such part were the total income of an Association of Persons); and

(ii) the tax on that part of income attributable to purposes other than charitable or religious and in respect of which shares of beneficiaries are indeterminate or unknown, at the maximum marginal rate.

F. Securitisation Trust [Sections 115TA to 115TC]: Securitisation Trust means a trust set up to undertake securitisation activities.

(i) If income of the trust consists of business income or the participants have taxable income, then trust is subject to maximum marginal rate of tax.

(ii) The income from the activity of securitisation of such trust will be exempt from tax u/s 10(23DA) with effect from the Assessment Year 2014-15.

(iii) Such trust will be liable to pay additional income tax on income distributed to its investors @ 25% if the income is distributed to investors being Individual or HUF or 30% for other case. Such amount of tax will be subject to increase by surcharge @12%, Education Cess @2% and Secondary and Higher Secondary Education Cess @1%.

(iv) The additional income tax shall not be payable if the income so distributed by such trust is received by a person who is exempt from tax under the Act.

(v) Amount of tax on distributed income shall be remitted within 14 days from the date of payment or distribution of income.

Where any part of income is not exempt u/s. 11 or 12 by virtue of sec. 13(1)(c) or (d), tax is charged on the relevant income at the maximum marginal rate.

The amount of tax will be increased by surcharge @ 12% if total income exceeds ₹1 crore, Education Cess @ 2% and Secondary and Higher Eeucation Cess @ 1%.

Howerever, the total amount payable as income tax and surcharge on total income exceeding ₹1 crore shall not exceed the total amount payable as income tax on a total income of ₹1 crore, by more than the amount of income that exceeds ₹1 crore.

Case Laws :

(i) For purpose of section 164(1) what is relevant is that income is receivable on behalf of beneficiaries and is not necessary that income is received by beneficiaries - Gosar Family Trust vs. CIT 81 Taxman 146/215 ITR 55.

(ii) Provision merely sets out how tax is to be charged and does not create a charge on the income - CIT vs. Kamalini Khatau 209 ITR 101.

ILLUSTRATIONS ON ASSESSMENT OF AOP / BOI

Illustration 1: A & B are members of AOP, sharing profit and losses in the ratio of 5 : 3 and they are allowed the following payments:

	A ₹	B ₹
(i) Salary	40,000	60,000
(ii) Interest on capital or loan	20,000	10,000

You are required to compute taxable business profits of AOP and share of each member for the Previous Year 2015-2016 in the following cases:

(a) AOP has earned profit of ₹ 3,00,000 after making the above payments;
(b) AOP has earned profit of ₹ 3,00,000 before making the above payments;
(c) AOP has suffered loss of ₹ 3,00,000 after making the above payments; and
(d) AOP has suffered loss of ₹ 3,00,000 before making the above payments.

Solution: Computation of income of AOP for the A.Y. 2016-2017

Particulars ₹	Case (a) ₹	Case(b) ₹	Case (c) ₹	Case (d) ₹
Profit/ loss	(+) 3,00,000	(+) 3,00,000	(-) 3,00,000	(-) 3,00,000
Add: Inadmissible payments [Sec. 40 (ba)]:				
(i) Salary to members (40,000+60,000)	(+) 1,00,000	—	(+) 1,00,000	—
(ii) Interest on capital/loan to members: (20,000 + 10,000)	(+) 30,000	—	(+) 30,000	—
Profit/Loss as per Income Tax Law	(+) 4,30,000	(+) 3,00,000	(-) 1,70,000	(-) 3,00,000

Computation of member's share in the income/loss of the AOP

Particulars	Case (a)		Case (b)		Case (c)		Case (d)	
	A ₹	B ₹	A ₹	B ₹	A ₹	B ₹	A ₹	B ₹
Salary	40,000	60,000	40,000	60,000	40,000	60,000	40,000	60,000
Interest	20,000	10,000	20,000	10,000	20,000	10,000	20,000	10,000
Divisible profit:								
(a) 4,30,000–1,30,000	1,87,500	1,12,500	X	X	X	X	X	X
(b) 3,00,000–1,30,000	X	X	1,06,250	63,750	X	X	X	X
(c) (–) 1,70,000 +(–)1,30,000 =(-)3,00,000	X	X	X	X	(1,87,500)	(1,12,500)	X	X
(d) (-) 3,00,000 + (-) 1,30,000= (-) 4,30,000	X	X	X	X	X	X	(2,68,750)	(1,61,250)
Share of profit/loss	2,47,500	1,82,500	1,66,250	1,33,750	(1,27,500)	(42,500)	(2,08,750)	(91,250)

(i) Where assessed business income is a profit: Beneficial payments (i.e. salary, bonus, commission and interest) made to partners should be deducted from assessed profit to arrive at divisible profit, which is to be apportioned among members.

(ii) Where assessed business income is a loss: Beneficial payments made to partners should be added to assess loss to arrive at the divisible loss which is to be apportioned among members.

Illustration 2: Anand and Aniket are equal members in AA & Associates. The Profit and Loss Account of the AOP for the year ended 31st March 2016 is as follows:

Particulars	₹	Particulars	₹
Selling and administrative	8,00,000	Gross Profit	20,00,000
Expenses		Income from House Property	3,60,000
Interest to Anand @ 15%	60,000		
Remuneration:			
Anand	1,50,000		
Aniket	1,50,000		
Net Profit:			
Anand	6,00,000		
Aniket	6,00,000		
	23,60,000		**23,60,000**

Other information :

1. Selling and administrative expenses include ₹ 60,000 paid to a consultant in cash.
2. The other income/investment details of the members are given as below:

Members	Income	Source of income	Investments
Anand	3,90,000	Interest on fixed deposit from bank	Purchase of NSC VIII ₹ 30,000
Aniket	5,00,000	Interest on Govt. securities	Contribution to PPF ₹ 50,000

Compute the tax liability of the AOP and it members.

Solution:

Computation of total income of AOP: AY 2016-2017

Particulars	₹
Net Profit	12,00,000
Add: Inadmissible payments.	
1. Fees paid to consultants in cash Sec. 40A (3)	60,000
2. Interest paid to members [Sec. 40(ba)]	60,000
3. Remuneration paid to members Sec. 40(ba)	3,00,000
	16,20,000
Less: Income from House Property	3,60,000
Business Profits	**12,60,000**
Add: Income from House Property	3,60,000
Total Income	**16,20,000**
Tax Liability of AOP on Total Income	
Tax on slabs rates	3,11,000
Add:	
Education cess 2%	6,220
SHEC @ 1%	3,110
Tax Payable	**3,20,330**

Allocation of income amongst the members:

Particulars	Anand ₹	Aniket ₹	Total ₹
Interest	60,000	—	60,000
Remuneration	1,50,000	1,50,000	3,00,000
Share of divisible profit (12,60,000-60,000-3,00,000)	4,50,000	4,50,000	9,00,000
Share of profit	6,60,000	6,00,000	12,60,000
Share of income from House Property	1,80,000	1,80,000	3,60,000
	8,40,000	7,80,000	16,20,000

Computation of total income of members:

Particulars	Anand ₹	Aniket ₹
Share income from AOP	8,40,000	7,80,000
Income from Other Sources:		
Interest on bank deposits	3,90,000	—
Interest on Government securities	—	5,00,000
Gross Total Income	12,30,000	12,80,000
Less: Deduction under Sec. 80C	30,000	50,000
Total Income	12,00,000	12,30,000
Tax liability of members : Tax on slab rates	1,85,000	1,94,000
Add: Education cess @ 2% on income tax	3,700	3,880
Add : SHEC @ 1%	1,850	1,940
	1,90,550	1,99,820
Less: Rebate on share of profit at the average: (See Note below)	1,33,385	1,26,715
Tax Payable	57,165	73,105
Tax Payable rounded off to the nearest multiple of ₹ 10 (See. 288B)	57,170	73,110
Note: Anand: 1,90,550/12,00,000x 8,40,000 Aniket : 1,99,820/12,30,000× 7,80,000		

Note: Assumed that the provisions of Alternate Minimum Tax are not applicable in the above case.

Illustration 3: A, B and C Ltd. are three members of an AOP, sharing profit and losses in the ratio 2:2:1. The AOP discloses its income for the PY 2015-2016 as below:

Particulars	₹
(i) Long-term Capital Gains	4,00,000
(ii) Business Profits	6,00,000

Determine tax liability of AOP in the following cases:

(i) C Ltd. is an Indian company

(ii) C Ltd. is a foreign company

Solution:

Allocation of income of AOP among partners

Particulars of income	A ₹	B ₹	C Ltd ₹
Long-term Capital Gains	1,60,000	1,60,000	80,000
Business Profits	2,40,000	2,40,000	1,20,000
Share income of the members	4,00,000	4,00,000	2,00,000

Tax liability of AOP

Particulars	Case – I C Ltd. an Indian company ₹	Case – II C Ltd. as foreign company ₹
Tax on the share of C Ltd.		
Case I : 1,20,000 x 30.90%	37,080	—
Case II: 1,20,000 x 41.20%	—	49,440
Tax on balance income at AOP:		
(i) Long-term Capital Gain 4,00,000 x 20.60%	82,400	82,400
(ii) Business Profits 4,80,000 x 30.90%	1,48,320	1,48,320
Total Tax Payable	2,67,800	2,80,160
Total Tax (Rounded off u/s 288B)	2,67,800	2,80,160

Note : Assumed that the provisions of AMT are not applicable in the above case.

Illustration 4: R, S and T Ltd. (a widely held domestic company) are members in an AOP for the Previous Year 2015-2016. They share profit and losses in the ratio 30%, 40% and 30%. Taxable business income of AOP is determined at ₹ 8,00,000. Personal incomes of the partners are given below:

	(₹)
R - House Property	90,000
S – Short-term Capital Gain	1,00,000

R deposits ₹ 20,000 in CTDS-15-year account in Post Office in February 2016. S purchases NSC VIII-Issue for ₹ 25,000 in December 2015.

Determine the tax liability of the AOP and its partners

Solution :

(a) Computation of tax liability of AOP for the Previous Year 2015-2016. Allocation of AOP income among members:

Particulars	R ₹	S ₹	T Ltd. ₹
Business Profit	2,40,000	320000	240000

Tax liability of AOP: 8,00,000 × 30.90% = 2,47,200

(b) Tax liability of members:

Particulars	R ₹	S ₹	T Ltd. ₹
Share income from AOP	2,40,000	320000	240000
AOP charged at maximum marginal rate	Exempt	Exempt	Exempt
Personal income of members after deduction under Chapter VIA	70,000	75,000	Nil
Personal income below taxable limit	Exempt	Exempt	X

Note : Assumed that AMT is not applicable in the above case.

Illustration 5: GMK are partners in a firm assessed as an association of persons. They share profit and losses in the ratio of 4:3:3. The abridged profit and loss for the Previous Year 2015-2016 is as follows:

Particulars	₹	Particulars	₹
Business expenses	5,00,000	Gross Profits	6,85,000
Salaries to partners		Short-term Capital Gain	2,80,000
G	60,000	Interest on drawings	
M	40,000	G	5,000
K	50,000	M	20,000
Bonus to partners:		K	10,000
G	30,000		
M	20,000		
Commission to K	40,000		
Interest to partners:			
G	20,000		
M	15,000		
K	25,000		
Net Profit			
G	80,000		
M	60,000		
K	60,000		
	10,00,000		**10,00,000**

Business expenses include donation to Nalanda University ₹ 50,000.

Compute the taxable income of AOP, its tax liability and tax liability of its members in the following cases:

Personal income of members	Case-I ₹	Case-II ₹
G: Interest on bank deposits	2,40,000	1,00,000
M: Interest on Government securities	2,65,000	1,20,100
K: Income from House Property	2,50,000	1,10,000
LIP paid by every member on a policy of ₹ 1,00,000.	20,000	20,000

Solution : **Computation of Taxable Business Profits**

Particulars	₹
Net Profit as per Profit & Loss A/c	2,00,000
Add: (i) Donation to Nalanda University	50,000
(ii) Salaries to partners [Sec. 40(ba)] (60,000 + 40,000 + 50,000)	1,50,000
(iii) Bonus to partners (30,000 + 20,000)	50,000
(iv) Interest on capital (Net of Interest on Drawings)	
G (20,000 – 5,000)	15,000
K (25,000 – 10,000)	15,000
(v) Commission to K	40,000
	5,20,000
Less: Short-term Capital Gain	2,80,000
Taxable Business Profits	**2,40,000**
Computation of Total Income	
Add: (i) Business Profits	2,40,000
(ii) Short-term Capital Gain	2,80,000
Gross Total Income	**5,20,000**
Less: Deduction for charitable donation (Sec. 80G)	
(a) Actual donation ₹ 50,000 or,	
(b) 10% of gross total income: $\frac{10}{100}$ × 5,20,000 = 52,000	
whichever is less, is qualifying amount. i.e. ₹ 50,000.	
Amount of deduction 50% of ₹ 50,000, qualifying amount	25,000
Total Income	**4,95,000**

Tax liability of AOP :

Particulars	Case I	Case II
(a) Tax on Total Income at slab rates including Education Cess and SHEC	25,235	—
(b) Tax on Total Income at maximum marginal rates including surcharge plus education cess plus SHEC	—	1,52,955
Tax Payable	25,235	1,52,955
Tax Payable rounded off (u/s 288B)	25,240	1,52,960

Tax liability of members:

Share of income from AOP:	**G** (₹)	**M** (₹)	**K** (₹)	**Total** (₹)
(i) Salary	60,000	40,000	50,000	1,50,000
(ii) Bonus	30,000	20,000	—	50,000
(iii) Commission	—	—	40,000	40,000
(iv) Interest	15,000	—	15,000	30,000
	1,05,000	60,000	1,05,000	2,70,000
(v) Divisible loss : (2,40,000-25,000)-270,000 = (-) 55,000	(-) 22,000	(-) 16,500	(-) 16,500	(-) 55,000
Share of Business Profit	83,000	43,500	88,500	2,15,000
Share of Short-term Capital Gain	112,000	84,000	84,000	2,80,000
Share of income from AOP	**1,95,000**	**1,27,500**	**1,72,500**	**4,95,000**

Total Income and Tax Liability of members :

Case:(a) where AOP is taxed at slab rates:

Particulars	**G**	**M**	**K**
Income from House Property	—	—	2,50,000
Income from Other Sources	2,40,000	2,65,000	—
Share income from AOP	1,95,000	1,27,500	1,72,500
Gross Total Income	**4,35,000**	**3,92,500**	**4,22,500**
Less: Deduction under Sec. 80C: LIP restricted to 20% of policy [Assumed the policy is issued before 1.4.2012]	20,000	20,000	20,000
Total Income	**4,15,000**	**3,72,500**	**4,02,500**
Gross income tax at slab rate	16,500	12,250	15,250
Less: Rebate u/s 87A	2,000	2,000	2,000
	14,500	10,250	13,250
Add: Surcharge	Nil	Nil	Nil
Add: Education Cess @ 2%	290	205	265
Add : SHEC @ 1%	145	103	133
	14,935	10,558	13,648
Less: Rebate on share of profit from firm at the average rate	7,018	3,619	5,849
Tax Payable	7,917	6,939	7,799
Tax Payable rounded off (u/s 288B)	**7,920**	**6,940**	**7,800**
Note 1: 14,935 ÷4,15,000 × 1,95,000 = 7,018			
Note 2: 10,558 ÷ 3,72,500 × 1,27,500 = 3,619			
Note 3: 13,648 ÷ 4,02,500 × 1,72,500 = 5,849			

Case (b) where AOP is taxed at maximum marginal rate:

Particulars	G	M	K
1. Share of profit from AOP; Since the AOP was assessed at the maximum marginal rate, share of income from AOP is exempt (Sec. 86)	—	—	—
2. Personal income:			
Income from House Property	–	–	1,10,000
Income from Other Sources	1,00,000	1,20,100	–
Less: Deduction u/s 80C	(-) 20,000	(-) 20,000	(-) 20,000
Total Income	80,000	1,00,100	90,000
Tax Payable	Nil	Nil	Nil

Note : Provisions of AMT are not applicable in the above case.

Illustration 6: T and Q are individuals, who constitute an Association of Persons, sharing profit and losses in the ratio of 2:1. For the accounting year ended 31st March 2016, the Profit and Loss Account of the business was as under:

Particulars	₹ in '000	Particulars	₹ in '000
Cost of goods sold	6,250.00	Sales	9,900.00
Remuneration to:		Dividend from companies	25.00
T	130.00		
Q	170.00	Long-term Capital Gains	1,640.00
Employees	256.00		
Interest to :			
T	48.30		
Q	35.70		
Other expenses	111.70		
Sales-tax penalty due	39.00		
Net Profit	4,524.30		
	11,565.00		11,565.00

Additional information furnished:

(i) Other expenses included:
  (a) entertainment expenses of ₹ 35,000;
  (b) wristwatches costing ₹ 2,500 each were given to 12 dealers, who had exceeded the sales quota prescribed under a sales promotion scheme;
  (c) employer's contribution of ₹ 6,000 to the Provident Fund was paid on 14th January 2016.
  (d) ₹ 30,000 was paid in cash to an advertising agency for publicity.

(ii) Outstanding sales tax penalty was paid on 15th April 2016. The penalty was imposed by the sales tax officer for non-filing of returns and statements by the due dates.

(iii) T and Q had, for this year, income from other sources of ₹ 3,50,000 and ₹ 2,60,000, respectively.

Required to :

(i) Compute the total income of the AOP for the Previous Year 2015-2016.

(ii) Ascertain the tax liability of the Association for that year; and

(iii) Ascertain the tax liability for that year of the individual members.

[Ignore the application of Alternate minimum Tax]

Solution :

(i) Computation of total income of the AOP for PY 2015-2016

Particulars	₹	₹
Profit and Gains of Business (see Working Note below)		33,12,300
Long Term Capital Gain		16,40,000
Income from Other Sources [dividend is exempt u/s 10(34), assuming it is from domestic companies]		NIL
Total Income		**49,52,300**
Working Note:		
Computation of profits and gains of business:		
Net profit as per Profit and Loss Account		45,24,300
Add: Inadmissible payments:		
Interest to members T & Q (₹ 48,300 + ₹ 35,700)	84,000	
Advertising [disallowance u/s 40A(3)	30,000	
Remuneration to members T & Q (₹ 1,30,000 + ₹ 1,70,000)	3,00,000	
Sales tax penalty due (See Note 3 below)	39,000	4,53,000
		49,77,300
Less : Income not taxable under this head		
Dividend from companies	25,000	
Long term Capital Gain	16,40,000	16,65,000
Profits and Gains of Business		**33,12,300**

(ii) Computation of tax liability of the AOP for PY 2015-2016

Particulars	₹	₹
Long-term Capital Gain (₹ 16,40,000 × 20%)		3,28,000
Other Income (₹ 33,12,300 × 30%)		9,93,690
Tax on Total Income		13,21,690
Add : Education cess @ 2%		26,434
Add : SHEC @ 1%		13,217
Total Tax due		**13,61,341**
Total Tax Rounded off (u/s 288B)		**13,61,340**

Note :

1. Since one of the members has individual income more than the basic exemption limit, the AOP will be assessed at the maximum marginal rate.
2. Since the employer's contribution to PF has been paid during the Previous Year 2015-2016 itself, it is allowable as deduction.
3. Penalty imposed for delay in filing sales tax return is not deductible since it is on account of infraction of the law requiring filing of the return within the specified period.
4. Gift paid to dealers are solely for business purpose and hence, fully deductible item.

(iii) Computation of Tax Liability of members T & Q for the PY 2015-2016

Particulars	₹	Particulars	₹
Tax on ₹ 3,50,000	10,000	Tax on ₹ 2,60,000	1,000
Less: Rebate u/s 87A	2,000	Less: Rebate u/s 87A	1,000
	8,000		Nil
Add : Surcharge	Nil	Add : Surcharge	Nil
Add : Education cess @ 2%	160	Add : Education cess @ 2%	Nil
Add : SHEC @ 1%	80	Add : SHEC @ 1%	Nil
Net Tax Payable	**8,240**	**Net Tax Payable**	**Nil**

ILLUSTRATIONS ON ASSESSMENT OF CHARITABLE TRUSTS

Illustration 7: Shri Dubbawala Charitable Trust (Regd.) submits the particulars of its income / outgoing for the Previous Year 2015-2016 as below :

		₹
(i)	Income from property held under trust for charitable purposes: (₹ 2,20,000 out of ₹ 10,00,000 is received in PY 2016-2017)	10,00,000
(ii)	Voluntary contributions (out of which ₹ 50,000 will form part of the corpus)	2,00,000

The trust spends ₹ 1,77,500 during the Previous Year 2015-2016 for charitable purposes. In respect of ₹ 2,20,000, it has exercised its option to spend it within the permissible time-limit in the year of receipt or in the year, immediately following the year of receipt.

The trust spends ₹ 2,00,000 during the Previous Year 2014-2015 and ₹ 1,00,000 during the Previous Year 2016-2017. Compute and discuss the chargeabiliry of the income of the trust.

Solution :

(a) Computation of taxable income and tax liability of the charitable trust for the PY 2015-2016 / AY 2016-2017

Particulars			₹
(i)	Income from property held under trust for charitable purposes		10,00,000
(ii)	Voluntary contributions (₹ 2,00,000 - ₹ 50,000)		1,50,000
			11,50,000
	Less: 15% set apart for future application		1,72,500
	Balance		9,77,500
	Less: Amount spent during the Previous Year for charitable purposes		1,77,500
	Balance		8,00,000
	Less: Income not received during the Previous Year 2015-2016		2,20,000
	Taxable Income		5,80,000
	Tax payable:	Rate of tax	
	2,50,000	Nil	
	2,50,000	10%	25,000
	80,000	20%	16,000
			41,000
	Add: Education Cess @ 2%		820
	Add: SHEC @ 1%		410
	Tax Payable		**42,230**
(b)	Previous Year 2016-2017 /AY 2017-2018		
	Income received during the Previous Year 2016-2017	2,20,000	
	Amount spent for charitable purposes during 2015-2016	1,00,000	
	Taxable Income	**1,20,000**	

Illustration 8: Shri Mungeri Ram Temple Trust (Regd.) derived ₹ 6,00,000 income from the property held under charitable trust during the Previous Year 2015-2016. About 40% of the income has been received by the end of the financial year. The trust could spend ₹ 60,000 for charitable purposes during the year 2015-2016 and 40% receipts, received by the year end in 2015-2016, are being planned to be applied for charitable purposes during the Previous Year 2016-2017. Compute its income for the said two years if the amount planned to be spent during Previous Year 2016-2017 for charitable purposes is ₹ 1,00,000.

Solution :

(a) Computation of Taxable Income of Charitable Trust: PY 2015-2016/AY 2016-2017

Particulars		₹
Income from property held under Trust		6,00,000
Less: 15% set apart for future application for charitable purposes		90,000
Balance		5,10,000
Less : Income applied for charitable purposes during the year 2015-2016		60,000
Balance		4,50,000
Less: Income realised by the close of the Previous Year—40% of ₹ 6,00,000		2,40,000
Taxable Income		**2,10,000**
(b) Previous Year : 2016-2017/**A.Y.** 2017-2018		
Amount set apart in 2015-2016 to be applied for charitable purposes in 2016-2017	= 2,40,000	
Less: Amount applied for charitable purposes	= 1,00,000	
Taxable Income	**1,40,000**	

Illustration 9: Devdas Charitable Trust submits the particulars of its receipts and outgoing during the Previous Year 2015-2016 as below :

(i)	Income from property held under trust for charitable purposes	₹ 20,00,000
(ii)	Voluntary contribution (out of which ₹ 5,00,000 will form part of the corpus)	₹ 15,00,000
(iii)	Donations paid to blind charitable school	₹ 6,00,000
(iv)	Scholarship paid to poor students	₹ 4,00,000
(v)	Amount spent on holding free eye camps in urban slums	₹ 3,00,000
(vi)	Amount set apart for setting up an old age home by March 2018	₹ 10,00,000

Compute the total income of the trust for the Previous Years 2015-2016 and 2018-2019 if it spends ₹ 3,00,000 during the Previous Year 2017-2018 and ₹ 5,00,000 during the Previous Year 2018-2019 in setting up the old age home.

Solution :

(a) Computation of the Taxable Income of the trust for Previous Year 2015-2016/AY 2016-2017.

Particulars		₹
(i) Income from property held under charitable trust		20,00,000
(ii) Income from voluntary contributions (₹ 15,00,000 - ₹ 5,00,000)		10,00,000
Total		**30,00,000**
Less : 15% set apart for future application		4,50,000
Balance		**25,50,000**
Less: Income applied for charitable purposes:		
(i) Donations to blind charitable school	6,00,000	
(ii) Scholarship to poor students	4,00,000	
(iii) Free eye camps in urban slums	3,00,000	
Total	**13,00,000**	
Amount set apart for old age home	10,00,000	(23,00,000)
Taxable Income		**2,50,000**
(b) Previous Year 2018-2019 /AY 2019-2020:		
Amount set apart for old age home	10,00,000	
Less : 1. Amount spent during 2017-2018	(3,00,000)	
2. Amount spent during 2018-2019	(5,00,000)	
Taxable Income	**2,00,000**	

Illustration 10: CD Charitable Trust furnishes the following particulars, for the year 2015-2016:

(₹)

(i)	Sale price of capital assets	15,30,000
(ii)	Expenses incurred in connection with sale of the asset	30,000
(iii)	Cost of the asset sold (purchased in 2014-2015)	5,00,000
(iv)	Compute Capital Gain in the following cases:	
	(a) Cost of the new asset to be acquired	15,00,000
	(b) Cost of the new asset to be acquired	8,00,000
	(c) Cost of the new asset to be acquired	4,00,000

Solution:

Computation of Capital Gain: PY 2015-2016/AY 2016-2017

Particulars	**Case-I** ₹	**Case-II** ₹	**Case-III** ₹
Sale price	15,30,000	15,30,000	15,30,000
Less: (i) Selling expenses	(-) 30,000	(-) 30,000	(-) 30,000
(ii) Cost of the asset	(-) 5,00,000	(-) 5,00,000	(-) 5,00,000
Short-term Capital Gain	10,00,000	10,00,000	10,00,000
Less: Exemption in respect of Capital Gain	10,00,000	3,00,000	Nil
Taxable Capital Gain	Nil	7,00,000	10,00,000

Notes : 1. Cost of new asset - cost of asset sold: 8,00,000 - 5,00,000 = 3,00,000

2. Cost of new asset - cost of asset sold: 4,00,000 - 5,00,000 = Nil

ILLUSTRATIONS ON ASSESSMENT OF COOPERATIVE SOCIETIES

Illustration 11: Dinesh Pally Cooperative Society Ltd. furnishes the following particulars of its income for the Previous Year ended on 31st March 2016:

(i)	Interest on Government securities	40,000
(ii)	Profits from banking business	3,50,000
(iii)	Income from purchase and sale of agricultural implement and seeds to its members	2,50,000
(iv)	Income from marketing of agricultural produce of its members	4,00,000
(v)	Profits and gains of business	2,20,000
(vi)	Income from cottage industry	3,50,000
(vii)	Interest and dividends (gross) from other cooperative societies	30,000

Compute Total Income of the society and calculate the Tax Payable by it for the Assessment Year 2016-2017.

Solution :

Dinesh Pally Cooperative Society Ltd.

Computation of income of the for the Previous Year 2015-2016 relating to the Assessment Year 2016-2017 :

Particulars	₹	₹
1. Profits and Gains of Business or Profession:		
a) Banking business	3,50,000	
b) Income from purchase and sale of agricultural implements and seeds to its members	2,50,000	
c) Income from marketing of agricultural produce of its members	4,00,000	
d) Profits and gains of business	2,20,000	
e) Income from cottage industry	3,50,000	15,70,000
2. Income from Other Sources:	40,000	
a) Interest on Government securities	30,000	70,000
b) Interest and dividends from other cooperatives		
Gross Total Income		**16,40,000**
Less: Deduction allowable from gross total income under Sec. 8OP		
1. Banking business [Assumed it is a Rural Development Bank]	3,50,000	
2. Income from purchase and sale of agricultural implement and seeds to its members	2,50,000	
3. Income from marketing of agricultural produce of its members	4,00,000	
4. Income from cottage industry	3,50,000	
5. Interest on Government securities(not eligible for deduction)	Nil	
6. Interest and dividends from other cooperative societies	30,000	13,80,000
Total Income		**2,60,000**

Computation of Tax Liability :

Particulars	Rate	₹
On first ₹ 10,000	10%	1,000
On next ₹ 10,000	20%	2,000
On balance ₹ 2,40,000	30%	72,000
Income Tax Payable		75,000
Add: Education cess @ 2%		1,500
Add: SHEC @ 1%		750
Tax Payable		**77,250**

Note: It is assumed that the provisions of Alternate Minimum Tax are not applicable.

Illustration 12: A co-operative society, engaged in the business of banking, seeks your opinion by the matter of eligibility of deduction under Sec. 8OP on the following items of income earned by it during the year ended 31-3-2016.

(i) Interest on investment in Government securities made out of statutory reserves

(ii) Hire charges of safe deposit lockers.

Solution :

From the Assessment Year 2008-2009 and onward, no deduction is allowed under Sec. 80P to any cooperative bank. However, a primary agricultural credit society or primary co-operative agricultural and rural development bank is outside the purview of this provision [Sec. 80P(4)].

Illustration 13: A co - operative society was engaged in the business of banking or providing credit facilities to its members. It sold goods on credit to its members. Is the co - operative society entitled to special deduction under Sec. 80P(2)(a)(i) in respect of income derived from such an activity?

Solution :

Society is not entitled to the special deduction under Sec. 80P(2)(a)(i).

ILLUSTRATIONS ON ASSESSMENT OF INDIVIDUAL

Illustration 14: Salil was running a business. He died on 20th December, 2015, leaving behind his wife Sruti and two minor sons - Sampat and Samar. He did not have any will. Sruti is running the business for and on behalf of herself and the minor children. Salil owned two house properties. Discuss how the rental income and the business income of the financial year 31st March, 2016 will be assessed and in whose hands.

Solution:

Section 159 provides that if an assessee dies during the Previous Year, the income of the period beginning from the commencement of Previous Year and ending with the date of death is taxable in the hands of the legal representative as if the assessee had not died. Therefore, the business profits and the rental income accruing from 1st April, 2015 to 20th December, 2015 will be assessable in the hands of the legal representatives. Sruti represents the estate and hence is liable to be assessed as the legal representative of Salil.

Business profits and rental income arise from 21st December, 2015 to 31st March, 2016: As far as rental income is concerned, it will be assessed as income of Sruti, Sampat and Samar according to their shares.

According to provisions of Hindu Succession Act, when a male Hindu dies intestate, his estate will devolve on the heirs mentioned in the Schedule by succession and not by survivorship. Hence, the widow and minor children became co-owners and Section 26 will apply since the respective shares are definite and ascertainable. The rental income will be divided into three parts. However, income of Sampat and Samar will be clubbed with income of Sruti by virtue of section 64(1A).

As far as business profit is concerned, the Andhra Pradesh High Court in Deccan Wine and General Stores vs. CIT [1977] 106 ITR 111 has held on similar facts that it is to be assessed in the status of Body of Individuals.

Illustration 15: Ria, Gia and Ira are persons ,aged 30 years, 34 years and 35 years respectively, of Indian origin, though their residential status is non-resident. During the Previous Year relevant for the Assessment Year 2016-17, their income from investment in India is as follows:

Particulars	Ria ₹	Gia ₹	Ira ₹
a. Interest on deposits with public limited companies received on March 31, 2016	35,000	80,000	1,50,000
b. Interest on Government securities received on December 31, 2015	2,25,000	2,20,000	2,70,000
c. Interest on deposits with private limited companies on September 30, 2015	Nil	1,00,000	8,80,000
Tax deducted at source, i.e., @ 20.6 per cent in respect of foreign exchange assets (a) and (b); and @ 30.9 per cent in respect of (c)	53,560	92,700	3,58,440

Determine the amount of tax liability/refund for the Assessment Year 2016-17. Also discuss whether the assessee should opt under section 115-I, i.e., not to be governed by provisions of sections 115C to 115-I.

Solution:

Tax liability if the assessee opts under section 115-I, not to be governed under the provisions of sections 115C to 115-I:

Particulars	Ria ₹	Gia ₹	Ira ₹
Gross Total Income [(a) + (b) + (c)]	2,60,000	4,00,000	13,00,000
Less: Deduction	Nil	Nil	Nil
Net Income	2,60,000	4,00,000	13,00,000
Tax	1,000	15,000	2,15,000
Add: Education Cess	20	300	4,300
Add: Secondary and Higher Secondary Education Cess	10	150	2,150
	1,030	15,450	2,21,450
Less: Tax Deduction at Source	53,560	92,700	3,58,440
Final tax liability/(-)refund	(52,530)	(-)77,250	(1,36,990)
Tax liability if provisions of sections 115C to 115-I are applicable:			
Income from foreign exchange assets eligible for provisions of sections 115C to 115-I [i.e., (a) + (b)]	2,60,000	3,00,000	4,20,000
Tax on income from foreign exchange assets [i.e., @ 20.6% in the case of Ria, Gia and Ira] (1)	53,560	61,800	86,520
Other Income [i.e., (c)]	Nil	1,00,000	8,80,000
Less: Deduction	Nil	Nil	Nil
Taxable Income	Nil	1,00,000	8,80,000
Tax	Nil	Nil	1,06,000
Add: Education Cess	Nil	Nil	2,120
Add: Secondary and Higher Secondary Education Cess	Nil	Nil	1,060
Tax on Other Income	Nil	Nil	1,09,180
Tax liability [i.e., (1) + (2)]	53,560	61,800	1,95,700
Less: Tax Deducted at Source	53,560	92,700	3,58,440
Final tax liability/(-)refund	Nil	(-)30,900	(-)1,62,740

Note: in the problem given above, Ria and Gia should opt under section 115-I (i.e., not to be governed by special provisions of sections 115C to 115-I) by furnishing return of income under section 139. Ira should take the benefit of special provisions of sections 115C to 115-I.

Illustration 16 : From the Profit and Loss Account of Alo of 36 years old for the year ending March 31, 2016, ascertain her Total Income and Tax liability for the Assessment Year 2016 -17:

Particulars	₹	Particulars	₹
General Expenses	13,500	Gross Profits	3,17,000
Bad debts	22,000	Commission	8,800
Advance Tax	3,000	Brokerage	37,000
Insurance	800	Sundry receipts	2,500
Printing & Stationery	1,200	Bad debt recovered (earlier allowed as deduction)	11,000
Salary to Staff	27,000		
Salary to Alo	51,000	Interest on debentures (i.e., net amount ₹18,000 + tax deducted at source : ₹ 2,000)	20,000
Interest on Overdraft	4,000		
Interest on loan to Chandra	41,000	Interest on deposit with a company (non – trade) (net interest : ₹ 13,500 + tax deducted at source : ₹ 1,500)	15,000
Interest on capital of Alo	22,000		
Depreciation	48,000		
Advertisement expenditure	7,000		
Contribution to employees' Recognized Provident Fund	7,800		
Net Profit	1,63,000		
	4,11,300		4,11,300

Other Information:

1. The amount of depreciation allowable is ₹ 45,000 as per the Income Tax Rules. It includes depreciation on permanent sing board.
2. Advertisement expenditure includes ₹ 2,000, being cost of permanent sing board fixed on office premises.
3. Income of ₹ 2,500, accrued during the Previous Year, is not recorded in the Profit and Loss Account.
4. Alo pays ₹ 9,000 as premium on own life insurance policy of ₹ 1,00,000.
5. General expenses include:
   (a) ₹ 1,500 given to sister for arranging a party in her birthday party
   (b) ₹ 1,000 being contribution to a political party.
6. Loan was taken from Chandra for payment of arrears of Income – tax.

Solution :

Assessee : Alo **Previous Year : 2015-2016** **Assessment Year : 2016-2017**

Particulars	₹	₹
Net profit as per Profit & Loss Account		1,63,000
Add: Inadmissible expenses:		
Expenses for arranging personal party	1,500	
Contribution to a political party	1,000	
Advance tax	3,000	
Salary to Alo	51,000	
Interest on capital to Alo	22,000	
Interest on loan taken for payment of Income-tax	41,000	
Capital expenditure on advertisement	2,000	
Depreciation debited to the Profit & Loss A/c	48,000	1,69,500
		3,32,500
Add: Income not recorded in the Profit and Loss Account		2,500
		3,35,000
Less: Income credited to the Profit and Loss Account but not chargeable under the head "Profits and gains of business or profession".		
Interest on debentures	(20,000)	
Interest on company deposit	(15,000)	(35,000)
		3,00,000
Less: Depreciation allowable Income Tax Rules		(45,000)
Business Income		2,55,000
Computation of Net Income of Alo		
Profits and Gains of Business or Profession		2,55,000
Income from Other Sources (interest on debentures and company deposit)		35,000
Gross Total Income		2,90,000
Less: Deductions		
Under section 80C (payment of insurance premium)	(9,000)	
Deduction under section 80GGC (being contribution to a political party)	(1,000)	(10,000)
Net Income		2,80,000
Tax on Net Income		3,000
Less: Rebate u/s 87A		(2,000)
Add: Surcharge		Nil
Tax and Surcharge		1,000
Add: Education cess (2% of tax and Surcharge)		020
Add: Secondary and higher education cess [1% of tax and Surcharge]		10
Tax		1,030
Less: Pre-paid tax (i.e., advance tax + tax deducted at source)		6,500
Tax Refundable (rounded off)		5,470

Note :

Provisions of Alternate Minimum Tax are not applicable.

Illustration 17 : The total income of Mina for the assessment year 2016-17 is ₹1,01,30,000. Compute the tax payable by Mina for the assessment year 2016-17.

Solution :

		₹
Tax on ₹1 crore		
On first ₹2,50,000		Nil
Next ₹2,50,000 — 10%		25,000
Next ₹5,00,000 — 20%		1,00,000
Balance ₹90,00,000 — 30%		27,00,000
		28,25,000
Tax on ₹1,30,000 which is above ₹1 crore		
₹1,30,000 @ 30%		39,000
Total tax		28,64,000
Additional income above ₹1 crore	1,30,000	
Tax payable	39,000	
Balance income	91,000	
Surcharge on ₹28,64,000 @ 12% — ₹3,43,680		
∴ Surcharge in this case shall be ₹91,000 or ₹3,43,680 whichever is less due to marginal relief		91,000
Tax including surcharge		29,55,000
Add: Education cess & SHEC @ 3%		88,650
Tax Payable		30,43,650

Alternatively :

	₹
Tax on ₹1 crore	
On first ₹2,50,000	Nil
Next ₹2,50,000 — 10%	25,000
Next ₹5,00,000 — 20%	1,00,000
Balance ₹91,30,000 — 30%	27,39,000
	28,64,000
Add: Surcharge @ 12%	3,43,680
(a)	32,07,680
Tax on ₹1,00,00,000	28,25,000
Add: Income over ₹1 crore	1,30,000
(b)	29,55,000
Tax [(a) or (b) whichever is lower]	29,55,000
Add: Education Cess & SHEC @ 3%	88,650
Tax payable	30,43,650

ILLUSTRATIONS ON ASSESSMENT OF HUF

Computation of Tax-liability of an HUF :	₹
1. Gross income tax on its total income at the prescribed rates as aforesaid:	
(a) Gross income tax on winnings from lotteries, cross word puzzle, races and horse races, card games, gambling or betting under Sec. 115BB	xxx
(b) Gross income tax on Long-term Capital Gains [Sec. 112(1)]	xxx
(c) Gross income tax on Short-term Capital Gain [Sec. 111A]	xxx
(d) Gross income tax on the balance of Total Income	xxx
Total Gross Income Tax	**xxx**
2. Less: Rebate from gross income tax under Sec. 88E	xxx
Net Income Tax	**xxx**
3. Add: Surcharge on income tax	**xxx**
4. Add: Education surcharge @ 2% on the aggregate income tax and surcharge	**xxx**
5. Add: SHEC @ 1%	**xxx**
Total Tax (3 + 4+ 5)	**xxx**
6. **Less :**	
(a) Rebate on share of profit from AOP under Sec. 86 where AOP (Association of Person) has been taxed at normal rate	**xxx**
(b) Relief under Sec. 89(1)	**xxx**
(c) Double taxation relief under Sec. 91	**xxx**
Tax due from an HUF	**xxx**
Less: Prepaid taxes:	
(a) Tax deducted at source	**xxx**
(b) Advance payment of tax	**xxx**
(c) Tax paid on self-assessment under Sec. 140A	**xxx**
Tax payable/refund due to the assessee	**xxx**
Tax payable is rounded off to the nearest multiple of ₹ 10 (Sec. 288B).	**xxx**

Illustration 18: The following details have been supplied by the Karta, of an HUF aged 62 years. You are required to compute its total income and tax liability for the Assessment Year 2016-2017.

	Particulars	₹
(i)	Profits from business (after charging ₹ 1,00,000 salary to Karta for managing the business)	15,00,000
(ii)	Salary received by the member of a family	60,000
(iii)	Director's fee received by Karta from B Ltd where HUF holds 20% shares but he became director because of his qualifications,	40,000
(iv)	Rental income from house property (after deduction of municipal taxes ₹ 12,000)	78,000
(v)	Dividends (gross) from Indian companies	15,000
(vi)	Long-term Capital Gain	80,000
(vii)	Short-term Capital Gain	30,000
(viii)	Donation to a school, which is an approved institution	1,00,000
(ix)	Deposits in Public Provident Fund	20,000
(x)	NSC-VIII issues purchased	40,000

Solution:

Computation of Total Income for the A.Y. 2016-17

	Particulars	₹	₹
(i)	Income from House Property:		
	Gross annual value (₹ 78,000 + ₹ 12,000)	90,000	
	Less: Municipal Taxes paid	12,000	
	Annual value	78,000	
	Less: Statutory deduction: 30% ×78,000	23,400	54,600
(ii)	Profits and gains from business		15,00,000
(iii)	Capital Gains (a) long-term + (b) short-term		1,10,000
(iv)	Income from other sources—gross dividends from Indian companies: Exempt [Sec. 10(34)]		Nil
	Gross Total Income		**16,64,600**
	Less:		
	1. Contribution to approved savings (Sec. 80C)		
	(i) Deposits in Public Provident Fund	20,000	
	(ii) NSC-VIII Issue	40,000	
		60,000	
	2. Donation to recognised school:		
	(a) Actual donation: ₹ 1,00,000 or		
	(b) 10% of adjusted total income = (Gross Total Income – Long Term Capital Gains – All deductions under Chapter VIA excluding Sec. 80G) of ₹ 15,24,600 (16,64,600 - 80,000 - 60000) whichever is less, is qualifying amount.		
	Amount of deduction: 50% of ₹ 1,00,000	50,000	1,10,000
	Total Income		**15,54,600**

Computation of Tax Liability:

Particulars of total income	Rate of income tax		₹
	₹	₹	
(a) Long-term Capital Gain	80,000	20%	16,000
(b) Balance of total income: ₹ 14,74,600			
(i) First	2,50,000	Nil	—
(ii) Between 2,50,000 – 5,00,000	2,50,000	10%	25,000
(iii) Between 5,00,000 – 10,00,000	5,00,000	20%	1,00,000
(iv) Between 10,00,000 – 14,74,600	4,74,600	30%	1,42,380
Gross Income Tax			**2,83,380**
Add: Education cess @ 2% on income tax			5,668
SHEC @ 1% on income tax			2,834
Tax Payable			**2,91,882**
Rounded off u/s 288B			**2,91,880**

Note : Assumed applicability conditions of AMT are not satisfied and hence, AMT provisions are not applicable.

Illustration 19: Prem was the Karta of HUF. He died leaving behind his major son Anand, his widow, his grandmother and brother's wife. Can the HUF retain its status as such or the surviving persons become co-owners?

Solution:

Income-tax law does not require that there should be at least two male members to constitute an HUF [Gowli Buddanna vs. CIT (1966) 60ITR 293 (SC)]. The expression "Hindu Undivided Family" used in the Act should be understood in the sense in which it is understood under the Hindu personal law. The expression "Hindu Undivided Family" under the Income-tax Act is known as "Joint Hindu Family", under the Hindu personal law. A 'Joint Family' may consist of a single male member and the widows of the deceased male members. The property of the Hindu joint family does not cease to be an HUF property merely because that the HUF, consist of one male member at a given point of time, exercising the proprietary rights over the property of HUF property.

Illustration 20: J (HUF) was the owner of a house property, which was being used for the purposes of a business carried on by a partnership firm JC & Co. in which the Karta and other members of the HUF were partners in their individual capacity. The Assessing Officer proposes to assess the annual letting value of the said property as the HUF's income from house property. The HUF contends that the building was used for business purposes and, therefore, the annual letting value thereof was not taxable in its hands as income from house property under Sec. 22. Examine the rival contention.

Solution:

Section 22 directs not to tax the annual value of a house property which is used by the owner for his business profession, the profits of which are chargeable to tax. In the instant case, the HUF is not using its property for its business. The Karta of the Hindu undivided family and other members of the HUF are partners in the firm in their personal capacity. They have not joined the partnership on behalf of the HUF. Therefore, it cannot be said that the HUF property was being used by the HUF for its business. Hence, the Assessing Officer is justified to tax the income of the HUF property as income from "House Property".

Illustration 21: J. Hazra was the Karta of a Hindu Undivided Family which was assessed to income tax. He died in an air crash and his two sons received ₹ 8 lakhs as compensation and ₹ 6 lakhs from the insurance company. The said amount of ₹ 14 lakhs was invested in units. The assessee claims that the income from these units is assessable as income of the Hindu Undivided Family composed of his sons and their families. Discuss.

Solution:

The right to receive compensation and insurance claim did not vest in the assessee during his life-time. It came into existence only after his death. The income from investment and compensation would be personal income of the assessee [CIT vs. L. Bansi Dhar & Sons (1980) 123 ITR 58 (Del.)].

Illustration 22: C, the Karta of a Hindu Undivided Family, was appointed as the treasurer of a private sector bank on his furnishing security of the family property valued at ₹ 3,00,000, as required by the service rules of the bank. C does not own any self-acquired property.

(i) Discuss how the remuneration of C as the treasurer should be assessed.

(ii) Will your answer be different if C had joined a partnership firm as a partner by contributing family funds of ₹ 30,000.

Solution:

(i) Remuneration from bank cannot be treated a return on the security of family property, pledged with the bank to secure the continuity of service. It cannot be treated as income of the HUF.

Remuneration is a compensation for services rendered by C, in his personal capacity on account of personal qualifications. C is assessable on remuneration as income from "salary". He can claim standard deduction under Sec. 16.

(ii) Membership of partnership has been obtained because of HUF funds and not because of personal skill or qualification of C. Therefore, any income from partnership firm will be treated as income of the HUF.

ILLUSTRATIONS ON ASSESSMENT OF FIRM / LLP

Illustration 23: R (29 years) and S (28 years) are two partners of R&S Co. (a firm of Cost Accountants). On March 31, 2015, there is no provision for payment of salary and interest to partners. On April 1, 2015, the deed of partnership has been amended to provide salary and interest as follows:

Particulars	R	S
Salary	₹ 21,000 per month	₹ 23,000 per month
Interest	14 per cent per annum	14 per cent per annum

The Income and Expenditure Account of R&S Co. for the year ending March 31, 2015 is as follows:

Particulars	₹	Particulars	₹
Office Expenses	2,59,000	Receipt from clients	10,57,000
Salary to employees	80,000	Interest recovered from R and S on drawings	3,000
Income tax	41,000		
Salary to R	2,52,000		
Salary to S	2,76,000		
Interest on capital to R @ 14% p.a.	14,000		
Interest on capital to S @ 14% p.a.	21,000		
Net Profit (shared by R and S equally as per the terms of partnership deed)	1,17,000		
	10,60,000		10,60,000

Other Information:

1. Out of office expenses, ₹ 19,000 is not deductible by virtue of sections 30 to 37.
2. During the year the firm sells a capital asset for ₹ 8,10,000 (indexed cost of acquisition being ₹ 1,88,865).
3. Personal income and investments of partners are as follows:

Particulars	R ₹	S ₹
Interest from Government securities	5,70,000	5,23,000
Fixed Deposit interest	2,00,000	1,08,000
Deposit in public provident fund	1,00,000	85,000
Mediclaim insurance premium	12,000	11,000

Find out the net income and tax liability of the firm as well as the partners for the Assessment Year 2016-17.

Solution :

Particulars	₹	₹
Computation of net income/tax liability of the firm		
Net profit as per Income and Expenditure Account		1,17,000
Add:		
Income tax		41,000
Office expenses		19,000
Salary to R and S (₹2,52,000 + ₹2,76,000)		5,28,000
Interest to R and S [to the extent not allowed as deduction, i.e., {(₹ 14,000 + ₹ 21,000)-12/14 of (₹ 14,000 + ₹ 21,000)}]		5,000
Book Profit		7,10,000
Less: Remuneration to partners [maximum deductible amount is 90% of ₹3,00,000 + 60% of ₹ 4,10,000]		5,16,000
Income from the Profession		1,94,000
Capital Gains		
Sale proceeds	8,10,000	
Less: Index cost of acquisition	1,88,865	6,21,135
Net income (rounded off)		8,15,135
Tax		
Income-tax on Long-term Capital Gain [20% of ₹ 6,21,135]		1,24,227
Income-tax on balancing amount [@30%]		58,200
Tax		1,82,427
Add: Surcharge		Nil
Tax and surcharge		1,82,427
Add: Education cess (2% of tax)		3,649
Add: Secondary and higher education cess (1% of income-tax)		1,824
Tax liability of the firm (rounded off)		1,87,900

Computation of net income and tax liability of partners	R	S
	₹	₹
Profits and gains of business or profession Interest from the firm(to the extent allowed as deduction, i.e., 12/14 of ₹ 14,000 and ₹ 21,000)	12,000	18,000
Salary received from the firm(to the extent allowed as deduction, i.e., ₹5,16,000 distributed in the ratio of 63:69)	2,46,273	2,69,727
Income from profession	2,58,273	2,87,727
Income from other sources	7,70,000	6,31,000
Gross total income	10,28,273	9,18,727
Less: Deduction under sections 80C to 80U		
Under section 80C	1,00,000	85,000
Under section 80D	12,000	11,000
Net Income (rounded off)	9,16,270	8,22,730
Tax on income		
Income-tax	1,08,254	89,546
Add: surcharge	Nil	Nil
Tax and surcharge	1,08,254	89,546
Add: Education Cess (2% of tax)	2,165	1,791
Add: Secondary and Higher Secondary Education Cess (1% of tax)	1,083	895
Tax liability (rounded off)	1,11,502	92,232

Note: Interest recovered from partners is fully taxable.

Provisions of Alternate Minimum Tax are not applicable in the above cases.

Illustration 24 : Bebo and Lolo are partners in a partnership firm, K & Co. They share profit at a ratio of 1:4. The firm is engaged in the business of civil construction. The Profit and Loss Account of the firm for the year ended March 31, 2016 is as follows:

Particulars	₹	Particulars	₹
Opening stock of raw material	1,12,200	Sales turnover	48,90,400
Depreciation	2,56,400	Rent of a godown	60,000
Salary to employees	1,65,000	Interest on company deposits	1,86,800
Purchase of raw material	33,12,000	Closing stock of raw material	6,12,600
Interest on loan taken for business purposes	76,400		
Travelling expense	27,200		
Entertainment expense	12,500		
Advertisement expenses	33,700		
Other expenses	4,15,000		
Municipal tax and insurance (₹ 8,000 + ₹ 1,600) of godown	9,600		
Salary to partners as per partnership deed			
Bebo	2,28,000		
Lolo	2,40,000		
Interest to partners as per partnership deed @ 20 per cent p.a.			
Bebo	20,000		
Lolo	60,000		
Net Profit	7,81,800		
	57,49,800		57,49,800

Other Information:

1. Out of other expenses debited to P&L A/c ₹ 15,700 is not deductible under section 37(1).
2. Out of travelling expenses ₹ 7,500 is not deductible under section 37(1).
3. On April 1, 2015, the firm owns the following depreciable assets:

   Block 1 – Plants 1 and 2, depreciated value: ₹ 4,70,000, rate of depreciation : 15%.

   Block 2 – Plants 3 and 4, depreciated value : ₹ 5,20,000, rate of depreciation : 30%.

   On January 1, 2016, the firm sells Plant 4 for ₹ 8,90,000 and purchases Plant 5 (rate of depreciation 15%) for ₹ 4,00,000.
4. The firm gives a donation of ₹ 1,50,000 to a notified charitable institute which is included in other expenses.

The firm wants to set off the following losses brought forward from earlier years:

Particulars	Assessment Years	
	2014-15 ₹	2013-14 ₹
Business	25,000	—
Capital Loss (short-term)	5,000	3,000

Income of partners Bebo and Lolo is as follows:

Particulars	Bebo ₹	Lolo ₹
Interest on Fixed Deposits	5,36,000	8,20,000
LIC Premium paid (Capital Sum Assured is more than 10% of Premium paid)	50,000	80,000

Firm wants to pay tax under section 44AD. Find out the net income and tax liability of the firm and partners for the Assessment Year 2016-17 on the assumption that –

a. Conditions of sections 184 and 40(b) are satisfied; and

b. Conditions of section 184 and/or section 40(b) are not satisfied.

Solution:

Particulars	Situation (a): When conditions of sections 184 and 40(b) are satisfied ₹	Situation (b): When conditions of Section 184 and/or 40(b) are not satisfied ₹
Computation of business income of the firm		
Income from civil construction business [i.e., 8% of ₹ 48,90,400]	3,91,232	3,91,232
Less: Interest on capital to partners @ 12% [i.e.12/20×(20,000+60,000)]	48,000	---
Book Profit	3,43,232	3,91,232
Less: Remuneration to partners [i.e., 90% of ₹ 3,00,000 and 60% of ₹ 43,232]	2,95,939	---
Income from the business of civil construction	47,293	3,91,232
Computation of income		
Property income [i.e., ₹ 60,000 – ₹ 8,000 – 30% of ₹ 52,000]	36,400	36,400
Business income (minus brought forward business loss)	22,293	3,66,232
Capital Gain on sale of Plant 4 under section 50 [i.e., ₹ 8,90,000 – ₹ 5,20,000 – ₹ 8,000 brought forward Short-term Capital Loss)	3,62,000	3,62,000
Income from Other Sources	1,86,800	1,86,800
Gross Total Income	6,07,493	9,51,432
Less: Deduction under section 80G [i.e., 50% of 10% of ₹ 6,07,493 or ₹ 9,51,432]	30,375	47,572
Net Income (rounded off)	5,77,120	9,03,860
Tax	1,73,136	2,71,158
Add: Surcharge	Nil	Nil
Tax and surcharge	1,73,136	2,71,158
Add: Education cess (2% on tax and surcharge)	3,463	5,423
Add: Secondary and higher education cess (1% on tax and surcharge)	1,731	2,712
Tax liability (rounded off)	1,78,330	2,79,290

Computation of net income and tax liability of partners	Situation (a)		Situation (b)	
	Bebo ₹	Lolo ₹	Bebo ₹	Lolo ₹
Business Income:				
Interest from firm	12,000	36,000	---	---
Salary from firm (₹2,95,939 shall be divided between Bebo and Lolo in the ratio of 228 : 240)	1,44,175	1,51,764	---	---
Business income under section 28	1,56,175	1,87,764	---	---
Bank interest (fixed deposits)	5,36,000	8,20,000	5,36,000	8,20,000
Gross total income	6,92,175	10,07,764	5,36,000	8,20,000
Less: Deduction under section 80C	50,000	80,000	50,000	80,000
Net Income (rounded off)	6,42,175	9,27,764	4,86,000	7,40,000
Tax	53,435	1,10,553	23,600	73,000
Less: Rebate u/s 87A	—	—	2,000	—
	53,435	1,10,553	21,600	73,000
Add: Surcharge	—	—	—	—
Tax and surcharge	53,435	1,10,553	21,600	73,000
Add: Education Cess (2% of tax)	1,069	2,211	432	1460
Add: Secondary and Higher Secondary education Cess [1% of tax]	534	1,106	216	730
Tax liability (rounded off)	55,038	1,13,870	22,248	75,190

Note : (i) Provisions of Alternate Minimum Tax are not applicable in the above cases.

(ii) Bebo & Lolo are assumed to be resident during the previous year.

Illustration 25 : A, B and C are three partners (3: 3: 4) of ABC & Co., a LLP engaged in manufacturing leather goods and it has agencies of different companies. The Profit and Loss Account of the LLP for financial year ended March 31, 2016 is as follows:

Particulars	₹	Particulars	₹
Cost of goods sold	7,90,000	Sales	21,22,000
Salary to staff	7,80,000	Long-term Capital Gains	3,00,000
Depreciation	2,50,000		
Remuneration to Partners :			
A	1,92,000	Short-term Capital Gain under	
B	96,000	section 111A	55,000
C	1,80,000	Other Short-term Capital Gain	65,000
Interest on capital to partners		Fixed deposit interest	50,000
A	17,000	Other business receipts	2,000
B	30,000	Interest on drawings recovered	
C	40,000	from A	16,000
Other expenses	1,65,000		
Net Profit:			
A	21,000		
B	21,000		
C	28,000		
	26,10,000		26,10,000

Other information:

1. The LLP satisfies conditions of sections 184 and 40(b).
2. The LLP is not eligible for deduction under section 80-IA/80-IB.
3. The LLP has given donation of ₹ 70,000 to a notified public charitable trust which is not debited to the Profit and Loss Account.
4. Up to March 31, 2015, there is no provision in the partnership deed to pay remuneration to partners. The deed is amended on April 1, 2015 to pay remuneration/interest to partners as under:

Particulars	Remuneration ₹	Interest on capital ₹
A	16,000 per month	17 per cent simple interest
B	8,000 per month	15 per cent simple interest
C	15,000 per month	20 per cent simple interest

5. Depreciation as per section 32 comes to ₹ 95,000
6. Other expenses to the tune of ₹ 65,000 is not deductible under sections 30 to 43D.
7. For the Assessment Years 2014-15 and 2015-16, the firm has assessed business loss of ₹ 30,000 and Long-term Capital Loss of ₹ 15,000 (which has not been set off so far).

Solution :

Particulars	₹
Computation of remuneration deductible under section 40(b)	
Net Profit as per P&L A/c (₹ 21,000+₹21,000+₹28,000)	70,000
Add:	
Depreciation debited to P&L A/c	2,50,000
Remuneration to partners (i.e., ₹ 1,92,000+ ₹96,000 + ₹1,80,000)	4,68,000
Interest to partners (to the extent not deductible) (i.e., 5/17 of ₹ 17,000 + 3/15 of ₹30,000 + 8/20 of ₹ 40,000)	27,000
Other expenses (to the extent not deductible)	65,000
	8,80,000
Less:	
Capital Gain (₹ 3,00,000 + ₹55,000 + ₹65,000)	4,20,000
Interest on Bank Fixed Deposit	50,000
Depreciation as per Section 32	95,000
Book Profit	3,15,000
Remuneration deductible (90% of ₹ 3,00,000 + 60% of ₹15000)	2,79,000

Computation of income of the firm	₹	₹
Business Income		
Book Profit	3,15,000	
Less : Remuneration deductible	2,79,000	
Balance	36,000	
Less : Brought forward business loss	30,000	6,000
Long-term Capital Gain (minus brought forward Long-term Capital Loss of ₹15,000)	2,85,000	
Short-term Capital Gain under section 111A	55,000	
Other Short-term Capital Gain	65,000	4,05,000
Interest on Fixed Deposit		50,000
Gross total income		4,61,000
Less: Deduction under Section 80G [i.e., 50% of 10% of ₹ (4,61,000-2,85,000-55,000)]		6,050
Net Income (rounded off)		4,54,950
Computation of tax of firm		
Long-term Capital Gain (20% of 2,85,000)		57,000
Short-term Capital Gain under section 111A (15% of ₹ 55,000)		8,250
Other Income (30% of ₹ 1,14,950)		34,485
Total		99,735
Add: Surcharge		Nil
Total		99,735
Add: Education cess		1,995
Add: Secondary and Higher Education cess		997
Tax liability of the firm (rounded off)		1,02,730

Note:

1. Interest recovered from partners is fully taxable.
2. Provisions of Alternate Minimum Tax are not applicable in the above cases.

Illustration 26 : The following is the Profit and Loss Account for the year ended 31.3.2016 of XYZ (LLP) having 3 partners :

Profit and Loss Account

		₹		₹
Establishment & other expenses		45,50,000	Gross Profit	69,20,000
Interest to partner @ 15%			Rent from house property	1,60,000
X	90,000		Interest on Bank deposits	20,000
Y	1,20,000			
Z	60,000	2,70,000		
Salary to designated partners				
X	2,40,000			
Y	1,80,000	4,20,000		
Net Profit		18,60,000		
		71,00,000		71,00,000

The LLP is eligible for 100% deduction under section 80-IC as it is established in notified area in Himachal Pradesh.

Compute the tax payable by the Limited Liability Firm.

Solution :

Computation of Total Income of XYZ (LLP) for the A.Y. 2016-17

	₹	₹	₹
Income under the head House Property			
Actual Rent		1,60,000	
Less : Deduction 30%		48,000	1,12,000
Business Income			
Net Profit as per P&L A/c		18,60,000	
Less : Income credited but either exempt or taxable under other head			
Rent	1,60,000		
Interest on bank deposit	20,000	1,80,000	
		16,80,000	
Add : Expenses disallowed			
Interest to partners in excess of 12% [i.e. 3/15×2,70,000]	54,000		
Salary to partners	4,20,000	4,74,000	
Book Profit		21,54,000	
Less : Salary as per section *40(b) (See* working note)		4,20,000	17,34,000
Income from Other Sources			20,000
Gross Total Income			18,66,000
Less : Deduction under section 80-IC		17,34,000	
Deduction under section 80TTA [Assumed Savings Account]		10,000	17,44,000
Total Income			1,22,000

Regular income tax payable on Total Income

Total Income of ₹ 1,22,000 @ 30%	36,600

Adjusted Total Income

Total Income	1,22,000
Add : Deduction u/s 80-IC	17,34,000
	18,56,000

Alternate Minimum Tax (AMT) 18.5% on ₹ 18,56,000 = ₹ 3,43,360

Hence, adjusted total income shall be total income and the tax (payable shall be the Alternate Minimum Tax) i.e. on ₹ 18,56,000 @ 18.5% + 3% (EC + SHEC).

Tax Payable

	₹
Alternate Minimum Tax 18.5% on ₹18,56,000	3,43,360
Add : 3% Education Cess & SHEC	10,301
	3,53,661
Rounded off	3,53,660

AMT credit of ₹3,15,963 (i.e. 3,53,661 – 37,698) is available which can be carried forward for ten Assessment Years.

Working Note :

Book Profit	21,54,000
Maximum salary allowed	
First 3,00,000 of book profit — 90%	2,70,000
Balance ₹ 18,54,000 of book profit 60%	11,12,400
	13,82,400

Salary allowed shall be ₹ 13,82,400 or ₹ 4,20,000 whichever is lower i.e. ₹ 4,20,000.

Illustration 27: Discuss whether Mr. Das, an individual, can become a partner in dual capacity, that is, one representing HUF as Karta and the other as representing himself. Is a firm constituted by partners, including a partner in dual capacity, entitled to get the deduction of salary and interest paid to its partner?

Solution : There is nothing in law which prevents an individual to become partner in a firm in dual capacity so long as there is one or more other individuals to join in the partnership. Such partnership is valid and legal and entilled to get the deduction of salary and interest paid to its partners if the requisite conditions are satisfied. [CIT vs. Budhalal Amolakhdas [1981] 5 Taxman 176 (Guj.)]

Hence, Mr. Das can become a partner in dual capacity of a firm and the firm is eligible to get deduction of salary and interest paid to its partners if the requisite conditions are satisfied.

ILLUSTRATIONS ON ASSESSMENT OF COMPANIES

Illustration 28: From the following information, determine the tax liability of Z Ltd., domestic company, for the Assessment Year 2015-2016 and 2016-2017.

S. No.	Assessment year	Book-profits (₹)	Total income (₹)
1.	2015-2016	2,80,000	1,30,000
2.	2016-2017	3,00,000	2,00,000

Solution :

Surcharge is not considered assuming, Net Income less than ₹ 1 crore

Assess-ment Year	Book-profit (₹)	Total Income (₹)	Tax on Book-Profit (₹)	Tax on Total In-come @ 30.9% rounded off u/s 288B (₹)	Tax Credit = Tax on Book Profits (–) Tax on Total In-come (₹)	Tax Payable after tax credit set off, if any (₹)	Tax credit balance (₹)
2015-2016	2,80,000	1,30,000	@ 19.055% on 2,80,000 = 53,354	@ 30.9% on 1,30,000 = 40,170	13,184	53,354	13,184
2016-2017	3,00,000	2,00,000	@ 19.055% on 3,00,000 = 57,165	@ 30.9% on 2,00,000 = 61,800	—	57,165 [restricted to ₹57,165]	8,549 [13,184-4,635]

Note :

1. Tax Payable is rounded off to the nearest multiple of ₹ 10 (Sec. 288B)
2. As per Sec. 115JD, the tax credit shall be allowed to be set off to the extent of the excess of regular income -tax over the alternate minimum tax and the balance of the tax credit, if any, shall be carried forward.

Illustration 29: Fashion Ltd., a well-diversified group, given below its Profit and Loss Account for the Previous Year 2015-2016:

Particulars	₹	Particulars	₹
Manufacturing expenses	9,00,000	Sale of manufactured goods	15,00,000
Salaries/wages	5,50,000	Sale of agriculture produce	10,00,000
Cultivation expenses	4,00,000	Receipt from generation / distribution of power	15,00,000
Power generation/distribution expenses	4,00,000	Receipt from I.U. set up in backward district in July 2005	10,00,000
Irrigation expenses	6,00,000	Transfer from Reserve & Provision A/c, debited to Profit and Loss Account in 2007-08 on account of free service under warranty period	9,50,000
Expenses of I.U., located in backward district	5,00,000	Sale of goods of I.U. (Sec. 10B)	2,00,000
Expenses of I.U., located in free trade zone(Sec. 10A)	1,50,000	Sale of goods of I.U, located in free trade zone (Sec. 10A)	2,00,000
Expenses of I.U. (Sec. 10B)	1,00,000	Receipt from water supply/irrigation project	1,00,000
Expenses of I.U. located in NRE	50,000	Income from UTI	50,000
Provision for losses of subsidiary	4,00,000	Sale of goods of I.U. located in Northern Eastern Region (NER) (Sec. 10C)	5,00,000
Sundry expenses	10,000	Long Term Capital Gain on sale of equity shares, transaction chargeable to Securities Transaction Tax	35,00,000
Provision for bad and doubtful debts	2,00,000		
Provision for bills under discount	50,000		
Provision for sales tax against demand notice	3,30,000		
Income tax provision against demand notice	3,00,000		
Dividend paid on preference shares	2,00,000		
Proposed dividend on equity shares	4,00,000		
Transfer to General Reserve	1,00,000		
Dividend Equalisation Reserve	2,00,000		
Penalties under direct tax laws	60,000		
Goodwill written off	50,000		
Depreciation	3,00,000		
Amortisation of patent rights	30,000		
Expenses on transfer of equity shares	20,000		
Net Profit	42,00,000		
	1,05,00,000		**1,05,00,000**

The following additional information is provided as below:

1. Depreciation includes, a sum of ₹1,00,000 on account of revaluation of building and plant and machinery.
2. Past year losses, before depreciation, are given below:

	Loss (₹)	Depreciation (₹)
2011-2012	(-) 5,00,000	(-) 6,00,000
2012-2013	Nil	(-) 5,00,000
2013-2014	(-) 7,00,000	(-) 4,00,000
2014-2015	(-) 5,00,000	Nil

Compute book-profits for the Previous Year 2015-2016/AY 2016-2017 for MAT under Sec. 115JB.

Solution :

Computation of Book Profit for the AY 2016-2017

Particulars	₹	₹
Net Profit as per Profit and Loss Account		42,00,000
Add:		
(i) Cultivation expenses	4,00,000	
(ii) Expenses of I.U. located in Free Trade Zone (Sec. 10A)	1,50,000	
(iii) Expenses of I.U. under Sec. 10B	1,00,000	
(iv) Provision of loss of subsidiary	4,00,000	
(v) Provision for bad and doubtful debts— an unascertained liability	2,00,000	
(vi) Provision for bills under discount— an unascertained liability	50,000	
(vii) Provision for sales- tax against demand notice — an ascertained liability	—	
(viii) Income-tax provision— an ascertained liability to be added back	3,00,000	
(ix) Dividend paid on preference shares	2,00,000	
(x) Proposed dividend on equity shares	4,00,000	
(xi) Transfer to General Reserve	1,00,000	
(xii) Dividend Equalisation Reserve	2,00,000	
(xiii) Depreciation [Sec. 115JB(2)(g) w.e.f. AY 2011-2012]	3,00,000	28,00,000
Adjusted Profits		**70,00,000**
Less:		
(i) Sales of agriculture produce [Sec. 10(1)]	10,00,000	
(ii) Receipt from I.U. in Free Trade Zone [Sec. 10A]	2,00,000	
(iii) Receipt from I.U. Sec. 10B	2,00,000	
(iv) Depreciation, excluding depreciation on account of revaluation of assets	2,00,000	
(v) Withdrawals from Reserve & Provision for free sale service, under warranty scheme	9,50,000	
(vi) Long-term capital gain on transfer of equity shares [Sec. 10(38)] — see Note below	Nil	
(vii) Receipts from UTI [Sec. 10(35)]	50,000	
(viii) Brought forward loss or depreciation, whichever is less.	9,00,000	35,00,000
Book-profits		**35,00,000**

Note: 1. Calculation of brought forward losses or depreciation:

2011-2012	Loss	5,00,000
2012-2013	Loss/depreciation	Nil
2013-2014	Depreciation	4,00,000
2014-2015	Loss/depreciation	Nil
	Total	9,00,000

2. Transfer from provision for after sale service, free of cost, made during the year 2007-2008, debited to Profit and Loss A/c and now credited to Profit and Loss A/c and the amount so credited to Profit and Loss A/c is an allowable deduction [Sec. 115JB(2)].

3. Long-term Capital Gain from the transfer of equity shares in a company is exempt is chargeable to Securities Transaction Tax (STT). However, for the purposes of computing Book-profits, it is not to be deducted [Sec.10(38)]. Accordingly, the expenditure incurred for the transfer of equity shares has not been added back in computing Book Profits.

Illustration 30: Classic Exporters Ltd, runs a new industrial undertaking set up in 2006-2007 which satisfies the conditions of Sec. 80-IB. Given below is the Profit and Loss Account for the Previous Year 2015-2016 :

Particulars	₹	Particulars	₹
Stock	4,00,000	Domestic sales	24,00,000
Purchases	23,00,000	Export sales	43,00,000
Salaries and wages	9,70,000	Export incentives Sec. 28(iiia)/(iiic)	50,000
Entertainment expenses	1,30,000	Profit of foreign branch Brokerage/ commission/interest/ rent, etc	2,50,000
Freights and insurance attributable to exports	3,00,000		50,000
Travelling expenses	2,20,000	Transfer from contingency reserve	10,00,000
Depreciation	1,50,000	Stock	3,50,000
Selling expenses	1,20,000		
Income tax paid	90,000		
Income-tax penalty	30,000		
Custom duty payable against demand notice	30,000		
Provision for unascertained liabilities	20,000		
Provision for ascertained liabilities	50,000		
Proposed dividend	3,00,000		
Loss of subsidiary company	50,000		
Net Profit	32,40,000		
	84,00,000		84,00,000

You are further informed:

(i) Excise duty for 2014-2015, amounting ₹ 1,20,000 was paid on 15th December 2015.

(ii) Depreciation under Sec. 32 is ₹ 2,20,000.

(iii) During the year 2011-2012, contingency reserve, amounting ₹ 10,00,000, debited to Profit and Loss A/c, was added back to the extent of ₹ 4,00,000 in the computation of Book-profits. The company has transferred the said reserve to the Profit and Loss A/c during the year.

(iv) Brought forward business loss/depreciation:

PY	Accounting purposes		Tax purposes	
	Loss	Depreciation	Loss	Depreciation
2011-2012	(-) 10,00,000	(-) 1,00,000	(-) 5,00,000	(-) 2,50,000
2012-2013	(-) 2,00,000	(-) 3,00,000	(-) 1,00,000	(-) 2,00,000

Compute the following: (a) Total Income, (b) Book-profits and (c) Tax Liability.

Solution :

(a) Computation of Total Income for the AY 2016-2017

Particulars	₹	₹
Net Profit as per Profit & Loss A/c		32,40,000
Add : Expenses debited to P&L A/c – disallowed		
(i) Income tax	90,000	
(ii) Custom duty payable	30,000	
(iii) Provision for unascertained liability	20,000	
(iv) Proposed dividend	3,00,000	
(v) Loss of subsidiary company	50,000	
(vi) Income-tax penalty	30,000	
(vii) Depreciation	1,50,000	6,70,000
		39,10,000
Less : Allowable Expenses and wrong credits in P&L A/c		
(i) Withdrawals from contingency reserve	10,00,000	
(ii) Excise duty	1,20,000	
(iii) Depreciation	2,20,000	
(iv) Brokerage, commission, interest and rent, etc.	50,000	13,90,000
Business Profits		**25,20,000**
Add: Income from Other Sources: Brokerage/ commission, etc.		50,000
Aggregate Income		**25,70,000**
Less:		
(i) Brought forward losses (Sec. 72)	6,00,000	
(ii) Brought forward depreciation [Sec. 32(2)]	4,50,000	10,50,000
Gross Total Income		**15,20,000**
Less: Profit from industrial undertaking Sec. 80IB:		
30% of ₹ 15,20,000 as included in GTI		4,56,000
Total Income		**10,64,000**

(b) Computation of Book Profits for the AY 2016-2017

Particulars	₹	₹
Net profits as per Profit & Loss A/c		32,40,000
Add : Expenses disallowed		
(i) Income tax	90,000	
(ii) Provision for unascertained liability	20,000	
(iii) Proposed dividend	3,00,000	
(iv) Loss of subsidiary	50,000	4,60,000
		37,00,000
Less : Allowable expenses and wrong credit in P & L A/c		
(i) Withdrawals from contingency reserve	4,00,000	
(ii) Brought forward business loss or depreciation whichever is less		
2011-2012 Depreciation	1,00,000	
2012-2013 Loss	2,00,000	7,00,000
Book-profits		**30,00,000**

(c) Computation of Tax Liability for the AY 2016-2017

Particulars	₹
(a) Tax on Total Income (including Education Cess and SHEC) = 30.9% of 10,64,000	3,28,776
(b) Tax on Book Profits (including Education Cess and SHEC) = 19.055% on 30,00,000	5,71,650
Tax payable [Higher of (a) & (b)]	**5,71,650**

Note :

(i) No adjustment is required for depreciation debited to Profit and Loss A/c because it is not on account of revaluation of any asset.

(ii) MAT credit available ₹ (5,71,650 – 3,28,776) = ₹ 2,42,874

(iii) Any penalty, interest, etc. paid under any of the direct tax laws or for infraction of any other laws and debited to Profit & Loss Account will be allowed and hence, need not be added back.

Illustration 31: Z Ltd is a qualifying shipping company which has got two qualifying ships during the Previous Year 2015-2016 :

Ship	Tonnage weight	No. of operational days
Ship A	37,949 tonnes and 990 kg	300 days
Ship B	25,550 tonnes and 275 kg	366 days

Compute its tonnage income under Tonnage Tax Scheme for the Assessment Year 2016-2017.

Solution:

Ship A	Ship B
(i) Tonnage consisting of kilograms is ignored. (ii) If such tonnage is not a multiple of 100 tonnes and the last two digits are less than 50, the tonnage is reduced to the previous lower tonnage which is a multiple of 100. (iii) Tonnage rounded off = 37,900 tonnes	(i) Tonnage consisting of kilograms is ignored. (ii) If such tonnage is not a multiple of 100, and last two degits are 50 or more, the tonnage is increased to next higher tonnage which is a multiple of 100 (iii) Tonnage rounded off = 25,600 tonnes

Income — computation under TTS		**Income — computation under TTS**	
Daily TI:	₹	**Daily TI:**	₹
First 1,000 tonnes (₹ 46 × 10)	460	First 1,000 tonnes (₹ 46 × 10)	460
Next 9,000 tonnes (₹ 35 × 90)	3,150	Next 9,000 tonnes (₹ 35 × 90)	3,150
Next 15,000 tonnes (₹ 28 × 150)	4,200	Next 15,000 tonnes (₹ 28 × 150)	4,200
Balance 12,900 tonnes (₹ 19 × 129)	2,451	Balance 600 tonnes (₹ 19 × 6)	114
Daily TI:	10,261	Daily TI:	7,924
Total TI for the Previous Year ₹ 10, 261 × 300	30,78,300	Total TI for the Previous Year ₹ 7,924 × 366	29,00,184

17.9 DIFFERENT ASPECTS OF DIRECT TAX PLANNING

Introduction:

The provisions of the Income-Tax are contained in the Income-Tax Act, 1961 (the Act), which extends to whole of India and is operative from the 1st day of April, 1962(the Rules). The Act provides for determination of taxable income, tax liability, procedures for assessment, appeals, penalties, interest levies, the tax payment schedules and its determination, refunds and prosecutions.

Depending upon Government polices certain income is exempted from tax, for example SEZ (Special Economic Zone) units income, Agriculture income, etc. and deduction are also provided on fulfillment of prescribed criteria. Provisions relating to such exemptions and deduction are also contained in the Act.

Corporate form of business is much in vogue. Therefore, certain taxes specific to companies like Tax on Book profit (115JB), tax on Dividend Distributed (115O), are levied.

At times in Cross border transactions income earned get exposed to tax in India as well as in some other countries. Provisions for upholding relief from double taxation are also made in the Income Tax Act.

The Act also lays down the powers duties of various income-tax authorities. Being revenue legislation, the act is amended once a year through union budgets and the finance bill is normally presented to the Parliament for approval around February. The Act has empowered the Central Board of Direct Taxes (CBDT) to frame the rules and these rules are implemented after necessary Gazette notifications. The CBDT also issues circulars and clarifications from time to time for implementation by the income-tax authorities by virtue of section 119, which gives such rule making powers to the CBDT. It is impracticable for the Act to provide exhaustively for everything relating to limits, conditions, procedures, forms and various other aspects. Therefore this power has been delegated to CBDT and thus periodical changes and modification by an executive authority is facilitated. The power to frame rules is vested with the Board u/s 295 of the Act and the word 'prescribed' used in section 2(33) means what is prescribed by rules made under the Act.

The Income-Tax Act gives definitions of the various terms expressions used in the Act. Unless the context otherwise requires, these definition should be applied. The words 'means' 'includes' and 'means and includes' are used in these definitions and the significance of these terms needs to be understood. When a definition uses the word 'means' the definition is self-explanatory, restrictive and in a sense exhaustive. It implies that the term or expression so defined means only as to what is defines as and nothing else. For example, the terms 'agricultural income' 'assessment year ' 'capital asset', are exhaustively defined. When the legislature wants to widen the scope of a term or expression and where an exhaustive definition cannot be provided, it uses the word 'includes' in the definition. Generally an inclusive definition provides an illustrative meaning and the definition could include what is not specifically mentioned in the definition so long as the stipulated criteria are satisfied. To illustrate refer to the definitions of 'income', 'person', 'transfer ' in the Act. When the legislature intends to define a term or expression to mean something and also intends to specify certain items to be included, other the words ' means' as well as ' includes' are used. Such definition is not only exhaustive but also illustrative in specifying what is intended to be included. Sometimes specific items are included in an exhaustive definition in order to avoid ambiguity and to provide clarity. Please refer to definitions of 'assessee', 'Indian company','recognised provident fund', under the Act.

Further any decision given by the Supreme Court also becomes a law on the subject and will be binding on all the courts, tribunals, income-tax authorities as well as the taxpayers. In case of apparent contradictions in the Supreme Court rulings, the following rules may have to be followed:-

1. The decision of the larger bench would prevail.
2. The principle of the later decision shall prevail, where the decisions are by equal number if judges. Decisions given by High Courts are binding on all taxpayers and It authorities, which fall under its jurisdiction till it is overruled by higher authority.

Tax Planning vs. Tax Evasion

The word 'tax planning' connotes the exercise carried out by the taxpayer to meet his tax obligations in proper, systematic and orderly manner availing all permissible exemptions, deductions and reliefs available under the statute as may be applicable to his case. To illustrate, assessee software company setting up assessee software technology park in assessee notified area to avail benefits of section 10A of the Act is assessee legally allowable course. Planning does not necessarily mean reduction in tax liability but is also aimed at avoiding controversies and consequential litigations.

Every taxpayer is expected to voluntarily make disclosures of his incomes and tax liabilities through legal compliance. When a tax payer deliberately or consciously do not furnish material particulars or furnishes inaccurate or false particulars or defrauds the State by violating any of the legal provisions, it shall be termed as 'tax evasion'. It is also illegal, but also unethical and immoral. Inflation of expenditure, suppuration of income, recording of fictitious transactions, claiming deductions wrongly are few examples.

Benjamin Franklin is credited with this classical statement: There are two certainties in this world – death and taxes. This makes all tax payers in general, and the companies in particular, realize the bitterness or hardship of taxes. Three methods of saving taxes have been developed in most countries of the world in the past few decades: tax evasion, tax avoidance and tax planning. A great deal of confusion prevails in corporate sector about correct connotations of these terms. Hence, we shall attempt to explain these terms to show tax planning is absolutely legal. The expression 'Tax Evasion' means illegally hiding income or concealing the particulars of income or concealing the particular source or sources of income or in manipulating the accounts so as to inflate the expenditure and other outgoings with a view to illegally reduce the burden of taxation. Hence, tax evasion is illegal and unethical. It is uneconomical as well. It deserves to be deprecated not only by the Government but by the companies as well. The next expression is 'Tax avoidance' which is assessee art of dodging taxes without breaking the law. In my opinion, tax avoidance means traveling within framework of the law or acting as per language of the law only in form, but murdering the very spirit of the law and defeating the purpose of the particular legal enactment. If, by adopting an artifice or device against the intension of the legislature but apparently on the face of it acting within the framework of the law, a company is able to dodge income tax, it would be a clear case of tax avoidance. In contrast, 'Tax Planning' takes maximum advantages of the exemptions, deductions, rebates, reliefs, and other tax concessions allowed by taxation statutes, leading to the reduction of the tax liability of the tax payer. Tax planning has been contrasted with the expression tax avoidance and has the legal sanction of the Supreme Court as well. In recent years the sentiments in favour of tax avoidance have changed and the courts view tax avoidance with displeasure. For example, Lord Summer in IRC vs. Fisher 's Executors AC 395, 412 had earlier as per the ratio of Westminister 's case said:

"My Lords, the highest authorities have always recognized that the subject is entitled so to arrange his affairs as not to attract taxes imposed by the Crown, so far as he can do so with the law, and that he may legitimately claim the advantage of any express terms or any omissions that he could find in this favour in taxing Acts. In so doing, he neither comes under liability nor incurs blame."

The significance of Ramsay as assessee turning point in the interpretation of tax laws in England and the departure from the principle of Westminister's case were explained in TRC vs. Burmah Oil Co. Ltd., STC 30 where Lord Diplok said:

"It would be disingenuous to suggest and dangerous on the part of those who advise on elaborate tax-avoidance scheme to assume, that Ramsay 's case did not mark assessee significant change in the approach adopted by this House its judicial role to assessee pre-ordained series of transactions into which they were inserted steps that have no commercial purpose apart from the avoidance of tax liability, which in the absence of those particular steps would have been payable. The difference is in approach."

Commenting on this judgment the Supreme Court of India in the McDowell Co. Ltd., Vs. CTO 154 ITR 148(SC) said:

"It is neither fair nor desirable to except the legislature to intervene and take care of every device and scheme to avoid taxation, it is up to the court to determine the nature of new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices for what they really are and to refuse to give judicial benediction."

In the same judgment, Supreme Court Judges made a clear distinction between tax avoidance and tax planning. This is what the judges of the Supreme Court have said in the same case:

"Tax Planning may be legitimate provided it is within the framework of law. Colorable devises cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honorable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

Form the above it is very clear that tax planning by Assessee Company cannot be called a crime or an illegal activity or an immoral action as is wrongly considered by confused thinkers on the subject. What constitutes a crime is tax evasion and what is undesirable is tax avoidance but it is certainly desirable to engage in the exercise of tax planning.

In UK, wherefrom the principal coined in McDowell's case was coined, the House of Lords expressly reaffirmed the basic principle, 'A subject is entitled to arrange his affairs so as to reduce his liability to tax. The fact that the motive for a transaction may be to avoid tax does not invalidate it unless a particular enactment so provides'.

The House of Lords expressly reaffirmed the cardinal principle of *Duke of Westminister,* 'Given that a document or transaction is genuine, the Court cannot go behind it to some supposed underlying substance'. They only ruled against the principle being overstated or overextended.

Mukharji J, who in his prompt and lethal report in CWT vs. Arvind Narottam said: '…no amount of moral sermons would change people's attitude towards tax avoidance', and soon thereafter in UoI v Playworld Electronics stated: 'one should avoid subverting the rule of law'. As a matter of law, the Supreme Court in these two latter cases reiterated that where the true effect of a transaction is clear, the appeal to discourage tax avoidance is not a relevant consideration.

In any event, when the language of a deed of settlement is clear, an attempt to invoke McDowell would be futile even if the deed results in tax avoidance. as the Madras High Court held in Valliapan vs. ITO, McDowell does not hit tax planning.

The manner in which McDowell is to be dealt with was well summed up by the Gujarat High Court in Banyan and Berry vs. CIT thus:

The court (in McDowell) nowhere said that every action or inaction on the part of the taxpayer which results in reduction of the tax liability to which he may be subjected in future, is to be viewed with suspicion and be treated as a device for avoidance of tax irrespective of legitimacy or genuineness of the act…. The principle enunciated in the above case has not affected the freedom of the citizen to the act in a manner according to his requirements, his wishes in the manner to do any trade, activity or planning his affairs with circumspection, within the framework of law, unless the same falls in the category of colourable device.

The House concluded that steps which had no commercial purpose and had been artificially inserted for tax purposes into a composite transaction, should be disregarded; but that a transaction which came into statutory language could not be disregarded merely because it was entered into solely for tax purposes.

Therefore, while tax planning these principles emanating from court made law need to be kept in sight. Otherwise, planning looking good on paper may fail in practice.

Tax Management

Planning which leads to filing of various returns on time, compliance of the applicable provisions of law and avoiding of levy of interest and penalties can be termed as efficient tax management. In short, it is an exercise by which defaults are avoided and legal compliance is secured. Through proper tax planning and management, the penalty of upto ₹100000 for delay in furnishing of tax audit reports u/s 44AB can be avoided.

Similarly by applying for Permanent Account Number (PAN), the penalty under the Act can be avoided. The borrowal of loan otherwise than by way of an account payee cheque or bank draft attracts 100% penalty and this can be avoided by conscious planning of the execution of loan transactions. Planning is a perception conceived on legitimate grounds and achieved through genuine transactions within the framework of law e.g. contribution to Public Provident Fund and claiming rebate u/s 88 of the Act. The filing of the returns with all proper documentary evidence for the various claims, rebates, reliefs, deductions, income computations and tax liability calculations would also be termed as tax management.

Tax management is also an important aspect of tax planning. Assessee is exposed to certain unpleasant consequences if obligations cast under the tax laws are not duly discharged. Such consequences take shape of levy of interest, penalty, prosecution, forfeiture of certain rights, etc.

Therefore, any effort in tax planning is incomplete unless proper discharge of responsibilities is not made.

Tax management includes:

1. Compiling and preserving data and supporting documents evidencing transactions, claims, etc.
2. Making timely payment of taxes e.g. advance tax, self assessment tax, etc.
3. TDS and TCS compliance
4. Following procedural requirements e.g. payment of expenses or acceptance of loans or repayment thereof, over ₹ 20,000 by account payee bank cheque or bank draft, etc.
5. Compliance with the prescribed requirements like tax audit, certification of international transactions, etc.
6. Timely filing of returns, statements, etc.
7. Responding to notices received from the authorities.
8. Preserving record for the prescribed number of years.
9. Mentioning PAN, TAN, etc. at appropriate places.
10. Responding to requests for balance confirmation from the other assessees.

Tax Implications in Planning

The main objectives in any exercise on tax planning are to :—

1. Avail all concessions and relief 's and rebates permissible under the Act.
2. Arrange the affairs in a commercial way to minimize the incidence of tax.
3. Claim maximum relief where taxes are paid in more than one country.
4. Become tax compliant and avoid penalties, prosecutions and interest payments.
5. Fruitful investment of savings.
6. Timely compliance of procedural requirements like tax audit, TDS, TCS, etc.
7. Appropriate record keeping
8. Avoidance of litigation.

9. Growth of economy and its stability.

10. Pay taxes – not a penny more, not a penny less.

E-Commerce and Taxation:

In the era of e-commerce, the determination of the place of source with reference to an item of income may quite often pose difficulty. The source-based taxation of business income depends on physical presence in the form of fixed place of business or a dependent agent in the source country. With e-commerce the need for physical presence virtually ceases. The change in mode of delivery from physical to online raises characterization issues and the lack of physical presence also creates problems in enforcement of tax laws. Therefore the long- term solution of the problems created by characterization lies in making direct taxation identical for all streams of income in a manner aimed at ensuring equitable sharing of revenues between residence country and source country. The following rulings by the Authority for Advanced Ruling may be worth remembering in this context:

1. A company incorporated in Mauritius for sale and distribution of television channels enters into an agreement with an Indian company where under the latter would solicit orders from purchasers of airtime and pass on those orders to the former. The business profits earned by the Mauritian company through Indian company are profits deemed to accrue or arise in India u/s 9 of the Act. However by virtue of Article 7 of the DTAA between India and Mauritius, they are not liable to be taxed in India, if: a) The liability of the Mauritian company to pay tax in Mauritius was established and b) The Mauritian company and not the Indian company is shown to exercise generally the power to conclude the advertisement contract for sale of airtime - P No. 296 of 1996 T V M vs. CIT 237 ITR 230 (AAR).

2. An American company is engaged in providing international credit cards, travelers cheques and travel related services. It has Central Processing Unit (CPU) in USA and Consolidated Data Network (CDN) in Hong Kong. Indian company is given access to the CPU through CDN for the reporting and processing of information on travel by customers in India. Charges for the use of CPU and CDN of American company paid by Indian company is royalty for the case of 'design or model, plan secret formula and process' and therefore taxable in India under Article 12(3)(a) of DTAA between India and USA – p. no. 30 of 1999 238 ITR 296 (AAR).

3. Where there is a PE for a non resident income attributable to such PE is chargeable to tax in the country in which such PE exist – p. no.28 of 1999 242 ITR 208 (AAR). A foreign company having a fixed office will be constructed to have a PE-p. no.13 of 1995 228 ITR 487 (AAR).

Strategic Management Decisions – Tax Implications

In business, the decisions are taken with a view of optimize returns to the stakeholders. A dominant aspect to be considered taking in view the tax consequences of the same on the bottom-line so as to share minimum profits with Government without violating any tax or any other laws in force. It is significant that tax consequences alone need not bind the management to take a decision and it is only a factor which influences the management decisions.

Moreover, in case of taxes, there are both direct as well as indirect taxes and in efforts for planning implications of both category of taxes are required to be considered.

Management decisions, which have a bearing on the bottom line are analyzed below from the point of view of income-tax implications.

(a) Make or Buy

(b) Own or Lease

(c) Retain or Replace

(d) Repair/Scrap or Return

(e) Export or Domestic Sale

(f) Shut Down or Continue

(g) Expand or Contract

(h) Demerger

(i) New Capital Investments

(j) Accounting Standards for Taxes on Income

TAX PLANNING-AN OVERVIEW

Q.1. Why is tax planning necessary?

Answer. The tax paid is an addition to the cost. Just as every businessman tries to maximise his profit by reducing the cost, he should also arrange his affairs in such a way, that he pays the least amount of tax. This however should be done within the four corners of law and there should be no element of fraud in it.

Q.2. Is tax planning confined only to direct taxes?

Answer. No. The effect of other taxes like sales-tax, customs duty and excise duty, are to be taken into account. It is a dynamic concept and the decision once taken is not valid for all times and requires continuous reappraisal.

Q.3. Is tax planning harmful?

Answer. Tax planning is not harmful. The tax saved can always be recycled in business and not necessarily wasted in conspicuous personal expenditure. The idea behind grant of incentives is to stimulate economy and hence there should be proper planning to make use of these incentives.

Q.4. When should planning be done?

Answer. Planning has to be done before the income accrues or arises, i.e., at the source itself. Planning done after receipt of income is only diversion of income and may even lead to an inference of fraud.

Q.5. What are the factors to be taken in tax planning?

Answer. The choice of taxable entity and other choice like time and place have all are common instances. Time is relevant for fixing the year of accrual. Place is relevant for fixing the residential status. The status in which the income is to be assessed, i.e., individuals, HUF firm or AOP or company is also to be considered.

Q.6. Has tax planning any effect on the rate of tax?

Answer. Yes. As dispersal of income over different taxable entities, slab rate can be reduced .

Q.7. What is the difference between dispersal and diversion of income?

Answer. Dispersal ensures that income accrues separately in different hands. Diversion is said to take place when money is siphoned off to other hands after accrual in one hand. The decision of the *Supreme Court in CIT* vs. *Sitaldas Thirakhdas* is as to what constitutes diversion as distinct from dispersal. In this case, an amount of annuity decreed by the court to be paid by son to his mother in view of his obligation was held to be dispersal, i.e., diversion by overriding title, so that he was entitled to reduce such payment from his taxable income. While diversion by overriding title will amount to dispersal, any other diversion without title at source is a mere application of income. The decision of Supreme Court in *CIT* vs. *Thakar Das Bhargava* illus-trates the principle of application of income, which does not help, where a lawyer who had assigned his right to fees to a charitable institution and had not received the same was still held liable to pay tax on such fees.

Q.8. Does tax planning include compliance within law?

Answer. Certainly. Timely filing of returns, payment of advance tax, finally tax deduction at source, etc., are all important to avoid penal interest, penalty, prosecution, etc.

Q.9. Is method of accounting important?

Answer. Yes. It is because income for tax purposes is one which is ascertained on the basis of what is computed under ordinary principles of commercial accounting subject only to such adjustments as are specifically required by the statute.

Q.10. What is the caution necessary in tax planning?

Answer. Tax planning may be legitimate provided it is within the law. But colorable devices are not only dishonorable but should not be recognized by the Assessing Officer. One such device is to avoid tax though not prohibited by the statute. It is not necessary that there should be a specific disapproval of every device or scheme. If they are artificial, they are prone to be rejected. What is to be noted is that the device should be genuine in that the income really goes to the person to whom it is intended and does not come back or held effectively by the devisor of the scheme.

Though the decision of the Supreme Court in *Union of India* vs. *Azadi Bachao Andolan* has granted great recognition to tax planning, the warning against artificial transactions lacking in commercial credibility in *McDowell's case* is still valid.

The concessional treatment for Short-term Capital Gains is available on such gains under section 111A. It may, however, be noticed that these concessions are available only where the transactions are on capital account and not where the shares are held as stock-in-trade.

TAX PLANNING-AVAILABLE AREAS

Q. 1. How to choose the most suitable form of organisation for tax planning?

Answer. It depends on the rate of tax applicable to the organisation, business needs, risk of non-observation of formalities, ability to raise finance, etc.

Q. 2. In what way, does the choice of head of income affect tax?

Answer. Actually assessment under different heads has diverse results as regards deduction and taxability. An asset, if it is property, gets a lump sum deduction at one fourth of annual value and as a business asset it gets depreciation on cost. On sale long term capital gains arises in former case and Short Term Capital Gains in latter.

Q. 3. How to select a location for business?

Answer. Deficiencies in infrastructure have to be balanced against the tax incentives. Excise duty and Sales-tax implications may also prove to be of greater importance.

Q. 4. What is the impact of the size of the business?

Answer. Small units gets some concession from State authorities. Dispersal amongst separate subsidiaries will give relief under certain sections.

Q. 5. Can accounting method have an impact on tax?

Answer. Yes. At present, only two methods mercantile and cash are available. For professionals and money lenders cash system is preferred. Also accounting practices to reflect the correct amount of income have to be adopted so that there is no overload in some years and deficiency in others. Inventory valuation is another area of accounting, which has impact on tax. But it should also be borne in mind that where the statute itself determines the income, accounting method has no relevance.

Q. 6. In what way capital can be restructured for maximum benefit?

Answer. A balance between own and borrowed capital has to be achieved. When own capital is more there will be larger taxable profits and poorer after-tax return. With more borrowed capital, taxable profits are less but after-tax return on own investment is better. There should be a continuous appraisal in this behalf.

Q. 7. What is the best investment?

Answer. Choice of investment depends on the expectations of the investors. Risky investments may involve larger profit or loss. Safe investments give a lesser but steady return. Period of holding depends upon varying needs of liquidity for the investors. As between investment in shares, deposits and debentures in companies, dividends have an edge because these are not taxed in the hand of the receiver. Interest is fully taxed subject to certain deductions.

Q. 8. What should be the consideration regarding investment in plant and machinery?

Answer. Depreciation is a significant deduction from taxable income. Plant and machinery relating to generation of power and pollution control equipment, and those relating to Research and Development, etc., are eligible for 100% deduction. Plant and machinery can be acquired, replaced, repaired, purchased or hired or assembled with different tax consequences.

There has been drastic reduction in rates of depreciation effective from assessment year 2006-07.

Q. 9. Is there any restriction in method of valuing stock?

Answer. Accountancy text books give various methods like: cost, market value, cost or market value whichever is less, FIFO, LIFO, etc. Some value obsolete or slow-moving stocks at lesser cost. At any rate the method adopted should be regular and should not distort the profits inviting rejection of accounts.

Q. 10. Is transfer pricing important?

Answer. Transfer pricing is important in reckoning of reliefs as well as in matters of non-resident taxation. Adoption of correct transfer pricing is a matter of concern for Revenue, but it should be equally a matter of concern for taxpayer lest the method adopted loses for himself the benefit which is otherwise available. This is all the more important in international transactions. Sections 92 to 92F may be seen.

Q. 11. What is the importance of dividend policy?

Answer. Dividend policy determines liquidity, possible impact as price of shares, credit rating, borrowing capacity, shareholder satisfaction, etc., which are matters of business policy. It also affects shareholders' tax liability. It is of importance in closely held companies particularly because even loans to substantial shareholders are treated as deemed dividends under section 2(22)(e) of the I.T. Act.

Q. 12. What are the factors to be borne in foreign collaborations?

Answer. The degree of participation of the foreign concern in Indian business, the extent of investment, duration of physical presence in India, the manner in which such participation is expected, whether by way of equity, loan, royalty, technical fees, etc., would decide liability. For the Indian partner the question whether payments made will be allowed as a deduction will be relevant. Double taxation agreements and where there is none section 91 of Income tax Act will also have relevance. The new provision introduced by Finance Act, 2001 in respect of transfer pricing in sections 92 to 92F w.e.f. 1.4.2002 would require consideration in matters of taxation of business income of non-residents.

Q. 13. Can an employee benefit from tax planning?

Answer. There is large scope for tax benefit for employees. This is done by designing a pay package taking into consideration tax-free and concessional perquisites in a manner that take-home pay is maximum. Minisation of tax incidence in other words an important objective of tax planning. There are certain allowances that are exempted. An employee should make a wise choise between perquisits and allowances and go for the one which is most beneficial for him or her.

TAX PLANNING-FOR INCOME FROM HOUSE PROPERTY

Q. 1. How is income to be computed, if a property is partly let out and partly self-occupied?

Answer. It has to be treated as two residential units and income from each unit has to be computed according to law by allocating common outgoings on a basis proportionate to area of occupation.

Q. 2. Is it necessary that the person must be a legal owner in order that the income should be computed under the head "income from property"?

Answer. No. If a person is entitled to the income under the law, such income is bound to be assessed under the head "income from property". Tax laws are generally concerned with beneficial ownership as laid down in *CIT* vs. *Podar Cement Pvt. Ltd.*

Q.3. Is municipal tax deductible in computation of income from: (i) self-occupied property; and (ii) where demand notice is reserved but it has not been paid?

Answer. Since income from one self-occupied property is nil, subject only to deduction of interest the question of deduction of municipal tax does not arise. For let out proper-ties, municipal tax is deductible only if it is paid during the year.

Q.4. Is deduction for repairs available, when tenant undertakes repairs under the rental agreement? What is meant by repairs?

Answer. By repairs we mean only substantial repairs as held in *CIT* vs. *Parbutty Churn Law* and *Sir Shadi Lai & Sons* vs. *CIT*. Where even substantial repairs other than normal maintenance is undertaken by tenant, annual value should get enhanced by the extent of repairs which should have been borne by the landlord so that any deduction for repairs then available to landlord will neutralise the amount added to annual rent. It would, therefore, mean that where there is specific stipulation that all repairs will be borne by tenant, there can be no deduction for repairs.

Q. 5. Is an annual charge on rent receivable on account of mortgage of property for obtaining funds for business or paying income tax deductible under section 24(1)(iv) of the Income Tax Act, 1961 ?

Answer. No. Since it is a charge created voluntarily by the assessee, it is not deductible as was held in *CIT* vs. *Indramani Devi Singhcmia1* in case of a business loan and *CIT* vs. *Tarachand Kalyanji* in the case of a charge created for payment of excess profit tax In the latter case, it was held that the amount is not deductible even if the charge has been created before 1st April, 1969, when such amount was deductible in law.

Q. 6. What are the conditions for deduction of unrealised rent?

Answer. Rule 4 of the Income-tax Rules as substituted by the Income-tax (Eighth Amendment) Rules, 2001 prescribes the conditions as under:

Unrealised rent—For the purposes of the Explanation below sub-section (1) of section 23, the amount of rent which the owner cannot realise shall be equal to the amount of rent payable but not paid by a tenant of the assessee and so proved to be lost and irrecoverable where,—

(a) the tenancy is *bona fide;*

(b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

(c) the defaulting tenant is not in occupation of any other property of the assessee;

(d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

Q.7. Is salary paid to a caretaker deductible?

Answer. No. Only deductions specified under section 24 are deductible.

Q. 8. How is the income of co-owned property computed?

Answer. Income has to be split up between co-owners and each co-owner has to be assessed as his share of the income as provided under section 26 of the Act.

Q. 9. Where an assessee borrows a second loan for repaying the first loan taken for acquiring a property, will the interest on second loan be deductible as amount borrowed for acquiring the property?

Answer. Yes. It is so conceded in Board's Circular No. 28 dated 20th August, 1969.

Q. 10. Ground rent—whether arrears of earlier years deductible?

Answer. No. The deduction under section 24(1)(v) is confined to the ground rent of previous year, and thus arrears of earlier years are not deductible.

Ground rent is no longer deductible from A.Y.2002-2003.

Q. 11. Interest deductible under section 24(1)(vi): whether simple interest or compound Interest?

Answer. Only simple interest is deductible.

Q. 12. What is the treatment given to loss from property?

Answer. Loss from property can be set off against other heads of income in the same year and to the extent unabsorbed, it will be carried forward and set off in next eight years.

Q. 13. Where municipal valuation is higher than the rent charged, what is the basis of computation of property income?

Answer. The law requires that either annual value as fixed by the local authorities or actual rent received, whichever is higher, should be treated as annual value. But where the assessee is unable to enhance the rent due to Rent Control Act, there is a case for acceptance of rent receivable as the basis. It was so held in *CIT* vs. *Sampathammal Chordia* .

Q.14. Are municipal taxes allowed on the basis of tax leviable for a year or on the basis of payment? If it is on the basis of what is leviable, what happens if demand for earlier years is received only during the year with the result that the payments for earlier years are made during the year?

Answer. Section 23(1) allows property tax levied by local authority on the basis of payment from assessment year 1985-86 vide amendment by Taxation Laws (Amendment) Act, 1984 so that the controversy in the prior law is now avoided. So, the amount paid during the year, including any amount of arrears for earlier years, is deductible in the year of payment.

Q. 15. Where the assessee is a mutual association having a property, will the property income be covered by the principle of mutuality so as to be exempt?

Answer. Yes, it has been held that principle of mutuality applies even to income from house property in Chelmsford Club vs. CIT.

Q. 16. The assessee — Mrs. A is in enjoyment of the property but the right is limited only for life under a Will in her favour. Who has to pay the tax, whether she as the person in enjoyment of the property as the holder of life interest or the remainderman treated as the owner in law?

Answer. Ownership is a bundle of rights. Right to enjoy the property is also a right which is part of such ownership right. Hence it will be assessable in the hands of life interest owner. It has been so held in *Estate of Ambalal Sarabhai* vs. *CIT*.

Q. 17. Where an assessee receives interest on deposit taken from a tenant, is it necessary to enhance the annual value by the notional interest which would have otherwise been payable?

Answer. Where actual rent received is more than the fair rent, i.e., annual value fixed by the local authorities, notional interest need not be added. It was so held in *CIT* vs. *J.K. Investors (Bombay) Ltd.* Where such notional interest is to be taken, as for example, where no rent is charged because of such

interest free deposit, the interest or other income earned by deployment of the interest free deposit will have to be correspondingly reduced from the annual value but the law does not provide for the same. But it stands to reason that such reduction may have to be allowed, though it is doubtful whether such reasonable interpretation will be acceptable to revenue.

Q. 18. Is it open to the Assessing Officer to substitute reasonable rent where the property is let out to an associate company at a lower rate?

Answer. Since annual value is not the only criterion, it is open to the Assessing Officer to adopt a reasonable rate where it is let out at a concessional rate. It was so held in *T. V. Sundaram Iyengar & Sons Ltd.* vs. *CIT* .

Q. 19. Where the property is in existence for less than 12 months, is it possible to assess the income as income from property since the scheme of the Act is to assess the annual rent? Does the income escape assessment in such cases?

Answer. The argument that the property should have been held for entire 12 months to be assessable under the head 'Income from property' was accepted in *P.J. Eapen* vs. *CIT.* But it was held that such income will be assessable under 'Other sources'. The decision is open to doubt because there is no reason why the proportionate income should not be assessed with reference to the period of holding because such proportionality is recognised in section 23 where the property is let out for part of the year and used for own residence for rest of the year under section 23(2)(a)(ii). Hence, similar apportionment should be possible though the annual value is with reference to the income which the property might fetch if let out from year to year.

Q. 20. Where the deduction under section 24 exceeds the available income, can such excess be allowable?

Answer. Where the property is partly let out and partly used for own residence, the deduction under section 24(1) will be limited to the income determined under that clause under the substituted section 24 by Finance Act, 2001. with effect from 1.4.2002, there are no detailed deductions but only 30% of annual value and interest on borrowed capital subject to the limit of ₹ 30,000 for self-occupied property with enhanced limit up to ₹2.00 lakhs subject to conditions as to the date of the loan and the date of construction. Hence, there can be a loss from the property depending upon interest on borrowed capital. It is only in respect of annual value, that there cannot be loss.

Q. 21. There is a practice of receiving deposit instead of rent. The assessee accounts for interest on such deposits as its income. Should he also account for notional income from property?

Answer. The answer was against the assessee in *S.Ujjanappa* vs. *CIT,* where it was held that ownership confers the duty to account for notional income from such property. The issue as to whether it involves double taxation was not posed in this case. Interest income earned by the assessee on the deposits or notional interest when used in business could have been set off against such income. There is clearly double taxation implicit in such cases. In *Webb's Agricultural & Automobile Industries* vs. *ITO* , a car received by way of lottery winnings brought to tax as income was held to be eligible for depreciation, though assessee had not paid for the same, because of the notional cost. This line of reasoning should avoid elimination of double taxation by setting off the two incomes one notional and the other real as between them, but the law on the subject is still nebulous.

Q.22. Is the amount of interest paid on unpaid consideration for acquiring property deductible as interest on borrowing under section 24(1)(vi) of the Income-tax Act?

Answer. In the context of similar interest on unpaid consideration for acquiring a business; the Supreme Court had held in *Bombay Steam Navigation Co. (1953) P. Ltd.* vs. *CIT* that such interest is not deductible under section 36(1)(iii) of the Income-tax Act, 1961. But in the same case, it was found that it can be allowed as deduction under section 37 of the Act. It is for this reason that it has felt that in absence of similar residuary clause, interest on unpaid consideration for acquiring property would not be deductible. However it was found in *CIT* vs. *Sunil Kumar Sharma* following *CIT* vs. *R.P. Goenka and J.P. Goenka* that

it makes no difference, whether the buyer borrows from a third party to acquire a property or gets the necessary financial assistance from the seller of the property. It should be construed that the seller is the lender and the purchaser is the borrower. It would thus appear that such interest is deductible.

Q. 23. What is the change in respect of computation of property income by the Finance Act, 2005?

Answer. There is no change in computation of property income, but the incentive for re-payment of loan for acquiring a property is enlarged by removing the limit of ₹ 20,000 in respect of such repayment and by providing such repayment as an outright deduction from the gross total income by the new section 80C substituting section 88, subject, however, to the limit of total deduction under section 80C to ₹ 1.50 lakh. Interest payable on such loan would be admissible as deduction, if the property were let out, subject to limit of ₹ 30,000 in case of self- occupation.

Q.24. If a person puts up a property on leased land, is the lease rent deductible as income from property?

Answer. There is no special provision for deduction of lease rent as was available in the pre-existing law under section 24 either as an annual charge on the property or as ground rent, but all the same, what is payable on leased land gets diverted at source and should not be part of the annual value, so that in determination of annual value, the amount should be deductible. Any other view could not be reasonable. An alternative argument may well be that if it is not deductible, income itself may not be assessable as a property income as the assessee is not the full owner of the property, so that income will be assessable as from "Other sources", so that the deduction in such a case cannot be denied, though the assessee may not be eligible for an ad hoc deduction at 30%; but only actual repairs, where it is assessable as income from other sources.

Q.25. Where a landlord undertakes to meet the expenses of watch and ward, corridor, lighting, lift, etc., are such expenses deductible from property income?

Answer. Expenses which are ordinarily borne by the tenant, but undertaken by the landlord according to terms of rental agreement will go to reduce the annual value, because the rental value of the property can only be the net income after meeting the tenant's burden.

Q.26. Where the assessee allows the property to be used by firm of which he is a partner without charging rent, is he entitled to self-occupation allowance or depreciation?

Answer. Since the firm is not a separate legal entity, the use of property by the firm should be treated as use and occupation of the property by the partner itself, so that self-occupation benefit will be available from income from such property. If the property is used for business, there is eligibility for depreciation also.

Q. 27. Where a partner allows the use of the property by the firm and charges rent for the same, would he be entitled to ad hoc deduction at 30% or depreciation of the property because of the use for business?

Answer. Since the rent is received from a firm of which he is a partner, the amount of rent receivable may not be treated as received in his capacity as landlord, but as a partner. If the property is used for business, the owner should be entitled to depreciation. It was so held in *CIT* vs. *Ramlubhaiya R. Malhotra* following *A.M. Ponnuranga Mudaliar* vs. *CIT.* The latter decision was followed in *CIT* vs. *Texspin Engineering and Manufacturing Works.*

Q.28. In the case where a tenant sublets the property, is the rent paid by the tenant deductible from the income from subletting?

Answer. Since the tenant is not the owner, the income should ordinarily be assessable as income from other sources, so that the rent paid should be deductible. Even if it were lease- hold property, the rent paid may have to be taken into account in determining the annual value. Contrary view taken in *CIT* vs. *Hemraj Mahabir Prasad Ltd.* would need review.

Q.29. Where the assessee borrows money on mortgage of his property for his daughter's marriage, is such interest paid deductible from the property income?

Answer. Merely because the loan is charged on the property, interest does not become deductible, because the amount is not borrowed for purpose of acquiring or constructing the property.

Q.30. To take advantage of mutuality principle, persons renting the hall of a club for marriage become temporary members. Is such receipt exempt from liability in the hands of the club?

Answer. No. There is no mutuality involved. Temporary membership for an ulterior purpose is not permissible. The rents are taxable in the hands of the club.

TAX PLANNING-FOR BUSINESS EXPENDITURE

Q. 1. There is a prevailing practice of a businessman taking loan of stock from another businessman and returning the same. Since he may have to pay for replacement at a higher price for return of loan of stock, can a provision made for the extra cost be deductible?

Answer. The issue had come up in *Welding Rods Manufacturing Co.* vs. *CIT,* where it was found that the price rise at the time of closure of accounts in respect of outstanding loan of stock could be recognised and the provision therefore would be allowed as a deduction. In coming to the conclusion the High Court followed the decision in *Calcutta Co. Ltd.* vs. *CIT.*

In this context, one may refer to the statutory provision in section 47(xv) in respect of capital gains on stock lending, whereby tax on capital gains is spared on such stock lending, if the guidelines issued by Securities and Exchange Board of India had been followed. The provision, however, is only for exemption from capital gains and the mere act of lending of securities in pursuance of stock lending scheme. It cannot have application for dealers in shares. Similarly, the final outcome of the transaction even in the case of an investor may have to be recognised for capital gains tax purposes under the law as exemption is at the stage of lending and not at the stage when the contractual obligation gets discharged.

Q. 2. Does a liability arise under excise law on show cause notice, which makes a special recognition for show cause notice, where such notice has been issued?

Answer. Notwithstanding the effect of a show cause notice, it does not create a demand for payment by itself, so as to justify the amount covered by the notice as statutory liability, on the basis of the decision in *Kedarnath Jute Mfg. Co. Ltd.* vs. *CIT.* It was so pointed out in *CIT vs. Morarji Goculdas Spg. & Wvg. Co. Ltd.*

Q. 3. Should the right to deduction await final result of any claim?

Answer. Courts have not taken a uniform view. Ordinarily when a final decision is awaited, deduction could be made only in the year in which the matter gets resolved as in the case of requirement of approval from the authorities following the decision in *Nonsuch Tea Estate Ltd.* vs. *CIT* . But in a case on converse facts, it was held that in the accrual concept in mercantile system of accounting, a mere requirement of approval, when it has become available at the time of assessment or even in appeal, such delay in approval need not bar assessment in the year of receipt as was held in *CIT* vs. *Jai Hind Travels (P) Ltd. ,* where the concept of the doctrine of relating back was adopted for accrual system. Such a view cannot be treated as non-controversial. Deduction need not be denied, where *ex post facto* approval is a formality. It is difficult to draw a line in such cases. It is for the taxpayer to make a provision in such cases in the year of claim, so that even if it is disallowed, it can be claimed in the year of payment. Failure to make the claim in an earlier year may lose the right, if revenue decides that the claim could be allowed only in the first year.

Q. 4. Is it open to the Revenue to disallow a portion of electricity charges paid with reference to the refund claim made during the year, but given in a subsequent year?

Answer. Receipt of refund in a subsequent year cannot be taken as a ground for not allowing a deduction at the time, when it was payable as was held in *Travancore Chemical and Mfg. Co.Ltd.* vs. *CIT* following the decision in *CIT* vs. *Bharat Iron and Steel Industries,* The High Court pointed out that the need for section 41(1) to tax amounts that had been remitted or waived would not have arisen, if allowance due for an earlier year could be modified with reference to the later waiver or remission.

Q. 5. Is it possible to value stock by methods other than cost, market value, or cost or market value, whichever is lower?

Answer. Any method which is consistently followed and is not likely to distort the income and is consistent with accounting principles should be acceptable. Lower valuation for slow moving goods in the view that future carrying cost would require to be taken into consideration was approved in *India Motor Parts and Accessories P. Ltd.* vs. *CIT.* The method, it was pointed out, had been suggested as a proper valuation in *Industrial Accountants Hand Book* edited by Wyman P Firke of John A. Beckett. Such a view had also the approval of Delhi High Court in *CIT* vs. *Bharat Commerce and Industries Ltd.* .

Q. 6. How is the work in progress valued? Should the overheads be treated as part of cost?

Answer. Work-in-progress is generally valued at cost. The issue as to whether the overheads should be taken into consideration by adoption of "on-cost" basis or whether only direct cost should be taken was considered in *Duple Motor Bodies Ltd.* vs. *Inland Revenue Commissioner*, where it was found that either method can be adopted but where the assessee has adopted one method, it is not open to him to change it.

Where an assessee had followed a method of accounting, which excluded over-heads in valuation of work-in-progress on the ground that the goods under manufacture may not result in marketable commodities, the Tribunal rejected the change mainly on the ground that there was no evidence of possible deterioration of work-in-progress. The High Court, however, found that since the assessee had followed the same method in earlier years, it was entitled to continue the same practice. The Supreme Court in *CIT* vs. *British Paints India Ltd.* decided on the short point that merely because a system has been consistently followed, it does not mean that Revenue is bound by it, if it finds that it is not consistent with accounting principles. If the income could xiot be rightly deduced from the system followed, it was open to the Assessing Officer to reject the same, since there is no estoppel in such matters. According to this decision, the cost ordinarily has to reckon overheads as well. The distinction between finished stock and work-in-progress was however not appreciated in this case, when it reversed the decision of the Calcutta High Court. But it is still an authority for the view that the method followed should be consistent with accounting principles. A scientific method of valuation of work-in-progress is probably only the retrievable value or a value which makes an allowance for a situation, if the goods turn out to be non-marketable. In other words, valuation at less than the cost or market value for work-in-progress should be permissible in certain lines of manufacture, where there is possible wastage before completion of the manufacture of the product, if such valuation is consistently followed.

Q. 7. An assessee had the practice of accounting receipts from contract only when the bills raised by it were passed by the contractee. Where such a method is regularly followed, can it be rejected by the Assessing Officer?

Answer. Yes. It was so held in *CIT* vs. *Shaik Mohd Rowther Shipping and Agencies (P) Ltd.*, where it was pointed out that the method is not consistent with any accounting principles. The work has been done on the basis of which bills were raised. 90% of the amount was also received, the balance pending for passing of the bills. Merely because the amount received is shown as advance, it is not possible to postpone recognition of revenue. The mere fact that the Assessing Officer had not disturbed the system in earlier years does not prevent him from correcting the same as the principle of *res judicata* can have no application to tax cases as was pointed out in *CIT vs. Brit.*

Q.8. Which is the best head of income from tax point of view, where there is a possible choice?

Answer. The best head is business as it is eligible for a list of deductions and reliefs.

Q.9. A business executive has purchased and sold shares through a stock broker. Will the loss, if any, be assessable under the head "business" or "capital gain"?

Answer. The mere fact that he has purchased and sold shares through a broker does not entitle the assessee to treat the income as business income. There should be a continuous activity. Moreover, if the interval between purchase and sale is short, profit will be referred under the head "Short Term Capital Gains" without any advantage.

Q.10. A piece of land acquired five years before is plotted out and sold. What is the head of income?

Answer. To treat the sale of land as a business transaction more facts are required. There should be facts to suggest that the land was converted to a business asset and dealt with as such and the sale is not just for the sake of realisation of appreciation in value.

Q.11. Can what is "accrued but not due" ever be treated as accrued for tax purposes? What is the correct treatment of interest from cumulative deposits in the hands of payer and payee?

Answer. This depends on the system of accounting. An assessee might choose with advantage to declare that income from year to year on accrual basis. However, the payer will deduct tax on the accumulated interest at the time of payment accords to section 194A in which case the assessee may have to ask for a refund.

Q.12. How far are income Computation,and disclosure standards relevant in computation of business income?

Answer. Income for income-tax purposes is computed under ordinary principles of commercial accounting. Income Computation and disclosure Standards lay down such principles accepted by the profession and have even been made mandatory for purposes of company law. Hence they have great persuasive value.

Q.13. A taxpayer has changed his method of stock valuation. Statutory auditors did not agree to the change and have qualified the balance sheet. Assessing Officer relies upon the decision of Supreme Court in *British Paint's* case for rejecting the change. Is he justified in doing so?

Answer. What is required is that the change in the method of valuation should be bona fide and thereafter followed continuously.

In *Karnataka State Forest Industries Corporation Ltd.* vs. *CIT* High Court found that the Income-tax Officer cannot reject a change in the method of valuation of stock merely because statutory auditors objected to it.

Q.14. A firm replaces defective TV sets long after the guarantee period was over with a view to maintain goodwill of the firm. Cost of replacement is disallowed by the Assessing Officer. Is he right?

Answer. Since the outlay was incurred on grounds of commercial expediency the claim is admissible. The paragraph under "commercial expediency" (supra) would give necessary authorities for the same.

Q.15. Is a payment made to Life Insurance Corporation of India towards group gratuity fund deductible under section 36(1)(v), though it has not been routed through an approved gratuity fund?

Answer. The deduction need not be denied merely because a direct payment has been made as long as it is towards account of group gratuity fund. It was so decided in *CIT* vs. *Textool Co. Ltd.* In fact this would have even otherwise been allowed under Sec. 37.

Q.16. Can dumpers used in contract work be classified as earth moving machinery?

Answer. Yes. They are entitled to depreciation and extra depreciation as earth moving machinery as held in *CIT* vs. *Abdulkarim Stone Contractor* . They are not road transport vehicles.

Q.17. What is meant by block asset?

Answer. Certain types of assets are grouped into one block and additions to the same will be treated as part of the block.

Q.18. What are the changes brought about by bringing in the concept of 'block asset' in evaluating cost for depreciation?

Answer. Each item of machineries is not separately considered for depreciation. Where a particular capital asset or assets forming part of the block is sold, the difference between the full value of the consideration on one hand and the WDV of the block asset, plus expenditure incurred in the transfer, plus value of any asset added to the block on the other hand is treated as Short-term Capital Gains.(Sec. 50)

The idea was to give up the profit under section 41(2) as it stood then which represented the amount of depreciation actually received. Earlier this amount was added as income and any excess above the

depreciation was to be treated as capital gains as held in *CIT vs. Artex Manufacturing Co.* However section 41(2) has now been reintroduced with effect from 1.4.1998.

Q. 19. The assessee has a project report for a new venture carried out at the cost of ₹ 5 lakhs. Assessing Officer disallows the same as the venture re-lates to a new business. Is the assessee eligible for deduction and if not, is he eligible for depreciation?

Answer. If the project report relates to an existing business for its expansion, it will be a revenue expenditure. But if it relates to a new business, it will be a capital expenditure eligible for depreciation as decided in *CIT* vs. *Harsha Tractor Ltd.*' following the decision in *Scientific Engineering House P. Ltd.* vs. *CIT.* After amendment to section 32(1) allowing depreciation on intangible assets from 1.4.1998, it is a matter of statutory right for the assessee to get depreciation not merely by treating such project report as a plant as under the pre-existing law but as an intangible asset on par with other tangible assets, so that the cost is entitled to depreciation like other intangible assets like know-how, patents, copyrights, trademarks, licence, franchise or any other business or commercial rights of similar nature.

Q.20. Where an air-conditioning plant is fixed in a bus, would such air-conditioner and bus be eligible for rates respectively applied to them?

Answer. Air-conditioning plant, which is an integral part of bus would not be entitled to rate of depreciation different from what is available for motor vehicles, where they are installed.

Q.21. Can fencing be treated as a plant?

Answer. No, it can be treated only as a building.

Q.22. It is the normal practice of revenue to deduct all depreciation allowed including initial depreciation in arriving at the WDV. Is this correct?

Answer. According to Gujarat High Court, depreciation is referable to wear and tear. Initial depreciation being in the form of an incentive is not to be deducted.

Q.23. Where a wholly owned subsidiary company acquires depreciable assets from the holding company at market value, is it eligible for depreciation on such market value?

Answer. No. Explanation 6 to section 43(1) provides that in the case of acquisition of assets by a wholly-owned subsidiary from its holding company, the written down value of the holding company will be the actual cost to the subsidiary as held in *Dalmia Ceramic Industries Ltd.* vs. *CIT.*

Q.24. Could a road in a factory building used exclusively for industrial purpose be treated as a plant for purposes of depreciation?

Answer. Road could not be treated as a plant, but only as a building for purposes of depreciation.

Q.25. Where the assessee undertook gratuity liability of the vendor of the business as per agreement for sale, such liability is also consideration, so that it could be treated as part of the cost of assets entitled to depreciation. Is this correct?

Answer. Since the assessee has undertaken only a future liability, it cannot form part of the cost so as to be entitled to depreciation.

Q.26. Is it possible to capitalise expenditure as cost of the asset for purposes of depreciation?

Answer. Expenditure which has nexus with the asset can be treated as part of the cost of the asset. Cost of temporary electricity connection, power line and inspection fee relating thereto were held to be part and parcel of cost of machinery for purposes of depreciation.

Q.27. Are computers office equipments so as to be ineligible for investment allowance or additional depreciation?

Answer. 'Office equipment' has not been defined in the statute. What is barred is plant and machinery installed in office premises. Office premises have also not been defined. In case of a doctor, a clinic may be his office, but at the same time, it is also his place of practice. A computer is not ordinarily an office equipment like a typewriter or a duplicating machine. Computers are, therefore, eligible for investment allowance, when it was in vogue and additional depreciation.

Study Note - 18

GRIEVANCES REDRESSAL PROCEDURE

This Study Note includes

18.1 GRIEVANCES REDRESSAL PROCEDURE

When the assessment order is passed against the assessee, and if he is not satisfied with any order passed by the Assessing Officer, he may appeal to higher court. Procedure for appeal is laid down under the act.

The redressal procedure under the act includes the following:

1. Rectification
2. Appeal
3. Revision

18.2 RECTIFICATIONS

18.2.1 Rectification of mistake [Section 154]

(1) For rectifying any mistake apparent from the record an Income Tax Authority referred to in section 116 may, —

(a) amend any order passed by it under the provisions of this Act;

(b) amend any intimation or deemed intimation under sub-section (1) of section 143;

(c) amend any intimation under sub-section (1) of section 200A w.e.f. 1.7.12;

(d) amend any intimation under sub-section (1) of section 206CB.

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(2) Subject to the other provisions of this section, the authority concerned-

(a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee or by the deductor, or by the collector and where the authority concerned is the Commissioner (Appeals), by the Assessing Officer also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor or the collector, shall not be made under this section unless the authority concerned has given notice to the assessee or the deductor or the collector

of its intention so to do and has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard.

18.2.2 At whose instance mistakes can be rectified :

- The concerned authority may [implies discretion] make the necessary amendment of its own motion.
- The concerned authority has to make [implies that there is no discretion] such amendment for rectifying any mistake brought to its notice by the assessee.
- Where the concerned authority is the Commissioner (Appeals) and the mistake has been brought to his notice by the Assessing Officer, it has to make such amendment [implies that there is no discretion].

18.2.3 Procedure for such rectification under sub-section (3),(5) and (6),

- An amendment of the following nature can be made only after the concerned authority has given notice in this respect and also a reasonable opportunity of being heard to the assessee or deductor or the collector-
  - (a) Amendment which enhances an assessment.
  - (b) Amendment which reduces a refund.
  - (c) Amendment which otherwise increases the liability of the assessee or deductor or the collector.
- If any amendment enhances the assessment or reduces a refund already made, a notice of demand is served on the assessee or deductor or the collector. Such notice is deemed to be a notice u/s 156.
- If any amendment reduces the assessment, refund due to the assessee is made unless it is withheld u/s 241.

18.2.4 Time Limit for Rectification:

Period of limitation for making rectification as prescribed in sub-section (7) of section154 is as follows:

- No amendment under this section can be made after the **expiry of 4 years** from the end of the financial year in which the order sought to be amended was passed. It may be noted that an amendment is made when the related order is passed.
- This period of limitation is not applicable in case the provision of section 155 are applicable.
- However, if a valid application has been made by the assessee for rectification within the statutory time limit but is not disposed of by the concerned authority within the time specified, it may be disposed of even after the expiry of such time limit [Circular No. 73, dated 7th January, 1972]. This relief is, however, not admissible in case rectification proceedings are initiated by the department itself.

18.2.5 Action against rectification order:

Following action may be taken against a rectification order:

- Appeal can be made to the Commissioner (Appeals) u/s 246A. Appeal can also be made against an order passed under this section refusing to rectify a mistake [Chennai Prop. & Inv. Ltd. vs. CIT [2001] 247 ITR 226 (Mad.)].
- Appeal can be made to the Appellate Tribunal u/s 253.
- Revision application can be made u/s 264.

18.2.6 Other amendments- For Rectification of Assessment of a Firm [Section 155]:

(1) Where, in respect of any completed assessment of a partner in a firm for the Assessment Year commencing on the 1st day of April, 1992, or any earlier Assessment Year, it is found-

  (a) on the assessment or reassessment of the firm, or

(b) on any reduction or enhancement made in the income of the firm under this section, section 154, section 250, section 254, section 260, section 262, section 263 or section 264, or

(c) on any order passed under sub-section (4) of section 245D on the application made by the firm, that the share of the partner in the income of the firm has not been included in the assessment of the partner or, if included, is not correct, the Assessing Officer may amend the order of assessment of the partner with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the final order was passed in the case of the firm.

(2) Where as a result of proceedings initiated under section 147, a loss or depreciation has been recomputed and in consequence thereof it is necessary to recompute the total income of the assessee for the succeeding year or years to which the loss or depreciation allowance has been carried forward and set off under the provisions of sub-section (1) of section 72, or sub-section (2) of section 73, or sub-section (1) or sub- section (3) of section 74, or sub-section (3) of section 74A, the Assessing Officer may proceed to recompute the total income in respect of such year or years and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the order was passed under section 147.

(3) Where any deduction in respect of any expenditure on scientific research has been made in any Assessment Year under sub-section (2B) of section 35 and the assessee fails to furnish a certificate of completion of the programme obtained from the prescribed authority within one year of the period allowed for its completion by such authority, the deduction originally made in excess of the expenditure actually incurred shall be deemed to have been wrongly made, and the Assessing Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant Previous Year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the Previous Year in which the period allowed for the completion of the programme by the prescribed authority expired.

(4) Where as a result of any proceeding under this Act, in assessment for any year of a company is whose case an order under section 104 has been made for that year, it is necessary to recompute the distributable income of that company, the Assessing Officer may proceed to recompute the distributable income and determine the tax payable on the basis of such recomputation and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the final order was passed in the case of the company in respect of that proceeding.

(5) Where in the assessment for any year, a capital gain arising from the transfer of a long-term capital asset, is charged to tax and within a period of six months after the date of such transfer, the assessee has made any investment or deposit in any specified asset within the meaning of Explanation 1 to sub- section (1) of section 54E, the Assessing Officer shall amend the order of assessment so as to exclude the amount of the capital gain not chargeable to tax under the provisions of sub-section (1) of section 54E; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the assessment was made.

(6) Where in the assessment for any year, a capital gain arising from the transfer of any original asset as is referred to in section 54H is charged to tax and within the period extended under that section the assessee acquires the new asset referred to in that section or, as the case may be, deposits or invests the amount of such capital gain within the period so extended, the Assessing Officer shall amend the order of assessment so as to exclude the amount of the capital gain not chargeable to tax under any of the sections referred to in section 54H; and the provisions of section 154 shall,

so far as may be, apply thereto, the period of four years specified in sub-section (7) of section 154 being reckoned from the end of the Previous Year in which the compensation was received by the assessee.

(7) Where in the assessment for any year commencing before the 1st day of April, 1988, the deduction under section 80-O in respect of any income, being the whole or any part of income by way of royalty, commission, fees or any similar payment as is referred to in that section, has not been allowed on the ground that such income has not been received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, has not been brought into India, by or on behalf of the assessee in accordance with any law for the time being in force for regulating payments and dealings in foreign exchange and subsequently such income or part thereof has been or is received in, or brought into, India in the manner aforesaid, the Assessing Officer shall amend the order of assessment so as to allow deduction under section 80-O in respect of such income or part thereof as is so received in, or brought into, India; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the Previous Year in which such income is so received in, or brought into, India; so, however, that the period from the 1st day of April, 1988 to the 30th day of September, 1991 shall be excluded in computing the period of four years.

(8) Where in the assessment for any year, the deduction under section 80HHB or section 80HHC or section 80HHD or section 80HHE or section 80-O or section 80R or section 80RR or section 80RRA has not been allowed on the ground that such income has not been received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, has not been brought into India, by or on behalf of the assessee with the approval of the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange and subsequently such income or part thereof has been or is received in, or brought into, India in the manner aforesaid, the Assessing Officer shall amend the order of assessment so as to allow deduction under section 80HHB or section 80HHC or section 80HHD or section 80HHE or section 80-O or section 80R or section 80RR or section 80RRA, as the case may be, in respect of such income or part thereof as is so received in, or brought into, India; and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the Previous Year in which such income is so received in, or brought into, India.

(9) Where in the assessment for any year, a capital gain arising from the transfer of a capital asset, being land or building or both, is computed by taking the full value of the consideration received or accruing as a result of the transfer to be the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in accordance with sub-section (1) of section 50C, and subsequently such value is revised in any appeal or revision or reference referred to in clause (b) of sub-section (2) of that section, the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking the full value of the consideration to be the value as so revised in such appeal or revision or reference; and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the Previous Year in which the order revising the value was passed in that appeal or revision or reference.

18.3 APPEAL AND APPELLATE HIERARCHY

Appeal is a complaint to a higher court relating to an injustice done by a lower court. The party complaining is called "appellant" and the other party is known as "respondent". There are various provisions in the Income-tax Act relating to appeals and revision of orders.

Under the Income-tax Act, the following remedial measures are available to the assessees if he is not satisfy with any order passed by the Assessing Officer :-

(i) **Appeal** w.e.f. 1.10.1998 first shall lie with the Commissioner of Income Tax (Appeals) against the order of the Assessing Officer (sec. 246A), or

(ii) **Revision** if appeal is not preferred or it could not be filed within the time limit allowed, the assessee can apply u/s. 264 to the Commissioner of Income Tax for revision of orders passed by the Assessing Officer.

The Commissioner of Income-tax can also take up suo moto the case for revision. Where, however, in the opinion of the Commissioner of Income Tax the order passed by the Assessing Officer is erroneous and prejudicial to the interest of revenue, the Commissioner of Income Tax can also take up the case for revision u/s. 263.

18.3.1 Appealable orders before Commissioner (Appeals) [Section 246A]

(1) Any assessee or any deductor or any collector aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

(a) an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143 or sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector]objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(aa) an order of assessment under sub-section (3) of section 115WE or section 115WF, where the assessee, being an employer objects to the value of fringe benefits assessed;

(ab) an order of assessment or reassessment under section 115WG;

(b) an order of assessment, reassessment or recomputation under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 150;

(ba) an order of assessment or reassessment under section 153A except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA;

(bb) an order of assessment or reassessment under sub-section (3) of section 92CD;

(c) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections [except an order referred to in sub-section (12) of section 144BA;

(d) an order made under section 163 treating the assessee as the agent of a non-resident;

(e) an order made under sub-section (2) or sub-section (3) of section 170;

(f) an order made under section 171;

(g) an order made under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;

(h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;

(ha) an order made under section 201;

(hb) an order made under sub-section (6A) of section 206C;

(i) an order made under section 237;

(j) an order imposing a penalty under—

(A) section 221; or

(B) section 271, section 271A, section 271AAA, section 271AAB, section 271F, section 271FB, section 272AA or section 272BB;

(C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;

(ja) an order of imposing or enhancing penalty under sub-section (1A) of section 275;

(k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;

(l) an order imposing a penalty under sub-section (2) of section 158BFA;

(m) an order imposing a penalty under section 271B or section 271BB;

(n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271CA, section 271D or section 271E;

(o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

(p) an order made by a Deputy Commissioner imposing a penalty under section 272AA;

(q) an order imposing a penalty under Chapter XXI;

(r) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

Explanation.—For the purposes of this sub-section, where on or after the 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for "Deputy Commissioner" and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively.

(1A) Every appeal filed by an assessee in default against an order under section 201 on or after the 1st day of October, 1998 but before the 1st day of June, 2000 shall be deemed to have been filed under this section.

(1B) Every appeal filed by an assessee in default against an order under sub-section (6A) of section 206C on or after the 1st day of April, 2007 but before the 1st day of June, 2007 shall be deemed to have been filed under this section.

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day.

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

Explanation.— For the purposes of this section, "appointed day" means the day appointed by the Central Government by notification in the Official Gazette.

Case Laws:

1. Non-allowing of interest in rectification order is appealable**:** When the ITO rectifies an assessment under section 154/155 and grants refund but fails to grant interest on the refund, such rectificatory order has the effect of reducing the amount payable to the assessee and hence appealable under section 246(1)(*b*) - *CIT* vs. *Perfect Pottery Co. Ltd.*173 ITR 545
2. Denial of liability to tax under particular circumstances is also covered - The expression 'denial of liability' is comprehensive enough to take in not only the total denial of liability but also the liability to tax under particular circumstances. Thus, an assessee has a right of appeal against the order of the ITO assessing the AOP instead of the members thereof individually - *CIT* vs. *Kanpur Coal Syndicate* 53 ITR 225
3. Objection as to place of assessment cannot be raised - No appeal can lie against an order determining the place of assessment - *Rai Bahadur Seth Teomal* vs. *CIT* 36 ITR 9

18.3.2 Appeal by person denying liability to deduct tax in certain cases. [Section 248]

Where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

Case Law:

AAC can determine quantum also : In an appeal filed under section 248, AAC has jurisdiction to deal with the quantum of sum chargeable under the provisions of the Act on which the assessee is liable to deduct tax under section 195 - *CIT* vs. *Westman Engg. Co. (P.) Ltd.* 188 ITR 327

18.3.3 Procedure for filing appeal [Section 249 & Rules 45 & 46]

(i) An appeal in Form No. 35 should be filed within 30 days of -

(a) the date of service of notice of demand relating to assessment or penalty if it relates to assessment or penalty; or

(b) the date of payment of tax, if it relates to any tax deducted u/s. 195(1) in respect of payment to non-resident in certain cases; or

(c) the date on which intimation of the order sought to be appealed against is served if it relates to any other cases.

The Commissioner of Income-tax (Appeals) may condone the delay in filing appeal petition if he satisfied that the appellant had sufficient cause for not presenting it within that period.

(ii) No appeal shall be admitted unless at the time of filing of appeal the appellant has paid :–

(a) the tax due on the income returned by him, or

(b) where no return has been filed the assessee has paid the amount equal to the amount of advance tax which was payable by him. However, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt the appellant from the payment of such tax.

(iii) Appeal is required to be made in duplicate. The memorandum of appeal, statement of facts and grounds of appeal should be accompanied by a copy of the order appealed against and the notice of demand in original, if any.

(iv) **Fee for filing appeal :** The memorandum of appeal shall be accompanied by a fee as under :–

a)	Where assessed income is ₹ 1,00,000 or less	₹ 250
b)	Where assessed income exceeds ₹ 1,00,000 but does not exceed ₹ 2,00,000	₹ 500
c)	Where assessed income exceeds ₹ 2,00,000	₹1,000
d)	other case except (a),(b) & (c)	₹ 250

W.e.f. 1.6.1999 fee for filing appeal relating to matters which may not have nexus with the returned income (e.g. TDS defaults, non-filing of return) has been prescribed to be ₹ 250 for appeal before Commissioner (Appeals). [Sec. 249]

The Commissioner (Appeals) after hearing the assessee and the income-tax department will pass an order in writing and communicate his order to the Assessee and the Commissioner of Income Tax. The Commissioner (Appeals) may confirm, reduce, enhance or annul an assessment against which the appeal is made. However, he has no power to set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment according to his direction. He may confirm or cancel the order of penalty. In other cases, he can pass such orders as he thinks fit. [Sec. 251]

Case Laws:

(1) Demand notice need not be enclosed to memo of appeal - Neither section 249 nor rule 45 makes it incumbent on the assessee-appellant to enclose the demand notice along with the memo of appeal - *Addl. CIT* vs. *Prem Kumar Rastogi* 115 ITR 503.

(2) Appellate authority is statutorily bound to consider condonation of delay - Where an application for condonation of delay in filing an appeal is preferred, it is the statutory obligation of the appellate authority to consider whether sufficient cause for not presenting the appeal in time was shown by the appellant - Shrimant Govindrao Narayanrao Ghorpade vs. CIT 48 ITR 54.

18.3.4 Procedure in appeal [Section 250]

(1) The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the hearing of the appeal—

(*a*) the appellant, either in person or by an authorized representative;

(*b*) the Assessing Officer, either in person or by a representative.

(3) The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).

(5) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A.

(7) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the [Chief Commissioner or Commissioner].

Case Laws:

(1) Appeal once filed cannot be withdrawn - An assessee having once filed an appeal, cannot withdraw it. Even if the assessee refuses to appear at the hearing, the AAC can proceed with the enquiry and if he finds that there has been an under-assessment, he can enhance the assessment - *CIT* vs. Rai Bahadur Hardutroy Motilal Chamaria 66 ITR 443 (SC)/CIT vs. B.N. Bhattachargee 118 ITR 461

(2) Revenue can object to delay in filing appeal - If an appeal by an assessee is admitted without the fact of delay in its presentation having been noticed, it is open to the department to raise the objection at the time of hearing of the appeal - *Mela Ram & Sons* vs. *CIT* 29 ITR 607

18.3.5 Powers of the Commissioner (Appeals) [Section 251]

(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—

(*a*) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

(*b*) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the materials and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceedings before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;

(c) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(*d*) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation—In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

18.3.6 Appellate Tribunal [Section 252]

(1) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade II of that Service or any equivalent or higher post for at least three years or who has been an advocate for at least ten years.

Explanation—For the purposes of this sub-section,—

(*i*) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;

(*ii*) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a Tribunal

or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(2A) An accountant member shall be a person who has for at least ten years been in the practice of accountancy as a Chartered Accountant under the Chartered Accountants Act, 1949 (38 of 1949), or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a Chartered Accountant, or who has been a member of the Indian Income-tax Service, Group A and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.

(3) The Central Government shall appoint:

(a) a person who is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court; or

(b) the Senior Vice-President or one of the Vice-President of the Appellate Tribunal,

to be the President thereof.

(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice- President or, as the case may be, Vice-Presidents thereof.

(4A) The Central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.

(5) The Senior Vice-President or a Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

18.3.7 Appeals to the Appellate Tribunal [Section 253]

(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(a) an order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154, section 250, section 271, section 271Aor section 272A; or

(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or

(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or

(c) an order passed by a Principal Commissioner or Commissioner under section 12AA or under clause (vi) of sub-section (5) of section 80G or under section 263 or under section 271 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General or a Principal Director or Director under section 272A; or

(d) an order passed by an Assessing Officer under sub-section (3), of section 143 or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order;

Following clause (e) shall be inserted after clause (d) of sub-section (1) of section 253 by the Finance Act, 2013, w.e.f. 1-4-2016 :

(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Principal Commissioner

or Commissioner as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order;

(f) an order passed by the prescribed authority under sub-clause (vi) or sub-clause (via) of clause (23C) of section 10.

(2) The Principal Commissioner or Commissioner may, if he objects to any order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154 or section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

(2A) The Principal Commissioner or] Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel under sub-section (5) of section 144C in respect of any objection filed on or after the 1st day of July, 2012, by the assessee under sub-section (2) of section 144C in pursuance of which the Assessing Officer has passed an order completing the assessment or reassessment, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or Commissioner, as the case may be.

Provided that in respect of any appeal under clause (b) of sub-section (1), this sub-section shall have effect as if for the words "sixty days", the words "thirty days" had been substituted.

(3A) Every appeal under sub-section (2A) shall be filed within sixty days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel under sub-section (5) of section 144C.

(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) or the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Assessing Officer (in pursuance of the directions of the Dispute Resolution Panel) or Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3) or sub-section (3A).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made, on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto, be accompanied by a fee of, —

(a) Where the total income is ≤ ₹1,00,000	Fee ₹ 500
(b) Where the total income is > ₹1,00,000 ≤ ₹2,00,000	Fee ₹ 1,500
(c) Where the total income is > ₹2,00,000	Fee of 1% of the assessed income (Maximum of ₹ 10,000)
(d) Where the subject matter of an appeal is not covered under (a), (b) and (c) above	Fee ₹ 500
(e) Application for stay of demand	Fee ₹ 500

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub- section (4).

Case Law:

(i) Where Tribunal found that cross-objections were belated by a period of one year and eleven months and Tribunal came to conclusion that no sufficient cause had been made out explaining delay, Tribunal was justified in holding that delay in filing cross-objections could not be condoned - *Vareli Textile Industries* vs. *CIT* 154 Taxman 33.

18.3.8 Orders of Appellate Tribunal [Sec. 254]

(1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer.

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

Provided that any application filed by the assessee in section 254(1) on or after 1.10.1998, shall be accompanied by a fee of ₹ 50.

(2A) In every appeal, the Apellate Tribunal, where it is possible may hear and decide such appeal within a period of 4 years from the end of the financial year in which such appeal is filed u/s 253 (1), (2) or (2A).

Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order.

Provided further that where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, the order of stay shall stand vacated after the expiry of such period or periods.

(2B) The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal.

(3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Commissioner.

(4) Save as provided in section 256 or section 260A, orders passed by the Appellate Tribunal on appeal shall be final.

Case Laws:

1. Jurisdiction is not higher than that of ITO – The jurisdiction of the Tribunal in the hierarchy created by the Act is no higher than that of the ITO; it is also confined to the year of assessment *ITO* vs. *Murlidhar Bhagwan Das* 52 ITR 335.

2. Tribunal cannot assume powers inconsistent with statutory provisions –CIT vs. Manick Sons 74 ITR
3. Jurisdiction is restricted to subject-matter of appeal- The powers of the Tribunal in dealing with appeals are expressed in section 254(1) in the widest possible terms. The word 'thereon' of course restricts the jurisdiction of the Tribunal to the subject-matter of the appeal Hukumchand Mills Ltd. vs. CIT 63 ITR 232.

18.3.9 Procedure of Appellate Tribunal [Sec. 255]

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does ≤ ₹15,00,000, and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Income Tax Authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

Case Laws :

1. **Statement to be relied upon must be got recorded:** If the Tribunal desires to rely upon a statement, it should formally call upon counsel for the assessee to record the statement in writing so as to enable the ITO to meet the case - *CIT* vs. *Thayaballi Mulla Jeevaji Kapasi* 66 ITR 147.
2. **Fiscal matters must be disposed of expeditiously :** Law must move quickly not only in the Courts but also before the Tribunals and officers charged with the duty of expeditious administrative justice. Indeed administrative officers and Tribunals are taking much longer time than is necessary, thereby defeating the whole purpose of creating quasi-judicial Tribunals calculated to produce quick decisions especially in fiscal matters ITO vs. Ramnarayan Bhojnagarwala 103 ITR 797.

18.3.10 Statement of case to Supreme Court in certain cases [Section 257]

If, on an application made [against an order made under section 254 before the 1st day of October, 1998,] under section 256 the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.

18.3.11 Appeal to the High Court [Section 260A & 260B]

An appeal shall lie to the High Court from every appellate order passed in appeal by the Tribunal, before the date of establishment of the National Tax Tribunal if the High Court is satisfied that the case involves a substantial question of law. The appeal may be filed by the Chief Commissioner or the Commissioner or the assessee. The Memorandum of Appeal shall precisely state the substantial question of law involving the appeal. An appeal along with a fee (as per Court Fees Act), shall be filed within 120 days of the date of receipt of the order appealed against. The question of law shall be formulated by the High Court, then the appeal shall be heard by a bench of at least two judges and decided by majority opinion. [Secs. 260A and 260B]

Case Laws :

1. Even if the High Courts have consistently taken an erroneous view, it would be worthwhile to let the matter rest, since large number of parties have modulated their legal relationship based on this settled position of law *Union of India* vs. *Azadi Bachao Andolan* 132 Taxman 373/263 ITR 706.
2. *Revenue authorities to follow decision of jurisdictional High Court*: Revenue authorities within State cannot refuse to follow jurisdictional High Court's decision on ground that decision of some other High Court was pending disposal by Supreme Court *CIT* vs. G.M. Mittal Stainless Steel (P.) Ltd. 130 Taxman 67/263 ITR 255.

18.3.12 Appeal to the Supreme Court [Section 261]

An appeal lies before the Supreme Court, against an order of the High Court in a reference, or in an appeal. Such appeal can be filed only if the High Court certifies it to be a fit case for appeal to the Supreme Court. If the High Court refuses to grant such a certificate, the assessee can file a Special Leave Petition (SLP)before the Supreme Court. If the SLP is granted, the Supreme Court will hear and decide the appeal on merits. [Sec. 261]

Case Laws :

1. Certificate will not issue against judgment of single Judge: Under article 133(3) of the Constitution, no appeal shall lie to the Supreme Court from the judgment, decree or final order of one Judge of the High Court. Consequently, no certificate can be issued in respect of such a judgment, decree or order State Bank of India vs. State Bank of India Employees' Union 169 ITR 675 .
2. Question must be of great public or private importance A certificate under section 261 which does not set out precisely the grounds or does not raise a question of great public or private importance does not comply with the requirements of the Act. The jurisdiction of the Supreme Court to entertain an appeal from the opinion recorded under the Act arises only when a certificate is properly issued by the High Court or when the Supreme Court grants special leave under article 136 of the Constitution. India Machinery Stores (P.) Ltd. vs. CIT 78 ITR 50 ; CIT vs. Central India Industries Ltd. 82 ITR 555.

18.3.13 Hearing before Supreme Court [Section 262]

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 261 as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this section shall be deemed to affect the provisions of sub-section (1) of section 260 or section 265.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 260 in the case of a judgment of the High Court.

Case Law :

1. Question not raised earlier cannot be raised: An independent issue, not considered by Tribunal or High Court, could not be permitted to be raised for first time before Supreme Court RM. Arunachalam vs. *CIT* 93 Taxman 423/227 ITR 222.

18.4 REVISION

Provisions relating to powers of revision of the Commissioner of Income Tax provides in sections 263 and 264 of the Income-tax Act which are analysed in a tubular form as under :

Section 263	**Section 264**
I. Scope:	
(a) Revision of order erroneous and prejudicial to the interest of revenue passed by the Assessing Officer	Revision of other orders by any sub- ordinate authority.
(b) Two circumstances must exist to enable the Commissioner to exercise the power of revision viz. (i) the order should be erroneous; and (ii) by virtue of the order being erroneous prejudice must have been caused to the interest and of the Revenue. CIT vs. Gabriel India Ltd., 203 ITR 108(Bom).	The Commissioner shall not revise any order where the appeal against the order is pending before the first or second appellate authorities (or) where the time for filing appeal has not lapsed the assessee has not waived his right of appeal.
II. Procedure :	
(a) Commissioner of Income Tax may call for and examine the records and revise the orders after hearing the assessee.	Commissioner of Income-tax either on his own motion or on an application by the assessee can call for the records and revise the order.
(b) Record shall include all records relating to any proceeding available at the time of examination of the file by the Commissioner of Income-tax.	Every application for revision should be accompanied by a fee ₹ 500.
III. Nature of order :	
(a) An order enhancing, modifying or cancelling the assessment can be passed by the Commissioner.	An order which is not prejudicial to the interest of the assessee can be passed.
(b) If the Income-tax Officer makes any mistake in carrying out the directions of the Appellate Assistant Commissioner or the Tribunal, his order can be revised by the Commissioner of Income Tax. Warner Lambert Co.vs. CIT, 205 ITR 395(Bom).	Commissioner declining to interfere will not amount to passing of an order prejudicial to the assessee.
(c) The Commissioner of Income Tax has jurisdiction and powers to initiate proceedings in respect of issues not touched by the CIT(Appeals) in his Appellate Order- CIT vs. Jayakumar B. Patil, 236 ITR 469(SC).	Where depreciation was not claimed before the Income-tax Officer or the Appellate Assistant Commissioner but was claimed for the first time before the Commissioner of Income Tax in an application u/s 264, the Commissioner must allow the claim on merits. Rashtriya Vikas Ltd. vs. CIT,196 ITR694 (All.)

IV. Time limit : (a) No order can be passed after the expiry of 2 years from the end of the Financial Year in which the order to be revised was passed.	Commissioner should pass an order disposing of the revision petition within one year from the end of the Financial Year in which the revision petition was filed by the assessee.
(b) An order in revision may be passed at any time in the case of an order which has been passed in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, the High Court or the supreme court.	On assessee's application- within one year from the end of financial year in which the application was filed.
V. Remedy : Appeal can be filed to the Appellate Tribunal.	There is no right of appeal but appeal vests under constitution.

For the purposes of this section, an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

18.5 GENERAL PROVISIONS

18.5.1 Tax to be paid notwithstanding reference, etc [Section 265]

Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case.

18.5.2 Execution for costs awarded by Supreme Court [Section 266]

The High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court.

18.5.3 Amendment of assessment on appeal [Section 267]

Where as a result of an appeal under section 246 or section 246A or section 253, any change is made in the assessment of a body of individuals or an association of persons or a new assessment of a body of individuals or an association of persons is ordered to be made, the Commissioner (Appeals) or the Appellate Tribunal, as the case may be, shall pass an order authorising the Assessing Officer either to amend the assessment made on any member of the body or association or make a fresh assessment on any member of the body or association.

18.5.4 Exclusion of time taken for copy [Section 268]

In computing the period of limitation prescribed for an appeal or an application under this Act, the day on which the order complained of was served and, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

18.5.5 Filing of appeal or application for reference by Income Tax Authority [Section 268A]

(1) The Board may, from time to time, issue orders, instructions or directions to other Income-tax Authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any Income-tax Authority under the provisions of this Chapter.

(2) Where, in pursuance of the orders, instructions or directions issued under sub-section (1), an Income-tax Authority has not filed any appeal or application for reference on any issue in the case of an assessee for any Assessment Year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of-

(a) The same assessee for any other Assessment Year; or

(b) any other assessee for the same or any other Assessment Year.

(3) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2)(3) and (4) shall apply accordingly.

18.5.6 Definition of "High Court" [Section 269]

In this Chapter,—

"High Court" means—

(*i*) in relation to any State, the High Court for that State ;

(*ii*) in relation to the Union territory of Delhi, the High Court of Delhi ;

(iii) in relation to the Union territory of the Andaman and Nicobar Islands, the High Court at Calcutta;

(*iv*) in relation to the Union territory of Lakshadweep, the High Court of Kerala;

(*v*) in relation to the Union territory of Chandigarh, the High Court of Punjab and Haryana;

(*vi*) in relation to the Union territories of Dadra and Nagar Haveli and Daman and Diu, the High Court at Bombay; and

(*vii*) in relation to the Union territory of Pondicherry, the High Court at Madras.

Study Note - 19

INTEREST

This Study Note includes

19.1 Interest payable
19.2 Interest Receivable
19.3 Rounding off

19.1 INTEREST PAYABLE

Sections 234A, 234B and 234C provide for charging of mandatory interest since word 'shall' is used in the said sections. (CIT vs. Anjum M.H. Ghaswala**)**

19.1.1 Interest For failure to deduct or pay any TDS [Section 201(1A)]:

Where a person responsible for deducting tax at source does not deduct at source under Chapter XVII or after deducting tax fails to pay the same as required by Act, he is liable to pay interest @ 1% for every month or part of a month on the amount of such tax from the date on which tax deductible till the date it is actually paid.

Finance Act, 2010 has been amended with effect from July 1, 2010. Under the amended version, interest will be payable as follows-

Rate of Interest (per month or part)	Period for which interest is payable
1 percent	From the date on which tax was deductible to the date on which tax is actually deducted
1.5 percent	From the date on which tax was actually deducted to the date on which tax is actually paid

The Finance Act, 2012 has amended the aforesaid provisions, with effects from July 1, 2012. After this amendment, the payer shall not be deemed to be an assessee in default if-

- the resident recipient has included such income in the return submitted under section 139 and the recipient has paid tax on such income, and
- the payer submits a certificate to this effect from Chartered Accountant.

In that case interest shall be payable at the rate of 1 percent from the date on which tax was deductible to the date of furnishing of return of income by the resident recipient.

Before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3) of section 200, such interest should be paid on self- assessment basis.

19.1.2 No order under section 201(1) after expiry of Seven Years

No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.

19.1.3 Interest for failure to collect any tax or pay TCS [Section 206C(7)] :
Where a person responsible for collecting tax at source under section 206C does not collect or after collecting tax fails to pay the same as required by Act, he is liable to pay interest @ 1% for every month or part of a month on the amount of such tax from the date on which tax should have been collected till the date it is actually paid.

Any person, other than dealers of jewellry responsible for collection of tax at source under section 206C fails to collect full or part of the tax and the above conditions thereof are not fulfilled, the date of submission by the buyer / lessee shall be taken as the date of payment of tax by the seller.

Consequently, the interest under section 206C(7) shall be payable from the date on which such tax was collectible to the date of furnishing of return of income of buyer / lessee.

The Finance Act, 2012 has amended the aforesaid provisions, with effect from July 1, 2012. After this amendment, the payer shall not be deemed to be an assessee in default if-

- the resident recipient has included such income in the return submitted under section 139 and the recipient has paid tax on such income, and
- the payer submits a certificate to this effect from Chartered Accountant.

In that case interest shall be payable at the rate of 1 percent from the date on which tax was deductible to the date of furnishing of return of income by the resident recipient. (the above relaxation is applicable only when the recipient is resident and the default pertains to the period commencing on or after July 1, 2012.)

Before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3) of section 200, such interest should be paid on self- assessment basis.

19.1.3 Interest on Delayed Payment of Tax other than Advance Tax [Section 220(2)]

Where an assessee fails to pay any tax, penalty, etc. within 30 days from the date of the Notice of Demand issued under Section156, he shall be liable to pay interest on the outstanding demands @1% for every month or part of a month, for the period of default.

Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then, such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority or disposal of the proceedings, as the case may be, and any such notice of demand shall have the effect as specified in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964.

The finance Act, 2012 has been amended the section 220 with effect from July 1, 2012 to provide that when interest is charged under section 201(1A) on the amount specified in the intimation issued under section 200A(1), then no interest will be chargeable for the same amount for the same period under section 220(2).

The Finance (No. 2) Act, 2014 has been inserted in the section 220 to provided further that where as a result of an order under sections specified in the first proviso, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under said sections or section 263, the amount on which interest was payable under this section is increased, the assessee shall be liable to pay interest under sub-section (2) from the day immediately following the end of the period mentioned in the first notice of demand, referred to in sub-section [1) and ending with the day on which the amount is paid.

Where the Notice of Demand issued under section156 is issued for payment of Advance Tax, interest is not chargeable on the outstanding demand, if any.

Penalty is prescribed under section 221 for any default in payment of advance tax, any other tax, penalty, etc. within 30 days from the date of the Notice of Demand issued under Section156. Penalty can be to the extent of the amount of tax in arrears. However, where assessee has preferred, the AO can exercise his discretion so as to treat the assessee as not being in default in respect of nonpayment of tax on the amounts disputed in first appeal and then penalty under section 221 does not attract [Sec. 220(6)].

The following additional points should be considered :-

(i) Interest charged under Section 220 (2) is reduced in case of reduction of tax in appeal, rectification or revision.

(ii) Interest under Section 220(2) is to be paid on delayed payments even if extension of time for making payment has been granted.

Notwithstanding anything contained in sub-section (2), where interest is charged under sub-section (7) of section 206C on the amount of tax specified in the intimation issued under sub-section (1) of section 206CB for any period, then, no interest shall be charged under sub-section (2) on the same amount for the same period.

19.1.4 Interest for defaults in furnishing return of income [Section 234A]

If the return of income is furnished after the due date or is not furnished, the assessee is liable to pay interest under section 234A.

Interest is calculated @ 1 percent per month or part of month (simple interest) commencing on the date immediately following the due date for filing the return of income and ending on-

(i) The date of furnishing the return (where return has been filed after the due date) or

(ii) The date of completion of assessment under section 144 (where no return has been furnished)

Amount on which interest is payable is calculated as under:

(i) Find out the tax on total income as determined under section 143(1) or on assessment under section 143(3) or section 147 or 153A (if the assessment is made for the first time under section 147 or 153A)

(ii) From the tax so determined advance tax paid, tax deducted or collected at source, relief under section 90/90A/91, MAT credit under section 115JD but not tax paid under section 140A) shall be deducted.

Amount on which interest is payable:

(i) Under Section 234A(1): Interest is payable on tax determined u/s 143(1) or on regular assessment u/s 143(3)/144/147/153A minus TDS/ Tax collected at source and advance tax paid by the assessee.

(ii) Under Section 234A(3): Tax determined u/s 147 or 153A minus tax on total income determined u/s 143(1), 144 or 147 earlier.

Provisions of section 234A, 234B and 234C have been amended so as to provide that credit to be set off in accordance with the provision of section 115JD of the Act, (Alternate Minimum Tax) taken into account for calculating interest liability under this sections. The amended provision has been applicable for the Assessment Year 2013-14.

No Interest if Taxes are paid :

Where the assessee had paid the taxes before the date of filling the return but could not file the return for reasons beyond his control but filled it belatedly, the charge of interest u/s 234A is not valid as in such cases there is no loss to the revenue. However interest would be payable where tax has not been deposited prior to the date of filling of the return. [Prannoy Roy (Dr.) vs. CIT 121 Taxman 314 (Del)]

19.1.5 For default in paying Advance Tax [Section 234B] :

(1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and where

a regular assessment is made, to the date of such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.

Explanation 1.—In this section, "assessed tax" means the tax on the total income determined under sub-section (1) of section 143 and where a regular assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of,—

(i) any tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

(ii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;

(iii) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;

(iv) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and

(v) any tax credit allowed to be set off in accordance with the provisions of section 115JAA or section 115JD.

Explanation 2.—Where, in relation to an assessment year, an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation 3.—In Explanation 1 and in sub-section (3) "tax on the total income determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.

(2) Where, before the date of determination of total income under sub-section (1) of section 143 or completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise,—

(i) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section;

(ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

(2A)(a) Where an application under sub-section (1) of section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section.

(b) Where as a result of an order of the Settlement Commission under sub-section (4) of section 245D for any assessment year, the amount of total income disclosed in the application under sub-section (1) of section 245C is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under sub-section (1) of section 245C.

(c) Where, as a result of an order under sub-section (6B) of section 245D, the amount on which interest was payable under clause (b) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly.

(3) Where, as a result of an order of reassessment or recomputation under section 147 or section 153A, the amount on which interest was payable in respect of shortfall in payment of advance tax for any financial year under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April next following such financial year and ending on the date of the reassessment or recomputation under section 147 or section 153A, on the amount by which the tax on the total income determined on the basis of the reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment as referred to in sub-section (1), as the case may be.

(4) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

(i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

19.1.6 Interest for Deferment of Advance Tax [Sec. 234C]

An advance tax is said to have been deferred, if any one or more of the installments are not paid or tax paid is less than prescribed under the law. In case of such deferment of advance tax simple interest shall be payable as follows :

(i) For Assessee other than Companies :	
(a) If the tax paid upto 15th September is less than 30%	Simple interest on the amount of shortfall @1% p.m.for 3 months
(b) If the tax paid upto 15th December is less than 60%	– do –
(c) If the tax paid upto 15th March is less than 100% of the tax due	Simple interest on the amount of shortfall @ 1%.
(ii) For Company Assessees :	
(a) If the tax paid upto 15th June is less than 15%	Simple interest on the amount of shortfall @1% p.m. for 3 months
(b) If the tax paid upto 15th September is less than 45%	– do –
(c) If the tax paid upto 15th December is less than 75%	– do –
(d) If the tax paid upto 15th March is less than 100%	Simple interest on the amount of shortfall @ 1% for 1 month

No interest under section 234C is leviable where the shortfall in payment of advance tax installments is on account of under-estimate/non-estimate of any capital gains or winning from lotteries, crossword puzzles, races, etc. This concession of not charging of interest is applicable where such incomes arise after payment of any of the installments and the whole tax on the items of income stated herein before is deposited along with the next succeeding installment falling due after the income arose.

19.1.7 Interest for Failure to pay Advance Tax [Sec. 234B and 234C]

Interest under sections 234B and 234C is payable even in cases where the assessee fails to pay advance tax at all. Any tax paid after 15th March but before 31st March is considered as advance tax paid.

19.1.8 Fees for default in furnishing Quarterly Returns [Sectioin 234E]

Section 234E has been inserted with effect from July 2012. It shall be applicable with respect of quarterly TDS / TCS return which are submitted on or after July 1st 2012. In other words, it would be applicable from the first quarter of the financial year 2012-13.

Under this section, if a person fails to deliver, or caused to be delivered, any TDS/ TCS Return within the time limit prescribed in section 200(3), or the provision of section 206C(3), need to pay a fees of a sum of ₹ 200 for every day during which the failure continues.

19.2 INTEREST RECEIVABLE

19.2.1 Interest Charged Under Section 234D

Section 234D was inserted by Finance Act 2003 with effect from June 2003. Under this section, interest is recovered on refund granted earlier. Where any refund has been granted to the assessee under section 143(1) and subsequently on regular assessment no refund or demand had arisen, then the assessee shall be liable to pay simple interest at the rate of 1/2 % p.m on the excess amount so refunded for the period starting from the date of refund to the date of final assessment.

19.2.2 Interest is payable to assessee on refund [Section. 244A]

Interest on excess payment of advance tax, tax deducted or collected at source and any other tax or penalty becoming refundable shall be paid @ 1/2% for every month or part of a month. The period for which the interest is payable will be:

(i) For refund out of advance and tax deducted at source, from 1st April of relevant Assessment Year to the date on which the refund is granted. However, no interest is payable, if the amount of refund is less than 10% of the tax determined under section 143(1) or on regular assessment or assessment of FBT under section 115WE, and

(ii) For all other tax or penalties, from the date of payment of tax or penalty to the date on which the refund is granted.

Delay in granting refund attributable to the assessee is excluded from the period for which interest is payable. Where the amount on which interest was payable is increased or decreased due to regular assessment orders, reassessment, rectification, appeals, revision or Settlement Commission's order, interest is also will be increased of decreased.

Interest earned by assessee under section 244A is treated as taxable income of the Previous Year in which it is allowed.

19.3 ROUNDING OFF

19.3.1 Rounding off of Month [Rule 119A]

The interest is to be calculated, any fraction of a month deemed to be full month and the interest shall be so calculated.

19.3.2 Rounding off of Amount [Rule 119A]

The amount of tax, penalty or other sum in respect of which interest is to be calculated is to be rounded off to the nearest multiple of ₹ 100 and for this purpose any fraction of ₹ 100 is to be ignored.

ILLUSTRATIONS ON INTEREST u/s 234A, 234B & 234C

Illustration 1. A firm made the following payments of advance tax during the Financial Year 2015-16:

	Figures in ₹ Lakhs
15.09.2015	9.30
15.12.2015	9.0
15.03.2016	13.9
	32.20

The income returned by the firm is ₹ 100 Lakhs under the head "Business" and ₹ 10 Lakhs by way of Long-term Capital Gains on sale of a property effected on 1.3.2016. What is the interest payable by the assessee u/s 234B and 234C of the Income Tax Act for Assessment Year 2016-2017? Assume that the return of income was filed on 31.07.2016 and tax was fully made upon self-assessment.

Solution :

Assessee : Firm **Previous Year : 2015-2016** **Assessment Year : 2016-2017**

(a) **Interest u/s 234B** = **Nil** [since more than 90% of Tax Payable has been paid before the end of the Previous Year]

(b) **Interest u/s 234C**

Due date	Advance Tax Payable (₹)	Advance Tax paid (₹)	Cumulative Advance Tax paid before due date (₹)	Shortfall in Payment (₹)	Surplus (₹)	Months	Interest @ 1% p.m. (₹)
15.9.2015	30% of ₹ 30,90,000 [See note] = 9,27,000	9,30,000	9,30,000	—	3,000	—	—
15.12.2015	60% of ₹ 30,90,000 = 18,54,000	9,00,000	18,30,000	24,000	—	3	720
15.3.2016	100% of ₹ 36,25,600 [See note] = 36,25,600	13,90,000	32,20,000	4,05,600	—	1	4,056
							4,776

Note : Tax on LTCG has been considered only for the 3rd instalment as such gain had arisen only on 1.3.2016. Surcharge is applicable only when the total income exceeds ₹1 crore. In the given case, the total income exceeds ₹1 crore only when the LTCG arose. So, while calculating interest, surcharge is considered only for the 3rd instalment.

Computation of Actual Tax Payable by the Firm :

Particulars	₹	₹
Profits and Gains of Business or Profession		1,00,00,000
Capital Gains — Long Term Capital Gain		10,00,000
Total Income		**1,10,00,000**
Tax on Total Income including Surcharge and Cess		
On Long Term Gain of ₹ 10 lakhs @ 20%	2,00,000	
On Business Income of ₹ 100 lakhs @ 30%	30,00,000	
Tax Payable		**32,00,000**

Computation of Net Tax Liability

		₹
(a)	Tax payable before surcharge	32,00,000
	(+) Surcharge @ 10%	3,20,000
		35,20,000
(b)	Tax payable on ₹1 crore	30,00,000
	(+) Total income over ₹1 crore	10,00,000
		40,00,000
Lower of (a) or (b)		35,20,000
Add : E. C & SHEC @ 3%		1,05,600
	Net Tax Payable	36,25,600

Note : Tax on Business income alone considered for computation of 1st and 2nd installment.

Illustration 2. A firm made the following payments of advance tax during the Previous Year 2015-16 :

	₹ in lakh
September 15, 2015	7.00
December 15, 2015	7.75
March 15, 2016	13.00
	27.75

The return of income is filed on 31.7.2016 showing —

Bonus income ₹ 80 lakh

Long Term Capital Gain taxable @ 20% (as on 1.12.2015) ₹ 20 lakh

Compute interest payable u/s 234C.

Solution :

Computation of tax liability for the A.Y. 2016-17

₹ in lakh

Particulars	Business Income	Long Term Capital Gain
Income	80.00	20.00
Tax rate	30%	20%
Tax liability before surcharge	24.00	4.00
Add : Education Cess & SHEC	0.72	0.12
Tax liability including cess	24.72	4.12

∴ Total Tax Liability = (24.72 + 4.12) lakhs = ₹ 28.84 lakhs.

(b) Interest U/S 234B = Nil [Since more than 90% of tax payble has been paid before the end of the previous year.]

(c) Computation of interest payable u/s 234C

Due date	Advance Tax Payment (₹)	Advance Tax paid (₹)	Cumulative Advance Tax paid before due date (₹)	Shortfall in Payment (₹)	Surplus (₹)	Months	Interest @ 1% p.m. (₹)
15.9.2015	30% of ₹ 24,72,000 = 7,41,600	7,00,000	7,00,000	41,600	—	3	1,248
15.12.2015	60% of ₹ 24,72,000 = 14,83,200 (+) 60% of 4,12,000 = 2,47,200	7,75,000	14,75,000	2,55,400	—	3	7,662
15.3.2016	100% of ₹ 28,94,000 = 28,94,000	13,00,000	27,75,000	1,19,000	—	1	1,190
							10,100

Illustration 3. In the case of Ms Laxmi, you are required to compute the interest u/s 234A, 234B & 234C from the following details—

Tax on total income ₹ 2,00,000; Due date for filing the return 30.09.2016; Actual date of filing the return 1.10.2016 and tax paid on 30.09.2016 ₹ 2,00,000.

Solution :

Computation of interest u/s 234A

Particulars	As per assessed income	
Tax		₹ 2,00,000
Less : Advance tax paid	Nil	Nil
TDS	Nil	
Amount on which interest is payable		₹ 2,00,000
Period of default (October being part of a month shall be considered)		1 month
Interest u/s 234A (1% × ₹ 2,00,000 × 1 month)		**₹ 2,000**

Computation of interest u/s 234B

Since assessee did not pay any amount by way of advance tax, hence she is liable to pay interest u/s 234B.

Particulars	Assessed income
Shortfall	₹ 2,00,000
Period of default (From April to September)	6 months
Interest (1% × ₹ 2,00,000 × 6 months)	**₹ 12,000**

Computation of interest u/s 234A

Due date	Advance Tax Payment (₹)	Advance Tax paid (₹)	Cumulative Advance Tax paid before due date (₹)	Shortfall in P ayment (₹)	Surplus (₹)	Months	Interest @ 1% p.m. (₹)
15.9.2015	30% of ₹ 2,00,000 = 60,000	Nil	Nil	60,000	—	3	1,800
15.12.2015	60% of ₹ 2,00,000 = 1,20,000	Nil	Nil	1,20,000	—	3	3,600
15.3.2016	100% of ₹ 2,00,000 = 2,00,000	Nil	Nil	2,00,000	—	1	2,000
							7,400

Total interest payable

Particulars	Amount
U/s 234A	2,000
U/s 234B	12,000
U/s 234C	7,400
Total	**21,400**

Illustration 4. During the Previous Year 2015-16, Mrs. X (aged 46 years) pays the following installments of advance tax :

	₹
On September 15, 2015	6,000
On December 15, 2015	14,000
On March 15, 2016	16,000
On March 16, 2016	8,000

Mrs. X files return of ₹ 7,01,000. Assessment is also completed on the basis of income returned by Mrs. X after making addition of ₹ 25,000 (date of assessment order : January 20, 2017). Mrs. X is entitled to tax credit of ₹ 12,510 on account of tax deducted at source. Compute interest under sections 234B and 234C.

Solution :

Interest liability under section 234B

	₹
Income(7,01,000 + 25,000)	7,26,000
Tax on ₹7,26,000	72,306
Less: Tax deducted at source	12,510
Assessed tax	59,796
90% of assessed tax	47,837
Advance tax paid during 2015-16 (i.e., ₹ 6,000 + 14,000 + 16,000 + 8,000)	44,000

Since advance tax during the Previous Year 2015-16 is less than 90% of assessed tax, Mrs. X is liable to pay interest under section 234B, i.e., on the shortfall of ₹ 10,946 (being ₹ 59,796 – 44,000) for 10 months (₹ 15,796 × 1/100 × 10) which comes to ₹ 1,580.

Interest liability under section 234C :

Tax on ₹7,01,000 = 65,200 + 3% on Education and Higher Education Cess = 67,156

Due date	**Advance Tax Payment** (₹)	**Advance Tax paid** (₹)	**Cumulative Advance Tax paid before due date** (₹)	**Shortfall in Payment** (₹)	**Surplus** (₹)	**Months**	**Interest @ 1% p.m.** (₹)
15.9.2015	30% of ₹ 67,156 = 20,147	6,000	6,000	14,147	—	3	424
15.12.2015	60% of ₹ 67,156 = 40,294	14,000	20,000	20,294	—	3	609
15.3.2016	100% of ₹ 67,156 = 67,156	24,000	44,000	23,156	—	1	232
							1,265

Study Note - 20

ADVANCE PAYMENT OF TAX

This Study Note includes

20.1 Advance Payment of Tax
20.2 Collection of Advance Tax
20.3 Recovery of Tax

20.1 ADVANCE PAYMENT OF TAX

Tax Payable by An Assesses Shall be paid in Advance [Section 4]

Who is liable to pay Advance Tax (Section 208)	When the Advance Tax-payable by any person for the Assessment Year immediately following the financial year is ₹ 10,000 or more.	
Amount of Advance Tax payable	Tax on Total Income Less: Rebate and relief Add: Surcharge Less: Tax deducted at source and Tax collected at source.	
Due Date of Installment in a relevant Previous Year	**Amount payable by Corporate Assesses**	**Amount payable by Non-Corporate Assesses**
On or before June 15	15% of Advance tax payable	Not Applicable
On or before September 15	45% of Advance tax payable	30% of Advance tax payable
On or before December 15	75% of Advance tax payable	60% of Advance tax payable
On or before March 15	100% of Advance tax payable	100% of Advance tax payable

Note :

Any amount paid by way of advance tax on or before 31st March of the relevant Previous Year shall also be treated as Advance Tax paid during the financial year ending on that day.

If the due date of payment of advance tax is a banking holiday, the Assessee can make the payment on the next immediately following working day. In such cases, no interest shall be leviable u/s 234B or 234C.

No Advance tax payable by senior citizens u/s.207

This section provides for payment of Advance Tax in instalments. It is now provided, w.e.f. 1-4-2012, that a senior citizen who has no income from business or profession will not be required to pay any Advance Tax.

20.2 COLLECTION OF ADVANCE TAX

20.2.1 Procedure for Payment of Tax under a Demand Notice Issued U/S 156

1. **Due date for payment of tax [Section 220(1)]:** Any amount of tax other than Advance Tax specified as payable in a notice of demand u/s 156 or u/s 143(1) or u/s 200A(1) or u/s 206CB(1) shall be paid within 30 days.
2. **Reduction of time limit:** If the Assessing Officer has any reason to believe that it would be detrimental to revenue if the full period of 30 days as aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum is to be paid within any period less than 30 days.

3. **Extension of time limit:** The Assessing Officer may extend the time on the basis of an application made by the Assessee to pay the tax demanded u/s 156(1) or the deductor or the collector under sub-section (1) of section 143 or sub-section (1) of section 200A or sub-section (1) of section 206CB or allow payments by installments subject to conditions as he may think fit to impose.

20.2.2 Circumstances of Assessee be Treated as Deemed to be in Default

1. **Assessee deemed to be in default [Section 220 (4)]:** The Assessee shall be deemed to be in default if the amount specified in the notice u/s 156 is not paid within the time allowed or within such extended time u/s 220(3).
2. **Amount of default [Section 220(5)]** Where the payment is allowed by instalments, the amount of default shall be the amount outstanding. All the other instalments shall be deemed to be in default on the same date as the instalment actually in default.
3. **Circumstances under which the Assessee is not deemed to be in default:**
   i. If the Assessee presents an appeal to the CIT (Appeals), the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose, treat the Assessee as not being in default as long as the appeal is not disposed of. **[Section 220(6)]**
   ii. Where the income of an Assessee arising outside India is assessed in a Country where the laws prohibit or restrict the remittance of money to India, such an Assessee shall not be treated as Assessee in default in respect of tax due on the income which cannot be brought into India. **[Section 220(7)]**
   iii. Where the demand in dispute has arisen because the Assessing Officer has adopted an interpretation of law in respect of which there are conflicting High Court decisions and the Department has not accepted the interpretation of the Court, the Assessee shall not be deemed in default. **[Circular No.530/ 6-3-1989]**
   iv. Where the demand in dispute relates to issues which are decided earlier in the Assessee's favour by an appellate authority / Court in his own case (say, for preceding Assessment Years), the Assessee shall not be deemed to be in default to the extent of tax liability relatable to such disputed points. **[Circular No.530/6-3-1989]**

20.2.3 Consequences of Non-Payment or Delay in Payment at Tax as Demanded by Notice u/ s 156

1. **Interest for belated payment of tax: [Section 220(2)]**
   (a) Interest : If the amount demanded as per notice u/s 156 is not paid within the period specified in that notice, the Assessee shall be liable to pay a simple interest @ 1 % per month or part of a month.
   (b) Period of Interest : The period of interest shall be from the day immediately following the end of the period mentioned in the notice ending with the day on which the amount is paid,
2. **Penalty: [Section 221]**
   (a) Where the Assessee is in default or deemed to be in default in making payment of tax, the Assessing Officer may direct the Assessee to pay a penalty not exceeding the amount of tax in arrears.
   (b) Penalty may be levied even if the tax is paid belatedly but before the levy of such penalty.
3. **Opportunity to Assessee :** The Assessee shall be given a reasonable opportunity of being heard.
4. **No penalty:** In case the Assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied.
5. **Refund of penalty :** In case the amount of tax was wholly reduced in any final order, then the penalty levied shall be cancelled and amount of penalty paid shall be refunded.

20.3 RECOVERY OF TAX

20.3.1 Certificate of Recovery u/s 222(1)

1. **Certificate of Recovery [Section 222(1)]:** When an Assessee is in default or deemed to be in default in payment of tax, the Tax Recovery Officer may draw up a statement under his signature in Form No.57 specifying the amount of arrears due from the Assessee. Such a statement is called Certificate.

2. The Assessee cannot dispute the correctness of any certificate drawn up by the TRO on any ground. **[Section 224]**

3. It is lawful on the part of the TRO to cancel the certificate for any reason he thinks necessary so to do or to correct any clerical or arithmetical mistake therein. **[Section 224]**

20.3.2 Modes of Recovery of Tax Under the Pro Visions of The Act, by The Tax Recovery Officer

1. **Modes of Recovery of tax [Section 222]:** In accordance with the rules laid down in the Second Schedule, the amount specified in the certificate may be recovered by any one or more of the following modes -

   (a) Attachment and sale of the Assessee's movable property,

   (b) Attachment and sale of the Assessee's immovable property,

   (c) Arrest of the Assessee and his detention in prison,

   (d) Appointing a receiver for the management of the Assessee's movable and immovable properties.

2. **Movable and immovable property includes** any property which has been transferred directly or indirectly by the Assessee to his spouse or minor child or son's wife or son's minor child for inadequate consideration and the same is held by such persons.

3. **Property held by major:** Any movable property or immovable property transferred to the minor child or son's minor child shall be treated as the Assessee's property even after the minor attains majority.

4. The Tax Recovery Officer may take action u/s 222(1) for recovery of tax arrears even though any other proceedings for recovery of arrears have been taken,

20.3.3 Other Modes of Recovery [Section 226]:

1. **Applicability:** Section 226 is applicable in the following situations:

   (a) No certificate u/s 222 has been drawn by the Assessing Officer

   (b) Where a certificate has been drawn u/s 222, the Tax Recovery Officer, without any Prejudice to the modes of recovery specified in Section 222, can recover by any one or more of the other modes u/s 226.

2. Modes of Recovery:

Mode	**Tax arrears due from**	**Arrears of tax to be deducted by**	**Payment of sum deducted**	**Other Provisions**
Attachment of Salary **[Section 226(2)]**	Salaried Employee	Person paying salary to such person	To the credit of Central Government	Not applicable where the salary is exempt from attachment under the Code of Civil Procedure
Garnishee Order **[(Section 226(3)]**	Any Assessee	Any Person from whom money is due or may become due to the Assessee or any person who holds any money for the Assessee jointly with any other person	To the credit of Central Government	If the assessee fails to make payment in pursuance to the notice, the assessee shall be deemed to be an assessee in default in respect to the amount specified in the notice and further proceeding may be taken against him as per section 222 to 225.
Recovery from money belonging to Assessee lying in Court's custody **[Section 226(4)]**	Assessee whose money is in Court's custody	Court	To the AO or TRO to the extent of liability	—
Recovery of arrears of tax by distraint and sale **[Section 226(5)]**	Any Assessee	Not Applicable	Not Applicable	It should be authorized by the CIT/CCIT by general or special order. The distraint or sale shall be made in the manner as that for an attachment and sale of movable Property attachable by actual seizure

ILLUSTRATION ON PAYMENT OF ADVANCE

Illustration 1 : Compute the Advance Tax payable by R from the following estimated income submitted for the Previous Year 2015-16.

	₹
(1) Income from Salary	3,64,000
(2) Rent from house property (per annum)	1,80,000
(3) Interest on Government securities	5,000
(4) Interest on bank deposits	3,000
(5) Receipt from horse race (net)	14,000
(6) Agricultural Income	90,000
(7) Contribution towards PPF	10,000

Tax deducted at source by the employer on salary is ₹ 9,680.

Solution: Computation of Estimated Total Income for the Previous Year 2015-16

	₹	₹
Income from Salary: Gross salary	3,64,000	
Less : Deduction	Nil	3,64,000
Income from House Property: Rent received	1,80,000	
Less : Statutory deduction u/s 24(*a*) @ 30%	54,000	1,26,000
Income from Other Sources: Interest on Government securities	5,000	
Interest on Bank Deposit	3,000	
Horse Races (Gross)	20,000	28,000
Estimated Gross Total Income		5,18,000
Less : Deduction under section 80C		10,000
		5,08,000
Estimated Tax: Step-1 : Aggregate of Agricultural income + Non-Agricultural income (90,000 + 5,08,000) = 5,98,000		
Tax on: Income from Horse Race of ₹ 20,000 @ 30%	6,000	
Balance income of ₹ 5,78,000	40,600	
		46,600
Step-2 : Aggregate of Basic exemption limit of agricultural income (2,50,000 + 90,000) = 3,40,000		
Tax on ₹ 3,40,000		9,000

Step-3 : Tax on non-agricultural income		
Tax under step-1 - Tax under step-2 (46,600 – 9,000) = 37,600		
Estimated tax payable		37,600
Add: Education cess @2%		752
Add: SHEC @1%		376
Less : Estimated TDS		38,728
on salary	9,680	
on horse races	6,000	(15,680)
Advance tax payable		23,048
First installment payable by 15.9.2015 (30%)		6,914
Second installment payable by 15.12.2015 (30%)		6,914
Third installment payable by 15.3.2016 (balance 40%)		9,220
Working notes:		
1. Computation of gross winnings from horse races:		₹
Net Amount		14,000
Grossing up 14,000 X100/70		20,000
Tax deducted at source (Gross amount ₹ 20,000 – Amount received ₹ 14,000)		6,000

2. Interest on Bank deposit assumed not to be from savings deposit.

Illustration 2. X Ltd. estimates its income for the Previous Year 2015-16 at ₹ 1,20,000. Besides this income, it has also earned Long-Term Capital Gain of ₹ 80,000 on transfer of gold on 1.12.2015. Compute the advance tax payable by the company in various instalments.

Solution:

	₹
Tax on ₹ 1,20,000 @30%	36,000
LTCG of ₹ 80,000 @ 20%	16,000
	52,000
Add: Education cess @ 2%	1,040
SHEC @1%	520
	53,560

Amount payable on 1st and 2nd instalment

For the first two instalments tax on LTCG will not be taken into account as this accrued on 1.12.2015 i.e. after the due date of the first 2 instalments.

	₹
Tax including Education Cess and SHEC payable without Long-term Capital Gain (₹ 36,000 + 720 +360)	37,080

Advance Tax Payable

Due Date	Tax Liability as on due date		Amount of Instalment Payable (₹)
15.6.2015	15% of 37,080 =	5,562	₹ 5,562
15.9.2015	45% of 37,080 =	16,686	16,686 –5562 = 11,124
15.12.2015	75% of 53,560 =	40,170	40,170 –5,562- 11,124 = 23,484
15.3.2016	100% of 53,560 =	53,560	53,560 –5,562-11,124-23484 = 13,390

Illustration 3. Find out the amount of advance tax payable by ABC Ltd. on specified dates for the Previous Year 2015-16:

Business income	₹ 1,75,000
Long Term Capital Gain on 31-7-2015	₹ 3,50,000
Bank interest	₹ 10,000
TDS on business income	₹ 19,995

Solution:

Computation of Total Income of ABC Ltd. for the Previous Year 2015-16

Particulars	Amount ₹
Profits and Gains of Business or Profession	1,75,000
Capital gains: Long Term Capital Gains	3,50,000
Income from other sources: Bank Interest [Not from saving Account]	10,000
Total Income	5,35,000

Computation of tax liability of ABC Ltd. for the previous year 2015-16

Particulars	Long Term Capital Gain (₹)	Other income (₹)
Income	3,50,000	1,85,000
Tax rate	20%	30%
Tax on above	70,000	55,500
Add : Education cess & SHEC	2,100	1,665
Tax and cess payable	72,100	57,165
Less : TDS	—	19,995
Advance tax payable	72,100	37,170

Advance tax to be aid on specified dates

Date	Advance tax on LTCG		Advance tax on income other than LTCG		
	Workings	Amount (a) ₹	Workings	Amount (b) ₹	Total (a+b) ₹
15.06.2015	As LTCG occurred on 31.7.15	Nil	15% of ₹ 37,170	5,576	5,576
15.09.2015	45% of ₹ 72,100	32,445	30% of ₹ 37,170	11,151	43,596
15.12.2015	30% of ₹ 72,100	21,630	30% of ₹ 37,170	11,151	32,781
15.03.2016	25% of ₹ 72,100	18,025	25% of ₹ 37,170	9,292	27,317
Total		72,100		37,170	1,09,270

Illustration 4. Find out the amount of advance tax payable by Mr. A on specified dates under the Income Tax Act, 1961 for the Previous Year 2015-16:

	₹
Business income	2,75,000
Long Term Capital Gain on 31-5-2015	1,60,000
Winning from lotteries on 12-6-2015	50,000
Bank interest	10,000
Other income	5,000
Investment in PPF	40,000
Tax deducted at source : Case I	48,000
Case II	25,000

Solution:

Computation of Total Income of Mr. A for the Previous Year 2015-16:

Particulars	**Details**	**Amount (₹)**
Profits and Gains of Business or Profession		2,75,000
Capital gains : Long Term Capital Gains		1,60,000
Income from Other Sources		
Winning from lotteries	50,000	
Bank interest	10,000	
Other income	5,000	65,000
Gross Total Income		5,00,000
Less : Deduction u/s 80C — Deposits in PPF	40,000	
Deduction u/s 80TTA	10,000	50,000
Total Income		4,50,000

Computation of Tax liability of Mr. A for the Previous Year 2015-16:

Income	**Case 1 (₹)**	**Case 2 (₹)**
Long Term Capital Gain (₹ 1,60,000 @ 20%)	32,000	32,000
Winning from lotteries (₹ 50,000 @ 30%)	15,000	15,000
Balance Income (₹ 2,50,000)	Nil	Nil
Tax	47,000	47,000
Add : Education cess & SHEC	1,410	1,410
	48,410	48,410
Less : Tax Deducted at Source	48,000	25,000
Total Tax Payable	410	23,410

Advance tax to be paid on specified dates

Case I: Since amount of tax payable is less than ₹10000, assessee is not liable to pay advance tax.

Case II : Advance Tax Payable

Due Date	**Tax Liability (₹)**	**Amount of Instalment (₹)**
15.09.2015	30% of 23,410 = 7,023	7,023
15.12.2015	60% of 23,410 = 14,046	14,046 – 7,023 = 7,023
15.03.2016	100% of 23,410 = 23,410	23,410 – 7,023 – 7,023 = 9,364

Study Note - 21

COLLECTION AND RECOVERY OF TAX

This Study Note includes

21.1 WHEN TAX PAYABLE AND WHEN DEMAND IN DEFAULT [SECTION 220]

(1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice:

Provided that, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.

(1A) Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then, such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority or disposal of the proceedings, as the case may be, and any such notice of demand shall have the effect as specified in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (11 of 1964).

(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid.

Provided that, where as a result of an order under section 154, or section 155, or section 250, or section 254, or section 260, or section 262, or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

Provided further that where as a result of an order under sections specified in the first proviso, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under said sections or section 263, the amount on which interest was payable under this section is increased, the assessee shall be liable to pay interest under sub-section (2) from the day immediately following the end of the period mentioned in the first notice of demand, referred to in sub-section (1) and ending with the day on which the amount is paid.

Provided also that in respect of any period commencing on or before the 31st day of March, 1989 and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one-half per cent for every month or part of a month.

(2A) Notwithstanding anything contained in sub-section (2), the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section if he is satisfied that—

(i) payment of such amount has caused or would cause genuine hardship to the assessee ;

(ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee ; and

(iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

(2B) Notwithstanding anything contained in sub-section (2), where interest is charged under sub-section (1A) of section 201 on the amount of tax specified in the intimation issued under sub-section (1) of section 200A for any period, then, no interest shall be charged under sub-section (2) on the same amount for the same period.

(2C) Notwithstanding anything contained in sub-section (2), where interest is charged under sub-section (7) of section 206C on the amount of tax specified in the intimation issued under sub-section (1) of section 206CB for any period, then, no interest shall be charged under sub-section (2) on the same amount for the same period.

(3) Without prejudice to the provisions contained in sub-section (2), on an application made by the assessee before the expiry of the due date under sub-section (1), the Assessing Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits defaults in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where an assessee has presented an appeal under section 246 or section 246A the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(7) Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form.

Case Law:

If tax is refunded pursuant to first appeal, but later restored and paid in second appeal, interest cannot be levied on refund made. [*Vikrant Tyres Ltd.* vs. *First ITO* 247 ITR 821]

21.2 PENALTY PAYABLE WHEN TAX IS IN DEFAULT [SECTION 221]

When an assessee is in default, he shall, in addition to the amount of the arrears and the amount of interest payable u/s. 220(2), be liable to pay penalty such amount as the A.O. may direct and in case of continuing default, such further amount as the A.O. may direct, so, however, that the total amount of penalty does not exceed the amount of in arrears.

21.3 CERTIFICATE TO TAX RECOVERY OFFICER [SECTION 222]

In the case of default of an assessee, the Tax Recovery Officer may draw up a statement (called certificate) in the prescribed form specifying the amount of arrears due from the assessee and proceed to recover by one or more of the following modes-

(i) attachment and sale of assessee's movable property;

(ii) attachment and sale of assessee's immovable property;

(iii) arrest of the assessee and his detention in prison

(iv) appointing a receiver for the management of the assessee's movable and imovable properties.

Case Law:

Recovery proceedings can be taken against the legal representatives - *First Addl. ITO* vs. *T.M.K. Abdul Kassim* 46 ITR 149 .

21.3.1 Tax Recovery Officer by whom recovery is to be effected. [Section 223]

(1) The Tax Recovery Officer competent to take action under section 222 shall be—

(*a*) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate, or

(*b*) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate,

the jurisdiction for this purpose being the jurisdiction assigned to the Tax Recovery Officer under the orders or directions issued by the Board, or by the Chief Commissioner or Commissioner who is authorised in this behalf by the Board in pursuance of section 120.

(2) Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer and the Tax Recovery Officer by whom the certificate is drawn up—

(*a*) is not able to recover the entire amount by sale of the property, movable or immovable, within his jurisdiction, or

(*b*) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Chapter, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property and, thereupon, that Tax Recovery Officer shall also proceed to recover the amount under this Chapter as if the certificate or copy thereof had been drawn up by him.

21.3.2 Validity of certificate and cancellation or amendment thereof [Section 224]

It shall not be open to the assessee to dispute the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to

cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.

21.3.3 Stay of proceedings in pursuance of certificate and amendment or cancellation thereof [Section 225]

(1) It shall be lawful for the Tax Recovery Officer to grant time for the payment of any tax and when he does so, he shall stay the proceedings for the recovery of such tax until the expiry of the time so granted.

(2) Where the order giving rise to a demand of tax for which a certificate has been drawn up is modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Tax Recovery Officer shall stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(3) Where a certificate has been drawn up and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Tax Recovery Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate, or cancel it, as the case may be.

21.4 RECOVER OF TAX

21.4.1 Other modes of recovery [Section 226]

If any assessee is in receipt of any income chargeable under the head "salaries", the Assessing Officer, Tax Recovery Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs.

The Assessing Officer or Tax Recovery Officer may, if authorised by the Chief Commissioner or Commissioner by general or special order, recover any arrears of tax due from an assessee by distrait and sale of his movable property in the manner laid down in the Third Schedule.

Case Laws:

(i) ITO can simultaneously take action under section 156 and section 226 — *Third ITO* vs. *M. Damodar Bhat* 71 ITR 806.

(ii) A garnishee order could be passed only if income-tax had been assessed and had remained unpaid - *All India Reporter Ltd.* vs. *Ramchandra D. Datar* 41 ITR 446.

21.4.2 Recovery through State Government [Section 227]

If the recovery of tax in any area is entrusted to a State Government under article 258(1) of the Constitution of India, then State Government may direct, with respect to that area or any part thereof, that tax shall be recovered therein with, and as an addition to, any municipal tax or local rate is recovered.

21.4.3 Recovery of tax in pursuance of agreements with foreign countries [Section 228A]

(1) Where an agreement is entered into by the Central Government with the Government of any country outside India for recovery of income-tax under this Act and the corresponding law in force in that country and the Government of that country or any authority under that Government which is specified in this behalf in such agreement sends to the Board a certificate for the recovery of any tax due under such corresponding law from a person having any property in India, the

Board may forward such certificate to any Tax Recovery Officer within whose jurisdiction such property is situated and thereupon such Tax Recovery Officer shall—

(*a*) proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 222; and

(*b*) remit any sum so recovered by him to the Board after deducting his expenses in connection with the recovery proceedings.

(2) Where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may, if the assessee has property in a country outside India (being a country with which the Central Government has entered into an agreement for the recovery of Income-tax under this Act and the corresponding law in force in that country), forward to the Board a certificate drawn up by him under section 222 and the Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

21.4.4 Recovery of Penalties, Fine, Interest and Other Sums [Section 229]

Any sum imposed by way of interest, fine, penalty or any other sum payable under the provisions of this Act, shall be recoverable in the manner provided in this Chapter for the recovery of arrears of tax as stated earlier.

21.4.5 Tax clearance certificate [Section 230]

(1) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf, no person,—

(*a*) who is not domiciled in India;

(*b*) who has come to India in connection with business, profession or employment; and

(*c*) who has income derived from any source in India,

shall leave the territory of India by land, sea or air unless he furnishes to such authority as may be prescribed—

(*i*) an undertaking in the prescribed form from his employer; or

(*ii*) through whom such person is in receipt of the income,

to the effect that tax payable by such person who is not domiciled in India shall be paid by the employer referred to in clause (*i*) or the person referred to in clause (*ii*), and the prescribed authority shall, on receipt of the undertaking, immediately give to such person a no objection certificate, for leaving India

Provided that nothing contained in sub-section (1) shall apply to a person who is not domiciled in India but visits India as a foreign tourist or for any other purpose not connected with business, profession or employment.

(1A) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf, every person, who is domiciled in India at the time of his departure from India, shall furnish, in the prescribed form to the Income-Tax Authority or such other authority as may be prescribed—

(*a*) the Permanent Account Number allotted to him under section 139A:

Provided that in case no such Permanent Account Number has been allotted to him, or his total income is not chargeable to income tax or he is not required to obtain a Permanent Account Number under this Act, such person shall furnish a certificate in the prescribed form;

(*b*) the purpose of his visit outside India;

(c) the estimated period of his stay outside India:

Provided that no person—

(*i*) who is domiciled in India at the time of his departure; and

(*ii*) in respect of whom circumstances exist which, in the opinion of an Income-tax Authority render it necessary for such person to obtain a certificate under this section,

shall leave the territory of India by land, sea or air unless he obtains a certificate from the Income

Tax Authority stating that he has no liabilities under this Act, or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Expenditure-tax Act, 1987 (35 of 1987), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person.

Provided that no Income Tax Authority shall make it necessary for any person who is domiciled in India to obtain a certificate under this section unless he records the reasons therefor and obtains the prior approval of the Chief Commissioner of Income-tax.

(2) If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside India allows any person to whom sub-section (1) or the first proviso to sub-section (1A) applies to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the Assessing Officer may, having regard to the circumstances of the case, determine.

(3) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (2), the owner or charterer, as the case may be, shall be deemed to be an assessee in default for such sum, and such sum shall be recoverable from him in the manner provided in this Chapter as if it were an arrear of tax.

(4) The Board may make rules for regulating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section.

Explanation—For the purposes of this section, the expressions "owner" and "charterer" include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

21.4.6 Recovery by Suit or Under Other Law not Affected [Section 232]

The several modes of recovery specified in this Chapter shall not affect in any way-

(a) any other law for the time being in force relating to the recovery of debts due to Government; or

(b) the right of the Government to institute a suit for the recovery of the arrears due from the assessee;

and shall be lawful for the Assessing Officer or the Government, as the case may be, to have recourse to any such law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter.

Study Note - 22

DEDUCTION AND COLLECTION OF TAX AT SOURCE

This Study Note includes

22.1 Deduction of Tax at Source [TDS]

22.2 Tax Collection at Source [Section 206C]

22.1 DEDUCTION OF TAX AT SOURCE (TDS)

22.1.1 Liability for TDS

Any person responsible for making payment of certain category of incomes is liable to deduct tax at source at an appropriate occasion.

The law prescribes time when the TDS is to be made, rate at which it should be made and, when TDS should be paid to the Government and associated administrative responsibilities of payer (tax deductor) and payee (tax deductee) have been prescribed.

The following chart states at a glance incomes from which TDS should be made :

Section	Nature of Income/ Payment	Threshold Limit	Person Responsible to Make TDS	Nature of payee	Rate at which to be deducted
192	Salary	Maximum amount not liable to tax for employee	Any person being an Employer	Employee having taxable salary	average rate of income-tax computed on the basis of rates inforce for the financial year in which the payment is made, on the estimated salary income of the employee for that financial year
193	Interest on securities	10,000, if income from 8% Saving Bonds, 2003 5,000, if interest on debenture	Any person issuing the security	Any person	Discussed later
194	Dividend	Nil	Company	Any person	@10% if PAN is provided @20% if PAN is not provided
194A	Any interest other than interest on securities	Exceeding ₹ 5,000 in a year or 10,000 in case payer is banking company or co-operative society or deposit with post office	Any person other than individual or HUF	Any resident in India	@10% if PAN is provided @20% if PAN is not provided

Section	Nature of Income/ Payment	Threshold Limit	Person Responsible to Make TDS	Nature of payee	Rate at which to be deducted
194B	Winnings from lottery or crossword Puzzle or card game and other game of any sort including television game	₹ 10,000	Any person	Any person	30% [Sec. 115BBB]
194BB	Winnings from horse race	₹ 5,000	Winning from horse race	Any person	30% [Sec. 115BBB]
194C	Any Payment in pursuance of any contract for consideration	If a contract exceeds contract ₹ 30,000 or total in a year contracts with the same contractor or sub-contractor exceed ₹ 75,000.	Central or State Government, Local Authority, Central/State or Provincial Corpn., Company Co-operative Society Housing Board, Trustor University, Firm	Any resident contractor or sub-contractor for carrying out any work including supply of labour	If the receipient is an individual/HUF = 1% If the recipient is any other person = 2% 20%, if PAN is not provided (in the both the cases). If the receipt is a transport operator and eligible to compute in come u/s 44AE and he furnishes his PAN to payer, TDS rate = Nil
194D	Insurance commission	₹ 20,000	Any person	Any resident person	10% if PAN furnished 20%, if PAN not furnished
194DA	Any person made payment to a resident person under Life Insurance Policy, including bonus on such policy, except income u/s 10(10D)	₹ 1,00,000	Any person	Any Resident	2%
194E	Income for (i) participation in any game or sport in India; (ii) by way of remuneration for articles on sorts, etc	Nil	Any person	Any non-resident sportsman (including athlete or an entertainer) who is not a citizen of India	20%
	Guaranteed sum in relation to any game or sport played in India.	Nil	Any person	Any non-resident association or institution.	20%
194EE	Any sum out of National Savings Scheme u/s 80CCCA	₹ 2,500	Any person	Any person	20%
194F	Amount on account of repurchase relevant of units covered u/s. 80CCB	Nil	Any person	Any person	20%

Section	Nature of Income/ Payment	Threshold Limit	Person Responsible to Make TDS	Nature of payee	Rate at which to be deducted
194G	Commission, remuneration or prize – relating to lottery tickets	Exceeding ₹ 1,000	Any person	Any person stocking, purchasing or selling lottery tickets.	10%
194H	Commission or Brokerage	Exceeding ₹ 5,000 p.a	Other than individual and HUF	Any person	10%, if PAN furnished 20%, if PAN not furnished
194-I	Rent	₹ 1,80,000 p.a	Other than individual and HUF	Any person	2% on Machinery or plant equipment 10%, any land or building or furniture or fittings.
194J	Fees for Professional or technical services	₹ 30,000 p.a	Other than individual & HUF	Any person	10%, if PAN furnished 20%, if PAN not furnished
94LA	Immovable Property (other than agricultural land) Acquisition Compensation.	₹ 2,00,000 p.a (w.e.f. 1-7-2012)	Any person	Any resident person	10%
194LB	Interest payable on Infrastructure debt fund	Nil	Any person	Non-resident/ foreign company	5% + EC + SHEC
194LBA(1)	Where any distributed income is payable by a business trust to its unit holder	Nil	Person responsible for making the payment	Unit holder being a resident	10%
194LBA(2)	Where any distributed income is payable by a business trust to its unit holder	Nil	Person responsible for making the payment	Unit holder being a non-resident	5%
194LBB	Income in respect of units of Investment Fund (w.e.f. 1st June, 2015)	Nil	Business Trust	Business Trust	10%, if PAN furnished 20%, if PAN not furnished
194LC	Interest paid or Payable to a non-resident/ Foreign Company	Nil	Specified Company or a Business Trust	Non-resident/ Foreign Company	5% +EC+SHEC
195	Any interest or any sum chargeable as income (other than salary) (Except interest u/s 194LB or 194LC or 194LD)	Nil	Any person	Any non-resident other than company Any foreign company	If the NR is resident of a country with which India has Double Tax Avoidance Agreement, (DTAA) beneficial of the rate as per FA or DTAA.
196B	Income in respect of units referred to in Sec. 115AB purchased in foreign currency or income of long term capital gains from such units.	Nil	Any person	Off shore fund	10%

Notes :

1. Threshold Limit: payments in a year upto this limit are not liable for TDS. If the amount of payment exceeds threshold limit, then provisions of TDS apply.
2. Rate of TDS is prescribed by the Finance Act (FA) that is applicable during the year when TDS is to be made. For example, for the current year from 1st April, 2014 to 31st March, 2015 (2014-15) TDS rates will be available in the Finance (No. 2) Act, 2014.
3. TDS rates specified herein above are rates of income tax. These are required to be increased by surcharge specified in The Finance Act applicable. Education cess and secondary and higher education cess is applicable when salary is paid to a resident or non-resident and when any amount (other than salary) is paid to a non-resident or a foreign company.
4. Individual and HUF :

   An individual or a Hindu Undivided Family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income is credited or paid, shall be liable to deduct Income-tax under this section.

   Payments made by way of fees which are exclusively for personal purposes will not attract provisions of Sec. 194J.

Applicability & Rates of Surcharge

Assessee	Income	Rate of Surcharge
Every Individual or Hindu undivided family or AOP/BOI (whether incorporated or not), or every artificial judicial person, Co-operative society, Firm (including limited liability partnership)	Exceeding ₹1 crore	10%
Domestic companies	Exceeding ₹1 crore	5%
	Exceeding ₹10 crore	10%
Foreign company	Exceeding ₹1 crore	2%
	Exceeding ₹10 crore	5%

22.1.2 Rationalisation of provisions relating to Tax Deduction at Source (TDS) [W.e.f. 1-10 2009]

Tax deduction at source is a method of collecting taxes on behalf of the Government at the time of payment or credit. The Income-tax Act casts a legal responsibility on the deductor to deduct tax on the correct amount, at the correct rate and deposit it to the Government account. The TDS rates are specified partly in the Finance Act and partly in the provisions of the Income-tax Act. Deductors are also required to compute surcharge and cess over and above some of the prescribed rates of TDS. If the deductor fails to deduct the tax or fails to deposit the tax after deduction, interest, penalty and prosecution provisions may get attracted. Further, under the provisions of section 40(a)(ia), if the deductor fails to deduct tax on a prescribed payment or fails to deposit the tax deducted in time, the 30% of the expenditure is disallowed while computing his total income. To assist deductors in complying with their TDS obligations and reduce their compliance burden, it is proposed to rationalise the provisions of TDS as under:

(A) Amendment in Section 193:

At present, no tax is required to be deducted at source if interest payable to a resident individual on debentures issued by a listed company does not exceed ₹ 2,500 in a year. This limit is increased to ₹ 5,000 w.e.f. 1-7-2012. This concession will now apply to debentures issued by unlisted public companies as well as to interest payable to resident HUF. The existing exemption in respect of interest paid on debentures issued by listed companies which are held in Demat Account will continue without any limit. The amendment in this section comes into force on 1-7-2012.

(B) Amendment in TDS rates and other provisions of section 194C

(i) **Rate of TDS under section 194C rationalized [W.e.f. 1-10-2009]:** Under the existing provisions of section 194C of the Income-tax Act, TDS at the rate of 2% is deducted on payment for a contract in case of receipient is otherthan Individual/HUF and 1% in case of Individual/HUF.

In order to reduce the scope for disputes regarding classification of contract as sub contract, the Act has specified the same rate of TDS for payments to both contractors as well as sub-contractors. To rationalise the TDS rates and to remove multiple classifications the Act has provided same rate of TDS in the case of payment for advertising contracts. To avoid hardship to small contractors/sub-contractors most of whom are organized as individuals/HUFs, the Act has prescribed following rates of TDS:

(a) 1% where payment for a contract are to individuals/HUF

(b) 2% where payment for a contract are to any other person.

The nil rate will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 1% for an individual/HUF transporter and 2% for other transporters up to 31.3.2010.

The rate of TDS will be 20% in all the above cases, if PAN is not quoted by the deductee w.e.f. 1-4-2010.

(i) Provisions for payments and tax deducted at source to transports [W.e.f. 1-10-2009] : Under section 194C, tax is required to be deducted on payments to transport contractors engaged in the business of plying, hiring or leasing goods carriages. However if they furnish a statement that they do not own more than two goods carriages, tax is not to be deducted at source. Transport operators report problem in obtaining TDS certificates as these are not issued immediately by clients and they are not able to approach the client again as they may have to move across the country for their business. The Act has inserted sub-section (6) to section 194C and has exempted payments to transport operators (as defined in section 44AE) from the purview of TDS. However, this would only apply in cases where the operator furnishes his Permanent Account Number (PAN) to the deductor. As per section 194(7), the dcductors who make payments to transporters without deducting TDS (as they have quoted PAN) will be required to intimate these PAN details to the Income Tax Department in the prescribed format.

Amendments in section 194C(6):

As there is no rationale for exempting payment to all transporters, irrespective of their size, from the purview of TDS, the Act has amended the provisions of section 194C of the Act to expressly provide that the relaxation under section 194C(6) of the Act from non-deduction of tax shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to an contractor who is engaged in the business of transport i.e. plying, hiring or leasing goods carriage and who is eligible to compute income as per the provisions of section 44AE of the Act (i.e. a person who is not owning more than 10 goods carriage at any time during the previous year) and who has also furnished a declaration to this effect along with his PAN.

(ii) Clarification regarding "work" under section 194C [W.e.f. 1-10-2009]: There is ongoing litigation as to whether TDS is deductible under section 194C on outsourcing contracts and whether outsourcing constitutes work or not. To bring clarity on this issue, the Act has provided that "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person other than such customer ns such a contract is a contract for 'sale'. This will however not apply to a contract, which does not entail manufacture or supply of an article or thing (e.g. a construction contract). The Act has included manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, within the definition of 'work'. It is further provided in section 194C(3) that in such a case TDS shall be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, TDS shall be deducted on the whole of the invoice value.

Further, in a case where the payment is made by an individual or HUF to the contractor exclusively for personal purposes of such individual or member of HUF, there will be no need to deduct tax at source under section 194C.

(C) Payment in respect of Life Insurance Policy [Section 194DA]

As per newly inserted section 194DA by the Finance (No.2) Act, 2014, any person responsible for paying to a resident any sum under a life insurance policy, including the sum allocated by way of

bonus on such policy, other than the amount not includible in the total income under clause (10D) of section 10, shall, at the time of payment thereof, deduct income-tax thereon at the rate of two per cent.

Provided that no deduction under this section shall be made where the amount of such payment or, as the case may be, the aggregate amount of such payments to the payee during the financial year is less than one hundred thousand rupees.

(D) Rate of TDS reduced in case of section 194-I : Under the existing provisions of section 194-I of the Income-tax Act, TDS on rental payments is prescribed at the rate of—

(a) 2% for the use of any machinery or plant or equipment,

(b) 10% for the use of any land or building or furniture or fittings, if the payee is an individual or HUF, and The

Act has rationalised and reduced the TDS rates on rental payments as under:

(a) 2% for the use of any machinery or plant or equipment,

(b) 10% for the use of any land or building or furniture or fittings for all persons.

The rate of TDS will be 20% in all the above cases, if PAN is not quoted by the deductee w.e.f. 1-4-2010.

Amendment to section 194-I by the Finance Act, 2015

No deduction shall be made under section 194-I where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in section 10(23FCA), owned directly by such business trust.

(E) Tax Deduction at Source (TDS) on transfer of certain immovable properties (other than agricultural land) [Section 194-IA] [w.e.f. 1.6.2013]

There is a statutory requirement under section I39A of the Income-tax Act read with rule 114B of the Income-tax Rules, 1962 to quote Permanent Account Number (PAN) in documents pertaining to purchase or sale of immovable property for value of ₹5 lakh or more. However, the information furnished to the department in Annual Information Returns by the Registrar or Sub-Registrar indicate that a majority of the purchasers or sellers of immovable properties, valued at ₹30 lakh or more, during the financial year 2011-12 did not quote or quoted invalid PAN in the documents relating to transfer of the property.

Under the existing provisions of the Income-tax Act, tax is required to be deducted at source on certain specified payments made to residents by way of salary, interest, commission, brokerage, professional services, etc. On transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties. In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time, the Act has inserted a new section 194-IA which provides as under:

(i) Transferee to deduct tax at source: Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall deduct an amount equal to 1% of such sum as income-tax thereon:

(a) at the time of credit of such sum to the account of the transferor, or

(b) at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode,

whichever is earlier,

However, no deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than ₹50,00,000.

(ii) Deductor not required to obtain tax deduction and collection account number [Section 194-IA(3)]: The provisions of section 203A relating to obtaining tax deduction and collection account number shall not apply to a person required to deduct tax in accordance with the provisions of this section.

1. **Meaning of agricultural land:** "Agricultural land" means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of section 2(14)(iii).
2. **Meaning of immovable property:** "Immovable property" means any land (other than agricultural land) or any building or part of a building.

   In other words, TDS shall not be applicable in case of transfer of rural agricultural land.

(F) Section 194J — TDS on fees from professional or technical services:

This section is now amended w.e.f. 1-7-2012. It will now be necessary for a company to deduct tax at source from any remuneration, fees or commission paid or payable to a director, if no tax is deductible u/s.192 under the head salary. The rate for TDS is 10%. It may be noted that the manner in which the section is amended indicates that this deduction is to be made irrespective of the quantum of such payment in the year. As regards professional fees, technical service fees, royalty, etc. to which this section applies, it is provided that tax is to be deducted only if payment under each head exceeds ₹ 30,000 in the financial year. Therefore, in case of payment of fees to non-executive directors and independent directors as 'Director's Fees', the tax at 10% will be deductible even if the total payment in the F.Y. is less than ₹ 30,000 to each of them.

Certain income from units of a Business Trust [Section 194LBA]

As per the newly inserted section 194LBA by the Finance (No.2) Act, 2014 provided that –

(1) Where any distributed income referred to in section 115UA, being of the nature referred to in clause (23FC) of section 10, is payable by a business trust to its unit holder being a resident, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate often per cent.

(2) Where any distributed income referred to in section 115UA, being of the nature referred to in clause (23FC) of section 10, is payable by a business trust to its unit holder, being a non-resident (not being a company) or a foreign company, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment; thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of 5%.

(3) Where any distributed income referred to in section 115UA, being of the nature referred to in clause (23FCA) of section 10, is payable by a business trust to its unit holder, being a non-resident (not being a company), or a foreign company, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

Tax deduction from income in respect of units of investment fund [Sec. 194LBB]

Section 194LBB has been inserted with effect from June 1, 2015. Provisions of this section are given below –

Time of tax deduction - Tax deduction is applicable if a business trust distributes any income referred to in section 115UB [not being business income of the nature referred to in section 10(23FBB)] to its unit holders. Tax is deductible at the time of credit of such payment to the account of the payee

or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

Rate of TDS - Tax is deductible at the rate of 10 per cent. If the recipient does not have PAN, tax is deductible at the rate of 20 per cent.

Lower TDS certificate - Provisions of section 197 or section 197A are not applicable.

(G) Income by way of interest from Indian company [Section 194LC]

(1) Where any income by way of interest referred to in sub-section (2) is payable to a non-resident, not being a company or to a foreign company by a specified company or a business trust, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of five per cent.

(2) The interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company or the business trust,—

(i) in respect of monies borrowed by it in foreign currency from a source outside India,—

(a) under a loan agreement at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2017; or

(b) by way of issue of long-term infrastructure bonds at any time on or after the 1st day of July, 2012 but before the 1st day of October, 2014; or

(c) by way of issue of any long-term bond including long-term infrastructure bond at any time on or after the 1st day of October, 2014 but before the 1st day of July, 2017,

as approved by the Central Government in this behalf; and

(ii) to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment.

(H) Income by way of interest on certain bonds and Government securities [Section 194LD] [w.e.f. 1.6.2013]

(i) Person responsible for paying interest to deduct tax at source [Section I94LD(1)]: Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor, any income by way of interest referred to in sub-section (2), shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon.

Rate of TDS: The rate shall be 5%

Notes:

1. Surcharge as applicable, education cess & SHEC shall be added to the above rates.
2. The rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee.
3. As tax cannot be deducted at lower rate, section 197 shall not be applicable in this case.

(ii) Income on which tax is to be deducted [Section 194LD(2)]: The income by way of interest referred to in sub-section (1) shall be the interest payable on or after 1.6.2013 but before 1.6.2017 in respect of investment made by the payee in—

(i) a rupee denominated bond of an Indian company;

(ii) a Government security.

However, the rate of interest in respect of bond referred to in clause (i) shall not exceed the rate as may be notified by the Central Government in this behalf.

Since, tax on such interest is deductible under section194LD, corresponding amendments have been made in sections 195 and 196D to exclude such interest under those provisions.

Meaning of "foreign institutional investor": "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

Meaning of "Government of security": "Government security" shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956;

Meaning of "Qualified Foreign Investor: "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular, No. CIR/IMD/DF/14/2011, dated 9.8.2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992.

(I) Rate of TDS on unlisted debentures or security or on Interest other than securities reduced to 10%.

Rate of TDS has been reduced by the Finance (No. 2) Act, 2009 from 20% to 10% in case of the following :

(i) TDS on interest on unlisted debentures and on any income other than mentioned in Para I(o) of Part II of Schedule I to the Finance (No. 2) Act, 2009 relating to TDS rates in case of a person other than a company who is resident in India has been reduced from 20% to 10%.

(ii) Similarly, TDS on interest other than interest on securities and on any income other than mentioned in Para 2(a) of Part II of the Schedule I to the Finance (No. 2) Act, 2009 in case of a domestic company has also been reduced from 20% to 10%.

(J) TDS to be deducted at basic rates

In order to ease the computation of TDS, the Act has removed surcharge and education cess & SHEC on tax deducted on any payment made to resident taxpayers except in case of salary. In case of salary TDS shall be deductible after including education cess and SHEC. This provision shall be effective after the Finance (No. 2) Act becomes the Act.

Case Law :

(i) The directors of the assessee company have routed the loan taken in their individual capacity in the name of company. The company was merely acting as the agent of the directors for receiving & disbursing the loans to the directors. It was held that as per the provisions of section 194A, TDS is to be made at the time of credit of such income to the account of the payee. So the company was liable to deduct tax on the interest payment to lenders as there was no resolution passed by the Board of Directors which empowered the company to merely act as a medium for routing the borrowing & repayment - CIT vs. Century Building Industries P. Ltd. 293 ITR 194.

(ii) The assessee has entered into an agreement for use of the premise for storage of goods. While making payment the assessee deducted tax at 2% u/s 194C considering that it was a contractual payment. However it was concluded that the payment made by the assessee is in the nature of rent u/s 194I of the Act & TDS should have been made @ 20%. The Apex court held that once tax is paid by the deductee on the income received from the deductor, the deductor cannot be once again called upon to pay the tax on same income. However the assessee is liable to pay interest u/s 201(1A) for delay or non-payment of tax to the Government within prescribed time. Hindustan Coca Cola Beverages P. Ltd. vs. CIT 293 ITR 226 (SC).

22.1.3 IMPORTANT POINTS

1. Time Schedule

Nature of Activity			**Time Frame**
Time of Deduction			Salary : At the time of payment Others : When income paid or credited to the account including "payable" or "suspense" account whichever is earlier.
Time of deposit of tax (Other than on behalf of Government)		(a)	If credited on the date on which accounts are made, within two months from the end of the month in which income is credited.
		(b)	Any other case, within one week from the end of the month in which deduction is made.
Statement			For each Quarter
TDS Type	Form		For all category due date of submission of quarterly returns
Salary	No 24Q		Q1 : April – June – 15th July
Non Resident	No 27Q		Q2 : July – September – 15th October
All Others	No 26Q		Q3 : October – December – 15th January
			Q4 : January - March - 15th May
Electronic For			every office of Government and the principal officer in the case of every company, firm, whose total sales, gross receipts or turnover from the business or profession carried on by it exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income is credited or paid.

1. Copies of Form Nos. 15G and 15H received by the payer have to be filed with the Chief Commissioner / Commissioner within 7 days of the succeeding month.
2. If the person responsible for deducting and paying tax fails to do so, he shall be considered as an assessee in default, liable to pay interest @ 12% p.a. on the amount of such tax from the date on which such tax was deductible to the date of actual payment, and penalty, not exceeding the amount of tax and rigorous imprisonment ranging from 3 months to 7 years and fine. The interest payment needs to be paid before filing of Quarterly Return.
3. Sec. 199 – Credit for tax deducted :
   a. Credit will be given for the Assessment Year in which such income is assessble.
   b. Where such income is assessable in the hands of any other person, credit shall be given to such other person.
   c. When any security, property etc. is jointly owned by two or more persons not constituting partnership, credit for TDS on income there from shall be given to such persons in the proportion in which the income is distributed.
4. A payee from whose income TDS is made must intimate his PAN to tax deductor. Tax deductor must to quote PAN of payees in TDS Certificate and TDS return [Sec. 139A].
5. TAN/TDCAN to be quoted on all quarterly statements of TDS/ TCS section 203A(ba).

   The requiremet of obtaining and Quoting of TAN under section 203A of the Act shall not apply to the notified deductors or collectors [Amended by Finance Act, 2015].
6. A declaration for non-deduction of tax u/s. 197A can be furnished by the assessee only if his aggregate income is less than threshold limit. Senior Citizens can file declaration if tax on their estimated total income is likely to be NIL.

7. Disallowance due to non-deduction:

   If tax deductible under sections 193, 194A, 194C, 194H, 194J and 195 is not deducted/paid before applicable due dates, the relevant expenditure otherwise allowable in computing Total Income of the payer would be liable for disallowance u/s 40(a)(i)/(ia). The deduction will be allowed in the year in which TDS is paid. For details see section 40(a).

8. Salary TDS:

   TDS by Employer : In respect of any perquisite which is not provided for by way of monetary payment, the Employer, at his option, may pay tax on the whole or part of such income without making any deduction there from, For the purpose of paying tax as aforesaid, tax shall be determined at the average of income-tax computed on the basis of the rates in force for the financial year, on the income chargeable under the head "Salaries".

   Simultaneous employment / Successive employment : the employee may furnish to one of the many or successive employers such details of the income under the head "Salaries" due or received by him from the other employer or employers, the tax deducted at source there from and such other particulars and thereupon such employer shall take into account the details so furnished for the purposes of making the TDS.

   Relief Under Section 89(1) : Government servant or an employee in a company, co-operative society, local authority, university, institution, association or body is entitled to the relief under section 89(1), he may furnish to the employer, such particulars and thereupon the said Employer shall compute the relief and take it into account in making the TDS.

   Other Income: Employee has any income chargeable under any other head of income for the same financial year, not being a loss under any such head other than the loss under the head "Income from House Property", he may send to the Employer the particulars of—

   (a) such other income and of any tax deducted thereon under any other provision of this Chapter;

   (b) the loss, if any, under the head "Income from House Property", and thereupon the Employer shall take—

      (i) such other income and tax, if any, deducted thereon; and

      (ii) the loss, if any, under the head "Income from House Property",

      also into account for the purposes of making the TDS.

   After considering such other information there should be no reduction in TDS from Salary, except reduction on account of loss from "House Property" head.

   PF, Superannuation Trusts : The trustees the fund at the time an accumulated balance due to an employee is paid, make there from the deduction provided in rules.

   Salary payable in foreign currency: Value in rupees of such salary shall be calculated at the prescribed rate of exchange.

9. Income payable "net of tax": In a case where, the tax chargeable on any income referred subject to TDS, the amount of TDS is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon at the rates in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement. [Sec. 195A]

22.1.4 Procedure for TDS

(i) To obtain Tax Dedcution and Collection Account Number (TAN) by applying in Form No. 49B [sec. 203A and Rule 114A]

(ii) To deduct tax at source as per provisions. TDS should be at an appropriate time and at appropriate rate.

(iii) To deposit tax in the Government treasury within the time in proper challan.

(iv) To submit quarterly TDS statements.

22.1.5 Consequence of non compliance of TDS provisions :

Sr. No.	Section or Chapter		Default Section	Consequence Effect
1	197A	Delay, no submission of no TDS declarations	272A(2)(j)	₹ 100 per day / Max. Tax Amount on Decleration
2	Chapter XVII - B	Fails to deduct the whole or any part of TDS	271C(1)(a)	Penalty of a sum equal to the amount of TDS not so deducted.
3	200	Delay in payment of TDS	201(1A)	Interest @ 1% p.m
4	200	Delay, no submission of Quarterly TDS Statement or correction statement	272A(2)(k)	₹ 100 per day / Max. Tax Amount of TDS in of Quarterly TDS Statement
5	203A	Default in the matter of TAN	272BB	Penalty ₹ 10,000

22.1.6 Improving compliance with provisions of quoting PAN through the TDS regime [Section 206AAJ] [W.e.f. 1-4 2010]

In order to strengthen the PAN mechanism, the Act has made amendments in the Income Tax Act to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatory furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates:

(i) The rate prescribed in the Act;

(ii) At the rate in force i.e., the rate mentioned in the Finance Act; or

(iii) At the rate of 20%.

TDS would be deductible at the above-mentioned rates even in a case where the taxpayer files a declaration in form 15G or I5H (under section 197A) but does not provide his PAN. Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

These provisions will also apply to non residents where TDS in deductable on payments or credits made to them. To ensure that the deductor knows about the correct PAN of the deductee it is also provided for mandatory quoting of PAN of the deductee by both the deductor and the deductee in all correspondence, bills and vouchers exchanged between them.

22.1.7 Processing of statements of tax deducted at source [Section 200A]

(1) Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—

(a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the statement; or

(ii) an incorrect claim, apparent from any information in the statement;

(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;

(d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;

(e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor.

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section.

22.1.8 Providing time limits for passing of orders under section 201(1) holding a person to be an assessee in default

Currently, the Income Tax Act does not provide for any limitation of time for passing an order under section 201(1) holding a person to be an assessee in default. In the absence of such a time limit, disputes arise when these proceedings are taken up or completed after substantial time has elapsed.

As per newly substituted sub-section (3) of section 201 by the Finance (No.2) Act, 2014 no order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.

Further, Explanation to section 153 regarding exclusion of certain period (like injunction by Court) to calculate time limit shall also be applicable while determining the above time limit. Similarly like section 153(3) there will be no time limit in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260A, 262, 263 or 264 or order of a Court. To provide sufficient time for pending cases, the Act has provided that such proceedings for a financial year beginning from 1-4-2007 and earlier years can be completed by the 31-3-2011.

However, no time-limits have been prescribed for order under section 201(1) where—

(a) The deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of Government dues,

(b) The employer has failed to pay the tax wholly or partly, under section 192(1A), as the employee would not have paid tax on such perquisites

(c) The deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.

These amendments shall be effective from 1-4-2010. Accordingly it will apply to such orders passed on or after the 1-4-2010.

22.1.9 Meaning of "person responsible for paying" [Section 204(iia)] [W.e.f. A.Y. 2013-14]

As per existing clause (iia) of section 204, in the case of any sum payable to a nonresident Indian, being any sum representing consideration for the transfer by him of any foreign exchange asset, which is not a short-term capital asset, the authorised dealer responsible for remitting such sum to the non-resident Indian or crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Regulation Act, 1973 and any rules made thereunder is the person responsible for paying.

The words "authorized dealer" mentioned above shall be substituted by the words "authorized person".

"**Authorized person**" shall have the meaning assigned to it in section 2(c) of the Foreign Exchange Management Act, 1999.

22.1.10 Section 206AA not applicable in respect of payment of interest on long-term infrastructure bonds [Section 206AA(7)] [w.e.f. 1.6.2013]

As per section 206AA, the deductee shall furnish his Permanent Account Number to the person responsible for deducting the tax at source, failing which tax shall be deducted at the higher of the following rates, namely:—

(i) at the rate specified in the relevant provision of this Act; or

(ii) at the rate or rates in force; or

(iii) at the rate of twenty per cent.

The above provisions of section 206AA shall not apply in respect of payment of interest, on long-term bonds, as referred to in section 194LC, to a non-resident not being a company, or to a foreign company.

22.2 TAX COLLECTION AT SOURCE [SECTION 206C]

Every seller at the time of debiting the buyer with the amount payable or receiving payments from buyers engaged in business of alcoholic liquor, forest produce, scrap, timber, tendu leaves, etc. shall collect tax at the following rates:

Sr.No	Nature of goods	TCS Rate
1	Alcoholic liquor for human consumption	1%
2	Tendu leaves	5%
3	Timber obtained under a forest lease	2.5%
4	Timber obtained by any mode other than under a forest lease	2.5%
5	Any other forest produce not being timber or tendu leaves	2.5%
6	Scrap	1%
7	Minerals being coal or liquor or iron ore	1%

Every person, who grants a lease or a license or enters into a contract, etc for the purpose mentioned below shall collect tax at the following rates:

TABLE

Sl. No.	Nature of contract or licence or lease, etc.	TCS Rate
(i)	Parking lot	2%
(ii)	Toll plaza	2%
(iii)	Mining and quarrying	2%

The amount of tax so collected shall be paid, within one week seven from end of the month of tax collection. Delay or failure attracts interest @ 1% p.m. [sec. 206C(7) & (8)]

Detail Provisions of section 206C

This section provides for collection of tax at source from sale of alcoholic liquor, tendu leaves, timber, forest products, scrap, etc. at the rates ranging from 1% to 5% of the sale price. The scope of this provision for TCS is extended w.e.f. 1-7-2012 as under.

(i) In respect of sale of minerals, being coal or lignite or iron ore, tax is to be collected by the seller at the rate of 1% of the sale price.

(ii) However, such tax is not to be collected if the purchase of such goods listed in section 206C(i) is made by the buyer for the purpose of manufacturing, processing or producing articles or things or for the purposes of generation of power. For this purpose the buyer of such goods has to give a declaration in Form No. 27C.

(iii) In order to reduce the quantum of cash transactions in bullion or jewellery sector and for curbing the flow of unaccounted money in the trading system, it is now provided that the seller of bullion or jewellery shall collect from the buyer tax at the rate of 1% of the sale consideration. For this purpose it is provided that the collection of the above tax of 1% shall be made if the sale price in cash exceeds the following amounts:

(a) For bullion, if the sale price exceeds ₹ 2 lac. It may be noted that for this purpose definition of 'Bullion' including coin or any other article weighing ten grams or less.

(b) For jewellery, if the sale price exceeds ₹ 5 lac.

It may be noted that this tax will be collected from the buyer even if the buyer has purchased bullion or jewellery for personal use or for manufacture or processing the same for his business. Further, it appears that persons who purchase bullion or jewellery for personal use will not be able to get credit for the tax collected at source because there will be no corresponding income from sale of bullion or jewellery in respect of which such credit for tax can be claimed. Further, the person making such payment for purchase of bullion or jewellery in cash will have to prove the source from which such cash is paid.

Sub-section (3A) has been inserted in section 206C with effect from June 1, 2015. It provides that in case of an office of the Government, where TCS has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer/Treasury Officer/ Cheque Drawing and Disbursing Officer/any other person, who is responsible for crediting TCS to the credit of the Central Government, shall deliver to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed.

Further, sub-section (3B) has been inserted with effect from June 1, 2015. It provides that person collecting tax at source may also deliver to the prescribed authority, a correction statement for rectification of any mistake or to add, delete or update the information furnished in the quarterly statement.

(iv) There are certain consequential amendments made in section 206C on the same lines as in section 201. According to these amendments, if the seller, who is required to collect tax under this section fails to do so, he will not be deemed to be in default if he can establish that the buyer has filed his return u/s.139 and paid tax on his income after considering the goods purchased by him. Consequential provision for reduction in the period for which interest is payable u/s 206C is also made.

22.2.1 Responsibility & Liability of the Tax Collector

1. To obtain Tax Collection Account No. [Section 206CA(1)]
2. To quote TCS No. in all returns, certificates and challans. [Section 206CA(2)]
3. To furnish quarterly return in Form No. 27EQ within stipulated time i.e. within fifteen days from the end of a quarter for the first three quarters and by 30th April for the last quarter.
4. Failure to furnish TCS return: Penalty @ ₹100 per day, during which the default continues, but not exceeding the amount of TCS. [Section 272A(2)(g)]
5. Failure to deposit TCS in Government treasury, rigorous imprisonment for a term of not less than 3 months, but which may extend to 7 years, in addition to fine [Sections 276B & 276BB]

Thus, administrative provisions are similar to TDS administration.

22.2.2 Filing of TDS and TCS statements (W.e.f. 1-10-2009)

Section 200(3) of Income-tax Act provides that any person deducting tax in accordance with the provisions of Chapter XVII B has to furnish, within the prescribed time, quarterly statements for the period ending on the 30th June, 30th September, 31st December and 31st March in each financial year. Similarly, filing of quarterly returns for Tax Collection at Source (TCS) have been provided in sub-section (3) of section 206C of the Act. Further section 206A provides furnishing of quarterly return in respect of payment of interest to residents without deduction of tax.

In order to provide administrative flexibility in deciding the periodicity of such TDS related statements, the Act has modified the existing provisions so as to allow the Government to prescribe periodicity of such TDS statements besides prescribing their form and manner.

Further, section 272A(2) relating to non-filing of quarterly statement of TDS/TCS has been amended in order to delete the word 'quarterly' given for such statements.

Study Note - 23

PENALTY & PROSECUTION

This Study Note includes

23.1 Penalties and Prosecution for defaults

23.1 PENALTIES AND PROSECUTION FOR DEFAULTS

Section	Nature of Default	Minimum Penalty	Maximum Penalty
158BFA	Undisclosed income determined by the Assessing Officer u/s.158BC(c)	100% of the tax on undisclosed income	300% of the tax on undisclosed income
221(1)	Default in making a payment of tax within prescribed time	Such amount as the Assessing Officer may impose	Amount of Tax in arrears
271(1)(b)	Failure to comply with a notice u/s. 142(1) or 143(2) or with a direction issued u/s 142(2A).	₹ 10,000 for each failure	₹ 10,000 for each failure.
271(1)(c)	Concealment of the particulars of income or furnishing inaccurate particulars of income.	100% of Tax sought to be evaded.	300% of Tax sought to be evaded.
271A	Failure to keep or maintain books of A/c, document as required u/s.44AA.	₹ 25,000	₹ 25,000
271AA	Failure to keep and maintain information and document in respect of international transaction (Specified domestic transactions) or failure to report international transaction or furnishing of incorrect information.	A sum equal to two per cent of the value of each international transaction entered into by such person.	A sum equal to two per cent of the value of each international transaction entered into by such person.
271AAA	Penalty where search has been initiated — undisclosed income	A sum computed at the rate of 10% of the undisclosed income of the specified Previous Year.	A sum computed at the rate of ten per cent of the undisclosed income of the specified Previous Year.
271AAB	Undisclosed income in the case of search (applicable if search is initiated on or after July 1, 2012)	Admit the undisclosed income — 10% of undisclosed income Not admit the undisclosed income — 20% of undisclosed income	Admit the undisclosed income — 10% of undisclosed income Not admit the undisclosed income — 20% of undisclosed income
271B	Failure to get accounts audited u/s.44AB or to furnish such report along with return of income by due date	1/2% of Total Sales, Turnover or Gross receipts.	₹ 1,50,000

Section	Nature of Default	Minimum Penalty	Maximum Penalty
271BA	Failure to submit report U/S 92E	₹ 1,00,000	₹ 1,00,000
271C	Failure to deduct the whole or any part of tax u/s192 to 195 or (w.e.f. 1.6.97) failure to pay the whole or any part of tax u/s115 O(2) or 2nd proviso to sec. 194B.	Amount of Tax required to be deducted at source.	Amount of Tax required to be deducted at source.
271CA	Penalty for failure to collect tax at source	A sum equal to the amount of tax failed to collect	A sum equal to the amount of tax failed to collect
271D	Taking or accepting any loan or deposit specified sum in contravention of the provisions of Section 269SS	Amount of Loan/ Deposit specified sum so taken or accepted	Amount of Loan/ Deposit specified sum so taken or accepted
271E	Repaying any deposit or loan specified sum otherwise than in accordance with the provisions of Sec. 269 T	Amount of loan or deposit specified sum so repaid.	Amount of loan or deposit specified sum so repaid.
271F	(i) Failure to furnish return of income u/s.139(1) before the end of the relevant Assessment Year (w.e.f. 1.4.99) (ii) Failure to furnish return of income as per proviso to Sec.139(1) by the end of relevant Assessment Year .	₹ 5000 ₹ 5000	₹ 5000 ₹ 5000
271FA	Failure to furnish statement of financial transaction or reportable account within the prescribed time under section 285BA(1)	₹ 100 for every day during the failure continue ₹ 500 for every durinng which the failure continues (If notice is issued)	₹ 100 for every day during the failure continue ₹ 500 for every durinng which the failure continues (If notice is issued)
271FAA	Person referred to in section 285BA(1)(k) provides inaccurate information in the statement	₹ 50,000	₹ 50,000
271FAB	failure to furnish statement or information or document by an eligible investment fund	₹5,00,000	₹5,00,000
271FB	Penalty for failure to furnish return of fringe benefits [Fringe Benefit Tax is not applicable from A.Y. 2010-11 onwards]	a sum of one hundred rupees for every day during which the failure continues.	a sum of one hundred rupees for every day during which the failure continues.
271G	Failure to furnish information or documents under section 92D(3) to AO or the TPO as reforred to in Section 92 CA	2% of value of the international transaction (Specified domestic transaction) for each failure	₹ 10,000 for each default.
271GA	failure to furnish information or document under section 285A	**Indian concern** – 2% of the value of the transaction **Other Case** - ₹5,00,000	**Indian concern** – 2% of the value of the transaction **Other Case** - ₹5,00,000

Section	Nature of Default	Minimum Penalty	Maximum Penalty
271H	Failure to submit in quarterly TDS/ TCS returns	₹ 10,000	₹ 1,00,000
271-I	failure to furnish information or furnishing inaccurate information under section 195	₹1,00,000	₹1,00,000
272A(1)(a)	Refuses to answer any question put to a person regarding his assessment by an I.T. Authority.	₹ 10,000 for each default	₹ 10,000 for each default
272A(1)(b)	Refuses to sign any statement made by a person in course of I.T. Proceeding.	₹ 10,000 for each default	₹ 10,000 for each default
272A(1)	Failure to comply with summons issued u/s131(1)	₹ 10,000 for each default	₹ 10,000 for each default
272A(2)	Failure to comply with a notice u/s 94, 176(3), 133, 206, 206C, 285B, 134 to furnish return of Income u/s 139(4A) or 139(4C) or to delivery in due time a declaration mentioned in section 197A or 206C(1A), to furnished certificate u/s 203 or 206C	₹ 100 for every day during the failure continues but restricted to amount of tax.	₹ 100 for every day during the failure continues but restricted to amount of tax.
272AA	Failure to comply with provisions of Sec. 133B.	Any amount upto ₹1,000	₹ 1,000
272B	Failure to comply with the provisions of section 139A or for quoting or intimating a PAN which is false. [w.e.f. 1.6.2002]	₹ 10,000	₹ 10,000
272BB(1)	Failure to comply with the provisions of of Sec. 203A	Up to ₹ 10,000	₹ 10,000
272BB	Failure to comply with the provisions of section 203A (i.e. failure to obtain TAN or after obtaining failure to quote TAN in all challans, certificates and returns etc.)	₹ 10,000	₹ 10,000
272BBB	Failure to comply before 1.10.2004 with the provisions of section 206CA relating to obtaining & quoting TCAN.	₹ 10,000	₹ 10,000
		Rigorous imprisonment	
		Minimum Period	**Maximum Period**
275A	Dealing with seized assets in contravention of the order made by the officer conducting search	Any period up to 2 years and fine	2 years and fine
275B	Failure to comply with the provision of section 132(1)(iib)	Any period up to 2 years and fine	2 years and fine
276	Removal, concealment, transfer or delivery of property to tax recovery	Any period up to 2 years and fine	2 years and fine

Section	Nature of Default	Minimum Penalty	Maximum Penalty
276A	Failure to comply with the provisions of section 178(1) & (3) by liquidator of a company	Any period up to 2 years but not less than 6 months in absence of special and adequate reasons	2 years
276B	Failure to pay tax to the Government's treasury or failure to pay to the Government tax payable by him as required by section 115-O(2) or second proviso to section 194B	3 months and fine	7 years and fine
276BB	Failure to pay to the credit of Central Government tax collected u/s 206C	3 months and fine	7 years and fine
276C(1)	Wilful attempt to evade tax penalty or interest imposable under the Act (non-cognizable as per sec. 279A)	If tax evaded exceeds ₹ 1,00,000, then for 6 months & fine; otherwise 3 months and fine.	If tax evaded exceeds ₹ 1,00,000, 7 years & fine; otherwise 3 years and fine.
276C(2)	Wilful attempt to evade the payment of any tax, penalty or interest (non-cognizable as per sec. 279A).	3 months and fine	3 years and fine
276CC	Wilful failure to file return of income in time u/s 139(1), or in response to notice u/s 142(1) or Sec. 148(Non-cognizable as per Sec. 279A)	If tax evaded exceeds ₹ 1,00,000, 6 months and fine. In any other case, 3 months and fine. Note: No prosecution if : (i) the return is filed before the expiry of the Assessment Year; or (ii) the tax payable on regular assessment, as reduced by TDS and advance tax does not exceed ₹ 3,000	If tax evaded exceeds ₹ 1,00,000, 7 years & fine; otherwise 3 years and fine
276CCC	Wilful failure to furnish in due time the return of total income which is required to be furnished u/s 158BC.	3 months and fine	3 months and fine
276D	Wilful failure to produce books of account and documents u/s 142(1) or wilful failure to comply with a direction to get the accounts audited u/s 142(2A)	Any period upto 1 year and/or fine of ₹ 4 for every day during which default continues and with fine.	1 year and/or fine of ₹ 10 every day during which default continues and with fine.
277	Making a false statement in verification or delivering a false account or statement(non-cognizable as per Sec. 279A)	If tax evaded exceeds ₹ 1,00,000; 6 months & fine; otherwise 3 months and fine.	If tax evaded exceeds ₹ 1,00,000, 7 years; otherwise 3 years and fine.

Section	Nature of Default	Minimum Penalty	Maximum Penalty
278	Abetment to make a false statement or declaration. (non- cognizable as per, Sec. 279A)	If tax evaded exceeds ₹ 1,00,000; 6 months; otherwise 3 months and fine.	If tax evaded exceeds ₹ 1,00,000, 7 years; otherwise 3 years and fine.
278A	Punishment for second and sub-sequent offences under sections 276B, 276C(1), 276CC, 277 or 278.	6 months for every offence and fine.	7 years for every offence and fine.
278B and 278C	Offences committed by companies/ firms or HUFs-Criminal liability of managing director managing partner, karta or any such officer, who wilfully committed the offence for the company/firm or HUF.	Same as in the case of the company/firm/ HUF	Same as in the case of the company/firm/ HUF
280(1)	Disclosure of particulars by public servants in contravention of Sec. 138(2) (prosecution to be instituted with the approval of Central Government)	Up to 6 months and fine.	6 months and fine.

If there is a reasonable cause, it can be offered as a defense against penalty, prosecution, etc.

Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of *bona fides* - *Azadi Bachao Andolan* vs. *Union of India* 252 ITR 471 (Delhi).

'Reasonable cause' as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. It means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do - *Woodward Governors India (P.) Ltd.* vs. *CIT* 118 Taxman 433 (Delhi).

The words "reasonable cause" in the section must necessarily have a relation to the failure on the part of the assessee to comply with the requirement of the law which he had failed to comply with. *Kalakrithi* vs. *ITO* 125 Taxman 97 (Mad.).

Liability of directors of private company in liquidation.

Under certain circumstances directors of private company in liquidation are liable to tax liability of the company. Care should be taken to ensure that directors are not exposed to this risk.

Section 179 provides that where any tax due from a private company in respect of any income of any Previous Year or from any public company of any Previous Year during which such other company was a private company cannot be recovered, then, every person who was a director of the private company at any time during the relevant Previous Year shall be jointly and severally liable for the payment of such tax.

No recovery can be made from a director if the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Section 179 operates without regard to any contrary provision about limited liability, etc. contained in the Companies Act, 1956 (corresponding sections of Companies Act, 2013).

Following Explanation 4 shall be substituted for the existing Explanation 4 of sub-section (1) of section 271 by the Finance Act, 2015, w.e.f. 1-4-2016 :

Explanation 4.— For the purposes of clause (iii) of this sub-section,—

(a) the amount of tax sought to be evaded shall be determined in accordance with the following formula—

(A – B) + (C – D)

where,

A = amount of tax on the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished;

C = amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished:

Provided that where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D:

Provided further that in a case where the provisions contained in section 115JB or section 115JC are not applicable, the item (C – D) in the formula shall be ignored;

(b) where in any case the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the effect of reducing the loss declared in the return or converting that loss into income, the amount of tax sought to be evaded shall be determined in accordance with the formula specified in clause (a) with the modification that the amount to be determined for item (A – B) in that formula shall be the amount of tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income;

(c) where in any case to which Explanation 3 applies, the amount of tax sought to be evaded shall be the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148.

Example:

The following information is noted from the records of X Ltd. for the assessment year 2016-17:

	General provisions (₹)	MAT (₹)
Income/book profit as per return of income	7,00,000	16,00,000
Add: Addition on estimate basis (not representing concealed income)	10,000	Nil
Add: Amount of concealed income (sale to A Ltd. not recorded in books of account as discovered by the Assessing Officer) (as per assessment order)	30,000	30,000
Add: Amount of concealed income (being deliberate attempt to conceal income by claiming higher deduction under section 35, even no explanation is offered) (as per assessment order)	70,000	Nil
Add: Deferred tax (being deliberate attempt by X Ltd. to declare lower book profit by not adding deferred tax which appeared on the debit side or profit and loss account) (as per assessment order)	Nil	80,000
Net income/book profit (as per assessment order)	8,10,000	17,10,000
Tax liability/MAT	2,50,290	3,25,840

Tax payable as per assessment order is ₹ 3,25,840. What is tax sought to be evaded for the purpose of concealment penalty under section 271(1)(c)?

Solution:

Tax sought to be evaded will be calculated as follows -

	₹
A = Normal tax on ₹ 8,10,000	2,50,290
B = Normal tax on (₹ 8,10,000 - ₹ 30,000 - ₹ 70,000)	2,19,390
C = MAT on ₹ 17,10,000	3,25,840
D = MAT on (₹ 17,10,000 - ₹ 80,000) (₹ 30,000 will not be reduced as it is also considered for computing normal income)	3,10,597
Tax sought to be evaded = (A- B) + (C - D)	46,143

Study Note - 24

REFUND

This Study Note includes

24.1 Refund

24.2 Interest on Refund

24.3 Set-Off of Refunds against the remaining payable [Section 245]

24.1 REFUND

24.1.21 When Right to Claim Refund Arises [Section 237]

Where any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf for any Assessment Year exceeds the amount with which he is properly chargeable under the Act for that year, he is entitled to a refund of the excess amount paid.

Case Law :

The tax paid by the assessee must be accepted as it is, and in the event of the tax paid being in excess of the tax liability duly computed on the basis of return furnished and the rates applicable, the excess shall be refunded to the assessee, since its retention may offend article 265 of the Constitution - *CIT* v. *Shelly Products* 261 ITR 367.

24.1.2 Who Can Claim Refund? [Section 238]

Usually refund can be claimed only by a person who has made excess payment of tax. If income of a person is included in the total income of another person u/s. 60 to 64, the refund can be claimed by the latter and not by the former. Where a person is unable to claim any refund due to him because of his death, incapacity, insolvency, liquidation or other cause, his legal representatives or the trustee or guardian or receiver, as the case may be, will be entitled to claim and receive such refund for the benefit of such person or his estate.

24.1.3 How to Claim Refund? [Section 239]

Refund claim should be made in Form No. 30 and verified in the prescribed manner. The refund should be claimed within one year from the last day of the assessment year.

In the following cases, where an otherwise valid refund claim u/s. 237 is filed by an assessee after the expiry of the time limit, the Assessing Officer, may admit the said refund claim and dispose of the same on merits and in accordance with law provided the following conditions are satisfied-

(i) It has been decided that cases where delayed claims of refund are being considered would be taken up for scrutiny.

(ii) The refund has arisen as a result of excess tax deducted/collected at source and payment of advance tax and the amount of refund does not exceed ₹ 50,00,000 for one Assessment Year.

(iii) The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.

(iv) No interest will be admissible on the belated refund claims.

(v) No claims under this provision will be entertained where a period of more than 6 Assessment Years has elapsed.

Board have also decided that in such cases : -

(a) In case of refund does not exceed ₹ 10,00,000 for any Assessment Year, the Assessing officer shall obtain the prior approval of the Commissioner of Income-tax before entertaining a belated refund claim,

(b) In case of refund exceeds ₹ 10,00,000 but does not exceeds ₹ 50,00,000 for any Assessment Year, the Assessing Officer shall obtain the prior approval of Chief Commissioner of Income Tax or Director General of Income Tax before entertaining a belated refund claim, and

(c) Where the refund exceeds ₹ 50,00,000, approval of the Board is required.

Case Law :

Board is competent to admit an application for refund even after expiry of period prescribed under section 239, for avoiding genuine hardship in any case or class of cases. Union of India vs. Azadi Bachao Andolan 263 ITR 706.

24.1.4 Refund on Appeal [Section 240]

Where refund arises as a result of any order passed in appeal or other proceedings under the Act, no formal application from the assessee is required. The Assessing Officer is bound to grant refund suo motu.

When Refund becomes due:

Under section 240, refund becomes due as follows –

Situations	Due date
1. An assessment is set aside or cancelled and an order of fresh assessment is directed to be made	The refund becomes due only on the making of such fresh assessment.
2. Assessment is annulled	The refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.

Case Laws :

(i) Assessee is entitled to interest if the interest is paid u/s 220(2) subsequently becomes refundable: Interest u/s 244A is payable in respect of the amount of interest earlier paid by the assessee u/s 220(2) but later determined as refundable – Modipon Ltd. vs. CIT 270 ITR 257.

(ii) Revenue is liable to pay interest on the amount of interest which it should have paid to the assessee but has unjustifiably failed to do - *CIT* vs. *Narendra Doshi* 254 ITR 606/122 Taxman 717.

(iii) Interest on delayment payment of interest: The Department is liable to pay interest on interest under sections 214 and 244(1A) if payment of interest is delayed - *MC, Nally Bharat Engg. Co. Ltd.* vs. *CIT* Tax L.R. 638.

(iv) Calculation of interest Interest cannot be granted till date of dispatch of refund order but it has to be granted till date when order regarding payment of interest has been signed - *Rajasthan State Electricity Board* vs. *CIT* 281 ITR 274.

(v) Where return is filled belatedly: Where delay in completion of assessment which led to refund was on account of delay in filing returns by assessee, assessee was not entitled to interest for period of said delay in terms of section 244A(2) - *M. Ahammadkutty Haji* vs. *Chief CIT* 155 Taxman 315.

21.1.5 Correctness of assessment not to be questioned [Section 242]

In a claim under this Chapter, it shall not be open to the assessee to question the correctness of any assessment or other matter decided which has become final and conclusive or ask for a review of the same, and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.

24.2 INTEREST ON REFUND

24.2.1 Interest on Delayed Refunds [Section 243]

(1) If the Assessing Officer does not grant the refund,—

(*a*) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividends, within three months from the end of the month in which the total income is determined under this Act, and

(*b*) in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter,

the Central Government shall pay the assessee simple interest at fifteen per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation — If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

(2) Where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the Chief Commissioner or Commissioner whose decision shall be final.

(3) The provisions of this section shall not apply in respect of any assessment for the Assessment Year commencing on the 1st day of April, 1989 or any subsequent Assessment Years.

24.2.2 Interest on refund where no claim is needed [Section 244]

(1) Where a refund is due to the assessee in pursuance of an order referred to in Section 240 and the Assessing Officer does not grant the refund within a period of three months from the end of the month in which such order is passed, the Central Government shall pay to the assessee simple interest at fifteen per cent per annum on the amount of refund due from the date immediately following the expiry of the period of three months aforesaid to the date on which the refund is granted.

(1A) Where the whole or any part of the refund referred to in sub-section (1) is due to the assessee, as a result of any amount having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted.

Provided that where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalment or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted.

Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding.

Provided also that where any interest is payable to an assessee under this sub-section, no interest under sub-section (1) shall be payable to him in respect of the amount so found to be in excess.

(2) Where a refund is withheld under the provisions of Section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of three months from the end of the month in which the order referred to in Section 241 is passed to the date the refund is granted.

(3) The provisions of this section shall not apply in respect of any Assessment for the Assessment Year commencing on the 1st day of April, 1989, or any subsequent Assessment Years.

24.2.3 Interest on Refund [Section 244A]

Interest on Refund of Income Tax:

(1) Where refund of any amount becomes due to the assessee under the Income Tax Act, he shall be entitled to receive, in addition to the said amount, simple interest on the refund calculated in the following manner:

(a) Where the refund is out of any tax deducted at source/ tax collected at source or advance tax paid or treated as paid u/s 199 during the financial year, interest will be paid at the rate of ½%, per month or part of a month from the period starting from 1st day of April of the Assessment Year to the date on which refund is granted.

Provided that, no interest shall be payable if the amount of refund is less than 10% of the tax determined u/s 143(1) or on regular assessement.

(b) In other cases, interest shall be paid @ ½% per month for every month or part of month for the period commencing from the date of payment of tax or penalty to the date on which refund is granted.

Explanation: For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under section 143(3) or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.

Judicial Decisions

(i) Section 244(1) nowhere speaks of interest. Provisions of section 240 & 244 reveal liability to pay interest on delayed payment of refund amount but do not provide for payment of any interest on interest even though there is delay in payment of such interest to assessee- Sandvik Asia Ltd. vs. CIT 280 ITR 643 (SC).

(ii) As the assessee has not received the refund of the excess advance tax, he preferred a writ petition before the Delhi High Court. When the writ petition was pending, the Department granted refund of advance tax along with interest thereon. The petitioner claimed interest on delayed payment of interest. The Delhi High Court held that the petitioner is entitled to interest on delayed payment of interest & accordingly directed the revenue to pay interest on interest- R.K. Jain & Sons vs. CIT193 CTR 659.

(iii) Assessee is entitled to interest if the interest is paid u/s 220(2) subsequently becomes refundable: Interest u/s 244A is payable in respect of the amount of interest earlier paid by the assessee u/s 220(2) but later determined as refundable- Modipon Ltd. vs. CIT 270 ITR 257.

24.3 SET-OFF OF REFUNDS AGAINST THE REMAINING PAYABLE [SECTION 245]

Where a refund is found to be due to any person, the Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals) or Chief Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

Case Law :

Prior intimation to assessee whether mandatory: While making set off of refunds against tax remaining payable, intimation is certainly not a jurisdictional requirement and absence thereof is merely an irregularity and, therefore, want of intimation would not vitiate the adjustment - *Brij Bhushan Lal & Sons* vs. *Designated Authority* 246 ITR 353.

Refund due to assessee cannot be adjusted against demand raised, against a third party *Archana Shukla* vs. *Joint CIT* 244 ITR 829.

Where refund arises as a result of any order passed in appeal or other proceedings under the Act, no formal application from the assessee is required. The Assessing Officer has to grant refund suo moto.

Study Note - 25

SETTLEMENT OF CASES

This Study Note includes

25.1 Settlement of Cases [Section 245A to 245L]

25.2 Advance Ruling

25.1 SETTLEMENT OF CASES [SECTION 245A TO 245L]

25.1.1 Meaning of Case [Section 245A(b)]

"Case" means any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of section 245C is made.

Explanation.—For the purposes of this clause—

(i) a proceeding for assessment or reassessment or recomputation under section 147 shall be deemed to have commenced—

  (a) from the date on which a notice under section 148 is issued for any assessment year;

  (b) from the date of issuance of the notice referred to in sub-clause (a), for any other assessment year or assessment years for which a notice under section 148 has not been issued, but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished under section 139 or in response to a notice under section 142;

(ii) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment shall be deemed to have commenced from the date on which such order, setting aside or cancelling an assessment was passed;

(iii) a proceeding for assessment or reassessment for any of the assessment years, referred to in clause (b) of sub-section (1) of section 153A in case of a person referred to in section 153A or section 153C, shall be deemed to have commenced on the date of issue of notice initiating such proceeding and concluded on the date on which the assessment is made;

(iv) a proceeding for assessment for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (i) or clause (iii) or clause (iiia), shall be deemed to have commenced from the date on which the return of income for that assessment year is furnished under section 139 or in response to a notice served under section 142 and concluded on the date on which the assessment is made; or on the expiry of two years from the end of relevant assessment year, in case where no assessment is made.

25.1.2 Income-tax Settlement Commission [Section 245B]

(1) The Central Government shall constitute a Commission to be called the Income-tax Settlement Commission for the settlement of cases under this Chapter.

(2) The Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other members as the Central Government thinks fit and shall function within the Department of the Central Government dealing with direct taxes.

(3) The Chairman Vice-Chairman and other members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts.

Provided that, where a member of the Board is appointed as the Chairman Vice-Chairman or as a member of the Settlement Commission, he shall cease to be a member of the Board.

25.1.3 Jurisdiction and Powers of Settlement Commission [Section 245BA]

(1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof.

(2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman or a Vice-Chairman and shall consist of two other Members.

(3) The Bench for which the Chairman is the Presiding Officer shall be the principal Bench and the other Benches shall be known as additional Benches.

(4) Notwithstanding anything contained in sub-sections (1) and (2), the Chairman may authorize the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.

(5) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the Presiding Officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the Presiding Officer or in the office of one or the other Members of the Bench, the remaining two persons may function as the Bench and if the Presiding Officer of the Bench is not one of the remaining two persons, the senior among the remaining persons shall act as the Presiding Officer of the Bench.

Provided that if at any stage of the hearing of any such case or matter, it appears to the Presiding Officer that the case or matter is of such a nature that it ought to be heard of by a Bench consisting of three Members, the case or matter may be referred by the Presiding Officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

(5A) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for the disposal of any particular case, constitute a Special Bench consisting of more than three Members.

(6) Subject to the other provisions of this Chapter, the places at which the principal Bench and the additional Benches shall ordinarily sit shall be such as the Central Government may, by notification in the Official Gazette, specify and the Special Bench shall sit at a place to be fixed by the Chairman.

25.1.4 Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances [Section 245BB]

(1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

25.1.5 Power of Chairman to transfer cases from one Bench to another [Section 245BC]

On the application of the assessee or the Chief Commissioner or Commissioner and after notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to another Bench.

25.1.6 Decision to be taken by majority [Section 245BD]

If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it.

25.1.7 Application for settlement of cases [Section 245C]

(1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of Income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided :

Provided *that no such application shall be made unless—*

(i) the additional amount of Income-tax payable on the income disclosed in the application exceeds the amount given below

Different situations	Application can be filed only if the additional amount of Income-tax payable on the income disclosed in the application exceeds the amount of tax given below		
	Up to May 31, 2010	From June 1, 2010 to May 31, 2011	With effect from June 1, 2011
Case 1 – When an application is filed before the Settlement Commission, in cases where proceedings for assessment or reassessment have been initiated as a result of requisition of books of account or other documents or any assets.	Settlement not possible	₹ 50 Lakhs	₹ 50 Lakhs
Case 2 – Where the applicant- a. is "related" to the person [referred to in Case 1 above] in whose case proceedings have been initiated as a result of search and who has filed an application; and b. is a person in whose case proceedings have also been initiated as a result of search	Settlement not possible	₹ 50 Lakhs	₹ 10 Lakhs
Case 3 – Where an application is filed in any other case	₹ 3 Lakhs	₹ 10 Lakhs	₹ 10 Lakhs

(ii) such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.

(1A) For the purposes of sub-section (1) of this section, the additional amount of Income-tax payable in respect of the income disclosed in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

(1B) Where the income disclosed in the application relates to only one Previous Year,—

(i) if the applicant has not furnished a return in respect of the total income of that year, then, tax shall be calculated on the income disclosed in the application as if such income were the total income;

(ii) if the applicant has furnished a return in respect of the total income of that year, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income.

(1C) The additional amount of Income-tax payable in respect of the income disclosed in the application relating to the Previous Year referred to in sub-section (1B) shall be,—

(*a*) in a case referred to in clause (*i*) of that sub-section, the amount of tax calculated under that clause;

(*b*) in a case referred to in clause (*ii*) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;

(1D) Where the income disclosed in the application relates to more than one Previous Year, the additional amount of Income-tax payable in respect of the income disclosed for each of the years shall first be calculated in accordance with the provisions of sub-sections (1B) and (1C) and the aggregate of the amount so arrived at in respect of each of the years for which the application has been made under sub-section (1) shall be the additional amount of Income-tax payable in respect of the income disclosed in the application.

(2) Every application made under sub-section (1) shall be accompanied by a fee of ₹ 500

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

(4) *An assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also intimate the Assessing Officer in the prescribed manner of having made such application to the said Commission.*

Case Law:

Application must disclose undisclosed income: The requirement is that there must be an income disclosed in a return furnished and undisclosed income disclosed to the Commission by a petition u/s 245C – *CIT* vs. *Damani Bros.* 259 ITR 475/126 Taxman 321

Additional tax shall be computed as follows :-

(i) Where the income disclosed in the application relates to only one Previous Year (a) If the applicant has not furnished a return of income of that year (b) If the applicant has furnished a return in respect of total income of that year	• Tax on income disclosed in the application as if such income were the total income • Tax on the aggregate of the total income returned and income disclosed in the application for settlement minus tax calculated on returned income
(ii) Where the income disclosed relates to more than one Previous Year	Aggregate of the amount of tax determined for each year according to rules mentioned.

25.1.8 Procedure for Receipt of Application [Section 245D]

(1) On receipt of an application under section 245C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with.

Provided that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner.

(2A) Where an application was made under section 245C before the 1st day of June, 2007, but an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before the 31st day of July, 2007.

Explanation— In respect of the applications referred to in this sub-section, the 31st day of July, 2007 shall be deemed to be the date of the order of rejection or allowing the application to be proceeded with under sub-section (1).

(2B) The Settlement Commission shall,—

(i) in respect of an application which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made; or

(ii) in respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that sub-section, on or before the 7th day of August, 2007, call for a report from the Commissioner, and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

(2C) Where a report of the Commissioner called for under sub-section (2B) has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question, after giving opportunity of being heard to the applicant, as invalid, and shall send the copy of such order to the applicant and the Commissioner;

(2D) Where an application was made under sub-section (1) of section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but an order under the provisions of sub-section (4), as they stood immediately before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007.

(3) The Settlement Commission, in respect of—

(i) an application which has not been declared invalid under sub-section (2C); or

(ii) an application referred to in sub-section (2D) which has been allowed to be further proceeded with under that sub-section, may call for the records from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters

covered by the application and any other matter relating to the case, and the Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission;

(4) After examination of the records and the report of the Commissioner, if any, received under—

(i) sub-section (2B) or sub-section (3), or

(ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007, and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorized in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner.

(4A) The Settlement Commission shall pass an order under sub-section (4),—

(i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008;

(ii) in respect of an application made on or after the 1st day of June, 2007, but before the 1st day of June, 2010, within twelve months from the end of the month in which the application was made;

(iii) in respect of an application made on or after June 1, 2010, within eighteen months from the end of the month in which application was made;

(5) Subject to the provisions of section 245BA, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (4) and, in relation to the passing of such order, the provisions of section 245BD shall apply.

(6) Every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(6A) Where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at one & one-fourth percent per month (or part of month)on the amount remaining unpaid from the date of expiry of the period of thirty-five days aforesaid. Interest is payable even if the Settlement Commission has extended the time of payment.

(6B) The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4)—

(a) at any time within a period of six months from the end of the month in which the order was passed; or

(b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be.

Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which an order under sub-section (4) is passed by the Settlement Commission.

Provided further that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.

(7) Where a settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Income-tax Authority concerned, may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

(8) For the removal of doubts, it is hereby declared that nothing contained in section 153 shall apply to any order passed under sub-section (4) or to any order of assessment, reassessment or re-computation required to be made by the Assessing Officer in pursuance of any directions contained in such order passed by the Settlement Commission and nothing contained in the proviso to sub-section (1) of section 186 shall apply to the cancellation of the registration of a firm required to be made in pursuance of any such directions as aforesaid.

Case laws:

(1) Effect of omission of sub-section (1A) of section 245D: Where the applications of the respondents were not proceeded with only because of the objection raised by the Commissioner under sub-section (1A), having regard to the fact that the said sub-section (1A) was removed from the statute book subsequent to 1991, there was no reason why the Settlement Commission could not have entertained fresh applications under section 245C and this would not be a case of review at all - *CIT* vs. *Bhaskar Picture Palace* 113 Taxman 109.

(2) Power to over-rule objections is procedural: Amendment of section 245D with effect from 1-4-1979 empowering Settlement Commission to overrule objections of Commissioner was procedural and an order passed by Commissioner under section 245D prior to aforesaid amendment without giving applicant an opportunity of hearing was a nullity being passed in violation of principles of natural justice and after amendment of section 245D with effect from 1-4-1979 assessee was entitled to be heard on objections of Commissioner *R.B. Shreeram Durga Prasad and Fatechand Nursing Das* vs. *Settlement Commission (IT & WT)* 176 ITR 169/43 Taxman 34.

25.1.9 Provisional Attachment to protect Revenue [Section 245DD]

If during the pendency of any proceedings the Commission is of the opinion that for the purpose of protecting the interests of the revenue, it is necessary to do so, it may attach provisionally for six months any property belonging to the applicant in the manner provided in the Second Schedule to the Act. Such attachment shall not extend in any case more than two years.

25.1.10 Reopening of completed proceedings [Section 245E]

If the Settlement Commission is of the opinion that for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceedings connected with the case but which has been completed by any Income-tax Authority before the application was made, it may, with the concurrence of the applicant reopen such proceedings and pass such orders thereon as it thinks fit. However, no proceeding shall be reopened by the Settlement Commission under this provision if the period between the end of the Assessment Year to which such a proceeding relates and the date of application for settlement u/s. 245C exceed nine years.

Case Law:

Others/matters relating to jurisdiction of Settlement Commission: Failure on the part of the petitioner to deduct tax at source does not come within purview of section 245C(1). Section 245E contemplates

reopening of completed proceedings not for benefit of assessee but in the interest of the revenue -*CIT* vs. *Paharpur Cooling Towers (P.) Ltd.* 85 Taxman 357.

25.1.11 Exclusive jurisdiction of the Settlement Commission over the admitted applications [Section 245F]

After an application made u/s. 245C has been allowed to be proceeded with, the Settlement Commission will have exclusive jurisdiction over the case till an order u/s. 245D(4) has been made. During this period the Settlement Commission will have all the powers vested in an Income-tax Authority under the Act. However, in the absence of any express direction to the contrary by the Settlement Commission nothing contained in Section 245F shall effect the operation of any other provisions of the Act requiring the applicant to pay tax on the basis of Self Assessment in relation to the matters before the Settlement Commission.

Case Law:

A final decision, however wrong, is still final and its binding force does not depend upon its correctness Capital Cables (India) (P.) Ltd. vs. *Income-tax Settlement Commission* 267 ITR 528/139 Taxman 332

25.1.12 Inspection, etc. Reports [Section 245G]

No persons shall be entitled to inspect or obtain copies of any reports made by any Income-tax Authority to the Settlement Commission but the Settlement Commission may in its discretion, furnish copies thereof to any such person or an application made to in this behalf. However, for the purposes of enabling any person whose case is under consideration to rebut any evidence on record against him in any such report, the Commission shall furnish him a certified copy of any such report if the applicant makes an application in this behalf. The copies will be supplied to the applicant on payment of the prescribed fee.

25.1.13 Immunity from Prosecution and Penalty [Section 245H]

If the Settlement Commission is satisfied that any person who made the application for settlement has cooperated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived subject to such conditions as it may think fit to impose for the reasons to be recorded in writing, it may grant immunity from prosecution under the Income-tax Act or under the Indian Penal Code or under any other Central Act as also the imposition of any penalty under the Income-tax Act with respect to the case covered by the settlement. However, w.e.f. 1.6.2007 no such immunity shall be granted by the Settlement Commission in cases where the proceedings for prosecution for any such offence have been instituted before the date of receipt of the application under Section 245C. An immunity granted by the Settlement Commission shall stand withdrawn if the applicant fails to pay the sum specified in the order of settlement within the time specified in such order or within such further time as may be allowed by the Settlement Commission or fails to comply with any other condition subject to which the immunity was granted. The immunity may also be withdrawn if the Settlement Commission is satisfied that the applicant has, in the course of proceedings, concealed any particular material to the settlement or had given false evidence. Once the immunity granted is withdrawn, the assessee may be tried for offence with respect to which the immunity was granted or for any other offences of which he appears to have been guilty in connection with the Settlement and shall also become liable to imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

25.1.14 Abatement of proceeding before settlement Commission [Section 245HA]

Proceedings for settlement shall abate from the date given below –

Circumstances in which the proceeding abates	Date of abatement
Where the application is made on or after June 1, 2007 and is rejected within 14 days from the date of application under section 245D(1).	Date on which the application is rejected.
An application made before June 1, 2007 but the tax is not paid before July 31, 2007 and hence it is rejected under section 245D(2D).	July 31, 2007.
An application made under section 245C declared as invalid with or without the report of the Commissioner under section 245D(2C).	The last day of the month in which the application is declared as invalid.
Any application made under section 245C, an order under sub-section (4) of section 245D has not been passed not providing for the terms of settlement.	The day on which the order under sub-section (4) of section 245D was passed not providing for the terms of settlement.
An application made under section 245C and the order is not passed within the time prescribed in section 245D(4A).	Date on which the time period specified in section 245D(4A) expires.

Where the proceedings before the Settlement Commission abates, the Assessing Officer or any other Income-tax Authority before whom the proceedings are pending at the time of making the application under section 245C shall reassume jurisdiction and shall dispose of the case in accordance with the provisions of the Act.

For the purpose of disposing the case, Assessing Officer can use-

- Material and other information produced by the Assessee before the Settlement Commission; or
- Result of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it.

Time limit for Sections 149, 153, 153B, 154, 155, 158BE, 231, 243, 244, 244A will be extended by the period-

- Commencing on and from the date of application; and
- Ending on date of abatement.

25.1.15 Credit of Tax paid in case of abatement of proceedings [Section 245HAA]

Where an application made u/s 245C on or after 1st day of June, 2007, is rejected u/s 245D(1) or any other application made u/s 245C is not allowed to be proceeded or is declared invalid or an order has not been passed within the time period, the Assessing Officer shall allow the credit for the tax and interest paid on or before the date of making the application or during the pendency of the case before Settlement Commission.

25.1.16 Order of the Settlement Commission to be conclusive [Section 245-I]

Order passed by the Commission u/s 245D(4) is conclusive as to the matter stated therein and no matter covered by such order shall be reopened in any proceeding under this Act or under any other law for the time being in force save as provided under Chapter XIXA. The order of the Commission can only be challenged through a written petition under Article 226 of the Constitution of India in a High Court or through Special Leave Petition under Article 136 in the Supreme Court on the ground that while making such order, principles of the natural justice has been violated or mandatory procedural requirements of law were not complied with or if it is found that there is no nexus between the reasons given and the decision taken.

25.1.17 Payment of the sums due under order of settlement [Section 245J]

Any sum specified in an order of settlement passed u/s 245D(4) may be recovered and any penalty for default in making payment of such sum may be impose and recovered in accordance with the provisions of Chapter XVII by the Assessing Officer having jurisdiction over the person who made the application for settlement u/s 245C.

25.1.18 Bar on subsequent application for settlement in certain cases [Section 254K]

(1) Where—

(i) an order of settlement passed under sub-section (4) of section 245D provides for the imposition of a penalty on the person who made the application under section 245C for settlement, on the ground of concealment of particulars of his income; or

(ii) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case; or

(iii) the case of such person was sent back to the Assessing Officer by the Settlement Commission on or before the 1st day of June, 2002,

then, he or any person related to such person (herein referred to as related person) shall not be entitled to apply for settlement under section 245C in relation to any other matter.

(2) Where a person has made an application under section 245C on or after the 1st day of June, 2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 245D, such person or any related person shall not be subsequently entitled to make an application under section 245C.

25.1.19 Proceedings before the Settlement Commission to be judicial proceedings [Section 245L]

Any proceedings under Chapter XIXA before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of Sec. 193 and 228, and for the purposes of Sec. 196 of the Indian Penal Code.

25.2 ADVANCE RULING

Finance Act, 1993 inserted a Chapter XIX-B in the Income-tax Act, 1961 to provide provisions of **Advance Rulings** to avoid dispute in respect of assessment of Income-tax liability in the case of non-resident. W.e.f. 1.10.1998, the scheme has been extended to cover notified resident applicants also. The Chapter XIX-B contains sections 245N to 245V.

'Advance Ruling' means a determination by the Authority for Advance Rulings, in relation to (i) a transaction which has been undertaken or is proposed to be undertaken by a non-resident or by a resident with a non-resident, including a determination of a question of law or of fact, and (ii) issues relating to computation of income pending before the Income-tax authority or the tribunal including a determination of a question of a law or of fact. [Sec. 245N(a)]

An application may be made by (i) non-resident, (ii) a resident entering into transaction with a non-resident, or (iii) a resident of the notified class or category i.e. a public sector company or a person indulging in a transaction with a non-resident. [Sec. 245N(b)]

Application for advance ruling should be in the prescribed form as below duly verified, along with a payment of fee of ₹ 2,500 shall be submitted to the authority for advance rulings.

Form No	Class of Assesses
34C	Non- resident desires of obtaining an advance ruling.
34D	Resident persons seeking advance ruling in relation to a transaction with a non-resident.
34E	Resident person of notified class or category.

The application for advance rulings should be in quadruplicate and the applicant may withdraw such application within 30 days from the date of application. [**Sec. 245Q**]

An advance ruling shall not be allowed where (i) question of law or fact is already pending either before any Income-tax Authority or the Appellate Tribunal (except in case of a resident applicant of notified class or category) or any court, (ii) a transaction, which is designed for the avoidance of Income-tax [Except in the case of a resident applicant falling in sub-clause(iii) of clause (b) of Section 245N] (or in the case of an applicant falling in sub-clause (iiia) of caluse (b) of Section 245N); or (iii) determination of the fair market value of any property. However, no application shall be rejected unless an opportunity has been given to the applicant of being heard and if the application is rejected, reasons for such rejection shall be given in the order. [**Sec. 245R**]

The Authority shall pronounce the advance ruling within six months after the receipt of the application. [**Sec. 245R(6)**]

In case an application for advance ruling has been made, in respect of an issue by a resident applicant, no Income-tax Authority or the Appellate Tribunal shall give a decision on the same issue. [**Sec. 245RR**]

The advance ruling shall be binding only on the applicant who has sought it in respect of the specific transaction covered thereunder, on the Commissioner and the Income-tax Authorities subordinate to him, having jurisdiction over the applicant. The advance ruling will continue to remain in force unless there is a change either in law or in fact on the basis of which the advance ruling was pronounced. [**Sec. 245S**]

Case Laws:

(i) Settlement Commission cannot be equated with CBDT for exercise of power of relaxation under section 119(2)(*a*) - *CIT* vs. *Anjum M.H. Ghaswala* 119 Taxman 352/ 252 ITR 1.

(ii) Commission is not bound to proceed with any application filed under section 245C - *CIT* vs. *Hindustan Bulk Carriers* 259 ITR 449/126 Taxman 321.

Study Note - 26

TAX ADMINISTRATION

This Study Note includes

26.1 Tax Administration

26.1 TAX ADMINISTRATION

26.1.1 Income Tax Authorities [Section 119]

In order to discharge executive and administrative functions relating to the Act, the following Income-tax Authorities have been constituted –

(a) The Central Board of Direct Taxes;

(b) Directors General of Income-tax or Chief Commissioners of Income-tax;

(c) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals);

(d) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals);

(e) Joint Directors of Income-tax or Joint Commissioners of Income-tax;

(f) Deputy Director of Income-tax or Deputy Commissioner of Income-tax or Deputy Commissioner of Income-tax (Appeals);

(g) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax;

(h) Income-tax Officers;

(i) Tax Recovery Officers;

(j) Inspectors of Income-tax.

26.1.2 Appointment of Income-Tax Authorities [Section 117]

(1) The Central Government may appoint such persons as it thinks fit to be Income-tax Authorities.

(2) Without prejudice to the provisions of sub-section (1), and subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, the Central Government may authorize the Board, or a Director-General, a Chief Commissioner or a Director or a Commissioner to appoint Income-tax Authorities below the rank of an Assistant Commissioner or Deputy Commissioner.

(3) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an Income-tax Authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

26.1.3 Control of Income-Tax Authorities [Section 118]

The Board may, by notification in the Official Gazette, direct that any Income-tax Authority or authorities specified in the notification shall be subordinate to such other Income-tax Authority or authorities as may be specified in such notification.

26.1.4 CENTRAL BOARD OF DIRECT TAXES (CBDT) [Sec. 119]

The Central Board of Direct Taxes (CBDT) has been constituted under the Central Board of Revenue Act, 1963. It works under the Ministry of Finance. The important powers of CBDT are:

(i) To make rules for carrying out purposes of the Act [Sec. 295].

(ii) To decide jurisdiction of the Income-tax Authorities [Sec. 120].

(iii) To issue instructions, orders and directions to other Income-tax Authorities for proper administration of this Act and all other persons employed in the execution of this Act. However, it cannot issue instructions to the Commissioner of Income-tax (Appeals). It cannot issue a direction to any Income-tax Authority to dispose of a case in a particular manner. [Sec. 119].

(iv) To declare an organization as company [Sec. 2(17) (iv)].

(v) To entertain objections in respect of search and seizure under the Act. [Sec. 132(1)].

(vi) To relax the provisions of Sections 139, 143, 144, 147, 148, 154, 155, 158BFA, 201(1A), 210, 211, 234A, 234B, 234C, 271 and 273 or otherwise [Section 119(2)(a)].

(vii) Power of relaxing any requirement contained in Chapter IV (provisions for computation of income under various heads) or Chapter VI-A (provisions for deductions from Gross Total Income) [Section 119(2)(c)].

(viii) Issue such general or special orders for relaxation of the provisions of sections relating to FBT viz; 115WD, 115WE, 115WF, 115WG, 115WH, 115WJ and 115WK [Section 119(2)(a)].

(ix) Prescribe categories of transactions and documents pertaining to business or profession, where quoting of PAN is necessary [Sec, 139A(4)].

(x) Prescribing qualifications for Authorized Representatives [Sec. 288].

(xi) Condone delay for seeking CBDT's approval, where it is required [Sec. 293B] and authorize any Income Tax Authority not being Commissioner of Income-tax (Appeals), to admit belatedly ant claim for exemption, deduction, refund or relief [Section 119(2)(b)].

(xii) The Act also assign powers and functions in Section 2(18), 11(1)(C), 35(3), 36(1)(iv), 44AA, 80RRA, 80U, 118, 124(2), 127, 132(1), 138, 197(2A), 200, 228A, 246, 273A(2), 279, the Second Schedule and the Fourth Schedule.

Circulars issued by the CBDT are legally binding on the revenue and this binding character attaches to the circulars even if they are found not in accordance with the correct interpretation of a statutory provision and they depart or deviate from such construction - *K.P. Varghese* vs. *ITO* 131 ITR 597 (SC).

It is well-settled that circulars can bind the ITO but will not bind the appellate authority or the Tribunal or the Court or even the assessee - *CIT* vs. *Hero Cycles (P.) Ltd.* 228 ITR 463 (SC).

CBDT has power, interalia, to tone down the rigor of the laws and ensure fair enforcement of its provision by issuing circular.

Circular contemplated in Sec.119 (2)(a) cannot be adverse to the assessee. Power is given for the purpose of just, proper and efficient management of work of assessment. Circular, however are not meant for contradicting or nullifying any provision of the statue. They are meant to mitigate the rigor of application of a particular provision. So long as such a circular is in favour, it would be binding on the departmental authorities in view of the provision of sec. 119 to ensure a uniform and proper administration & application of the IT Act - UCO Bank vs. CIT 237 ITR 899 (SC).

26.1.5 Director General/Director

The Central Government has power to appoint Director General and Director [Sec. 117]. The CBDT authorize them to perform such functions as may be assigned to them by [Sec. 120]. The powers enjoyed by them include:

(a) to give instructions to Income Tax Officer [Sec. 119(2)]

(b) to enquire or investigate into concealment [Sec. 131(1A)]

(c) to search and seizure [Sec. 132].

(d) To requisition of books of accounts, etc. [Sec. 132A].

(e) To survey [Sec. 133A].

(f) To make an enquiry [Sec. 135].

26.1.6 Commissioners of Income-tax

Commissioners of Income-tax are appointed by the Central Government. A Commissioner of Income-tax enjoys the following administrative as well as judicial powers and functions under the different provisions of the Act.

(i) powers pertain to registration of a charitable trust or institution [Sec. 12A(a)];

(ii) approval of an annuity contract [Sec. 80E];

(iii) appointment of Income-tax Officers (Class II) and Inspectors of Income-tax [Sec. 117(2)];

(iv) instructions to subordinate authorities [Sec. 119] ;

(v) shifting of jurisdiction [Sec. 125] ;

(vi) transfer of cases [Sec. 127] ;

(vii) assignment of functions to Inspectors of Income-tax [Sec. 1281;

(viii) discovery, production of evidence [Sec. 131] ;

(ix) search and seizure [Sec. 132] ;

(x) requisite books of account [Sec. 132A] ;

(xi) any enquiry [Sec. 135] ;

(xii) disclosure of information respecting assesses [Sec.138] ;

(xiii) granting sanction for issue of notice to reopen assessment after the expiry of 4 years [Sec. 151(2)];

(xiv) authorising Income-tax Officers to recover any arrear of tax due from an assessee by distraint and sale of his movable property [Sec. 226(5)] ;

(xv) set off of refunds against tax remaining payable [Sec. 245] ;

(xvi) directing the Assessing Officer to prefer an appeal to Appellate Tribunal against the order of the Commissioner (Appeals) [Sec. 253(2)] ;

(xvii) appeal to High Court [Sec. 260A] ;

(xviii) revision of orders passed by Assessing Officer which are prejudicial to the revenue [Sec. 263] ;

(xix) revision of orders passed by subordinate authorities on his own motion or on the application of the assessee [Sec. 264] ;

(xx) reduction or waiver of penalty in certain cases [Sec. 273A] ;

(xxi) to award and withdraw recognition to provident funds [Schedule IV].

26.1.7 Commissioner of Income-Tax (Appeals)

Appointment is made by the Central Government. The following are important powers:

(i) Power regarding discovery, production of evidence etc. [Sec. 131]

(ii) Power to condone delay in filing of appeal.

(iii) Power to call for information. [Sec. 133]

(iv) Power to inspect register of companies. [Sec. 134]

(v) Power to dispose of an appeal and to confirm, reduce, enhance or annul the assessment. [Sec. 251]

(vi) Power to impose a penalty. [Sec. 271 and 272A]

(vii) Power to set off any refund against arrears of tax. [Sec. 245].

(viii) The Commissioner (Appeals) has inherent powers to stay recovery proceedings *Paulsons Litho Works* vs. *ITO* 208 ITR 676 (Mad.).

26.1.8 Joint Commissioner of Income Tax

They are appointed by the Central Government. They enjoy the following powers :-

(i) Power regarding discovery, production of evidence, etc. [Sec. 131]

(ii) Power of search and seizure, if authorised. [Sec. 132]

(iii) Power to call for information. [Sec. 133]

(iv) Power to survey [Sec. 133A]

(v) Power to make an enquiry [Sec. 135]

(vi) Power to collect certain information [Sec. 133B]

(vii) Power to inspect register of companies. [Sec. 134]

(viii) Power to sanction reopening of assessment after the expiry of 4 years, if the assessment is made under any section other than sections 143(3) and 147.

(ix) Instruction to the Assessign officer [Sec. 119(3)].

26.1.9 Assessing Officer

'Assessing Officer' means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under Section 120 or any other provision of this Act, and the *Additional Commissioner or Additional Director or* Joint Commissioner or Joint Director who is directed under the said section 120 to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act [Sec. 2(7A)]

The following are some of the powers of Income-tax Officers —

(i) Power regarding discovery, production of evidence, etc. [Sec. 131]

(ii) Power of search and seizure, if authorised. [Sec. 132]

(iii) Power to requisition books of accounts. [Sec. 132A]

(iv) Power to apply the assets seized and retained u/s. 132 in satisfaction of the existing liabilities of the assessee under Direct Taxes Act. [Sec. 132B]

(v) Power to call for information. [Sec. 133]

(vi) Power of survey [Sec. 133A].

(vii) Power to collect certain information- [Sec. 133B]

(viii) Power to inspect register of companies. [Sec. 134]

(ix) Power to allot Permanent Account Number. [Sec. 139A]

(x) Power to impose penalties; to issue direction for setting accounts audited [Sec. 142]

(xi) Power to make assessment. [Sec. 143, 144]

(xii) Power to reassess income which has escaped assessment. [Sec. 147]

(xiii) Power to rectify mistakes apparent from the records, either on his own or on an application made by the assessee. [Sec. 154]

(xiv) Power to grant a certificate to an assessee to receive a payment without deduction of tax at source or deduction of tax at source at a lower rate than prescribed [Sec. 197]

(xv) Power to grant refund. [Sec. 237, 240]

26.1.11 Inspectors of Income Tax

Inspectors are appointed by the Commissioner of Income Tax.

They have to perform such functions as are assigned to them by the Commissioner or any other Income-tax Authority under which they are appointed to perform their functions.

In case of survey, inspectors have power to inspect books of account and other documents, place marks of identification, to take statements at any function, ceremony or event [Sec. 133A].

26.1.12 Change of incumbent of an office [Section 129]

Whenever in respect of any proceeding under this Act an Income-tax Authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the Income-tax Authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.

Study Note - 27

DOUBLE TAXATION RELIEF

This Study Note includes

27.1 AGREEMENT WITH FOREIGN COUNTRIES OR SPECIFIED TERRITORIES [SECTION 90]

(1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India,-

(a) for the granting of relief in respect of-

(i) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case may be, or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee even if such provisions are not beneficial to him [w.e.f. 1-4-2016].

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

(4) An assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate of his being a resident] in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.

(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed.

Explanation 1 -For the removal of doubts, it is hereby declared that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company.

Explanation 2 -For the purposes of this section, "specified territory" means any area outside India which may be notified as such by the Central Government.

Explanation 3 -For the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and the notification issued thereunder being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.

27.2 ADOPTION BY CENTRAL GOVERNMENT OF AGREEMENT BETWEEN SPECIFIED ASSOCIATIONS FOR DOUBLE TAXATION RELIEF [Section 90A]

(1) Any specified association in India may enter into an agreement with any specified association in the specified territory outside India and the Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for adopting and implementing such agreement-

(a) for the granting of relief in respect of-

(i) income on which have been paid both income-tax under this Act and income-tax in any specified territory outside India; or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that specified territory outside India to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that specified territory outside India, or

(c) for exchange of information for the prevention of evasion or avoidance of income- tax chargeable under this Act or under the corresponding law in force in that specified territory outside India, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that specified territory outside India.

(2) Where a specified association in India has entered into an agreement with a specified association of any specified territory outside India under sub-section (1) and such agreement has been notified under that sub-section, for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee even if such provisions are not beneficial to him [w.e.f. 1-4-2016].

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

(4) An assessee, not being a resident, to whom the agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate of his being a resident] in any specified territory outside India, is obtained by him from the Government of that specified territory.

(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed.

Explanation 1- For the removal of doubts, it is hereby declared that the charge of tax in respect of a company incorporated in the specified territory outside India at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such company.

Explanation 2 -For the purposes of this section, the expressions-

(a) "specified association" means any institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or the laws of the specified territory outside India and which may be notified as such by the Central Government for the purposes of this section;

(b) "specified territory" means any area outside India which may be notified as such by the Central Government for the purposes of this section.

Explanation 3 -For the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and the notification issued there-under being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.

27.3 COUNTRIES WITH WHICH NO AGREEMENT EXISTS [Section 91]

(1) If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

(2) If any person who is resident in India in any previous year proves that in respect of his income which accrued or arose to him during that previous year in Pakistan he has paid in that country, by deduction or otherwise, tax payable to the Government under any law for the time being in force in that country relating to taxation of agricultural income, he shall be entitled to a deduction from the Indian income-tax payable by him-

(b) of the amount of the tax paid in Pakistan under any law aforesaid on such income which is liable to tax under this Act also; or

(c) of a sum calculated on that income at the Indian rate of tax;

whichever is less.

(3) If any non-resident person is assessed on his share in the income of a registered firm assessed as resident in India in any previous year and such share includes any income accruing or arising outside India during that previous year (and which is not deemed to accrue or arise in India) in a country with which there is no agreement under section 90 for the relief or avoidance of double taxation and he proves that he has paid income-tax by deduction or otherwise under the law in force in that country in respect of the income so included he shall be entitled to a deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income so included at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

Explanation -In this section,-

(i) the expression "Indian income-tax" means income-tax charged in accordance with the provisions of this Act;

(ii) the expression "Indian rate of tax" means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of this Act but before deduction of any relief due under this Chapter, by the total income;

(iii) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country;

(iv) the expression "income-tax" in relation to any country includes any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country.

Tax Residency Certificate [TRC Section 90 & 90A]

For claiming relief under DTAA – section 90 & 90A empowers the Central Government to enter into Double Taxation Avoidance Agreement with the foreign countries / foreign territories.

With effect from 1st April 2013, to avail the benefit, submission of TRC would be necessary.

A simple certificate of being resident of a country is required to avail the benefits of DTAA.

ILLUSTRATIONS ON DOUBLE TAXATION RELIEF

Illustration 1: R a resident Indian, has derived the following income for the Previous Year relevant to the Assessement Year 2016-2017.

Particulars	Amount (₹)
Income from profession	3,00,000
Share of income from a partnership in country X (tax paid in Country X for this income in equivalent Indian Rupees 25,000)	2,00,000
Commission income from a concern in country Y (tax paid in country Y @ 20%, converted in equivalent Indian Rupees)	40,000
Interest on scheduled banks [other than savings account]	20,000

R wishes to know whether he is eligible to any double taxation relief, if so, its quantum. India does not have any Double Taxation Avoidance Agreement with countries X and Y.

Solution:

(1) Computation of Total Income for the Assessment Year 2016-17

Particulars	Amount (₹)	Amount (₹)
Income from Business:		
Income from profession	3,00,000	
Share income in partnership firm in country X	2,00,000	5,00,000
Income from Other Sources:		
Interest from schedule bank	20,000	
Commission earned in country Y, assumed from other sources	40,000	60,000
Total Income		**5,60,000**

(2) Computation of Tax Liability on Total Income for the Assessment Year 2016-17

Particulars	Amount (₹)
Tax on Total Income of ₹ 5,60,000	37,000
Add: Surcharge on Income Tax (assuming total income is less than one crore)	Nil
Add: Education Cess @ 2%	740
Add: Secondary and Higher Education Cess @ 1%	370
	38,110
Less: Double taxation relief : (2,00,000 + 40,000) = 2,40,000 × 6.805%	16,332
Tax Payable	**21,778**
Rounded off U/S 288B	**21,780**

Note: (i) Average rate of tax in the foreign country = [(25,000 + 8,000)/ (2,00,000 +40,000)] = 13.75%

(ii) Average rate of tax in India:

= 38,110/5,60,000 x 100 = 6.805%

Whichever is less, is applicable

Illustration 2: Mr. Prasad, ordinarily resident in India, furnished the following particulars of his income/ savings during the Previous Year 2015-2016.

(i)	Income from foreign business (Including ₹ 2,00,000 from business connection in India) accruing outside India	12,00,000
(ii)	Loss from Indian business	(–) 2,00,000
(iii)	Income from house property	4,00,000
(iv)	Dividends gross from Indian companies	60,000
(v)	Deposit in Public Provident Fund	70,000
(vi)	Tax paid in foreign country	2,50,000

There is no double taxation avoidance treaty. Compute the tax liability

Solution:

(1) Computation of Total Income for the Assessment Year 2016-17

Particulars	Amount (₹)	Amount (₹)
1. Income from House Property		4,00,000
2. Income from Business:		
(a) Income from Indian Business	(2,00,000)	
(b) (i) Income from foreign business accruing or arising outside India	10,00,000	
(ii)income from foreign business deemed to accrue or arise in India	2,00,000	10,00,000
3. Income from other sources		
Dividends from Indian Companies- exempted u/s 10(34)		Nil
Gross Total Income		14,00,000
Less: Deduction for approved savings u/s 80C – PPF deposits		70,000
Total Income		13,30,000

(2) Computation of Tax liability on Total Income for the Assessment Year 2016-17

Particulars	Amount (₹)
Tax on Total Income of ₹ 13,30,000	2,24,000
Add: Surcharge on Income Tax (assuming total income is less than one crore)	Nil
Add: Education Cess @ 2%	4,480
Add: Secondary and Higher Education Cess @ 1%	2,240
	2,30,720
Less: Double taxation relief : 10,00,000 x 17.347%	1,73,470
Tax Payable	57,250

Note: 1. Relief is allowed on the doubly taxed income either at average rate of Indian tax or average rate of foreign income tax, whichever is lower:-

(a) Average rate of Indian income tax : 2,30,720/ 13,30,000 × 100 = 17.347%

(b) Average rate of foreign income tax: (2,50,000/12,00,000) × 100 = 20.833%

2. The amount of doubly taxed income has been worked out as under:

Income from foreign business, accruing outside India	12,00,000
Less: Income from business connection deemed to accrue or arise in India which is not entitled to double taxation relief.	2,00,000
Doubly taxed income	10,00,000

3. Loss from Indian business has been set-off against profits from foreign business which is deemed to accrue or arise in India. The mode of set-off increases the amount of double taxation relief.

Illustration 3: The Income-tax Act, 1961 provides for taxation of a certain income earned by X. The Double Taxation Avoidance Agreement, which applies to X, excludes the income earned by X from the purview of tax. Is X liable to pay tax on the income earned by him? Discuss.

Solution:

Where any conflict arises between the provisions of the Double Taxation Avoidance Agreement and the Income-tax Act, 1961, the provisions of the Double Taxation Avoidance Agreement would prevail over those of the Income-tax Act. X is, therefore, not liable to pay tax on the income earned by him.

Illustration 4: Explain briefly the proposition of law in case of any conflict between the provisions of the Double Taxation Avoidance Agreement (DTAA) and the Income-tax Act, 1961.

Solution:

Where there is conflict between the provision as contained in the tax treaty and the provisions of Income Tax Act, a payer can take advantage of those provisions which are more beneficial to him. Thus, tax treaties override the provisions of Income Tax Act which can be enforced by the Appellate Authorities/ Courts.

Illustration 5: Rupesh, a resident both in India and Malaysia in Previous Year 2015-2016, owns immoveable properties (including residential house) at Malaysia and India. He has earned income of ₹ 50 lakh from rubber estates in Malaysia during the Previous Year 2015-2016. He also sold some property in Malaysia resulting in short-term capital gain of ₹ 10 lakh during the year. Rupesh has no permanent establishment of business in India. However, he has derived rental income of ₹ 6 lakh from property let out in India and he has a house in Lucknow where he stays during his visit to India. The Article 4 of the Double Taxation Avoidance Agreement between India and Malaysia provides that where an individual is a resident of both the Contracting States, he shall be deemed to be resident of the Contracting State in which he has permanent home available to him. If he has permanent home in both the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests).

You are required to state with reasons whether the business income of Rupesh arising in Malaysia and the capital gains in respect of sale of the property situated in Malaysia can be taxed in India.

Solution:

Where the Central Government has entered into an agreement with the Government of any other country for granting relief to tax or for avoidance of double taxation, the provisions of the Income-tax Act, 1961 are applicable in such case to the extent they are more beneficial to the assessee.

Rupesh has a residential house both in Malaysia and India. Thus, he has a permanent home in both the countries. However, he has no permanent establishment of business in India. The Double Taxation Avoidance Agreement (DTAA) with Malaysia provides that where an individual is a resident of both countries, he is deemed to be resident of that country in which he has a permanent home and if he has a permanent home in both the countries, he is deemed to be resident of that country, which is the centre of his vital interests, i.e. the country with which he has closer personal and economic relations. Rupesh owns rubber estates in Malaysia from which he derives business income. However, Rupesh has no permanent establishment of his business in India. Therefore, his personal and economic relations with Malaysia are closer, since Malaysia is the place where:–

(a) the property is located ; and

(b) the permanent establishment (PE) has been set-up. Therefore, he is deemed to be resident of Malaysia for A.Y. 2016-2017.

So, in this case, Rupesh is not liable to Income tax in India for Assessement Year 2016-2017 in respect of business income and capital gains arising in Malaysia.

Illustration 6: Ms. Sania, a resident Indian, furnishes the details for the Assessement Year 2016-2017 :

	Particulars	Amount (₹)
(1)	Income from profession	1,94,000
(2)	Share of income from a partnership in country X (tax paid in Country X for this income in equivalent Indian Rupees 8,000)	40,000
(3)	Commission income from a concern in country Y (tax paid in country Y @ 20%, converted in equivalent Indian Rupees	30,000
(4)	Interest on scheduled banks [other than savings account]	20,000

Ms. Sania wishes to know whether she is eligible to any double taxation relief, if so, its quantum. India does not have any Double Taxation Avoidance Agreement with countries X and Y.

Solution :

(1) Computation of Total Income for the Assessment Year 2016-17

Particulars	Amount (₹)	Amount (₹)
(a) Income from Business or Profession:		
(i) Income from Profession	1,94,000	
(ii) Share of income in partnership firm in country X	40,000	2,34,000
(b) Income from other sources:		
(i) Interest from scheduled bank	20,000	
(ii) Commission earned in Country Y, assumed from other sources	30,000	50,000
Total Income		**2,84,000**

(2) Computation of Tax Liability on Total Income for the Assessment Year 2016-17

Particulars	Amount (₹)
Tax on Total Income of ₹ 2,84,000	3,400
Add: Surcharge on Income Tax	Nil
Add: Education Cess @ 2%	68
Add: Secondary and Higher Education Cess @ 1%	34
	3,502
Less: Double taxation relief : 70,000 x 1.233%	(863)
Tax Payable	**2,639**
Rounded off u/s 288B	**2,640**

Notes : (i) Average rate of tax in the foreign country = 20% i.e. [(₹ 8,000 + 20% of ₹ 30,000)/ (40,000+30,000)] ×100

(ii) Average rate of tax in India = (3,502/2,84,000) × 100 = 1.233%

Illustration 7: Mr. B is a musician deriving income from foreign concerts performed outside India, ₹ 50,000. Tax of ₹ 10,000 was deducted at source in the country where the concerts were given. India does not have any agreement with that country for avoidance of double taxation. Assuming that Indian income of B is ₹ 2,50,000, what is the relief due to him under Sec. 91 for the Assessement Year 2016-2017.

Solution:

(1) Computation of Total Income for the Assessment Year 2016-17

Particulars	Amount (₹)
Indian Income	2,50,000
Foreign Income	50,000
Gross Total Income or Total Income	3,00,000

(2) Computation of Tax Liability on Total Income for the Assessment Year 2016-17

Particulars	Amount (₹)
Tax on Total Income	5,000
Add: Education Cess @ 2%	100
Add: Secondary and Higher Education Cess @ 1%	50
Less: Double taxation relief u/s 91 = ₹ 50,000 × 1.72%	860
Tax Payable	**4,290**

Notes : 1. Average rate of Indian income tax: (5,150 × 3,00,000) × 100 = 1.72%

2. Average rate of foreign income tax:

Relief is allowed either at the average rate of Indian Income Tax or the average rate of Foreign Income Tax = (10,000/50,000) × 100 = 20%

whichever is lower. Accordingly, the relief has been allowed at the average rate of Indian Income tax.

Illustration 8: A resident assessee, earned foreign exchange of ₹ 78,800. The foreign income was also subjected to tax deduction of ₹ 8,800 at source in the foreign country with which India had no agreement for avoidance of double taxation. The assessee claimed relief under Sec. 91 of the Income-tax Act in respect of the whole foreign income. Discuss his contention with reference to decided case laws.

Solution:

Where any income is taxed outside India as well as in India, a resident assessee is entitled to claim double taxation relief on such doubly taxed income provided such income is not deemed to accrue or arise in India. If any income arising outside India, is not subjected to tax in India, such foreign income does not form part of doubly taxed income for the purposes of Sec. 91. The expression "doubly taxed income" refers to foreign income which also suffered tax in India.

Where any foreign income, taxed outside India, is also eligible to deduction in computing total income in India, double taxation relief would be allowed only on such income as forms part of total income.

On the amount of doubly taxed income, Income-tax is calculated at the Indian rate of tax and rate of tax of the foreign country. The foreign tax rate has to be calculated separately for each country – CIT vs. Bombay Burmah Trading Corpn. Ltd. [2003] 126 Taxman 403 (Bom.)

Double taxation relief will be allowed on such doubly taxed income either at the average rate of Foreign Income Tax or Indian Income Tax, whichever is lower out of the two.

Section - B
WEALTH TAX

Study Note - 28

WEALTH TAX

Levy of Wealth Tax under the Wealth Tax Act has been abolished with effect from the Assessment Year 2016-2017

Section - C
INTERNATIONAL TAXATION & TRANSFER PRICING

Study Note - 29

TAXATION OF INTERNATIONAL TRANSACTIONS

This Study Note includes

29.1 INTERNATIONAL TAXATION AND TRANSFER PRICING – INTRODUCTION

The provision relating to levy and collection of tax liability on international transactions is empowered through Sec.92 to 92F of the Income Tax Act, 1961. These provisions were inserted by the Finance Act, 1976. With the opening up of global economy, apart from goods, there has been transfer or transaction relating to rendering of services cross-border. There is a magnanimous increase in the volume of cross-border transactions, which calls for attracting the provisions of Indirect Taxes in India. There arises the necessity and therefore leads to computation of reasonable, fair and equitable profit and tax in India are not being eroded of Indian tax revenue. Any income arising from an international transaction shall have to be computed having regard to arm's length price.

29.2 INTERNATIONAL TRANSACTION

Computation of income from international transaction having regard to arm's length price [Sec 92]

(1) Any income arising from an international transaction shall be computed having regard to the arm's length price.

Explanation.- For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price.

(2) Where in an international transaction [or specified domestic transaction], two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

(2A) Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.

(3) The provisions of this section shall not apply in a case where the computation of income under sub-section (1) [or sub-section (2A)] or the determination of the allowance for any expense or interest under [sub-section (1) or sub-section (2A)], or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2) [or sub-section (2A)], has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction 78[or specified domestic transaction] was entered into.

As per Sec. 92B of the Income Tax Act,1961,

(1) For the purposes of this section and sections 92, 92C, 92D and 92E, "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

(2) A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be deemed to be a transaction entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not.

Explanation: For the removal of doubts, it is hereby clarified that—

(i) the expression "international transaction' shall include

(a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;

(b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

(c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;

(d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

(e) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

(ii) the expression "intangible property" shall include

(a) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;

(b) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;

(c) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;

(d) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;

(e) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schema-tics, blueprints, proprietary documentation;

(f) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;

(g) contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;

(h) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;

(i) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;

(j) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;

(k) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;

(l) any other similar item that derives its value from its intellectual content rather than its physical attributes.]

Meaning of specified domestic transaction [Sec 92BA]

For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:

(i) any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A;

(ii) any transaction referred to in section 80A;

(iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;

(iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;

(v) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or

(vi) any other transaction as may be prescribed,

and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of ₹ 5 crore upto 31.3.2016 or ₹ 20 crore w.e.f. 1.4.2016 onwards.

Reference to Transfer Pricing Officer [Sec 92CA]

(1) Where any person, being the assessee, has entered into an international transaction [or specified domestic transaction] in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Commissioner, refer the computation of the arm's length price in relation to the said international transaction [or specified domestic transaction] under section 92C to the Transfer Pricing Officer.

(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction 96[or specified domestic transaction] referred to in sub-section (1).

(2A) Where any other international transaction [other than an international transaction referred under sub-section (1)], comes to the notice of the Transfer Pricing Officer during the course of the proceedings before him, the provisions of this Chapter shall apply as if such other international transaction is an international transaction referred to him under sub-section (1).

(2B) Where in respect of an international transaction, the assessee has not furnished the report under section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding before him, the provisions of this Chapter shall apply as if such transaction is an international transaction referred to him under sub-section (1).

(2C) Nothing contained in sub-section (2B) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year, proceedings for which have been completed before the 1st day of July, 2012.

(3) On the date specified in the notice under sub-section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction '[or specified domestic transaction] in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer and to the assessee.

(3A) Where a reference was made under sub-section (1) before the 1st day of June, 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (1) is made on or after the 1st day of June, 2007, an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in section 153, or as the case may be, in section 153B for making the order of assessment or reassessment or re-computation or fresh assessment, as the case may be, expires.

(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C in conformity with the arm's length price as so determined by the Transfer Pricing Officer.

(5) With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him under sub-section (3), and the provisions of section 154 shall, so far as may be, apply accordingly.

(6) Where any amendment is made by the Transfer Pricing Officer under sub-section (5), he shall send a copy of his order to the Assessing Officer who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

(7) The Transfer Pricing Officer may, for the purposes of determining the arm's length price under this section, exercise all or any of the powers specified in clauses (a) to (of sub-section (1) of section 131 or sub-section (6) of section 133 '[or section 133A].

Explanation: For the purposes of this section, "Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board' to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons.]

Power of Board to make safe harbour rules [Section 92CB]

(1) The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules.

(2) The Board may, for the purposes of sub-section (1), make rules for safe harbour.

Explanation.- For the purposes of this section, "safe harbor" means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

Advance pricing agreement [92CC]

(1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person.

(2) The manner of determination of arm's length price referred to in sub-section (1), may include the methods referred to in sub-section (1) of section 92C or any other method, with such adjustments or variations, as may be necessary or expedient so to do.

(3) Notwithstanding anything contained in section 92C or section 92CA, the arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered.

(4) The agreement referred to in sub-section (1) shall be valid for such period not exceeding five consecutive previous years as may be specified in the agreement.

(5) The advance pricing agreement entered into shall be binding

(a) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and

(b) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

(6) The agreement referred to in sub-section (1) shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

(7) The Board may, with the approval of the Central Government, by an order, declare an agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

(8) Upon declaring the agreement void ab initio,

(a) all the provisions of the Act shall apply to the person as if such agreement had never been entered into; and

(b) notwithstanding anything contained in the Act, for the purpose of computing any period of limitation under this Act, the period beginning with the date of such agreement and ending on the date of order under sub-section (7) shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation, referred to in any provision of this Act, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(9) The Board may, for the purposes of this section, prescribe' a scheme specifying therein the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

(9A) The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm's length price or specify the

manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years referred to in sub-section (4), and the arm's length price of such international transaction shall be determined in accordance with the said agreement.

(10) Where an application is made by a person for entering into an agreement referred to in sub-section (1), the proceeding shall be deemed to be pending in the case of the person for the purposes of the Act.

Effect to advance pricing agreement [Section 92CD]

(1) Notwithstanding anything to the contrary contained in section 139, where any person has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement.

(2) Save as otherwise provided in this section, all other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139.

(3) If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1), proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the agreement.

(4) Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return in accordance with the provisions of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished.

(5) Notwithstanding anything contained in section 153 or section 153B or section 144C,

(a) the order of assessment, reassessment or recomputation of total income under sub-section (3) shall be passed within a period of one year from the end of the financial year in which the modified return under sub-section (1) is furnished;

(b) the period of limitation as provided in section 153 or section 153B or section 144C for completion of pending assessment or reassessment proceedings referred to in sub-section (4) shall be extended by a period of twelve months.

(6) For the purposes of this section,

(i) "agreement" means an agreement referred to in sub-section (1) of section 92CC;

(ii) the assessment or reassessment proceedings for an assessment year shall be deemed to have been completed where

(a) an assessment or reassessment order has been passed; or

(b) no notice has been issued under sub-section (2) of section 143 till the expiry of the limitation period provided under the said section.]

Maintenance and keeping of information and document by persons entering into an international transaction [or specified domestic transaction] [Sec 92D]

(1) Every person who has entered into an international transaction &[or specified domestic transaction] shall keep and maintain such information and document in respect thereof, as may be prescribed'.

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction t0[or specified domestic transaction] to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard :

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

Report from an accountant to be furnished by persons entering into international transaction [or specified domestic transaction].

92E. Every person who has entered into an international transaction [or specified domestic transaction] during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed.

Definitions of certain terms relevant to computation of arm's length price, etc. [Sec 92F]

In sections 92, 92A, 92B, 92C, 92D and 92E, unless the context otherwise requires,

(i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;

(ii) "arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions;

(iii) "enterprise" means a person (including a permanent establishment of such person) who is, or has been, or is proposed to be, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights, or the provision of services of any kind,12[or in carrying out any work in pursuance of a contract,] or in investment, or providing loan or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, whether such activity or business is carried on, directly or through one or more of its units or divisions located at the same place here the unit or division or subsidiary enterprise is located or at a different place or places;

(iiia) "permanent establishment", referred to in clause includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;

(iv) "specified date" shall have the same meaning as assigned to "due date" in Explanation 2 below sub-section (1) of section 139;]

(v) "transaction" includes an arrangement, understanding or action in concert,

(A) whether or not such arrangement, understanding or action is formal or in writing; or

(B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.]

Avoidance of income-tax by transactions resulting in transfer of income to non-residents [Sec 93]

(1) Where there is a transfer of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income becomes payable to a non-resident, the following provisions shall apply:

(a) where any person has, by means of16 any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a non-resident person which, if it were income of the first-mentioned person, would be chargeable to income-tax, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of the first-mentioned person for all the purposes of this Act;

(b) where, whether before or after any such transfer, any such first-mentioned person receives or is entitled to receive any capital sum the payment whereof is in any way connected with the transfer or any associated operations, then any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a non-resident shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

Explanation: The provisions of this sub-section shall apply also in relation to transfers of assets and associated operations carried out before the commencement of this Act.

(2) Where any person has been charged to income-tax on any income deemed to be his under the provisions of this section and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

(3) The provisions of this section shall not apply if the first-mentioned person in sub-section (1) shows to the satisfaction of the "[Assessing] Officer that

(a) neither the transfer nor any associated operation had for its purpose'8 or for one of its purposes the avoidance of liability to taxation; or

(b) the transfer and all associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

Explanation: For the purposes of this section,

(a) references to assets representing any assets, income or accumulations of income include references to shares in or obligation of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;

(b) any body corporate incorporated outside India shall be treated as if it were a non-resident;

(c) a person shall be deemed to have power to enjoy the income of a non-resident if

(i) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first-mentioned person in sub-section (1), or

(ii) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or

(iii) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and assets which represent that income, or

(iv) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(v) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income;

(d) in determining whether a person has power to enjoy income, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(4) (a) "Assets" includes property or rights of any kind and "transfer" in relation to rights includes the creation of those rights ;

(b) "associated operation", in relation to any transfer, means an operation of any kind effected by any person in relation to

(i) any of the assets transferred, or

(ii) any assets representing, whether directly or indirectly, any of the assets transferred, or

(iii) the income arising from any such assets, or

(iv) any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets ;

(c) "benefit" includes a payment of any kind ;

(d) "capital sum" means-

(i) any sum paid or payable by way of a loan or repayment of a loan; and

(ii) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.

Avoidance of tax by certain transactions in securities [Sec 94]

(1) Where the owner of any securities (in this sub-section and in subsection (2) referred to as "the owner") sells or transfers those securities, and buys back or reacquires the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this sub-section, be deemed, for all the purposes of this Act, to be the income of the owner and not to be the income of any other person.

Explanation.- The references in this sub-section to buying back or reacquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to income-tax than he would have been under if the original securities had been bought back or reacquired.

(2) Where any person has had at any time during any previous year any beneficial interest in any securities, and the result of any transaction relating to such securities or the income thereof is that, in respect of such securities within such year, either no income is received by him or the income received by him is less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, then the income from such securities for such year shall be deemed to be the income of such person.

(3) The provisions of sub-section (1) or sub-section (2) shall not apply if the owner, or the person who has had a beneficial interest in the securities, as the case may be, proves to the satisfaction of the 20[Assessing] Officer

(a) that there has been no avoidance of income-tax, or

(b) that the avoidance of income-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any avoidance of income-tax by a transaction of the nature referred to in sub-section (1) or sub-section (2).

(4) Where any person carrying on a business which consists wholly or partly in dealing in securities, buys or acquires any securities and sells back or retransfers the securities, then, if the result of the transaction is that interest becoming payable in respect of the securities is receivable by him but is not deemed to be his income by reason of the provisions contained in sub-section (1), no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(5) Sub-section (4) shall have effect, subject to any necessary modifications, as if references to selling back or retransferring the securities included references to selling or transferring similar securities.

(6) The 20[Assessing] Officer may, by notice in writing, require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner or in which he had a beneficial interest at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether income-tax has been borne in respect of the interest on all those securities.

(7) Where

(a) any person buys or acquires any securities or unit within a period of three months prior to the record date;

(b) such person sells or transfers

(i) such securities within a period of three months after such date; or

(ii) such unit within a period of nine months after such date;]

(c) the dividend or income on such securities or unit received or receivable by such person is exempt,

then, the loss, if any, arising to him on account of such purchase and sale of securities or unit, to the extent such loss does not exceed the amount of dividend or income received or receivable on such securities or unit, shall be ignored for the purposes of computing his income chargeable to tax.

(8) Where

(a) any person buys or acquires any units within a period of three months prior to the record date;

(b) such person is allotted additional units without any payment on the basis of holding of such units on such date;

(c) such person sells or transfers all or any of the units referred to in clause (a) within a period of nine months after such date, while continuing to hold all or any of the additional units referred to in clause (b),

then, the loss, if any, arising to him on account of such purchase and sale of all or any of such units shall be ignored for the purposes of computing his income chargeable to tax and notwithstanding anything contained in any other provision of this Act, the amount of loss so ignored shall be deemed to be the cost of purchase or acquisition of such additional units referred to in clause (b) as are held by him on the date of such sale or transfer.

Explanation.- For the purposes of this section,

(a) "interest" includes a dividend ;

(aa) "record date" means such date as may be fixed by

(i) a company for the purposes of entitlement of the holder of the securities to receive dividend; or

(ii) a Mutual Fund or the Administrator of the specified undertaking or the specified company as referred to in the Explanation to clause (3.5) of section 10, for the purposes of entitlement of the holder of the units to receive income, or additional unit without any consideration, as the case may be;

(b) "securities" includes stocks and shares ;

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or in the manner in which they can be transferred;

(d) "unit" shall have the meaning assigned to it in clause (b) of the Explanation to section 115AB.]

Special measures in respect of transactions with persons located in notified jurisdictional area [Sec 94A]

(1) The Central Government may, having regard to the lack of effective exchange of information with any country or territory outside India, specify by notification in the Official Gazette such country or territory as a notified jurisdictional area in relation to transactions entered into by any assessee.

(2) Notwithstanding anything to the contrary contained in this Act, if an assessee enters into a transaction where one of the parties to the transaction is a person located in a notified jurisdictional area, then--

(i) all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A;

(ii) any transaction in the nature of purchase, sale or lease of tangible or intangible property or provision of service or lending or borrowing money or any other transaction having a bearing on the profits, income, losses or assets of the assessee including a mutual agreement or arrangement for allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided by or to the assessee shall be deemed to be an international transaction within the meaning of section 92B,

and the provisions of sections 92, 92A, 92B, 92C [except the second proviso to sub-section (2)], 92CA, 92CB, 92D, 92E and 92F shall apply accordingly.

(3) Notwithstanding anything to the contrary contained in this Act, no deduction,-

(a) in respect of any payment made to any financial institution located in a notified jurisdictional area shall be allowed under this Act, unless the assessee furnishes an authorisation in the prescribed form authorising the Board or any other income-tax authority acting on its behalf to seek relevant information from the said financial institution on behalf of such assessee; and

(b) in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified jurisdictional area shall be allowed under any other provision of this Act, unless the assessee maintains such other documents and furnishes such information as may be prescribed, in this behalf.

(4) Notwithstanding anything to the contrary contained in this Act, where, in any previous year, the assessee has received or credited any sum from any person located in a notified jurisdictional area and the assessee does not offer any explanation about the source of the said sum in the hands of such person or in the hands of the beneficial owner (if such person is not the beneficial owner of the said sum) or the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory, then, such sum shall be deemed to be the income of the assessee for that previous year.

(5) Notwithstanding anything contained in any other provisions of this Act, where any person located in a notified jurisdictional area is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVH-B, the tax shall be deducted at the highest of the following rates, namely:

(a) at the rate or rates iii force;

(b) at the rate specified in the relevant provisions of this Act;

(c) at the rate of thirty per cent.

(6) In this section,

(i) "person located in a notified jurisdictional area" shall include,

(a) a person who is resident of the notified jurisdictional area;

(b) a person, not being an individual, which is established in the notified jurisdictional area; or

(c) a permanent establishment of a person not falling in sub-clause (a) or sub-clause (b), in the notified jurisdictional area;

(ii) "permanent establishment" shall have the same meaning as defined in clause (iiia) of section 92F;

(iii) "transaction" shall have the same meaning as defined in clause (v) of section 92F.

29.3 ARM'S LENGTH PRINCIPLE

The arm's length principle seeks to ensure that transfer prices between members of an MNE ("controlled transactions"), which are the effect of special relationships between the enterprises, are either eliminated or reduced to a large extent. It requires that, for tax purposes, the transfer prices of controlled transactions should be similar to those of comparable transactions between independent parties in comparable circumstances ("uncontrolled transactions"). In other words, the arm's length principle is based on the concept that prices in uncontrolled transactions are determined by market forces and, therefore, these are, by definition, at arm's length. In practice, the "arm's-length price" is also called "market price". Consequently, it provides a benchmark against which the controlled transaction can be compared.

The Arm's Length Principle is currently the most widely accepted guiding principle in arriving at an acceptable transfer price. As circulated in 1995 OECD guidelines, it requires that a transaction between two related parties is priced just as it would have been if they were unrelated. The need for such a condition arises from the premise that intra-group transactions are not governed by the market forces like those between two unrelated entities. The principle simply attempts to place uncontrolled and controlled transactions on an equal footing.

29.3.1 Why Arm's Length Pricing?

The basic object of determining Arm's Length Price is to find out whether any addition to income is warranted or not, if the following situations arises:

(a) Selling Price of the Goods < Arm's Length Price

(b) Purchase Price > Arm's Length Price

Total Income as disclosed by an Assessee	XXXX
Add: Understatement of profit due to overstatement of purchase price	XXX
Add: Understatement of profit due to understatement of selling price	XXX
Total Income after Assessment	XXXX

29.3.2 Role of market forces in determining the "Arm's Length Price"

In case of transactions between Independent enterprises, the conditions of their commercial and financial relations (eg. The price of goods transferred or services provided and the conditions of the transfer or provision) are, ordinarily, determined by the market force.

Whereas,

In case of transactions between MNEs (Multinational Enterprises), their commercial and financial relations may not be affected by the external forces in the same way, although associated enterprises often seek to replicate the dynamics of the market forces in their dealings with each other.

29.3.3 Difficulties in applying the arm's length principle

The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are difficulties in applying this principle in a number of situations.

(a) The most serious problem is the need to find transactions between independent parties which can be said to be exact compared to the controlled transaction.

(b) It is important to appreciate that in an MNE system, a group first identifies the goal and then goes on to create the associated enterprise and finally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises.

(c) Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefits of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.

(d) The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).

(e) Arm's length principle involves a lot of cost to the group.

29.3.4 Terms used under different methods

(1) Transaction: As per Sec.92F(v) the term "transaction" which is defined to include an arrangement, understanding or action in concert, whether or not such arrangement, understanding or action is formal or in writing or whether or not it is intended to be enforceable by legal proceeding.

"Transaction" includes a number of closely linked transactions.

(2) "Uncontrolled Transaction": a transaction between enterprises other than associated enterprises, whether resident or non-resident.

(3) "Comparable Transaction": The OECD guidelines further states that an uncontrolled transaction is comparable to a controlled transaction (i.e. it is a comparable uncontrolled transaction) for purposes of the CUP method if one of the two conditions is met:

(i) None of the differences(if any) between the transactions being compared or between the enterprises undertaking those transactions could materially affect the price in the open market;

(ii) Reasonably accurate adjustments can be made to eliminate the material effects of such differences.

(4) International transaction : Sub-section (1) of Sec. 92B defines the term as follows:

"For the purposes of this section and sections 92, 92C, 92D and 92E, "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises."

(5) Tested Party: As per the OECD guidelines, the tested party is ought to be the enterprise that offers a higher degree of comparability or would require lesser adjustment with uncontrolled companies. Consequently, the enterprise that requires the least amount of adjustments as compared to potentially comparable companies should be the tested party. Hence, in most cases, the tested party will be the least complex of the controlled tax payers and will not own valuable intangible property or unique assets that distinguish it from potential uncontrolled comparables.

29.3.5 Use of Profit Level Indicator (PLI)

In trying to benchmark the results of the tested party with that of unrelated parties i.e. comparable companies, by applying the TNMM, it is important to use appropriate PLIs. The choice of PLI is dependent upon the following which also includes:

(a) the nature of the activities of the tested party,

(b) the reliability of the available financial data with respect to comparable companies,

(c) the extent to which a particular PLI is applicable to this data.

All PLIs not similar. The selection of the appropriate PLI depends on the structure and the business of the tested party. For example, Berry Ratio might be an apt PLI in case of the tax-payers that almost exclusively perform services and distribution activities. On the other hand, a manufacturing concern with an extensive capital investment in plant and equipment might require the application of the return on assets to determine the arm's length prices.

29.3.6 Use of Operating Margin

The operating margin (in this case the ratio of EBIT to Operating Revenue) is a profitability measure. EBIT is a measure of operating profit, which excludes the effect of company financing and taxation decisions as well as abnormal and extraordinary items.

The ratio is a useful indicator of comparative performance by showing the ability of a company to control its costs relative to its level of sales.

29.4 TRANSFER PRICING – CLASSIFICATION OF METHODS

In order to ensure that a transfer price meets the arm's length standard, the OECD (Organization for Economic Co-operation and Development) guidelines have indicated five transfer pricing methods that can be used. These methods fall in two categories:

(1) Traditional Transaction Methods;

(2) Transactional Profit Methods.

As per Sec.92C of the Income Tax Act, 1961, the methods for determining Arm's Length Price may be represented as under:

(1) Comparable Uncontrolled Price Method,

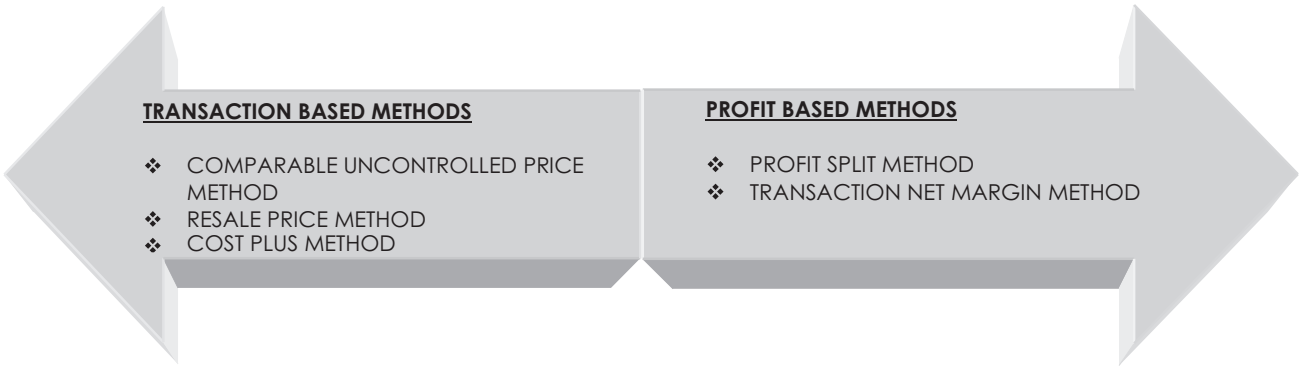
(2) Resale Price Method,

(3) Cost plus Method,

(4) Profit Split Method,

(5) Transactional Net Margin Method,

(6) Such other method as may be prescribed by the Board.



29.5 STEPS IN THE PROCESS OF COMPUTING ARM'S LENGTH PRICE – TRANSFER PRICING (TP) STUDY

Transfer Pricing Study (TP Study) is the prime document which is used during transfer pricing assessment. The statement of particulars to be furnished in the Annexure to Form No.3CEB for the Income Tax Act, 1961 assessment, has thirteen clauses.

The following are the steps to be followed:-

Step 1	Selection of comparable companies
Step 2	Use of different filters
Step 3	Screening of comparables based on FAR
Step 4	Use of Power under Indirect Tax laws [special reference to Sec.133(6) of the Income Tax Act,1961]
Step 5	Adjustments
Step 6	3% Safe Harbour

The steps may be enumerated as follows:

Step 1: Selection of Comparable Companies

The first step for doing this study is to select comparable companies. This can be selected in the following four ways:-

(a) Industry-wise selection

(b) Product-wise selection

(c) NIC Code-wise selection

(d) Segment-wise selection

The data relating to the financial year in which the international transaction has been entered into must be used in analyzing the comparability of an uncontrolled transaction with an international transaction.

Step 2: Use of different filters

Once there is a selection of comparable companies, the next step is to filter these companies with the use of quantitative and qualitative filters. The following filters are also used sometimes:

(a) Companies whose data is not available for the relevant year

(b) Companies for which sufficient financial data is not available to undertake analysis

(c) Different financial year filter

(d) Turnover filter

(e) Service Income filter

(f) Export filter

(g) Diminishing Loss filter

(h) Related party filter

(i) Companies that had exceptional year/(s) of operation

(j) Employee cost filter

(k) Onsite and offsite filter

(l) Fixed Asset filter

(m) Research & Development Expense filter

(n) Income Tax filter

Step 3: Screening of comparables based on FAR

Comparability of an international transaction with an uncontrolled transaction shall have to be judged with relevance to the following factors:

(a) The specific characteristics of the property transferred or services provided in either transaction;

(b) FAR Analysis- the (F) functions performed, taking into account (A)assets employed or to be employed or the (R) risks assumed by the respective parties to the transactions;

(c) The contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions;

(d) Conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, overall economic development and level of competition and whether the markets are wholesale or retail.

There may arise situation, where it requires further analysis of the following factors:-

(i) Is there a public issue in the relevant year or previous year?

(ii) Are the entity's profits exempted from tax?

(iii) Is there any merger/de-merger, etc., during the relevant time?

(iv) Is the depreciation policy different?

(v) Is there a wide difference between various segments' profitability?

(vi) Is the area of operation, i.e. geography different?

(vii) Is the volume of operation different?

Step 4: Use of power under Indirect Tax Laws

This power is usually used by the Revenue Department/Authorities, with a special reference to Sec.133(6) of the Income Tax Act,1961. The authorities may exercise such powers for getting details which are generally not available in the annual reports of the companies. This power is used more in the earlier years.

Step 5: Adjustments

Based on specific characteristics of the property transferred or the services rendered in either transaction and the contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions. The following enterprise level and transaction level adjustments are suggested:

(a) Functional differences

(b) Asset differences

(c) Risk differences

(d) Geographical location

(e) Size of the market

(f) Wholesale or retail market

(g) The laws and governmental orders in force

(h) Cost of labour

(i) Cost of capital in the markets

(j) Overall economic development

(k) Level of competition

(l) Accounting practices

However, in practice the following adjustments are provided:

(i) Working capital adjustment

(ii) Risk adjustment

(iii) Volume/geographical/depreciation/idle capacity/first year operation, etc.

Step 6: Safe Harbour Rules

Power of Board to make Safe Harbour Rules [Section 92CB]

The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbor rules.

Further as per section 92CB(2), the Board may, for the purposes of section 92CB(1), make rules for safe harbor.

Explanation.- For the purposes of this section, "safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

Safe hourbour rules for international transactions have since been notified by the CBDT by Notification No. 73/2013, dated 18-9-2013 which contain rules 10TA to 10TG.

29.6 TRANSFER PRICING ISSUES

In the content of International Transactions and ascertainment of arm's length price, the following issues are surfaced. These needs to be further examined in the light of applicable statutory provisions of Indirect Tax laws in India.

29.6.1 Key current and emerging TP Audit issues in India

Indian transfer pricing administration over the past 10 years has witnessed several challenges in administration of transfer pricing law. In the above backdrop, this chapter highlights some of the emerging transfer pricing issues and difficulties in implementation of arm's length principle.

29.6.2 Key Issues for consideration

(a) Challenges in the comparability analysis - Increased market volatility and increased complexity in international transaction have thrown open serious challenges to comparability analysis and determination of arm's length price.

(b) Issue relating to risks - A comparison of functions performed, assets employed and risks assumed is basic to any comparability analysis. India believes that the risk of a MNE is a by product of performance of functions and ownership, exploitation or use of assets employed over a period of time. Accordingly, risk is not an independent element but is similar in nature to functions and assets. In this context, India believes that it is unfair to give undue importance to risk in determination of arm's length price in comparison to functions performed and assets employed.

(c) Arm's length range - Application of most appropriate method may set up comparable data which may result in computation of more than one arm's length price. Where there may be more than one arm's length price, mean of such prices is considered. Indian transfer pricing regulations provide that in such a case the arithmetic mean of the prices should be adopted as arm's length price. If the variation between the arithmetic mean of uncontrolled prices and price of international transaction does not exceed 3% or notified percentage of such transfer pricing, then transfer price will be considered to be at arm's length. In case transfer price crosses the tolerance limit, the adjustment is made from the central point determined on the basis of arithmetic mean. Indian transfer pricing regulation do not mandate use of inter quartile range.

(d) Comparability adjustment - Like many other countries, Indian transfer pricing regulations provide for "reasonably accurate comparability adjustments". The onus to prove "reasonably accurate comparability adjustment" is on the taxpayer. The experience of Indian transfer pricing administration indicates that it is possible to address the issue of accounting difference and difference in capacity utilization and intensities of working capital by making comparability adjustments. However, Indian transfer pricing administration finds it extremely difficult to make risk adjustments in absence of any reliable and robust and internationally agreed methodology to provide risk adjustment. In some cases taxpayers have used Capital Asset Pricing Method (CAPM).

(e) Location Savings - It is view of the Indian transfer pricing administration that the concept of "location savings" which refer to cost savings in a low cost jurisdiction like India – should be one of the major aspects to be considered while carrying out comparability analysis during transfer pricing audits. Location savings has a much broader meaning; it goes beyond the issue of relocating a business from a 'high cost' location to a 'low cost' location and relates to any cost advantage. MNEs continuously search options to lower their costs in order to increase profits. India provides operational advantages to the MNEs such as labour or skill employee cost, raw material cost, transaction costs, rent, training cost, infrastructure cost, tax incentive etc.

(i) Highly specialized skilled manpower and knowledge

(ii) Access and proximity to growing local/regional market

(iii) Large customer base with increased spending capacity

(iv) Superior information network

(v) Superior distribution network

(vi) Incentives

(vii) Market premium

The incremental profit from LSAs is known as "location rents". The main issue in transfer pricing is the quantification and allocation of location savings and location rents among the associated enterprises.

Under arm's length pricing, allocation of location savings and rents between associated enterprises should be made by reference to what independent parties would have agreed in comparable circumstances.

The Indian transfer pricing administration believes it is possible to use the profit split method to determine arm's length allocation of location savings and rents in cases where comparable uncontrolled transactions are not available. In these circumstances, it is considered that the functional analysis of the parties to the transaction (functions performed, assets owned and risks assumed), **and** the bargaining power of the parties (which at arm's length would be determined by the competitiveness of the market availability of substitutes, cost structure etc) should both be considered appropriate factors.

(f) Intangibles - Transfer pricing of intangibles is well known as a difficult area of taxation practice. However, the pace of growth of the intangible economy has opened new challenges to the arm's length principle. Seventy five percent of all private R&D expenditure worldwide is accounted for by MNEs.

The transactions involving intangible assets are difficult to evaluate because of the following reasons:

(i) Intangibles are seldom traded in the external market and it is very difficult to find comparables in the public domain.

(ii) Intangibles are often transferred bundled along with tangible assets.

(iii) They are difficult to be detected.

A number of difficulties arise while dealing with intangibles. Some of the key issues revolve around determination of arm's length price of rate of royalties, allocation of cost of development of market and brand in a new country, remuneration for development of marketing, Research and Development intangibles and their use, transfer pricing of cobranding etc.

(g) R&D activities - Several global MNEs have established subsidiaries in India for research and development activities on contract basis to take advantage of the large pool of skilled manpower which are available at a lower cost. These Indian subsidiaries are generally compensated on the basis of routine and low cost plus mark up. The parent MNE of these R&D centres justify low cost plus markup on the ground that they control all the risk and their subsidiaries or related parties are risk free or limited risk bearing entities.

The claim of parent MNEs that they control the risk and are entitled for major part of profit from R&D activities is based on following contentions:

(i) Parent MNE designs and monitors all the research programmes of the subsidiary.

(ii) Parent MNE provides fund needed for R&D activities.

(iii) Parent MNE controls the annual budget of the subsidiary for R&D activities.

(iv) Parent MNE controls and takes all the strategic decisions with regards to core functions of R&D activities of the subsidiary.

(v) Parent MNE bears the risk of unsuccessful R&D activities.

The Indian transfer pricing administration always undertakes a detailed enquiry in cases of contract R&D centres. Such an enquiry seeks to ascertain correctness of the functional profile of subsidiary and parent MNE on the basis of transfer pricing report filed by the taxpayers, as well as information available in the public domain and commercial databases. After conducting detailed enquiries, the Indian tax administration often reaches the following conclusions:

(i) Most parent MNEs were not able to file relevant documents to justify their claim of controlling risk of core functions of R&D activities and asset (including intangible assets) which are located in the country of subsidiary or related party.

(ii) Contrary to the above, it was found that day to day strategic decisions and monitoring of R&D activities were carried out by personnel of subsidiary who were engaged in actual R&D activities and bore relevant operational risks.

(h) Marketing Intangibles

Marketing related intangible assets are used primarily in the marketing or promotion of products or services.

This includes: Trademarks; Trade names; Service marks; Collective marks; Certification marks; Trade dress; Newspaper mastheads; Internet domain names; Non-competitive agreements

(i) Customer-related intangible assets – are generated through inter-action with various parties such as customers, entities in complimentary business, suppliers, etc. these can either be purchased from outside or generated internally.

(i) Contractual basis: customer contracts and customer relationships; order or production backlog

(ii) Non-contractual basis:- customer lists; non-contractual customer relationships;

(j) Artistic-related intangible assets – are rights granted by Government or other authorized bodies to the owners or creators to reproduce or sell artistic or published work. These are on a contractual basis. These includes: Plays, opera and ballets; Books, magazines, newspapers and other literary works; Musical works; Picture and photographs; Video and audio-video material.

(k) Intra-group Services - Globalization and the drive to achieve efficiencies within MNE groups have encouraged sharing of resources to provides support between one or more location by way of shared services. Since these intra group services are the main component of "tax efficient supply chain management" within an MNE group, the Indian transfer pricing authorities attach high priority to this aspect of transfer pricing.

The tax administration has noticed that some of the services are relatively straight forward in nature like marketing, advertisement, trading, management consulting etc. However, other services may be more complex and can often be provided on stand alone basis or to be provided as part of the package and is linked one way or another to supply of goods or intangible assets. An example can be agency sale technical support which obligates the licensor to assist the licensee in setting up of manufacturing facilities, including training of staff.

The Indian transfer pricing administration generally considers following questions in order to identify intra group services requiring arm's length remuneration:

(i) Whether Indian subsidiaries have received any related party services i.e., intra group services?

(ii) Nature and detail of services including quantum of services received by the related party.

(iii) Whether services have been provided in order to meet specific need of recipient of the services?

(iv) What are the economic and commercial benefits derived by the recipient of intra group services?

(v) Whether in comparable circumstances an independent enterprise would be willing to pay the price for such services?

(vi) Whether an independent third party would be willing and able to provide such services?

The answers to above questions enable the Indian tax administration to determine if the Indian subsidiary has received or provided intra group services which requires arms' length remuneration. Determination of the arm's length price of intra group services normally involve following steps:

(i) Identification of the cost incurred by the group entity in providing intra group services to the related party.

(ii) Understanding the basis for allocation of cost to various related parties i.e., nature of allocation keys.

(iii) Whether intra group services will require reimbursement of expenditure along with markup.

(iv) Identification of arm's length price of markup for rendering of services.

(I) Financial Transactions

Intercompany loans and guarantees are becoming common international transactions between related parties due to management of cross border funding within group entities of a MNE group. Transfer pricing of inte company loans and guarantees are increasingly being considered some of the most complex transfer pricing issues in India. The Indian transfer pricing administration has followed a quite sophisticated methodology for pricing inter company loans which revolves around:

(i) comparison of terms and conditions of loan agreement;

(ii) determination of credit rating of lender and borrower;

(iii) Identification of comparables third party loan agreement;

(iv) suitable adjustments to enhance comparability.

Transfer pricing administration is more than a decade old in India. However disputes are increasing with each transfer pricing audit cycle, due to the following factors:

(i) Cross border transactions have increased exponentially in the last one decade.

(ii) Lack of international consensus on taxation of certain group cross border transactions like intangible, financial transactions, intra group services etc.

(iii) Difficulty in applying the arm's length principle to complex transactions like business restructuring.

(iv) Taxpayers in India can postpone payment of tax liability by resorting to litigation.

(v) Availability of multiple channels to resolve disputes in India.

29.7 CROSS-BORDER TRANSACTIONS

Cross Border Transaction services means services related to transaction which involve two or more countries. In India there are two Acts which primarily seems to show concern when a person (Indian Resident or foreign Resident) undertakes cross border transactions viz.

(i) Foreign Exchange Management Act,1999

(ii) Income Tax Act,1961

Therefore it is imperative that a person needs to deal with both the above mentioned Acts to enter into a cross-border transaction.

29.7.1 Relevant provisions and the structure

In terms of the provisions of Sec.5 (2) of the Income Tax Act,1961, non-residents are also liable to tax in India on the income received or deemed to be received in India.

29.7.1.1 Major charging provision

The major charging provision is Sec.5(2) of the Income Tax Act,1961. Two major and specific tests are required to determine the incidence of tax and tax liability thereafter. The tests are related to determining:-

(i) Whether Income Accruing or Arising in India or not;

(ii) Whether the Source of Income is India or not.

29.7.1.2 Deeming provisions

The major provisions laying down the source rule are contained in sections 9(1)(vii), 44D,44DA and 115A of the Income Tax Act,1961. There are some specific provisions also related to imposing tax liability on cross-border services, which are, Sections 44B, 44BB, 44BBA, 44BBB.

Section	Deals with	
9(1)(vii)	Fees for technical services paid by the Government or a resident is deemed to accrue or arise in India unless such services are utilized by a resident for business or profession carried on outside India or for the purpose of earning income from any source outside India.	
	Fees for technical services paid by a non-resident is deemed to accrue in India only if such services are utilized in a business carried on in India by the non-resident or are utilized for the purpose of earning income from any source in India.	
44D	Restriction on the right of foreign company to claim deduction for expenses from income in the nature of royalties or fees for technical services received from the Government or an Indian concern as follows:	
	Date of Signature of Agreement	restriction on deduction for expenses
	Before April 1,1976	deduction allowed upto 20% of gross amount of fees for technical services
	After 31st March,1976 but before April 1,2003	No deduction allowed.
	This section is applicable to foreign companies only and not to any other non-residents.	
44DA	Specific provisions dealing with royalties/fees for technical services – after 31st March,2003 Provisions laid down in this section emphasizes to harmonise the provisions relating to income from royalty or fees for technical services attributable to a fixed place of profession or permanent establishment in India with similar provisions in various tax treaties. In terms of the provisions of this section, deduction is available for expenses from royalty or fees for technical services to a non-resident if : (i) Royalties or FTS are received from Government or an Indian concern (ii) Agreement is made after 31st March,2003 (iii) Business is carried on in India through a permanent establishment (iv) Professional services are provided from fixed place of profession (v) Right, property or contract for which royalty/fees for technical services arises is effectively connected with the permanent establishment or fixed place of profession. "Permanent Establishment is defined in Sec.92F (iiia),which includes a fixed place of business through which the business of the enterprise is wholly or partly carried on". There are three types of Permanent Establishments (PEs): (i) Basic rule PE – a fixed place of business, office, branch, installation, etc (ii) Service PE – presence of employees (iii) Agency PE – presence of dependent agent	

44C	The provision starts with a 'non-obstante clause', i.e. "Notwithstanding anything to the contrary contained in section 28 to 43A…..". This section overrides Sections 28 to 43A and accordingly the words "computation under the head profits and gains of business or profession in accordance with the provisions of ITA" would mean that deduction of head office expenses would be allowed subject to restrictions contained in Section 44C.
44DA	This section is inserted "with a view to harmonize the provisions relating to the income from royalty or fees for technical services attributable to a fixed place of profession or a permanent establishment in India with a similar provisions in various DTAAs'.

29.8 ASSOCIATED ENTERPRIESE

The term 'associated enterprise' has been defined in a broad manner. Based on the same, the following illustrates the definition when Enterprise X ("X") would be the associated enterprise of Enterprise Y ("Y") :

- X participates, directly or indirectly, or through one or more intermediaries, in the management, control or capital of Y and one or more of the requisites enlisted below are fulfilled; or
- The same persons participate in the management, control or capital of X, as also that of Y and one or more of the requisites enlisted below are fulfilled.
- X and Y would be deemed to be associated enterprises if at any time during the previous year :
- X holds directly or indirectly shares carrying at least 26% voting power in Y or vice versa;
- Any person holds directly or indirectly shares carrying at least 26% voting power in both X and Y;
- A loan advanced by X to Y amounts to atleast 51% of book value of the total assets of Y or vice versa;
- X guarantees at least 10% of the total borrowings of Y or vice versa;
- More than half of the directors or members of the governing board, or one or more of the executive directors or executive members of the governing board of X are appointed by Y or vice versa;
- More than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board of X and Y are appointed by the same person(s);
- The manufacture / processing of goods/articles by, or business of, X, is wholly dependent on use of intangibles or any other commercial rights of similar nature, or any data, documentation or drawing etc., owned by Y or for which Y has exclusive rights; or
- Atleast 90% of raw materials for the manufacture or processing of goods or articles required by X are supplied by Y or persons specified by Y under commercial terms influenced by Y or;
- Goods / articles manufactured / processed by X are sold to Y or persons specified by Y, and Y influences the commercial terms relating to the sale or;
- X is controlled by Mr. A and Y is controlled by Mr. A or relative of Mr. A either individually or jointly;
- X is controlled by a Hindu Undivided Family, and Y is controlled by a member of such Hindu Undivided Family or by a relative of a member of such Hindu Undivided Family, or jointly by such member and his relative; or
- X is a firm, association of persons or body of individuals, and Y holds atleast 10% interest in such firm, association of persons or body of individuals; or
- There exists, between X and Y, any relationship of mutual interest, as may be prescribed (no such relationship has yet been prescribed).

29.9 COMPUTATION OF ARM'S LENGTH PRICE

29.9.1 Comparable Uncontrolled Price method (CUP)

Step I: Identify the price charged/ paid for property transferred or services provided in a **comparable uncontrolled transaction(s).**

Step II: Adjust the price derived in Step I above **for differences**, if any, which could materially affect the price in the open market.

(a) between the international transaction and the comparable uncontrolled transactions, or

(b) between the enterprises entering into such transactions.

Step III: Arm's Length Price = Step I **Add/Less**: Step II

Illustration 1: Jackle, Korea and CD Ltd, an Indian Company are associated enterprises. CD Ltd manufactures Cel Phones and sells them to Jackle, Korea & Fox, a Company based at Nepal. During the year CD Ltd supplied 2,50,000 Cellular Phones to Jackle Korea at a price of ₹ 3,000 per unit and 35,000 units to Fox at a price of ₹ 5,800 per unit. The transactions of CD Ltd with Jackle and Fox are comparable subject to the following considerations -

(a) Sales to Jackle are on FOB basis, sales to Fox are CIF basis. The freight and insurance paid by Jackle for each unit is ₹ 700.

(b) Sales to Fox are under a free warranty for Two Years whereas sales to Jackle are without any such warranty. The estimated cost of executing such warranty is ₹ 500.

(c) Since Jackle's order was huge in volume, quantity discount of ₹ 200 per unit was offered to it.

Compute the Arm's Length Price and the amount of increase in the Total Income of CD Ltd, if any, due to such Arm's Length Price.

A. **Computation of Arm's Length Price of Products sold to Jackle Korea by CD Ltd.**

Particulars	₹	₹
Price per Unit in a Comparable Uncontrolled Transaction		5,800
Less: Adjustment for Differences -		
(a) Freight and Insurance Charges	700	
(b) Estimated Warranty Costs	500	
(c) Discount for Voluminous Purchase	200	(1,400)
Arms's Length Price for Cellular Phone sold to Jackle Korea		**4,400**

B. **Computation of increase in Total Income of CD Ltd.**

Particulars	₹	₹
Arm's Length Price per Unit		4,400
Less: Price at which actually sold to Jackle Korea		(3,000)
Increase in Price per Unit		1,400
No. of Units sold to Jackle Korea		2,50,000
Therefore, increase in Total Income of CD Ltd (2,50,000 × ₹ 1,400) = ₹ 35 Crores.		

29.9.2 Resale price method (rpm)

Step I: Identify the price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an **unrelated enterprise.**

Step II: Reduce the normal GP margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from II) obtaining and providing the same or similar services, in a comparable uncontrolled transaction (s).

Step III: Reduce expenses incurred by the enterprise in connection with the purchase of property or obtaining of services.

Step IV: Adjust for functional and other differences, including differences in accounting practices, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market.

Step V: Arm's Length Price = Step I

Less Step II & III

Add / Less Step IV.

Illustration 2: Swinhoe LLP of France and Rani Ltd of India are associated enterprises. Rani Ltd. imports 3,000 compressors for Air Conditioners from Swinhoe at ₹ 7,500 per unit and these are sold to Paharpur Cooling Solutions Ltd at a price of ₹ 11,000 per unit. Rani had also imported similar products from Cold Ltd and sold outside at a Gross Profit of 20% on Sales.

Swinhoe offered a quantity discount of ₹ 1,500 per unit. Cold could offer only ₹ 500 per unit as Quantity Discount. The freight and customs duty paid for imports from Poland had cost Rani ₹ 1,200 a piece. In respect of purchase from Cold Ltd, Rani had to pay ₹ 200 only as freight charges.

Determine the Arm's Length Price and the amount of increase in Total Income of Rani Ltd.

A. Computation of Arm's Length Price of Products bought from Swinhoe, France by Rani Ltd.

Particulars	₹	₹
Resale Price of Goods Purchased from Swinhoe		11,000
Less: Adjustment for differences		
(a) Normal gross profit margin @ 20% of sale price [20% × ₹ 11,000]		2,200
(b) Incremental Quantity Discount by Swinhoe [₹ 1,500 – ₹ 500]		1,000
(c) Difference in Purchase related Expenses [₹ 1,200 – ₹ 200]		1,000
Arms Length Price		**6,800**

B. Computation of Increase in Total Income of Rani Ltd

Particulars	₹	₹
Price at which actually bought from Swinhoe LLP of France		7,500
Less : Arms Length Price per unit under Resale Price Method		(6,800)
Decrease in Purchase Price per Unit		700
No. of Units purchased from Swinhoe		1,000
Increase in Total Income of Rani Ltd [3,000 Units × ₹ 700]		₹ 21,00,000

29.9.3 Cost plus Method in determining ALP

Step I: Determine the direct and indirect costs of production incurred by the enterprise in respect of property transferred or services provided to an associated enterprise.

Step II: Determine the normal GP mark-up to such costs (computed under same accounting norms) arising from the transfer or provision of the same or similar property or services by the enterprise, or by an unrelated enterprise, in a comparable uncontrolled transaction(s).

Step III: Adjust the normal gross profit mark-up referred to in Step II to take into account the functional and other differences, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect such profit mark-up in the open market.

Step IV: Arm's Length Price = Step I

Add Step III

Illustration 3: Branco Inc., a French Company, holds 45% of Equity in the Indian Company Chirag Technologies Ltd (CTL). CTL is engaged in development of software and maintenance of the same for customers across the globe. Its clientele includes Branco Inc.

During the year, CTL had spent 2,400 Man Hours for developing and maintaining software for Branco Inc, with each hour being billed at ₹ 1,300. Costs incurred by CTL for executing work for Branco Inc. amount to ₹ 20,00,000.

CTL had also undertaken developing software for Harsha Industries Ltd for which CTL had billed at ₹ 2,700 per Man Hour. The persons working for Harsha Industries Ltd and Branco were part of the same team and were of matching credentials and caliber. CTL had made a Gross Profit of 60% on the Harsha Industries work.

CTL's transactions with Branco Inc. are comparable to the transactions with Harsha Industries, subject to the following differences:

(a) Branco gives technical know-how support to CTL which can be valued at 8% of the Normal Gross Profit. Harsha Industries does not provide any such support.

(b) Since the work for Branco involved huge number of man hours, a quantity discount of 14% of Normal Gross Profits was given.

(c) CTL had offered 90 Days credit to Branco the cost of which is measured at 2% of the Normal Billing Rate, No such discount was offered to Harsha Industries Ltd.

Compute ALP and the amount of increase in Total Income of Chirag Technologies Ltd.

(A) Computation of Arms Length Gross Profit Mark-up

Particulars	₹	₹
Normal Gross Profit Mark up		60.00
Less : Adjustment for differences		
(a) Technical support from Branch [8% of Normal GP = 8% of 60%]	4.80	
(b) Quantity discount 14% of normal Gross profit [= 14% of 60%]	8.40	(13.20)
		46.80
Add: Cost of Credit to Branco 2% of Normal Bill [2% ×GP 60%]	1.20	1.20
Arm's Length Gross Profit mark-up		48.00

(B) Computation of Increase in Total Income of Branco Ltd

Particulars	₹	₹
Cost of services provided to CTL		20,00,000
Arm's length Billed Value [Cost / [(100 – Arm's Length mark up)] = ₹ 20,00,000 / (100% - 48%)		38,46,154
Less: Billed amount [2,400 hours x ₹ 1,300 per hour]		31,20,000
Therefore, Increase in Total Income of Branco		7,26,154

29.9.4 Profit Split Method (PSM)

This method is mainly applicable in international transactions involving transfer of unique intangibles or in multiple international transactions which are so inter-related that they cannot be evaluated separately for the purpose of determining the Arm's Length Price of any one transaction.

Step I: Determine the combined net profit of the associated enterprises arising from the international transaction in which they are engaged.

Step II: Determine the relative contribution made by each of the associated enterprises to the earning of such combined net profit. This is determined on the basis of the functions performed, assets employed and risks assumed by each enterprise and on the basis of reliable external market data which indicates how such contribution would be determined by unrelated enterprises performing comparable functions in similar circumstances.

Step III: Split the combined net profit amongst the enterprises on the basis of reasonable returns and in proportion to their relative contributions, as determined in Step II. (See note below)

Step IV: Arm's Length Price - Profit apportioned to the assessee under Step III.

Note : Combined Net Profit shall be split as under:

III.A. First Split = Reasonable Return: Allocate an amount to each enterprise so as to provide it with a basic return appropriate for the type of international transaction with reference to market returns achieved in similar types of transactions by independent enterprises.

III.B. Second Split = Contribution Ratio: Allocate the residual net profit amongst the enterprises in proportion to their relative contribution.

III.C. Total Profit: Share of profit of each enterprise = Step III.A + III.B

Illustration 4: NBR Medical Equipments Inc. (NBR) of Canada has received an order from a leading UK based Hospital for development of a hi-tech medical equipment which will integrate the best of software and latest medical examination tool to meet varied requirements. The order was for 3,00,000 Euros. To execute the order, NBR joined hands with its subsidiary Precision Components Inc. (PCI) of USA and Bioinformatics India Ltd (BIL), an Indian Company. PCI holds 30% of BIL. NBR paid to PCI and BIL Euro 90,000 and Euro 1,00,000 respectively and kept the balance for itself. In the entire transaction, a profit of Euro 1,00,000 is earned. Bioinformatics India Ltd incurred a Total Cost of Euro 80,000 in execution of its work in the above contract. The relative contribution of NBR, PCI and BIL may be taken at 30%, 30% and 40% respectively. Compute the Arm's Length Price and the incremental Total Income of Bioinformatics India Ltd, if any due to adopting Arms Length Price determined here under:-

Particulars	**Euros [€]**
A. Share of each of the Associates in the Value of the Order	
value of the order:	**3,00,000**
Share of BIL (given)	**1,00,000**
Share of PCI (given)	**90,000**
Share of NBR [Amount retained = 3,00,000 – 1,00,000 – 90,000]	1,10,000
B. Share of each of the Associates in the profit of the order	
Combined Total Profits	**1,00,000**
Share of BIL [Contribution of 40% × Total Profit € 1,00,000]	40,000
Share of PCI [Contribution of 30% × Total Profit € 1,00,000]	30,000
Share of NBR [Contribution of 30% × Total Profit € 1,00,000]	30,000

C. Computation of Incremental Total Income of BIL

Total Cost to Bioinformatics India Ltd	80,000
Add: Share in the Profit to BIL (from B above)	40,000
Revenue of BIL on the basis of Arm's Length Price	1,20,000
Less: Revenue Actually received by BIL	(1,00,000)
Increase in Total Income of BIL	20,000

29.9.5 TRANSACTION NET MARGIN METHOD (TNMM)

Step I: Compute the net profit margin realised by the enterprise from an international transaction entered into with an associated enterprise, in relation to costs incurred or sales effected or assets employed by enterprise or having regard to any other relevant base.

Step II: Compute the net profit margin realised by the enterprise or by an unrelated enterprise from a **comparable uncontrolled transaction (s),** having regard to the same base as in Step I.

Step III: Adjust the net profit margin as per Step II for differences, if any, which could materially affect amount of net profit margin in the open market :

(a) between the international transaction and the comparable uncontrolled transactions, or

(b) between the enterprises entering into such transactions.

Step IV: Net Profit Margin for uncontrolled transactions = Step II **Add/Less** Step III.

Step V: Arm's Length Price = Transaction Value x Net Profit Margin as per Step IV above.

Meaning of certain terms: For the computation of Arm's Length Price -

1. **"Transaction"** includes a number of closely linked transactions.
2. **"Uncontrolled Transaction"** means a transaction between unrelated enterprises, whether resident or non-resident.
3. **"Unrelated Enterprises":** Enterprises are said to be unrelated, if they are not associated or deemed to be associated u/s 92A.
4. **"Uncontrolled conditions":** Conditions which are not controlled or suppressed or moulded for achievement of pre-determined results are said to be uncontrolled conditions.
5. **"Property"** includes goods, articles or things, and intangible property.
6. **"Services"** include financial services.

Illustration 5: Fox Solutions Inc. a US Company, sells Laser Printer Cartridge Drums to its Indian Subsidiary Quality Printing Ltd at $ 20 per drum. Doc Solutions Inc. has other takers in India for its Cartridge Drums, for whom the price is $ 30 per drum. During the year, Fox Solutions had supplied 12,000 Cartridge Drums to Quality Printing Ltd.

Determine the Arm's Length Price and taxable income of Quality Printing Ltd if its income after considering the above is ₹ 45,00,000. Compliance with TDS provisions may be assumed and Rate per USD is ₹ 45. Also determine income of Doc Solutions Inc.

Solution:

A. Computation of Total Income of Quality Printing Ltd.

Particulars	₹	₹
Total Income before adjusting for differences due to Arm's Length Price		45,00,000
Add: Difference on account of adopting Arm's Length price [12,000 x $ 20 × ₹ 45]	1,08,00,000	
Amount actually paid to Doc Solutions [12,000 × $ 30 × ₹ 45]	(1,62,00,000)	
Incremental Cost on adopting ALP U/s 92(3), Taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP is ignored.	54,00,000	
Total Income of Quality Printing Ltd		45,00,000

B. Computation of Total Income of Fox Solutions Inc.

The provisions relating to taxing income of Fox Solutions Inc., on applying Arm's Length Price for transactions entered into by a Foreign Company is given in Circular 23 dated 23.7.1969, which is as follows:

(i) **Transactions Not Taxable in India :** Transactions will not be subject tax in India if transactions are on principal-to-principal basis and are entered into at ALP, and the subsidiary also carries on business on its own.

(ii) **Transactions Taxable in India** if the Indian Subsidiary does not carry on any business on its own. The following are the other considerations in this regard -

(i) Adopting ALP does not affect the computation of taxable income of Fox Solutions Inc. if tax has been deducted at source or if tax is deductible.

(ii) Where ALP is adopted for taxing income of the Parent Company, income of the recipient Company (i.e. Quality Printing Ltd) will not be recomputed.

Illustration 6: Khazana Ltd is an Indian Company engaged in the business of developing and manufacturing Industrial components. Its Canadian Subsidiary Techpro Inc. supplies technical information and offers technical support to Khazana for manufacturing goods, for a consideration of Euro 1,00,000 per year.

Income of Khazana Ltd is ₹ 90 Lakhs. Determine the Taxable Income of Khazana Ltd if Techpro charges Euro 1,30,000 per year to other entities in India. What will be the answer if Techpro charges Euro 60,000 per year to other entitles. (Rate per Euro may be taken at ₹ 50)

Solution:

Computation of Total Income of Khazana Ltd.

Particulars		
When Price Charged for Comparable Uncontrolled Transaction	1,00,000	50,000
Price actually paid by Khazana Ltd [€ 1,00,000 x 50]	50,00,000	50,00,000
Less: Price charged in Rupees (under ALP) [€ 1,30,000 x 50] [€ 50,000 x 50]	65,00,000	30,00,000
Incremental Profit on adopting ALP [A]	(15,00,000)	20,00,000
Total Income before adjusting for differences due to Arm's Length Price	90,00,000	90,00,000
Add: Difference on account of adopting Arm's Length Price [if (A) is positive]	Nil	20,00,000
Total Income of Khazana Ltd	90,00,000	1,10,00,000

Note : U/s 92(3), Taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP which reduces the Taxable Income is ignored.

Notes

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