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DIRECT TAX AMENDMENTS

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AMENDMENTS AT A GLANCE FINANCE ACT, 2011

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RATES OF TAX

1A. For Any Individual, HUF, AOP, BOI, AJP

Net Income Range	Rate of Tax
Up to Rs. 1,80,000	NIL.
Rs. 1,80,001 to Rs.5,00,000	10% of the amount by which Net Income exceeds Rs. 1,80,000.
Rs. 5,00,000 to Rs. 8,00,000	Rs. 32000 plus 20% of the amount by which Net Income exceeds Rs. 5,00,000.
Above Rs.8,00,000	Rs.92,000 plus 30% of the amount by which Net income exceeds Rs.8,00,000.

1B. For Resident woman (Who is below 60 years of age at any time during the Previous year)

Net Income Range	Rate of Tax
Up to Rs. 1,90,000	NIL.
Rs. 1,90,000 to Rs.5,00,000	10% of the amount by which Net Income exceeds Rs. 1,90,000.
Rs. 5,00,000 to Rs. 8,00,000	Rs. 31000 plus 20% of the amount by which Net Income exceeds Rs. 5,00,000.
Above Rs.8,00,000	Rs.91,000 plus 30% of the amount by which Net income exceeds Rs.8,00,000.

1.C. For Resident Senior Citizens (Who is 60 years or more at any time during the Previous year)

Net Income Range	Rate of Tax
Up to Rs. 2,50,000	NIL.
Rs. 2,50,001 to Rs. 5,00,000	10% of the amount by which Net Income exceeds Rs. 2,50,000.
Rs. 5,00,000 to Rs. 8,00,000	Rs. 25,000 plus 20% of the amount by which Net Income exceeds Rs. 5,00,000.
Above Rs. 8,00,000	Rs.85,000 plus 30% of the amount by which Net income exceeds Rs.8,00,000.

1D For Resident Very Senior Citizens (Who is 80 years or more at any time during the P.Y)

Net Income Range	Rate of Tax
Up to Rs. 5,00,000	NIL.
Rs. 5,00,001 to Rs.8,00,000	20% of the amount by which Net Income exceeds Rs. 5,00,000.
Above Rs.8,00,000	Rs.60,000 plus 30% of the amount by which Net income exceeds Rs.8,00,000.

RATES OF TAX FOR Companies

Particulars	Domestic Co Upto 1 Crore income	Domestic Co with income > 1 crore	Foreign co with income upto 1 crore	Foreign co with income > 1 crore
Rate of Tax	30%	30%	40%	40%
Surcharge	-	**5%**	**-**	**2%**
Education cess	3%	3%	3%	3%
Effective rate	30.90%	32.445%	41.20%	42.024%

Marginal relief available

Q1: Compute the tax liability of X Ltd., assuming that the total income of X Ltd. is ` 1,01,00,000 and the total income does not include any income in the nature of capital gains.

Q2: Compute the tax liability of X Ltd., assuming that the total income of X Ltd. is ` 1,00,80,000 and the total income does not include any income in the nature of capital gains.

Charitable Purpose Sec 2(15)

- It is defined to include –
  - Relief of the poor.
  - Education.
  - Medical relief
  - The advancement of any other object of general public utility
  - ***Preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest.***

Proviso to Sec 2(15) 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 rendering of services in relation to any trade commerce or business. Objective is to stop commercial entities from claiming this exemption.

However this proviso shall not apply in case the aggregate receipts from the activities referred to in the proviso do not exceed Rs. 25 lakh in the previous year.

Therefore, in effect, "advancement of any other object of general public utility" would continue to be a "charitable purpose", if the total receipts from 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 does not exceed ` 25 lakhs in the relevant previous year.

An institution having its main object as "advancement of general public utility" received ` 35 lakhs in aggregate during the P.Y.2011-12 from an activity in the nature of trade. It applied 85% of its receipt from such activity during the same year for its main object i.e. advancement of general public utility.
(i) What would be the tax consequence of such receipt and application thereof by the institution?

(ii) Would your answer be different of the institution had received ` 20 lakhs (instead of ` 35 lakhs) in aggregate during the P.Y.2011-12 from an activity in the nature of trade?

(iii) What would be your answer if the main object of the institution is "relief of the poor" and the institution receives ` 35 lakhs from a trading activity and applies 85% of the said receipts for its main object?

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

(a) Exemption of specified allowances and perquisites paid to Chairman or a retired Chairman or any other member or retired member of the UPSC [Section 10(45)]

(i) Under the Income-tax Act, 1961, perquisites and allowances received by an employee are taxable under the head "Salaries" unless they are specifically exempted.

(ii) New clause (45) has been inserted in section 10 to exempt specified allowances and perquisites received by Chairman or any other member, including retired Chairman/member, of the Union Public Service Commission (UPSC).

(iii) The exemption would be available in respect of such allowances and perquisites as may be notified by the Central Government in this behalf.

(Effective retrospectively from A.Y.2008-09)

Note – At present, tax exemption is available in respect of certain specified perquisites enjoyed by Chief Election Commissioner/Election Commissioner and judges of Supreme Court on account of the enabling provisions in the respective Acts which govern their service conditions.

(b) Exemption of specified income of notified entities not engaged in commercial activity [Section 10(46)]

Related amendment in section: 139(4C)

(i) New clause (46) has been inserted in section 10 to provide for exemption of income arising to a body or authority or Board or Trust or Commission, the nature and extent of which is to be specified by the Central Government.

(ii) It should be set up under any law for administering an activity for the benefit of the general public

(iii) It should not be engaged in any commercial activity and should be notified by the Central Government

(iv) Section 139(4C) has been amended to require such body or authority or Board or Trust or Commission to furnish its return of income for the previous year in the prescribed form within the period specified under section 139(1), if its total income, without giving effect to the exemption under section 10(46), exceeds the basic exemption limit.

(c) Exemption of income of notified infrastructure debt funds and concessional tax rate on interest received by non-residents from such fund [Section 10(47) & 115A]

Related amendment in sections: 194LB & 139(4C)

(i) In order to give a fillip to infrastructure and encourage inflow of long-term foreign funds to this sector, the Central Government to notify infrastructure debt funds to be set up in accordance with the prescribed guidelines, the income of which would be exempt from tax.

(ii) Interest income received by a non-resident or a foreign company from such fund would be subject to tax at a concessional rate of 5% under section 115A on the gross amount of such interest income as compared to tax @ 20% on other interest income of non-resident.

(iii) Accordingly, tax would be deductible @ 5% on interest paid/credited by such fund to a non-resident/foreign company. 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 income-tax @5%. This is provided for in new section 194LB.

(iv) Section 139(4C) has been amended to require such infrastructure debt fund to furnish its return of income for the previous year in the prescribed form within the period specified under section 139(1), if its total income, without giving effect to the exemption under section 10(47), exceeds the basic exemption limit.
(Effective from 1st June, 2011)

4. PROFITS AND GAINS OF BUSINESS OR PROFESSION
(a) Increase in percentage of weighted deduction under section 35(2AA)
(i) Section 35(2AA) provides for a weighted deduction of 175% in respect of amount paid to National Laboratory, or a University or an IIT or specified person with a specific direction that such sum shall be used for the purpose of an approved scientific research programme. This has been increased to 200% from AY 2012-13

Ilustration

Excellent Ltd. furnishes the following particulars for the P.Y.2011-12.
Compute the deduction allowable under section 35 for A.Y.2012-13

Particulars	*Rs*
Amount paid to Indian Institute of Science, Bangalore, for scientific research	*2,00,000*
Amount paid to IIT, Kharagpur for an approved scientific research programme	*3,00,000*
Amount paid to X Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	*5,00,000*
Expenditure incurred on in-house research and development facility as approved by the prescribed authority	
Revenue expenditure on scientific research	*2,00,000*
Capital expenditure (including cost of acquisition of land `4,00,000)	*9,00,000*

(b) Expansion of scope of "specified business" for provision of "investment-linked tax incentives" under section 35AD and for set-off of losses under section 73A
1. The Finance Act, 2011 has extended the investment-linked tax deduction under section 35AD to two new businesses –
(1) developing and building a housing project under a notified scheme for affordable housing framed by the Central Government or State Government; and
(2) production of fertilizer in India.

2. One of the conditions is that the date of commencement of operations in the case of the two "specified businesses" of affordable housing projects and production of fertilizer in a new plant or in a newly installed capacity in an existing plant should be on or after 1st April, 2011.
(Effective from A.Y.2012-13)

3. In respect of the business of hotels and hospitals, the word "new" has been removed from the definition of "specified business". Therefore, "specified business" means the business of building and operating, anywhere in India, -
(1) a hotel of two-star or above category as classified by the Central Government;
(2) a hospital with at least one hundred beds for patients.

Consequently, the loss of an assessee claiming deduction under section 35AD in respect of a specified business can be set-off against the profit of another specified business under section 73A, irrespective of whether the latter is eligible for deduction under section 35AD. As assessee can, therefore, set-off the losses of a hospital or hotel which begins to operate after 1st April, 2010 and which is eligible for deduction under section 35AD, against the profits of the existing business of operating a hospital (with at least 100 beds for patients) or a hotel (of two-star or above category), even if the latter is not eligible for deduction under section 35AD.

Example
Susheel Ltd. commenced operations of the business of a new three-star hotel in Latur, Maharashtra on 1.4.2011. The company incurred capital expenditure of ` 75 lakh during the period January, 2011 to March, 2011 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2011. Further, during the P.Y.2011-12, it incurred capital expenditure of ` 220 lakh(out of which `180 lakh was for acquisition of land) exclusively for the above business. Compute the income under the head "Profits and gains of business or profession" for the A.Y.2012-13, assuming that Susheel Ltd. has fulfilled all the conditions specified for claim of deduction under section 35AD and has not claimed any deduction under Chapter VI-A under the heading "C. – Deductions in respect of certain incomes". The profits from the business of running this hotel (before claiming deduction under section 35AD) for the A.Y.2012-13 is ` 30 lakhs. Assume that the company also has another existing business of running a three-star hotel in Pune, which commenced operations 4 years back, the profits from which are ` 105 lakhs for the A.Y.2012-13.

(c) Employer's contribution to the account of the employee under a Pension Scheme referred to in section 80CCD to be deductible as a business expenditure [Section 36(1)(iva)]
Related amendment in sections : 40A(9) & 80CCE
(i) 36(1)(iva) provides that the employer's contribution to the account of an employee under a Pension Scheme as referred to in section 80CCD would be allowed as deduction while computing business income.

(ii) However, the deduction would be restricted to 10% of salary of the employee in the previous year.

(iii) Salary, for this purpose, includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

(iv) Under section 40A(9), which provides for disallowance of any sum paid by an employer towards contribution to any fund or trust has been amended to exclude from the scope of its disallowance, contribution by an employer to the pension scheme referred to in section 80CCD, to the extent to which deduction is allowable under section 36(1)(iva).

(v) Further, such contribution by the employer to the pension scheme, allowable as deduction under section 80CCD(2) in the hands of the employee, would now be outside the overall limit of ` 1 lakh stipulated under section 80CCE

Examples

(1) Computation of deduction in the hands of the employer in respect of contribution to pension scheme

X Ltd. contributes 18% of basic salary to the account of each employee under a pension scheme referred to in section 80CCD. Dearness Allowance is 30% of basic salary and it forms part of pay of the employees. Compute the amount of deduction allowable under section 36(1)(iva), if the basic salary of the employees aggregate to ` 25 lakh. Would disallowance under section 40A(9) be attracted, and if so, to what extent?

(2) Tax treatment of employer's and employee's contribution to pension scheme in the hands of the employee

The basic salary of Mr. Prashant is 45,000 p.m. He is entitled to dearness allowance, which is 40% of basic salary. 60% of dearness allowance forms part of pay for retirement benefits. Both Mr. Prashant and his employer contribute 18% of basic salary to the pension scheme referred to in section 80CCD. His income from other sources was Rs. 150000. Explain the tax treatment in respect of such contribution in the hands of Mr. Prashant if his LIC premium paid is Rs. 50000.

5. DEDUCTIONS FROM GROSS TOTAL INCOME

(a) Deduction for investment in long-term infrastructure bonds to continue for one more year [Section 80CCF]

This benefit of additional deduction of ` 20,000 under section 80CCF for investment in notified long-term infrastructure bonds has now been extended for one more year i.e. A.Y. 2012-13.

(b) Extension of sunset clause for tax holiday under section 80-IA for power-sector undertakings [Section 80-IA(4)(iv)]

Units starting generation, distribution of power or doing substantial renovation of power plants will be eligible to claim the deduction if the operations are commenced on or before 31-03-2012.

(c) Sunset clause for tax holiday in respect of certain undertakings engaged in commercial production of mineral oil [Section 80-IB(9)]

Type of Business	Date of commencement	Amount of Deduction	Period
Production of Mineral Oil	After 31.3.1997 anywhere in India.	100%	First 7 A.Y.
Refining of Mineral Oil	After 30.9.1998 anywhere in India	100%	First 7 A.Y.

Amendments AY 2012-13:

- *Undertaking has been defined to mean all blocks licensed under a single contract which has been awarded under the New Exploration License Policy or by the Central or State government.*

- ***Deduction will not be available for production of mineral oil for blocks awarded after 31-3-2011***

6. TRANSFER PRICING

(a) Permissible variation between ALP and transfer price to be such percentage of the transfer price, as may be notified by the Central Government [Section 92C]

(i) Section 92C requires application of the most appropriate method for determination of arm's length price (ALP). Where more than one price is determined by the most appropriate method, the ALP shall be the arithmetical mean of such prices. However, if the ALP so determined is within 5% of the transfer price, then no adjustment is required to be made and the transfer price would be deemed to be the ALP of the international transaction.

(ii) The permissible variation at a standard rate of 5% of the transfer price for all segments of business activity and range of international transactions has been substituted by such percentage of the transfer price, as may be notified by the Central Government in this behalf [Second proviso to section 92C(2)].

(iii) The Central Government may, therefore, prescribe the rate of permissible variation for different segments of business activity and class of international transactions.

(b) Broadening the scope of powers of Transfer Pricing Officer (TPO) [Section 92CA (2A) & (7)]

The powers of the TPO under section 92CA have been extended to empower him to -

(i) determine the arm's length price of other international transactions, identified subsequently in course of proceedings before him. So far, his powers were restricted to determining the ALP of international transactions referred to him by the Assessing Officer.

(ii) conduct a survey by exercising the powers conferred upon an income-tax authority under section 133A for the purpose of determining the ALP.

(c) Introduction of specific anti-avoidance measures in respect of transactions with persons located in notified jurisdictional area [New Section 94A]

SECTION 94A

This section is a collection of anti avoidance provisions. A very simple description of the section would be:

It authorises the Government of India to black-list non-cooperative jurisdictions; and to penalise both – Indian assessee as well as the concerned non-resident.

It seeks to cover: (i) Tax Base erosion by way of Transfer Pricing and (ii) Round Tripping.

Simple statement of the provisions:

It is well known that tax evasion takes place through offshore centers (also known as tax havens). The offshore centers not only help in tax evasion, but also in avoiding other laws. Their laws are designed to thwart any enquiries from other countries. The Indian government has so far been ineffective in getting the required information from the offshore centers.

In order to discourage Indian residents from undertaking transactions with persons in such centers, the finance bill has provided for several measures. The provisions are explained below.

Sub Section (1): The Indian Government is trying to enter into agreements so that the offshore centers provide the necessary information. However **despite** such **agreements**, the information may not be forthcoming. In such situations, the Indian government can notify such a country or a territory as "notified jurisdictional area" (NJA). (Or in simple words, black list a jurisdiction.)

S.s (2): If an Indian assessee enters into a transaction with a person in NJA, it will have some consequences as stated below. Note that the **assessee may be an Indian resident or a non-resident**. There can be several situations where a non-resident will be an Indian assessee. If that non-resident tries to reduce Indian tax liability by transacting with tax haven companies, its attempt can be curbed U/s. 94A.

i) The transaction will be considered as an "**International Transaction**".

(ii) Even if just any one party to the transaction is located in an NJA, all the parties to the transaction shall be treated as "**Associated Parties**".

(iii) All provisions of "**Transfer Pricing"** will apply. Assessee will have to get the accounts audited for Transfer Pricing (TP) and submit the same with Income-tax return. It will also have to maintain complete records as required under TP rules. ***The 5% safe harbour margin will not be available in such cases.***

S.s (3): (i) If any **payment is made to a financial institution** in an NJA, the assessee will have to provide an **authorisation** to the Central Board of Direct Taxes to seek relevant information from the said financial institution. If an authorisation is not given, no deduction will be allowed for the payment made to the financial institution. Say a loan is taken from a bank in Cyprus, (and assume that Cyprus is notified as an NJA), then no deduction for interest paid to the Cypriot bank will be allowed unless the assessee gives an authorisation.
ii) If any **expenditure or depreciation allowance** is claimed for a transaction with a person in an NJA, no deduction will be allowed unless the assessee maintains documents and furnishes information as may be prescribed.

S.s (4): If the assessee has **received any amount** from a person in an NJA, he will have to provide explanation for the **source of amount in the hands of the payer**. Thus if an Indian resident has received a loan from a company in British Virgin Islands (BVI) (and assuming that BVI is an NJA), the assessee will have to provide the source of amount in the hands of the BVI company. If the explanation is not provided, or the explanation is unsatisfactory, whole of the loan will be added as the income of the Indian assessee.

S.s (5): If any payment is made to a person in an NJA, and the NJA is liable to tax in India, then the **tax has to be deducted** at the highest of:
- rate in force (including the rate in a DTA),
- rate specified in the relevant provisions of the Income-tax Act,
- rate of 30%.

Summary: Consequences of applicability of S.94A can be summarised as under:

Compliance with procedures:

(i) Once a territory is black listed, all Indian assessees dealing with all parties located in the NJA will be liable to TP procedures. (S.s 2)

(ii) If a financial institution is involved, Indian assessee will have to give an authorisation to the CBDT to seek relevant information from the institution. (S.s 3a)

(iii) In addition to the TP records, CBDT may prescribe additional records to be maintained and information to be furnished. (S.s 3b)

Once the above referred procedures and authorisations are complied with, the assessing officer will make assessment. If the information justifies, he may make additions to the income of the assessee.

Tax Consequences: For the Indian assessee:

If the procedure is not complied with, the consequences for the Indian Assessee will be as under:

(i) Payments to Financial Institutions will be disallowed as expenses. (S.s 3a)

(ii) Expenses paid to a person located in an NJA will be disallowed.

(iii) Loan etc. received from the person located in an NJA will be treated as the income of the Indian Assessee.

Tax Consequences: For the Non-Resident party:

Where any payments are made to persons located in an NJA, and such payments amount to taxable income in the hands of the NJA person, then tax shall be levied at the highest rate.

Examples

(1) *A Ltd., an Indian company, provides technical services to a company, XYZ Inc., located in a NJA for a consideration of ` 20 lakhs in October, 2011. It charges ` 24 lakhs and ` 26 lakhs for similar services rendered to PQR Inc. and MNO Inc., respectively, which are not located in a NJA. PQR Inc. and MNO Inc. are not associated enterprises of A Ltd.*

Assuming that the variation notified by the Central Government for such class of international transactions is 8% of the transaction price, discuss the tax implications under section 94A read with section 92C in respect of the above transaction of provision of technical services by A Ltd. to XYZ Inc.

(2) *Mr.X, a non-resident individual, is due to receive interest of ` 5 lakhs during March 2012 from a notified infrastructure debt fund eligible for exemption under section 10(47). He incurred expenditure amounting to ` 10,000 for earning such income. Assuming that Mr.X is a resident of a NJA, discuss the tax implications under section 94A, read with sections 115A and 194LB.*

7. ASSESSMENT OF VARIOUS ENTITIES

(a) Marginal increase in rate of MAT to maintain the effective rate of MAT [Section 115JB]

MAT rate increased from 18% of book profits to 18.5% of book profits

(b) Sunset for MAT exemption for SEZ Developers and units and for dividend distribution tax (DDT) exemption for SEZ Developers [Section 115-O & 115-JB]

Related amendment in section: 10(34)

(i) SEZ Developers were entitled to exemption from applicability of MAT and DDT and units in SEZ were entitled to exemption from applicability of MAT.

(ii) Section 10(34) provides for exemption of dividend referred to in section 115-O in the hands of the recipient. *Explanation* to section 10(34) clarifies that dividend referred to in section 115-O shall not be included in the total income of the assessee, being a Developer or entrepreneur.

(iii) A sunset clause has now been introduced to remove MAT exemption w.e.f. A.Y.2012-13 and remove DDT exemption for dividends declared, distributed or paid on or after 1st June, 2011.

(iv) Since DDT would be levied under section 115-O on dividends declared, distributed or paid on or after 1.6.2011, such income would be exempt in the hands of the recipient under section 10(34). Further, dividend income received by an SEZ Developer or entrepreneur would also be exempt under section 10(34), since the same would have been subject to DDT under section 115-O.

(v) Therefore, the clarificatory Explanation to section 10(34) has also been omitted w.e.f. 1.6.2011, since the dividend income would be exempt in the hands of the recipient under the main section 10(34) itself.

Note *- Since DDT exemption has been removed only with effect from 1st June, 2011, such exemption would be available to SEZ Developers in respect of dividend declared, distributed or paid upto 31st May, 2011. It is possible to take a view that DDT would not be attracted in respect of dividend declared on or before 31st May, 2011, even if the same is paid after that date.*

ALTERNATE MINIMUM TAX IN CASE OF LIMITED LIABILITY PARTNERSHIPS

CHAPTER XII-BA : Sec 115JC and 115JD

In order to save revenue on account of companies converting to LLP's to take benefits of tax exemptions and to rationalize taxation of LLP's with companies, Finance Act 2011 has introduced a new Chapter XII-BA under the Income Tax Act 1961 which provides for levy of Alternate Minimum Tax @ 18.5% on the adjusted total income of Limited Liability Partnerships. The effective rate of AMT after taking in account education cess will be 19.05%.

As per the provisions of the chapter XII-BA, where the regular income tax payable by a LLP for a particular financial year is less than the corresponding alternate minimum tax computed at the rate of 18.5% on its adjusted total income; such alternate minimum tax shall be deemed to be the income tax liability of such LLP.

Adjusted total income shall be the total income as increased by the deductions claimed under any section included in chapter VI-A (C) (deductions in respect of certain income) and deductions claimed under section 10AA (deduction available to SEZ units).

AMT VS MAT

The concept to AMT is similar to the Minimum Alternate Tax (MAT), as applicable to the Companies but since there is no concept of book profits in case of LLP, the LLP's will be liable to pay AMT on their adjusted total income (equivalent to adjusted taxable income). Similar to Company, LLP paying AMT can claim its credit for 10 assessment years. But as opposed to Company, LLP will not be liable to pay AMT on those income, which are exempt under provisions of Income Tax like long term capital gain under section 10 (38) and income from dividend under section 10 (34) etc

	MAT	**AMT**
Section	115JB(1) Chapter – XII-B	Section 115JC Chapter XII-BA
Provision	A Company is required to pay a minimum alternate Tax (MAT) on its book profit, if the income tax payable on the total income, as computed under the income tax act in respect of any previous year relevant to the assessment year commencing on or after 1st April 2011, is less than the MAT.	Where the regular tax payable for a previous year by a limited liability partnership 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 limited liability partnership and LLP shall be liable to pay income tax on such total income. "Adjusted total income shall be total income as increased by the deductions claimed under any section included in chapter VI-A, Part C (deductions in respect of certain income and deductions claimed under section 10AA (Deduction available to SEZ units). Regular Tax means the tax payable under the income tax act for LLPs excluding the provisions of chapter 115JC.
Rate	18.5% + Surcharge (5%) +Education Cess (3%) i.e. 20%	18.5% +Education Cess (3%) i.e 19.05% (Surcharge is not applicable on Limited Liability Partnership)
Tax Credit	The tax credit to be allowed shall be the difference of the Minimum Alternate tax paid for any assessment year and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act.	The tax credit is allowed to the extent of the excess of the alternate minimum tax paid over the regular income tax.
Carrry Forward of Tax Credit	Tax credit will be carried forward for a maximum period of 10 years from the year in which such credit arose.	Tax credit will be carried forward for a maximum period of 10 years from the year in which such credit arose.

No interest shall be payable on tax credit allowed u/s 115JD(1)

If the amount of regular income tax or the alternative minimum tax is reduced or increased as a result of any order passed under this Act, the amount of tax credit allowed under this section shall also be varied accordingly.

As per Sec 115JC(3) each LLP to whom this section applies shall obtain a report from a CA certifying that the adjusted total income and the AMT have been computed in accordance with the provisions of this Chapter.

Example

Excellent LLP has income of ` 25 lakhs under the head "Profits and gains of business or profession". One of its businesses is eligible for deduction@100% of profits under section 80-IA for A.Y.2012-13. The profit from such business included in the business income is ₹12 lakhs. Compute the tax payable by the LLP, assuming that it has no other income during the P.Y.2011-12.

(c) Concessional rate of tax on dividends received by Indian companies from specified foreign companies [New Section 115BBD]

(i) Dividends received by Indian companies from specified foreign companies to be subject to a concessional rate of 15% as against the existing rate of 30%.

(ii) This rate of 15% would be applied on gross dividend, in the sense, that no expenditure would be allowable in respect of such dividend.

(iii) However, this concessional rate would not be applicable in respect of dividend received from a foreign company in which the holding of the Indian company is less than 26% of the nominal value of the equity share capital.

(iv) Specified foreign company means a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of the company.

Example

Nilam Ltd., an Indian company, receives the following dividend income during the P.Y.2011-12 –

(1) from shares held in XYZ Inc., a foreign company, in which it holds 25% of nominal value of equity share capital – `1,00,000;

(2) from shares held in PQR Inc., a foreign company, in which it holds 30% of nominal value of equity share capital – `2,00,000.

(3) from shares held in Indian companies – `2,50,000.

A Ltd. has paid remuneration of `30,000 for realising dividend, the break up of which is as follows –

(1) `5,000 (XYZ Inc.)

(2) `10,000 (PQR Inc.)

(3) `15,000 (Indian companies)

The business income of Nilam Ltd. computed under the provisions of the Act is `50 lakh. Compute the total income and tax liability of Nilam Ltd., ignoring MAT.

8. INCOME TAX AUTHORITIES

Powers for facilitating collection of information on requests from tax authorities outside India [Section 131]

Related amendment in sections: 133, 153 & 153B

(i) Under section 131(1), certain income-tax authorities have the same powers as are vested in a court under the Code of Civil Procedure, 1908, while trying a suit in respect of discovery and inspection, enforcing the attendance of any person and examining him on oath, compelling the production of books of account and other documents and issuing commissions.

(ii) For facilitating quick collection of information on request from tax authorities outside India, notified income-tax authorities (not below the rank of Assistant Commissioner of Income-tax) to now have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons. Such notified authorities to also have the powers under section 131(3) to impound and retain in their custody for such period as they think fit, any books of account or other documents produced before them in any proceeding under the Act.

(iii) Such notified authorities are also empowered, for the purposes of an agreement referred to in section 90 or section 90A, to exercise the powers conferred under section 133 to call for information, irrespective of whether any proceedings are pending before it or any other income-tax authority.

(iv) The time limits for completion of assessments and reassessments are provided for in section 153. Section 153B provides for the time limit for completion of assessment under section 153A in case of search or requisition. The periods to be specifically excluded for computing these time limits are provided in Explanation 1 to section 153 and Explanation to section 153B, respectively. Clause (viii) has been inserted in the said Explanations to exclude the time taken in obtaining information from the tax authorities in jurisdictions situated outside India (under an agreement referred to in section 90 or section 90A) from the prescribed time limit for completion of assessments/reassessments under section 153/153B. Accordingly, the period beginning with the date on which a reference for exchange of information is made and ending with the date on which the information is received by the Commissioner or a period of six months, whichever is less, is excluded for computing the above time limits.

9. ASSESSMENT PROCEDURE

(a) Extension of due date for filing of transfer pricing report and return of income of corporate assessees undertaking international transactions [Section 139(1)]

ASSESSEE	DUE DATE
Company, Person whose accounts are required to be audited, working partner in audited firm and who is drawing remuneration from the firm,	30th September

Company who is required to file transfer pricing audit report in Form No 3CEB	30th November
Other Assessee	31st July

Accordingly the time limits of Section 43B and Section 40a(ia) will have to be read as 30th Nov for the specified corporate assessees.

EXEMPTION FROM FILING RETURNS Sec 139(1C)

The Central Government has the power to exempt any class of persons from filing a return of income.

Individuals having total income up to Rs.5,00,000 for FY 2010-11, after allowable deductions, consisting of salary from a single employer and interest income from deposits in a saving bank account up to Rs.10,000 are not required to file their income tax return. Such individuals must report their Permanent Account Number (PAN) and the entire income from bank interest to their employer, pay the entire tax by way of deduction of tax at source, and obtain a certificate of tax deduction in Form No.16.

Persons receiving salary from more than one employer, having income from sources other than salary and interest income from a savings bank account, or having refund claims shall not be covered under the scheme.

The scheme shall also not be applicable in cases wherein notices are issued for filing the income tax return under section 142(1) or section 148 or section 153A or section 153C of the Income Tax Act 1961.

(c) Time limit extended for issue of notification for relaxation, modification or adaptation of any provision of law to facilitate centralized processing of returns [Section 143(1B)]

10. SETTLEMENT COMMISSION

(a) Threshold limit for "additional amount of income-tax payable on income disclosed in the application" for admission of a case by an entity related to the tax-payer who is the subject matter of search [Section 245C]

(i) Last year, section 245A was amended to provide that the proceedings for assessment or reassessment resulting from search/requisition would fall within the definition of a "case" which can be admitted by the Settlement Commission.

(ii) Consequent amendment was made in section 245C to provide that the additional amount of income-tax payable on income disclosed in the application should exceed ` 50 lakh, for an application to be made before the Settlement Commission in such cases.

(iii) Therefore, if proceedings have been initiated against the applicant (hereinafter referred to as specified person) under section 153A or under section 153C as a result of search or a requisition of books of account, an application can be made before the Settlement

Commission if the additional amount of income-tax payable on the income disclosed in the application exceeds ` 50 lakh.

(iv) The Finance Act, 2011 has now provided that an application can also be made, where the applicant is related to the specified person (mentioned in (iii) above) and in whose case also proceedings have been initiated as a result of search, provided the additional income-tax payable on the income disclosed in the application exceeds ` 10 lakh.

(v) Therefore, the limit of ` 50 lakh would be applicable to the tax payer who is the subject matter of search and the limit of ` 10 lakh would be applicable to entities related to such a tax payer, who are also the subject matter of search.

(b) Settlement Commission specifically empowered to amend any order to rectify a mistake apparent from record within six months from date the of its order [Section 245D(6B)]

Note *– Similar amendment has been effected by inserting sub-section (6B) in section 22 of the Wealth-tax Act, 1957*

11. MISCELLANEOUS PROVISIONS

(a) Omission of the requirement to quote DIN [Section 282B]

(b) Non-resident having liaison office required to submit statement in prescribed form to the Assessing Officer [New Section 285]

(i) A non-resident can operate in India through a branch or a liaison office set up after getting the approval of the Reserve Bank of India. Since the branch constitutes a permanent establishment of the non-resident, it has to file its return of income. However, there is no such requirement as regards a liaison office since no business activity is allowed to be carried out in India via a liaison office of a non-resident.

(ii) With effect from 1.6.2011, such a non-resident would be required to file a statement in the prescribed form to the Assessing Officer having jurisdiction, within 60 days from the end of the financial year, providing the details in respect of activities carried out by the liaison office in India during the financial year.

(iii) Since the provision has been made effective from 01.06.2011, the requirement to file such statements would arise for financial year 2011-12 and thereafter and the statement of a particular financial year should be filed on or before 30th May, of the succeeding financial year. For example, the statement for F.Y. 2011-12 should be filed on or before 30th May, 2012.

(c) Relaxation of time limit for satisfying the conditions, the non-compliance of which would result in withdrawal of recognition of recognized provident fund [Amendment of Fourth Schedule to the Income-tax Act]

(i) Rule 4 of Part A of the Fourth Schedule to the Income-tax Act, 1961, provides for the conditions which are required to be satisfied by a provident fund for receiving or retaining recognition under the Income-tax Act, 1961.

(ii) The above time limit specified in the proviso to Rule 3(1) of Part A of the Fourth Schedule for a recognized provident fund, where it has received recognition on or before 31.03.2006, for satisfying the conditions set out in clause (ea) of Rule 4 and any other conditions such as the Board may notify, has now been extended from 31.12.2010 to 31.3.2012. Therefore, only if the fund does not satisfy such conditions on or before 31.3.2012, the recognition granted to the fund shall be withdrawn.

CIRCULARS

1. Circular No. 4/2010 dated 18.5.2010

Clarification regarding definition of new infrastructure facility for the purpose of section 80-IA(4)

The CBDT has, vide this Circular, clarified that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of section 80-IA(4)(i).

2. Circular No. 6/2010 dated 20.9.2010

Regional Rural Banks not eligible for deduction under section 80P

3. Notification No.41/2010 dated 31.05.2010

Substitution of Rules 30, 31, 31A, 31AA, 37CA & 37D in the Income-tax Rules, 1962.

Changes in the time limits of payment of TDS, filing of returns, issue of certificates.

4. Notification No. 12/2011 dated 25.02.2011

United Stock Exchange of India Ltd. notified as a recognized stock exchange

Now recognised stock exchanges are BSE, NSE, MCX and USE.

10. Notification No. 32/2011 dated 3.06.2011

Limits for exemption of interest on Post Office Savings Bank Account

The interest on Post Office Savings Bank Account which was so far fully exempt would henceforth be exempt from tax for any assessment year only to the extent of:

(i) ` 3,500 in case of an individual account.

(ii) ` 7,000 in case of a joint account.

CASE LAWS

1) Assessee set up a unit in Jammu and Kashmir under the New Industrial Policy and received interest subsidy and refund of excise duty. The AO taxed the same as revenue receipt on following grounds.

(i) the aforesaid incentives were not given to establish industrial units because the industry was already established.

(ii) the incentives were available only on commencement of commercial production.

(iii) the incentives were recurring in nature.

(iv) the incentives were not given for acquisition of capital assets.

(v) the incentives were given for easy market accessibility and to run the business more profitably.

Assessee contends that it is a capital receipt and not taxable.Advise

Ref: ***Shree Balaji Alloys v. CIT (2011) 333 ITR 335 (J&K)***

2) Yash Motors purchased a machine 5 years ago and it was being used till last year for the business. In the current year it is not used at all since it has no practical use and is discarded. Yash Motors claimed depreciation on the same which the AO refused to allow. Advise.

Ref : ***CIT v. Yamaha Motor India Pvt. Ltd. (2010) 328 ITR 297 (Delhi)***

3) Dr Health was running a hospital for many years and enjoyed a good reputation. Dr. Update purchased the building and continued the business of hospital in the same place and same name. He paid Dr Health Rs. 10 lakh towards goodwill. He now wants to claim depreciation on the same. Advise.

Ref: B. Raveendran Pillai v. CIT (2011) 332 ITR 531 (Kerala)

4) Bacchan Shows Ltd is in the business of operating movie theatres across the country. A proposal was put up to take over an existing theatre and convert it into a multi screen one. An architect was appointed to look into the feasibility and was paid fees for the same. Ultimately it was decided to scrap the proposal since it was not financially viable. Assessee claimed the expenses as revenue while the AO insists that this is a capital expenditure. Advise.

Ref : CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594 (Delhi)

5) Hard Head Ltd manufactures helmets. It took a loan from a bank for purchase of capital assets. It went into financial difficulties and the bank agreed to waive part of the principal portion of the loan. The Assessing Officer u/s 143(3) added the same to the income on 2 grounds

   a) It is deemed income u/s 41(1)

b) Alternatively it is a benefit u/s 28(iv)

Assessee wants to file an appeal but seeks your advise whether he has a good case.

Ref : Iskraemeco Regent Ltd. v. CIT (2011) 331 ITR 317 (Mad.)

6) Anna entered into a joint property development with a builder and the builder was to give him 3 residential flats in the same building. In the computation of capital gains Anna claimed the investment in the 3 flats as exempt u/s 54. The AO is proposing to disallow the same since assessee has purchased more than one house property. Advise.

Ref : CIT v. Smt. K. G. Rukminiamma (2011) 331 ITR 211 (Kar.)

7) Suzlon Ltd purchases different parts and assembles them into a windmill. In their opinion this is a manufacture and hence eligible for deduction u/s 80IB. The AO rejects their claim on the ground that they are not actually manufacturing. Advise

Ref: CIT v. Chiranjjeevi Wind Energy Ltd. (2011) 333 ITR 192 (Mad.)

8) Nilam Ltd set up a unit eligible for deduction u/s 80IB for 10 years. However they did not claim deduction for the first 6 years. In the 7th year the company claimed the deduction for the first time. The AO refused to allow the deduction on the grounds that the Company had forfeited the deduction by not claiming it earlier. Assessee wants to go into appeal. Advise.

Ref: Praveen Soni v. CIT (2011) 333 ITR 324 (Delhi)

9) Mittal Steels Ltd was into the activity of manufacture of steel and was eligible for deduction u/s 80IB. During the year it received transport subsidy and refund of excise duty. It claimed deduction u/s 80IB on entire profits including these 2 items. The AO said that the Supreme Court, in *Liberty India v. CIT [2009] 317 ITR 218*, observed that section 80-IB provides for deduction in respect of profits and gains "derived from the business" of the assessee and accordingly, the Parliament intended to cover sources of profits and gains not beyond the first degree. There should be a direct nexus between the generation of profits and gains and the source of profits and gains, the latter being directly relatable to the business of the assessee. Any other

source, not falling within the first degree, can only be considered as ancillary to the business of the assessee. On these grounds he has refused to allow the deduction.
Ref : CIT v. Meghalaya Steels Ltd. (2011) 332 ITR 91 (Gauhati)

10) The assessee, club providing facilities like gym, library, etc, to its members earned interest from fixed deposits which it had made by investment of its surplus funds with its corporate members. It claimed the entire income exempt on the grounds of mutuality. AO wants to tax the interest income. Advise.
Ref : Madras Gymkhana Club v. DCIT (2010) 328 ITR 348 (Mad.)

11) In this case, the airline company sold tickets to the agents at a minimum fixed commercial price. The agents were permitted to sell the tickets at a higher price, however, up to the maximum of published price. Commission at the rate of 9% of published price was payable to the agents of the airline company, on which tax was deducted under section 194H. The issue under consideration is whether the difference between the published price and the minimum fixed commercial price amounts to additional special commission in the hands of the agents to attract the provisions of section 194H.
Ref: CIT v. Qatar Airways (2011) 332 ITR 253 (Bom.)

12) An assessee filed an appeal before the ITAT. The ITAT decided the matter against the assessee. However the assessee brought to the notice of the ITAT that there were serious mistakes committed by the ITAT while passing the order. In order to rectify the same the ITAT "recalled the entire order" to decide it afresh. The tax authorities filed an appeal to the High Court that the ITAT does not have a power of recall. It can only rectify mistakes.
Ref: Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243 (Delhi)[FB]

13) Rachana filed an income tax return for AY 2011-12. The assessing officer sent an intimation u/s 143(1) in which he made some prima facie changes. On 10th April 2012 he sent a notice u/s 143(2) to the assessee for regular assessment. On 1st June 2012 he issued a notice u/s 143(1) for rectification of mistake in the intimation sent u/s 143(1). Rachana is of the opinion that this action seems incorrect. Advise her.

Ref: ***CIT v. Haryana State Handloom and Handicrafts Corporation Ltd. [2011] 336 ITR 699 (P&H)***

14) Bhandari Ltd filed a return of income for AY 2008-09. The assessing officer in 2012 initiated proceedings u/s 148 for reassessment of capital gains income. During the course of reassessment the AO also noticed some other income by way of interest and taxed the same. However he was not able to tax any capital gains since assessee proved that there was no such income. Assessee wants to challenge the validity of the order. Advise.
Ref : Ranbaxy Laboratories Ltd. v. CIT (2011) 336 ITR 136 (Delhi), Jet Airways V. CIT Mumb.

15) Sarda Ltd filed a return of income for AY 2005-06. On 12th April 2012 they received a notice u/s 148 for AY 2008-09. Sarda Ltd objected to the AO that the notice is invalid since they received it on 12-4-2012 ie after the expiry of 6 years. The AO pointed out that he had signed the notice on 31-3-2012 and handed over to the postal department on 10-4-2012. He also pointed out that the section 149 requires the notice to be **issued** within the time limit and not served within the time limit. Hence in his opinion the notice was valid. Can Sarda Ltd. Challenge this in appeal?
Ref: ***Kanubhai M. Patel (HUF) v. Hiren Bhatt or his successors to Office (2011) 334 ITR 0025 (Guj.)***

16) Ram Bharose Lottery Centre was operating the business of sale of lottery tickets for which they earned commission. In practise prizes from unsold tickets of the lotteries shall be the property of the organising agent. Similarly, all unclaimed prizes shall also be the property of the organising agent and shall be refunded to the organising agent. During the year it earned income by way of winnings from unsold tickets. It asks your advise whether this income will be taxed u/s 115BB at 30% or as business income at normal rates.
Ref : CIT v. Manjoo and Co. (2011) 335 ITR 527 (Kerala)

17) Mr. Steve Bucknor from West Indies was appointed as match umpire for IPL season IV. Total remuneration due to him from BCCI was 20 lakh. BCCI wants to release the

payment to him after deducting tax u/s 194E since in their opinion he is covered by section 115BBA. Advise.

Ref: Indcom v. Commissioner of Income-tax (TDS) (2011) 335 ITR 485 (Calcutta)

Latest Judgements

Vodafone International Holdings B.V. vs. UOI (Supreme Court)

A Cayman Island company called CGP Investments held 52% of the share capital of Hutchison Essar Ltd, an Indian company engaged in the mobile telecom business in India. The shares of CGP Investments were in turn held by another Cayman Island company called Hutchison Telecommunications. The assessee, a Dutch company, acquired from the second Cayman Islands company, the shares in CGP Investments for a total consideration of US $ 11.08 billion. The AO issued a show-cause notice u/s 201 in which he took the view that as the ultimate asset acquired by the assessee were shares in an Indian company, the assessee ought to have deducted tax at source u/s 195 while making payment to the vendor.

(i) The department's argument that there is a conflict between **Azadi Bachao Andolan** 263 ITR 706 (SC) & **McDowell**154 ITR 148 (SC) and that **Azadi Bachao** is not good law is not acceptable. **While tax evasion through the use of colourable devices and by resorting to dubious methods and subterfuges is not permissible, it cannot be said that all tax planning is impermissible**;

(ii) **In the taxation of a Holding Structure the burden at the threshold is on the Revenue to establish abuse in the sense of tax avoidance in the creation and/or use of such structure(s)**. The Revenue may invoke the "substance over form" principle or "piercing the corporate veil" test **only after it is able to establish that the transaction is a sham or tax avoidant** (e.g. structures used for circular trading or round tripping or to pay bribes) or if the Holding Structure entity has no commercial or business substance and has been interposed only to avoid tax. **A strategic foreign direct investment coming to India should be seen in a holistic manner** and keeping in mind certain factors like the period of business operations in India etc. On facts, the Hutchison structure was in place since 1994 and could not be said to be created as a sham or tax avoidant. The holding companies were not a "fly by night" operator or short time investor;

(iii) The Revenue's argument that u/s 9(1)(i) it can "look through" the transfer of shares of a foreign company holding shares in an Indian company and treat the **transfer of shares of the foreign company as equivalent to the transfer of the shares of the Indian company** on the premise that s. 9(1)(i) covers direct and indirect transfers of capital assets is not acceptable. S. 9(1)(i) (unlike the DTC Bill, 2010) does not use the word "indirect transfer";

(iv) The argument that CGP, the intervened entity, had **no business or commercial purpose** and that its **situs** was not in the Cayman Islands but in India (where the

assets were) is also not acceptable. The situs of the shares of a company is where the registered office is;

(v) The High Court's finding that, applying the "nature and character of the transaction" test, the transfer of the CGP share was not adequate in itself to achieve the object of consummating the transaction between HTIL and VIH and that there was a transfer of other "rights and entitlements" which were "capital assets" is not correct because the transaction was one of "share sale" and not an "asset sale". It had to be viewed from a commercial and realistic perspective. **As it was not a case of sale of assets on itemized basis, the entire structure, as it existed, ought to have been looked at holistically. A transfer of shares lock, stock and barrel cannot be broken up into separate individual components, assets or rights such as right to vote, right to participate in company meetings, management rights, controlling rights, control premium, brand licences and so on as shares constitute a bundle of rights**. The sum of US$ 11.08 bn was paid for the "entire package" and it was not permissible to split the payment and consider a part of it towards individual items

Alpine Electronics Asia Pte Ltd vs. DGIT (Delhi High Court)
The AO issued a notice u/s 148 to reopen the assessment. Though the assessee filed a ROI, the AO did not issue the s. 143(2) notice within the prescribed period but passed a draft assessment order u/s 144C. The Court had to consider (a) what is the effect of the failure to issue notice u/s 143(2) within the period stipulated in the proviso to clause (ii) and (b) the effect of s. 292BB of the Act. HELD by the Court quashing the assessment proceedings:

(i) The service of notice u/s 143(2) within the statutory time limit is mandatory and is not an inconsequential procedural requirement. **Omission to issue notice u/s 143(2) is not curable and the requirement cannot be dispensed with. S. 143(2) is applicable to proceedings u/s 147 & 148**. While the Proviso to s. 148 protects and grants liberty to the Revenue to serve notice u/s 143(2) before passing of the assessment order for returns furnished on or before 1.10.2005, in respect of returns filed pursuant to notice u/s 148 after 1.10.2005, it is mandatory to serve notice u/s 143(2) within the stipulated time limit.

(ii) S. 292BB incorporates the principle of estoppel and stipulates that an assessee who has appeared in any proceeding and co-operated in any enquiry relating to assessment or reassessment shall be deemed to be served with any notice which was required to be served and would be precluded from objecting that the notice was not served upon him or was served upon him in an improper manner or was not served upon him in time. **However, the principle of estoppel does not apply if the assessee has raised objection in reply to the notice before completion of assessment or reassessment**. As the AO had passed a draft assessment order and the assessee had raised an objection before completion of assessment, the estoppel in s. 292BB did not apply and the s. 147 proceedings could not continue.

CIT vs. SPL's Siddhartha Ltd (Delhi High Court)
S. 147: Sanction of CIT instead of JCIT renders reopening invalid

The AO issued a notice u/s 148 to reopen an assessment. As a s. 143 (3) order had not been passed & 4 years had elapsed, the AO ought to have obtained the sanction of the Joint/Additional CIT u/s 151(2). Instead, he routed the file through the Additional CIT and obtained the sanction of the CIT. On appeal by the assessee, the Tribunal struck down the reopening on the ground that correct sanction had not been obtained. On appeal by the department, HELD upholding the Tribunal:

(i) S. 151(2) requires the sanction to be accorded by the Joint/Additional CIT. The AO sought the sanction of the CIT.**Though the file was routed through the Addl. CIT, the latter only made an endorsement "CIT may kindly accord sanction". This showed that the Addl. CIT did not apply his mind or gave any sanction**. Instead, he requested the CIT to accord approval. This is not an irregularity curable u/s 292B;

(ii) The different authorities specified in s. 116 have to exercise their powers in accordance with law. **If powers conferred on a particular authority are arrogated by other authority without mandate of law, it will create chaos in the administration of law and hierarchy of administration will mean nothing. Satisfaction of one authority cannot be substituted by the satisfaction of the other authority**. If the statute requires a thing to be done in a certain manner it has to be done in that manner alone. Also, the designated authority should apply his independent mind to record his satisfaction and it should not be at the behest of a superior authority.

Airport Authority of India vs. CIT (Delhi High Court – Full Bench)
S. 37(1): Distinction between capital & revenue expenditure explained

The assessee incurred expenditure on removal of encroachments and claimed the same as a revenue deduction on the ground that the expenditure was incurred in the normal course of the business.

The question that has to be considered is whether the expenditure is incurred for initiating the business or for removing an obstruction to facilitate an existing business. **Expenditure incurred for running the business or working it, with a view to produce profits is in the nature of revenue expenditure**. **Expenditure incurred to fine tune trading operations to enable the management to run the business effectively, efficiently and profitably leaving the fixed assets untouched would be an expenditure of a revenue nature even though the advantage obtained may last for an indefinite period**. On facts, the land belonged to the assessee and the amount paid for removal of encroachers was not for acquisition of new assets. The payment was made to facilitate its smooth functioning of the business i.e. in relation to carrying on the business in a profitable manner.

CIT vs. Arvind Kumar Jain (Delhi High Court)
The assessee held 50% of the shares of a closely held company. The assessee's books showed that he had taken an "unsecured loan" of Rs. 47 lakhs from the company. The High Court held that the amount was not taxable on following grounds

(i) S. 2(22)(e) provides that any "loan or advance" by a closely held company to a substantial shareholder shall be assessed as "deemed dividend". The purpose is to tax accumulated profits distributed in the form of loans. Bearing this purpose in mind, **the word "advance" has to be read in conjunction with the word "loan"**. The attributes of a loan are that it involves a positive act of lending coupled with acceptance by the other side of the money as loan: it generally carries interest and there is an obligation of re-payment. The term "advance" may or may not include lending. The word "advance" if not found in conjunction with the word "loan" may or may not include the obligation of repayment. If it does then it would be a loan. Applying the doctrine of noscitur a sociis, **the word "advance" means such advance which carries with it an obligation of repayment. Trade advance which are in the nature of money transacted to give effect to a commercial transactions do not fall within the ambit of s. 2(22)(e)**

CIT vs. Manjula J. Shah (Bombay High Court)
Indexed cost of gifted assets has to be determined with reference to previous owner

The assessee's daughter purchased a flat on 29.1.1993 at a cost of Rs.50.48 lakhs. She gifted the flat to the assessee on 1.2.2003. The assessee sold the flat on 30.6.2003 for Rs. 1.10 crores. In computing LTCG, the assessee took the indexed cost of acquisition under Explanation (iii) to s. 48 on the basis that she "held" the flat since 29.1.1993. The AO held that as the assessee had "held" the flat from 1.2.2003, the cost inflation index for 2002-03 would be applicable.

Under Explanation 1(i)(b) to s. 2(42A), in determining the period for which any asset is held by an assessee under a gift, the period for which the said asset was held by the previous owner has to be included. Accordingly, **though the assessee acquired the capital asset on 30.6.2003, she was deemed to have "held" the asset from 29.1.1993 onwards**. This fiction will apply to clause (iii) of the Explanation to s. 48 as well for determining the "indexed cost of acquisition". The object of the legislature is to tax the gains arising on transfer of a capital acquired under a gift or will by including the period for which the said asset was held by the previous owner. **This object cannot be defeated by excluding the period for which the said asset was held by the previous owner while determining the indexed cost of acquisition of that asset to the assessee**.

CIT vs. Asahi India Safety Glass Ltd (Delhi High Court)
Expenditure on 'Application Software' is revenue in nature

The assessee, engaged in manufacturing safety glass, entered into an agreement with Arthur Anderson for installation of the "Oracle" software application for financial accounting, inventory and purchase. A Master Software Licence and Services Agreement was also entered into with Oracle. The assessee incurred expenditure of Rs. 1.36 crores & Rs. 1.70 crores in AY 1997-98 & 1998-99. While in the books the expenditure for AY 1997-98 was capitalized, the expenditure for AY 1998-99 was

treated as "deferred revenue expenditure". The High Court, HELD in favour of assessee

(i) The test of enduring benefit is not a certain or a conclusive test which the courts can apply almost by rote. What is required to be seen is the real intent and purpose of the expenditure and whether the expenditure results in creation of fixed capital for the assessee. Expenditure incurred which enables the profit making structure to work more efficiently leaving the source of the profit making structure untouched is expense in the nature of revenue expenditure. **Fine tuning business operations to enable the management to run its business effectively, efficiently and profitably; leaving the fixed assets untouched is of revenue expenditure even though the advantage may last for an indefinite period**. Test of enduring benefit or advantage collapses in such like cases **especially in cases which deal with technology and software application** which do not in any manner supplant the source of income or added to the fixed capital of the assessee

(ii) On facts, the expenditure was for overhauling the accountancy and to efficiently train the accounting staff. It was incurred under various sub-heads such as licence fee, annual technical support fee, professional charges, data entry operator charges, training charges and travelling expenses. **None of these resulted in either creation of a new asset or brought forth a new source of income for the assessee**. **The software was "application software" which enabled it to execute tasks in the field of accounting, purchases and inventory maintenance more efficiently**;

(iii) The fact that the expenditure was not written off in the books/ treated as 'deferred revenue' is irrelevant

CIT vs. Kotak Securities Limited (Bombay High Court)
"Transaction charges" paid to BSE is "fees for technical services" u/s 194-J

The assessee paid Rs.5.17 crores to the Bombay Stock Exchange towards "transaction charges" for getting access to the "BOLT" trading system. The AO held that the payment constituted 'fees for technical services' u/s 194J and that as there was a failure to deduct TDS u/s 194-J, the amount was disallowable u/s 40(a)(i).

The assessee's argument, based on **Skycell Communications v/s DCIT** 251 ITR 53 (Mad), that the stock exchange does not render "managerial or technical services" is not acceptable because while in that case the subscriber had paid a fixed amount for the use of air time on the mobile phone and was not concerned with the technology or the services rendered by the managerial staff in keeping the cellular mobile phone activated, in the case of a stock exchange, there is **direct linkage between the managerial services rendered and the transaction charges levied by the stock exchange**. The BOLT system provided by the BSE is a complete platform for trading in securities. **A stock exchange manages the entire trading activity carried on by its members and accordingly renders "managerial services". Consequently, the transaction charges constituted "fees for technical services" u/s 194-J and the assessee ought to have deducted TDS**.

CIT vs. M/s Khemchand Motilal Jain (Madhya Pradesh High Court)
While kidnapping is an offense, paying ransom is not; Bar in Explanation 1 to s. 37(1) not attracted

The assessee, engaged in manufacture and sale of bidis, sent its whole-time director to a forest area for purchase of tendu leaves. There, the director was kidnapped by dacoits and the assessee paid ransom of Rs. 5.50 lakhs to secure his release. The AO disallowed the claim for deduction of the said amount u/s 37(1) though the CIT (A) and Tribunal upheld the claim on the ground of commercial expediency. Before the High Court, the department relied on the Explanation to s. 37(1) and argued that expenditure incurred for any purpose which is an offence or which is prohibited by law is not allowable as a deduction. HELD dismissing the appeal:
The Explanation of s. 37(1) provides that 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. **It has to be seen whether the expenditure is incurred for any purpose which is an offence or prohibited by law**. While kidnapping for ransom is an offence u/s 364 A of the IPC, **the payment of ransom to secure the release of a kidnapped person is not an offense**. **The payment of ransom is not prohibited by law**. Accordingly, the Explanation of to s. 37 (1) is not applicable and the ransom is deductible as business expenditure.