DIRECT TAXES

POWER PACK REVISION MATERIAL

RELEVANT FOR NOV 2018 EXAM

- CA MEHUL THAKKER

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REVISION MATERIAL

FOR NOV 2018

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ASSESSMENT YEAR 2018-19

Special Thanks to CA Chetan V Chaudhary

Law stated in this book is as amended by the Finance Act, 2017

A MILLION TON QUESTION

WHAT TO REVISE IN DIRECT TAX ON LAST DAY?

IF YOU FIND

- ✓ IMPORTANT AMENDMENTS MADE BY FA 2017
- ✓ RECENT CIRCULARS
- ✓ RECENT NOTIFICATIONS
- ✓ FREQUENTLY ASKED PRACTICALS
- ✓ IMPORTANT CASE STUDIES
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AT ONE PLACE

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PAGES

HERE IS THE POWER PACK REVISION MATERIAL

PART – I

IMPORTANT PROVISIONS OF INCOME TAX ACT, 1961

1 – BASICS OF INCOME TAX

1.1 RATES OF INCOME TAX

(A) Paragraph A

(a) Individual/ HUF/ AOP / BOI and every artificial juridical person

Level of Total Income	Rate of income-tax
Where the total income	
- Does not exceed Rs. 2,50,000	Nil
- Exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000	5% of the amount by which the total income exceeds Rs. 2,50,000
- Exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	Rs. 12,500 plus 20% of the amount by which the total income exceeds Rs. 5,00,000
- Exceeds Rs. 10,00,000	Rs. 1,12,500 plus 30% of the amount by which the total income exceeds Rs. 10,00,000

(b) For resident individuals of the age of 60 years or more but less than 80 years at any time during the previous year

Level of total income	Rate of income-tax
Where the total income	
- Does not exceed Rs. 3,00,000	Nil
- Exceeds Rs. 3,00,000 but does not exceed Rs. 5,00,000	5% of the amount by which the total income exceeds Rs. 3,00,000
- Exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	Rs. 10,000 plus 20% of the amount by which the total income exceeds Rs. 5,00,000
- Exceeds Rs. 10,00,000	Rs. 1,10,000 plus 30% of the amount by which the total income exceeds Rs. 10,00,000

(c) For resident individuals of the age of 80 years or more at any time during the previous year

Level of total income	Rate of income-tax
Where the total income	
- Does not exceed Rs. 5,00,000	Nil
- Exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	20% of the amount by which the total income exceeds Rs. 5,00,000
- Exceeds Rs. 10,00,000	Rs. 1,00,000 plus 30% of the amount by which the total income exceeds Rs. 10,00,000

(B) Circular No. 28/2016, dated 27-07-2016

Clarification regarding attaining prescribed age of 60 years/80 years on 31st March itself, in case of senior/very senior citizens whose date of birth falls on 1st April

- **The Supreme Court in the case of Prabhu Dayal Sesma vs. State of Rajasthan &, another 1986, AIR, 1948 observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the day preceding, the anniversary of his birthday.**
- The CBDT has, vide this Circular, clarified that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday.
- Therefore, a resident individual whose 60th birthday/80th birthday falls on 1st April, 2018, would be treated as having attained the age of 60 years in the P.Y.2017-18, and would be eligible for higher basic exemption limit of Rs.3 lakh / Rs.5 lakh in computing his tax liability for A.Y.2018-19.

(C) Paragraph B:- Co-operative society

Level of total income	Rate of income-tax
Where the total income	
(1) Does not exceed Rs. 10,000	10% of the total income
(2) Exceeds Rs. 10,000 but does not exceed Rs. 20,000	Rs. 1,000 plus 20% of the amount by which the total income exceeds Rs. 10,000
(3) Exceeds Rs. 20,000	Rs. 3,000 plus 30% of the amount by which the total income exceeds Rs. 20,000

(D) Paragraph C: Firm/Limited Liability Partnership (LLP)
The rate of tax for a firm (LLP) for A.Y. 2018-19 is 30%.

(E) Paragraph D: Local authority
The rate of tax for a local authority for A.Y.2018-19 is 30%.

(F) Paragraph E: Company
The rates of tax for A.Y.2018-19 are as under:-

	Domestic companies		**Foreign companies**
	If Total Turnover or Gross Receipts in P.Y.2015-16 does not exceed Rs.50 Crore	**If Total Turnover or Gross Receipts in P.Y.2015-16 exceeds Rs.50 Crore**	
	Tax rates	**Tax rates**	**Tax rates**
Short Term Capital Gain u/s.111A	15% + SC+EC	15% + SC+EC	15%+ SC+EC
Long-term capital gain	20% +SC+EC	20% +SC+EC	20%+ SC+EC
Winnings from lotteries	30% + SC+EC	30% + SC+EC	30%+ SC+EC
Other income	25%+ SC+EC	30%+ SC+EC	40%+ SC+EC

1.2 SURCHARGE AND MARGINAL RELIEF

The rates of surcharge applicable for A.Y. 2018-19 are as follows –

Surcharge (as a percentage of income tax)-	If total income is Upto Rs.50 lakhs	If total income is in the range of Rs.50 lakhs to Rs.1 crore	If total income is in the range of Rs.1 crore to Rs.10 crore	If total income is Above Rs.10 crore
Individuals/HUF/AOP/BOI/artificial juridical person	Nil	10%	15%	15%
Firm	Nil	Nil	12%	12%
Co-operative society	Nil	Nil	12%	12%
Local authority	Nil	Nil	12%	12%
Domestic company	Nil	Nil	7%	12%
Foreign company	Nil	Nil	2%	5%

The above surcharge is subject to a Marginal relief

Why there is a need for marginal relief?

Consider Example (A) and (B)

Example : (A) Taxpayer : Mr. Active, 54 years having total income of Rs.50,00,000.

Particulars	Rs.
Tax on Rs.50,00,000 Add: Surcharge	13,12,500 Nil
Sub-total	13,12,500

Example : (B) Taxpayer: Mr. Passive, 55 years having total income of Rs.50,50,000.

Particulars	Rs.
Tax on Rs.50,50,000 Add: Surcharge (10%)	13,27,500 1,32,750
Sub-total	14,60,250

Now, as compared to Example (A), in Example (B), income is increased by **Rs. 50,000,** while tax is increased by Rs.**1,47,750,** therefore, there is a need for marginal relief.

Under marginal relief, **tax liability of Rs. 50,50,000 is restricted as under**:-

Tax on 50,50,000 = Tax on 50,00,000 + (Total Income – Rs.50,00,000)
= Tax on 50,00,000+ (50,50,000-Rs.50,00,000)
= 13,12,500 + 50,000
= 13,62,500

The above tax is increased by education cess 3%

☺ EASY STEPS to compute Final tax liability when total income of Individual ranges between Rs.50,00,001 to Rs. 1,00,00,000.

Step 1: Find out regular tax liability + Surcharge (Ignore education cess)

Step 2: Find out tax on 50,00,000 + (Total Income-50,00,000)

Step 3: Step 1 or Step 2 whichever is lower

Step 4: Add Education Cess (@3%)

Practical 1

Find out tax payable of Mr. Jayesh, 51 years, having total income of Rs. 51,00,000.

Solution

Step 1:-	Tax on 51,00,000 = Rs. 13,42,500	
	+ Surcharge (10%) = Rs. 1,34,250	
	Rs. 14,76,750	
Step 2:-	Tax on 50,00,000 + (51,00,000 – 50,00,000)	
	= Rs. 13,12,500 + Rs. 1,00,000	
	=Rs. 14,12,500	
Step 3:-	Step 1 or Step 2 whichever is lower i.e.	Rs. 14,12,500
Step 4:-	Add education cess (3% of 14,12,500)	Rs. 42,375
	Tax Payable	Rs. 14,54,875
	Tax Payable (Rounded off)	**Rs. 14,54,880**

Reader's Note:

1.3 EDUCATION CESS/SECONDARY AND HIGHER EDUCATION CESS ON INCOME-TAX

"Education cess (EC)" is to be calculated at the rate of 2% of income-tax and surcharge. Similarly, "Secondary and higher education cess on income-tax (SHEC)" is to be computed @1% of income-tax and surcharge. EC and SHEC is applicable to all assessees i.e., individuals, HUFs, AOP/BOIs, co-operative societies, firms, LLPs, local authorities and companies. The format of computation of EC and SHEC is as under:-

(a) Income Tax	XXXXX
(b) Add: Surcharge on Income Tax (if any)	XXXXX
(c) Sub-Total (a+b)	XXXXX
(d) Education cess @ 2% on (c)	XXXXX
(e) Secondary and higher education cess on@ 1% on (c)	XXXXX
(f) Total Tax payable (c+d+e)	XXXXX

No marginal relief would be available in respect of such cess.

1.4 RATES OF DISTRIBUTION TAX

Section	Particulars	Rate of Tax
115-O	Tax on distributed income of domestic companies by way of dividend	15%
115-QA	Tax on distributed income of domestic company for buyback of unlisted shares	20%
115R	Tax on distributed income of UTI/Mutual Funds	
	— Distribution to a unit-holder of equity oriented funds or any income distributed by the Administrator of the specified undertaking to unit-holder	Nil
	— Distribution by Money Market Mutual Fund or a Liquid Fund or any Other Fund to Unit Holder being individuals/ HUFs	25%
	— Distribution by Money Market Mutual Fund or a Liquid Fund or any Other Fund to Unit Holder being any other person	30%
	— Distribution by infrastructure debt funds to non-residents/foreign companies	5%

Surcharge@12% would be leviable on distribution tax levied under sections 115-O, 115-QA and 115R **irrespective of amount distributed.** Further, education cess@2% and secondary and higher education cess@1% would be leviable on (the distribution tax plus surcharge).

1.5 REBATE

Section:- 87A – Effective from A.Y.2018-19

(a) Section 87A has been inserted to provide a rebate from the tax payable (before education cess) by an individual who is resident in India, provided his total income **does not exceed** Rs.5,00,000 **[Rs. 3,50,000 w.e.f. A.Y. 2018-19].**

(b) Such rebate shall be the amount of **income-tax payable** on the total income **or** an amount of Rs. 5,000 ***[Rs. 2,500 W.e.f. A.Y. 2018-19]*** **whichever is less.**

Practical 2

The gross total income of Mr. X, a resident aged 30 years, comprises of salary (Rs.3,85,000) and interest on savings bank (Rs.8,000). Compute his tax liability, assuming that he had deposited Rs.50,000 in public provident fund.

Solution

Computation of total income of Mr. X

Particulars	Rs.	Rs.
Salary		3,85,000
Interest on savings bank account		8,000
Gross Total Income		**3,93,000**
Less: Deductions under chapter VIA		
Section 80C (deposit in PPF)	50,000	
Section 80TTA (interest on savings bank account)	8,000	58,000
Total Income		**3,35,000**

Computation of tax liability of Mr. X

Particulars	Rs.
Tax on total income @ 5% of Rs.85,000 (Rs.3,35,000-Rs.2,50,000)	4,250
Less: Rebate under 87A	(2,500)
	1,750
Add: Education cess @2%	35
Secondary and higher education cess @ 1%	18
Total tax liability	**1,803**
Total tax liability (Rounded off)	**1,800**

Reader's Note:

2 – INCOME WHICH DO NOT FORM PART OF TOTAL INCOME

2.1 INTEREST TO NON-RESIDENTS

Section:- 10(4)(ii) - w.r.e.f A.Y. 2013-14

In the case of an individual, any income by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India in accordance with FEMA, 1999 shall be exempt.
For this purpose, such individual is a person resident outside India as defined in ~~clause (q)~~ **clause (w)** of section 2 of FEMA,1999 or is a person who has been permitted by the Reserve Bank of India to maintain the aforesaid Account.

2.2 TAX EXEMPTION TO PARTIAL WITHDRAWAL FROM NPS

Section:- 10(12B) – Effective from A.Y.2018-19

Section	Eligible Assessee	Nature Of Income	Conditions/ Definitions/Comments
10(12A)	Employee	40% of total amount payable to him is exempt.	Such amount is payable to employee at the time of closure of his account under NPS or opting out of the pension scheme referred to in section 80CCD.
10(12B) Inserted by Finance Act, 2017 w.e.f. A.Y.2018-19	Employee	Any payment from NPS to an employee on partial withdrawal	**(1)** Withdrawal is made in accordance with the terms and conditions, specified under the Pension Fund Regulatory and Development Authority Act, 2013 and **(2)** Exemption shall not exceed twenty-five percent of the amount of contributions made by him.

Practical 1

Mr. Suresh, an employee of ECO POWER LTD contributed Rs.6,00,000 to New Pension System (NPS) since 2011 and claimed deduction under section 80CCD. Mr. Suresh was in need of money and therefore, planning to make partial withdrawal of Rs. 2,00,000 from the contribution made by him. Discuss taxability if any.
What would have been your answer if he decided to opt out of NIPS and received Rs. 11,00,000.

Solution

Particulars	Partial Withdrawal(Rs.)	Opting out of NPS (Rs.)
Amount received from NPS is deemed to be the income for the P.Y 2017-18 u/s 80CCD(3)	2,00,000	11,00,000
Less: Exemption under section 10(12A)	NA	(4,40,000)
Less: Exemption under section 10(12B)	(1,25,000)	NA
Taxable amount	75,000	Rs.6,60,000

Readers Note:

2.3 TAX EXEMPTION OF INCOME OF CHIEF MINISTER'S RELIEF FUND/LIEUTENANT GOVERNOR'S RELIEF FUND

Section:- 10(23C) [w.r.e.f A.Y.1998-99] and 11 [Effective A.Y.2018-19]

Eligible Assessee	Nature Of Income	Conditions/Definitions/Comments
Income received by any person on behalf of following entities **(a)** Prime Minister's National Relief fund. **(b)** Prime Minister's fund for promotion of folk art **(c)** Prime Minister's Aid to Students Fund **(d)** National foundation for communal harmony **(e)** Swachh Bharat Kosh **(f)** Clean Ganga Fund **(g)** **Chief Minister's Relief Fund or Lieutenant Governor's Relief Fund (inserted by Finance Act, 2017 w.r.e.f. A.Y. 1998-99)** **(h)** University or other Educational Institution wholly or substantially financed by the Government **(i)** Hospital or other institution wholly or substantially financed by Central govt. for treatment of specified illness and established for philanthropic purpose only.	Any income	**1.** The fund, trust, university, hospitals, charitable organization requiring approvals shall make an application in prescribed form to prescribed authority for the grant of or continuation of exemption. **2.** Exemption shall not be available for anonymous donations referred to in section 115BBC. **3.** The provisions of section 11, 12 or 12AA shall also apply to various institutions referred to herein. **4.** The institutions where their income exceeds the maximum amount chargeable to tax shall get their accounts audited. **5.** With retrospective effect from A.Y. 09-10 In case of other charitable trusts, universities, hospitals, charitable organization approved by specified authority in which case 1st proviso to Sec.2(15) applies exemption under this sec. shall not be allowed. **6.** 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 section 10(23) in the same or any other previous year. **(a) For Entities mentioned at (g) and (h)** 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 (50%

(j) University or educational institution set up for education purpose and not for profit and whose gross receipt does not exceed Rs.1 crore. **(k)** Hospital or other institution set up for philanthropic purpose for treatment of specified illness and whose gross receipts do not exceed Rs. 1 crore. Other charitable trusts, universities, hospitals, charitable organization approved by specified authority		prescribed), of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year. **(b) For Entities mentioned at (k)** Entities which have been approved or notified for claiming benefit of exemption u/s 10(23) would not be entitled to claim any benefit of exemption under other provisions of section 10 (except the exemption in respect of agricultural income). **(c) For Entities mentioned at (l)** **With effect from Assessment Year 2018-19,** any donation (contribution) given to a trust or institution with a specific direction that they shall form part of the corpus of recipient trust or institution, then it shall not be treated as application of income for the donor trust or institution falling under point no. (l). **[Amendment by Finance Act, 2017]**

2.4 SALE OF LEFTOVER STOCK OF CRUDE OIL

Section:- 10(48B) –Effective from A.Y.2018-19

Eligible Assessee	Nature Of Income	Conditions/Definitions/Comments
Foreign Company	Any income accruing or arising on account of sale of leftover stock of crude oil from the facility in India after the expiry of agreement u/s 10(48A).	This exemption is subject to such conditions as Central Government may notify in this behalf.

2.5 TAX HOLIDAY UNDER SECTION 10AA – EXEMPTION VS. DEDUCTION

Section:- 10AA - Effective from A.Y.2018-19

(A) Conditions:

(1) A unit in SEZ has begun to manufacture or produce any article or things or provide any services after 31.03.2005 but on or before 31st March, 2020.

(2) The unit in SEZ is not formed by the splitting up, or the reconstruction, of a business already in existence.

However, where an industrial undertaking is formed as a result of re-establishment, reconstruction or revival by the assesse 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 the same will quality for the tax concession.

Section 33B

The business of any industrial undertaking carried on in India is discontinued in any previous year by reason of extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee and used for the purposes of such business as a direct result of—

(*i*) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature ; or

(*ii*) riot or civil disturbance ; or

(*iii*) accidental fire or explosion ; or

(*iv*) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),

and, thereafter, at any time before the expiry of three years from the end of such previous year, the business is re-established, reconstructed or revived by the assessee.

(3) The unit in SEZ is not set up by the transfer of plant and machinery previously used for any purpose. This condition is subject to following relaxation:

(a) *20 per cent previously used plant and machinery is permitted* - If the value of the previously used plant and machinery does not exceed 20 per cent of the total value of the machinery or plant used in the business, this condition is deemed to have been complied with.

(b) *Second-hand imported machinery is treated as new-* Any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled—

(i) Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India.

(ii) Such machinery or plant is imported into India from any country outside India.

(iii) 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 assessee.

(4) The assessee shall furnish the report from an chartered accountant in a prescribed form along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provision of this section.

(5) Deduction under section 10AA is not available unless it is claimed in the return of income. – Section 80A(5).

(6) *If deduction is claimed in respect of a specified business [as referred to in section 35AD(8)(c)] under section 10AA, no deduction in respect of that business will be available under section 35AD.*

(B) Period and quantum of deduction:-

First 5 consecutive assessment years (beginning with the assessment year in which undertaking begins to manufacture or produce articles or things or computer software, as the case may be)	100% of profits and gains derived from export
Next 5 assessment years	50% of profits and gains derived from export
Next 5 assessment years	50% of profits and gains derived from export or amount transferred to "Special Economic Zone Reinvestment Allowance Reserve Account" whichever is lower.

(C) Profits and gains derived from export shall be worked out as under:-

Profits of the business of the unit $\times \dfrac{\text{Export turnover of the unit}}{\text{Total Turnover of the unit}}$

(1) Export Turnover means the consideration in respect of export by the unit of articles or things or services received in, or brought into India by the assessee, but does not include the following:

a. Freight;

b. Telecommunication charges;

c. Insurance attributable to the delivery of the articles or things outside India;

d. Expenses, if any, incurred in foreign exchange in rendering of services outside India.

(2) The profits and gains derived from on-site development of computer software including services for development of software outside India shall be deemed to be export profits eligible for deduction.

(D) Ceiling on deduction to be claimed under section 10AA of the Act

As per the amendment made by Finance Act, 2017 w.e.f. A.Y. 2018-19,

(a) *Amount of deduction under section 10AA shall be allowed from the total income of the assessee computed under the Act before giving deduction under section 10AA and*

(b) *Deduction under section 10AA shall not exceed (a) above*

Practical 2

Rajesh Exports Pvt Ltd. has set up its manufacturing unit in SEZ which is eligible for the benefit under section 10AA of Income Tax Act. Apart from that it has another manufacturing unit in Non-SEZ area. It provides following information for the year under consideration:

Particulars	**(Rs. In lakhs)**
Profit from the manufacturing unit set up in SEZ (Export turnover/Total Turnover = 90%)	80
Profit from the manufacturing unit in Non-SEZ area	-40
Income from other sources	22
Amount eligible for deduction under section 80G	5

Compute total income of Rajesh Exports Pvt Ltd. (a) before amendment made by Finance Act, 2017 (b) After amendment made by Finance Act, 2017.

Solution

(a) Computation of Total Income of Rajesh Export Pvt Ltd. before amendment

Particulars	**Rs.**	**Rs.**
Profit from the manufacturing unit set up in SEZ	80	
Less: Exemption under section 10AA (90% of Rs. 80)	(72)	8
Profit from the manufacturing unit in Non-SEZ Area		(40)
Income under the head PGBP (A)		**(32)**
Income from Other sources (B)		**22**
Gross Total Income (A) plus (B)		**(10)**
Deduction under section 80 G		Nil
Total Income		**(10)**

Note: Business loss to be carried forward Rs. 10 Lakh.

(b) Computation of Total Income of Rajesh Export Pvt Ltd. after amendment

Particulars	**Rs.**	**Rs.**
Profit from the manufacturing unit set up in SEZ	80	
Profit from the manufacturing unit in Non-SEZ Area	(40)	
Income under the head PGBP (A)		**40**
Income from Other sources (B)		**22**
Gross Total Income (A) plus (B)		**62**
Less: Deduction under section 80 G		(5)
Total Income before giving deduction under section 10AA (C)		**57**
Less: Deduction under 10 AA is lower of followings:		(57)
(a) Total income as per (C) above	57	
(b) Deduction under section 10AA (90% of Rs. 80)	72	
Total Income		**Nil**

Readers Note:

2.6 RESTRICTIONS ON ALLOWABILITY OF EXPENDITURE

Section:- 14A and Rule 8D

Secttion 14A(1): As per section 14A, expenditure incurred in relation to any exempt income is not allowed as a deduction wh ile computing income under any of the five heads of income.
However, the Assessing Officer is not empowered to reassess under section 147 or to pass an order increasing the liability of the assessee by way of enhancing the assessment or reducing a refund already made or otherwise increase the liability of the assessee under section 154, for any assessment year beginning on or before 1.4.2001 i.e. for any assessment year prior to A.Y. 2002-03.

Section 14A(2): The Assessing Officer is empowered to determine the amount of expenditure incurred in relation to such income which does not form part of total income in accordance with such method as may be prescribed.

The method for determining expenditure in relation to exempt income is to be prescribed by the CBDT for the purpose of disallowance of such expenditure under section 14A. Such method should be adopted by the Assessing Officer if he is not satisfied with the correctness of the claim of the assessee, having regard to the accounts of the assessee.

Section 14A(3): Further, the Assessing Officer is empowered to adopt such method, where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of total income.

Rule 8D

Rule 8D lays down the method for determining amount of expenditure in relation to income not includible in total income. If the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with –

(a) the correctness of the claim of expenditure by the assessee; or

(b) the claim made by the assessee that no expenditure has been incurred in relation to exempt income for such previous year,

he shall determine the amount of expenditure in relation to such income in the manner provided hereunder -

The expenditure in relation to income not forming part of total income shall be the aggregate of the following:

(i) the amount of expenditure directly relating to income which does not form part of total income;

(ii) an amount equal to 1% of the opening and closing balance of the annual average of the monthly average of the value of investment, income from which does not form part of total income. However, such amount cannot exceed the total expenditure claimed by the assessee.

Clarification regarding disallowance of expenses under section 14A in cases where corresponding exempt income has not been earned during the financial year [Circular No. 5/2014, dated 11.2.2014]

Section 14A provides that no deduction shall be allowed in respect of expenditure incurred relating to income which does not form part of total income. A controversy has arisen as to whether disallowance can be made by invoking section 14A even in those cases where no income has been earned by an assessee, which has been claimed as exempt during the financial year.

The CBDT has, through this Circular, clarified that the legislative intent is to allow only that expenditure which is relatable to earning of income. Therefore, it follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether such income has been earned during the financial year or not.

Practical 3

Mr. W has provided the following information regarding his income and expenditure of the previous year **2017-18.**

Particulars	Rs.
Income from business (computed)	5,00,000
Dividend income from Money Market Mutual Funds	1,25,000
Consultancy charges to Mutual Fund agent	15,000
Interest expenditure relating to both taxable and non-taxable income	2,25,000

Annual average of the monthly average of the opening and closing balances of the value of investments in mutual fund is Rs. 50,00,000.

Value of total assets as appearing in Balance Sheet as on first day and last day of the previous year are Rs. 50,00,000 and Rs. 70,00,000.

Mr. W claims that no expenditure was incurred by him for exempt income earned. The Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income. You are required to compute the amount of expenditure incurred in relation to exempt income and resultant total income, assuming that Mr. W has no other income.

Solution

As per section 14A, expenditure incurred in relation to any exempt income is not allowed as deduction. However, if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income, or the claim made by the assessee that no expenditure has been incurred in relation to exempt income for such previous year, he shall determine the amount of expenditure in relation to such income in the manner provided in Rule 8D.

In this case, Mr. is in receipt of dividend income which represents exempt income and further he claims that no expenditure is incurred for the purpose of earning this income, the assessing officer is empowered to invoke Rule 8D. The computation as per Rule 8D is given as under:

Particulars	Rs.
(i) The amount of expenditure directly relating to exempt income	
(3) Consultancy charges paid to Mutual Fund Agent	15,000
(ii) 1% of the annual average of the monthly average of the opening and closing balances of the value of investment in Mutual Fund Units 1% of 50,00,000	50,000
[The amount in (i) & (ii) put together should not exceed the total expenditure claimed by the assessee]	
Amount of expenditure in relation to exempt income	**65,000**

Computation of total income of Mr. W for the A.Y. 2018-19

Particulars	Rs.
Income from business (computed)	5,00,000
Add: Amount of expenditure in relation to exempt income	65,000
Income from business / Total Income	**5,65,000**

Readers Note:

3 – SALARY

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4 – HOUSE PROPERTY

4.1 NO NOTIONAL INCOME FOR HOUSE PROPERTY HELD AS STOCK IN TRADE UPTO ONE YEAR

Section:- 23(5) - Effective from A.Y.2018-19

Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade
and
the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property,

for the period up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority,

shall be taken to be nil.

4.2 EXTENSION OF PERIOD FOR COMPLETION OF CONSTRUCTION FROM 3 YEARS TO 5 YEARS, FOR CLAIMING HIGHER DEDUCTION OF UPTO Rs. 2 LAKH IN RESPECT OF INTEREST ON CAPITAL BORROWED FOR CONSTRUCTION OF SELF-OCCUPIED HOUSE PROPERTY

Section:- 24(b)

- Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital shall be allowed as deduction. However, in case of self- occupied property, the amount of such deduction shall not exceed Rs. 30,000.
- *However, above limit of Rs. 30,000 shall be increased to Rs. 2,00,000 in case of self-occupied property subject to following conditions:*
  (a) The property is acquired or constructed with capital borrowed on or after the 01.04.1999 and
  (b) such acquisition or construction is completed within ~~***three***~~ **five** years from the end of the financial year in which capital was borrowed.

Practical 1

Mr. Gajanan provides following information:

(i) He inherits plot of land since 1990.
(ii) For construction of residential house, he borrowed from State Bank of India on 14-2-2011.
(iii) He started construction of house property on 15-5-2011.
(iv) The construction of house property was completed on 10-5-2016.
(v) This house property was self-occupied during previous year 2016-17.

(vi) Interest payable to SBI for the financial year 2016-17 was Rs.2,30,000.

(vii) Municipal tax for the financial year 2016-17 was Rs. 1200

Find out income under the head house property in the hands of Mr. Gajanan.

Solution

Considering the above, the computation of income under the head house property in case of Mr. Gajanan for the financial year 2016-17 is as under:

Particulars	Rs.
Gross Annual Value	Nil
Less: Municipal Taxes paid during the previous year	Nil
Net Annual Value	Nil
Less: 30% of Net Annual Value	Nil
Less: Interest on borrowed capital –section 24(b)	(30,000)
Income under the head house property	(30,000)

Remark:

Apparently, it seems that Mr. Gajanan has completed construction within 5 years. However, for the purpose of section 24(b), one of the conditions to claim higher limit of Rs.2,00,000 is that construction shall be completed **within 5 years from the end of financial in which capital was borrowed**.(Readers must note that it is not from the date of commencement of construction) In the given case, the amount was borrowed on 14-2-2011 therefore construction should have been completed on or before 31-3-2016.

Readers Note:

4.3 AMOUNTS NOT DEDUCTIBLE FROM INCOME FROM HOUSE PROPERTY

Section:- 25

Any interest chargeable under this Act which is payable outside India, on which tax has not been paid or deducted under Chapter XVII-B, shall not be deducted in computing the income chargeable under the head "Income from house property".

4.4 TAXABILITY OF UNREALISED RENT AND ARREARS OF RENT.

Section:- 25A

At present, section 25AA deals with taxability of unrealised rent when realised subsequently and section 25B deals with the tax treatment of arrears of rent received.

These two provisions are now merged in new section 25A. The summary of new section 25A is as under:

Sr. No.	Taxability of Arrears of Rent or Unrealised Rent
(i)	Taxable in the year of receipt or
(ii)	Deduction@30% of rent received
(iii)	Taxable even if assessee is not the owner of the property in the financial year of receipt

Practical 2

Mr. Parmanand provides following information:

(a) In July, 2017, he recovered unrealized rent of Rs. 50,000 (which was reduced from Gross Annual Value earlier) from Mr. Saif (tenant).

(b) In October, 2017, he received arrears of rent (which was not taxed earlier) of Rs. 70,000 from State Bank of India (tenant).

Discuss taxability of above receipts in the hands of Mr. Parmanand under following alternatives:

(1) Mr. Parmanand has already sold out the captioned house property on 10-2-2017

(2) Mr. Parmanand continued to own the house property in previous year 2017-18.

Solution

Computation of income from house property of Mr. Parmanand for A.Y.2017-18

Particulars	Rs.
(i) Unrealised rent recovered from Mr. Saif	50,000
(ii) Arrears of rent received from SBI	70,000
	1,20,000
Less: Deduction@30%	(36,000)
Income from house property	**84,000**

Reader's Note:

5 – PROFITS AND GAINS FROM BUSINESS OR PROFESSION

5.1 NON-COMPETE FEE RECEIVED/RECEIVABLE FOR NOT CARRYING ON A PROFESSION CHARGEABLE UNDER THE HEAD "PROFITS AND GAINS OF BUSINESS OR PROFESSION"

Section:- 28(va) – Effective from A.Y.2017-18

Section	Chargeable Income
28(va)	Sum received or receivable, in cash or kind, under an agreement for- (a) not carrying out any activity in relation to business or profession or (b) not to share any known-how, patent copyright, trademark, license, 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. However, following shall not be charged under this head: (1) any sum received on account of transfer of the right to manufacture, produce or process any article or thing which is chargeable as capital gains; (2) any sum received on account of transfer of a right to carry on any business or profession, which is chargeable as capital gains; (3) any sum received as compensation from the multilateral fund of the Montreal Protocol under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India.

Practical 1

ABC Contractors Ltd. has paid Rs. 10,00,000 to PQR Contractors Ltd. for not participating in a particular Government tender. Discuss taxability of Rs. 10,00,000 in the hands of PQR Contractors Ltd.

Solution

As per section 28(va), any sum received or receivable, in cash or kind, under an agreement for not carrying out any activity in relation to business shall be treated as income and the same shall be charged to tax under the head "PGBP".

Therefore, amount of Rs.10,00,000 received by PQR Contractor Ltd. for not participating in a particular Government tender is an income and the same shall be charged to tax in its hands under the head "PGBP".

Reader's Note:

5.2 EXPENDITURE ON SCIENTIFIC RESEARCH

Section:- 35

(A) Deduction of expenditure on in house research by any assesse [Section 35(1)(i) and (2)]

The following expenditure **incurred** by the assessee on scientific research in relation to the assessee's business shall be allowed as deduction:

(i) Current year revenue expenditure on scientific research.

(ii) Current year capital expenditure on scientific research.

(iii) Prior period revenue expenditure or capital expenditure incurred during 3 years immediately preceding the date of commencement of business will be allowed as deduction in the previous year in which the assessee commences the business.

(iv) Revenue expenditure of a prior period shall be the payment of salary (excluding perquisites) to research personnel and material cost used for research.

- Prior period revenue expenditure shall be deductible to the extent certified by prescribed authority.
- But prior period capital expenditure are not required to be certified by prescribed authority.

(v) The expenditure on acquisition of land will not be allowed as a deduction.

(vi) The assessee is not entitled to claim any depreciation on the capital expenditure which has been allowed as deduction u/s. 35(2).

(B) Deduction for expenditure on in house research by companies in special business [Section 35(2AB)]

(i) In case of a company engaged in the business of bio-technology or any business of manufacture or production of any article or thing except those specified in the Eleventh Schedule, an amount equal to 150% of the expenditure incurred on scientific research shall be allowed as deduction.

(ii) The cost of any land or building shall not be allowed as a deduction.

(iii) Once deduction is claimed under this section, then same expenditure shall not be allowed as deduction under any other provision of Income Tax Act.

(iv) For the purpose of claiming deduction under this section, company shall enter into an agreement with the prescribed authority for co-operation in such research and development facility and fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed.

(v) The prescribed authority shall submit its report in relation to the approval of the said facility to the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General in such form and within such time as may be prescribed.

Comparison between {Section 35(1) (i) /(2)} and {Section 35(2AB)}

Section No.	Who can Claim?	Nature of Expenditure	Percentage of Deduction	Whether Prior Period covered?	Restriction
35(1)/(2)	Any assessee	Revenue/Capital	100%	Yes	Land
35(2AB)	Company in Special Business	Capital as well as Revenue	150%	No	Land & Building

Section 35(1) and 35(2) are applicable to any assessee including company in special business also. Therefore, company in special business can claim-

(a) deduction of building at 100 %.

(b) deduction of prior period capital as well as revenue expenditure at 100%.

Practical 2

An assessee commenced production of chemicals on **1st November, 2017**. It has made the following expenditure on scientific research before commencement of production:

(a) Salary to research personnel and the cost of research material during the 12 months ending on **31st October, 2014**: Rs.8,30,000.

(b) Salary to research personnel from **1st November, 2014 to 31st October, 2017**: Rs.24,50,000 (out of which amount certified by the prescribed authority was Rs.18,12,000)

(c) Expenditure on providing rent – free flats to research personnel, from **1st November, 2014 to 31st October, 2017**: Rs.1,80,000.

(d) Cost of research material from **1st November, 2014 to 31st October, 2017**: Rs.18,75,200 (out of which amount certified by the prescribed authority was Rs.17,44,800).

(e) Capital expenditure on scientific research upto **31st October, 2014** –

(i) Payment towards purchase of land : Rs. 50,00,000.

(ii) Payment towards construction of laboratory building: Rs.12,00,000.

(iii) Purchase of plant and machinery to be used in laboratory: Rs. 17,00,000.

(f) Capital expenditure on scientific research between **1st November, 2014 to 31st October, 2017** - not certified by the prescribed authority

(i) Payment towards purchase of land : Rs. 20,00,000.

(ii) Payment towards construction of laboratory building: Rs.6,00,000.

(iii) Purchase of plant and machinery to be used in laboratory: Rs. 28,00,000.

(g) Revenue expenditure on scientific research incurred after commencement of business: Rs. 20,00,000.

Determine the amount of deduction available under section 35 under following alternatives assuming that the scientific research is related to the business of the assessee :

Alternative (1) : An assessee is a partnership firm.

Alternative (2): An assessee is an Indian company engaged in special business.

Solution

Alternative 1: An assessee is a partnership firm

Statement showing deduction under section 35

Particulars	Rs.
a. Expenditure incurred till **October 2014**-not deductible as it is incurred beyond 3 years.	Not Deductible
b. Prior period revenue expenditure incurred during 3 years immediately preceding **01.11.2017** to the extent certified by prescribed authority.	18,12,000
c. Expenditure on providing perquisites (i.e, rent – free flats) to research personnel	Not Deductible
d. Expenditure on research material to the extent certified by prescribed authority.	17,44,800
e. Capital expenditure incurred till **October 2014** –not deductible as it is incurred beyond 3 years.	Not Deductible
f. Capital expenditure incurred during 3 years immediately preceding **01.11.2017**. (Certification of prescribed authority not required)	
(i) Purchase of land	Not Deductible
(ii) Construction Cost	6,00,000

(iii) Cost of plant and machinery	28,00,000
g. Revenue expenditure on research after commencement of business.	20,00,000
Total deduction under section 35	**89,56,800**

Alternative 2: An assessee is an Indian company engaged in special business

Statement showing deduction under section 35

Particulars	Rs.
a. Expenditure incurred till **October 2014**-not deductible as it is incurred beyond 3 years.	Not Deductible
b. Prior period revenue expenditure incurred during 3 years immediately preceding **01.11.2017** to the extent certified by prescribed authority. (at 100%)	18,12,000
c. Expenditure on providing perquisites (i.e, rent – free flats) to research personnel	Not Deductible
d. Expenditure on research material to the extent certified by prescribed authority. (at 100%)	17,44,800
e. Capital expenditure incurred till **October 2014** –not deductible as it is incurred beyond 3 years.	Not Deductible
f. Capital expenditure incurred during 3 years immediately preceding **01.11.2017**. (Certification of prescribed authority not required)	
(i) Purchase of land	Not Deductible
(ii) Construction Cost (at 100%)	6,00,000
(iii) Cost of plant and machinery (at 100%)	28,00,000
g. Revenue expenditure on research after commencement of business. (at 150%)	30,00,000
Total deduction under section 35	**99,56,800**

Reader's Note:

(C) Contribution made to outsiders [Section 35(1)(ii)/(iii)/(iiia) and Section 35(2AA)]

Where assessee makes contributions to other institutions for research purpose, a weighted deduction is allowed, as follows-

Section No.	**To whom contribution can be given?**	**To be utilized for?**	**Weighted deduction from the A.Y. 2018-19 to 2020-21**	**Weighted deduction A.Y. 2021-22 onwards**
35 (1) (ii)	An approved association or an approved university, college or other institution	Scientific research	150 % of contribution	100 % of contribution
35 (1) (iii)	An approved association or an approved university, college or other institution	Social science research or Statistical research	100 % of contribution	100 % of contribution

35 (2AA)	National Laboratory, University, IIT or specified person approved by prescribed authority	Scientific research	150% of Contribution	100% of Contribution
35(1)(iia)	Company registered in India having main object of scientific research and development provided such company is time being approved by the prescribed authority	Scientific research	100% of Contribution	100% of Contribution

Notes:

1. Above deduction can be claimed by any assessee even if research is not related to assessee's business.
2. Deduction in respect of above contribution made to above institutions shall not be denied merely on the ground that, subsequent to contribution made by assessee, the approval granted to these institutions have been withdrawn.

Practical 3

PQR private limited has shown a net profit of Rs. 32,88,000 after debiting following items:

1. Rs.1,00,000 paid to the Indian Agricultural Research Institute, New Delhi, being an approved scientific research institution under section 35(1)(ii) for the purpose of carrying out scientific research in natural science.
2. Rs.75,000 paid to the Indian Institute of Management, Ahmedabad being an approved institute under section 35(1)(iii), for the purpose of carrying out scientific research in social or statistical science.
3. Rs.51,000 paid to an approved National Laboratory for carrying out scientific research.
4. Rs. 11,000 paid to IIT for carrying out scientific research.
5. Rs. 30,000 paid to TATA Research Limited, an Indian company approved under section 35(1) (iia) for carrying out scientific research.

Find out income of PQR private limited under the head "PGBP".

Solution

	Particulars	Rs.
	Net Profit as per Profit & Loss account	**32,88,000**
Add:	Contribution to Indian Agricultural Research Institute, New Delhi	1,00,000
Less:	Contribution to Indian Agricultural Research Institute, New Delhi-Section 35(1)(ii) [150% of Rs.1,00,000]	(1,50,000)
Add:	Contribution to Indian Institute of Management, Ahmedabad	75,000
Less:	Contribution to Indian Institute of Management, Ahmedabad - Section 35(1)(iii) [100% of Rs.75,000]	(75,000)
Add:	Contribution to approved National Laboratory	51,000
Less:	Contribution to approved National Laboratory - Section 35(2AA) [150% of Rs.51,000]	(76,500)

Add:	Contribution to IIT	11,000
Less:	Contribution to IIT - Section 35(2AA) [150% of Rs.11,000]	(16,500)
Add:	Contribution to TATA Research Limited	30,000
Less:	Contribution to TATA Research Limited- Section 35(1) (iia) [100% of Rs.30,000]	(30,000)
	Business Profit	**32,07,000**

Reader's Note:

Practical 4

ABC Scientific Research (P) Ltd is a company registered in India and approved u/s 35(1)(iia) as well as eligible to claim deduction under section 35(2AB). During previous year it spent Rs. 3 crore on scientific research related to its business. Can it claim 200% of Rs.3 crore as deduction u/s 35(2AB)?

Solution

On close reading of the clarification given under Section 35(1)(iia), company approved for accepting contribution under section 35(1)(iia) cannot claim weighted deduction of 200 percent under section 35(2AB). Considering the same, ABC Scientific Research (P) Ltd. cannot claim weighted deduction under section 35(2AB).

However, the restriction is for section 35(2AB) and not for section 35(1) and 35(2). Therefore, it can claim deduction of Rs. 3 crore.

Reader's Note:

(D) Carry forward and set off of unabsorbed scientific research expenditure

It shall be given the same treatment as is given to the unabsorbed depreciation.

5.3 DEDUCTION IN RESPECT OF EXPENDITURE ON SPECIFIED BUSINESS

Section:- 35AD - Effective from A.Y.2018-19

(1) Conditions

- **(a)** Assessee must be carrying on "specified business".
- **(b)** The specified business should not be set up by splitting up, or the reconstruction, of a business already in existence.

  Not only that, it should not be set up by the transfer of old plant and machinery. However, in following two cases old machinery is permitted:

  Case 1:- If the value of the old assets does not exceed 20 per cent of the total value of the plant and machinery, this condition is deemed to have been satisfied.

  Case 2:- Second-hand imported machinery is treated as new subject to satisfaction of few conditions in this regard.
- **(c)** Books of account of the assessee must be audited.

(2) Quantum of Deduction

Sr. No.	Specified business	Quantum of deduction (Percentage of capital Expenditure)
1.	Setting up and operating a cold chain facility (Refer Note 1)	**100%**
2.	Setting up and operating a warehousing facility for Storage of agricultural produce	**100%**
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. (Refer Note 2)	100%
4.	Building and operating anywhere in India a new hotel of 2 star or above category (Refer Note 3)	100%
5.	Building and operating anywhere in India, new hospital with at least 100 beds for patients	**100%**
6.	Developing and building a housing project under a scheme for slum redevelopment or rehabilitation	100%
7.	Developing and building a housing project under a scheme for affordable housing	**100%**
8.	Production of fertilizer in India	**100%**
9.	setting up and operating an inland container depot or a container freight station	100%
10.	Bee-keeping and production of honey and beeswax	100%
11.	setting up and operating a warehousing facility for storage of sugar	100%
12.	Laying and operating a slurry pipeline for the transportation of iron ore	100%
13.	Setting up and operating a semiconductor wafer fabrication manufacturing unit.	100%
14. *	Developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility (Amendment by Finance Act, 2016 but effective from A.Y. 2018-19) (Refer Note 4)	100%

* The benefit of deduction under this section is available to a company formed under Companies Act, 1956 or a consortium of such companies or an authority or a board or a corporation established under Central or State Act.

Notes

1. "Cold chain facility" means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.

2. This business shall 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.

3. Where the assessee builds a hotel of two-star or above category as classified by the Central Government 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.

4. infrastructure facility" means—

(i) a road including toll road, a bridge or a rail system;

(ii) a highway project including housing or other activities being an integral part of the highway project;

(iii) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(iv) a port, airport, inland waterway, inland port or navigational channel in the sea.

(3) Year of Deductibility

Above mentioned deduction under section 35AD in respect of any capital expenditure (whether old or new) shall be allowed in the previous year in which such capital expenditure is incurred.

In case of expenditure incurred prior to the commencement of specified business, the same shall be allowed as deduction during the previous year in which the assessee commences the operation specified business, if the amount is capitalized in the books of account on the date of commencement of specified business.

(4) Restrictions

Capital expenditure incurred on the following shall not be eligible for deduction under section 35AD

(i) land

(ii) goodwill

(iii) financial instrument

(iv) any capital expenditure in respect of which the payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds ten thousand rupees. (Inserted by Finance Act, 2017, w.e.f. A.Y. 2018-19)

Practical 5

Priyanka warehouse LLP set up the operation of warehousing facility in Gujarat for storage of agricultural produce. It commenced operation with effect from April 1, 2017. The following information is available from the records of LLP.

Particulars	Rs.
Expenses incurred prior to April 1, 2017 and capitalized in the books	
Purchase of land for warehouse	80,00,000
Construction cost of warehouse (Material)	12,00,000
Payment to labour contractor for construction of warehouse(single payment - in cash)	7,00,000

Expenses incurred during 2017-18	
Further construction cost of warehouse	50,00,000
Purchase of old plant and machinery (from India)	2,50,000
Purchase of old plant and machinery (from Denmark)	3,50,000
Purchase of new plant and machinery	9,00,000

Compute amount of deduction u/s 35AD assuming that the books of accounts of Priyanka warehouse LLP have been audited.

Solution

Statement showing computation of deduction under section 35AD in the hands of Priyanka warehouse LLP:

Particulars	Rs.
Expenses incurred prior to April 1, 2017 and capitalized in the books	
Purchase of land for warehouse	Not Eligible for 35AD benefit
Construction cost of warehouse	12,00,000
Payment to labour contractor for construction of warehouse (Not eligible because single payment is made in cash exceeding Rs.10,000)	Nil
Expenses incurred during 2017-18	
Further construction cost of warehouse	50,00,000
Purchase of old plant and machinery (from India)	2,50,000
Purchase of old plant and machinery (from Denmark)	3,50,000
Purchase of new plant and machinery	9,00,000
Total Deduction under section 35AD	**77,00,000**

Reader's Note:

5.4 DEDUCTION FOR PROVISION FOR BAD AND DOUBTFUL DEBTS IN CASE OF CERTAIN ASSESSEE

Section:- 36(1)(viia) - Effective from A.Y.2018-19

Assessee	Amount of Deduction	Additional Deduction in case of Rural Branches	Additional Optional deduction
Any Scheduled, Non-Scheduled or co-operative bank but other than a primary agriculture credit society or a primary co-operative agricultural and rural development bank (Except Foreign Bank)	Not exceeding 7.5% **(8.5% w.e.f. A.Y. 2018-19)** of its total income*	10% of aggregate average advances made by rural branches of Bank.	Further deduction of an amount not exceeding the income derived from redemption of securities in accordance with scheme framed by Government. However, this additional deduction can be claimed only if income from such securities has been offered for taxation under the head "Profits and Gains of Business or Profession".

Any Foreign Bank			
Public Financial Institution or State Financial Corporation or State Industrial Investment Corporation or NBFC	5% of its total income*	Not available	Not available

*Total Income means total income before claiming deduction under this clause and Chapter VIA

Notes:

In the case of an assessee to which section 36(1)(viia) applies, the amount of the deduction relating to any bad debt or part thereof under section 36(1)(vii) shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1) (viia) ***without making any distinction between rural advances and other advances.***

That means, there should be only ***one account in respect of provision for bad and doubtful debts*** without making any distinction between rural advances and other advances.

Practical 6

The following are the particulars in respect of Indian Bank

Sr. No.	Particulars	Rs. in lakhs
(i)	Provision for bad and doubtful debts u/s 36(1)(viia) as on **1st April 2017**	200
(ii)	Gross Total Income of **A.Y.2018-19** [before deduction u/s 36(1)(viia)]	1000
(iii)	Aggregate average advances made by rural branches of the bank (assume that bank opened first time rural branches in previous year **2017-18**).	400
(iv)	Bad debts written off (for the first time) in the books of account (in respect of urban advances only) during the previous year **2017-18**	350

Compute deduction:

(a) in respect of provision for bad and doubtful debt under section 36(1) (viia)

(b) in respect of bad debts under section 36(1)(vii)

Solution

(a) Deduction in respect of provision for bad and doubtful debt under section 36(1) (viia) = Rs. 85 lacs + Rs. 40 Lacs = Rs. 125 Lacs

(b) Deduction in respect of bad debts under section 36(1) (vii) = Rs. 25 Lacs

Working Note:

Provision for Bad-Doubtful Debts A/c

[ONE/SINGLE ACCOUNT]

Dr. **Cr.**

Particulars	Rs. in lakhs	Particulars	Rs. in lakhs
		By Balance b/f	200
		By Profit & Loss A/c [1000 x 8.5%]	85
To Debtors A/c	325	By Profit & Loss A/c [400 x 10%]	40
	325		**325**

Bad-Debts A/c

Dr. **Cr.**

Particulars	**Rs. in lakhs**	**Particulars**	**Rs. in lakhs**
To Debtors A/c [350-325]	25	By Profit & Loss A/c	25
	25		**25**

Reader's Note:

5.5 GENERAL DEDUCTION

Section:- 37(1)

Conditions for allowability of expenditure:

(1) The expenditure should not be in the nature as prescribed u/s. 30 to 36.

(2) It should be incurred in connection with business or profession carried on by the assessee.

(3) It should have been expended wholly and exclusively for the purpose of such business or profession.

(4) The expenditure should not be in the nature of capital expenditure

(5) It should not be of personal expenditure

(6) It should be incurred during the previous year.

Explanation 1:- No deduction shall be allowed under this section in respect of an expenditure incurred for any purpose, which is an offence or is prohibited by law.

Explanation 2:- No deduction shall be allowed under this section in respect of an expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013.

Summary of frequently tested issues on section 37(1)

Following are debited to profit and loss account. Discuss the allowability of the same while computing income under the head "PGBP" with reasons.

Sr. No.	**Particulars of debit**	**Allowable / Disallow**	**Reason / Remark**
1.	Compensation of Rs. 2,00,000 paid to the suppliers of automatic kitchen appliances because of termination of the contract after receipt of 50% of appliances	Disallow	Compensation paid for breach of a contract for supply of a capital asset is in the nature of capital expenditure as held by the **Supreme Court in case of Swadeshi Cotton Mills Co. Ltd. vs. CIT (1967) 63 ITR 65.**
2.	Wines and liquor imported and held as stock-in trade amounting to Rs. 5 lac. Entire stock so held were confiscated by the Custom Officer being an illegal import hence written off.	Allowable	**The Apex Court in case of Dr. T.A. Quereshi vs CIT (2006) 287 ITR 547** observed that loss of stock-in-trade has to be considered as a trading loss. Business loss is allowable on ordinary commercial principles.

			Explanation to section 37(1) is not relevant here since it is not a case of business expenditure but one of business loss.
3.	Retrenchment compensation paid to employees of one of the units closed down during the year Rs.10,00,000.	Allowable	Compensation paid to workers **on closing one of units** be allowed to be deducted when there was unity of control and management of various units and all were assessed in assessee's hands as one business. - Jayshree Tea and Industries Ltd. v. CIT [2005] (Cal.); CIT V. JK Cotton Spinning & Weaving Co. Ltd. (2005) 145 Taxman 591 (All)
4.	Rs. 5 lacs paid to N. Ltd, towards feasibility study conducted for examining proposals for technological advancement relating to the existing business. The project was abandoned later.	Allowable	**The Delhi High Court, in CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594**, observed that in such cases, whether or not a new business/asset comes into existence would become the relevant factor. If there is no creation of a new asset, then the expenditure incurred would be of revenue nature.
5.	Expense of Rs. 10 lakhs on foreign travel of two directors for a collaboration agreement with a foreign company for a brewery project to be set up. The negotiation did not succeed and the project was abandoned. This project is not related to the existing business of the assessee.	Disallow	Where expenditure is incurred for a project not related the existing business and the project was abandoned without creating a new asset, the expenses are capital in nature **McGaw-Ravindra Laboratories (India) Ltd. v. CIT (1994) 210 ITR 1002 (Guj.)**
6.	Commission of Rs. 1 lakhs paid to a recovery agent for realization of a debt. Tax has been deducted and remitted as per Chapter XVIIB of the Act	Allowable	Commission paid to a recovery agent for realisation of a debt is an allowable expense under section 37(1) as per **DCIT v. Super Tannery (India) Ltd. (2005) 274 ITR 338 (All)**
7.	Rs. 12 lakhs paid towards course fee and hostel expenses for MBA course of a close relative of a director. The relative is not in employment with the company.	Disallow	Such expenditure is not incurred wholly and exclusively for the purposes of business and therefore not deductible under section 37 **Enkay (India) Rubber Co. Pvt. Ltd v. CIT (2003) 263 ITR 521 (Del).**

8.	Rs. 3 lakhs spent on gift items distributed to various dealers under the company's sales incentive scheme.	Allowable	Expenses on distribution of gift items to dealers under sales incentive scheme would promote goodwill and is made in the interest of business. Such gifts are prompted by commercial expediency and hence, the expenditure is allowable under section 37(1) **[CIT v. Avery Cycle Industries Ltd. (2008) 298 ITR 239 / 296 ITR 393 (Punjab & Haryana)].**
9.	Rs. 25 lacs paid for the higher studies of the director's son abroad, with a stipulation that he would be appointed as a trainee in the company under "apprentice training scheme" where there is no evidence of existence of such scheme	Disallow	Since there is no evidence of existence of any "apprentice training scheme", the expenditure of Rs. 25 lakhs incurred in respect of higher studies abroad for the director's son is not allowable as deduction as there is no nexus between the education expenditure incurred abroad for the director's son and the business of the assessee. **Bombay High Court in Echjay Forgings Ltd. v. ACIT (2010) 328 ITR 286.**
10.	Secret commission of Rs. 3 lacs was paid.	Disallow	As per Explanation to section 37(1), 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 and no deduction or allowance shall be made in respect of such expenditure. Therefore, payment of secret commission, if it is established as a payment for any purpose which is an offence or which is prohibited by law, cannot be allowed as deduction. **Tarini Tarpauline Productions v. CIT (2002) 254 ITR 495 (Ori.)**
11.	Purchased a brand new bus for Rs. 15 lacs and donated to a school where the employees' children were studying and debited the same to the Workmen and Staff Welfare Account.	Allowable	The expenditure incurred for acquiring a new bus and donating it to the school is for the welfare of the children of staff/workmen of the company. Such expenditure is a part of employees' welfare expenses incurred for the purpose of securing healthy services for staff members. Therefore, such expenses

			were incurred wholly and exclusively for the purpose of the business. Since the bus had been donated to the school, no benefit of enduring nature was derived by the assessee as the right of ownership was transferred to school. Hence, it is not a capital expenditure. Since such expenditure is incurred wholly and exclusively for the purpose of business and is not capital in nature, S Ltd. is entitled to claim deduction in full under section 37(1). **Rajasthan High Court in CIT v. Rajasthan Spinning and Weaving Mills Ltd. (2006) 281 ITR 408.**
12.	Legal fees incurred in defending title to factory premises	Allowable	Legal fees incurred in defending title to factory premises is an expenditure incurred wholly and exclusively for the purpose of business and is, therefore, allowable under section 37(1). **Supreme Court in Dalmia Jain & Co. Ltd. v. CIT (1971) 81 ITR 754.**
13.	Interest paid on arrears of GST	Allowable	Interest paid on arrears of sales tax is not penal in nature but is compensatory in character and is an allowable deduction under section 37(1) **Supreme Court in Lachmandas Mathurdas v. CIT (2002) 254 ITR 799.**
14.	Penalty for delay in filing of GST returns	Disallow	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. – **CIT v. Ratanchand Bholanath (S.S) (1986) 160 ITR 500 (M.P.)**
15.	Rs. 2,50,000 incurred on public issue of shares. However, the public issue could not materialize on account of non-clearance by SEBI	Disallow	Share issue expenses incurred by the company constitutes a capital expenditure, even though it could not go in for the public issue on account of non-clearance by SEBI. Though the efforts were aborted, the fact remains that the expenditure incurred was only for the purpose of expansion of the capital base. The capital nature of the expenditure would not be lost on account of

			the abortive efforts **Mascon Technical Services Ltd. v. CIT (2013) 358 ITR 545 (Mad.)**
16.	Rs. 1,00,000 paid as compounding fee for violation of provisions of Kerala Building Act.	Disallow	The amount paid for compounding an offence is inevitably a penalty and the mere fact that it has been described as compounding fee cannot, in any way, alter the character of the payment which is in the nature of penalty. Hence, the same is not allowable as revenue expenditure in view of explanation to section 37(1) **Millenia Developers P Ltd. v. Deputy CIT (2010) 322 ITR 401 (Kar.).**
17.	The company lost cash of Rs. 25,00,000 due to theft when it was withdrawn from bank and taken to administrative office.	Allowable	In order to determine whether any loss from theft, dacoity, embezzlement, etc., is deductible or not, what is material is whether the loss incurred by theft, dacoity, etc., is incidental to the carrying on of the business. It does not make much difference whether such act is committed by the employees of the assessee or by strangers **G.G. Dandekar Machine Works Ltd. v. CIT (1993) 202 ITR 161 (Bom.)**
18.	Rs.5 lakhs, being expenses incurred on the travelling of the wife of Managing Director, who accompanied him on tour to Beijing on invitation of Trade & Commerce Chamber, China.	Allowable	Expenses on travelling of wife of Managing Director to Bejing on the invitation of Trade and Commerce Chamber, China, is an allowable expense on the grounds of commercial expediency and business consideration. **Hero Honda Motors Ltd. v. CIT (2005) 3 SOT 572 (Delhi)**
19.	Legal charges in connection with alteration of the Articles of Association Rs. 1.50 lacs	Allowable	Legal charges of for amendment of Articles of Association is deductible. **Allahabad High Court in CIT vs Modi Spinning & Weaving Mills Co Ltd. (1973) 89 ITR 304.**
20.	An executive, while on business trip abroad, died and gratuity paid voluntarily amounted to Rs. 6.00 lacs to his family members	Allowable	Payment of gratuity on account of death of an executive while on business trip is allowable as deduction. **CIT vs. Laxmi Cement Distributors (P) Ltd. (1976) 104 ITR 711 (Gujarat)**

21.	Rs. 2 lakh on alteration of Memorandum of Association in connection with increase in authorized capital.	Disallow	Rs. 2 lakhs, being legal expenses in relation to alteration of memorandum in connection with increase in Authorised Capital is directly related to expansion of the capital base of the company and is, hence, a capital expenditure. Therefore, the same is not allowable as deduction. It has been so held in **Punjab State Industrial Development Corporation Ltd. vs. CIT (1997) 225 ITR 792 (SC).**
22.	Rs. 10 lakh on issue of bonus shares	Allowable	There is no fresh inflow of funds or increase in capital employed on account of issue of bonus shares and there is only reallocation of the company's fund. Consequently, since there is no increase in the capital base of the company, legal expenses of Rs. 10 lakhs in connection with issue of bonus shares is a revenue expenditure and is hence, allowable as deduction. It has been so held by Apex Court in case of **CIT vs. General Insurance Corpn. (2006) 286 ITR 232.**
23.	Interest of Rs. 3,000 paid on an overdraft of Rs. 1 lac taken for making payment of installment of advance tax of Rs. 1.25 lacs.	Disallow	Interest on the overdraft taken for making payment of installment of advance tax is not allowable under section 37(1) since it is not an expenditure wholly and exclusively incurred for the purpose of business as held by the **Apex Court in the case of East India Pharmaceutical Works Ltd. v. CIT (1997) 224 ITR 627.**

5.6 PAYMENTS MADE TO A RELATIVE ETC

Section:- 40A(2) - w.r.e.f A.Y.2017-18

The payment is in respect of goods, services or facilities supplied / provided by a relative or specified person and the amount paid to such relative or specified person is considered to be excessive or unreasonable as compared with the market value of such goods, services or facilities, or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, then such excess shall be disallowed.

~~**Provided** that no disallowance, on account of any expenditure being excessive or unreasonable having regard to the fair market value, shall be made in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm's length price as defined in clause (ii) of section 92F~~. **(This proviso not relevant from A.Y. 2017-18 and onwards – Amendment by Finance Act, 2017).**

5.7 PAYMENT EXCEEDING RS.20,000 MADE OTHERWISE THAN BY ACCOUNT PAYEE CHEQUE OR DEMAND DRAFT

Section:- 40A(3) - Effective from A.Y.2018-19

(1) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, exceeds twenty thousand rupees **(ten thousand rupees w.e.f. A.Y. 2018-19)**, no deduction shall be allowed in respect of such expenditure.

(2) With effect from 1st October, 2009, the monetary limit of Rs. 20,000 (Rs.10,000 w.e.f. A.Y. 2018-19) u/s 40A(3) has been raised to Rs. 35,000 in the case of payment made for plying, hiring or leasing goods carriages.

(3) The provisions of this section all types of expenditure including payment made for purchase of goods which are to be claimed under the head "PGBP".

(4) However, no disallowance shall be made this sub-section, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors. – Rule 6 DD

Practical 7

From the following information, determine the amount of disallowance in the hands of ABC Limited.

1. Salary for the month of **January, 2018** paid to three employees namely:-Mahesh, Suresh and Ramesh in cash. (Cash payment made Rs.6,000, Rs.8,000 and Rs.22,500 respectively).

2. On **10th June, 2017**, ABC Limited purchased goods on credit from PQR Ltd. for Rs.54,000. This liability was discharged as under: -
   (a) Rs.8,000 in cash on **15th June, 2017;**
   (b) balance amount by a bearer cheque on **1st July, 2017.**

3. On **18th August, 2017,** ABC Limited incurred expenditure Rs.36,000 on machine repairing. However it made entire payment in cash on **21st September, 2017** as under:
   (a) Rs. 12,000 at 10 am
   (b) Rs. 10,000 at 3 pm
   (c) Rs. 14,000 at 6pm

4. On **18th November, 2017**, ABC Ltd. purchased packing material on credit from a relative of a director for Rs.48,000 though market value was Rs. 40,000. The amount was paid by way of bearer cheque on **22nd December, 2017**.

5. On **12th January, 2018**, ABC Ltd. made cash payment of Rs. 32,000 to transport operator, Mr. Bhola.

Solution

1. Rs.22,500 being payment made to Mr. Ramesh shall be disallowed.
2. Nothing will be disallowed out of the payment of Rs.8,000 in cash on **15th June, 2017**, as the payment does not exceed Rs.10,000. However, Rs.46,000 shall be disallowed since payment exceeds Rs.10,000 and payment has been made otherwise than by account payee cheque or draft.
3. Entire Rs. 36,000 shall be disallowed since aggregate payment made in a day to the same person exceeds Rs. 10,000 otherwise than by way of account payee cheque or draft.
4. **1st View:** Out of the payment of Rs.48,000, Rs.8,000 (being the excess payment to a relative) shall be disallowed under section 40A(2). As the payment is made by bearer cheque (and not an account payee cheque) and the remaining amount (i.e. Rs. 40,000) exceeds Rs.10,000, Rs.40,000 shall be disallowed under section 40A(3).

   2nd View: Entire Rs.48,000 shall be disallowed under section 40 A (3) since payment is made by bearer cheque and not an account payee cheque.
5. Nothing shall be disallowed out of payment made to Mr. Bhola since payment made to him does not exceed Rs. 35,000.

Reader's Note:

5.8 DEDUCTION HAS BEEN CLAIMED EARLIER ON DUE BASIS AND PAYMENT IS MADE SUBSEQUENTLY OTHERWISE THAN BY ACCOUNT PAYEE CHEQUE OR DRAFT

Section:- 40A(3A) - Effective from A.Y.2018-19

A special provision has been introduced to cover the above-mentioned payments under section 40A (3A) which is given below-

(i) The taxpayer had claimed deduction in respect of an expenditure in any of the earlier years.
(ii) The amount of deduction exceeds Rs. 20,000 (**Rs. 10,000 w.e.f. A.Y. 2018-19)**
(iii) Subsequent year payment is made in respect of the aforesaid liability
(iv) The payment exceeds Rs. 20,000 (**Rs. 10,000 w.e.f. A.Y. 2018-19)**
(v) The payment is made otherwise than by an account payee cheque or draft or use of electronic clearing system through a bank account.

If above conditions are satisfied, the payment so made shall be deemed to be the business income of the previous year in which payment is made.

Practical 8

Tip Top Ltd. purchased goods worth Rs. 95,000 on credit from Mr. Mohan. This purchase was made on **10-07-2014.** However, Tip Top Ltd. discharged such liability on **10-8-2017** by cash payment. Discuss tax consequence of above transaction in the hands of TIP Top Ltd.

Solution

Provisions of section 40A(3A)

(i) Tip Top Ltd. had claimed deduction in respect of purchase in previous year **2014-15.**
(ii) The amount of deduction exceeds Rs. 10,000 (In this case, it is Rs. 95,000)

(iii) Subsequent year (In this case, previous year **2017-18**) payment is made in respect of the aforesaid liability.

(iv) The payment exceeds Rs. 10,000. (In this case, it is Rs. 95,000)

(v) The payment is made otherwise than by an account payee cheque or draft. (In this case, payment is made by way of cash)

If above conditions are satisfied, the payment so made (Rs. 95,000) shall be deemed to be the business income of the previous year **(2017-18)** in which payment is made.

Reader's Note:

5.9 CERTAIN DEDUCTIONS TO BE ONLY ON ACTUAL PAYMENT

Section:- 43B - Effective from A.Y.2018-19

- Followings are deductible on payment basis:-

  (a) Any sum payable by way of tax, duty, cess or fees by whatever name called under any law for the time being in force e.g. Municipal tax, Excise Duty, VAT, Service Tax, Custom Duty

  (b) Any sum payable by an employer by way of contribution to provident fund or superannuation fund or any other fund for the welfare of employees. **(Employers' Contribution)**

  (c) Any sum payable as bonus or commission to employees.

  (d) Any sum payable as interest on any loan or borrowing from a public financial institution or a state financial corporation or a state industrial investment corporation.

  (e) Interest on any loan or advances taken from a scheduled bank or **a co-operative bank other than a primary agriculture society or a primary co-operative agricultural and rural development bank. (bold portion inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19)**

  (f) Any sum payable by an employer in lieu of leave at the credit of his employee

  (g) any sum payable by the assessee to the Indian Railways for the use of railway assets.

- Above expenditures are deductible in the previous year in which they have been incurred provided actual payment has been made on or before the due date for furnishing return of income u/s 139(1).

- If payment is not made within the time mentioned above, then relevant expenditure is first disallowed and thereafter it shall be allowed as deduction in the previous year in which actual payment is made.

- **Explanation 3C and 3D of section 43B**

  If any sum payable by an assessee as interest on any loan or borrowing or advance is converted by the bank or financial institution into a fresh loan, the interest so converted (but not actually paid) shall not be deemed to have been actually paid for the purpose of this section and therefore same shall not be allowed as deduction under the head PGBP.

- Further, student must note that **Employees' Contribution** is not governed by section 43B. It is governed by section 2(24) and section 36(1) (va). Tax treatment of Employees' Contribution is as under:-

N.P. as per profit and loss account	XXX
Add: Employees' Contribution :- It is deemed income as per definition of Income [Section 2(24) (x)]	XXX
Less: Amount deposited within the due date under Provident Fund Act or any other relevant Act [Section 36(1)(va)]	XXX

5.10 SPECIAL PROVISION IN CASE OF INCOME OF PUBLIC FINANCIAL INSTITUTIONS, PUBLIC COMPANIES, ETC.

Section:- 43D - Effective from A.Y.2018-19

Assessee	Nature of Income	Year of taxability
— Public Financial Institutions — Scheduled banks — **co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) – Inserted by Finance Act, 2017** — State Financial Corporations — State Industrial Investment Corporations	Interest on advances categorized as 'Bad & Doubtful debts" as per the guidelines issued by RBI.	Year in which such interest is: (i) credited to P&L account or (ii) actually received by the assessee whichever is earlier

Practical 9

Ratnakar Home Furniture Private Ltd (RHFPL) had raised term loan from Kalupur Commercial Co-operative Bank Limited (KCCBL) two years before. However, RHFPL failed to pay the instalments of term loan and therefore KCCBL categorized this term loan as "Bad and Doubtful Debts" as per the guidelines issued by RBI. The total interest not served by RHFPL was Rs. 32,00,000 for the previous year 2017-18. Discuss tax consequence of the abovementioned transaction in the hands of

(a) RHFPL

(b) KCCBL

Solution

<u>Tax consequence in the hands of RHFPL</u>

As per the amended provisions of section 43B, RHFPL is not entitled to claim unpaid interest of Rs. 32,00,000 unless it has been actually paid on or before due date of filing return under section 139(1) of the Act.

<u>Tax consequence in the hands of KCCBL</u>

As per the amended provisions of section 43BD, if KCCL does not recognize Rs. 32,00,000 as interest income in its books account then it would not be taxable in the previous year 2017-18.

Reader's Note:

5.11 MAINTENANCE OF BOOKS OF ACCOUNTS

Section:- 44AA - Effective from A.Y.2018-19

The requirement of this section regarding maintenance of books of account by certain persons are based on two criteria:

(a) Financial criteria;

(b) Persons specified under Section 44AA (1).

Accordingly, the requirement of keeping books of account shall be as under:

Types of profession /Business	**Financial criteria**	**Books of account/documents to be maintained**
Specified professions u/s 44AA(1)	• Total gross receipts exceed Rs.1,50,000 in any of the three years immediately preceding the previous year **or** • where the profession is newly set up in the previous year, total gross receipts are likely to exceed Rs.1,50,000.	Books and documents as prescribed under Rule 6F (2).
Specified professions u/s 44AA (1)	• Total gross receipt Rs.1,50,000 or below in any of the three years immediately preceding the previous year **or** • total gross receipts not likely to exceed Rs.1,50,000 in the previous year, if the profession is newly set up.	Such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of the Act.
Other persons	(a) Income from business or profession exceeds Rs.1,20,000 or total sales, turnover or gross receipts exceed Rs.10 lakhs in any of the three years preceding the previous year **or** (b) Where the business or profession newly set up in the previous year, if his income from business or profession likely to exceed Rs. 1,20,000 or total sales, turnover or gross receipts likely to exceed Rs.10 lakhs, **or** (c) **In case of person being an individual or Hindu undivided family, the provisions of clause (a) and (b) above, the limit of Rs. 1,20,000 shall be substituted by Rs. 2,50,000 and the limit of Rs. 10 lakhs shall be substituted by Rs. 25 lakhs (Inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19) or**	Such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of the Act.

	(d) where profits and gains from the business are claimed to be lower than profits computed under Section 44AE or 44BB or 44BBB or (e) Where the provisions of section 44AD(4) are applicable in his case and his income exceeds maximum amount not chargeable to tax in any previous year.	
Other persons	Not covered by above	Not required to maintain any books of account.

(1) Persons specified u/s 44AA (1): Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorized representative or film artist.

(2) Books and documents specified under Rule 6F: The books of account and other documents prescribed under Rule 6F(2) are:

(i) a cash book;
In cases where the cash book maintained by the assessee contains adequate particulars in respect of the expenditure incurred by him, it would not be necessary to prepare and sign the payment voucher.

(ii) a journal, if the accounts are maintained under mercantile system of accounting

(iii) a ledger;

(iv) for an amount exceeding Rs.25, carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the assessee and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him;

(v) original bills wherever issued to the assessee and receipts in respect of expenditure incurred by the assessee or, where such bills and receipts are not issued and the expenditure incurred does not exceed Rs.50, payment vouchers prepared and signed by the assessee.

(3) In addition to the above books of account and other documents, under Rules 6F(3) a person carrying on medical profession shall also maintain the following:

(i) a daily case register in Form No.3C;

(ii) an inventory under broad heads, as on the first and the last day of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.

(4) The books of account and other documents specified above under rule 6F(2) and 6F(3) shall be kept and maintained for a period of 6 years from the end of the relevant assessment year.

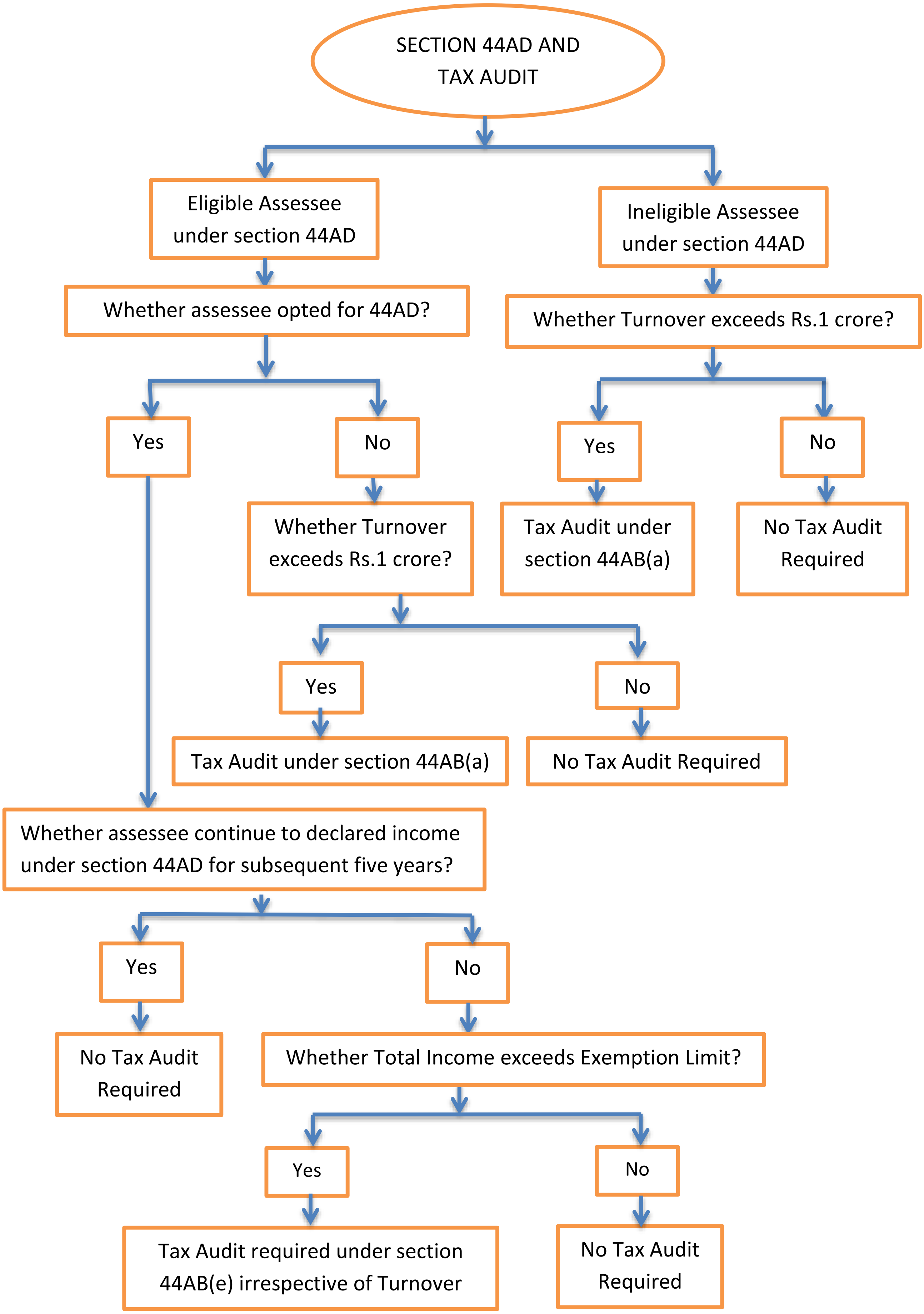
5.12 TAX AUDIT

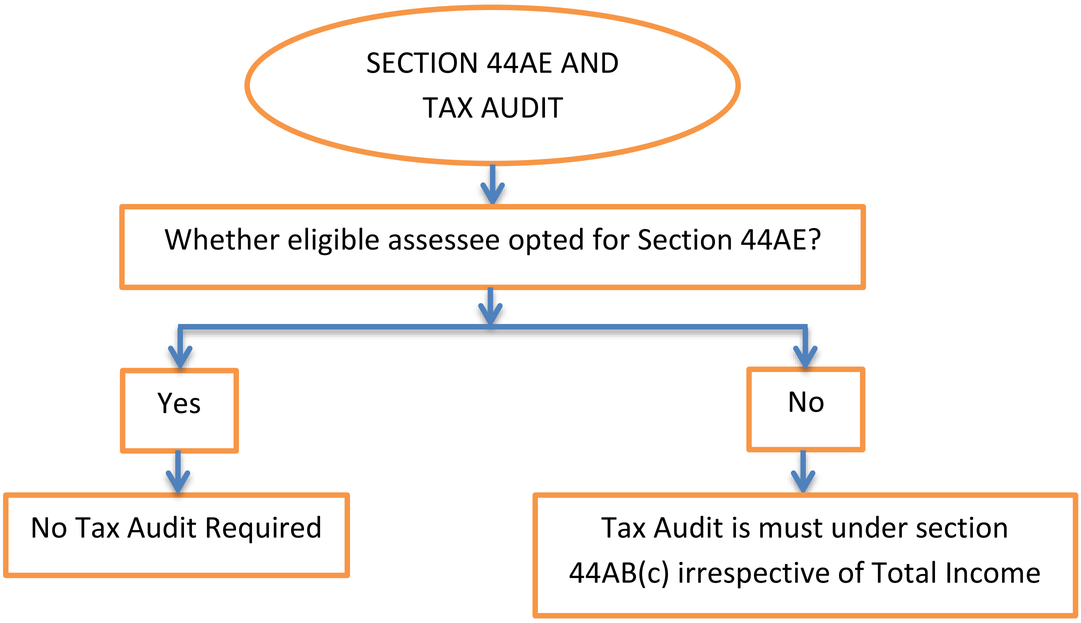
Section:- 44AB – w.r.e.f. A.Y.2017-18

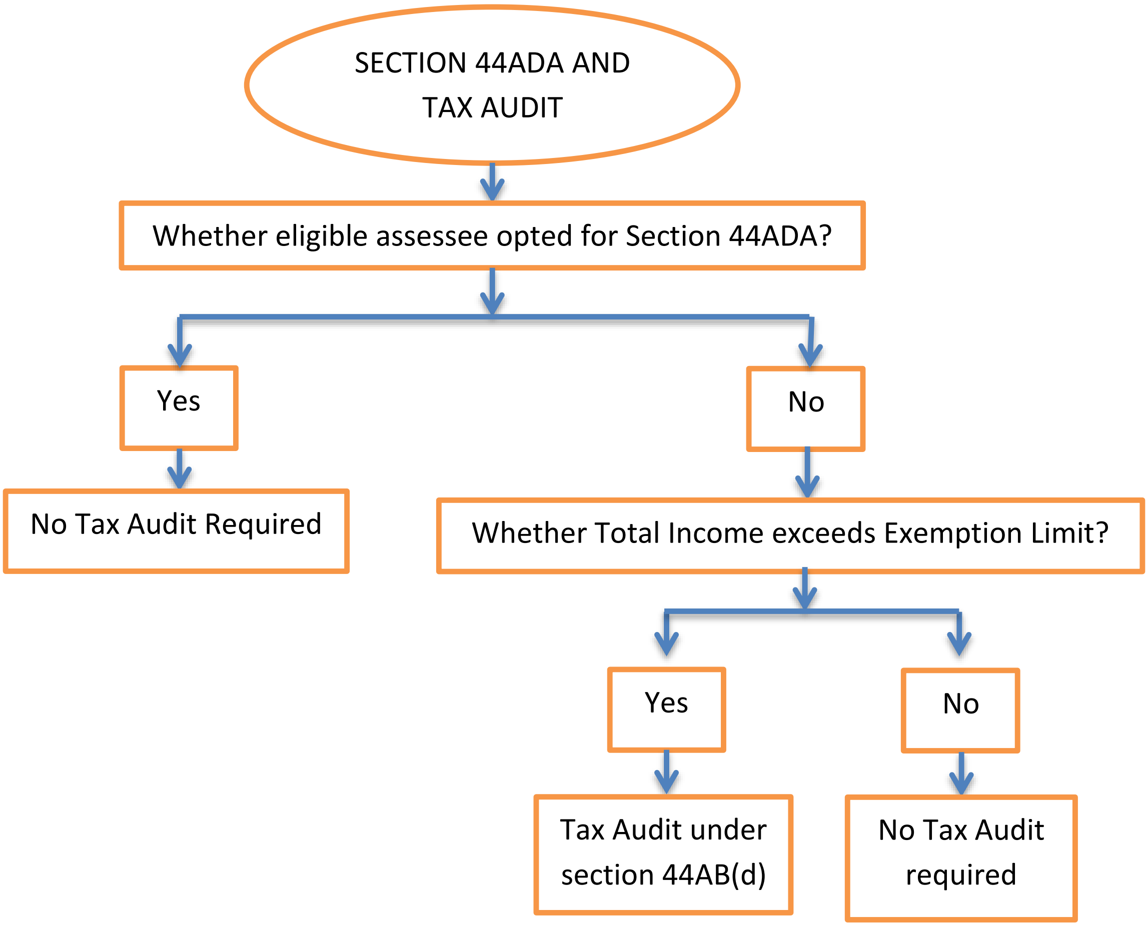
Section 44AB prescribes accounts to be audited in following five situations:-

Clause No.	Situation giving rise to tax audit
(a)	Every person carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year;
(b)	Every person carrying on profession shall, if his gross receipts in profession exceed **twenty-five (fifty – Amendment by Finance Act, 2016)** lakh rupees in any previous year; or
(c)	Every person carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and **he has claimed his income to be lower than the profits** or gains **so deemed** to be the profits and gains of his business, as the case may be, in any previous year;
(d)	Every person carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under **section 44ADA and he has claimed such income to be lower than the profits** and gains **so deemed** to be the profits **and** gains of his profession **and his total income exceeds the maximum amount which is not chargeable** to income-tax in any previous year; **(modified by Finance Act, 2016)**
(e)	Every person carrying on the business shall, if the provisions of **sub-section (4) of section 44AD** are applicable in his case and **his total income exceeds the maximum amount** which is **not chargeable to** income-**tax** in any previous year.
1st Proviso	However, this section shall not apply to the persons, who declares profits and gains for the previous year in accordance with the provisions of section 44AD(1) and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year **(inserted by Finance Act, 2017 w.r.e.f A.Y. 2017-18)**

To sum up presumptive taxation and tax audit, consider following:







Whether deduction of interest and remuneration to partner shall be allowed out of presumptive income?

Section 44AD	Section 44AE	Section 44ADA
No	Yes	No

Practical 10

Mr. Ramesh runs grocery shop. Total turnover of this grocery shop for the previous year **2017-18** is Rs. 1 Cr and 45 Lacs. He would not like to opt for the provisions of section 44AD. He regularly maintains books of accounts. Due to loss under head house property and the deductions under section 80C to 80 U, total income of Mr. Ramesh for the previous yea**r 2017-18** is Rs. 2,30,000. Whether he is required to get his accounts audited? If yes, then under which clause?

Solution

Consider following press release issued by the CBDT dated 20th June, 2016 giving clarification on "Threshold Limit of tax audit under section 44AB and section 44AD":

- Section 44AB of the Income-tax Act ('the Act') makes it obligatory for every person carrying on business to get his accounts of any previous year audited if his total sales, turnover or gross receipts exceed one crore rupees.
- However, if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees.
- The higher threshold for non-audit of accounts has been given only to assessees opting for presumptive taxation scheme under section 44AD.

Considering the above press release, 1st proviso to section 44AB of the Act as inserted by Finance Act, 2017 and the fact that Mr. Ramesh would not like to opt for section 44AD, he is advised to get his accounts audited under **clause (a) section 44AB** of the Act since turnover of grocery shop exceeded Rs. 1 Cr irrespective of his total income.

Reader's Note:

Practical 11

Mr. Kishore owns 5 heavy trucks throughout the previous year **2017-18**. He wants to declare business income of Rs. 2,45,000 from truck operations. Income from other sources is Rs.5,000. He wants to claim deduction of Rs. 30,000 u/s 80C. Advice Mr. Kishore for maintaining books of accounts and getting them audited.

Solution

In this case, Mr. Kishore wants to declare income from truck operation Rs.2,45,000 which is less than the income required to be disclosed under section 44AE (i.e., 5 x Rs.7500 x 12 = Rs. 4,50,000). Therefore, he must maintain books of accounts and get the same audited under section 44AB(c) irrespective of his total income.

Reader's Note:

Practical 12

Mr. Utsav is a chartered accountant. He practices in individual name. For the previous year **2017-18**, his gross receipts from the profession was Rs. 9,00,000. He wants to declare Rs. 2,55,000 net income from this profession. Further, he earned interest on fixed deposit Rs. 5,000. He wants to claim deduction Rs. 30,000 u/s 80C. Advise him about getting his accounts audited in view of requirements of Section 44AB (d) of the Act.

Solution

In this case, Mr. Utsav wants to declare Rs.2,55,000 from his profession which is less than 50% of gross receipts (Rs.9,00,000 in this case).

Computation of Total Income of Mr. Utsav

Particulars		Rs.
	Income from profession	2,55,000
Add:	Income from other Sources	5,000
	Gross Total Income	**2,60,000**
Less:	Deduction under section 80C	(30,000)
Total Income		**2,30,000**

Since total income of Mr. Utsav does not exceed exemption limit, therefore, he is not required to get his accounts audited in view of the requirements of section 44AB(d) of the Act even though he would like to declare income from profession lower than 50% of gross receipts.

Reader's Note:

Practical 13

Does your answer differ in above problem, if income from other sources was Rs.40,000 instead of Rs.5,000.

Solution

Computation of Total Income

Particulars		Amount in Rs.
	Business Income	2,55,000
Add:	Income from other Sources	40,000
	Gross Total Income	**2,95,000**
Less:	Deduction under section 80C	30,000
Total Income		**2,65,000**

Since total income of Mr. Utsav exceeded exemption limit, therefore, he is required to get his accounts audited under section 44AD(d).

Reader's Note:

5.13 PRESUMPTIVE TAXATION FOR ELIGIBLE ASSESSEE CARRYING ON ELIGIBLE BUSINESS

Section:- 44AD – w.r.e.f A.Y. 2017-18

(1) Eligible Assessee

– would mean an assessee who:

(i) is a resident, individual, Hindu undivided family or a partnership firm (limited liability partnership firm specifically excluded) and

(ii) has not claimed deduction under any of the sections 10AA and 80H to 80RRB.

(2) Eligible business means—

(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of **two crore rupees** (Amendment by Finance Act, 2016).

(3) Provisions of this section shall not apply to-

(i) a person carrying on profession as referred to in sub-section (1)of section 44AA;

(ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business

(4) Presumptive Income

8% of the total turnover/ gross receipts or amount earned by the eligible assessee from such business whichever is higher.

However, the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year. **(Inserted by Finance Act, 2017 w.r.e.f. A.Y. 2017-18)**

(5) Other salient features of this presumptive scheme

- **Section 44 AD(2):-** All the deductions under section 30 to 38 shall deemed to have been allowed. Due to deletion of proviso to this section, if eligible assessee is a firm then it cannot claim deduction in respect of interest and salary paid to partners. (Amendment made by Finance Act, 2016).
- **Section 44 AD(3) :-** The WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years.
- **Section 44 AD(4):-** Where an eligible assessee declares profit for any assessment year in accordance with the provisions of this section and he declares profit for any of the five consecutive subsequent assessment years at lower than the required 8 percent, then he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared up to 8 percent.
- **Section 44 AD(5):-** Consequently, such assessee, if total income exceeds maximum amount not chargeable to tax, shall be required to keep and maintain books of accounts and other documents as per section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Practical 14

M/s. Patel & Co., a partnership firm has opened medical store on **10-5-2017.** The firm purchased small furnished shop on **15-04-2017** for Rs. 45,00,000 (which includes Rs. 5,00,000 for furniture) Since it was the first year of operations, firm would like to opt for section 44AD of the Act. Following are the details of first year of operations:

Particulars	**Rs.**
Sales of Medicines (Cash Sales)	1,12,00,000
Less :	
Cost of goods sold	(1,03,00,000)
Depreciation as per section 32- shop	(4,00,000)
Depreciation as per section 32- furniture	(50,000)
Salary and interest to partners (as permitted by section 40(b)	(3,65,000)
Other shop expenses	(55,000)
Net profit	30,000
Income from other sources	10,000

You are required to compute total income of the firm for the assessment year **2018-19.**

Solution

Computation of Total income of Patel & Co. for the A.Y. 2018-19

Particulars	**Rs.**
Business income	8,96,000
Income from other Sources	10,000
Total Income	**9,06000**

Working Note: Calculation of presumptive income as per section 44AD

Particulars	**Rs.**
Turnover	1,12,00,000
Presumptive Income as per section 44AD (8% of Turnover)	**8,96,000**
Less: Salary and interest to partners	Not deductible
Net presumptive income under section 44AD	**8,96,000**

Other Notes:

1. Patel & Co. runs medical store and its turnover is less than Rs. 2 Crore, therefore, it is an eligible assessee under section 44AD of the Act.
2. As per the provisions of section 44AD of the Act, assessee has to declare minimum 8% of gross receipts as income under the head "PGBP", if firm would not like to maintain books of accounts.
3. Once firm opts for the section 44AD, all deductions under section 30 to 38 shall be deemed to have been allowed.
4. Further under section 44AD, firm cannot claim interest and remuneration paid to partners as well.

Reader's Note:

Practical 15

Continuing above problem, M/s. Patel & Co. offered its income under section 44AD for the **assessment year 2019-20** and **2020-21** also. However, for **assessment year 2021-22**, M/s. Patel & Co. decided to declare profit from the medical store lower than the 8% of turnover. Discuss the tax consequences of this decision and also find out the depreciation for the **assessment year 2021-22.**

Solution

As per section **44AD(4)** of the Act, where an eligible assessee declares profit for any assessment year in accordance with the provisions of this section and he declares profit for any of the five consecutive subsequent assessment years at lower than the required 8 percent, then he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared up to 8 percent.

Considering the above provision and the facts of present case, since Patel & Co. has declared profit under section 44AD for the **assessment year 2018-19,** ideally, it shall declare the profits under section 44AD of the Act for the following five assessment years:

Sr. No.	Assessment years
1	2019-20
2	2020-21
3	2021-22
4	2022-23
5	2023-24

However, Patel & Co. would like to declare profit from the medical store lower than 8% of turnover in **assessment year 2021-22,** then it shall not be eligible to claim benefit of section 44AD for the following five assessment years:

Sr. No.	Assessment years
1	2022-23
2	2023-24
3	2024-25
4	2025-26
5	2026-27

Consequently, Patel & Co. shall be required to keep and maintain books of accounts and other documents as per section 44AA and get them audited under section 44AB(e) for all the above years provided its total income exceeds exemption limit- **Section 44AD(5)**

As per the provisions of **section 44AD(3)**, the WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years. Considering the requirement of this provision, Patel & Co. can claim depreciation on Shop and furniture for the assessment year **2021-22** as under:

Particulars	Building (Rs.)	Furniture (Rs.)
WDV as on **01-4-2017**	Nil	Nil
Add: Purchased during previous year **2017-18**	40,00,000	5,00,000
Less: Sold out during previous year **2017-18**	Nil	Nil
WDV for the previous year 2017-18	**40,00,000**	**5,00,000**

Less: depreciation for the previous year **2017-18**	(4,00,000)	(50,000)
WDV as on 01-04-18	**36,00,000**	**4,50,000**
Less: Depreciation for the previous year **2018-19**	3,60,000	45,000
WDV as on 01-04-19	**32,40,000**	**4,05,000**
Less: Depreciation for the previous year **2019-20**	3,24,000	40,500
WDV as on 01-04-2020	**29,16,000**	**3,64,500**
Less: Depreciation for the previous year **2020-21 (A.Y. 2021-22)**	**2,91,600**	**36,450**

Reader's Note:

Practical 16

Mr. Sanjay is engaged in the business of Civil Construction undertakes small government projects. He received the following amounts by way of contract receipts:

Particulars	Rs.
Towards contract work for supply of labour	70,00,000
Value of materials supplied by Government	10,00,000
Gross receipts	80,00,000

Mr. Sanjay paid Rs. 50,00,000 to labourers in cash. He has brought forward loss and unabsorbed depreciation of the discontinued business Rs.45,000 and Rs. 30,000 respectively. Compute income under the head "PGBP" assuming that he opts for section 44AD.

Solution

Particulars	Rs.
Presumptive income under section 44AD [Rs. 70,00,000 x 8%]	5,60,000
Less: unabsorbed depreciation	Nil
	5,60,000
Less: Business loss brought forward u/s 72	(45,000)
Business Income	5,15,000

Notes:

(1) As per para **31.1** of the **circular no. 684 of CBDT dated 10-06-1994,** gross receipts are the amount received from the clients for contract and will not include the value of material supplied by the client.

(2) Once assessee opts for section 44AD, deduction under section 30 to 38 shall be deemed to have been allowed. Therefore, question of disallowance in respect of labour payment of Rs. 50,00,000 in cash under section 40 A(3) does not arise.

(3) Once assessee opts for section 44AD, deduction under section 30 to 38 shall be deemed to have been allowed. Since depreciation is governed by section 32(2), it cannot be adjusted while computing income under section 44AD of the Act. But brought forward business loss is governed by section 72, same shall be adjusted against presumptive income computed under section 44AD.

Reader's Note:

Practical 17

XYZ Ltd. is engaged in the manufacture of textile since 01-04-2009. Its Statement of Profit & Loss shows a net profit of Rs. 700 lakhs after debit/credit of the following items:

(1) Depreciation calculated on the basis of useful life of assets as per provisions of the Companies Act, 2013 is Rs. 50 lakhs.

(2) Employer's contribution to EPF of Rs. 2 lakhs and Employees' contribution of Rs. 2 lakhs for the month of March, 2018 were remitted on 8th May 2018.

(3) The company appended a note to its Income Statement that industrial power tariff concession of Rs. 2.5 lakhs was received from the State Government and credited the same to P & L Account.

(4) The company had provided an amount of Rs. 25 lakhs being sum estimated as payable to workers based on agreement to be entered with the workers union towards periodical wage revision once in 3 years. The provision is based on a fair estimation on wage and reasonable certainty of revision once in 3 years.

(5) The company had made a provision of 10% of its debtors towards bad and doubtful debts. Total sundry debtors of the company as on 31-03-2018 was Rs. 200 lakhs.

(6) A debtor who owed the company an amount of Rs. 40 lakhs was declared insolvent and hence, was written off by debit to Profit and loss account.

(7) Sundry creditors include an amount of Rs. 50 lakhs payable to A & Co, towards supply of raw materials, which remained unpaid due to quality issues. An agreement has been made on 31-03-2018, to settle the amount at a discount of 75% of the outstanding. The amount waived is credited to Profit and Loss account.

(8) The opening and closing stock for the year were Rs. 200 lakhs and Rs. 255 lakhs, respectively. They were overvalued by 10%.

(9) Provision for gratuity based on actuarial valuation was Rs. 500 lakhs. Actual gratuity paid debited to gratuity provision account was Rs. 300 lakhs.

(10) Commission of Rs. 1 lakhs paid to a recovery agent for realization of a debt. Tax has been deducted and remitted as per Chapter XVIIB of the Act.

(11) The company has purchased 500 tons of industrial paper as packing material at a price of Rs. 30,000/ton from PQR, a firm in which majority of the directors are partners. PQR's normal selling price in the market for the same material is Rs. 28,000/ton.

Additional Information:

(1) There was an addition to Plant & Machinery amounting to Rs. 50 lakhs on 10-06-2017, which was used for more than 180 days during the year. Additional depreciation has not been adjusted in the books.

(2) Normal depreciation calculated as per income-tax rules is Rs.80 lakhs.

(3) The company had credited a sub-contractor an amount of Rs. 10 lakhs on 31-03-2017 towards repairing a machinery component. The tax so deducted was remitted on 31-12-2017.

(4) The company has collected Rs. 7 lakhs as sales tax from its customers and paid the same on the due dates. However, on an appeal made, the High Court directed the Sales Tax Department to refund Rs. 3 lakhs to the company. The company in turn refunded Rs. 2 lakhs to the customers

from whom the amount was collected and the balance of Rs. 1 lakh is still lying under the head "Current Liabilities".

Compute total income and tax payable. Ignore MAT provisions.

Solution

Computation of Total Income of XYZ Ltd. for the A.Y.2018-19

Particulars	Rs.	Rs.
Net Profit as per Statement of Profit and Loss		7,00,00,000
Add: Items debited but to be considered separately or to be disallowed:		
(a) Depreciation as per Companies Act, 2013 disallowed	50,00,000	
(b) Employees contribution to EPF **[See Note 1 below]** [Since employees contribution to EPF has not been deposited on or before the due date under the PF Act, the same is not allowable as deduction as per section 36(1)(va). Since the same has been debited to profit and loss account, it has to be added back for computing business income].	2,00,000	
(c) Employers contribution to EPF [As per section 43B, employers' contribution to EPF is allowable as deduction since the same has been deposited on or before the 'due date' of filing of return under section 139(1). Since the same has been debited to profit and loss account, no further adjustment is necessary]	Nil	
(d) Industrial power tariff concession received from State Government [Any assistance in the form of, inter alia, concession received from the Central or State Government would be treated as income as per section 2(24)(xviii). Since the same has been credited to profit and loss account, no adjustment is required	Nil	
(e) Provision for wages payable to workers [The provision is based on fair estimate of wages and reasonable certainty of revision, the provision is allowable as deduction, since ICDS X requires 'reasonable certainty for recognition of a provision, which is present in this case. As the provision has been debited to profit and loss account, no adjustment is required while computing business income]	Nil	
(f) Provision for doubtful debts [10% of Rs. 200 lakhs] [Provision for doubtful debts is allowable as deduction under section 36(1)(viia) only in case of banks, public financial institutions, state financial corporations and state industrial investment corporations. Such provision is not allowable as deduction in the case of a manufacturing company. Since the	20,00,000	

same has been debited to profit and loss account, it has to be added back for computing business income]		
(g) Bad debts written off [Bad debts write off in the book of account is allowable as deduction under section 36(1)(vii). Since the same has already been debited to profit and loss account, no further adjustment is required]	Nil	
(h) Discount given by Sundry Creditors for supply of raw materials [Discount of 75% given by Sundry Creditors for supply of raw materials is taxable under section 41(1). Since the same has already been credited to profit and loss account, no further adjustment is required]	Nil	
(i) Provision for gratuity [Provision of Rs. 500 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of Rs. 300 lakhs paid is allowable as deduction. Hence, the difference has to be added back]	2,00,00,00 0	
(j) Commission paid to recovery agent for realization of a debt. [Commission of Rs. 1 lakh paid to a recovery agent for realisation of a debt is an allowable expense under section 37 as per DCIT v. Super Tannery (India) Ltd. (2005) 274 ITR 338 (All). Since the same has been debited to profit and loss account, no further adjustment is required]	Nil	
(k) Purchase of paper at a price higher than the fair market value 10,00,000 [As per section 40A(2), the difference between the purchase price (Rs. 30,000 per ton) and the fair market value (Rs. 28,000 per ton) multiplied by the quantity purchased (500 tons) has to be added back since the purchase is from a related party, a firm in which majority of the directors are partners, at a price higher than the fair market value]	10,00,000	
(l) Sales tax not refunded to customers out of sales tax refund [The amount of sales tax refunded to the company by the Government is a revenue receipt chargeable to tax under section 41(1). Deduction can be claimed of amount refunded to customers [CIT v. Thirumalaiswamy Naidu & Sons (1998) 230 ITR 534 (SC)]. Hence, the net amount of Rs. 1,00,000 (i.e., Rs. 3,00,000 minus Rs. 2,00,000) would be chargeable to tax]	1,00,000	2,83,00,000
		9,83,00,000

Less: Items credited but to be considered separately / permissible expenditure and allowances		
(m) Depreciation as per Income-tax Act,1961 already debited in profit and loss account	80,00,000	
(n) Over-valuation of stock [Rs. 55 lakhs × 10/110] [The amount by which stock is over-valued has to be reduced for computing business income. Rs. 50 lakhs, being the difference between closing and opening stock, has to be adjusted to remove the effect of over-valuation]	5,00,000	
(o) Additional Depreciation **[See Note 2 below]** [Additional depreciation@20% is allowable on Rs. 50 lakhs, being actual cost of new plant & machinery acquired on 10.06.2017, as the same was put to use for more than 180 days in the P.Y.2017-18.]	10,00,000	
Payment to a sub-contractor where tax deducted last year was remitted after the due date of filing of return [See Note 3 below] [30% of Rs. 10 lakhs, being payment to a sub-contractor, would have been disallowed under section 40(a)(ia) while computing the business income of A.Y.2017-18, since tax deducted was remitted after the due date of filing of return. However, the same is allowable in A.Y.2018-19, since the remittance has been made on 31.12.2017]	3,00,000	98,00,000
Total Income		**8,85,00,000**

Computation of tax liability of XYZ Ltd. for A.Y.2018-19

Particulars	Rs.
Tax @30% on the above total income	2,65,50,000
Add: Surcharge@7% (since total income exceeds Rs. 1 crore but less than Rs. 10 crore)	18,58,500
	2,84,08,500
Add: Education cess@2%	5,68,170
Secondary and Higher Education cess@2%	2,84,085
Total tax liability	**2,92,60,755**
Total tax liability (rounded off)	**2,92,60,760**

Notes:

(1) Employees contribution to PF deposited after the due date mentioned under the PF Act is not allowable as deduction as per section 36(1)(va). The same has also been affirmed by the Gujarat High Court in CIT v. Gujarat State Road Transport Corporation (2014) 366 ITR 170. Hence, in the above solution, employees' contribution to PF has been disallowed while computing business income.

Alternate View - An alternate view has, however, been expressed in CIT v. Kiccha Sugar Co. Ltd. (2013) 356 ITR 351 (Uttarakhand), CIT v. AIMIL Ltd (2010) 321 ITR 508 (Del) and CIT v. Nipso Polyfabriks Ltd (2013) 350 ITR 327 (HP) that employees contribution to PF, deducted from the salaries of the employees of the assessee, shall be allowed as deduction from the income of the employer-assessee, if the same is deposited by the employer-assessee with the provident fund authority on or before the due date of filing of return for the relevant previous year. If this view is considered, then no disallowance would be attracted in this case, since the employees' contribution has been remitted before the due date of filing of return of income.

(2) Rs. 50 lakhs, being the addition to plant and machinery on 1.6.2017 qualifies for additional depreciation@20% under section 32(1)(iia). Since only the normal depreciation as per Income-tax Rules, 1962, has been debited to profit and loss account, additional depreciation of Rs. 10 lakhs (being 20% of Rs. 50 lakhs) has to be deducted while computing business income.

(3) Since the tax deducted during the P.Y.2016-17 was remitted only on 31.12.2017, i.e., after the due date of filing of return for A.Y.2017-18, Rs. 3,00,000, being 30% of Rs. 10 lakh would have been disallowed while computing the business income of that year. Since the tax deducted has been remitted on 31.12.2017, Rs. 3,00,000 would be allowed as deduction while computing the business income of the A.Y.2018-19.

Reader's Note:

6 – CAPITAL GAINS

6.1 DEFINITION OF CAPITAL ASSET

Section:- 2(42A) – Effective from A.Y.2018-19

As per section 2(42A), a short-term capital asset means capital asset held by an assessee for not more than 36 months immediately prior to its date of transfer. However, in the following cases an asset, held for not more than 12 months, is treated as short-term capital asset-

(a) Equity or preference shares in a company (Listed in a recognized stock exchange)
(b) Securities listed in a recognized stock exchange in India.
(c) Units of UTI (whether listed or not)
(d) Units of an equity oriented fund (whether listed or not)
(e) Zero Coupon Bonds (whether listed or not)

Remark:

1. In case of unlisted shares (equity or preference), if transfer takes place on or after 1st April, 2016, the period of holding not exceeding 24 months, shall be taken into consideration instead of 36 months.
2. **In case of *an immovable property, being land or building or both,* if transfer takes place on or after 1st April, 2017, the period of holding not exceeding 24 months, shall be taken into consideration instead of 36 months.**

Practical 1

Mr. Jagmohan purchased residential building on 10th August, 2015. Thereafter, he sold out this building on 15th August, 2017. Determine the nature of asset.

Solution

Period of holding in respect of residential building exceeded 24 months. Hence, the residential building transferred by Mr. Jagmohan is a long term capital asset.

Reader's Note:

6.2 SHIFTING BASE YEAR FROM 1981 TO 2001 FOR COMPUTATION OF CAPITAL GAIN

Section:- 48 and 55 - Effective from A.Y.2018-19

Existing Provisions

If a capital asset which was acquired (prior to April 1, 1981) is transferred, the assessee has been given an option of either to adopt the fair market value of the asset as on April 1, 1981 or the actual cost of the asset as cost of acquisition.

Further, assessee is not allowed to claim deduction for cost of improvement incurred before April 1, 1981, if any.

Amendment

The base year for computation and capital gain is shifted from 1981 to 2001 with effect from the assessment year 2018-19.

Consequently, the following changes are required to be kept in mind while computing capital gain from the assessment year 2018-19 onwards –

1. If a capital asset which was acquired (prior to April 1, 2001) is transferred, the assessee will be given an option of either to adopt the fair market value of the asset as on April 1, 2001 or the actual cost of the asset as cost of the acquisition.
2. The assessee is not allowed to claim deduction for cost of improvement incurred before April 1,2001, if any.
3. As a result of above changes, if bonus shares were allotted prior to April 1, 2001, then cost of acquisition of such shares will be the fair market value on April 1, 2001. On the contrary, if bonus shares are allotted on or after April 1, 2001, cost of acquisition shall be taken as zero.
4. The Central Government has notified the "Cost inflation index" for the purpose of long-term capital gain as follows:

Financial year	*Cost inflation index*	*Financial year*	*Cost inflation index*
2001-02	100	2010-11	167
2002-03	105	2011-12	184
2003-04	109	2012-13	200
2004-05	113	2013-14	220
2005-06	117	2014-15	240
2006-07	122	2015-16	254
2007-08	129	2016-17	264
2008-09	137	2017-18	272
2009-10	148		

6.3 TAX INCENTIVE FOR THE DEVELOPMENT OF CAPITAL OF ANDHRA PRADESH

Section:- 10(37A), 49 (6) and 194LA

Section 10(37A) :- Exemption in respect of capital gains arising on transfer of Specified Capital Assets under the Land Pooling Scheme notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014. [With retrospective effect from A.Y.2015-16]

As per section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2014, the specified compensation received by the landowner in lieu of acquisition of land is exempt from income tax. The Land Pooling Scheme is an alternative form of arrangement made by the Government of Andhra Pradesh for formation of new capital city of Amaravati to avoid land acquisition disputes and lessen the financial burden associated with payment of compensation under that Act.

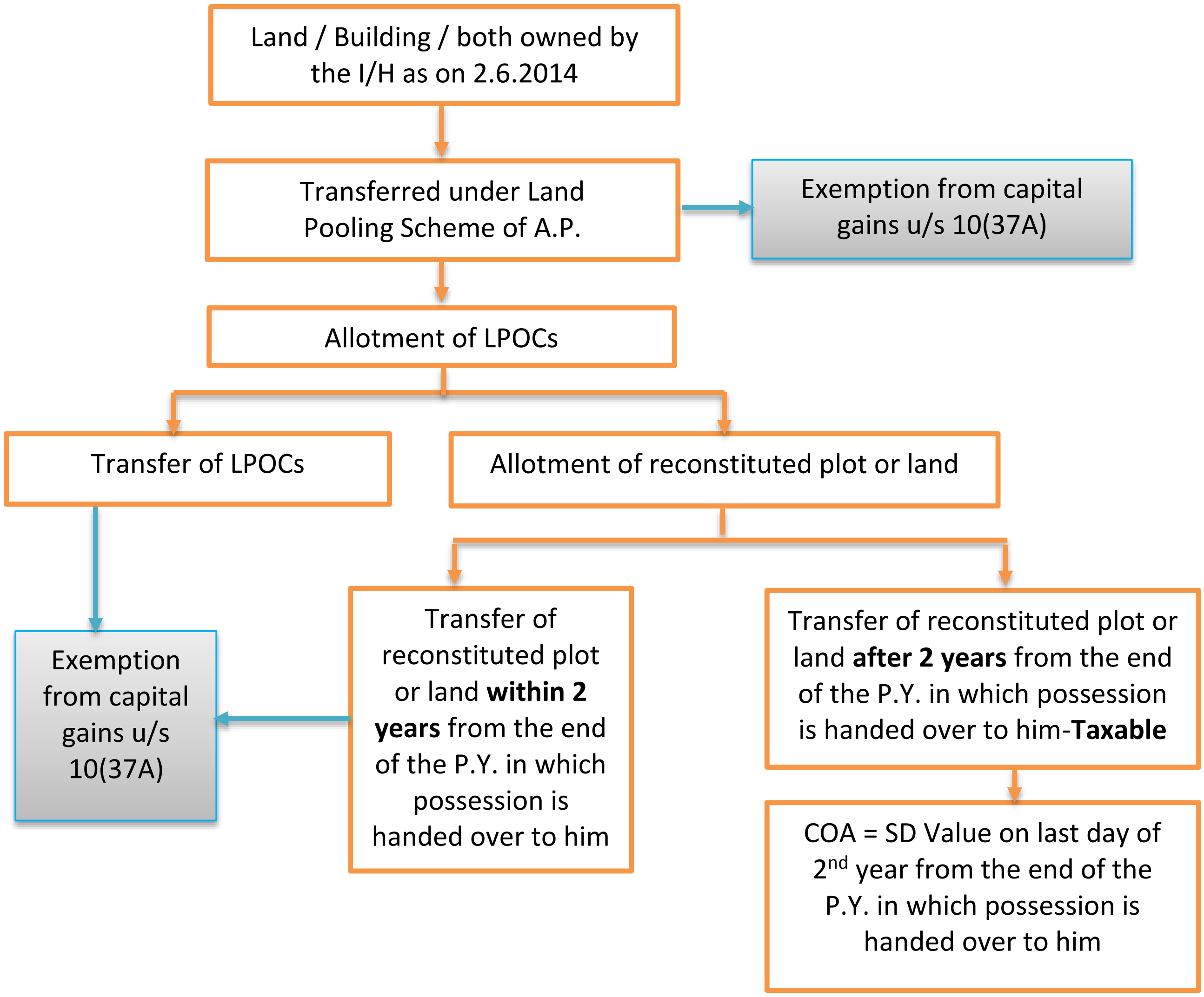
- In Land pooling scheme, the compensation in the form of reconstituted plot or land is provided to land owners. However, the existing provisions of the Act do not provide for exemption from tax on transfer of land under the land pooling scheme as well as on transfer of Land Pooling Ownership Certificates (LPOCs) or reconstituted plot or land.

- With a view to provide relief to an individual or Hindu undivided family who was the owner of such land as on 2nd June, 2014, and has transferred their land or building or both, under the land pooling scheme notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014, new clause (37A) has been inserted in section 10 to provide that in respect of said persons, capital gains arising from the transfer of the followings, specified capital assets, shall not be chargeable to tax under the Act:
  - Transfer of capital asset being land or building or both, under land pooling scheme.
  - Sale of LPOCs by the said persons received in lieu of land transferred under the scheme.
  - Sale of reconstituted plot or land by said persons within two years from the end of the financial year in which the possession of such plot or land was handed over to the said persons.

<u>Section 49(6):-</u> Cost of Acquisition of reconstituted plot or land: [With Effect from A.Y.2018-19]

Where the capital gain arises from the transfer of a reconstituted plot or land, (received by the assessee in lieu of land or building or both transferred under the Land Pooling Scheme of Andhra Pradesh) which has been transferred after the expiry of 2 years from the end of the financial year in which the possession of such plot or land was handed over to the assessee, the cost of acquisition of such reconstituted plot or land shall be deemed to be its stamp duty value as on the last day of the second financial year after the end of the financial year in which the possession of the said plot or land was handed over to the assessee.
For this purpose, "stamp duty value" means the value adopted or assessed or reassessable by the authority of the State Government for the purpose of payment of stamp duty in respect of an immovable property.

<u>Section 194LA :-</u> No Tax deduction shall be made in respect of any award or agreement which has been exempted from income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. **(Effective from 1st April, 2017)**



Practical 2

Mr. Aadinath provides following information:

(a) He purchased plot of land for Rs. 10,000 on 3rd January, 1998 in Amarawati.

(b) This plot of land was transferred under land pooling scheme on 10th July, 2014.

(c) As a result, Land Pooling Ownership Certificate (LPOC) was issued to him.

(d) He then transferred this LPOC for Rs. 12,00,000 on 15th September,2015.

Discuss tax consequences of the above transaction in the hands of Mr. Aadinath.

Solution

Previous year 2014-15

As per the provisions of Section 10(37A) of the Act, any capital gain arising to Individual / HUF on transfer of land under Land Pooling Scheme is exempt. Therefore, transfer of land by Mr. Aadinath under land poling scheme will not result into any tax liability.

Previous year 2015-16

As per the provisions of Section 10(37A) of the Act, any capital gain arising to Individual / HUF on transfer of LPOC is also exempt. Therefore, transfer of such LPOC by Mr. Aadinath will not result into any tax liability.

Reader's Note:

Practical 3

Continuing above problem, assuming that Mr. Aadinath had not transferred LPOC. The Andhra Pradesh Government allotted him a reconstituted plot of land on 15th March, 2016, however, the possession of reconstituted plot was handed over to him on 2nd April, 2016. Discuss Tax consequences in the hands of Mr. Aadinath under following alternatives

(a) Mr. Aadinath has transferred reconstituted plot on 10th March, 2019 for Rs. 20,21,000

(b) Mr. Aadinath has transferred reconstituted plot on 15th April, 2019 for Rs. 21,51,000

Note: Stamp duty valuation of such reconstituted plot on 31st March, 2019 was Rs. 20,25,000

Solution

Alternative (a)

Previous year 2018-19

As per the provisions of Section 10(37A) of the Act, any capital gain arising to Individual / HUF on transfer of reconstituted plot is exempt provided such reconstituted plot has been transferred within 2 years from the end of financial year in which the possession of such plot was handed over to him. Therefore, under this alternative, Mr. Aadinath is not required to pay any capital gain tax liability on transfer of such reconstituted plot.

Alternative (b)

Previous year 2019-20

Since transfer of reconstituted plot has been made after the end of 2 years from the end of financial year in which possession of reconstituted plot was handed over to Mr. Aadinath, he is liable to pay tax on capital gain arising on such transfer.

For the purpose of computing capital gain, following points merit consideration:

(i) Period of Holding: 2nd April, 2016 to 15th April, 2019

(ii) Full value of Consideration : Rs. 21,51,000

(iii) Cost of acquisition as per the provision of section 49(6) of the Act : Rs. 20,25,000

Reader's Note:

6.4 EXEMPTION FROM LONG TERM CAPITAL GAINS SCHME MODIFIED

Section:- 10(38) - Effective from A.Y.2018-19

Under the existing provisions of the Section 10(38) of the Income-tax Act, 1961, the income arising from a transfer of long term capital asset, being equity share of a company or a unit of an equity oriented fund, is exempt from tax if the transaction of sale is undertaken on or after 1st October, 2014 and is chargeable to Securities Transaction Tax under Chapter VII of the Finance (No.2) Act, 2004.

It has been noticed that exemption provided under section 10(38) is being misused by certain persons for declaring their unaccounted income as exempt long-term capital gains by entering into sham transactions.

With a view to prevent this abuse, it is proposed to amend section 10(38) to provide that exemption under this section for income arising on transfer of equity share acquired or on after 1st day of October, 2004 shall be available only if the acquisition of share is chargeable to Securities Transactions Tax under Chapter VII of the Finance (No 2) Act, 2004.

However, to protect the exemption for genuine cases where the Securities Transactions Tax could not have been paid like acquisition of share in IPO, FPO, bonus or right issue by a listed company acquisition by non-resident in accordance with FDI policy of the Government etc., it is also proposed to notify transfers for which the condition of chargeability to Securities Transactions Tax on acquisition shall not be applicable.

As on 05/06/2017 Government issued a notification no. 43/2017. In preamble of said notification, the Government notifies all transactions (with few specific exclusion and few specific inclusion) of acquisition of equity share entered into on or after the 1st day of October, 2004 which are not chargeable to STT EXCEPT the **Column 1** transactions but including the **column 2** transactions;

Column 1	**Column 2**
Specific exclusion – STT on acquisition not paid, not eligible for 10(38) exemption	**Specific Inclusion – STT on acquisition not paid, still eligible for 10(38) exemption**
Acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue	Acquisition of listed equity shares in a company which has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf
	Acquisition of listed equity shares in a company by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India
	Acquisition of listed equity shares in a company by an investment fund referred to in clause (a) of Explanation 1 to section 115UB of the Act or a venture capital fund referred to in clause (23FB) of section 10 of the Act or a Qualified Institutional Buyer
	Acquisition of listed equity shares in a company through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply
Where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange of India	Following acquisition of listed equity shares in a company made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956

	– acquisition through an issue of share by a company other than the issue referred to in clause (a) i.e. preferential allotment. – acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business – acquisition which has been approved by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf – acquisition under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 – acquisition by any non-resident in accordance with foreign direct investment guidelines of the Government of India – where acquisition of shares of company is made under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 – acquisition from the Government – acquisition by an investment fund referred to in clause (a) to Explanation 1 to section 115UB of the Income-tax Act or a venture capital fund referred to in clause (23FB) of section 10 of the income-tax Act or a Qualified Institutional Buyer – acquisition by mode of transfer referred to in sections 47 or 50B of the Income-tax Act, if the previous owner of such shares has not acquired them by any mode referred to in clause (a) or clause (b) or clause (c) [other than the transactions referred to in the proviso to clause (a) or clause (b)].
Acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules made thereunder	-

Explanation,—For the purposes of this notification,—

(a) "frequently traded shares" means shares of a company, in which the traded turnover on a recognised stock exchange during the twelve calendar months preceding the calendar month in which the acquisition and transfer is made, is at least ten per cent. of the total number of shares of such class of the company: Provided that where the share capital of a particular class of shares of the company is not identical throughout such period, the weighted average number of total shares of such class of the company shall represent the total number of shares.

(b) "listed‟ means listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder

(c) "preferential issue" and "Qualified Institutional Buyer" shall have the meanings respectively assigned to them in sub-regulation (1) of regulation (2) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

(d) "public financial institution" and "scheduled bank" shall have the meanings respectively assigned to them in Explanation to clause(viia) of sub-section (1) of section 36 of Income-tax Act.

(e) "recognised stock exchange" shall have the same meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956

(f) "reconstruction company" and "securitisation company" shall have the meanings respectively assigned to them in sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6.5 SPECIAL PROVISIONS FOR COMPUTATION OF CAPITAL GAIN IN CASE OF JOINT DEVELOPMENT AGREEMENT

Section:- 45(5A) and 49(7) - Effective from A.Y.2018-19

Section 45(5A):- Taxability of capital gains in case of Specified agreement:

The definition of 'transfer', inter alia, includes any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred.

And therefore, execution of Joint Development Agreement between the owner of immovable property and the developer attracts capital gain tax liability in the hands of owner in the year in which possession is handed over to the developer.

With a view to minimise the genuine hardship which the owner of land or building may face in paying capital gains tax in the year of transfer, a new sub-section (5A) in section 45 has been inserted to provide that

- in case of an assessee being individual or Hindu undivided family who transfers land or building or both under a specified agreement,
- then capital gain arising from such transfer shall be chargeable to income-tax as income of the **previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.**

What is the full value of consideration? The stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by any consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

Benefit of provisions of section 45(5A) not available [Proviso to section 45(5A)]:- It may, however, be noted these beneficial provisions would not apply, where the assessee transfers his share in the project on or before the date of issue of said completion certificate and therefore, the capital gain tax liability would be deemed to arise in the previous year in which such transfer took place. In such a case, full value of consideration received or accruing shall be determined by the general provisions of the Act.

Meaning of certain terms:

(a) Specified Agreement:- Specified agreement means the registered agreement in which a person owing land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.

(b) Competent authority:- The authority empowered to approve the building plan by or under any law for the time being in force.

(c) Stamp duty value:- The value adopted or assessed or reassessable by any authority of Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.

Section 49(7):- Cost of acquisition of capital asset, being share in the project referred under section 45(5A)

Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in section 45(5A) which is chargeable to tax in the previous year in which the completion of certificate for the whole or part of the project is issued by the competent authority), the cost of acquisition of such asset, shall be the amount which is deemed as full value of consideration in that sub-section.

SUMMARY

Individual/HUF entering into specified agreement

Is the individual/HUF transferring his share in the project after the date of issue of completion certificate?

Yes

Capital gains tax liability would arise in the P.Y. in which Certificate of Completion for whole or part of project **is issued** by the Competent Authority

Full Value of Consideration = Stamp duty value on the date of issue of certificate of completion (+) Cash consideration **[Section 45(5A)]**

On subsequent sale of share of developed property, abovementioned full value of consideration deemed to be the cost of acquisition **[Section 49(7)]**

No

Capital gains tax liability would arise in the **P.Y. in which the property is transferred.**

Full value of consideration =Stamp duty value on the date of transfer or actual consideration, whichever is higher **[Section 50C]**

Practical 4

Mr. Abhinav provides following information:

(a) He purchased small plot of land in Ahmedabad on 10th July 1998 for Rs. 10 lakh (fair market value of such plot as on 1st April, 2001 was Rs. 12 lakh)

(b) He entered into a "Specified Agreement" with Amrapali Devlopers Ltd. on 18th May 2017.

(c) Agreed consideration was : Cash component Rs. 1 Crore and 50% share in constructed area

(d) Project completion certificate was issued by Local authority on 10th August, 2018.

(e) Stamp duty valuation of 50% share in constructed area (as on 10th August, 2018): Rs. 2.25 Crore.

(f) He sold out the constructed area allotted to him on 1st May, 2019 for Rs. 3 Cr.

Discuss tax consequences of above transaction in the hands of Mr. Abhinav.

Solution

Computation of Long Term Capital Gain in the hands of Abhinav for P.Y. 2018-19

Period of Holding: From 10-07-1998 to 18-05-2017

Type of Capital Asset : Long Term

Particulars	Rs.
Full value of consideration (Rs. 1 Cr. + Rs. 2.25 Cr.)	3,25,00,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	3,25,00,000
Less: Indexed Cost of Acquisition $(\text{Rs. } 12{,}00{,}000) \times \frac{272}{100}$	32,64,000
Taxable Long Term Capital Gain	**2,92,36,000**

Computation of Long Term Capital Gain in the hands of Abhinav P.Y. 2019-20

Period of Holding: From 10-08-2018 to 01-05-2019

Type of Capital Asset : Short Term

Particulars	Rs.
Full value of consideration	3,00,00,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	3,00,00,000
Less: Cost of Acquisition **as per section 49(7)**	2,25,00,000
Taxable Short Term Capital Gain	**75,00,000**

Reader's Note:

6.6 FAIR MARKET VALUE TO BE THE FULL VALUE OF CONSIDERATION FOR TRANSFER OF UNQUOTED SHARES - Effective from A.Y.2018-19

Section:- 50CA

In order to ensure the full consideration is not understated in case of transfer of unlisted shares, a new section 50CA has been inserted to provide that where the consideration received or accruing as a result of transfer of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, such fair market value shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

For the purpose, "quoted shares" means the share quoted on any recognized stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

Note:

The fair market value of the unquoted shares would be determined in the manner provided in sub-clause (b) or sub-clause (c), as the case may be, of Rule 11UA(1)(c) and for this purpose the reference to valuation date in the Rule 11U and 11UA shall mean the date on which the capital asset, being unquoted share of a company is transferred (Rule 11UAA).

For determination of fair market value: Refer Rule 11U and Rule 11UA under **Chapter 7: Income from Other Sources.**

Practical 5

Mr. Dravid provides following information:

(a) He subscribed shares of ABC Infrastructure Private Limited for Rs. 12,00,000 on 16th May, 2001.

(b) He sold out these shares for Rs. 85,00,000 on 18th May, 2017.

(c) Fair market value of this share on 18th May, 2017 was Rs. 98,00,000.

Discuss tax consequences of above transaction in the hands of Mr. Dravid.

Solution

Computation of Long Term Capital Gain in the hands of Mr. Dravid for P.Y.2017-18

Period of Holding: From 16-05-2001 to 18-05-2017

Type of Capital Asset : Long Term

Particulars		Rs.
Full value of consideration (actual consideration or FMV whichever is higher		98,00,000
Less: Expenses in connection with Transfer		Nil
Net Consideration		98,00,000
Less: Indexed Cost of Acquisition	$(\text{Rs. } 12{,}00{,}000) \times \frac{272}{100}$	32,64,000
Taxable Long Term Capital Gain		**65,36,000**

Reader's Note:

6.7 FEW MORE TRANSACTIONS ARE NOT TREATED AS TRANSFER

Section:- 47 (viiaa), (xb) - Effective from A.Y.2018-19

As per clause (viiaa) of section 47, any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non-resident is not treated as transfer.

As per clause (xb) of section 47, conversion of preference shares of a company into equity shares of that company is not treated as transfer.

6.8 HOW TO FIND OUT CAPITAL GAINS WHEN EQUITY SHARES RECEIVED ON CONVERSION ARE SUBSEQUENTLY SOLD?

Section:- 49(2AE), Explanation to section 2(42A) - Effective from A.Y.2018-19

(a) Section 49(2AE) has been inserted to provide that cost of acquisition of preference shares shall be treated as cost of acquisition for equity shares (received on conversion).

(b) Further, to find out whether such equity shares received on conversion are long-term capital assets or not, the period of holding shall be determined from date of acquisition of preference shares of such company.– **Explanation 1 to section 2(42A).**

(c) The benefit of indexation will start from the date of acquisition of preference shares in the company.

Practical 6

Ms. Mayuri subscribed 10,000 preference shares of Online Education Private Limited @ Rs. 10 each on 18th August, 2015. Such shares were converted into 12,500 equity shares on 10th April, 2017. She then transferred 8,000 shares on 21st September, 2017 for Rs. 12 per share. Discuss tax consequences of above transaction in the hands of Ms. Mayuri.

Solution

As discussed earlier, conversion of preference shares into equity shares is not treated as transfer by virtue of section 47 (xb). Therefore, conversion will not attract capital gain tax liability in the hands of Ms. Mayuri.

Computation of Capital Gain in the hands of Ms. Mayuri.

Period of Holding: From 18-08-2015 to 21-09-2017
Type of Capital Asset : Long Term

Particulars	Rs.
Full value of consideration (8,000 X Rs. 12)	96,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	96,000
Less: Indexed Cost of Acquisition (Working Note)	(68,535)
Taxable Long Term Capital Gain	**27,465**

Working Note:-

Total Cost of 12500 equity shares	= Cost of preference shares =10000 × Rs. 10 = Rs.1,00,000
Hence, cost per equity share	$= \frac{1,00,000}{12500}$ = Rs.8
Hence, cost of acquisition of 8000 equity shares	=8000×Rs.8=Rs.64,000
Therefore, Indexed Cost of Acquisition =	$=\left(64000 \times \frac{272}{254}\right)$ =Rs.68,535

Readers Note:

6.9 HOW TO FIND OUT CAPITAL GAINS WHEN UNITS OF CONOSLIDATED PLAN ARE SUBSEQUENTLY SOLD?

Section:- 49(2AF), Explanation to section 2(42A) – w.r.e.f A.Y.2017-18

By virtue of section 47(xix), any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund, is not treated as transfer.

(a) As **per section 49(2AF)**, the cost of acquisition of units allotted in consolidated plan of a Mutual Fund scheme shall be the cost of acquisition of the units in the consolidating plan of the scheme of Mutual fund.

(b) To find out whether units of consolidated plan are long-term capital assets or not, the period of holding shall be determined from date of acquisition of units in the consolidating plan of the scheme of mutual fund.– **Explanation 1 to Section 2(42A)**

(c) The benefit of indexation will start from the date of allotment / acquisition of units in the consolidating plan of the scheme of mutual fund.

Practical 7

ABC Mutual Funds operates various plans within a DEBT Scheme like ABC Debt Growth Fund, ABC Fixed Income Fund, ABC Dividend Income Fund. It has decided to consolidate all these plans into ABC Premier Debt Fund in accordance with guidelines of SEBI (Mutual Funds) Regulations, 1996 with effect from 10-07-16. Mr. Abhishek subscribed 10,000 units of ABC Debt Growth Fund on 10-08-2015 for Rs. 10 per unit. As a result of consolidation, he was allotted 13,333.33 units of ABC Premier Debt Fund. The Income Tax Officer asked Mr. Abhishek to pay capital gain tax on such transaction because this transaction amounts to "exchange" and therefore covered under the definition of "transfer". Whether contention of Income Tax Officer is valid?

Continuing above problem, Mr. Abhishek sold 500 units of ABC Premier Debt Fund on 13-12-2017 for Rs. 10.50 per unit. Find out capital gain in the hands of Mr. Abhishek.

Solution

All the conditions of section 47(xix) are satisfied, hence no capital gain shall be taxed in the hands of Mr. Abhishek. Thus, the contention raised by the Income Tax officer is not valid.

Computation of Capital Gain

Period of Holding: From 10-08-2015 to 13-12-2017
Type of Capital Asset : Short Term

Particulars	**Rs.**
Full value of consideration (5000 × Rs.10.50) Less: Cost of Acquisition (Working Note)	52,500 37,500
Taxable STCG	**15,000**

Working Note:

Total Cost of 13,333.33 units of ABC Premier Debt Fund	= Cost of 10,000 units of ABC Debt Growth Fund =10,000 × Rs. 10 = Rs. 1,00,000
Hence, cost per unit of ABC Premier Debt Fund	$= \frac{\text{Rs.}1{,}00{,}000}{13{,}333.33}$ = Rs. 7.50
Hence, cost of acquisition of 5000 units of ABC Premier Debt Fund	= 5000 × Rs.7.50=Rs.37,500

Readers Note:

6.10 WHAT IS THE COST OF ACQUISITION OF CAPITAL ASSETS OF CHARITABLE TRUSTS ON WHICH TAX HAS BEEN LEVIED UNDER SECTION 115TD?

Section:- 49(8) – w.r.e.f A.Y.2017-18

Where the capital gain arises from the transfer of an asset, being the asset held by a trust or an institution in respect of which accreted income has been computed and the tax has been paid thereon in accordance with the provisions of Chapter XII-EB, **the cost of acquisition of such asset shall be deemed to be the fair market value of the asset which has been taken into account for computation of accreted income as on the specified date referred to in sub-section (2) of section 115TD**.

6.11 CAPITAL GAIN NOT TO BE CHARGED ON INVESTMENT IN CERTAIN BONDS

Section:- 54EC - Effective from A.Y.2018-19

Q 1. Who can claim exemption?

Ans. Any person

Q2. What is the nature of capital asset which has been transferred?

Ans. Long Term Capital Asset

Q3. Which specific asset is eligible for exemption (that means which asset has been transferred?)

Ans. Any Long Term Capital Asset

Q4. Which asset the tax-payer shall acquire to avail exemption under this section?

Ans. Bonds of National High-way Authority of India (NHAI) or Rural Electrification Corporation Limited or **any other notified by the Central Government in this behalf.**

Notification No. 47 / 2017 dated 8th June, 2017:- Bonds (redeemable after three years) issued on or after 15th day of June, 2017 by Power Finance Corporation Limited are eligible for availing benefit under section 54 EC

Notification No. 79 / 2017 dated 8th August, 2017:- Bonds (redeemable after three years) issued on or after 8th day of August, 2017 by Indian Railway Finance Corporation Limited are eligible for availing benefit under section 54 EC.

Q5. What is time-limit for acquiring the new capital asset?

Ans. Six months from the date of transfer

Q6. What is the quantum of exemption?

Ans. Exemption under section 54EC = Amount invested in new asset or capital gain whichever is lower

Upper Limit for exemption: Under no circumstances, exemption under 54EC shall exceed Rs. 50 Lac in a financial year.

Q7. Is it possible to revoke the exemption in a subsequent year? (Can exemption be taken back?)

Ans. If new asset is transferred or converted into money or loan is taken on the security of new asset within 3 years from the date of its acquisition.

Q7.1.What is the nature of capital gain if exemption is taken back in subsequent year?

Ans. Long term

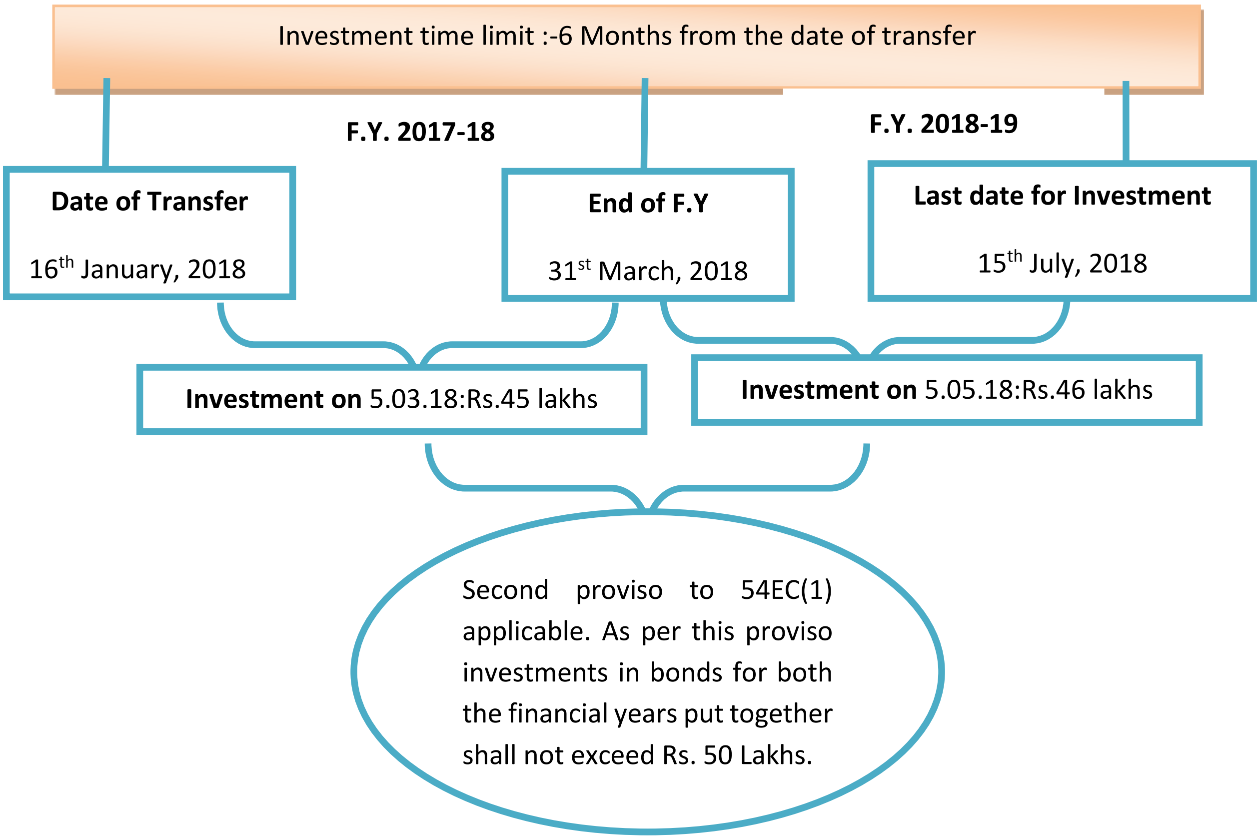
Q8. Is scheme of Deposit available?

Ans. No

Practical 8

Mrs. X, resident woman, transfers (Date of transfer:-January 16, 2018) a house property resulting into long term capital gain of Rs. 1,01,50,000. She invests a sum of Rs. 45,00,000 in capital gains bonds issue by Power Finance Corporation Limited on March 5, 2018. She further invests a sum of Rs. 46,00,000 in the same bonds on May 5, 2018. Accordingly, she wants to claim exemption of Rs. 91,00,000 under 54EC. Advise her suitably.

Solution



Therefore, Mrs. X is entitled to claim exemption of Rs. 50,00,000 under section 54EC instead of Rs 91,00,000.

Readers Note:

7 – INCOME FROM OTHER SOURCES

7.1 DEFINITION OF INCOME AMENDED

Section:- 2(24) - Effective from 01.04.2017

The reference of section 56 (2)(x) has been inserted in section 2(24) w.e.f April 1, 2017.

7.2 SUM OF MONEY/PROPERTIES RECEIVED WITHOUT CONSIDERATION OR PROPERTIES RECEIVED FOR A CONSIDERATION WHICH IS LESS THAN FAIR MARKET VALUE OR STAMP DUTY, AS THE CASE MAY BE

Section:- 56(2)(x) - Effective from A.Y.2018-19

Following paragraphs deal with taxation of sum of money or properties received without consideration or properties received for a consideration which is less than fair market value or stamp duty, as the case may be.

Para No.	Description
Para 7.2	Sum of money/ properties received without consideration.
Para 7.2A	Exceptions / Relief from taxation
Para 7.2B	Meaning of Property
Para 7.2C	Determination of fair market value of Jewellery etc.
Para 7.2D	Determination of fair market value of Shares and Securities
Para 7.2E	What is the cost of acquisition if properties are subsequently sold?

Conditions for taxability:

If any person receives one or more of the following during the previous year from any other person, on or after the 1st day of April, 2017, then shall be regarded as income and subject to tax under this head:

(A) Sub Clause (a) of section 56(2)(x)

Transaction	*Condition*	*Taxable amount*
Sum of money received without consideration	*Aggregate amount received exceeds Rs.50,000*	***Aggregate** amount received*

Practical 1

During concerned previous year, Mr. Krishna received following sum of money without consideration. Discuss tax consequences.

From	Rs.
Friend A	17,000
Friend B	14,000
Friend C	19,000

Solution

Mr. Krishna received exactly Rs.50,000 (not exceeding Rs. 50,000) without consideration. Therefore nothing shall be taxed in his hands.

Reader's Note:

Practical 2

Suppose in the above problem, amount received from Friend C is Rs.19,001 instead of Rs. 19,000. Discuss tax consequences.

Solution

The aggregate amount received without consideration by Mr. Krishna is Rs.50,001 (exceeding Rs. 50,000), therefore, entire Rs. 50,001 shall be taxed in the hands of Mr. Krishna under the head "Income from other sources."

Reader's Note:

(B) Sub Clause (A) of section 56(2)(x)(b)

Transaction	*Condition*	*Taxable amount*
Immovable property received without consideration	*Stamp duty value of immovable property exceeds Rs50, 000.*	*Stamp duty value of such property. (This rule shall be applicable for **each property separately)***

Practical 3

During concerned previous year, Mr. Yudhisthir received following urban lands without consideration.

From	Valuation for Stamp Duty Purpose (Rs.)
Friend P	32,000
Friend Q	68,000

Solution

The valuation of land received from friend "P" does not exceed Rs. 50,000 (It is Rs. 32,000), therefore, it shall not be taxed in the hands of Mr. Yudhisthir. However, value of land received from friend "Q" exceeds Rs. 50,000 (It is Rs. 68,000), the same shall be taxed.

Reader's Note:

Practical 4

Suppose in the above problem, land received from friend Q is an agricultural land instead of urban land. Discuss tax consequences.

Solution

Since land received from Friend Q is not a capital asset (in this case, it is an agricultural land), nothing shall be taxed in the hands of Mr. Yudhisthir even though value of this land exceeds Rs. 50,000.

Reader's Note:

(C) Sub Clause (B) of section 56(2)(x) (b)

Transaction	*Condition*	*Taxable amount*
Immovable property received for a consideration which is less than the stamp duty value.	*Consideration is less than the stamp duty value of the property by an amount exceeding Rs. 50,000. (Refer Note)*	*Difference between stamp duty value and the consideration (This rule shall be applicable for **each property separately)***

Notes:

1. If there is a time gap between date of agreement and date of registration, **the stamp duty value may be taken as on the date of agreement** instead of the date of registration. However, for this purpose, at least a part of the consideration has been paid by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement.
2. If assessee may dispute the stamp duty value of property on grounds mentioned under section 50C(2),then the assessing officer may refer the valuation of such property to the valuation officer, and the provisions of section 50C and section 155(15) shall apply accordingly for the purpose of sub clause (b) of Section 56(2)(x).

Practical 5

Shweta purchased flat from Rahul, details of which are as under:

1. Date of entering into agreement :-1.7.**2017**.
2. Agreed consideration : Rs. 100 lakhs
3. Down payment of Rs. 15 lakhs was paid by cheque on the date of agreement.
4. Stamp duty value of flat on the date of agreement was Rs. 135 lakhs.
5. Registration of sale deed in respect of flat took place on 1.1.**2018**.
6. Stamp Duty value on the date of registration of sale deed was Rs. 150 lakhs.

Discuss tax implications in the hands Shweta.

Solution

(1) Taxable Amount under the head "Income from Other Sources"

Taxable Amount =Stamp Duty Value ***Less*** Actual Consideration
= Rs.135 lakhs – Rs.100 lakhs
= Rs. 35 lakhs

(2) Further, Shweta shall deduct TDS under section 194 IA at 1 % of consideration (Reader must note that 1% is not of stamp duty value, it is of consideration). Therefore, Shweta shall deduct TDS of Rs. 1,00,000/- while making payment to Rahul.

Reader's Note:

(D) Sub Clause (A) of section 56(2)(x) (c)

Transaction	*Condition*	*Taxable amount*
Movable property received without consideration	*Aggregate fair market value of movable properties exceeds Rs 50,000*	*fair market value **on aggregate basis***

Practical 6

During concerned previous year, Mr. Arjuna received following properties without consideration. Discuss tax consequences.

Description of Property	Fair Market Value (Rs.)
Jewelry from friend M	27,000
Archeological Collections from friend N	14,000
Mobile from friend O	15,000

Solution

Description of Property	Fair Market Value (Rs.)
Jewelry from friend M	27,000
Archeological Collections from friend N	14,000
Mobile from friend O **(Not covered within the meaning of property)**	-
Aggregate	**41,000**

Since aggregate amount does not exceed Rs. 50,000, nothing is taxable in the hands of Mr. Arjuna.

Reader's Note:

(E) Sub Clause (B) of section 56(2)(x) (c)

Transaction	*Condition*	*Taxable amount*
Movable property received for a consideration which is less than the aggregate fair market value.	*Consideration is less than the aggregate fair market value of properties by an amount exceeding Rs 50,000*	*Difference between fair market value and consideration* ***on aggregate basis***

Practical 7

During concerned previous year, Mr. Bhima purchased following properties. Discuss the tax consequences.

Particulars	Fair Market Value (Rs.)	Purchase Price
Golden Ring	78,000	72,000
L.C.D. Television	42,000	32,000
Paintings	1,00,000	61,000

Solution

Particulars	Fair Market Value (Rs.)	Purchase Price (Rs.)	Difference (Rs.)
Golden Ring	78,000	72,000	6,000
L.C.D.Television**(Not covered within the meaning of property)**	-	-	-
Paintings	1,00,000	61,000	39,000
Aggregate of Difference			45,000

Since aggregate amount does not exceed Rs. 50,000, nothing is taxable in the hands of Mr. Bhima.

Reader's Note:

Practical 8

Suppose in the above problem painting was purchased for Rs.51,000 instead of Rs. 61,000. Discuss the tax consequences.

Solution

Particulars	Fair Market Value(Rs.)	Purchase Price(Rs.)	Difference (Rs.)
Golden Ring	78,000	72,000	6,000
L.C.D.Television**(Not covered within the meaning of property)**	-	-	-
Paintings	1,00,000	51,000	49,000
Aggregate of Difference			**55,000**

Since aggregate amount exceeds Rs. 50,000, entire difference of Rs. 55,000 is taxable in the hands of Mr. Bhima.

Reader's Note:

Practical 9

Mr. Nakula provides the following information for the concerned previous year. Discuss the tax consequences.

(i) Received gift of Rs. 48,000 from friend X.

(ii) Received house property without consideration from friend's grandmother, valuation of the same for stamp duty purpose was Rs. 42,000.

(iii) Purchased urban land for Rs.11,82,000 though the value of the same for stamp duty purpose was Rs.11,00,000.

(iv) Received gift of shares worth Rs. 29,000

(v) Purchased sculpture for Rs.9,000 though fair market value was Rs.49,000

Solution

Tax Consequences in the hands of Mr. Nakula

Sr. No.	Particulars	Relevant Para Applicable (Rs.)				
		Para 7.12(A)	Para 7.12(B)	Para 7.12(C)	Para 7.12(D)	Para 7.12(E)
(i)	Received Cash	48,000				
(ii)	Received House property without consideration		42,000			
(iii)	Purchased Urban land			Refer Note		
(iv)	Gift of Shares				29,000	
(v)	Sculpture					40,000
	Which rule Applicable-Aggregation or each transaction?	Aggregate	Each transaction	Each transaction	Aggregate	Aggregate
	Aggregate	48,000	NA	NA	29,000	40,000
	Taxability	**Not Taxable**	**Not Taxable**	**Not Taxable**	**Not Taxable**	**Not Taxable**

Reader's Note:

Note: Section 56 is not applicable since Nakula purchased land for a value more than the value adopted for stamp duty purpose.

7.2A EXCEPTIONS / RELIEF FROM TAXATION

Section:- Proviso to section 56(2)(vii)

While calculating the above monetary limit of Rs. 50,000, any sum of money/properties received form the following shall not be considered.

1. Any sum of Money/properties which is received from any relative
2. Any sum of Money/properties which is received on the occasion of the marriage of the individual.
3. Any sum of Money/properties which is received under a will or by way of inheritance.
4. Any sum of Money/properties which is received in contemplation of death of the payer.
5. Money/properties received from a local authority
6. Money/properties received from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in section 10(23C).
7. Money/properties received from a charitable institute registered under section 12AA.
8. Money/properties received by way of transaction not regarded as transfer under clause (vicb) or clause (vid) or clause (vii) of section 47. [i.e., receipt of money/ properties in a scheme of amalgamation, demerger, etc.]
9. Money / properties received by a trust from an individual where trust is created or established solely for the benefit of relative of the individual.

Meaning of relative in relation to “Individual” -For the aforesaid purpose, the term "relative" in relation to “Individual” means—

1. Spouse of the individual
2. Brother or sister of the individual
3. Brother or sister of the spouse of the individual
4. Brother or sister of either of the parents of the individual
5. Any lineal ascendant or descendant of the individual
6. Any lineal ascendant or descendant of the spouse of the individual
7. Spouse of the person referred to in (2) to (6)

Meaning of relative in relation to “HUF” - For the aforesaid purpose, the term "relative" in relation to “HUF” means any member thereof.

That means any sum of money or property received without consideration or for an inadequate consideration by an HUF from its members will not be subject to tax.

Practical 10

Mr. Jayesh received gift of Rs. 1, 00,000 from his uncle. Discuss tax consequences in the hands of Mr. Jayesh.

Solution

Mr. Jayesh received Rs.1,00,000 from his uncle who falls under the definition of relative for Mr. Jayesh. Any sum of money / property received from relative does not fall under section 56(2)(vii), therefore, nothing shall be taxed in the hands of Mr. Jayesh.

Reader’s Note:

Practical 11

Mr. Uncle received gift of Rs. 1,00,000 from his nephew. Discuss tax consequences in the hands of Mr. Uncle.

Solution

Mr. Uncle received Rs.1,00,000 from his nephew who does not fall under the definition of relative for Mr. Uncle. And amount received exceeds Rs. 50,000 therefore entire Rs. 1,00,000 shall be taxed in the hands of Mr. Uncle.

Reader's Note:

Practical 12

Mr. Manmoji received gold from various persons without consideration. The fair market value of gold is Rs. 1,25,000. Discuss tax consequences in the hands of Mr. Manmoji under following alternatives:-

Alternative (a) : Mr. Manmoji received gold on occasion of his marriage.

Alternative (b) : Mr. Manmoji received gold on his 25th marriage anniversary.

Solution

Alternative (a)

For the purpose of section 56(2(vii), any sum of money/properties received on the occasion of the marriage of the individual shall excluded.

Therefore, gold received on the occasion of marriage by Mr. Manmoji is not taxable.

Alternative (b)

As discussed above, For the purpose of section 56 (2)(vii), any sum of money/properties received on the occasion of the marriage of the individual shall excluded. However it does not exclude any money/properties received on the occasion of marriage anniversary from non-relative.

Therefore, gold receive worth Rs. 1,25,000 (exceeding Rs. 50,000) on the occasion of 25th marriage anniversary shall be chargeable to tax in the hands of Mr.Manmoji.

Reader's Note:

7.2B MEANING OF PROPERTY

Section:- 56(2)(vii)

"Property" *means capital asset of the assessee being*

(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;
(ix) *bullion;*

Practical 13

During concerned previous year, Mr. Sahdev received 1,000 shares of WIPRO Limited from his friend, without consideration. Fair market value of this shares on the date of gift was Rs. 2,500 per share. Discuss tax consequences in the hands of Sahdev under following alternatives:-

Alternative (a): Mr. Sahdev is a share trader

Alternative (b): Mr. Sahdev is not a share trader

Solution

On minute reading of the definition of property, it shall be taxed in the hands of recipient only if it is a capital asset for the recipient.

Alternative (a):- In this alternative, Mr. Sahdev is a share trader and if he treats the shares of WIPRO Limited received by him from his friend as a part of stock-in-trade (not a capital asset), then nothing shall be taxed under section 56(2)(x)(c)(A)

Alternative (b):- In this alternative, Mr. Sahdev is not a share trader and therefore, shares of WIPRO Limited received by him from his friend are capital asset. Hence, Rs. 25,00000 (Fair market value) shall be taxed under section 56(2)(x)(c)(A).

Reader's Note:

7.2C DETERMINATION OF FAIR MARKET VALUE OF JEWELLERY, DRAWINGS ETC.

Rule:- 11 U, 11 UA

The FMV of jewellery, archeological collections, drawings, paintings, sculptures or any work of art shall be estimated to be price which it would fetch if sold in the open market on the valuation date: Consider following chart:-

- If above assets is received by the way of purchase on the valuation date, from a registered dealer
  - Invoice value shall be the fair market value.
- If above assets is received by any other mode
  - If value of respective asset exceeds rupees fifty thousands
    - Assessee may obtain the report of registered valuer in respect of price it would fetch if sold in the open market on the valuation date.

Relevant definitions:

1) **Registered dealer**

   "registered dealer" means a dealer who is registered under Central Sales tax Act, 1956 or General Sales-tax Law for the time being in force in any State including value added tax laws.

2) **Registered valuer**

   "Registered valuer" shall have the same meaning as assigned to it in section 34AB of the Wealth Tax Act, 1957 read with rule 8A of wealth-tax Rules, 1957.

3) **Valuation date**

   "valuation date" means the date on which the property is received by the assessee.

Practical 14

Ms. Jaya purchased diamond jewellery from "Abhushan" Jewellers, a registered dealer under Gujarat VAT Act for Rs. 55,000. Similar jewellery was purchased by Ms. Chhaya on the same day from "Kalyan Jewellers", a registered dealer under Gujarat VAT Act for Rs. 62,000. Find out fair market value for the purpose of section 56 in the hands of Ms. Jaya and Ms. Chhaya under following alternatives:-

Alternative (a): Both Ms. Jaya and Ms. Chhaya have obtained the invoice from respective jewellers.

Alternative (b): Both Ms. Jaya and Ms. Chhaya have not obtained the invoice from respective jewellers

Alternative (c): Both Ms. Jaya and Ms. Chhaya have obtained the invoice from respective jewellers but both the jewellers are unregistered.

Solution

Alternative (a): Both Ms. Jaya and Ms. Chhaya have obtained the invoice from respective jewellers.

If diamond is purchased from a registered dealer by obtaining invoice, then as per valuation rule, invoice value shall be the fair market value.

Therefore, respective invoice value of the diamond shall be the fair market value in the hands of Ms. Jaya and Ms. Chhaya.

Alternative (b): Both Ms. Jaya and Ms. Chhaya have not obtained the invoice from respective jewellers

If diamond is purchased from a registered dealer without obtaining invoice, then as per valuation rules, assessee may obtain the report of registered valuer in respect of fair market value of diamond on the date of purchase.

Alternative (c): Both Ms. Jaya and Ms. Chhaya have obtained the invoice from respective jewellers but both the jewellers are unregistered.

If Diamond is purchase from a unregistered dealer, then as per valuation rules, assessee may obtain the report of registered valuer in respect of fair market value of diamond on the date of purchase.

Reader's Note:

Practical 15

Ms. Kamli purchased gold jewellery from "Gharana Jewellers', being unregistered dealer for Rs. 45,000. Further, she purchased painting from "Modern Art" being unregistered dealer for Rs. 38,000. Is Ms. Kamli required to obtain report of registered valuer?

Solution

On reading of valuation rule, Ms. Kamli required to obtain report of registered valuer only when the value of respective asset exceeds Rs.50,000. In this case, value of each asset (i.e. jwellery and painting) does not exceed Rs.50,000, therefore, Ms Kamli is not required to obtain report from registered valuer.

Reader's Note:

Practical 16

Mr. Viru purchased painting on **5th May, 2017** from registered dealer for Rs.1, 00,000 and obtained the invoice of same. He gifted this painting to Miss Mohmaya on **9th September 2017**. Fair market value of this painting, as per registered valuer report on **9th September, 2017** was Rs.1, 25,000. Discuss taxability of this transaction in the hands of Miss Mohmaya.

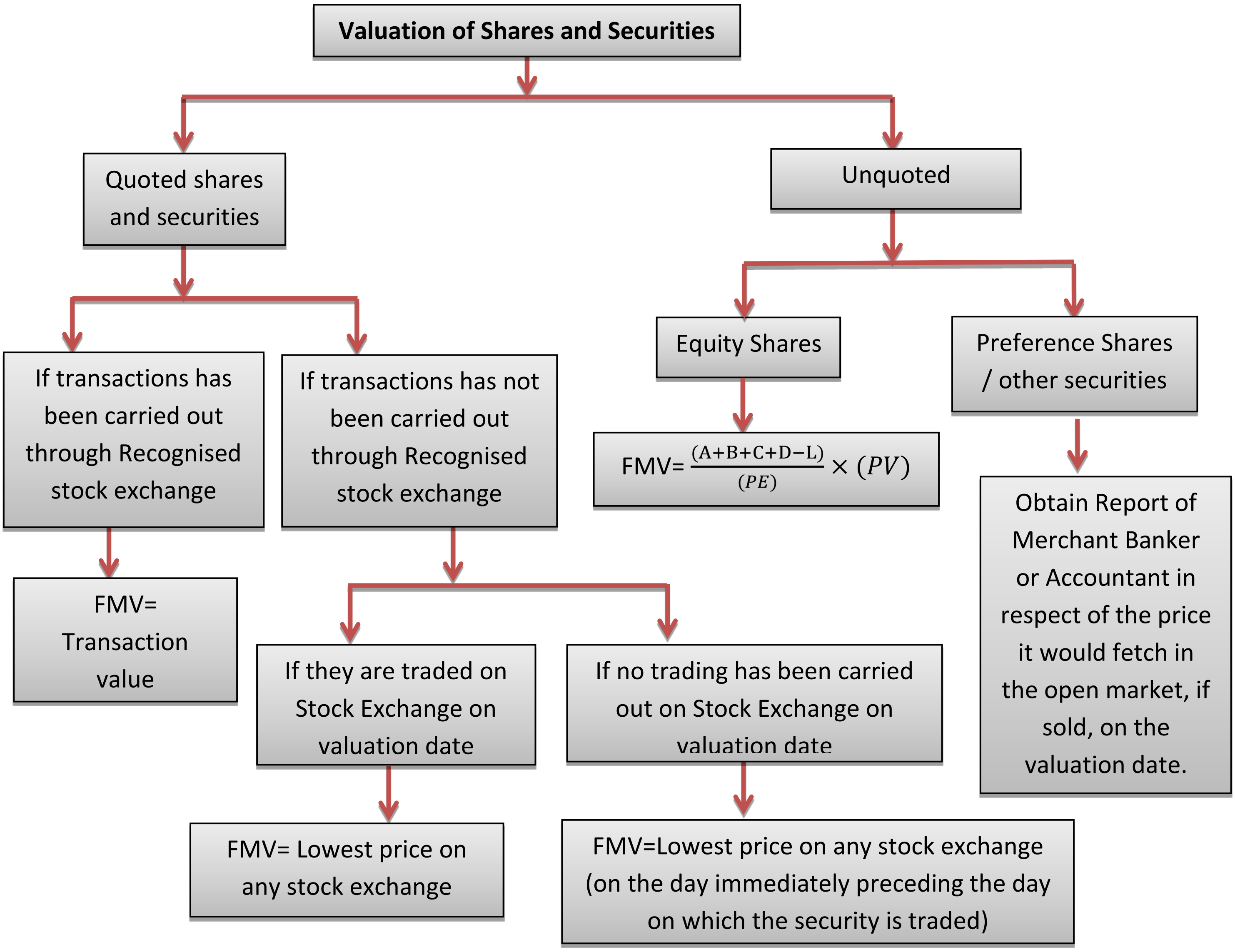
Solution

Miss Mohmaya has received paintings without consideration, therefore, fair market value of painting on the date of gift (i.e. Rs.1,25,000) shall be chargeable to tax in her hands.

Reader's Note:

7.2D DETERMINATION OF FAIR MARKET VALUE OF SHARES AND SECURITIES

RULE:- 11U, 11UA



Meaning of various terms used in the above valuation rule:

A= book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,-

(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and

(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in this rule;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L= book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PV= the paid up value of such equity shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;”

Relevant definitions

(a) "accountant" shall have the same meaning as assigned to it in the Explanation below sub-section (2) of section 288 of the Act;

(b) The balance-sheet in relation to any company means balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor appointed u/s 224 of the Companies Act, 1956(1 of 1956);

(c) "Merchant banker" means category I merchant banker registered with Security and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(d) "quoted shares or securities" in relation to share or securities means a share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;

(e) "recognized stock exchange" shall have the same meaning as assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(f) "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);

(g) "unquoted shares and securities", in relation to shares or securities, means shares and securities which is not a quoted shares or securities;

(h) "valuation date" means the date on which the property is received by the assessee.

Practical 17

Mr. Abhishek gifted 10,000 unquoted shares of Ajitabh Bachhan Corporation Limited (ABCL) to Dr. Deval on **10th July, 2017**. Find out amount, if any, to be taxed in the hands of Dr. Deval under the head "Income from other sources".

Balance Sheet of ABCL on 10th July, 2017

Liabilities	Rs. In crores	Assets	Rs. In crores
30,00,000 equity shares of Rs.10 each	3.00	Fixed Assets	10.00
12% Cumulative Preference shares	2.00	Investments	2.00
Reserves and Surplus	1.50	Current Assets	2.00
Loan funds	2.50		
Current liabilities	5.00		
	14.00		**14.00**

Additional information:

(i) Fixed assets represents immovable properties of the company and the valuation assessable for the purpose of stamp duty for these assets is Rs. 25 Cr.

(ii) Investment represents investment in shares and securities, the fair market value of such investments in accordance with Rule 11UA is Rs. 3.5 Cr.

(iii) Current Asset includes advance tax Rs.50 lakh.

(iv) Current liability includes

a. Provision for unascertained liability Rs. 30 lakhs

b. Proposed dividend Rs.10 lakhs.

(v) Reserve and Surplus includes Depreciation Reserve Rs. 22.50 lakhs

(vi) Further, company reported contingent liabilities Rs. 55 lakhs which includes unpaid preference dividend of one year.

Solution

Amount to be taxed in the hands of Dr. Deval = 10,000 shares x Rs. 68.12 = Rs.6,81,200

Working Notes:

Calculation of Fair Market Value as on 10th July, 2017

Fair Market Value $= \frac{(A+B+C+D-L)}{PE} \times PV$

$= \frac{(1.5\ Cr+Nil+3.50\ Cr+25Cr - 9.565\ Cr)}{3.00\ Cr} \times 10$

= Rs. 68.12 per share

Calculation of Assets (A)

Particulars	**Rs.in crores**
Total Assets	14.00
Less: Fixed Assets	(10.00)
Less: Investments	(2.00)
Less: Advance Tax	(0.50)
Assets (A)	**1.50**

Calculation of Assets (B) = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer = **NIL**

Calculation of Assets (C) = fair market value of shares and securities as determined in the manner provided in this rule = **Rs. 3.5 Cr**

Calculation of Assets (D) = the value assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property = **Rs. 25Cr**.

Calculation of Liabilities (L)

Particulars	**Rs.in crores**
Total Liabilities	14.00
Less:(1) Paid up equity share capital	(3.00)
(2) Provisions for unascertained liabilities	(0.30)
(3) Proposed dividend	(0.10)
(4) Reserves and surplus (other than depreciation reserve)	(1.275)
Add: Unpaid Preference share dividend	0.24
Liabilities (L)	**9.565**

Calculation of PE

PE =Total amount of paid up equity share capital as shown in the balance sheet

= **Rs. 3.00 crores**

Calculation of PV

PV = the paid value of equity share = **Rs.10**

Reader's Note:

7.2E WHAT IS THE COST OF ACQUISITION IF PROPERTIES ARE SUBSEQUENTLY SOLD?

Section:- 49(4) and 49(1)

Particulars	Section Applicable	Cost of acquisition	Period of holding
Gift transaction – taxable u/s 56(2)	Section 49(4)	Value adopted for purpose of section 56	Period of holding of previous owner **not included**
Gift transaction – not taxable u/s 56 (2)	Section 49(1)	Cost to the previous owner	Period of holding of previous owner **included**

Practical 18

Mr. Surya purchased diamond ring for Rs. 38,000 on ***09-09-14.*** He gifted the same to Miss Maya on ***14-02-2017***, on that day fair market value of this diamond ring was Rs. 48,000. It is the only gift received by Miss Maya during previous year 2016-17. After break-up with Mr. Surya, Miss Maya sold out this diamond ring for Rs. 52,000 on ***12-12-17.*** Discuss tax consequences in the hands of Miss Maya.

Cost of Inflation Index 2014-15: 240 2017-18: 272

Solution

In the hands of Miss Maya

(1) Taxability for the P.Y. 2016-17

Aggregate fair market value of gift received by Miss Maya does not exceed Rs. 50,000 therefore, nothing is taxable for the previous year 2016-17.

(2) Taxability for the P.Y. 2017-18

Period of Holding: 09-09-2014 to 12-12-2017
Nature of Capital Asset: Long Term

Particulars	(Rs.)
Full value of consideration	52,000
Less: Expenses in connection with Transfer	-
Net Consideration	52,000
Less: Cost of acquisition $\left(38{,}000 \times \frac{272}{240}\right)$	(43,066)
Long Term Capital Gain	**8,934**

Reader's Note:

Practical 19

Suppose in the above problem Miss Maya also received gift of gold ornament worth Rs. 22,000 on **30-03-2017** from another boy-friend Mr. Prakash. Discuss tax consequences assuming that she sold out diamond ring received from Mr. Surya as per the information given in above problem.

Solution

(1) Taxability for the P.Y. 2016-17

Particulars	Fair Market Value (Rs.)
Diamond Ring from Mr. Surya	48,000
Gold Ornament from Mr. Prakash	22,000
Aggregate	**70,000**

Aggregate fair market value of gift received by Miss Maya exceeds Rs. 50,000 therefore, Rs.70,000 shall be taxed for the previous year 2016-17

(2) Taxability for the P.Y. 2017-18

Period of Holding: 14-02-2017 to 12-12-2017

Particulars	**Rs.**
Full value of consideration	52,000
Less: Cost of acquisition **u/s 49(4)**	(48,000)
Short Term Capital Gain	4,000

Reader's Note:

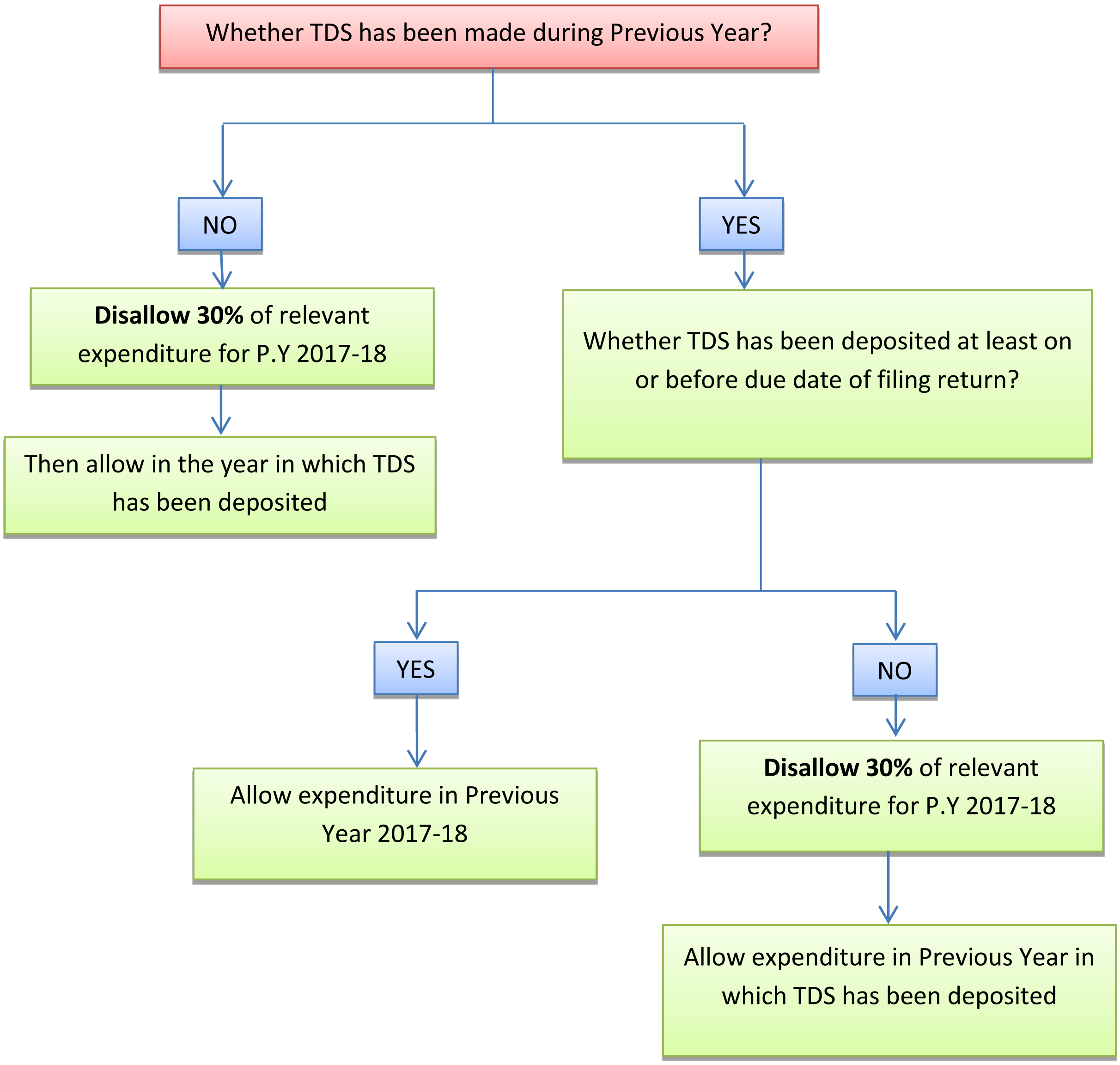
7.3 RECEIPT OF SHARES OF CLOSELY HELD COMPANY BY FIRM OR CLOSELY HELD COMPANY IS NOT CHARGEABLE TO TAX

Section:- 56(2)(viia) – Effective from 01.04.2017

7.4 DISALLOWANCE FOR TDS DEFAULT EXTENDED TO INCOME TAXABLE UNDER THE HEAD "INCOME FROM OTHER SOURCES"

Section:- 58(1A) – Effective from A.Y. 2018-19

With a view to improving compliance of provision relating to TDS, section 58(1A) has been amended (w.e.f. A.Y. 2018-19) so as to provide that provisions of section 40(a)(ia) shall, so far as they may be, apply in computing income chargeable under the head "Income from other sources" as they may be, apply in computing income chargeable under the head “Profit and Gains from Business or Profession.



8 – CLUBBING OF INCOME

-

9 – SET OFF AND CARRY FORWARD OF LOSSES

9.1 RESTRICTIONS ON SET - OFF OF LOSS FROM HOUSE PROPERTY

Section:- 71(3A) – Effective from A.Y.2018-19

Sub- section (3A) has been inserted under section 71 which provides as under:

Where in respect of any assessment year, the net result of the computation under the head "Income from house property" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to set off such loss, to the extent the amount of the loss exceeds two lakh rupees, against income under the other head.

Practical 1

Mr. Laxman provides following information about his income:

Particulars	A.Y. 2018-19 (Rs.)	A.Y. 2019-20 (Rs.)
Business income	30,00,000	50,00,000
FD interest income	3,00,000	3,40,000
Income under the head “House Property”	(-) 4,60,000	3,70,000
Invested in PPF	1,50,000	1,50,000

Find out the total income of Mr. Laxman for assessment year is 2018-19 and 2019-20. Also ascertain losses to be carried forward.

Solution

Computation of Total Income for A.Y. 2018-19

Particulars	Rs.
Income under the head house property	(-)4,60,000
Income under the head PGBP	30,00,000
Income from other sources	3,00,000
Gross Total Income (Refer Note)	**31,00,000**
Less: Deduction under section 80C	1,50,000
Total Income	**29,50,000**
House Property loss to be carried forward to next 8 years (it can be set off only against the income under head house property of next 8 years)	2,60,000

Note: In view of the amendment made by Finance Act, 2017 under section 71(3A), set-off of loss under the head “Income from house property” against any other head of income shall be restricted to Rs.2 Lakh.

Computation of Total Income for A.Y. 2019-20

Particulars	**Rs.**	**Rs.**
Business Income		50,00,000
Income from house property (Let out)	3,70,000	
Less: B/f loss under section 71B (see Note)	(2,60,000)	1,10,000
Income from other sources		3,40,000
Gross Total Income		**54,50,000**
Less: Deduction under section 80C		1,50,000
Total Income		**54,00,0000**

Note: Section 71B has not been amended. Brought forward house property loss can be adjusted in the current year against income under the head house property even if a quantum of brought forward loss is more than Rs.2,00,000.

Readers Note:

10 – DEDUCTIONS FROM GROSS TOTAL INCOME

10.1 DEDUCTION IN RESPECT OF CONTRIBUTION TO PENSION SCHEME OF CENTRAL GOVERNMENT

Section:- 80CCD – Effective from A.Y.2018-19

In order to provide parity between those who are employed and those who are self-employed, section 80CCD has been amended w.e.f A.Y. 2018-19 to increase the upper limit for contribution to NPS from 10% of Gross Total Income to 20% in case of self-employed.

Readers are requested to consider the following summary:-

SECTION	***MAXIMUM DEDUCTION***	
	For A.Y. 2017-18	***From A.Y. 2018-19***
80C	*Rs.1,50,000*	*Rs.1,50,000*
80CCC	*Rs.1,50,000*	*Rs.1,50,000*
80CCD(1) [i.e., employee's or ***assessee's contribution to NPS****]*	*[10% of Salary or 10% of GTI as the case may be]*	*10% of Salary or* ***20% of GTI*** *as the case may be.*
80CCE : The aggregate deduction under sections 80C, 80CCC and 80CCD(1)	*Rs.1,50,000*	*Rs.1,50,000*
80CCD(1B) [i.e., contribution to NPS by an individual]	*Rs.50,000*	*Rs.50,000*
80CCD(2) [i.e., employer's contribution to NPS]	*10% of salary*	*10% of salary*

10.2 DEDUCTION IN RESPECT OF INVESTMENT MADE UNDER AN EQUITY SAVINGS SCHEME

Section:- 80CCG – Effective from A.Y.2018-19

Deduction under section 80CCG will not be allowed from A.Y. 2018-19. However, an assessee who has claimed benefit under this section for A.Y. 2017-18 and earlier assessment years shall be allowed to claim deduction under this section upto A.Y. 2019-20.

10.3 DEDUCTION IN RESPECT OF DONATIONS TO CERTAIN FUNDS, CHARITABLE INSTITUTIONS, ETC.

Section:- 80G – Effective from A.Y.2018-19

No deduction shall be allowed (w.e.f. A.Y.2018-19) under section 80G in respect of donation of any sum exceeding ~~Rs.10,000~~ (Rs.2,000) unless such sum is paid by any mode other than cash.

Practical 1

Mr. Rajmohan (self-employed), whose gross total income was Rs. 7,00,000 for the financial year 2017-18 furnishes you the following information:

(i) Contributed Rs. 1,50,000 to NPS

(ii) Donation to Prime Minister National Relief Fund Rs. 5,000 in cash.

(iii) Donation to a recognized charitable trust Rs. 25,000 by cheque which is eligible for deduction under section 80G at the applicable rate.

Compute the total income of Mr. Rajmohan for the Assessment year 2018-19.

Solution

Computation of total income of Mr. Rajmohan for the A.Y.2018-19

Particulars	Rs.	Rs.
Gross Total Income		**7,00,000**
Deduction under Chapter VI-A		
Under section 80CCD(1)		
Though contribution made to NPS is Rs. 1,50,000, deduction under this section is restricted upto 20% of GTI- i.e. 20% of Rs. 7,00,000	1,40,000	
Under section 80G		
-Donation to P.M.N.R.F. exceeding Rs. 2,000 in cash therefore not eligible for deduction in view of the **Amendment by Finance Act, 2017**	Nil	
-Donation to recognized charitable trust (50% of Rs. 25,000) (Refer Note)	12,500	1,52,500
Total Income		**5,47,500**

Note: In case of deduction u/s 80G in respect of donation to a charitable trust, the net qualifying amount has to be restricted to 10% of adjusted total income, i.e., gross total income less deductions under Chapter VI-A except 80G. The adjusted total income is, therefore, Rs. 5,60,000 (i.e.7,00,000 – Rs. 1,40,000), 10% of which is Rs. 56,000, which is higher than the actual donation of Rs. 25,000. Therefore, the deduction under section 80G would be Rs. 12,500, being 50% of the actual donation of Rs. 25,000.

Readers Note:

10.4 SPECIAL PROVISIONS IN RESPECT OF SPECIFIED BUSINESS (START-UP)

Section:- 80-IAC – Effective from A.Y.2018-19

(1) Eligible Business

Business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property

(2) Conditions to be fulfilled for an eligible start-up

1. The assessee is a company or a limited liability partnership (LLP) and engaged in an eligible business.
2. The above company or LLP is incorporated after March 31, 2016 but before April 1, 2019.
3. The total turnover of the company or LLP does not exceed Rs.25 crore in any of the previous years beginning from P.Y.2016-17 and ending with P.Y.2020-21.

4. It holds a certificate of eligible business from the Inter-Ministerial Board of certification as notified in the Official Gazette by the Central Government.
5. The above company or LLP is not formed by splitting up or reconstruction of a business already in existence.

   Exception: 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;
6. Further, undertaking should not be set up by the transfer of old plant and machinery. However, following two cases old machinery is permitted:

   Case 1:- If the value of the old assets does not exceed 20 per cent of the total value of the plant and machinery, this condition is deemed to have been satisfied.

   Case2:- *Second-hand imported machinery is treated as new subject to satisfaction of few conditions in this regard.*
7. The other provisions with reference to furnishing of audit report, determination of quantum of deduction, power of assessing officer to re-compute profit in case of inter-unit transfer, restriction on double deduction, transactions between close connection activities of 80 IA are equally applicable to this section.

(3) Quantum of deduction

If the above conditions are satisfied, 100 per cent of the profits and gains derived from eligible business is deductible for 3 consecutive assessment years. However, this deduction may, at the option of the assessee, be claimed by it for any 3 consecutive assessment years out of 5 years **(7 years with effect from A.Y. 2018-19, Amendment by Finance Act, 2017)** beginning from the year in which the eligible start-up is incorporated.

Practical 2

ABC Ltd. was incorporated on 1.4.2017 to carry on the business of innovation, development, deployment and commercialization of new processes driven by technology. It holds a certificate of eligible business from the notified IMBC.

Its estimated turnover and profits and gains from such business for the P.Y.2017-18 to P.Y.2023-24 are as follows:

							(Rs. in crores)
	P.Y. 2017-18	**P.Y. 2018-19**	**P.Y. 2019-20**	**P.Y. 2020-21**	**P.Y. 2021-22**	**P.Y. 2022-23**	**P.Y. 2023-24**
Total turnover	15	18	20	22	25.5	26	28
Profits/ Losses	(2.50)	(1.30)	6.80	8.40	9.80	1.60	11.20

Is ABC Ltd. eligible for any tax advantage under the p Income-tax Act, 1961? If yes, then suggest best course of action to ABC Ltd. for maximization of such benefits?

Solution

Since all the conditions of Section 80-IAC are satisfied, ABC Ltd. is entitled to claim deduction of 100% of the profits and gains derived by it from an eligible business for any three consecutive assessment years out of seven years beginning from the year in which the eligible start up is incorporated i.e. P.Y.2017-18.

Consider the following options for claiming benefit under section 80-IAC

(Rs. in crores)

Sr. No.	Options	Deduction for 1st Year	Deduction for 2nd Year	Deduction for 3rd Year	Total deductions for all the three years
1.	Deduction claimed for P.Y. 2017-18, 2018-19 and 2019-20	Nil	Nil	3	3
2.	Deduction claimed for P.Y. 2018-19, 2019-20 and 2020-21	Nil	3	8.40	11.40
3.	Deduction claimed for P.Y. 2019-20, 2020-21 and 2021-22	3	8.40	9.80	21.20
4.	Deduction claimed for P.Y.2020-21, 2021-22 and 2022-23	8.40	9.80	1.60	19.80
5.	Deduction claimed for P.Y. 2021-22, 2022-23 and 2023-24	9.80	1.60	11.20	**22.60**
6.	Deduction claimed for P.Y. 2022-23 and 2023-24	1.60	11.20	NA	12.80
7.	Deduction claimed for P.Y. 2023-24	11.20	NA	NA	11.20

Considering the estimated turnover and profits of the ABC Ltd., it is advised to select option at Sr. No. 5 of the table above.

Readers Note:

10.5 DEDUCTIONS IN RESPECT OF PROFITS AND GAINS FROM HOUSING PROJECTS

Section:- 80-IBA – Effective from A.Y.2018-19

(1) Eligible Business

Any assessee engaged in business of developing and building a housing project.

Housing project means a project consisting predominantly of residential units with such other facilities and amenities as the competent authority may specify.

(2) Conditions

(i) The project is approved by the competent authority (*authority empowered to approve the building plan by or under any law for the time being in force)* after June 1, 2016, but on or before March 31, 2019.

(ii) The project shall be completed within a period of 3 years **(5 years with effect from A.Y. 2018-19, Amendment by Finance Act, 2017)** from the date of first approval by the competent authority. The project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority.

(iii) The built up **(carpet w.e.f A.Y. 2018-19)** area of the shops and other commercial establishments included in the housing projects does not exceed 3 per cent of the aggregate built up **(carpet w.e.f A.Y. 2018-19)** area.

(iv) Size of the plot, area of residential units and minimum utilization of FAR (floor area ratio) should satisfy the criteria given below-

Location of project	**Areas of plot of land on which project is situated**	**Areas of residential units comprised in the housing project**	**Utilization of permissible FAR**
Project is located within the cities of Chennai, Delhi, Kolkata or Mumbai ~~(or within the distance, measured aerially, of 25 kilometers from the municipal limits of these cities)~~ **Omitted by Finance Act, 2017 w.e.f. A.Y. 2018-19**	Not less than 1,000 square meters	Not to exceed 30 square meters	Not less than 90%
Project is located in any other place	Not less than 2,000 square meters	Not to exceed 60 square meters	Not less than 80

(v) The project is the only housing project on such plot of land as specified in column 2 of the above table.

(vi) Where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual.

(vii) The assessee maintains separate books of account in respect of the housing project.

(3) Quantum & Period of deduction

If the above conditions are satisfied, 100 percent of the profit derived from the aforesaid business is deductible under section 80-IBA.

However, deduction is not available to any assessee who executes the housing project as a works contract awarded by any person (including the Central/State Government). Once deduction is claimed and allowed under this section, deduction to the extent of such profit is not available under any provision of the Act.

(4) Reversal of deduction if project not completed within stipulated time

Where the housing project is not completed within 3 years **(5 years with effect from A.Y. 2018-19, Amendment by Finance Act, 2017)** from the date of first approval by the competent authority and in respect of which a deduction has been claimed and allowed under this section, the total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be income of the assessee chargeable under the head "PGBP" of the previous year in which the period for completion so expires.

10.6 DEDUCTION IN RESPECT OF EMPLOYMENT OF NEW WORKMEN

Section:- 80JJAA

(1) Eligible Assessee and Amount of deduction

Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, there shall, be allowed a deduction of an amount equal to thirty per cent of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

(2) Conditions

(a) The business is not formed by splitting up, or the reconstruction, of an existing business: However, this condition is not applicable in respect of a business which is formed as a result of re-establishment, reconstruction or revival by the assessee of the business in the circumstances and within the period specified in section 33B;

(b) The business is not acquired by the assessee by way of transfer from any other person or as a result of any business reorganisation;

(c) The assessee furnishes alongwith the return of income the report of the accountant, as defined in the Explanation to section 288 giving such particulars in the report as may be prescribed.

(3) Other Points

(a) Explanation.—For the purposes of this section,—

(i) "additional employee cost" means total emoluments paid or payable to additional employees employed during the previous year.

- However, in the case of an existing business, the additional employee cost shall be nil, if—
  - (a) there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;
  - (b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account:
- For the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;

(ii) "additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year.

- However, additional employee does not include,—
  - (a) an employee whose total emoluments are more than twenty-five thousand rupees per month; or
  - (b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; or

(c) an employee employed for a period of less than 240 days during the previous year; or (150 days if assessee is engaged in the business of manufacturing of apparel)

(d) an employee who does not participate in the recognised provident fund;

(iii) "emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include—

(a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and

(b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

(b) No deduction under this section shall be allowed if it has not been claimed in the return of income.

(c) Double deduction is not possible in respect of the same business income under section 80H to 80RRB.

(d) The aggregate deductions under the various provisions referred to above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be.

Practical 3

Arjun Ltd. commenced the chain of medical stores on **1.4.2017**. It employed 200 employees during the P.Y.2017-18, the details of whom are as follows:

Sr. No.	**No. of employees**	**Date of employment**	**Whether they participate in RPF?**	**Total monthly emoluments per employee (Rs.)**
(i)	25	1.4.2017	Yes	20,000
(ii)	75	1.5.2017	Yes	30,000
(iii)	50	1.8.2017	No	17,000
(iv)	50	1.9.2017	Yes	22,000

Compute the deduction available to Arjun Ltd. under section 80JJAA for **A.Y.2018-19**, assuming that its total turnover is 20.21 crores and all the salary payments were made by an account payee cheques. What would have been your answer if Arjun Limited has made salary payments in cash?

Solution

Arjun Ltd. is eligible for deduction under section 80JJAA since it is subject to tax audit under section 44AB for **A.Y.2018-19**, as its total turnover from business exceeded Rs.1 crore and it has employed "additional employees" during the P.Y.**2017-18**.

Additional employee cost = Rs. 20,000 × 12 × 25 [Refer Working Note] = Rs. 60,00,000

Deduction under section 80JJAA = 30% of Rs.60,00,000 = Rs. 18,00,000.

Working Note:

Number of additional employees

Particulars	No. of employees	
Total number of employees employed during the year		200
Less: Employees who do not participate in recognized provident fund	50	
Less: Employees whose total monthly emoluments exceed Rs.25,000	75	
Less: Employees employed less than 240 days in the P.Y.**2017-18**	50	(175)
Number of "additional employees"		25

Answer will not differ even if salary payments were made in cash since the requirement of payment by account payee cheque or draft is applicable for the existing business only and not for the newly set up business.

Readers Note:

11 – COMPUTATION OF TOTAL INCOME AND TAX LIABILITY

11.1 EXEMPTION UNDER SECTION 10(34) NOT TO APPLY TO DIVIDEND CHARGEABLE TO TAX IN ACCORDANCE WITH SECTION 115BBDA

Section:- 115BBDA and 10(34) - Effective from A.Y. 2018-19

- Section 115BBDA has been inserted to provide that any income by way of aggregate dividend in excess of Rs. 10 lakh shall be chargeable to tax in the case of ~~an individual, Hindu undivided family (HUF) or a firm~~ **(specified assessee w.e.f. A.Y.2018-19)** who is resident in India, at the flat rate of 10%. Further, basic exemption limit of Rs.2,50,000 /Rs.3,00,000 / Rs.5,00,000 shall not be available for such dividend income.
- "Specified assessee" means a person other than,—
  - (a) a domestic company; or
  - (b) a fund or institution or trust 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) of clause (23C) of section 10; or
  - (c) a trust or institution registered under section 12A or section 12AA.
- Further, no deduction in respect of any expenditure or allowance or set-off of loss shall be allowed to the assessee in computing the income by way of such dividends.
- Dividend for the purpose of this section means every dividend as covered by section 2(22) except section 2(22)(e).
- Further, a proviso has been inserted to section 10(34) to provide that dividend income which is subject to section 115BBDA shall not be exempt in the hands of shareholder.

Practical 1

Find out tax liability of Mr. X, resident and Mr. Y, resident for the **assessment year 2018-19.**

Particulars	Mr. X (Rs.)	Mr. Y (Rs.)
Income under head PGBP	(15,00,000)	(9,00,000)
Dividend from Indian Companies on which CDT has been paid	18,00,000	7,30,000
Dividend under section 2(22)(e)	3,00,000	3,00,000

Solution

<u>Points to be considered while computing total income and tax liability of Mr. X</u>

Considering the provisions of section 115BBDA, Mr. X is subject to this section since dividend from Indian companies on which CDT has been paid exceeded Rs. 10,00,000. (Readers must remember that for the purpose of section 115BBDA, dividend under section 2(22)(e) shall not be taken into consideration). As a result, taxable dividend under section 115BBDA shall be Rs. 8,00,000. Such dividend shall be taxed at the flat rate of 10% without being set off of any loss.

However, dividend under section 2(22)(e) shall be charged to tax under section 56 of the Act in the hands of shareholder. Since, such dividend is not subject to section 115BBDA, therefore, set off is available against such dividend income.

Considering the above remarks, **Total Income of Mr. X** is computed as under:

Particulars	Rs. In lakhs
Income under head PGBP	(15,00,000)
Dividend from Indian Companies on which CDT has been paid	8,00,000
Dividend under section 2(22)(e)	3,00,000
Total Income	**8,00,000**

Computation of Tax liability of Mr. X

Tax on Rs.8,00,000 @ 10.30% (including education cess) = Rs. 82,400

Points to be considered while computing total income and tax liability of Mr. Y

Mr. Y is not subject to section 115BBDA since dividend from Indian companies on which CDT has been paid (Rs.7,30,000 in present case) did not exceed Rs. 10,00,000. (Readers must remember that for the purpose of section 115BBDA, dividend under section 2(22)(e) shall not be taken into consideration). Hence entire dividend income of Rs. 7,30,000 is exempt under section 10(34) in the hands of Mr. Y.

However, dividend under section 2(22)(e) shall be charged to tax under section 56 of the Act in the hands of shareholder. Since, such dividend is not subject to section 115BBDA, therefore, set off is available against such dividend income.

Considering the above remarks, **Total Income of Mr. Y** is computed as under:

Particulars	Rs.
Income under head PGBP	(9,00,000)
Dividend from Indian Companies on which CDT has been paid	Exempt under section 10(34)
Dividend under section 2(22)(e)	3,00,000
Total Income	**(6,00,000)**

Note: Loss under the head “PGBP” Rs. 6,00,000 (Rs.9,00,000 – Rs. 3,00,000) shall be carried forward for next 8 assessment years.

Computation of Tax liability of Mr. Y

Since total income is negative, tax payable is NIL.

Readers Note:

11.2 TAX ON INCOME FROM TRANSFER OF CARBON CREDITS.

Section:- 115BBG - Effective from A.Y. 2018-19

1. As per the provisions of section 115BBG, income by way of transfer of carbon credits shall be charged to tax at a flat rate of 10 percent.
2. No expenditure or allowance can be claimed against such income.
3. Shifting benefit is also not available on such income

Explanation.—*For the purposes of this section, "carbon credit" in respect of one unit shall mean reduction of one tonne of carbon dioxide emissions or emissions of its equivalent gases which is validated by the United Nations Framework on Climate Change and which can be traded in market at its prevailing market price.*

11.3 CONCESSIONAL TAXATION REGIME FOR ROYALTY INCOME IN RESPECT OF PATENT DEVELOPED AND REGISTERED IN INDIA

Section:- 115BBF – Effective From A.Y.2017-18

- Section 115BBF provides that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of 10%
- No deduction for any expenditure or allowance in respect of such royalty income shall be allowed under the Act.
- For this purpose, developed means atleast 75% of the expenditure should be incurred in India by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970.
- This section is optional.
- The eligible assessee is required to exercise the option for taxation of income by way of royalty in respect of a patent developed and registered in India in accordance with the provisions of section 115BBF in the prescribed manner, on or before the due date of furnishing return of income under section 139(1).
- Where an eligible assessee opts for taxation of income by way of royalty in respect of a patent developed and registered in India for any previous year in accordance with section 115BBF, and the assessee offers the income for taxation for any of the five assessment years relevant to the previous year succeeding the previous year not in accordance with section 115BBF(1), then the assessee shall not be eligible to claim the benefit of section 115BBF for five assessment years subsequent to the assessment year relevant to the previous year in which such income has not been offered to tax in accordance with section 115BBF(1).

- **For the purpose of this section,**

  (1) <u>Eligible assessee means:</u>

  - A person resident in India,
  - who is the true and first inventor of the invention and
  - whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970.

  (2) <u>Meaning of royalty:</u>

  "Royalty", in respect of a patent, means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains" or consideration for sale of product manufactured with the use of patented process or the patented article for commercial use) for the—

(a) transfer of all or any rights (including the granting of a licence) in respect of a patent; or

(b) imparting of any information concerning the working of, or the use of, a patent; or

(c) use of any patent; or

(d) rendering of any services in connection with the activities referred to in (1) to (3) above.

(3) <u>Meaning of Patent:</u>

"Patent" shall have the meaning assigned to it in section 2(1)(m) of the Patents Act

- **Amendment under section 115JB:**

  Further, the amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF would not be subject to MAT under section 115JB. Therefore, following adjustments are required to be performed while computing book profit under section 115JB:

  Positive Adjustment:

  The amount or amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF.

  Negative Adjustment:

  The amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF; (Inserted by FA 2016, effective from A.Y. 2017-18)

12 - ASSESSMENT OF FIRMS / LLP

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13 – ASSESSMENT OF AOP OR BOI

13.1 MEANING OF AOP: DIFFERENCE BETWEEN AOP AND BOI

- The Supreme Court in **CIT vs. Indira Balkrishna (1960) 39 ITR 546,** defines an AOP to mean two or more persons join in a common purpose or common action with an object to produce income, profits or gains.
- However, the Supreme Court further cautioned that there is no formula of universal application of the above definition. A conclusion can be drawn about AOP only on the basis of the facts and circumstances of each case.
- Thus, it can be safely concluded that an association of two or more persons having common action with an object to produce income and which in law do not constitute partnership firm shall be regarded as Association of Persons.

(A) Difference between AOP and BOI

1. Any person can be a member in an AOP whereas only individuals can be the members in "BOI".
2. There is common will and desire amongst the members of "AOP" and they voluntarily join together to carry on the activities. In the case of a body of individuals such common will and desire may be lacking.
3. Body of individuals may be formed by operation of law where members receive income jointly.

Practical 1

Mr. P set up business in the name of M & Co. and ran this business in proprietary capacity till death. He died intestate leaving behind his mother, widow and three minor sons. Mother relinquished her interest in the business against a lump sum payment. The business thereafter was carried on by widow as a single unit in the same name on her own behalf and on behalf of all the three minor children. In whose hand such business income shall be assessed- whether widow and three minors in their "Individual capacity" or as "Body of Individuals"?

Solution

Supreme Court while dealing with the similar situation in case of **Meera & Company vs. CIT 224 ITR 635** had made following observation:

"In the background of definition of person under section 2(31), when several individuals are found to have joined together for the purpose of making profit, the group of individuals may be conveniently described as "a BOI". "An AOP" or "a BOI", whether incorporated or not, has been brought within the net of taxation. The intention of the legislature is clearly to hit combination of individuals or other persons who were engaged together in some joint enterprise. The combination may or may not be incorporated. A profit-yielding joint venture has to be taxed as a single unit".

Considering the above ratio, income generated in the business shall be assessed in the status of "BOI".

Readers Note:

Practical 2

Three brothers inherited a property (land) from their father. A part of this land was acquired by the State Government and compensation was paid. In whose hand, capital gain arising on compulsory acquisition shall be assessed- whether brothers in their “Individual capacity” or as an “association of persons”?

Solution

Supreme Court while dealing with the similar situation in case of **CIT vs. Govindbhai Mamaiya 367 ITR 498** had made following observation:

“The Property in question which was acquired by the Government, came to three brothers on inheritance from their father i.e. by the operation of law. Furthermore, even the income which was earned was not because of any business venture of the three assessees but it was the result of the act of the Government in compulsorily acquiring the said land. In these circumstances, the case was squarely covered by the ratio of the judgment laid down in Meera & Company inasmuch as it is not a case where any “Association of Persons” was formed by volition of the parties for the purpose of generation of income. This basic test was to determine the status of AOP was absent in the present case.”

Considering the above ratio, capital gain arising on compulsory acquisition shall be assessed in the hands of brothers in their “Individual capacity”.

Readers Note:

13.2 HOW TO COMPUTE INCOME UNDER THE HEAD “PGBP” IN CASE OF AN AOP/BOI?

Section:- 40(ba)

- Any salary, bonus, commission or remuneration by whatever name called is paid by the AOP/BOI to its members is not deductible in computing the income under the head “PGBP”.
- Similarly, any interest paid by AOP/BOI to its members by whatever name called is not deductible in computing income under the head “PGBP”.
- Explanation 1 to section 40(ba) —Where interest is paid by an association or body to any member thereof who has also paid interest to the association or body, the amount of interest to be disallowed under this clause shall be limited to the amount by which the payment of interest by the association or body to the member exceeds the payment of interest by the member to the association or body.
- Explanation 2 and 3 to section 40(ba) are similar to explanations 1 and 2 to section 40(b) under chapter “assessment of firms/LLP”.

Practical 3

From the following information, find out interest to be disallowed in the hands of Dagu Magu & Co., AOP (consisting of two members, Mr. Dagu and Mr. Magu) under section 40(ba).

- AOP paid interest to member Mr. Dagu Rs.35,000 while recovered on drawings Rs.4,000.
- AOP paid interest to member Mr. Magu Rs. 8,000 while recovered on drawings Rs. 3,000.

Solution

Name of members	Interest paid to members (A)	Interest recovered from members (B)	Net interest (A-B)
Mr. Dagu	Rs. 35,000	Rs. 4,000	Rs. 31,000
Mr. Magu	Rs. 8,000	Rs. 3,000	Rs. 5,000
Interest to be disallowed in the hands of AOP			**Rs.36,000**

Readers Note:

Practical 4

PQRS & Co., an AOP provides following information:

Name of Member	Interest paid to Member	Interest recovered from Member
Mr. P	Rs. 8,000	Nil
Mr. Q	Rs. 10,000	Nil
Mr. R	Rs. 13,000	Nil
Mr. S	Nil	Rs. 21,000

Find out interest to be disallowed under section 40(ba) in the hands of AOP

Solution

Name of member	Interest paid to members (A)	Interest recovered from members (B)	Net interest (A-B)
Mr. P	Rs. 8,000	Rs. Nil	Rs. 8,000
Mr. Q	Rs. 10,000	Rs. Nil	Rs. 10,000
Mr. R	Rs.13,000	Rs. Nil	Rs.13,000
Mr. S	Rs. Nil	Rs. 21,000	Rs. Nil
Interest to be disallowed in the hands of AOP			**Rs. 31,000**

Readers Note:

13.3 TAX RATE APPLICABLE TO AN AOP/BOI

Section:- 167B, 67A, 86

At what rate the income of AOP shall be taxed depends on following factors:

(1) Whether shares of members are known (determinate)/ unknown (indeterminate)?

(2) Who are the members of AOP?

(3) What are the other incomes of members?

Considering the above factors, following possibilities may emerge:-

(A) Case 1 :

(a) Tax rate applicable to AOP/BOI under Case 1

If all the followings conditions are satisfied, then AOP shall be taxed as per the rates applicable to an individual (i.e. Slab rate)

(1) Shares of members are determinate / known.

(2) All members of AOP are subject to slab rate.

(3) None of the member has a total (net) income exceeding exemption limit. (Income from AOP shall not be considered at this stage)

(b) Rules for computation tax liability of members of AOP / BOI under this case.

Once AOP shall be taxed as per slab rates, then Share from AOP (Interest, Remuneration and Profit) shall also be taxed in the hands of members.

(1) How to compute share from AOP? [Section 67A (1)]

Particulars	Member 1	Member 2	Member 3…..	Total
Interest (Net)	xxxx	xxxx	Xxxx	xxxx
Remuneration	xxxx	xxxx	Xxxx	xxxx
Profit / loss	xxxx	xxxx	Xxxx	xxxx (Balancing Figure)
TOTAL				**TOTAL INCOME OF AOP**

(2) Under which head "Share from AOP" shall be taxed?[Section 67A (2)]

For the purposes of assessment, the share of a member in the income or loss of the AOP/BOI, as computed under section 67A (1) is to be apportioned under the various heads of income in the same manner in which the income or loss of the AOP/BOI has been determined under each head of income [Sec. 67A (2)].

(3) Can Interest paid by member on borrowed capital be claimed? [Section 67A(3)]

In computing the income of a member chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the AOP/BOI, any interest paid by the member on capital borrowed by him for the purposes of investment in the AOP/BOI can be deducted from his share.

(4) Can member claim chapter VI-A deductions which have already been claimed by AOP? [Section 80A(3)]

In computing the total income of an AOP/BOI if any deduction is admissible under Chapter VI-A, no deduction under that chapter can be claimed while computing the total income of a member of the AOP/BOI in relation to the share of that member in the income of AOP/BOI.

(5) Rebate from tax liability [Section 86]

Due to double taxation in the hands of members, rebate shall be given to the members from their personal tax liability under section 86 as per following formula:-

$$\text{Rebate} = \text{Share from AOP} \times \frac{\text{Total Tax of Member (including education cess)}}{\text{Total Income of Member}}$$

(6) Non-availability of rebate under section 86 in certain cases

However, where no income-tax is chargeable on the total income of the AOP/BOI, the shares of a member therein shall be fully chargeable to tax as part of his total income and no rebate shall be given.

(B) Case 2 :

(a) Tax rate applicable to AOP/BOI under Case 2

If all the followings conditions are satisfied, then AOP shall be taxed at maximum marginal rate (MMR)-30% plus surcharge. [i.e. 34.50% for **A.Y. 2018-19**]

(1) Shares of members are determinate / known.

(2) All members of AOP are subject to slab rate.

(3) But, one or more members has a total (net) income exceeding exemption limit.

(b) Rules for computation tax liability of members of AOP under this case.

Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

(C) Case 3 :

(a) Tax rate applicable to AOP/BOI under Case 3

If all the followings conditions are satisfied, then AOP shall be taxed at maximum marginal rate (MMR)- 30% plus surcharge. [i.e. 34.50% for **A.Y. 2018-19**]

(1) Shares of members are determinate / known.

(2) One or more members of the firm is

- **a.** an Indian company, or;
- **b.** a partnership firm or;
- **c.** an AOP/BOI whose income is chargeable to tax at MMR/rate higher than MMR.

(b) Rules for computation tax liability of members of AOP under this case.

Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

(D) Case 4 :

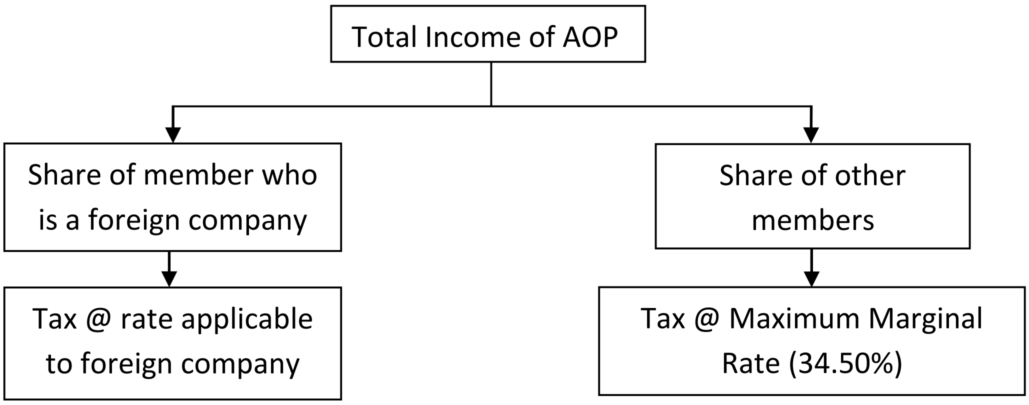
(a) Tax rate applicable to AOP/BOI under Case 4

If following conditions are satisfied;

(1) Shares of members are determinate / known.

(2) One of the members is chargeable to tax at a rate higher than Maximum Marginal Rate (MMR). {It is possible only when one of the members is a foreign company }

Then, divide the total income as under:



(b) Rules for computation tax liability of members of AOP/ BOI under this case.

Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

(E) Case 5 :

(a) Tax rate applicable to AOP/BOI under Case 5

If all the followings conditions are satisfied, then AOP shall be taxed at maximum marginal rate (MMR)- 30% plus surcharge. [i.e. 34.50% for **A.Y. 2018-19**]

(1) Shares of members are indeterminate / unknown.

(2) None of the members is a foreign company.

(b) Rules for computation tax liability of members of AOP / BOI under this case.

Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

(F) Case 6 :

(a) Tax rate applicable to AOP/BOI under Case 6

If all the followings conditions are satisfied, then entire income of AOP shall be taxed at the rate higher than maximum marginal rate i.e. 40%.

(1) Shares of members are indeterminate / unknown.

(2) One of the members is chargeable to tax at a rate higher than Maximum Marginal Rate (MMR).

(b) Rules for computation tax liability of Members under this case.

Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

Practical 5

P, Q and R are individuals, who constitute an Association of Persons, sharing profit and losses in the ratio of 2:3:5. For the concerned previous year, the Profit and Loss account of the business was as under:

Particulars	Rs.	Particulars	Rs.
Cost of goods sold	47,50,000	Sales	54,00,000
Remuneration to:		Dividend from Indian companies	39,000
P	1,32,200	Capital gains: Short term	7,01,000
Q	1,72,500	**Interest on Drawings:**	
Employees	1,96,500	P	3,000
Interest to:		Q	1,450
P	59,400	R	3,550
Q	54,170		
R	43,000		
Other expenses	1,41,700		
Sales Tax Penalty	57,000		
Net profit	5,41,530		
	61,48,000		**61,48,000**

Additional information:

(1) Other expense includes Rs. 30,000 paid in cash to an advertising agency for publicity.

(2) Sales tax penalty was paid on 15th October of relevant assessment year. The penalty was imposed by the Sales-tax Officer for non-filing of returns by the due dates.

Compute total income and tax liability of AOP and individual members for the relevant assessment year under the following cases:

Situation 1 -Other incomes of members are given below:

Name of Members	Nature of income	Amount (Rs.)	LIC premium (Rs.)
P	Bank interest	57,200	24,000
Q	Interest on Government securities	54,400	19,000
R	Interest on company deposit	2,72,000	86,000

Situation 2 - The profit-sharing ratio of P, Q and R is 3 : 1 : 6. Other incomes of members are as follows:

Name of Members	Amount of income (Rs.)	Donation to P.M.N.R.F. (Rs.)	Contribution to PPF (Rs.)
P	26,000	6,000	1,000
Q	3,25,000	26,000	30,000
R	67,000	15,000	5,000

Situation 3 -One of the members, R is a foreign company and the profit-sharing ratio of P, Q and R Ltd is 2:3:5. Other income of the members are given below:

Name of Members	Amount (Rs.)
P	1,65,000
Q	8,30,000
R Ltd.	2,10,000

Situation 4–Suppose in 1st situation, shares of P, Q and R are not known.

Situation 5 - Suppose in 3rd situation, shares of P, Q and R Ltd. are not known.

Solution

Computation of Total Income of AOP

Particulars	Rs.
Income under the head PGBP	
Net Profit as per Profit and Loss account	5,41,530
Less: Dividend [Exempt income]	(39,000)
Less: Short term capital gain [to be considered separately]	(7,01,000)
Add: Adv. Expenses [Section 40A(3)]	30,000
Add: Sales tax Penalty [Section 37(1)]	57,000
Add: Remuneration to P [Section 40ba)]	1,32,200
Add: Remuneration to Q [Section 40ba)]	1,72,500
Add: Interest to P (59,400-3000) [Section 40ba)]	56,400
Add: Interest to Q (54,170-1450) [Section 40ba)]	52,720
Add: Interest to R (43000-3550) [Section 40ba)]	39,450
Income under the head PGBP	**3,41,800**
Add: Short term Capital Gain	7,01,000
Gross Total Income	**10,42,800**
Less: Deductions under section 80C to 80U	Nil
Total Income	**10,42,800**

Situation 1:

(A) Computation of Tax Liability of AOP

(1) Shares of members are determinate /known. (i.e., 2:3:5)

(2) All members of AOP are subject to slab rate.

(3) None of the member has a total (net) income exceeding exemption limit. (Income from AOP shall not be considered at this stage)

Therefore, the income of AOP shall be taxed as per slab rate

Income	**Tax Rate**	**Tax (Rs.)**
0 - 2,50,000	-	-
2,50,000 to 5,00,000	5%	12,500
5,00,000 to 10,00,000	20%	1,00,000
10,00,000 to 10,42,800	30%	12,840
		1,25,340
Add: 3% Education Cess		3,760
Tax Liability		1,29,100

(B) Computation of Share from AOP of Members and Tax Liability of Members

Calculation of Share from AOP

Particulars	**P**	**Q**	**R**	**Total**
Interest (Net)	56,400	52,720	39,450	1,48,570
Remuneration	1,32,200	1,72,500	-	3,04,700
Profit (2:3:5)	1,17,906	1,76,859	2,94,765	5,89,530 (Balancing Figure)
TOTAL	**3,06,506**	**4,02,079**	**3,34,215**	**10,42,800**

Computation of Tax Liability of Members

Particulars	**P (Rs.)**	**Q (Rs.)**	**R (Rs.)**
Share from AOP	3,06,506	4,02,079	3,34,215
Income From Other Sources	57,200	54,400	2,72,000
Gross Total Income	**3,63,706**	**4,56,479**	**6,06,215**
Less: Section 80C	(24,000)	(19,000)	(86,000)
Total Income	**3,39,706**	**4,37,479**	**5,20,215**
Total Income (Rounded off)	**3,39,710**	**4,37,480**	**5,20,220**
Tax Calculation			
Upto 2,50,000	Nil	Nil	Nil
2,50,000 – 5,00,000 (5%)	4,485	9,374	12,500
5,00,000 – 5,20,220 (20%)	Nil	Nil	4,044
Sub-total	**4,485**	**9,374**	**16,544**
Less: Rebate under section 87A	(2,500)	Nil	Nil
Sub-total	1,985	9,374	16,544
Add: 3% Education Cess	60	281	496
Sub-total	**2,045**	**9,655**	**17,040**
Less: Rebate under section 86 **(Working Note)**	(1,845)	(8,874)	(10,947)
Tax Liability	**200**	**781**	**6,093**
Tax Liability (Rounded off)	**200**	**780**	**6,090**

Working Note: Rebate under section 86

$$\text{Rebate} = \text{Share from AOP} \times \frac{\text{Total Tax of Member (including education cess)}}{\text{Total Income of Member}}$$

$$P = 3{,}06{,}506 \times \frac{2{,}045}{3{,}39{,}706}$$

= Rs.1,845

$$Q = 4{,}02{,}079 \times \frac{9{,}655}{4{,}37{,}479}$$

= Rs.8,874

$$R = 3{,}34{,}215 \times \frac{17{,}040}{5{,}20{,}215}$$

= Rs.10,947

Situation 2

(A) Computation of Tax Liability of AOP

(1) Shares of members are determinate /known.

(2) All members of AOP are subject to slab rate.

(3) But, total (net) income of Mr. Q *exceeds exemption limit.*

Therefore, AOP shall be taxed at maximum marginal rate (MMR).i.e., 34.50%.

Tax Liability = Rs.10,42,800 x 34.50%

= Rs.3,59,766 + 3% Education Cess

= Rs.3,59,766 + Rs.10,793

= Rs.3,70,559

= Rounded off to **Rs. 3,70,560**

(B) Computation of Tax Liability of Members

Particulars	**P (Rs.)**	**Q (Rs.)**	**R (Rs.)**
Share from AOP [Section 86]	Not Taxable	Not Taxable	Not Taxable
Income From Other Sources	26,000	3,25,000	67,000
Gross Total Income	26,000	3,25,000	67,000
Less: Section 80C	(1,000)	(30,000)	(5,000)
Less: Section 80G	(6,000)	(26,000)	(15,000)
Total Income	**20,000**	**2,69,000**	**47,000**
Upto 2,50,000	**Nil**	**Nil**	**Nil**
2,50,000 – 5,00,000 (5%)	**-**	**950**	**-**
Sub-total	**-**	**950**	**-**
Less: Rebate 87A	**-**	**(950)**	
Tax Liability	**-**	**-**	**-**

Situation 3

(A) Computation of Tax Liability of AOP

(1) Shares of members are determinate / known.

(2) R Ltd. is a foreign company and chargeable to tax at a rate higher than Maximum Marginal Rate (MMR). (i.e., 40% plus education cess)

Rs.10,42,800

Share of member who is a foreign company → Rs. 3,34,215 → Tax Rate= 40% + Edu cess → Tax = Rs.1,37,697

Share of Other members → Rs.7,08,585 → Tax Rate = 34.50% + Edu. Cess → Tax = Rs.2,51,796

Tax Liability = Rs.1,37,697 + Rs.2,51,796
= Rs.3,89,493
= Rounded off to Rs. 3,89,490

(B) Computation of Tax Liability of Members

Particulars	P (Rs.)	Q (Rs.)	R Ltd. (Rs.)
Share from AOP [Section 86]	Not Taxable	Not Taxable	Not Taxable
Other Income	1,65,000	8,30,000	2,10,000
Gross Total Income	1,65,000	8,30,000	2,10,000
Less: Deduction	-	-	-
Total Income	**1,65,000**	**8,30,000**	**2,10,000**
Upto 2,50,000	Nil	Nil	NA
2,50,000 – 5,00,000 (5%)	-	12,500	NA
5,00,000 – 8,30,000 (20%)	-	66,000	
Tax Rate @40%	**NA**	**NA**	84,000
Sub-total	**-**	**78,500**	**84,000**
Add: Education Cess(3%)	-	2,355	2,520
Tax Liability	**-**	**80,855**	**86,520**
Tax Liability (Rounded off)	**-**	**80,860**	**86,520**

Situation 4

(A) Computation of Tax Liability of AOP

(1) Shares of members are indeterminate / unknown.

(2) All members of AOP are subject to slab rate.

Therefore, AOP shall be taxed at maximum marginal rate [MMR i.e. 33.60%].

Tax Liability = Rs.10,42,800 x 34.50%

= Rs.3,59,766 + 3% Education Cess

= Rs.3,59,766 + Rs.10,793

= Rs.3,70,559

= Rounded off to **Rs. 3,70,560**

(B) Computation of Tax Liability of Members

Particulars	P (Rs.)	Q (Rs.)	R (Rs.)
Share from AOP [Section 86]	Not Taxable	Not Taxable	Not Taxable
Income From Other Sources	57,200	54,400	2,72,000
Gross Total Income	**57,200**	**54,400**	**2,72,000**
Less: Section 80C	24,000	19,000	86,000
Total Income	**33,200**	**35,400**	**1,86,000**
Tax Liability	**Nil**	**Nil**	**Nil**

Situation 5

(A) Computation of Tax Liability of AOP

(1) Shares of members are indeterminate /unknown.

(2) R. Ltd. a foreign company is chargeable to 40%

Therefore AOP shall be taxed @40%

Tax Liability = Rs.10,42,800 x 40%

= Rs.4,17,120 + 3% Education Cess

= Rs.4,17,120 + Rs.12,514

= Rs.4,29,634 rounded off to Rs.4,29,630

(B) Computation of Tax Liability of Members

Particulars	P (Rs.)	Q (Rs.)	R Ltd. (Rs.)
Share from AOP [Section 86]	Not Taxable	Not Taxable	Not Taxable
Other Income	1,65,000	8,30,000	2,10,000
Gross Total Income	1,65,000	8,30,000	2,10,000
Less: Deduction	-	-	-
Total Income	**1,65,000**	**8,30,000**	**2,10,000**
Upto 2,50,000	Nil	Nil	NA
2,50,000 – 5,00,000 (5%)	-	12,500	NA
5,00,000 – 8,30,000 (10%)	-	66,000	
Tax Rate @40%	NA	NA	84,000
Total	**-**	**78,500**	**84,000**
Add: Education Cess(3%)	-	2,350	2,520
Tax Liability	**-**	**80,855**	**86,520**
Tax Liability (Rounded off)	**-**	**80,860**	**86,520**

Readers Note:

Practical 6

A Ltd, a Indian company, Mr. X and Mr. Y are three members of an AOP sharing profit in ratio of 4 : 3: 3. Total income of the AOP for the relevant assessment year is Rs. 8,00,000, out of which, Rs. 1,00,000 is short term capital gains u/s 111A. Find out tax liability of A.O.P.

Solution

Computation of tax liability of A.OP.

Total Income of AOP=Rs.8,00,000

Short Term Capital Gain u/s 111A	Other Income
Rs. 1,00,000	Rs.7,00,000
Tax Rate= 17.25% +3% Edu cess	Tax Rate = 34.50% + Edu. Cess
Tax = Rs.17767	Tax = Rs.248745

Tax Liability = Rs.17,767 + Rs.2,48,745

= Rs.2,66,512 rounded off to Rs.2,66,510

Readers Note:

14 – ASSESSMENT OF CO-OPERATIVE SOCIETIES

14.1 DEFINITION

Section:- 2(19)

"Co-operative society means a society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any state for the registration of co-operative societies.

14.2 DEDUCTION IN RESPECT OF INCOME OF CO-OPERATIVE SOCIETIES

Section:- 80P

In case of co-operative societies, the gross total income includes any income mentioned in following paras, then,

(1) Section 80P(2)(a)

Co-operative society engaged in-

(i) carrying on the business of banking or providing credit facilities to its members; or

(ii) a cottage industry; or

(iii) the marketing of the agricultural produce grown by its members; or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; or

(v) the processing, without the aid of power, of the agricultural produce of its members; or

(vi) the collective disposal of the labour of its members; or

(vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,

whole (100%) of the amount of profits and gains of business attributable to any one or more of such activities is deductible..

However, in case of co-operative societies falling under clauses (vi) and (vii) above, the deduction, is available subject to the condition that the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:-

(i) the individuals who contribute their labour or ,as the case may be, carry on the fishing or allied activities;

(ii) the co-operative credit societies which provide financial assistance to the society;

(iii) the State Government.

(2) Section 80P(2)(b)

Co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or given by its members to -

(i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits or vegetables, as the case may be; or

(ii) the Government or a local authority; or

(iii) a Government company as defined in section 617 of the Companies Act, 1956 or a statutory corporation (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables as the case may be, to the public);

whole (100%) of the amount of profits and gains of business such business is deductible..

(3) Section 80P(2)(c)

Co-operative society engaged in activities other than those specified in Para No. 19.1 and Para No. 19.2 above, either independently of, or in addition to, all or any of the activities so specified, so much of its profits and gains attributable to such activities as does not exceed -

(i) where such co-operative society is a consumers' co-operative society Rs.1,00,000;

(ii) in case of any other co-operative society Rs.50,000;

is deductible.

(4) Section 80P(2)(d)

Any income by way of interest or dividends derived by the co-operative society from its investments in any other co-operative society is deductible.

(5) Section 80P(2)(e)

Any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities is deductible.

(6) Section 80P(2)(f)

Any income by way of interest on securities and income from house property is deductible provided gross total income of the society does not exceed Rs. 20,000.

However, deduction under this clause is not available to the following societies:

(a) a housing society or

(b) an urban consumers' society or

(c) a society carrying on transport business or

(d) a society engaged in the performance of any manufacturing operations with the aid of power.

14.3 DOUBLE DEDUCTION NOT PERMISSIBLE

Section:- 80P(3)

Where an assessee is also entitled to deduction u/s 80-IA, deduction u/s 80P shall be allowed with reference to such profits and gains as reduced by the deduction allowed under section 80-IA.

14.4 PROVISIONS OF SECTION 80P SHALL NOT APPLY TO ANY CO-OPERATIVE BANK

Section:- 80P(4)

The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation

For the purposes of this sub-section,-

(a) "Co-operative Bank" and "Primary agricultural credit society" shall have the meanings respectively assigned to them in part V of the Banking Regulation Act, 1949;

(b) "Primary Co-operative agricultural and rural development bank" means a society having its area of operation confined to taluka and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

14.5 RATES OF TAX

Total Income	Rate of Income Tax
Upto Rs.10,000	10%
Next Rs.10,000	20%
Balance Income	30%

Surcharge: Surcharge is 12% of income-tax if total income exceeds Rs.1 crore.

Education Cess: It is 2% of (income-tax and surcharge).

Secondary and higher education cess: It is 1% of (income-tax and surcharge).

Practical 1

X Cooperative Society Ltd., markets agricultural produce supplied to it by its members. Its profit and loss Account showed a profit of Rs.10 lakhs on sales of Rs.100 lakhs. (It can be assumed that profits accrued uniformly on sales). The Society's claim for exemption of income from the tax was examined by the Assessing Officer who found that the sales composed of:

Rs.70 lakhs of produce raised by the Society's own members in their agricultural fields; and Rs.30 lakhs of produce bought by the members from the open market and supplied to the Society.

The Assessing Officer wants to deny exemption under section 80P(1) in regard to profits on bought out goods supplied by members to the Society. Is the assessing officer's view correct in law? Discuss.

Solution

As per section 80P, 100% deduction is allowed to the co-operative Society if it earns any income from the activity of marketing of the agricultural produce grown by its members. In the present case, the view of the Assessing Officer for denying exemption on income earned on the sale composed of Rs.30 lakhs of produce bought by the members from the open market and supplied to the society is correct.

Readers Note:

Practical 2

Kheda Agriculturists Co- operative Society furnishes the following particulars, determine its total income:

(a) Income from processing of agricultural produce without aid of power: Rs.18,000;

(b) Income from marketing agricultural produce grown by its members: Rs.5,000;

(c) Dividends from another co – operative society; Rs.60,000;

(d) Income from letting of godown: Rs.12,000; and

(e) Income from agency business: Rs.1,25,000.

Solution

Particulars	Rs.	Rs.
Income from letting of godowns	12,000	
Business income:		
- From processing	18,000	
- From marketing	5,000	
- From agency	1,25,000	1,60,000
Dividend Income		60,000
Gross Total Income		2,20,000
Less: Deductions in respect of income from		
(a) processing of agricultural produce [Sec. 80P(2)(a)]	18,000	
(b) marketing of agricultural produce [Sec.80P(2)(a)]	5,000	
(c) agency business [sec. 80P(2)(c)]	50,000	
(d) dividend [sec. 80P(2)(d)]	60,000	
(e) letting of godowns [sec. 80P(2)(e)]	12,000	1,45,000
Total Income		**75,000**

Readers Note:

Practical 3

The Totgars Co-operative Sale Society Ltd. was a credit society. It also markets the agricultural produce of its members whose sale proceeds at times were retained by it. This fund was not required immediately for business purposes, it was invested in short term deposits with banks and in Government securities. The assessee claimed deduction of such interest income under section 80P(2)(a)(i) treating it as business income.

The Assessing Officer held that the interest income which the assessee had disclosed under the head 'Income from business' was liable to be taxed under the head 'Income from other sources'. According to the Assessing Officer, the assessee-society had invested the surplus funds as and by way of investment by an ordinary investor, hence, interest on such investment has got to be taxed under the head 'Income from other sources'.

Before the Assessing Officer, it was argued by the assesssee that it had invested the funds on short-term basis as the funds were not required immediately for business purposes and, consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed u/s.28 and not u/s.56 of the Act, and, consequently, the assessee was entitled to deduction u/s.80P(2)(a)(i) of the Act.

Whether the claim made by assessee-society is acceptable?

Solution

Supreme Court while dealing with the above issue in case of **The Totgars Co-operative Sale Society Ltd. vs. ITO 322 ITR 283** had drawn following conclusions:

The Supreme Court held that assessee markets the produce of its members whose sale proceeds at times were retained by it. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. Interest on such investments, therefore, could not fall within the meaning of the expression 'profits and gains of business'. Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. The Supreme Court was of the view that such interest income would come in the category of 'Income from other sources', hence, such interest income would be taxed u/s.56 of the Act.

The Supreme Court further held that to say that the source of income is not relevant for deciding the applicability of S. 80P of the Act would not be correct because weightage need to be given to the words 'the whole of the amount of profits and gains of business' attributable to one of the activities specified in S. 80P(2)(a) of the Act. The words 'the whole of the amount of profits and gains of business' emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. In this particular case, the evidence showed that the assessee-society earned interest on funds which were not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, the Supreme Court was of the view, such interest income fell in the category of 'Other Income' which had been rightly taxed by the Department u/s.56 of the Act without giving deduction under section 80P(2)(a)(i).

Considering the above ratio, the claim of assessee society is not acceptable.

Readers Note:

Practical 4

Udaipur Sahakari Upbhokta Thok Bhandar Ltd., a co-operative society registered under the Rajasthan Co-operative Societies Act, 1965, was running a consumer co-operative store at Udaipur since 1963. It had 30 branches. It was dealing in non-controlled commodities through its branches. In addition, the society was also doing the work of distribution of controlled commodities such as wheat, sugar, rice and cloth on behalf of the government under the public distribution scheme (PDS) for which it was getting commission. The distribution of the controlled commodities was regulated by the District Supply Officer (DSO –Authorized Officer) under the Rajasthan Foodgrains and other Essential Articles (Regulation of Distribution) Order, 1976 (for short, "the 1976 Order"). The society claimed to be stockist/distributor of controlled commodities. It took delivery from the Food Corporation of India (FCI) and the Rajasthan Rajya Upbhokta Sangh, as per the directives of the state government. The price, quantity and the person from whom the delivery was to be taken was fixed by the state government under the said 1976 Order. After taking the delivery, the society stored these goods in its godowns, both owned and rented. The storage godowns were open to checking by the concerned officers of the state government. The stocks stored by the appellant were delivered to fair price shops (FPS-retailers), as per the directives of the state government. The quantity price and the FPS to whom the delivery was to be given, were fixed by the state government. According to the society, therefore, the above modus operandi indicated that the state government exercised total control over the stock of controlled commodities stored in the godowns of the assessee society.

On August 31, 1990, the society filed its returns for the assessment year 1989-90, claiming deduction under section 80P(2)(e) of the 1961 Act on the income of commission received by it from the government for storage of controlled commodities. The assessee – society later filed its returns of income for the subsequent assessment years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, inter alia, claiming deduction on the income of commission received by it from the state government for storage of controlled commodities.

Vide order dated March 26, 1992, the AO (Assessing Officer) disallowed the claim on the ground that the appellant-society was a wholesaler of foodgrains and it was not a mere stockist as claimed, and consequently, it was not entitled to deduction under section 80P(2)(e) of the 1961 Act.

Whether the rejection of claim under section 80P(2)(e) is correct?

Solution

Supreme Court while dealing with the above issue in case of **Udaipur Sahkari Upbhokta Thok Bhandar Ltd. Vs. CIT 315 ITR 21** had drawn following conclusions:

The Supreme Court, at the outset, noted that the appellant had composite business. The appellant was a dealer in non-controlled commodities and it was an authorization holder in respect of controlled commodities under the 1976 Order. It owned godowns and it also hired godowns on rent. It earned commission during the relevant assessment years at the rate of 2.25 per quintal (e.g. for rice). Under clause 20 of the 1976 Order, every authorization holder had to comply with general or special directions given in writing from time to time by the Collector in regard to purchase, sale, storage for sale, distribution and disposal of controlled commodities. **The Supreme Court further noted that the appellant earned commission on the principle of "netting". In other words, the appellant set off "issue price" against "sale price" and retained commission fixed at Rs.2.25 per quintal.**

The Supreme Court, referring to the rate fixation mechanism indicated by one of the orders issued on 12th March, 1987, w.e.f. 1st May, 1987 and adverting to the working given therein, observed that the said working indicated that Rs.247.82 (issue price) was treated by the appellant as expense and it was set off against the sale price of Rs.251.07. In other words, the working indicated cost plus mechanism, i.e. Rs.247.82 was the cost plus profit margin which included Rs.2.25 as commission. Therefore, Rs.2.25 was part of the profit margin. The Supreme Court, referring to the written submissions filed by the appellant, observed that the appellant had taken into its books of account the consolidated value of the closing stock. According to the Supreme Court, the circumstances reinforced that the appellant was storing the commodities in its godowns as a part of its own trading stock.

Applying its judgement in the case of *A. Venkata Subbarao Etc. vs. State of Andhra Pradesh Etc. AIR 1965 SC 1773*, **the Supreme Court held that the High Court was right in coming to the conclusion that the assessee was storing the commodities in question in its godowns as part of its own trading stock, hence, it was not entitled to claim deduction for such margin under Section 80P(2)(e) of the 1961 Act.**

Considering the above ratio, the claim of assessee- society under section 80 P(2) (e) was rightly rejected.

Readers Note:

15 – ASSESSMENT OF COMPANIES

15.1 MINIMUM ALTERNATE TAX (MAT) AND ITS APPLICABILITY

Section:- 115JB(1), 115JB(5A), 115JB(6) and 115JB(7)

The concept of MAT under the Income Tax Act is very wide. Therefore, it has been divided into following paras for better understanding.

Para No.	Description
Para 15.1	MAT and its applicability
Para 15.1A	Book Profit – How to Determine?
Para 15.1B & C	Computation of Tax Liability

Section 115JB has been inserted from the assessment year 2001-02. It provides that in case the income-tax payable on total income *is less than* 18.5 per cent of the book profit, **such book profit shall be deemed to be the 'total income', chargeable to tax at the rate of 18.5 per cent (plus SC+EC).**

Amendment by Finance Act, 2016

Section 115JB (7) provides that if the assessee is a unit located in International Financial Services Centre and derives its income solely in convertible foreign exchange, then book profit shall be taxed at the rate of **9 per cent** instead of **18.5 percent.**

15.1A BOOK PROFIT – HOW TO DETERMINE?

Section:- 115JB(2)

Profit as shown in statement of profit and loss (after 27 adjustments) is book profit.

(A) Meaning of "Profit as shown in statement of profit and loss"

Profit in case of –

(a) any insurance or banking company or any company engaged in the generation or supply of electricity (or any other class of company for which a different form of statement of profit and loss has been specified in or under the Act governing such class of company), shall be calculated on the basis of statement of profit and loss prepared in accordance with the provisions of their regulatory Acts, or

(b) any other company, shall be calculated on the basis of statement of profit and loss prepared in accordance with Schedule III to the Companies Act, 2013.

(B) Twenty Seven adjustments to Profit as shown in statement of profit and loss to convert it into Book Profit [Explanation to section 115JB (2)]

Fifteen Positive Adjustments –

Profit as shown in statement of profit and loss is to be increased by the following amounts if debited to the statement of profit and loss:

(1) the amount of income-tax paid or payable, and the provisions therefore; or

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

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

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

(5) the amount or amounts of dividends paid or proposed; or

(6) the amount or amounts of expenditure relatable to any income to which section 10 [not being provisions *contained under section 10(38)]* or 11 or 12 apply.

(7) 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

(8) 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 governing MAT) is less than 18.5%; or

(9) the amount representing,

a. notional loss on transfer of a capital asset, being share of 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

b. the amount representing notional loss resulting from any change in carrying amount of said units or

c. the amount of loss on transfer of units referred to in clause (xvii) of section 47

(10) the amount or amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF (Inserted by FA 2016, effective from A.Y. 2017-18)

(11) the amount of depreciation

(12) The amount of deferred tax and the provisions therefore

(13) The amount or amounts set aside as provision for diminution in the value of any asset;

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(14) Amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset if it is not credited to the statement of profit and loss;

(15) 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.

Explanation: Amount of income tax shall include,

(i) *any tax on distributed profits under section 115-O or on distributed income u/s 115-R*

(ii) *any interest charged under this Act*

(iii) *Surcharge, if any has levied by the central Acts from time to time.*

(iv) *Education cess on income tax, if any has levied by the Central Acts from time to time*

(v) *Secondary and higher education cess on Income Tax, if any levied by the Central Acts from time to time.*

<u>Twelve Negative Adjustments–</u>

Profit as shown in the statement of profit and loss is to be reduced by the following amounts:

(1) the amount withdrawn from reserves or provisions, if any such amount is credited to the statement of profit and loss; or (Provided book profits was increased in the year of creation of reserve or reserve was created by way of debit to statement of profit and loss)

(2) the amount of income to which any of the provisions of section 10 [not being provisions contained u/s 10(38)] or 11 or 12 apply, if any such amount is credited to the statement of profit and loss; or

(3) the amount of depreciation debited to the statement of profit and loss (excluding the depreciation on account of revaluation of assets); or

(4) the amount withdrawn from revaluation reserve and credited to the statement of profit and loss, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (3) above; or

(5) 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 statement of profit and loss; or

(6) 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 the income-tax payable thereon in accordance with the provisions of this Act (other than the provisions governing MAT) is less than 18.5%; or (Inserted by FA 2015, effective from A.Y. 2016-17)

(7) 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 statement of profit and loss; or

(8) 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; (Inserted by FA 2015, effective from A.Y. 2016-17)

(9) the amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF; (Inserted by FA 2016, effective from A.Y. 2017-18) or

(10) 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

(11) the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under section 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the assessment year during which the entire net worth (i.e., paid-up capital plus free reserves) of such company becomes equal to or exceeds the accumulated losses;

(12) Amount of deferred tax, if any such amount is credited to statement of profit and looss.

15.1B COMPUTATION OF TAX LIABILITY

Step 1: Book Profit	Compute Book Profit as per Section 115JB
Step 2: MAT Liability	Compute tax @ 18.50% on Book Profit + (Surcharge) + (Education Cess)
Step 3: Total Income	Compute total income of the company as per the provisions of Income Tax Act, 1961.
Step 4: Regular Tax Liability	Find out Regular tax liability of the company applying tax rates as per para No. 25C.
Step 5: Tax Payable	Tax Liability shall be ***higher of the step 2 or step 4***

REMARK:

In the case of a company, if tax liability is governed by MAT provisions, then book profit is taken as total income.

15.1C TAX RATES APPLICABLE FOR STEP 4

Section:- Annual Finance Act and section 115BA

(A) Income Tax Rates

	Domestic companies		Foreign companies
	If Total Turnover or Gross Receipts in P.Y.2015-16 does not exceed Rs.50 Crore	**If Total Turnover or Gross Receipts in P.Y.2015-16 exceeds Rs.50 Crore**	
	Tax rates	Tax rates	Tax rates
Short Term Capital Gain u/s.111A	15% + SC+EC	15% + SC+EC	15%+ SC+EC
Long-term capital gain	20% +SC+EC	20% +SC+EC	20%+ SC+EC
Winnings from lotteries	30% + SC+EC	30% + SC+EC	30%+ SC+EC
Other income	25%+ SC+EC	30%+ SC+EC	40%+ SC+EC

(B) Tax on income of certain domestic companies.[Section 115BA]

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 111A and section 112, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent, if the conditions contained in sub-section (2) are satisfied.

(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

(a) the company has been set-up and registered on or after the 1st day of March, 2016;

(b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and

(c) the total income of the company has been computed,—

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AC or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AC or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and

(iii) depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed. [By notification no. 103/2016, depreciation claim has been has been restricted to 40% in case of block of assets where the prescribed rate of depreciation is more than 40%].

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

(C) Surcharge

Surcharge is applicable if total income (or Book Profit) exceeds Rs. 1 crore. The rates of surcharge are as under:-

Type of Company	If Total Income / Book Profit exceeds Rs. 1 crore but does not exceed Rs. 10 crore	If Total Income or Book Profit exceeds Rs. 10 crore
Domestic company	7%	12%
Foreign company	2%	5%

(D) Education Cess

Education Cess: It is 2% of (income-tax and surcharge).

Secondary and higher education cess: It is 1% of (income-tax and surcharge).

Practical 1

PQR Ltd. is engaged in manufacturing of goods. It provides following information for the previous year 2017-18.

Profit & Loss Account

Particulars	Rs.	Particulars	Rs.
Cost of Goods sold	7,02,52,000	Sales	7,36,19,350
Entertainment Expenses	19,500	Interest on Fixed Deposit	1,54,900
Traveling Expenses	31,500	Dividend (from Indian Companies)	1,00,000
Salary & Wages	1,75,000	Deferred Tax	25,000
Salary to Directors	4,50,000	Share from AOP (where AOP had paid tax at Maximum Marginal Rate)	41,100
Professional fees	29,000		
Depreciation	5,17,000		
Provision for Bad and doubtful Debts	16,000		
Penalty under Income-Tax Act	10,000		
Interest for late filing of return	2,000		
Wealth-Tax (P.Y. 2013-14)	15,000		

Outstanding custom duty	21,000		
Provision for unascertained liabilities	75,000		
Loss of subsidiary company	39,000		
Provision for Income-Tax	2,25,000		
Proposed Dividend and CDT	64,350		
Net Profit	**19,99,000**		
	7,39,40,350		**7,39.40,350**

Additional Information

(1) Depreciation of Rs.5,17,000 includes depreciation of Rs.17,000 on account of upward revaluation of fixed asset.

(2) Brought forward loss and unabsorbed depreciation as per books of accounts is Rs.2,10,000 and Rs.6,000 respectively.

(3) Depreciation allowable under section 32 of Income Tax Act was Rs. 5,36,000

(4) Brought forward business loss for tax purpose Rs. 13,52,000

(5) Brought forward unabsorbed depreciation for tax purpose Rs. 13,000

(6) Company is eligible for deduction under section 80-IC @ 30%

(7) Total turnover of the company for the previous year 2015-16 was Rs. 56.05 Cr.

Compute tax liability.

Solution

Step 1: Computation of Book Profit

	Particulars	Rs.	Rs.
	Net Profit as per Profit & Loss Account		**19,99,000**
Add:	**Positive Adjustments**		
	Depreciation	5,17,000	
	Provision for Bad and doubtful Debts	16,000	
	Interest for late filing of income tax return	2,000	
	Provision for unascertained liabilities	75,000	
	Loss of subsidiary company	39,000	
	Provision for Income Tax	2,25,000	
	Proposed Dividend and CDT	64,350	**9,38,350**
Less:	**Negative Adjustments**		
	Dividend from Indian Companies	(1,00,000)	
	Deferred Tax	(25,000)	
	Income by way of share in income of AOP (which is not subject to tax)	(41,100)	
	Depreciation (excluding depreciation on account of revaluation)	(5,00,000)	
	Brought forward loss or unabsorbed depreciation whichever is lower [as per books of accounts]	(6,000)	(6,72,100)
	Book Profit		**22,65,250**

Step 2: Computation of MAT Liability

Particulars	Rs.
MAT @18.5% of Book Profit (Rs. 22,65,250)	4,19,071
Add: education Cess: (3%)	12,572
MAT Liability	**4,31,643**

Step 3. Computation of total income

Particulars	Rs.)
Income Under head PGBP	
Net Profit as per profit and loss account	19,99,000
Less: Interest on Fixed Deposit (to be considered under "IFOS")	(1,54,900)
Less: Dividend from Indian Companies (Exempt)	(1,00,000)
Less: Differed Tax	(25,000)
Less: Share from AOP (Not taxable)	(41,100)
Add: Depreciation	5,17,000
Add: Provision for bad and doubtful debts	16,000
Add: Penalty under Income Tax Act	10,000
Add: Interest for late filing of return	2,000
Add: Wealth Tax (P.Y. 2013-14)	15,000
Add: Custom Duty (Assuming that it has not paid before due date of filing return)	21,000
Add: Provision for unascertained liability	75,000
Add: Losses of subsidiary	39,000
Add: Provision for Income Tax	2,25,000
Add: Proposed Dividend and CDT	64,350
Sub-total	26,62,350
Less: Depreciation as per Income Tax	(5,36,000)
Balance	21,26,350
Less: brought forward Business Loss	(13,52,000)
Balance	7,74,350
Less: unabsorbed depreciation	(13,000)
Income Under the head PGBP	7,61,350
Add: Income from Other Sources (FD Interest)	1,54,900
Gross total income	9,16,250
Less: Deduction under section 80IB (30% of PGBP)	2,28,405
Total Income	**6,87,845**

Step 4: Computation of Regular Tax Liability

Particulars	Rs.
Regular tax @ 30% of Total Income	2,06,354
Add: education Cess: (3%)	6191
Regular tax liability	**2,12,545**

Step 5: Final Tax Payable

Particulars	Rs.
MAT Liability as per Step 2	4,31,643
Regular Tax Liability as per Step 4	2,12,545
Whichever is higher	**4,31,643**

Readers Note:

Practical 2

Sona Ltd., a resident company, earned a profit of Rs.15 lakhs after debit/credit of the following items to its Statement of Profit and Loss:

(i) Items debited to Statement of Profit and Loss:

Sr. No.	Particulars	Rs.
(1)	Provision for the loss of subsidiary	70,000
(2)	Provision for doubtful debts	75,000
(3)	Provision for income-tax	1,05,000
(4)	Provision for gratuity based on actuarial valuation	2,00,000
(5)	Depreciation	3,60,000
(6)	Interest to financial institution (unpaid before filing of return)	1,00,000
(7)	Penalty for infraction of law	50,000

(ii) Items credited to Statement of Profit and Loss:

Sr. No.	Particulars	Rs.
(1)	Profit from unit established in special economic zone.	5,00,000
(2)	Share in income of an AOP as a member	1,00,000
(3)	Income from units of UTI	75,000
(4)	Long term capital gains	3,00,000

Other Information:

(i) Depreciation includes Rs. 1,50,000 on account of revaluation of fixed assets.

(ii) Depreciation as per Income-tax Rules is Rs. 2,80,000.

(iii) Balance of Statement of Profit and Loss shown in Balance Sheet at the asset side was Rs. 10 lakhs which includes unabsorbed depreciation of Rs. 4 lakhs.

(iv) The capital gain has been invested in specified assets under section 54EC.

(v) The AOP, of which the company is a member, has paid tax at maximum marginal rate.

(vi) Provision for income-tax includes Rs. 45,000 of interest payable on income-tax.

Compute minimum alternate tax under section 115JB of the Income-tax Act, 1961.

Solution

Step 1. Computation of Book Profit

Particulars	**Rs.**
Net Profit as per profit and loss account	15,00,000
Positive Adjustments	
Provision for the loss of subsidiary	70,000
Provision for doubtful debts, being the amount set aside as provision for diminution in the value of any asset	75,000
Provision for income-tax	1,05,000
Depreciation	3,60,000
Negative Adjustments	
Share in income of an AOP as a member	(1,00,000)
Income from units in UTI [Income from units in UTI shall be reduced while computing the book profits, since the same is exempt under section 10(35)]	(75,000)
Depreciation other than depreciation on revaluation of assets(Rs.3,60,000–Rs.1,50,000)	(2,10,000)
Unabsorbed dep. or b/f business loss, whichever is less, as per the books of account.[Here, unabsorbed dep. is Rs.4,00,000 while b/f business loss Rs.6,00,000]	(4,00,000)
Book Profit	**13,25,000**

Step2. Computation of MAT Liability

Particulars	**Rs.**
MAT @18.5% of Book Profit (Rs. 13,25,000)	2,45,125
Add: education Cess: (3%)	7,354
MAT Liability	**2,52,479**
MAT Liability (Rounded Off)	**2,52,480**

Notes:

(1) It is only the specific items mentioned under Explanation 1 to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted while computing book profit:

- Interest to financial institution (unpaid before filing of return) and
- Penalty for infraction of law
- Capital gains credited to profit and loss account even if it is exempt under section 54EC of the Act. **[CIT v. Veekaylal Investment Co. P. Ltd. (2001) 249 ITR 597 (Bom.) & N J Jose and Co. (P) Ltd. v. ACIT (2010) 321 ITR 132 (Ker.)]**

(2) Provision for gratuity based on actuarial valuation is an ascertained liability **[CIT v. Echjay Forgings (P) Ltd. (2001) 251 ITR 15 (Bom.)].** Hence, the same should not be added back to compute book profit.

Readers Note:

15.2 SCHEME OF MAT CREDIT

Section:- 115JAA - Effective from A.Y. 2018-19

1. When company pays tax under MAT, the tax credit shall be an amount which is the difference between the amount payable under MAT and the regular tax.

   However, where the amount of tax credit in respect of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, allowed against the tax payable under MAT exceeds the amount of such tax credit admissible against the regular tax payable by the assessee, then, while computing the amount of MAT credit, such excess amount shall be ignored. **(Amendment by Finance Act, 2017 effective from assessment year 2018-19)**
2. MAT credit will be allowed to be carried forward for a period of ten assessment years immediately succeeding the assessment year in which MAT credit is available. However, with effect from the assessment year 2018-19, MAT credit will be allowed to be carried forward for a period of 15 assessment years. **(Amendment by Finance Act, 2017)**
3. If, in any subsequent assessment year, regular tax becomes payable, then, the difference between the regular tax and tax computed under MAT for that year shall be available as set off.
4. The MAT credit will not bear any interest.
5. The scheme of MAT credit shall not apply to a limited liability partnership which has been converted from private company or unlisted public company.

Practical 3

From the following information, compute tax liability, MAT credit to be carried forward if any and tax payable after MAT credit set off, if any.

(Rs. In lakhs)

Particulars	**1st Year**	**2nd Year**	**3rd Year**	**4th Year**
Regular Tax Liability	20	22	32	12
MAT liability	25	24	29.50	11.75

Solution

1st Year		
Sr. No.	**Particulars**	**Rs. In lakhs**
A.	Regular Tax Liability	20
B.	MAT Liability	25
C.	Tax Liability (A or B whichever is higher)	25
D.	Tax Payable	25
E.	MAT Credit arose in this year (MAT Liability – Regular Tax Liability)	5
F.	No. of years MAT Credit can be carried forward	Next 15 Years

2nd Year		
Sr. No.	**Particulars**	**Rs. In lakhs**
A.	Regular Tax Liability	22
B.	MAT Liability	24
C.	Tax Liability (A or B whichever is higher)	24
D.	Tax Payable	
E.	MAT Credit arose in this year (MAT Liability – Regular Tax Liability)	2
F.	Total MAT Credit to be carried forward	
	- Relating 1st Year (next 14 Years)	5
	- Relating 2nd Year (next 15 Years)	2

3rd Year			
Sr. No.	**Particulars**		**Rs. In lakhs**
A.	Regular Tax Liability		32
B.	MAT Liability		29.50
C.	Tax Liability (A or B whichever is higher)		32
D.	Tax Payable	32.00 lakhs	
	Less: MAT Credit Set off (to the extent of difference between Regular Tax Liability and MAT Liability: Rs.32 lakhs-29.50 lakhs)	(2.50 lakhs)	29.50
E.	Total MAT Credit to be carried forward		
	- Relating to 1st Year – (5 lakhs -2.5 lakhs) [for next 13 years]		2.5
	- Relating to 2nd Year [for next 14 years]		2

4th Year			
Sr. No.	**Particulars**		**Rs. In lakhs**
A.	Regular Tax Liability		12
B.	MAT Liability		11.75
C.	Tax Liability (A or B whichever is higher)		12
D.	Tax Payable	12.00 lakhs	12
	Less: MAT Credit Set off (to the extent of difference between Regular Tax Liability and MAT Liability: Rs.12 lakhs-11.75 lakhs)	(0.25 lakhs)	11.75
E.	Total MAT Credit to be carried forward		
	- Relating to 1st Year –(2.50 lakhs-0.25 lakhs) [for next 12 years]		2.25
	- Relating to 2nd Year [for next 13 years]		2

Readers Note:

Practical 4

From the following information, find out the (a) MAT credit to be carried forward before the amendment by Finance Act, 2017 (b) MAT credit to be carried forward after the amendment by Finance Act, 2017.

Particulars	Rs. in Lakhs
Regular Tax Liability (ignoring MAT)	8
MAT Liability	30
Tax Credit under section 90 of the Act	28

Solution

MAT Credit to be carried forward before the amendment by Finance Act, 2017

Sr. No.	Particulars	Rs. In lakhs
A.	Regular Tax Liability	8
B.	MAT Liability	30
C.	Tax Liability (A or B whichever is higher)	30
D.	Less: Tax credit under section 90 of the Act	(28)
E.	Tax payable	**2**
F.	MAT Credit to be carried forward (MAT Liability – Regular Tax Liability)	22

MAT Credit to be carried forward after the amendment by Finance Act, 2017

As per the amendment made by Finance Act, 2017, where the amount of tax credit in respect of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, allowed against the tax payable under MAT exceeds the amount of such tax credit admissible against the regular tax payable by the assessee, then, while computing the amount of MAT credit, such excess amount shall be ignored.

Sr. No.	Particulars	Rs. In lakhs
A.	MAT Credit to be carried forward before the amendment by Finance Act, 2017 (MAT Liability – Regular Tax Liability)	22
B.	Less: excess credit to be ignored as per Amendment (Refer working note)	(20)
C.	MAT Credit to be c/f after the amendment by Finance Act, 2017 (A-B)	**2**

Working Note: Excess Credit to be ignored as per the Amendment

Sr. No.	Particulars	Rs. In lakhs
A.	Tax Credit available under section 90 of the Act against the tax payable under MAT (Foreign Tax credit or MAT whichever is lower)	28
B.	Less: Tax Credit available under section 90 of the Act against the regular tax payable (Foreign Tax credit or Regular Tax whichever is lower)	(8)
C.	Excess credit to be ignored as per the amendment	**20**

Readers Note:

15.3 CARRY FORWARD AND SET OFF OF LOSSES IN THE CASES OF CERTAIN COMPANIES

Section:- 79- Effective from A.Y. 2018-19

In the case of companies in which the public are not substantially interested (other than start-up company referred to in section 80-IAC), loss will not be carried forward and set off unless the shares of the company carrying not less than 51 per cent of the voting power were beneficially held by the same person(s) both on the last day of the previous year in which loss occurred and on the last day of the previous year in which brought forward loss is sought to be set off.

***In the case of a company, not being a company in which the public are substantially interested but being an eligible start-up as referred to in section 80-IAC**, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,—*

(i) *continue to hold those shares on the last day of such previous year; and*

(ii) *such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.*

Exceptions - The aforesaid restriction contained in section 79 shall not be applicable if change in voting power takes place in following two cases:

1. Where a change in voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making the gift.
2. Where any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.

Remark:

This section is applicable to the losses and not to the unabsorbed allowances. Therefore, entire unabsorbed depreciation can be carried forward by closely held company irrespective of the change in shareholding pattern.- CIT v. Shri Subhulaxmi Mills Ltd. [2001] 249 ITR 795.

15.4 TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES POPULARLY KNOWN AS CORPORATE DIVIDEND TAX (CDT)

Section:- 115-O

(A) Levy

Any amount declared, distributed or paid by a domestic company by way of dividend (whether interim or otherwise) out of current or accumulated profits shall be charged to additional income-tax (to be called dividend distribution tax/corporate dividend tax).

This levy is in addition to income tax chargeable on the total income of domestic company.

(B) Meaning of "dividend" for the purpose of this section.

For the purpose of section 115-O the expression "dividend" shall have the same meaning as is given to under section 2(22), but it shall not include sub-clause (e) of section 2(22).

(C) Rate of dividend distribution tax

The rate of dividend distribution tax is 15% increased by surcharge (irrespective of amount of dividend) and E.C. Therefore, effective rate of CDT is 17.304%**.**

(D) Amount on which CDT is payable

Computation of "amount on which CDT is payable" shall be done as under:-

Particulars	Amount (Rs.)
Amount declared, distributed or paid by a domestic company (say holding company) by way of dividend	**XXX**
Less: (1) The amount of **dividend, if any, received** during the financial year **from domestic subsidiary**, *where subsidiary has paid the tax under section 115-O*	(XXX)
(2) The amount of **dividend, if any, received** during the financial year from foreign subsidiary, *where tax is payable by holding company* on such dividend *under section 115BBD*	(XXX)
(3) The amount of **dividend**, if any, **paid to New Pension System Trust** referred to in section 10 (44).	(XXX)
Net distributed profits	XXX
Add: **Increase for the purpose of Grossing up of dividend** $\left(Net\ Distributed\ Profits \times \frac{15}{100-15}\right)$ **[as per amendment made by Finance Act, 2014]**	XXX
Amount on which Corporate Dividend ax is Payable	**XXX**

(E) Meaning of subsidiary company for the purpose of this section

A company shall be a subsidiary of another company, if such other company, holds more than half in nominal value of the equity share capital of the company.

Practical 5

A Ltd. holds 60% share capital of B Ltd. On 10th August, **2017**, B Ltd. declared dividend of Rs.5,00,000 on which B Ltd. had paid corporate dividend tax. On 1st October, **2017,** A Ltd. wants to declare dividend of Rs.12,00,000. Find out corporate dividend tax payable by A Ltd assuming that A Ltd. and B Ltd. both are Indian companies.

Solution

Computation of Corporate Dividend Tax Payable by A Ltd.

Particulars	Rs.
Amount declared, distributed or paid by a domestic company by way of dividend	12,00,000
Less: (1) The amount of dividend, if any, received **[60% of 5,00,000]** during the financial year from domestic subsidiary **[B. Ltd.]**, where subsidiary has paid the tax under section 115-O.	(3,00,000)
(2) The amount of dividend, if any, received during the financial year from foreign subsidiary, where tax is payable by holding company on such dividend under section 115BBD	(Nil)
(3) The amount of dividend, if any, paid to New Pension System Trust referred to in section 10 (44).	(Nil)
Net Distributed Profits	**9,00,000**
Add: Grossing up of dividend $\left(9{,}00{,}000 \times \frac{15}{85}\right)$	**1,58,824**
Amount on which CDT is payable	**10,58,824**
Corporate Dividend Tax [10,58,824 x 17.304%]	**1,83,219**

Readers Note:

Practical 6

A Ltd. holds 60% equity of B Ltd. B Ltd. holds 70% equity of C Ltd. On 1st April **2017,** C Ltd. declared dividend Rs.2,00,000. On 1st June, **2017,** B Ltd. declared dividend of Rs.3,00,000. On 1st September, **2017,** A Ltd. declared dividend of Rs.5,00,000. Find out amount on which corporate dividend tax is payable by the respective companies assuming that all are Indian companies.

Solution

C Ltd.

Particulars	Rs.
Amount declared, distributed or paid by a domestic company by way of dividend	2,00,000
Net Distributed Profits	**2,00,000**
Add: Grossing up of dividend $\left(2{,}00{,}000 \times \frac{15}{85}\right)$	**35,294**
Amount on which CDT is payable	**2,35,294**

B Ltd.

Particulars	Rs.
Amount declared, distributed or paid by a domestic company by way of dividend	**3,00,000**
Less: (1) The amount of dividend, if any, received **[70% of Rs. 2,00,000= Rs. 1,40,000]** during the financial year from domestic subsidiary **[C. Ltd.]**, where subsidiary has paid the tax under section 115-O**.**	(1,40,000)
Net Distributed Profits	**1,60,000**
Add: Grossing up of dividend $\left(1{,}60{,}000 \times \frac{15}{85}\right)$	**28,235**
Amount on which CDT is payable	**1,88,235**

A Ltd.

Particulars	Rs.
Amount declared, distributed or paid by a domestic company by way of dividend	5,00,000
Less: (1) The amount of dividend, if any, received **[60% of Rs. 3,00,000= Rs. 1,80,000]** during the financial year from domestic subsidiary **[B. Ltd.]**, where subsidiary has paid the tax under section 115-O**-[Here, B Ltd paid tax under 115 O on Rs. 1,60,000- See Calculation of B Ltd. above].**	(1,60,000)
Net Distributed Profits	**3,40,000**
Add: Grossing up of dividend $\left(3{,}40{,}000 \times \frac{15}{85}\right)$	**60,000**
Amount on which CDT is payable	**4,00,000**

Readers Note:

Practical 7

A Ltd. an Indian company wants to declare dividend of Rs.9,00,000 on **31st July, 2017**. It received dividend from the following companies:-

(a) Rs.1,00,000 received from X Ltd., an Indian company (in which A Ltd. holds 40% equity).

(b) Rs.50,000 received from Y Ltd., an Indian company (in which A Ltd. holds 51% equity).

(c) Rs.1,25,000 received from Z Ltd., a Foreign company (in which A Ltd. holds 26% equity).

(d) Rs.2,00,000 received from Q Ltd., a Foreign company (in which A Ltd. holds 60% equity).

Calculate amount on which CDT is payable by A Ltd.

Solution

Amount on which CDT is payable by A Ltd.

Particulars	Rs.
Amount declared, distributed or paid by a domestic company by way of dividend **–A Ltd.**	9,00,000
Less: (1) The amount of dividend, if any, received during the financial year from domestic subsidiary, where subsidiary has paid the tax under section 115-O**-Y. Ltd.**	(50,000)
(2) The amount of dividend, if any, received during the financial year from foreign subsidiary, where tax is payable by holding company on such dividend under section 115BBD-**Q Ltd.**	(2,00,000)
(3) The amount of dividend, if any, paid to New Pension System Trust referred to in section 10 (44).	(----)
Net Distributed Profits	**6,50,000**
Add: Grossing up of dividend $\left(6{,}50{,}000 \times \frac{15}{85}\right)$	**1,14,706**
Amount on which CDT is payable	**7,64,706**
Corporate Dividend Tax [7,64,706x 17.304%]	**1,32,325**

NOTES:

1) Since X Ltd is not a subsidiary of A Ltd therefore, dividend received from X Ltd is not eligible for deduction.

2) Since Z Ltd is not a subsidiary of A Ltd therefore, dividend received from Z Ltd is not eligible for deduction even though dividend received from Z Ltd is subject to section 115BBD

Readers Note:

(F) Dividend distribution tax cannot be avoided

The domestic company is liable to pay dividend distribution tax under this section even if no income-tax is payable on its total income computed under the provisions of the Act.

(G) Who is liable to pay dividend distribution tax and when?

- The principal officer of the domestic company and the company shall be liable to pay dividend distribution tax.
- Such tax shall be paid within 14 days from the date of
  a. declaration of any dividend ; or
  b. distribution of any dividend ; or
  c. payment of any dividend,

  whichever is the earliest.

(H) Dividend tax is the final levy and no further credit for such tax paid

- Tax on dividend paid by a domestic company shall be taken as the final tax payment in respect of the amount declared, distributed or paid as dividend.
- In respect of tax so paid, no credit is available to the company paying tax, or the recipient of dividend or to any other person.

(I) Dividend tax is not deductible

Neither domestic company nor the shareholders can claim deduction under any other provision of this Act in respect of dividend tax levied under this section.

(J) Companies not required to pay dividend distribution tax

(1) Dividend distribution tax is not applicable in respect of any amount declared, distributed or paid by the specified domestic company by way of dividends (whether interim or otherwise) to a business trust out of its current income on or after the specified date:
Above relaxation shall not apply in respect of any amount declared, distributed or paid, at any time, by the specified domestic company by way of dividends (whether interim or otherwise) out of its accumulated profits and current profits up to the specified date.

Meaning of certain terms:-

(a) "specified domestic company" means a domestic company in which a business trust has become the holder of whole (100%) of the nominal value of equity share capital of the company (excluding the equity share capital required to be held mandatorily by any other person in accordance with any law for the time being in force or any directions of Government or any regulatory authority, or equity share capital held by any Government or Government body);

(b) "specified date" means the date of acquisition by the business trust of such holding as is referred to in clause (a).

(2) No tax on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2017, out of its current income, either in the hands of the company or the person receiving such dividend.

Meaning of certain terms:-

(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) "unit" means a unit established in an International Financial Services Centre, on or after the 1st day of April, 2016.

(K) Interest for non-payment of tax [Sec. 115P]

If the company and the principal officer fails to pay the whole or any part of dividend distribution tax within the specified time limit discussed above, then he or it shall be liable to pay interest at the rate of 1% p.m. or a part of month

Period for which interest is payable

Interest is chargeable for the period commencing from the next date after the last date of payment and ending on the date of actual payment.

Amount on which interest is payable:

Particulars	Rs.
Dividend distribution tax payable	Xxx
Less: dividend distribution tax paid within the time limit of 14 days	(xxx)
Unpaid dividend distribution tax	**Xxxx**

(L) When company is deemed to be in default? [Sec. 115Q]

If principal officer of a domestic company and domestic company does not pay dividend distribution tax in accordance with the provisions of section 115-O, then he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it. Consequently, all provisions of the Act regarding collection and recovery of tax shall apply.

16 – ALTERNATE MINIMUM TAX

16.1 TAX CREDIT FOR ALTERNATE MINIMUM TAX

Section:- 115JD - Effective from A.Y. 2018-19

(A) Sub – Section (1)

The credit for tax paid by a person under section 115JC shall be allowed to him in accordance with the provisions of this section.

(B) Sub – Section (2)

The tax credit of an assessment year to be allowed under sub-section (1) shall be the excess of alternate minimum tax paid over the regular income-tax payable of that year.

Provided that where the amount of tax credit in respect of any income-tax paid in any country or specified territory outside India under section 90 or section 90A or section 91, allowed against the alternate minimum tax payable, exceeds the amount of the tax credit admissible against the regular income-tax payable by the assessee, then, while computing the amount of credit under this sub-section, such excess amount shall be ignored. **(Amendment by Finance Act, 2017)**

(C) Sub – Section (3)

No interest shall be payable on tax credit allowed under sub-section (1).

(D) Sub – Section (4)

The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (5) and (6) but such carry forward shall not be allowed beyond the fifth assessment year **(Amendment by Finance Act, 2017)]** immediately succeeding the assessment year for which tax credit becomes allowable under sub-section (1).

(E) Sub – Section (5)

In any assessment year in which the regular income-tax exceeds the alternate minimum tax, 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.

(F) Sub – Section (6)

If the amount of regular income-tax or the alternate 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.

17 – ASSESSMENT OF HINDU UNDIVIDED FAMILY (HUF)

18 – TAXATION OF BUSINESS TRUST

19 – TAXATION OF TRUST/INSTITUTIONS AND POLITICAL PARTIES

19.1 DONATION TO ANOHTER CHARITABLE TRUST NOT TREATED AS APPLICATION OF INCOME IF MADE WITH A DIRECTION THAT IT SHALL FORM PART OF THE CORPUS OF THE TRUST.

Section:- 11(1) - Effective from A.Y. 2018-19

Donation of income to another charitable trust is also treated as application of income for the purpose of s. 11(1) **- CIT v. Sarladevi Sarabhai Trust (No. 2) [1988] 172 ITR 698 (Guj.)**
However, with effect from Assessment Year 2018-19, any donation (contribution) given to a trust or institution with a specific direction that they shall form part of the corpus of recipient trust or institution, then it shall not be treated as application of income for the donor trust or institution. - Vide explanation 2 to section 11(1). **[Amendment by Finance Act, 2017]**

Practical 1

A Charitable Public Trust derives income from voluntary contribution of Rs.25,00,000 (out of Rs.8,00,000 is for specific direction that is shall form part of corpus of the trust) for the year ending **31.3.2018.** It invests the entire corpus donations in Bank Deposits and does not spend at all. It accumulates Rs.10,00,000 out of Rs.25,00,000/- for construction of trust hospital and informs the Assessing Officer accordingly. Out of the balance, a sum of Rs.2,50,000 is spent for the objects of the Trust. Further, Rs. 50,000 was donated to PQR charitable trust having similar objects. Another Rs. 25,000 was donated to XYZ charitable trust with a direction that it will form part of corpus of XYZ charitable trust. Determine the taxable income of the Trust for the A.Y. **2018-19**. What will be the tax implication if the trust could spend only Rs.7,50,000 of the amount of accumulated upto **31.3.2023** and Rs.1,00,000 during the previous year **2023-24.**

Solution

Previous Year 2017-18

	Particulars	Rs.
	Voluntary Contribution (excluding corpus donations)	17,00,000
Less:	15% Set apart	2,55,000
	Balance	14,45,000
	Applied for the objects of trust {section 11(1)--> { Rs. 2,50,000 + Rs.50,000 donated to PQR charitable Trust} (Refer Note)	(3,00,000)
	Balance	**11,45,000**
Less:	Accumulation of income for construction of hospital {Section 11(2)}	(10,00,000)
	Total Income	**1,45,000**

Previous Year 2023-24

	Particulars	Rs.
	Amount to be spent for construction of hospital	10,00,000
Less:	Amount actually spent during previous year **2022-23 {fifth year}**	(7,50,000)
		2,50,000
Less:	Amount actually spend during previous year **2023-24 {sixth year}**	(1,00,000)
	Taxable Income	**1,50,000**

Readers Note: As per Explanation 2 to Section 11(1), any donation to another charitable trust with a direction that it shall form part of corpus of trust shall not be treated as application of income in the hands of donor trust. As a result, donation given to XYZ charitable trust amounting to Rs. 25,000 shall not be considered as application of income.

Practical 2

Will your answer differ if charitable trust, out of accumulation donated Rs.1,50,000 to another trust during previous year **2023-24?**

Solution

As per explanation to section 11(2), donation to other trusts out of accumulation shall not be taken to meet the requirements of section 11(2) and therefore same shall not be given credit. Therefore, answer will not differ.

Readers Note:

19.2 CONDITIONS FOR CLAIMING EXEMPTION UNDER SECTION 11 OF THE ACT

Section:- 12A(1) - Effective from A.Y. 2018-19

The income derived from property held under trust wholly for charitable or religious purposes is exempt from tax under section 11 subject to fulfillment of certain conditions.

The conditions are:

(i) The trust or institution shall be registered under section 12AA.

(ii) In a case, trust or institution has been granted registration under section 12AA, and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, then it shall be required to make an application, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and thereupon obtain fresh registration. **(Inserted by Finance Act, 2017 w.e.f. assessment year 2018-9)**

(iii) The accounts of the trust or institution for the previous year shall be audited if the total income before claiming exemption under section 11 and 12 exceeds exemption limit.

(iv) Trust or institution has furnished the return in accordance with the provisions of Section 139(4A), within the time allowed under that section. Referring the provisions of section 139(4A), conclusion is that the trust or institution shall furnish the return of income within the time limit given under section 139(1) of the Act. **(Inserted by Finance Act, 2017 w.e.f. assessment year 2018-19)**

19.3 RESTRICTION ON ALLOWABILITY OF DEPRECIATION OR DEDUCTION OF ASSET IN CERTAIN CIRCUMSTANCES–

Section:- 11(6)

This section provides that 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.

That means, while determining total income of the trust, no depreciation or deduction shall be allowed in respect of an asset, cost of which has been claimed as an application of income, in the same or any other previous year.

19.4 RESTRICTION ON CLAIMING BENEFIT OF EXEMPTION UNDER VARIOUS CLAUSES OF SECTION 10 OF THE ACT

Section:- 11(7)

This section provides that where a trust or an institution has been granted registration for purposes of availing of exemption under section 11, then such trust or institution cannot claim any exemption under any provision of section 10 except exemption relating to agricultural income and exemption under section 10(23C).

That means, as per this amendment, trust or institution registered under section 12AA can claim only following exemptions under section 10.

(i) Section 10(1) : Exemption in relation to agricultural income
(ii) Section 10(23C): Exemption to certain national funds, educational institutions and hospitals.

Therefore, reader shall strictly note that *trust or institution cannot straightaway exclude following incomes while computing total income* because such incomes are not covered by section 10(1) or 10(23C):-

Section 10(34)	:	Dividend Income
Section 10(38)	:	Long Term Capital Gain
Section 10(33)	:	Capital gain on transfer of unit of US 64
Section 10(34A)	:	Capital gain on Buy Back of unlisted shares
And many more …..	:	As covered by section 10 of the Income Tax Act, 1961

Practical 3

During previous year, a public charitable trust registered under section 12AA of I.T. Act, derived gross income of Rs. 26 lakhs, which consists of the following:

Sr. No.	Particulars	Amount (Rs.)
1.	Income from properties held under trust	9,00,000
2.	Voluntary contributions from public	7,00,000
3.	Corpus donations	4,00,000
4.	Dividend income from shares of Indian Companies	1,00,000
5.	LTCG on sale of shares (subject to security transaction tax)	3,00,000
6.	Income from agriculture operations	2,00,000

During the previous year under consideration, the trust had spent Rs. 11,60,000 towards charitable purposes. Further, trust has purchased small office on the beginning of the previous year for Rs. 5,00,000. *(Rate of depreciation is 10%).* Determine the taxable income of the trust.

Solution

In this practical aspect, trust has purchased small office. Therefore, trust has two options:

Option 1: To claim investment in office as application of income and therefore, cannot claim depreciation in view of section 11(6)

Option 2: Not to claim investment in office as application of income and to avail depreciation in respect of such office.

Considering the above two options, answer is as under**:**

Option 1

	Particulars	**Rs.**
	Income from property held under trust	9,00,000
Add:	Voluntary Contribution received from public	7,00,000
Add:	Corpus Donations are not an income	Nil
Add:	Dividend income from shares (Exemption u/s 10(34) not available in view of amendment discussed above)	1,00,000
Add:	LTCG on sale of shares (Exemption u/s 10(38) not available in view of amendment discussed above)	3,00,000
Add:	Income from Agricultural Operations(Exemption u/s 10(1) is available to trust)	Nil
		20,00,000
Less:	15% Set apart	(3,00,000)
	Balance	17,00,0,00
Less:	Applied for the objects of Trust	(11,60,000)
Less:	Applied for purchase of Office	(5,00,000)
	Total Income	**40,000**

Option 2

	Particulars	**Rs.**
	Income from property held under trust	9,00,000
Add:	Voluntary Contribution received from public	7,00,000
Add:	Corpus Donations are not an income	Nil
Add:	Dividend income from shares (Exemption u/s 10(34) not available in view of amendment discussed above)	1,00,000

Add:	LTCG on sale of shares (Exemption u/s 10(38) not available in view of amendment discussed above)	3,00,000
Add:	Income from Agricultural Operations(Exemption u/s 10(1) is available to trust)	Nil
		20,00,000
Less:	Depreciation in respect of Office [10% of Rs.5,00,000]	(50,000)
		19,50,000
Less:	15% Set apart	(2,92,500)
	Balance	16,57,500
Less:	Applied for the objects of Trust	(11,60,000)
	Total Income	**4,97,500**

Reader's Note:

Practical 4

Gangaram Public Charitable Trust runs a hospital. The gross receipts from its operational activities is Rs. 250 Lacs and expenses incurred are Rs. 55 Lacs. Depreciation on various assets used in the hospital is Rs. 15 Lacs. Out of income of Rs. 250 Lacs, the amount accrued but not received during the previous year is Rs. 20 Lacs. The institution earmarked and set apart Rs. 30 Lacs in the month of March to give as advance for a building intended to be taken on lease for expansion of the hospital, but the amount was paid on 7th April of next year, as the lease agreement could not be signed by 31st March of the previous year. The trust has got an ERP package developed and installed by an IT company during the year. The total cost to the trust on account of the ERP package was Rs. 85 Lacs. Advice the trust on its total income, if the trust has incurred Rs. 12 Lacs for purchase of a number of desktop and laptop computers for use in the hospital.

Solution

Computation of total income of trust

Particulars	**Rs. in lakhs**
Income derived from property held under trust	250
Less: Expenses incurred in earning income	(55)
Less: Depreciation on used assets	(15)
Business Income	180
Less: 15% to be set apart (15% of Rs.180)	(27)
Balance	153
Less: Income not received during the year [Note 3]	(20)
	133
Less: Non-application of income resulting from non-signing lease agreement [Note 1]	(30)
Available amount	103
Less: Development and installation expenses of ERP package [Note 2]	(85)
Less: Purchase of desktop and laptop computers [Note 2]	(12)
Taxable income	**6**

Notes:

1. In **CIT v. Trustees of H.E.H The Nizam's Charitable Trust [1981] 131 ITR 497 (AP),** it was held that in order to secure exemption under section 11, it is sufficient if the assesse provides or sets apart the funds for a charitable purpose and it is not necessary that the assessee must have spent the amount during the relevant assessment year.
2. In **S.R.M.M.CT.M. Tirupaani Trust v. CIT [1998] 230 ITR 636 (SC),** it was held that for the purpose of claiming exemption u/s 11, a trust can apply its income either on capital expenditure or on revenue expenditure.
3. Income not received during the current year may be spent in the year of receipt or in the immediately following year. For this purpose, the option has to be exercised in writing before the expiry of due date of submission of return of income.

Reader's Note:

19.5 INCOME OF POLITICAL PARTY

Section:- 13A - Effective from A.Y. 2018-19

(1) Political party means an AOP or BOI citizens of India registered or deemed to be registered with the Election Commission of India as a political party

(2) Following categories of income are not included in computing total income:

- **(a)** Income under the head "House Propery", "Capital Gain" and "Other sources" are exempt from tax
- **(b)** Any income by way of voluntary contribution

(3) Conditions for availing the exemption:

- **(a)** The political party keeps and maintains such books of account and other documents as would enable the A.O. to properly deduce its income therefrom
- **(b)** The political party keeps and maintains a record of each voluntary contribution (except contribution by way of electoral bond) in excess of Rs. 20,000/- and of the names and addresses of persons who have made such contirbutions
- **(c)** The accounts of the political pary are audited by a chartered accountant or other qualified accountants.
- **(d)** The treasurer of a political party shall in each financial year prepare a report in respect of contribution received by the political pary in excess of Rs. 20,000/- from any person / company in that year and submit it (before due date of submission of return of income) to the Election Commission.
- **(e)** no donation exceeding Rs. 2,000 is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond. (**inserted by Finance Act, 2017 w.e.f. A.Y. 2018—19)**
- **(f)** It shall furnish the return of income in accordance with the provisions of section 139(4B) on or before the due date under section 139(1) of the Act. (**inserted by Finance Act, 2017 w.e.f. A.Y. 2018—19)**

20 – RETURN, ASSESSMENT, REASSESSMENT AND RECTIFICATION

20.1 RETURN OF INCOME

Section:- 139(1)

(i) Every company shall furnish return of income in respect of its income or loss for every previous year.

(ii) Every firm shall furnish return of income in respect of its income or loss for every previous year.

(iii) Every other person, whose total income or total income of any other person in respect of which he is assessable exceeds the maximum amount not chargeable to tax, shall furnish a return of income. [For this proviso, total income = Total income without giving effect to the provisions of sections 10A, 10(38) and sections 80C to 80U]

(iv) Every resident person shall mandatorily furnish return of income or loss if he or it 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.

Exceptions:

1. This clause is not applicable to resident but not ordinary resident

2. This clause is also not applicable to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includible in the income of the person referred to in clause (a) above.

(v) The return of income shall be filed in the prescribed form containing prescribed particulars within the prescribed time.

Practical 1

State whether the following persons have to mandatorily furnish their return of income for the relevant assessment year.

(a) Mr. Ashok, an individual, aged 50 years, whose gross total income before deduction under section 80C is Rs. 2,60,000 and total income after deduction under section 80C is Rs.1,05,000.

(b) Mr. Jayesh earned long term capital gain of Rs.3,80,000 [Eligible for exemption u/s 10(38)]. He does not have any other income.

(c) M/s. N.R.K & Co., a firm, which has incurred a loss.

Solution

(a) As per fourth proviso to section 139(1), every person (other than company and firm) whose total income or total income of any other person in respect of which he is assessable exceeds the maximum amount not chargeable to tax, shall furnish a return of income.

For this proviso, total income means total income without giving effect to the provisions of sections 10A, 10(38) and sections 80C to 80U.

The total income before giving effect to the 80C of Mr. Ashok exceeds basic exemption limit of Rs.2,50,000. Therefore, Mr. Ashok is required to furnish return of income.

(b) The total income before giving effect to the 10(38) of Mr. Jayesh exceeds basic exemption limit of Rs.2,50,000. Therefore, Mr. Jayesh is required to furnish return of income.

(c) It is compulsory for firms to furnish return of income or loss on or before the due date. Therefore, M/s N.R.K &Co., is required to furnish return of loss.

Readers Note:

Practical 2

Mr. Mohan is engaged in growing & manufacturing Tea. His composite income from this activity under the head "PGBP" for the concerned previous year is Rs.6,25,000. Advise him regarding filing return u/s 139(1) assuming that he does not have any other income.

Solution

As per circular No. 10, 2003, CBDT clarified that when the assesse is engaged in growing and manufacturing tea, coffee or rubber then only taxable income out of composite income shall be taken into consideration while deciding whether such Individual/HUF should submit return or not.

In this case taxable income is 40% of Rs. 6,25,000 = Rs. 2,50,000 and therefore Mr. Mohan is not required to submit return since taxable income does not exceed exemption limit of Rs.2,50,000.

Readers Note:

Due Dates for filing Income Tax Return under section 139(1)

Different situations	Due date of submission of return
1. Where the assessee is required to furnish a report in Form No. 3CEB under section 92E	November 30 of assessment year
2. Where the assessee is a company [not required to furnish report under section 92E]	September 30 of assessment year
3. Where the assessee is a person other than a company [not required to furnish report under section 92E]	
3.1 where accounts of the assessee are required to be audited under this Act or under any other law	September 30 of assessment year
3.2 where the assessee is a "working partner" in a firm whose accounts are required to be audited under this Act or under any other law	September 30 of assessment year
3.3 In any other case	July 31 of assessment year

(vi) Without prejudice to the provisions of this Act, where a person required to furnish a return of income under section 139, fails to file the same within the time prescribed under section 139(1), then he shall pay fee of,—

(a) five thousand rupees, if the return is furnished on or before the 31st day of December of the assessment year

(b) ten thousand rupees in any other case:

However, if the total income of the person does not exceed five lakh rupees, the fee payable under this section shall not exceed one thousand rupees.

The provisions of this section shall apply in respect of return of income required to be furnished for the assessment year commencing on or after the 1st day of April, 2018.

This fee is in addition to the interest payable under section 234A

20.2 RETURN OF LOSS

Section:- 139(3)

- A loss sustained by the assessee in any previous year under the
  (a) Section 72(1) - Profits and Gains of business or profession
  (b) Section 73(2) - Speculation business
  (c) Section 73A(2)-Specified business
  (d) Section 74A(3) - Owning and maintaining of horse races
  (e) Section 74(3) - Capital Gains
  can be carried forward only if the return is furnished within the time allowed u/s. 139(1).
- Section 139 (3) read with section 80 is not applicable to the followings:
  (a) Unabsorbed depreciation u/s 32(2)
  (b) Loss under the head "Income from house property" u/s. 71B
  That means above mentioned unabsorbed allowance / losses can be carried forward even if return is not furnished within the time allowed under section 139(1).

SECTION 119-POWERS OF CBDT

The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorize any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

Circular No.8 / 2001 dated 16th May 2001

Claim for carry forward of losses can be enjoyed by the assessee even if return is not filed on or before due date u/s 139(1), if delay is due to genuine hardship. The Assessing Officer with the prior approval of

CIT can condone delay u/s. 119(2)(b) in respect of a loss up to Rs.10,00,000. When loss exceeds Rs. 10,00,000 but does not exceed Rs. 50,00,000 then A.O. should obtain the prior approval of CCIT. Where loss exceeds Rs. 50,00,000 then prior approval of Board is required.

20.3 BELATED RETURN

Section:- 139(4)

Any person who has not furnished his return of income within the time allowed u/s. 139(1), then, the belated return under this section may be furnished at any time before the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

20.4 RETURN BY CHARITABLE TRUST

Section:- 139(4A)

The charitable or religious trust whose income exceeds the maximum amount that is not chargeable to income tax before giving exemption u/s. 11 and 12 shall furnish its return within the prescribed period.

20.5 RETURN BY POLITICAL PARTIES

Section:- 139(4B)

The chief executive of every political party shall furnish the return of income in the prescribed form within the prescribed due date if its total income exceeds the maximum amount not chargeable to tax before giving effect to the provision u/s. 13A.

20.6 RETURN BY CERTAIN ASSOCIATIONS/INSTITUTIONS

Section:- 139(4C)

The following entities shall furnish their return of income if the total income, before giving effect to the exemption under section 10, exceeds exemption limit

(i) Research association –Section 10(21)

(ii) News agency – Section 10 (22B)

(iii) association or institution referred to in Section 10(23A) / (23B)

(iv) **Funds established for welfare of employees or their dependents notified by the Board under section 10(23AAA)**

(v) Fund or Institution, University or other educational institution or hospital or other medical Institution referred to under section 10(23C) *(iiiab)/ (iiiac)/ (iiiad)/(iiiae)*/(iv)/(v)/(vi)/(via)

(vi) *Mutual Fund referred to in section 10(23D)*

(vii) *Securitisation trust referred to in section 10(23DA)*

(viii) **Investor protection fund set up by commodity exchange - Section 1023(EC)**

(ix) **Investor protection fund set up by depository - 1023(ED)**

(x) **Core Settlement Guarantee fund set up by Clearing Corporation - Section 1023(EE)**

(xi) **Various Boards (Tea Board/ Coffee Board..) and Certain Authorities referred to in Section 10(29A)**

(xii) *Venture capital company or venture capital fund referred to in section 10(23FB)*

(xiii) Trade Union or association covered under section 10(24).

(xiv) Section 10(29A)

(xv) Any body or authority or board or trust referred to in section 10 (46)

(xvi) Infrastructure debt fund referred to in section 10(47)

Practical 3

Discuss obligation of followings to file income tax return

Sr. No.	Name of the entity	Total income before giving effect to the provisions of section 10 (Rs.)
1.	Competition Commission of India	50.25 Crores
2.	Prasar Bharati	10.22 Crores
3.	Reliance Mutual Fund	22.78 Crores
4.	Trade Union	2.08 lacs
5.	Insurance Regulatory Development Authority (IRDA)	8.05 Crores

Solution

Sr. No.	Name of the entity	Total income before giving effect to the provisions of section 10 (in Rs.)	Section under which entity is eligible for exemption	Whether entity falls in the list of section 139(4C)?	Whether return is required to be filed?
1	Competition Commission of India	50.25 Crores	Section 10(46)	Yes	Yes
2	Prasar Bharati	10.22 Crores	Section 10(23BBH)	No	No
3	Reliance Mutual Fund	22.78 Crores	Section 10(23D)	Yes	Yes
4	Trade Union	2.08 lacs	Section 10(24)	Yes	No because income does not exceed exemption limit

5.	Insurance Regulatory and Development Authority (IRDA)	8.05 Crores	Section 10(23BBE)	No	No

Readers Note:

20.7 REVISED RETURN

Section:- 139(5)

Conditions for filing revised return

(i) The original return must have been furnished under section 139(1) or section 139(4) and

(ii) The assessee discovers an omission or wrong statement therein.

then, the revised return under this section may be furnished before the end of the relevant assessment year or before the completion of assessment, whichever is earlier. **(modified by Finance Act, 2017)**

Important consequence once revised return is filed: As per various judicial pronouncements, once a return is furnished under this sub-section, all the provisions of the Income-tax Act, 1961 shall apply as if such return has been furnished u/s. 139(1)/(4).

Fill in the blanks:

(a) Belated return _______ be revised (can/cannot)

(b) Revised return replaces __________ return. [**Dhampur sugar mills Ltd. V CIT *(1973) 90 ITR 236 (All)].***

(c) Filing of a revised return after discovery of the omission or wrong statement is not by itself sufficient to bring the revised return within the ambit of section 139(5) .A further requirement is that this omission or wrong statement in the original return must be due to a _________ (bonafide / Malafide) inadvertence or mistake on the part of the assessee. [***Sunanda Ram Deka v. CIT (1994) 210 ITR 988 (Gau)].***

(d) Second revised return _______ be submitted (Can/Cannot)

(e) Original return filed under section 139(1) declaring loss of Rs. 8,00,000. However, assessee failed to include Loss from Business D amounting to Rs. 3,50,000 and therefore submitted revised return declaring total loss of Rs. 11,50,000. Assessee is entitled to carry forward loss of Rs.______________. **[CIT Vs. Periyar District Co-operative Milk Producers Union Ltd. [2004] 266 ITR 705 (Mad.)]**

Solution:

Can (b) original (c) bonafide (d) Can (e) Rs. 11,50,000

20.8 DEFECTIVE RETURN

Section:- 139(9)

This section has an overriding effect over all the provisions of Income Tax Act

Rectification of Defect:-

The Assessing Officer may at his discretion intimate to the assessee the defect in the return.

Time Limit for rectification: - The time limit for rectification shall be **15 days from the date of such intimation** or such extended period allowed by the Assessing Officer.

The assessee fails to rectify the defect within 15 days or such extended time limit	*Assessee rectifies the defect after the expiry of 15 days or such extended time but before the assessment is made*
(i) The return shall be treated as an invalid return (ii) The provisions of this Act shall apply as if the assessee had failed to furnish the return	The Assessing Officer may condone the delay and treat return as a valid return.

As per explanation to section 139(9), a return of income shall be regarded as defective in the following cases:

(a) The annexure, statements and columns in the return of income has not been duly filled in.

(b) The return is not accompanied by the following:

- (i) Statement showing the computation of tax.
- (ii) Audit report u/s. 44AB or
- (iii) Proof of TDS/TCS, advance tax or self – assessment tax paid.
- (iv) Proof the compulsory deposit made under Compulsory Deposit Scheme.
- (v) Audited Profit and Loss account, Balance Sheet and Auditor's Report (including Cost Audit Report under section 233B of the Companies Act) if the accounts of the assessee have been audited under any other law.
- (vi) ***Where regular books of account are maintained by the assessee:-***
  - i. Manufacturing Account, Trading Account, Profit and Loss account, or Income and Expenditure account or similar account and Balance Sheet
  - ii. In case of the proprietary business, personal account of the proprietor; in case of firm, AOP/BOI, the accounts of the partners/members and in case of a partner / member his personal account in the firm, AOP/BOI.

(vii) **Where *regular books are not maintained by the assessee:-***

i. statement indicating the turnover, gross receipts, gross profit, expenses and net profit and the basis of such computation

ii. Statement of sundry debtors, creditors, stock in trade and cash balance at the end of the previous year

NOTE:

(1) Due to provisions of section 139C/139D and the present ITR forms, it is not possible to attach any certificates, audit reports, computation of total income, financial statements, and proof of various pre-paid taxes. Therefore, practically, return of income may not be regarded as defective because of non-fulfillment of requirements mentioned at point no. (c) above.

(2) Relevant portion from Notification No. 3/2012, dated 04-01-2012

(i) In case of a defective return, the Commissioner shall intimate this to the person through e-mail or by placing a suitable communication on the e-filing website.

(ii) A person shall comply with the notice regarding defective return by uploading the rectified return within the period of time mentioned in the notice.

(iii) The Commissioner may, in order to avoid hardship to the person, condone the delay in uploading of rectified return.

(iv) In case no response is received from the person in reply to the notice of defective return, the Commissioner may declare a return as not having been uploaded at all or process the return on the basis of information available

SECTION 292B: Return, Notice etc. not to be invalid on certain grounds.

In this connection, a reference may be made to section 292B of the Income-tax Act which provides that no return of income, assessment, notice, summons or other proceedings furnished, made, issued or taken shall be invalid merely by reason of mistake, defect or omission in such return of income, order, notice, summons etc.

The provision in section 139(9), however, overrides other provisions of the income-tax Act (including section 292B) in this regard and in a case where any of the specified defect is not removed within the time allowed, the return shall be treated as an invalid return and the provisions of the Income-tax Act apply as if the assessee had failed to furnish the return. – ***Circular No. 281, dated 22-9-1980.***

Fill in the blanks:

(a) The defects mentioned in the section 139(9) are ________ (illustrative / exhaustive) [***Rai Bahadur Bissesswarlal Motilal Malwasie Trust 195 ITR 825 [1992]*****(Cal.)]**

(b) The assesse submitted e-return. But it is not verified at all. Hence, the return was an absolutely ________ (Invalid/Defective) as it had a glaring inherent defect which could not be cured inspite of the deeming effect of section 292B. **[CIT V. Harjinder Kaur 310 ITR 71 (P & H)]**

Solution: (a) illustrative (b) Invalid

20.9 QUOTING OF AADHAAR NUMBER

Section:- 139AA

(1) Every person who is eligible to obtain Aadhaar number shall, on or after the 1st day of July, 2017, quote Aadhaar number—
   (i) in the application form for allotment of permanent account number;
   (ii) in the return of income:

(2) However, where the person does not possess the Aadhaar Number, the Enrolment ID of Aadhaar application form issued to him at the time of enrolment shall be quoted in the application for permanent account number or, as the case may be, in the return of income furnished by him.

(3) Every person who has been allotted permanent account number as on the 1st day of July, 2017, and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to such authority in such form and manner as may be prescribed, on or before a date to be notified by the Central Government in the Official Gazette:
In case of failure to intimate the Aadhaar number, the permanent account number allotted to the person shall be deemed to be invalid and the other provisions of this Act shall apply, as if the person had not applied for allotment of permanent account number.

(4) The provisions of this section shall not apply to such person or class or classes of persons or any State or part of any State, as may be notified by the Central Government in this behalf, in the Official Gazette.

- **Notification No. 37/2017, F. No. 370133/6/2017-TPL**
  As per Notification No. 37/2017, the provisions of section 139AA shall not apply to an individual who does not possess the Aadhaar number or the Enrolment ID and is:-
  (i) residing in the States of Assam, Jammu and Kashmir and Meghalaya;
  (ii) a non-resident as per the Income-tax Act, 1961;
  (iii) of the age of eighty years or more at any time during the previous year;
  (iv) not a citizen of India

20.10 RETURN UNDER SECTION 139 BY WHOM TO BE VERIFIED

Section:- 140

ASSESSEE	VERIFICATION TO BE DONE BY
Individual	Individual himself
When he is absent from India or mentally incapacitated or for any other reason he is not able to verify	His guardian or any other person competent to act on his behalf duly authorized by him
H. U. F	Karta

Karta is absent from India or he is mentally incapacitated	Any other adult member of the family
Company Managing Director is unable to verify or there is no M.D. Company is not resident in India Company is in Liquidation Company's management is taken over by the government	Managing Director Any other director Holder of a valid Power of Attorney The Liquidator The Principal Officer
Partnership Firm	Managing Partner or any other partner not being a minor
Limited liability partnership firm Where for any unavoidable reason such designated partner is not able to verify Where there is no designated partner	Designated partner Any Partner Any partner
Local authority	Principal Officer
Political Party	Chief executive officer
Association of Persons	Any member or principal officer
Any other person	That person or some other person who is competent to verified on his behalf.

20.11 SELF – ASSESSMENT TAX

Section:- 140A

- An assessee is required to submit his return of income under section 139 or 142 or 148 or 153A.
- Self-Assessment tax payable by the assessee shall be worked out in the following manner:-

Particulars	Rs.
Compute Total Income under Income Tax Act	XXX
Compute tax on total income as per rates in force together with SC and EC	XXX
Less: TDS / TCS /Advance tax/relief under section 90,91, 90A/Tax credit under sec.115JAA / Tax credit under section 115JD (AMT)	XXX
Add: Interest u/s 234A/ 234B/ 234C	XXX
Add: Late Fee u/s 234F	XXX
Self-Assessment tax payable (Amount Refundable)	XXX

- The return of income is to be accompanied by proof of payment of tax together with interest and fee.
- Where the amount paid by the assessee falls short of the aggregate of tax, interest and fee (fee under section 234F of the Act), the amount so paid shall first be adjusted towards the fee payable and thereafter towards interest and the balance, if any, shall be adjusted towards tax.
- After a regular assessment under section 143 or 144 or an assessment under section 153A has been made, any amount paid under section 140A shall be deemed to have been paid towards such regular assessment.
- If any assessee fails to pay whole or any part of such tax, interest or fee in accordance with this section, he shall be deemed to be an assessee in default and all the provision of the Act shall apply accordingly.

SECTION 221: Penalty payable when tax in default

When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub – section (2) of section 220, be liable, by way of penalty, to pay such amount as the Assessing Officer may direct, and in the case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct, so however, that the total amount of penalty does not exceed the amount of tax in arrears.

However, before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard.

Further, where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section.

SECTION 222: Certificate to be drawn by TRO

When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in Form No. 57 specifying the amount of arrears due from the assessee (such statement being hereafter referred to as "certificate") and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule.

(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.

20.12 INQUIRY BEFORE ASSESSMENT

Section:- 142(1)

Notice for filing return of income

Notice shall be issued to any person requiring him to furnish return of income if the said person has not filed the return of income within the time allowed u/s. 139(1) or before the end of relevant assessment year.

Considering the effect of proviso to section 142 (1) (i), such notice can be issued even after the expiry of assessment year.

The Assessing Officer may serve notice on any person, **whether he has filed return or not** requiring him to:

Requirement	Restrictions
Produce or cause to be produced, such accounts or documents as he may require	Accounts shall not relate to **a period more than three** years prior to the previous year.
Furnish such information in writing as he may require including a statement of all assets and liabilities whether included in the accounts or not.	Previous approval of the Joint Commissioner shall be obtained before requiring the assessee to furnish a statement of assets and liabilities not included in the accounts.

20.13 INQUIRIES

Section:- 142(2)

The Assessing Officer can make such inquiries necessary for obtaining full information regarding income or loss of any person.

20.14 SPECIAL AUDIT

Section:- 142(2A)

The direction for special audit can be issued at any stage of proceedings if

(i) 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 in the interest of revenue, is of the opinion that the accounts shall be audited.

(ii) Prior approval of the Chief Commissioner or Commissioner shall be obtained.

(iii) However, the Assessing Officer shall not direct the assessee to get the accounts audited unless the assessee has been given a reasonable opportunity of being heard.

Nomination of Auditor and expenses of audit

(i) The Chief Commissioner / Commissioner shall nominate the auditor and his decision in this regard is final.

(ii) On or after the 1st day of June, 2007, the expenses of, and incidental to, such audit (including the remuneration of the Accountant) shall be determined by the Chief Commissioner or Commissioner and the expenses so determined shall be paid by the Central Government.

Time limit for submission of audit report and law relating to re-audit.

(i) The audit report shall be furnished within the period specified by the A. O. or extended time. Such extension can be done either by the A.O. *on his own motion (Amendment Finance Act, 2008)* or on application made by assessee.

(ii) The total time limit (including such extended time) shall not exceed 180 days.

(iii) Assessing Officer can direct the assessee to get his accounts audited under this section even if the accounts are already audited under this Act or under any other law.- ***Super Cassettes Industries Ltd. V CIT (1999) 102 Taxman 202 (Delhi).***

20.15 OPPORTUNITY OF BEING HEARD

Section:- 142(3)

The assessee shall be given a reasonable opportunity of being heard in respect of any material gathered on inquiry u/s.142/142(2A) and proposed to be used in the assessment except assessment to be completed u/s. 144.

Practical 4

Mr. X had not filed return for A.Y. ***2018-19*** though due date was ***30/9/2018.*** He was in receipt of notice u/s 142(1) requiring him to file return on or before ***15/12/2018.*** Mr. X didn't respond. A.O. issued another notice u/s 142(1) requiring him to file return on or before ***31/12/2018.***He filed return on ***15/2/19.*** On ***19/2/19*** he received an assessment order u/s 144 and order was signed by A.O. on ***13/2/19.*** Mr. X challenged assessment order on following grounds:

(i) Assessment had been framed without giving opportunity of being heard.

(ii) A.O. had not acted upon the return which was very well in time as per section 139(4).

Discuss validity of contentions raised by Mr. X.

Solution

(i) If notice u/s 142(1) is received and it is not complied with then as per sec 142(3) (opportunity of being heard), no opportunity of being heard is to be given to the assessee particularly when assessment is completed u/s 144.

(ii) As per provision of sec 139(4) belated return can be submitted –

before the end of relevant A.Y. ***(31/3/2019)***.

Or

before completion of assessment. ***(13/2/2019)***.{$whichever\ is\ earlier$}

However, Mr. X submitted return on ***15/2/2019***. Therefore, return submitted by Mr. X is not valid.

Hence, both the contentions raised by Mr. X are not tenable.

Readers Note:

20.16 ESTIMATES BY VALUATION OFFICER IN CERTAIN CASES

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 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, 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 judgment, 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, 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.

(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.

Practical 5

During the course of scrutiny proceedings, MNO Limited submitted all the details called for including books of accounts of the company. During the year under scrutiny, MNO Limited had made investment in immovable property. The Assessing Officer was satisfied with the books of accounts and therefore accepted book results but he would like to refer matter to the valuation officer for ascertaining fair market value of captioned immovable property. MNO Limited objected such reference on the ground that Assessing Officer cannot refer matter to the valuation officer without the books being first rejected.

Discuss the validity of objections raised by MNO Limited.

Solution

As per provisions of section 142A(2), the Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee. Considering this, the objection raised by MNO Limited is not sustainable.

Readers Note:

20.17 INTIMATION / POPULARLY KNOWN AS SUMMARY ASSESSMENT

Section:- 143(1)

(1) Where a return has been made under section 139, or in response to a notice under section 142(1), such return shall be processed in the following manner, namely:-

(a) the total income or loss shall be computed after making the following adjustments, namely;

i. any arithmetical error in the return or
ii. any incorrect claim, if such incorrect claim is apparent from any information in the return;
iii. disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
iv. disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
v. disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or
vi. addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made.

(b) the tax , interest and fee shall be computed on the basis of the total income computed under clause (a) above;

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and fee, if any, computed under clause (b) above by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax , interest and fee;

(d) the intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable, or the amount of refund due to, the assessee after aforesaid corrections;

(e) the amount of refund due to the assessee shall be granted to him.

Provided that intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax, interest or fee is payable by, or no refund is due to him.

Time limit

No intimation shall be sent under this section after the expiry of one year from the end of the financial year in which the return is made. The acknowledgment of 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.

Meaning of incorrect claim

It means such claim on the basis of an entry, in the return-

(a) of an item, which is inconsistent with another entry of the same or some other item in such return;

(b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished;

(c) in respect of a deduction, where such deduction exceeds specified statutory limits which may have been expressed as monetary amount or percentage or ratio or fraction.

(1A) For the purpose of processing the returns as mentioned above, the Board may make a scheme for centralized processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee.

(1B) For the purpose of giving effect to the scheme, the Central Government may, by notification, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. Further, such notification may be issued at any time but not after 31st March, 2012.

(1C) Every such notification shall be laid before each house of Parliament.

(1D) Notwithstanding anything contained in section 143(1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under section 143(2).

Provided that the provisions of this sub-section shall not apply to any return furnished for the assessment year commencing on or after the 1st day of April, 2017.

20.18 NOTICE FOR SCRUTINY/ REGULAR ASSESSMENT

Section:- 143(2)

To ensure that the assessee has not

(a) understated the income or (b) computed excessive loss or (c) underpaid the tax in any manner;

The Assessing Officer or the prescribed income-tax authority may **serve a notice** on the assessee requiring him on a date to be specified in this notice, either:

(i) to attend the office of Assessing Officer; or (ii) to **produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.**

Time limit:- No notice shall be **served after the expiry of 6 months from the end of the financial year in which the return is furnished.**

20.19 SCRUTINY/REGULAR ASSESSMENT

Section:- 143(3)

(i) The Assessing Officer shall take into account all relevant material gathered by him and also the evidence produced by the assessee.
(ii) On this basis, he shall make an assessment of the total income or loss of the assessee.
(iii) On the basis of such assessment, he shall determine the sum payable by the assessee or refund due to him.

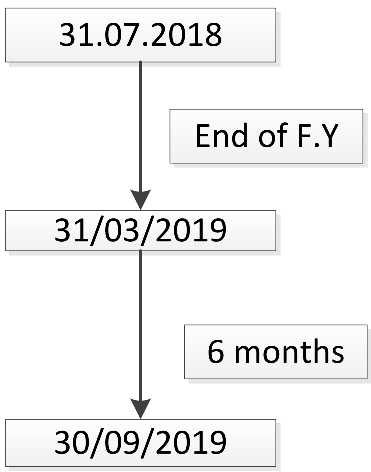
Practical 6

Mr. Joy filed return for the **A.Y. 2018-19** on **31.07.2018**, A.O. thereafter served notice u/s 143(2) requiring him to produce evidence. Notice was dated **30/09/2019**. However, it was served to Mr. Joy on **10/10/2019.** During the course of hearing, Mr. Joy challenged the jurisdiction of assessing officer on the ground that the assessing officer failed to serve notice under section 143(2) in time. Whether contention raised by Mr. Joy is valid?

Solution

Whenever assessment is sought to be made, assessing officer must assume proper jurisdiction over the case of taxpayer, by issuing and serving valid notice as per the provisions of the Income Tax Act, 1961.

Section 143(2) requires service of notice within six months from the end of financial year in which return is furnished.



Considering the above time limit, notice for scrutiny must be served to Mr. Joy on or before **30/9/2019,** while in present case, it has been served on **10/10/2019.** Therefore, contention raised by Mr. Joy for challenging jurisdiction of the assessing officer is valid.

As a result, any order passed by the assessing officer under section 143(3) of the Act, in case of Mr. Joy, for the **A.Y. 2018-19** shall be considered as null and void.

Readers Note:

Practical 7 **Section 143(1) – section 143(2)**

Mr. X filed return for ***A.Y.2018-19*** on ***15/7/2018*** declaring income by Rs.3,51,000. A.O. issued intimation u/s 143(1) and determined income at Rs. 3,61,000. A.O. therefore raised notice of demand of Rs.1,200. Intimation was served to assessee on ***10/12/2018***. Assessee met demand in full on ***12/12/2018***. A.O. thereafter served notice u/s 143(2) on ***15/9/2019*** requiring him to produce the evidence on which Mr. X relied in support of the return furnished. Mr. X challenged validity of notice on the ground that once summary assessment is done, notice for scrutiny assessment cannot be served. Whether contention raised by Mr. X is valid?

Solution

Intimation u/s 143(1) in fact is not an assessment, it is merely intimation. It is a mechanical process adopted by Income Tax department to make certain adjustments based on information contained in the return like disallowance of excess depreciation, reducing claim of 80C, wrong calculation of tax etc. In this entire process, neither taxpayer nor the evidences are called upon to verify the correctness of return filed. Therefore, the contention raised by Mr. X challenging the scrutiny notice is not valid.

Readers Note:

Practical 8 **SECTION 143(1)–Section 143(1D)-Section 143(3)-GEB's Case**

Mr. X, filed return for ***A.Y. 2018-19*** on ***31/8/18.*** He received notice for scrutiny on ***31/12/18*** requiring him to produce books of a on ***15/1/19.***He responded and during the course of hearing, A.O. found error in rate of depreciation charged on plant and machinery. Therefore, assessing officer would like to issue intimation of demand u/s 143(1). Advice assessing officer.

Solution

<u>Position before amendment made by Finance Act, 2017</u>

As discussed in earlier Practical, 143(1) is merely intimation while 143(3) is an assessment. Therefore income assessed u/s 143(3) prevails over income determined/ processed u/s 143(1).

Further, **Supreme Court in case of CIT v. Gujarat Electricity Board 260 ITR 84 (2003)** held that Once a regular assessment proceeding has been commenced under section 143(2), there is no need for a summary proceeding under section 143(1).

Considering the above, the assessing officer is advised not to issue intimation under section 143(1) but to make addition in relation to depreciation while passing order under section 143(3).

<u>Position after amendment made by Finance Act, 2017</u>

Section 143(1D), however has been amended and it states that the return shall be processed under section 143(1) even though notice under section 143(2) has been issued.

Considering the amendment, the assessing officer is advised to issue intimation under section 143(1) before passing order under section 143(3) of the Act.

Readers Note:

20.20 BEST JUDGMENT ASSESSMENT

Section:- 144

When Best Judgment assessment can be made?

Under Section 144	Under Section 145(2)
Where a person fails to (i) Furnish a return u/s. 139 or (ii) Comply with **all the terms** of notice issued u/s. 142(1) or (iii) Comply with a direction issued u/s. 142(2A) i.e. Audit of accounts (iv) Comply with **all the terms** of a notice issued u/s. 143(2)	(a) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee (b) No method of accounting has been regularly followed by the assessee (c) Where the "income computation and disclosure standards" notified by the Central Government have not been regularly followed by the assessee.

Opportunity of being heard:-

(i) The assessee will be given an opportunity by a show cause notice as to why assessment shall not be completed to the best judgement of the Assessing Officer.

(ii) **Opportunity need not be given where notice u/s. 142(1) has already been issued.**

20.21 TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND CERTAIN PERIODS ARE EXCLUDED FROM THE TIME LIMIT FOR PASSING ASSESSMENT ORDERS

Section:- 153(1), 153(4) and Explanation 1 to Section 153

1. **Time limit for completion of assessment under section 143(3)/ 144**

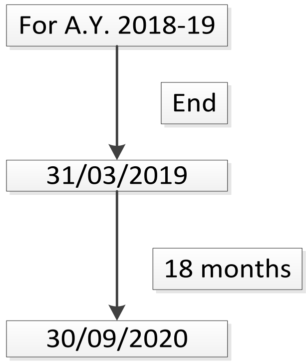
   Within 21 months **from** the end of relevant assessment year.

2. **The abovementioned time limit for completion of assessment has been modified by Finance Act, 2017 as under:**

Assessment Year	Abovementioned time limit of 21 months shall be substituted by
2018-19	18 months
2019-20 and onwards	12 months

3. Time limit mentioned at Sr. No. 1 and 2 shall be extended by further twelve months, in case where reference is made to TPO under section u/s 92CA (1).

Let's take an illustration that for the assessment year **2018-19,** the assessing officer shall complete the assessment under section 143(3) or 144 on or before



However, the following time periods are excluded from the time limit for passing assessment orders.

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(iii) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of section 10(21), section 10(22B), section 10(23A), section 10(23B) or section 10(23C) and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, under those clauses is received by the Assessing Officer; or

(iv) 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 Principal Commissioner or Commissioner; or

(v) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under section 142A(1) and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

(vi) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him; or

(vii) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

(viii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under section 245Q(1) and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under section 245R(3); or

(ix) the period commencing from the date on which an application is made before the Authority for Advance Rulings under section 245Q(1) and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under section 245R(7); or

(x) 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 Principal Commissioner or Commissioner or a period of one year, whichever is less; or

(xi) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer.

After extending, if the period available to the Assessing Officer for making an order is less than sixty days, then same shall be extended to sixty days.

Similarly, if the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order is less than sixty days, then same shall be extended to sixty days.

Similarly where a proceeding before the Settlement Commission abates under section 245HA, if the period available to the Assessing Officer for making an is less than one year, then the same shall be extended to one year. Further, for the purposes of determining the period of limitation under sections 149, 153B, 154, 155 and for the purposes of payment of interest under section 244A, this provision shall also apply accordingly.

Practical 9

For the **A.Y. 2018-19**, the case of Good Better Best Private Ltd. was selected under scrutiny. During scrutiny proceedings, the Assessing Officer, on **15-12-20**, had made a reference to Valuation Officer under section 142A for determining fair market value under section 69 of Income Tax Act. Thereafter, valuation officer determined fair market value and sent valuation report to Assessing Officer on **30-01-2021**. Find out the revised time limit available with assessing officer for completion of assessment under section 143(3).

Solution

Step 1: **Regular Time Limit under section 153**

18 months from the end of Assessment Year

End of the Assessment year + 18 months

31.3.2019 + 18 months

30.09.2020

Step 2: **Revised Time Limit**

Original Time Limit + days lost (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**.)**

30.09.2020 + 46 days

15.11.2020

Step 3: **Minimum Time Limit**

Day on which authority can reassume jurisdiction + 60 days

30.01.2021 + 60 days

31.03.2021

Step 4: **Effective Time Limit**

Step 2 or Step 3 whichever is later

31.03.2021

Readers Note:

20.22 NOTICE OF DEMAND

Section:- 156

When any tax, interest, penalty or any other sum is payable in consequence of any order passed, the Assessing Officer shall serve upon the assessee, a notice of demand in the prescribed form specifying the sum so payable.

Where any sum is determined to be payable by the assessee or by the deductor or by the collector under section 143(1) or section 200A (1) or 206CB(1), then intimation issued under those sections shall be deemed to be a notice of demand for the purpose of section 156.

SECTION 220(1): Time limit for payment of tax mentioned in demand notice

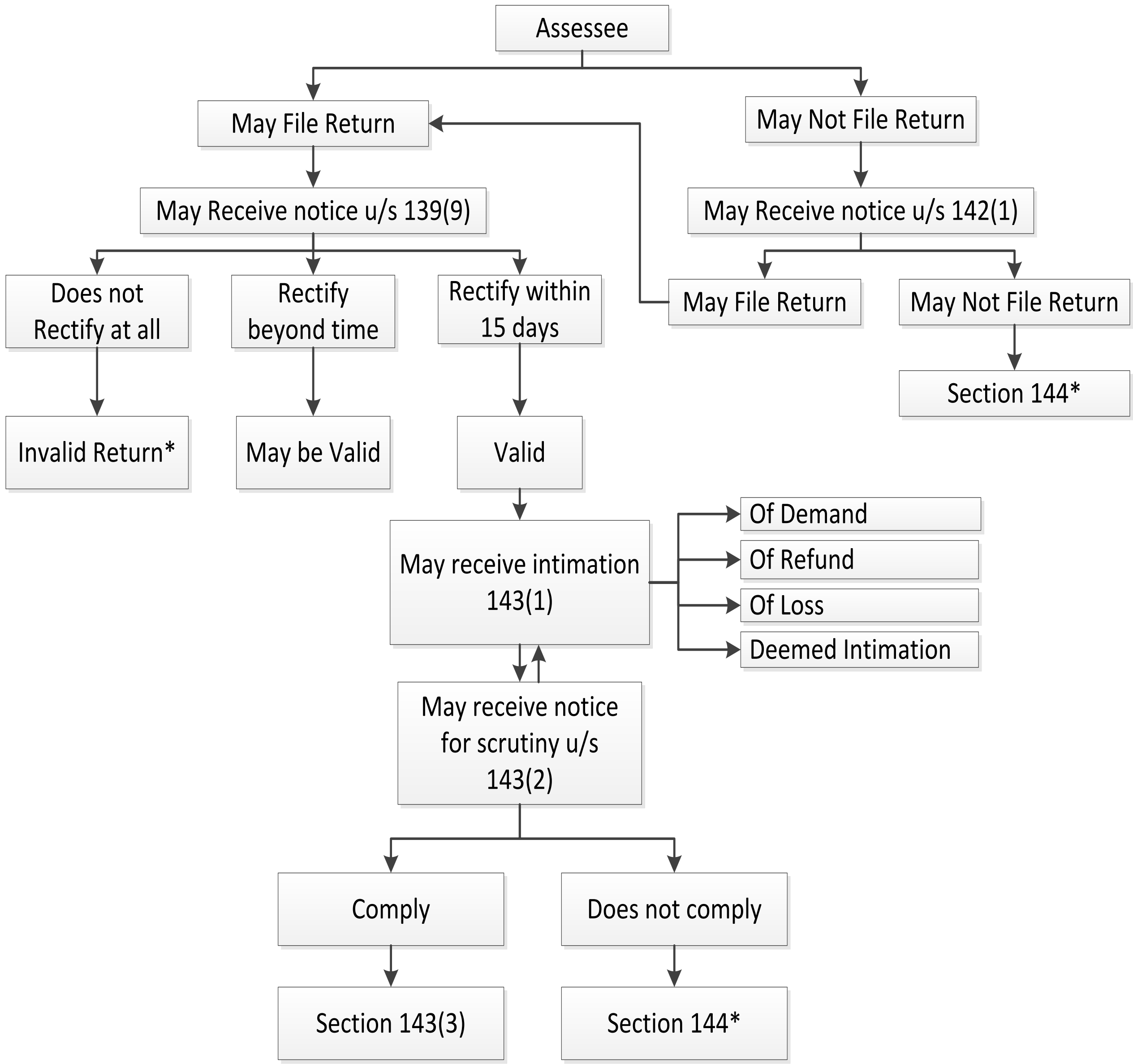
Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid *within thirty days of the service of the notice* at the place and to the person mentioned in the notice.

However, 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.

SECTION 246A: Appeal to Commissioner (Appeals)

Refer Topic Appeal to Commissioner of Income Tax (A)- **Section 246A**

Summary Chart of Assessment Procedure



Section 144*

Not complied with 143(2)	Not complied with 142(1)	Method of accounting-145
Failed to file return 139	Direction of Audit- 142(2A)	

20.23 PROTECTIVE ASSESSMENT

- There is no specific provision in the Indian Income-tax Act for such a thing as protective assessment.
- But it is permissible to make a protective assessment, where owing to litigations it is not possible to establish finally as to who is the proper assessee.
- The reason for protective assessment is that if the income-tax authorities are precluded from making an alternative assessment, then, by the time the disputes are over, the real assessment would be barred.
- But while a protective assessment is permissible, **protective recovery of tax cannot be allowed**

Practical 10

There is a dispute with regard to ownership of house property between Mr. A and Mr. B. Dispute is pending before ordinary court. What are the courses of action available with A.O. for doing assessment in the hands of Mr. A & Mr. B?

Solution

- **Alternative-1**

  A.O. can assess house property income in the hands of Mr. A as well as Mr. B on protective basis. However he cannot collect tax pertaining to income under the head house property.
- **Alternative-2**

  Notice for income escaping assessment u/s 148 can be issued at any time in order to give effect to a finding given by any court in any proceedings under any law.

Readers Note:

20.24 RECTIFICATION OF MISTAKES BY I.T. AUTHORITY OF ANY ORDER OR INTIMATION

Section:- 154

Section 154(1)

With a view to 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 issued under sub-section (1) of section 200A

(d) amend any intimation issued under sub-section (1) of section 206CB.

Section 154(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.

Section 154(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 collector, and where the authority concerned is the Commissioner (Appeals), by the Assessing Officer also.

Section 154(3)

An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or deductor or collector, shall not be made under this section unless the authority concerned has given notice to the assessee or deductor or collector of its intention so to do and has allowed the assessee or deductor or collector a reasonable opportunity of being heard.

Section 154(4)

Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

Section 154(5)

Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor or collector, the Assessing Officer shall make any refund which may be due to such assessee or the deductor or collector.

Section 154(6)

Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or collector, the Assessing Officer shall serve on the assessee or the deductor or collector, as the case may be a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

Section 154(7)

No amendment under this section shall be made **after the expiry of four years from the end of the financial year in which the order sought to be amended was passed.**

Section 154(8)

Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee or by deductor or collector to an income-tax authority, the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,

(a) making the amendment; or

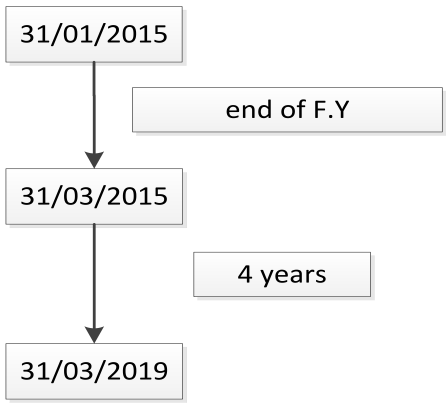
(b) refusing to allow the claim.

Practical 11

For **A.Y. 2013-14**, Assessing Officer passed the order u/s 143(3) on **31/01/15.** In this order, the assessing officer found the mistake apparent from record. Ascertain the maximum time limit available with assessing officer to rectify this order.

Solution

Time limit under Section 154(7): When A.O. acting on his own motion



Readers Note:

Practical 12

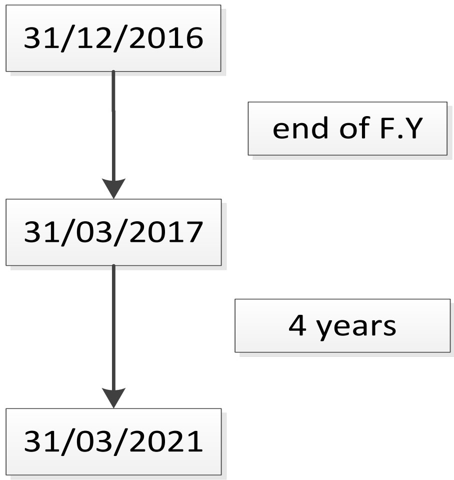
For **A.Y. 2014-15**, Assessing Officer completed the assessment under u/s 143(3) on **31/12/16**. In this order, the assessee found the mistake apparent from record. Ascertain the maximum time limit by which assessee can submit an application (request) for rectification to the assessing officer.

Assuming that the assessee submitted application for rectification on **10/06/2017**, what shall be the maximum time limit by which the assessing officer shall dispose of this application?

Solution

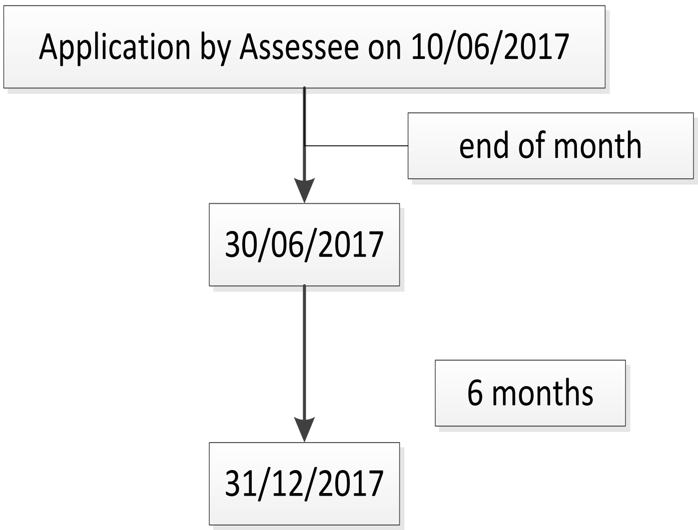
(1) Time limit for submitting an application to the assessing officer:

Readers must note that on analysis of **Circular No. 73, dated 7-1-1972,** assesse can make an application within 4 years from the end of financial year in which order sought to be amended was passed. In that case, the departmental authority shall dispose of this application within the time frame given under section 154 (8).



Therefore, the assessee can make an application for rectification on or before **31/03/2021.**

(2) Time limit under Section 154(8): When Assessee makes an application



The assessing officer shall dispose of the application of the assessee under section 154 either approving or refusing on or before **31/12/2017.**

Readers Note:

Practical 13

Whether following result into mistake apparent from record?

(i) Debatable point of law

(ii) Subsequent Supreme Court Decision

(iii) Retrospective Amendment

Solution

(i) Debatable point of law

The Supreme Court in the case of ***T. s. Balaram, ITO v. Volkart Bros 82 ITR 50***, held that "a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions.

Therefore, a decision on a debatable point of law is not a mistake apparent from the record.

(ii) Subsequent Supreme Court Decision

The Andhra Pradesh High Court in case of ***B.V.K. Seshavataram* v. *CIT 210 ITR 633*** held that "A subsequent decision of Supreme Court can validly form basis for rectifying an order of assessment under section 154 provided decision is given by the Apex Court within **four years from the end of the financial year in which the order sought to be amended was passed.**

Therefore, a subsequent Supreme Court decision result into mistake apparent from record for the purpose of section 154. CBDT has also expressed similar view in circular No. 68 dated November 17, 1971.

(iii) Retrospective Amendment

The Calcutta High Court in case of ***CIT v. E.Sefton and Co. (P.) Ltd. (1989) 179 ITR 435*** held that if the assessment order is plainly and obviously inconsistent with the specific and clear provision as amended retrospectively, undisputedly there is a mistake apparent from record.

Therefore, in the light of the retrospective amendment, the assessment order had to be rectified /amended under section 154.

Readers Note:

Practical 14

In an order of assessment for the **A.Y. 2012-13,** the assessee noticed a mistake for which application u/s 154 was moved and the order was rectified. Subsequently, the assessee moved further application for rectification u/s 154 which was rejected by the Assessing Officer on the ground that the order once rectified cannot be rectified again. Is the contention of the Assessing Officer correct?

Solution

The word "order" in expression "from the end of the financial year in which the order sought to be amended" in section 154(7) includes amended or rectified order and, therefore, where original assessment was subsequently rectified, a second application for rectification can be made.— **Hind Wire Industries Ltd. v. CIT 212 ITR 639 (1995) (SC)**

Readers Note:

21 – APPEALS

21.1 APPELLATE TRIBUNAL

Section:- 252

- 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.
- A judicial member shall be a person-
  1. who has held a judicial office in the territory of India at least for ten years; or
  2. 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
  3. who has been an advocate for at least 10 years.
- An accountant member shall be a person -
  1. who has been in the practice of accountancy as a Chartered Accountant at least for ten years; or
  2. 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.
- 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) one of the Vice-Presidents of the Appellate Tribunal, to be the President thereof.

21.2 QUALIFICATIONS, TERMS AND CONDITIONS OF SERVICE OF PRESIDENT, VICE-PRESIDENT AND MEMBER.

Section:- 252A

Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

21.3 APPEALS TO TRIBUNAL

Section:- 253

- **Appealable Orders**

(A) Appeal by assesse [Section 253(1)]

(a) An order passed by a Commissioner (Appeals) u/s 154, section 250, section 271, section 271A or section 272A or

(b) An order passed by a Commissioner under section 12AA or u/c (vi) of section 80G(5) or under section 263 [or section 271 (w.e.f. 1-6-2002)] or under sections 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A

(c) An order passed by Assessing Officer under section 115VZC(1)-Expulsion from Tonnage Taxation Scheme.

(d) An order passed by an Assessing Officer under section 143(3) 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.

(e) An order passed by the prescribed authority under Section 10(23C) (iv) or (v) or (vi) or (via).

(B) Appeal by Commissioner[Section 253(2)]

Order passed by Commissioner (Appeals) under section 154 or 250.

- **Time limit for presenting appeal [Section 253(3)]**

Within 60 days of the date on which order sought to be appealed against is communicated to the assessee/ Commissioner.

- **Form of Appeal, Filing Fees, Signing of Form and Documents to be submitted [Section 253(6)]**

  - The appeal shall be presented in Form No. 36.
  - It shall be signed and verified by the person authorized to sign the return of income under section 140.
  - Documents to be submitted:
    (a) Form No. 36- 2 copies

    (b) Order appealed against – 2 copies (including one certified copy)

    (c) Order of Assessing Officer – 2 copies

    (d) Grounds of appeal before first appellate authority – 2 copies

    (e) Statement of facts filed before first appellate authority – 2 copies

(f) In case of appeal against penalty order -2 copies of relevant assessment order.

(g) In case of appeal against order under section 143(3), read with section 144A - 2 copies of the directions of the Deputy Commissioner under section 144A.

(h) In case of appeal against order under section 143(3), read with section 144B - 2 copies of the draft assessment of the Deputy Commissioner under section 144B.

(i) In case of appeal against order u/s 143(3), read with section 147-2 copies of original assessment order, if any.

(j) Triplicate copy of challan for payment of fee.

- Above documents shall be accompanied by a prescribed fee as follows:

Particulars	Rs.
(1) Assessed total income of Rs.1 lakh or less	500
(2) Assessed total income is more than Rs. 1 lakh but less than Rs.2 lakh	1,500
(3) Appeals involving total income more than Rs.2 lakh	1% of the assessed income subject to a maximum of Rs.10,000
(4) Miscellaneous applications under 254(2)	50
(5) Stay petitions [Section 253(7)]	500
(6) Any other matter	500

- **Time limit for filing of cross-objections [Section 253(4)]**

On receipt of notice from the Registrar of Tribunal intimating that an appeal against the order of CIT (A) has been preferred under section 253(1) or 253(2) by the other party, the Assessing Officer or the assesse may file a memorandum of cross-objections within 30 days from the date of receipt of such notice.

It shall be in Form No. 36A. No fee is required to be paid for filing such memorandum of cross objection.

Once memorandum of cross-objection is filed within the time limit, it shall be disposed of by the Tribunal as if it were an appeal.

- **Condonation of delay in filing appeal [Section 253(5)]**

The Tribunal may admit an appeal / memorandum of cross-objection after the expiration of the prescribed period, if it is satisfied that there was sufficient cause for not presenting it within that period.

21.4 ORDERS OF APPELLATE TRIBUNAL

Section:- 254

- The Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit.
- The Tribunal shall send a copy of any order passed to the assessee and to the Principal Commissioner or Commissioner.
- Cost of appeal shall be at discretion of Tribunal.
- The appeal, where it is possible, shall be disposed within a period of four years from end of financial year in which appeal is filed. – **Section 254(2A)**
  - 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 :- **First Proviso to Section 254(2A)**
  - 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: **-Second Proviso to Section 254(2A)**
  - 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, even if the delay in disposing of the appeal is not attributable to the assessee. – **Third Proviso to Section 254(2A)**

Practical 1

A petition for stay of demand was filed before ITAT by XYZ Ltd. in respect of a disputed demand for which appeal was pending before it, on which stay was granted by the ITAT vide order dated **1.1.2017.** The bench could not function thereafter till **1.2.2018** and therefore, the disputed matter could not be disposed off. The Assessing Officer attached the bank account on **16.2.2018** and recovered the amount of Rs.15 lacs against the arrear demand of Rs.25 lacs. The assessee requested the Assessing Officer to refund back the amount as it holds stay over it. The Assessing Officer rejected the contention of the assessee. Now the assessee seeks your opinion.

Solution

As mentioned in the first, second and third proviso to section 254(2A), the stay granted by the Appellate Tribunal shall stand vacated after the period of 365 days, inspite of the delay is not due to assesse.

In the present case, the period of 365 days has expired on **31.12.2017,** after which date the order of stay stands vacated. Accordingly, the recovery of Rs.15 lacs against the arrear demand of Rs. 25 lacs made by the Assessing Officer is a valid action.

Readers Note:

21.5 FEW CASE STUDIES WITH REGARD TO RESTRICTION ON POWER OF TRIBUNAL

Section:-

The Tribunal cannot grant relief larger than what was prayed for in the appeal—***CIT v. Krishna Mining Co. (AP).***

Tribunal is not authorised to take back the benefit granted to the assessee by the Assessing Officer - ***Hukumchand Mills Ltd. v. CIT 63 ITR 232 (SC)***

21.6 RECTIFICATION OF MISTAKES BY TRIBUNAL

Section:- 254(2)

- The Tribunal may, at any time within 4 years from the date of the order (with effect from 1st June, 2016, six months from the end of the month in which the order was passed), with a view to rectifying any mistake apparent from the record, amend any order passed by it and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer.
- If, however, an amendment has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, it shall not be made unless the Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

Practical 2

Give few examples of "Mistake apparent from record" which can be rectified by Tribunal?

Solution

(a) Arithmetical error
(b) Subsequent Supreme Court decision
(c) Retrospective Amendment
(d) Non-consideration of Judgment cited before it
(e) Non-disposal of grounds of appeal
(f) Procedural lapse on the part of Tribunal like failure to refer matter to president when there is a disagreement between Accountant Member and Judicial Member
(g) Overlooking the material facts on record

Readers Note:

Practical 3

Can Tribunal Review its own order? Or Can Tribunal Re-decide / recall the matter?

Solution

On the analysis of various judgments of High Courts and the Supreme Court, the following principles emerge with regard to the powers of the Tribunal to rectify and review its own order:

1. The power of the Tribunal under section 254(2) is confined to rectifying any mistake apparent from the record.
2. If the error or mistake is one, which could be established only by long-drawn arguments or by way of process of investigation and research, it is not a mistake apparent from the record.
3. The Tribunal cannot re-decide the matter and it has no power to review its order.
4. Where the Tribunal has over-looked the relevant material on record, there would be an error apparent from record, which can be rectified by setting aside the order for fresh consideration.

Readers Note:

21.7 FUNCTIONING OF TRIBUNAL

Section:- 255

Section 255(2)

Normally, a Bench of the Appellate Tribunal shall consist of one Judicial Member and one Accountant Member.

Section 255(3)

The President or a member of the Appellate Tribunal may be empowered by the Central Government, sitting singly, to dispose of any case where total income assessed does not exceed Rs.15 lakhs. (Rs. 50 lakh with effect from 01.06.2016). The President may constitute a Special Bench consisting of three or more members, one of whom shall be a judicial member and one on accountant member.

Section 255(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 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 for hearing by one or more of the other members of the Appellate Tribunal. Such point shall thereafter 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.

Practical 4

Mahakuteshwar Oil Industries was a manufacturer of edible oil. For the **A.Y. 1997-98**, it had declared the total income of Rs.8,660 in the return of income. The Assessing Officer computed the total income at Rs.48,27,614. The Commissioner(Appeals) enhanced the income to Rs.63,89,795. In appeal before the Tribunal, the Single Member of the Tribunal decided the appeal and granted relief to the assessee. Whether the single member of the Tribunal is justified in assuming jurisdiction to decide this appeal?

Solution

The Karnataka High Court in case of **CIT v. Mahakuteshwar Oil Industries 298 ITR 390** held as under :
"A single member of the Tribunal can exercise powers if the income computed by the Assessing Officer is less than Rs.5 lakhs (Amended limit is Rs. 50 Lakhs), even though the same has been enhanced by the Commissioner (Appeals) in excess of Rs.5 lakhs (Amended limit is Rs. 50 Lakhs)".
Considering the amended provision and the judicial pronouncement of Karnataka High Court, single member of the Tribunal is justified in deciding this appeal.

Readers Note:

21.8 PRODUCTION OF ADDITIONAL EVIDENCE BEFORE INCOME TAX APPELLATE TRIBUNAL

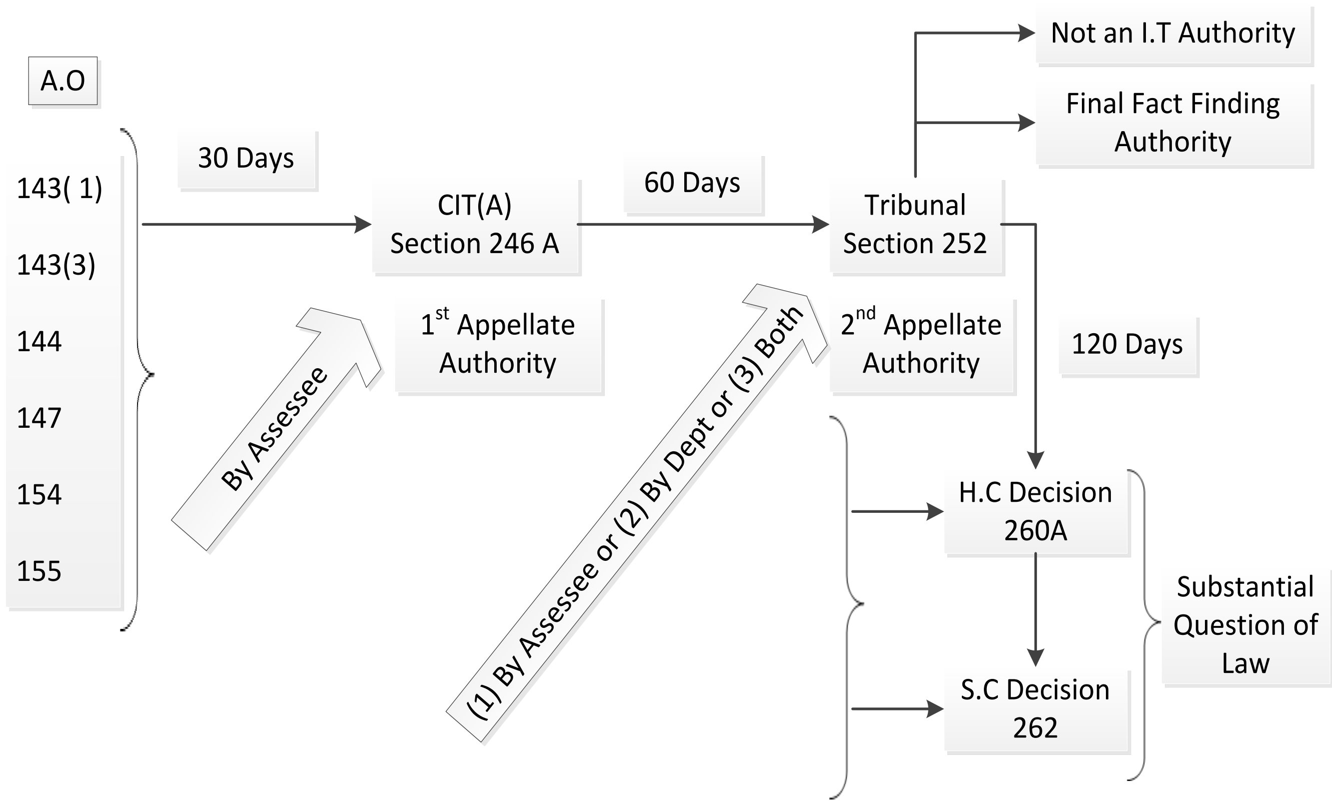
Rule:- Rule 29 of Appellate Tribunal Rules, 1963

The parties to the appeal shall not be entitled to produce additional evidence, either oral or documentary, before the Tribunal. However, the following are the exceptions to this rule –

(a) where the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause; or
(b) where the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by the them.

In case of (a) above, the Tribunal may allow such document to be produced or witness to be examined or affidavit to be filed.
In case of (b) above, the Tribunal may allow such evidence to be adduced.
However, in both cases, the Tribunal should record its reasons in writing.

Summary Chart of provisions relating to Appeals



22 – REVISION

22.1 REVISION OF ORDERS PREJUDICIAL TO THE INTEREST OF REVENUE

Section:- 263

Orders which may be revised	Any **order passed by the Assessing Officer** which the Principal Commissioner or Commissioner considers **erroneous in so far as it is prejudicial to the interests of the revenue.**
Explanation 1(a) to Section 263	For the purpose of this section, order passed by the Assessing Officer shall include: (i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A; (ii) an order made by Jt. CIT in the capacity of A.O.
Explanation 1(b) to Section 263	For the purpose of this section, "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner.
Can order which are the subject-matter of appeal be revised? - Explanation 1(c) to section 263	In the case of orders which have been the subject-matter of appeal, the Commissioner can use his power under this section and revise the orders in relation to such matters as had not been considered and decided in such appeal.
Explanation 2 to section 263 **[Inserted by FA 2015 with effect from 01.06.2015]**	For the purposes of section 263, it is hereby declared 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 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.

Procedure to be followed	• First, the Commissioner may call for and examine the **record** of any proceeding under the Act.
	• If the Commissioner finds any order passed by the Assessing Officer to be erroneous and prejudicial to the interests of the revenue, he must give an opportunity to the assessee of being heard.
	• He must also make or cause to be made such enquiry as he deems necessary
	• Thereafter he may pass such revision order as the circumstances of the case justify (including an order enhancing or modifying the assessment, or canceling the assessment and directing a fresh assessment)
Time limit for passing revision order	Two years from the end of the financial year in which the order sought to be revised was passed (however, there is no time limit for passing an order to give effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court).

Practical 1

Mention the twin conditions to be satisfied by the Commissioner before exercising the jurisdiction under section 263.

Solution

The Commissioner has to be satisfied with the twin conditions, namely,

(i) the order of the Assessing Officer sought to be revised is erroneous;
and

(ii) it is prejudicial to the interests of the revenue.

If one of the conditions is absent – if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue – recourse cannot be had to section 263(1). —**Malabar Industrial Co. Ltd. v. CIT 243 ITR 83 [2000] (SC).**

Readers Note:

Practical 2

When two views are possible and the Assessing officer has taken a view with which the Commissioner does not agree, can such order of A.O. be treated as erroneous?

Solution

Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue—**Malabar Industrial Co. Ltd. v. CIT 243 ITR 83 [2000] (SC).**

Readers Note:

Practical 3

What can be the illustrative list where assessment made by the assessing officer can be held to be the erroneous?

Solution

Assessment made on

(i) wrong assumption of facts or

(ii) on incorrect application of law or

(iii) without due application of mind or

would certainly be 'erroneous' assessment warranting exercise of revisional jurisdiction under section 263 - **[CIT V. Jawahar Bhatacharjee 341 ITR 434 (Gau.) (FB)]**

Readers Note:

Practical 4

The assessee who had not earned the income wants such income to be assessed in his hands in order to assist someone else who may be assessed at a higher figure. The assessing officer accepted the claim of the assessee and passed the order without inquiry. Whether such order may be subject to revision under section 263?

Solution

An assessment made without enquiry, evidence and under haste is erroneous and prejudicial to the revenue. Where an income has not been earned by the assessee and is not assessable in its hands and the assessee wants it to be assessed in his hands in order to assist some one else who would have been assessed to a larger amount and rate of tax, the assessment of the income in assessee's hands will be erroneous and prejudicial to the interests of the revenue and the Commissioner has jurisdiction to set aside such an assessment**—Thalibhai F. Jain v. ITO 101 ITR 1 [1975] (Kar.).**

Readers Note:

Practical 5

Assessing officer while passing the order under section 143(3) accepted the deduction claimed by assessee without inquiry. Can such order be subject matter of revision under section 263?

Solution

Failure of the Assessing Officer to make an inquiry before granting deduction would render the assessment erroneous and prejudicial to the interest of revenue**—CIT v. Seshasayee Paper & Boards Ltd. 242 ITR 490 [2000] (Mad.).**

Readers Note:

Practical 6

Assessing officer passed the order and accepted some claim made by assessee after conducting inquiry. The Commissioner assumed jurisdiction under section 263 holding that the assessing officer should have made further inquiry before passing the order. Discuss the validity of action taken by the Commissioner.

Solution

For the purpose of holding an assessment order to be erroneous and prejudicial to the interests of revenue on that ground, there should be omission or failure to make such enquiry. (i.e. lack of inquiry) Merely because from a perfectionist point of view it is felt that some more enquiries and verifications could have been made by the AO, the order cannot be declared to be erroneous. – Salora International Ltd. v. Addl CIT (2005) 2 SOT 705 (Del)

Respectfully following the above ratio, the action taken by Commissioner under section 263 is not valid.

Readers Note:

Practical 7

The assessing officer, based on the decision of jurisdictional High Court treated certain receipts in the hands of assessee as capital receipts and therefore not taxed. The commissioner assumed jurisdiction under section 263 on the ground that the order of High Court is erroneous. Is action of Commissioner justified?

Solution

Commissioner cannot proceed under section 263 stating that the decision of High Court is erroneous and that the Assessing Officer who had acted on terms of the High Court decision had acted erroneously. **[CIT v. GM Mittal Steel Pvt. Ltd. 130 Taxman 67 (2003) (SC)]**.

Therefore, the action of Commissioner assuming jurisdiction under section 263 is not justified.

Readers Note:

Practical 8

For the **A.Y. 1983-84,** the New Jagat Textile Mills Private Limited had filed a statement of advance tax u/s.209A of the Income-tax Act, 1961 on **12-6-1982**, estimating the total income at Rs.1,35,404 and had also paid the advance tax thereon of Rs.74,000. However, the assessee failed to file the return of income within the prescribed time. The Assessing Officer therefore issued notice u/s.142 (1) of the Act, dated **1-9-1983** requiring the assessee to file the return of income. The assessee applied for extension of time. However, thereafter nothing further happened and ultimately on **30-10-1985**, the Income-tax Officer made the following entry in the order sheet: "The assessee-company untraceable, proceedings dropped." Subsequently, the Commissioner, in the exercise of powers u/s.263, set aside the order of the Assessing Officer dropping the assessment proceedings and directed the Assessing Officer to make a fresh assessment in accordance with law, after making necessary enquiries and giving a reasonable opportunity of being heard to the assessee-company. Would such dropping of proceedings amounts to an order which can be subject matter of revision under section 263 of the Act?

Solution

Gujarat High Court in case of **New Jagat Textile Mills P. Ltd. v. CIT, 282 ITR 399** held as under:

(a) Section 263 of the Income-tax Act, 1961, empowers the Commissioner to take up for consideration 'any order passed' in any proceedings under the Act. In these circumstances, it is not possible to read the provisions as being limited to exercising revisional powers qua order of assessment only.

It would take within its sweep even the orders wherein either the proceedings are dropped or the proceedings are filed.

(b) Therefore, once the twin conditions for exercise of jurisdiction u/s.263 of the Act were shown to be fulfilled, the Commissioner was perfectly justified in taking action under the said provisions and exercising his revisional powers."

Readers Note:

Practical 9

Commissioner having found that assessee had suppressed the true value of the property which it had sold and that fact of suppression had come to light when the premises of the purchaser were raided, assumed jurisdiction under 263 of the Act. Comment on the validity of action taken by Commissioner.

Solution

The issue deals with scope of term "Record" for the purpose of section 263 of the Act.

The power of a Commissioner under section 263 is wide enough to make enquiry in case of an assessee on the basis of any other person's record—**CIT v. Arunaben Sumankumar 124 Taxman 57 [2002] (Guj.).**

Even a statements in search operations carried out in relation to another person can be considered as forming part of the 'record' which can be examined by the Commissioner for invoking his power under section 263(1)—**CIT v. Vallabhdas Vithaldas 253 ITR 543 [2002] (Guj.).**

Considering the above judgments of Gujarat High Court, the action taken by Commissioner is justified.

Readers Note:

Practical 10

The assessing officer passed the order under section 143(3) of the Act after considering the following issues:

Particulars	Claim by Assessee	Allowed by A.O.	Disallowed by A.O.
Interest Expense	1,20,000	-	1,20,000
Salary to Relative	1,80,000	1,80,000	-
Travelling Expense	1,12,000	56,000	56,000

Being aggrieved, the taxpayer preferred an appeal to CIT (A) against the addition of (i) Interest (ii) Travelling expense. The Commissioner while acting under section 263 would like to revise the whole order passed by the assessing officer. Comment on the action of Commissioner.

Solution

As per explanation 1(c) to section 263 of the Act, in the case of orders which have been the subject-matter of appeal, the Commissioner can use his power under this section and revise the orders in relation to such matters as had not been considered and decided in such appeal. Similar observations were made in ***Ranka Jewellers v. Addl CIT (2010) 328 ITR 148 (Bom) and CIT vs. Arbuda Mills Ltd.(1998) 231 ITR 50 (SC).***

That means, CIT can revise that portion of order of assessing officer, which is not in appeal.

Particulars	Whether Assessee is in appeal?	Whether revision u/s 263 is possible?
Interest	Yes	No
Salary to Relative	No	Yes
Travelling Exp.	Yes	No

Considering the above, the action of Commissioner under section 263 purporting to revise the whole order passed by assessing officer is improper.

Readers Note:

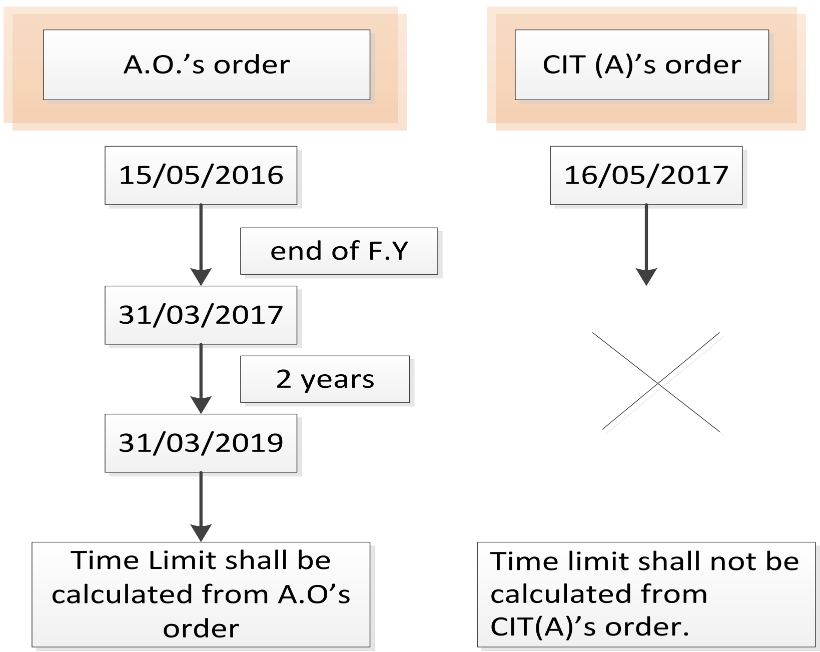
Practical 11

Suppose in the above case, A.O. passed an order on **15/05/16** and CIT(A) passed an order on **16/5/17**.Thereafter CIT acting under section 263 wants to do revision 'for salary paid to relative', then what is time limit for completion of proceeding u/s 263?

Solution

As discussed earlier the time limit for passing order under section 263 is two years from the end of the financial year in which the order sought to be revised was passed.

While dealing with the similar issue **Rajasthan High Court in case of CIT v. Hemraj Udyog 259 ITR 420** held that where an order prejudicial to the Revenue has become the subject matter of appeal on a different issue, the time limit under section 263 has to be reckoned with reference to the original order and not the later order.



Readers Note:

Practical 12

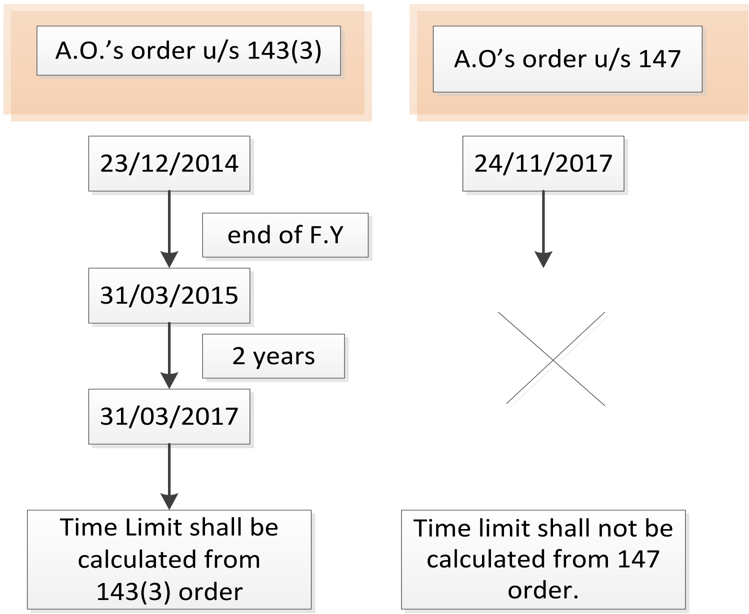
Assessment for **A.Y. 2013-14** was completed as per section 143(3) considering the various claims so made by the assessee on **23.12.2014.** Subsequently, this was reopened u/s 147 on certain issues, but excluding the claim of the assessee as to "Lease Equalisation Fund". The order of reassessment was passed on **24.11.2017.** The Commissioner within the powers vested u/s 263 passed an order on **11.01.2019** rejecting the claim of assessee as to "Lease Equalisation Fund". The assessee challenges that the action of the CIT is not sustainable because the same was barred by limitation.

Solution

Section 263(2) provides no order shall be made under section 263(1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

The period of limitation as referred to in section 263(2) relates to the assessment in which the claim of the assessee as to Lease Equalisation Fund was considered by the Assessing Officer. This issue was not the subject matter of reassessment proceedings. Accordingly, the period of limitation shall be reckoned with reference to the original assessment order and not from the date of the order of reassessment. - **CIT v. Alagendran Finance Ltd. (2007) 293 ITR 1.**

Therefore, in this case, the revision proceedings are barred by limitation since the original assessment order was made on **23.12.2014** and the revision should have been made by **31.3.2017**.



Readers Note:

Practical 13

During the course of scrutiny proceedings, the assessee placed reliance on the decision of Rajsthan High Court for deductibility of certain expenditure under section 37(1). The Assessing Officer, Ahmedabad, while passing an assessment order under section 143(3) allowed the deduction under section 37(1) relying on the said decision.

On **10-08-2016**, the Commissioner of Income Tax assumed revision jurisdiction under section 263 in respect of such order on the ground that on similar facts, there was a decision of Madras High Court denying deduction under section 37(1). The Commissioner of Income tax is of the opinion that the order of Assessing officer under section 143(3) is deemed to be erroneous and prejudicial to the interest of revenue.

Examine the validity of jurisdiction assumed by Commissioner of Income Tax under section 263.

Solution

- On minute reading of the explanation 2 to Section 263 - clause (d), the order of assessing officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if the same has not been passed in accordance with any decision which is prejudicial to the assessee rendered by the jurisdictional High Court in case of the assessee or any other person.
- In present case study, the jurisdictional High Court shall be Gujarat High Court while the Commissioner of Income Tax relied on the decision of Madras High Court. Therefore, the opinion of the Commissioner that order passed by Assessing Officer, Ahmedabad is deemed to be erroneous and prejudicial to the interest of revenue is not tenable.
- Further, Supreme Court in case of **Malabar Industrial Co. Ltd. v. CIT (supra)** held that recourse cannot be had to section 263(1) unless the Commissioner is satisfied with the twin conditions, namely,
  - the order of the Assessing Officer sought to be revised is erroneous; and
  - it is prejudicial to the interests of the revenue.
- If one of the conditions is absent – if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue – then jurisdiction under section 263 fails.
- Therefore, every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue.
- Considering the above, action taken by Commissioner of Income tax is not tenable in the eyes of law.

Readers Note:

Practical 14

Does your answer differ, if there was a decision of Gujarat High Court instead of Madras High Court, denying deduction under section 37(1)?

Solution

If there was a decision of Gujarat High Court instead of Madras High Court, denying deduction under section 37(1), then the order of Assessing Officer falls within the explanation 2 to section 263- clause (d) and therefore, such order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue. Hence, Commissioner of Income Tax is justified in assuming jurisdiction under section 263 of the Act.

Readers Note:

23 – ASSESSMENT ON REMAND

23.1 TIME LIMIT FOR COMPLETION OF FRESH ASSESSMENT

Section:- 153(3) - Effective from 01.06.2016

If fresh assessment is made in pursuance of an order under sections 254, 263 or 264 setting aside or canceling an assessment, then, the below mentioned time limit under section 153(3) of the Act is applicable:

Nature of order	Time-limit for completion of "Fresh Assessment"
• If assessment is set aside or cancelled by virtue of an order under section 254	Fresh assessment shall be completed within **9 months** from the end of the financial year in which order u/s 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be.
• If assessment is set aside or cancelled by virtue of an order under section 263 or 264	Fresh assessment shall be made within **9 months** from the end of the financial year in which order under section 263 or 264 is passed by the Principal Commissioner or Commissioner.
• During the course of the proceedings for the fresh assessment of total income if a reference u/s 92CA(1) is made	Then above time limits shall be extended by 12 months i.e. **21 months instead of 9 months.**

The above time limit has been modified by the **Finance Act, 2017** in respect of above orders either passed by or received by Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner on or after 1st April 2019. In this situation, time limit of 9 months mentioned above shall be substituted by 12 months and 21 months shall be substituted by 24 months.

Practical 1

The assessments of Samip Chemicals Ltd. for the assessment year **2015-16** was completed under section 143(3). The Principal Commissioner found the order of assessing officer erroneous and prejudicial to the interest of revenue since it was passed without conducting any inquiry. The Principal Commissioner, therefore, while acting under section 263 of the Act, set aside the whole assessment order and directed the assessing officer to pass the order afresh. This order of Principal Commissioner was dated **10-07-2018**.

Based on the above facts, answer following questions:

(a) What is the scope of assessment proceedings at the time of fresh assessment after the order of Principal Commissioner?

(b) What is the time limit for completion of above assessment?

Solution

(a) Considering the ratio laid down in **Kundanlal Maru v. CIT (1982) 135 ITR 84 (MP)** and the **Rambilas Chandran v. CIT (1985) 156 ITR 344 ,** where the Principal Commissioner sets aside the whole assessment and directs the assessing officer to pass the order afresh without imposing any restrictions or limitations as to how the fresh proceedings to be conducted by the Assessing Officer, then the Assessing Officer has the same powers in making such fresh assessment as he had originally when making an assessment under section 143(3) / 144 of the Act.

(b) Time limit for completion of "fresh assessment" is now governed by section 153(3). Considering the provisions of this section, the assessing officer shall complete the "fresh assessment" within 9 months form the end of financial year in which order under section 263 was passed by the Principal Commissioner.

Readers Note:

24 – INCOME TAX AUTHORITIEIS AND THEIR POWERS

24.1 POWER OF AUTHORIZED OFFICER TO ATTACH PROPERTY PROVISIONALLY

Section:- 132(9B), (9C) and (9D) – Effective w.e.f. 01-04-2017

- Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer, for reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee in accordance with the provisions of the Second Schedule.
- Every provisional attachment shall cease to have effect after the expiry of a period of six months from the date of such order.
- The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, make a reference to a Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the said officer within a period of sixty days from the date of receipt of such reference.

24.2 POWER TO CALL FOR INFORMATION

Section:- 133 - Effective from 01.04.2017

The Assessing Officer, Joint Commissioner, Commissioner (Appeals) may require to furnish the following details:

Sub- Section	Assessee	Information
(1)	Firm	Names, addresses of the partners of the firms and their respective shares.
(2)	HUF	Names, addresses of the manager and the members of the family
(3)	Trustee, guardian, agent	Names of the persons for or of whom he is trustee, guardian or agents and their addresses
(4)	Any assessee	Name and addresses of persons to whom the following payments are made exceeding Rs. 1,000 or such higher amount as may be prescribed - Rent, - interest, - commission, - royalty, - brokerage,

		- annuity not being taxable under the head "Salaries"
(5)	Broker, agent or any person concerned in the management of stock or commodity exchange	Names and addresses of all persons to whom any sum has been paid or received for transfer by way of sale, exchange or otherwise of assets together with particulars of all such payments and receipts.
(6)	Any person, including a banking company or any officer thereof.	Statements of accounts and affairs verified in a specified manner in relation to such matters or points as, in the opinion of the authority will be useful for or relevant to any enquiry or proceedings under the Act.

However, the powers referred to in section 133(6) may also be exercised by the Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director and the Principal Commissioner or Commissioner or **the Joint Director or Deputy Director or Assistant Director** (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017).

Provided further that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner **other than the Joint Director or Deputy Director or Assistant Director** (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017) without the prior approval of the Principal Director or Director or, as the case may be, the Principal Commissioner or Commissioner.

Practical 1

The Assessing Officer issued notices under section 133 to four banks requiring particulars relating to a customer in a specific format duly verified in a prescribed manner. One of the banks refused to part with the information on the ground that the letter did not specify about any proceeding pending against the said customer under the Income-tax Act, 1961. Discuss the correctness of action of the bank in refusing to furnish the particulars as required by the Assessing Officer.

Solution

- As per section 133(6), power is given to an Assessing Officer to issue notice, for the purposes of the Act, requiring any person, including a banking company, to furnish information in respect of such points or matters or to furnish statement of accounts and affairs verified in the manner specified by the Assessing Officer, as may be useful for, or relevant to, any enquiry or proceeding under the Act. Therefore, the provisions of this section can be invoked even in case of any enquiry and it is not necessary that any proceeding should be pending against the customer for the same.
- However, in respect of an enquiry, this power can be exercised by any Income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner only after getting the prior approval of the Principal Director or Director or Principal Commissioner or Commissioner, as the case may be.
- Therefore, the Assessing Officer can issue notice under section 133(6) asking for particulars relating to a customer in the specified format duly verified in the prescribed manner from the banking company, even if no proceeding is pending against such customer, provided he has obtained the

prior approval of the Principal Director or Director or the Principal Commissioner or Commissioner, as the case may be. **[As per amendment made by Finance Act, 2017, no prior approval is required if assessing officer is Joint Director or Deputy Director or Assistant Director].** This view was affirmed in case of **Kathiroor Service Cooperative Bank Ltd. Vs. Commissioner Of Income Tax (CIB) Ors. (2014) 360 ITR 0243 (SC).**

- Hence, in such a case, the action of bank in refusing to furnish particulars relating to a customer as required by the Assessing Officer on the ground that no proceeding was pending against the customer, is not correct.

Readers Note:

24.3 POWER TO SURVEY

Section:- 133A - Effective from 01.04.2017

Survey in connection with business or profession [Section 133A(1)]

(i) Place of survey:

a) Any place within the limits of the area assigned to the income tax authority,

b) Any place occupied by any person in respect of whom the income tax authority exercises jurisdiction,

c) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,

at which a business or profession or **an activity for charitable purpose** is carried on, whether such place be the principal place or not of such business or profession or **of such activity for charitable purpose** (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017)

Explanation.—For the purposes of this sub-section, a place where a business or profession or **activity for charitable purpose** is carried on shall also include any other place, whether any business or profession or **activity for charitable purpose** is carried on therein or not, in which the person carrying on the business or profession or **activity for charitable purpose** states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession or **activity for charitable purpose** are or is kept. (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017)

(ii) Time to enter the place of survey:-

Place of Survey	Time of Survey
Place of business or profession	During the hours at which such place is open for the conduct of business or profession or an activity for charitable purpose.
At any other place	Only after sunrise and before sunset

Practical 2

The Assessing Officer within his jurisdiction surveyed Charitable trust in afternoon for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. The

Charitable Trust is kept open for its activity every day between 10 a.m. to 6 p.m. The trustee of the Charitable trust claimed that the Assessing Officer could not enter because it is not a business place but a place where charitable activity is conducted.

Solution

With effect from 1st April, 2017, the Assessing Officer is further empowered under section 133A to enter any place at which an activity for charitable purpose is carried during the hours at which such place is open for an activity for charitable purpose.

Therefore, the claim made by the trustee to the effect that the Assessing Officer could not enter the place where charitable activity is conducted is not in accordance with law.

Readers Note:

24.4 INQUIRY BY PRESCRIBED INCOME-TAX AUTHORITY

Section:- 133C - Effective from 01.04.2017

This section provides that the prescribed income-tax authority, may for the purposes of verification of information in its possession relating to any person, issue a notice to such person requiring him, on or before a date to be specified therein, to furnish information or documents (verified in the manner specified therein), which may be useful for, or relevant to, any inquiry or proceeding under the Act.

For this purpose, the Board may make a scheme for centralised issuance of notice and for processing of information or documents and making available the outcome of the processing to the Assessing Officer. **(inserted by Finance Act, 2017 w.e.f. 1-4-2017)**

Practical 3

The assessing officer is in receipt of the outcome of processing of information under section 133C of the Act. The outcome reveals that certain income has escaped in case of Mr. Jagat for the A.Y. 2014-15 though he has furnished the return of income. Advise assessing officer for the next course of action.

Solution

For the purpose of section 147, following shall be deemed to be the cases where income chargeable to tax has escaped assessment**:**

Situation	Deeming escapement
where a return of income has not been furnished by the assessee or **a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, section 133C (2)**	**It is noticed by the Assessing Officer that** the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be**, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.**

Considering the abovementioned provisions of deeming escapement, the assessing officer shall proceed under section 147 of the Act and for that purpose, he is advised to issue notice under section 148 of the Act after recording the necessary reasons.

Readers Note:

25 – ASSESSMENT IN CASE OF SEARCH OR REQUISITION

25.1 ASSESSMENT IN CASE OF SEARCH OR REQUISITION

Section:- 153A (1) - Effective from 01.04.2017

1. This section has an overriding effect over section 139, 147, section 148, section 149, section 151 and section 153 of the Act.
2. In the case of any person, a search is initiated u/s 132 or requisition is made u/s 132A, the Assessing Officer shall issue a notice to such person requiring him to furnish a return of income in respect of each of the assessment years falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such **search is conducted or requisition is made.**
3. The assessee shall furnish return of income in response to the above notice within the time period specified in the notice and the provisions of the Act shall apply as if such were a return required to be furnished under section 139 of the Act.
4. The assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years.
5. Any assessment or reassessment relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search u/s 132 or making of requisition u/s 132A shall abate.
6. The income determined under this section shall be taxed at the rates or rates applicable to each of the relevant assessment years.
7. However the Central Government may by rules made by it and published in the Official Gazette (except in cases 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.

Notification No. 42/2012 dated 4.10.2012

In exercise of the powers conferred by section 153A and 153C, the Central Government has, through this notification, inserted a new Rule 112F which shall come into force from the 1st July, 2012.

The said Rule provides that the Assessing Officer is not 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, in the following cases:

(i) where as a result of a search under section 132(1) or a requisition made under section 132A, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, whether or not he is the actual owner of the same, and

(ii) where, such search is **conducted or such requisition is made in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued**

under section 30 read with section 56 of the Representation of the People Act, 1951, **or where the assets so seized** or requisitioned are **connected in any manner to the ongoing election** in an assembly or parliamentary constituency.

However, this Rule is not applicable to cases where such search under section 132 or such requisition under section 132A has taken place after the hours of poll so notified.

8. **In respect of the search initiated under section 132 or the requisition made under section 132A on or after the 1st day April, 2017,** the assessing officer is empowered to issue notice under section 153A and further empowered to assess or reassess total income for the aforementioned six assessment years and "for the relevant assessment year or years" (i.e. beyond six years).

The expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

However, for this purpose, following conditions must be satisfied:

a. Assessing officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant 4 assessment years (which are falling beyond sixth assessment years);
b. the abovementioned income has escaped assessment for such year or years;
c. the abovementioned income is represented in the form of asset. For this purpose, asset shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

25.2 TIME LIMIT FOR COMPLETION OF ASSESSMENT U/S 153A

Section:- 153B - Effective from 01.04.2017

1. The time available for completion of assessment or reassessment in respect of each assessment year falling within six assessment years shall be ***21 months*** from the end of the financial year in which the last of the authorizations for **search** u/s 132 or for **requisition** u/s 132A **was executed.**

2. In respect of the assessment year relevant to the previous year in which search is conducted u/s 132 or requisition is made u/s 132A, a period of ***21 months*** from the end of the financial year in which the last of the authorizations for **search** u/s 132 or for **requisition** u/s 132A was **executed** shall be allowed.

3. The time limit mentioned at Sr. No. 1 and Sr. No. 2has been modified by the Finance Act, 2017, the summary of which is as under:

Date where the last authorization for search under section 132 or for requisition under section 132A was executed	**Abovementioned time limit of 21 months shall be substituted by:**
During financial year 2018-19	18 months
During financial year commencing on or after 1st April, 2019	12 months

4. A proviso to sub-section (1) of section 153B provides that in case of such other person, the time limit for making assessment or reassessment shall be the either:

(a) ***21 months*** from the end of the financial year in which the last of authorisations for search under section 132 or for requisition under section 132A was executed; or

(b) ***9 months*** from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person,

whichever is later.

5. The time limit mentioned at Sr.No.4 has been modified by the Finance Act, 2017, the summary of which is as under:

Date where the last authorization for search u/s 132 or for requisition u/s 132A was executed	Abovementioned time limit of 21 months at Sr. No. 4(a) shall be substituted by:	Abovementioned time limit of 9 months at Sr. No. 4(b) shall be substituted by:
During financial year 2018-19	18 months	12 months
During financial year commencing on or after 1st April, 2019	12 months	12 months

6. The above time limit at Sr. No. 1, 2, 3 and 4 shall be extended by further twelve months when reference is made to TPO u/s 92CA (1) during the course of proceedings under this chapter.

7. For the purpose of this section, the search shall be construed to have been executed only on the conclusion of the search as recorded in the last panchanama drawn. In the case of requisition u/s 132A, the requisition shall be construed as executed only on the actual receipt of the books of account or other documents or assets by the authorised officer.

Practical 1

A search was carried out at the business premises of Ms. Mansi on **10.12.2016** and it was concluded on the same day. Answer the following questions.

(a) Mention the assessment years for which the Assessing Officer shall issue notice under section 153A of the Act requiring the Mansi to file the returns.

(b) What will be the status of assessment proceeding of A.Y**2014-15** which is pending on the date of search?

(c) What is time limit for the completion of above assessments?

(d) Does your answer differ for the question (a) above, if search was carried out on **10.12.2017** instead of **10.12.2016?**

Solution

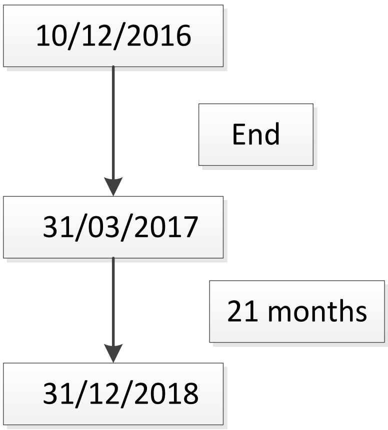
(a)

	P.Y.	A.Y.
(1)	10-11	11-12
(2)	11-12	12-13
(3)	12-13	13-14
(4)	13-14	14-15
(5)	14-15	15-16
(6)	15-16	16-17

10/12/16 ⟶ Search Date

(b) As per the provisions of section 153A, any assessment or reassessment falling within six assessment years pending on the date of search shall abate (stop). As a result thereof, the assessment proceedings for the **A.Y. 2014-15** shall abate.

(c) As per the provisions of section 153B, the time available for completion of assessment or reassessment in respect of each assessment year falling within six assessment years shall be ***21 months*** from the end of the financial year in which the last of the authorizations for **search** u/s 132 **was executed.**



Therefore, the assessing officer shall complete the assessments in the hands of Ms. Mansi on or before **31/12/2018.**

(d) **In view of the amendment made by Finance Act, 2017,** the assessing officer is empowered to issue notice under section 153A and further empowered to assess or reassess total income for the aforementioned six assessment years and "for the relevant assessment year or years" (i.e. beyond six years).

However, for this purpose, following conditions must be satisfied:

a. Assessing officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant 4 assessment years (which are falling beyond sixth assessment years);

b. the abovementioned income has escaped assessment for such year or years;

c. the abovementioned income is represented in the form of asset.

Readers Note:

26 - COLLECTION AND RECOVERY OF TAX

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27 – TAX DEDUCTION AND COLLECTION AT SOURCE

27.1 PAYMENT OF RENT BY CERTAIN INDIVIDUALS / HUFs

Section:- 194 – IB - Effective from 1st June, 2017

(A) Person liable to deduct tax at source:- Any person, being an individual or a Hindu undivided family (other than those who are covered under section 194-I) , responsible for paying to a resident any income by way of rent, shall deduct an amount equal to five per cent of such income as income-tax thereon.

The provisions of this section shall not be applicable to the individual or Hindu undivided family who are liable to deduct tax at source under section 194-I.

(B) Time of tax deduction – Tax is deductible at the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, 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.

(C) Threshold limit – Tax is deductible if rent is exceeding fifty thousand rupees for a month or part of a month during the previous year**.**

(D) Rate of TDS- Tax is deductible at the rate of 5 per cent of Rent

(E) Ceiling on TDS :- In a case where the tax is required to be deducted as per the provisions of section 206AA (i.e. if payee does not provide PAN), such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be

(F) Meaning of Rent:- For the purposes of this section, "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.

Practical 1

Mr. Madhukant is an employee of M/s. PQR Ltd. He had taken property on rent from Mr. Suresh, resident, for his residential purpose for the monthly rent of Rs. 70,000 w.e.f. **1st February, 2018**. He claims that he is not required to deduct tax at source since (i) he is not an assessee covered by tax audit under section 44AB(a)/(b) (ii) rent for the financial year 2017-18 does not exceed Rs. 1,80,000 (limit prescribed under section 194-I).Advise him with regard to his TDS obligation.

Solution

- The contention of Mr. Madhukant is true with regard to provisions of Section 194-I. However, with effect from 1st June, 2017, section 194-IB has been inserted by Finance Act, 2017 requiring individual or a Hindu undivided family (other than those referred to in the second proviso to section 194-I), to deduct tax at source at the rate of five percent if he or it is responsible for paying rent to a resident any income by way of rent exceeding fifty thousand rupees for a month or part of a month during the previous year.

- Therefore, Mr. Madhukant is required to deduct tax at source under section 194IB in the month of March, 2018 on Rs.1,40,000 at the rate of 5%.

Reader's Note:

Practical 2

Mr. Ramakant, senior Chief Financial officer of M/s. DANGAR Ltd. He had taken property on rent from Mr. Ganesh, resident, for his residential purpose for the monthly rent of Rs. 1,50,000 w.e.f. **1st July, 2018**. Advise Mr. Ramakant for deduction of tax under section 194-IB with regard to the time of deduction and the amount, assuming that Mr. Ganesh does not provide PAN.

Solution

- With regard to the time of deduction, Mr. Ramakant shall deduct tax at source annually in the last month of the financial year (i.e. March, 2018) on total rent of Rs. 13,50,000 (i.e. 1,50,000 X 9 months). However, rate of TDS shall be 20% since Mr. Ganesh has not provided PAN.
- With regard to amount of TDS, it shall be ideally Rs. 2,70,000 (20% of Rs.13,50,000). But the rent of last month is only Rs. 1,50,000. Therefore, as per the ceiling suggested under section 194 IB, Mr. Ramakant shall not exceed tax more than the rent of last month i.e. Rs. 1,50,000.

Reader's Note:

Practical 3

Mr. Jaykant runs proprietorship in the name and style M/s. MASIKOTAR TRADING. He pays shop rent to Mr. Shrenik, resident Rs. 20,000 p.m. with effect from 1st April 2017. Advise him with regard to TDS obligation under following alternatives:

(a) Total turnover of M/s. MASIKOTAR TRADING for the previous year 2016-17 was Rs. 2.5 Cr.

(b) Total turnover of M/s. MASIKOTAR TRADING for the previous year 2016-17 was Rs. 95 Lakhs.

Solution

Alternative (a):

- Since turnover for the previous year 2016-17 exceeded monetary limit for tax audit under section 44AB(a), Mr. Jaykant is subject to Section 194-I. Under this section, he is not required to deduct tax at source on rent, if rent paid during the financial year does not exceed Rs. 1,80,000.
- In the present case, annual rent is Rs. 2,40,000, (it exceeded limit of Rs. 1,80,000). Therefore, Mr. Jaykant shall deduct tax at source at 10% under section 194-I, at the time of credit to Mr. Shrenik or at the time of payment whichever is earlier.

Alternative (b):

- Since turnover for the previous year 2016-17 has not exceeded monetary limit for tax audit under section 44AB(a), Mr. Jaykant is not governed by the provisions of Section 194-I but his case falls under the provisions of section 194-IB.
- However, provision of section 194-IB is made applicable only when rent is exceeding fifty thousand rupees for a month or part of a month during the previous year.

- In the present case, monthly rent is Rs. 20,000 (not exceeding Rs. 50,000), Mr. Jaykant is not required to deduct tax at source under section 194-IB also.

Reader's Note:

27.2 TAX DEDUCTION AT SOURCE ON PURCHASE OF IMMOVABLE PROPERTY

Section:- 194 – IC - Effective from 1st April, 2017

(A) Person liable to deduct tax at source:- Any person responsible for paying to a resident any sum by way of consideration under the specified agreement under section 45(5A), shall deduct tax at source.

(B) Time of tax deduction – Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time or payment thereof, whichever is earlier.
For this purpose, "payment" can be in cash or by issue of a cheque or draft of by any other mode.

(C) Threshold limit – Nil

(D) Rate of TDS - Tax is deductible at the rate of 10 per cent of Rent

(E) No Tax is deductible:- Tax deduction at source shall not be made in respect of that part of consideration which is in kind under the specified agreement.

(F) Meaning of "Specified agreement":- "specified agreement" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.

27.3 TAX DEDUCTION AT SOURCE ON FEES FOR PROFESSIONAL OR TECHNICAL SERVICES

Section:- 194 J - Effective from 1st June, 2017

(A) Person liable to deduct tax at source:- Any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of -

(a) fees for professional services, or
(b) fees for technical services or
(c) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company or
(d) royalty or
(e) any sum referred to in section 28 (va) ;
shall deduct tax at source under this section.

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 abovementioned sum is credited or paid, shall be liable to deduct income-tax under this section.

However, no tax deduction under this section is required on sum by way of fees for professional services in case such sum is exclusively for personal purposes of such individual or any member of Hindu Undivided Family.

(B) Time of deduction:- Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, credit to "Suspense account" or any other name shall be deemed to be a credit of such income to the account of the payee.

For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode.

(C) Threshold limit:- No tax is deductible if the amount credited or paid or likely to be credited or paid during the financial year to the account of the payee **does not exceed**-

Nature of Payment	**Separate Threshold limit (In Rs.)**
Professional services	30,000
Fees for technical services	30,000
Royalty	30,000
Sum referred to in section 28(va)	30,000

(D) Tax rate:- 10%. (2% in case of payee engaged only in the business of operations of call centre- Amendment with effect from 1st June, 2017)

27.4 DEDUCTION OF TAX AT SOURCE FROM INTEREST PAYABLE BY AN INDIAN COMPANY

Section:- 194 LC - Effective from A.Y.2018-19

Person liable to deduct tax at source	An Indian company or a Business Trust
Payee	A non-resident or a foreign company
Nature of Payment	• Interest payable by an Indian Company or a Business Trust 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, *2020*; 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, *2020*, as approved by the Central Government in this behalf. • Interest payable in respect monies borrowed by it from a source outside India by way of issue of rupee denominated bond before the 1st day of July, 2020.
Time of tax deduction	At the time of credit of such income to the account of payee or at the time of payment whichever is earlier. For this purpose, "payment" can be in cash or by issue of a cheque or draft of by any other mode.
Threshold limit	Nil
Rate of tax deduction	5%(+SC+EC+SHEC)
Additional Point	Interest does not exceed the amount of interest calculated at the rate approved by Central Government in this behalf after considering the terms of bond or loan and its repayment. The provisions of section 206AA shall not apply in respect of payment of interest on long-term infrastructure bonds, as referred to in this section.

27.5 DEDUCTION OF TAX AT SOURCE ON INTEREST ON BONDS/GOVERNMENT SECURITIES

Section:- 194 LD - Effective from A.Y.2018-19

Person liable to deduct tax at source	An Indian company or a Government
Payee	Qualified Foreign Investor (QFI) or Foreign Institutional Investor (FII)
Nature of Payment	Interest payable on or after the 1st day of June, 2013 but before the 1st day of July, 2020 in respect of investment made by the payee in— (i) a rupee denominated bond of an Indian company ; or (ii) a Government security.
Time of tax deduction	At the time of credit of such income to the account of payee or at the time of payment whichever is earlier. For this purpose, "payment" can be in cash or by issue of a cheque or draft of by any other mode.
Threshold limit	Nil
Rate of tax deduction	5%(+SC+EC+SHEC)

Additional Points	- Rate of interest in respect of rupee denominated bond of an Indian company shall not exceed the rate as may be notified by the Central Government in this behalf. - "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD. - "Government security" shall have the meaning assigned to it in clause (b) of section 214b of the Securities Contracts (Regulation) Act, 1956. - "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 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. - If tax is deductible under this section, then provisions of section 195 and Section 196D are not applicable in respect of such payment.

Practical 4

Mention the section no. under which TDS to be made and the rate of TDS.

(i) Interest paid to FII in respect of rupee denominated bond of an Indian company

(ii) Interest paid to FII in respect of debenture of an Indian company

(iii) Payment to FII resulting into Long term capital gain on transfer of security

(iv) Payment to FII resulting into Short term capital gain on transfer of security

(v) Interest paid to non-resident by infrastructure debt fund referred to in section 10(47) (Non-resident does not have PAN)

(vi) Interest paid to non-resident on long term infrastructure bond issued by an Indian company (Non-resident does not have PAN)

Solution

Sr. No.	Particulars	Section No.	TDS Rate
(i)	Interest paid to FII in respect of rupee denominated bond of an Indian company		
(ii)	Interest paid to FII in respect of debenture of an Indian company		
(iii)	Payment to FII resulting into Long term capital gain on transfer of security		
(iv)	Payment to FII resulting into Short term capital gain on transfer of security		
(v)	Interest paid to non-resident by infrastructure debt fund referred to in section 10(47) (Non-resident does not have PAN)		
(vi)	Interest paid to non-resident on long term infrastructure bond issued by an Indian company (Non-resident does not have PAN)		

Reader's Note:

27.6 PAYMENT WITHOUT TAX DEDUCTION OR WITH DEDUCTION AT LOWER RATE

Section:- 197A - Effective from 1st June, 2017

If a declaration (form no. 15G and 15 H) is submitted under section 197A by the recipient to the payer, then no tax is deductible in a few cases.

The payer shall submit the declaration to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, on or before the seventh day of the month next following the month in which the declaration is furnished to him.

Conditions for submitting declaration

	Section 192A	**Interest on securities [Sec. 193]**	**Dividend [Sec. 194] and NSS [Section 194EE]**	**Interest other than interest on securities [Sec. 194A]**	**Insurance Commission [Sec. 194D]**	**Section 194DA**	**Section 194-I Rent [w.e.f. 01.06.2016]**
Condition 1 - Who is recipient?	Other than a company or firm	Other than a company or firm	Resident individual	Other than a company or firm	Other than a company or firm	Other than a company or firm	Other than a company or firm
Condition 2 - What is tax on estimated total income of the previous year?	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Condition 3 - How much is total of income covered by sections 192A,193, 194, 194A, 194EE, 194D, 194DA and 194I?	Not to exceed the amount of exemption limit						

Condition 3 is not applicable from June 1,2003 if the recipient is a resident individual who is 60 years or more at any time during the financial year.

Practical 5

Mr. Jagat, aged 55 years, provides following estimation for the previous year **2017-18**

(a) F.D. interest from State Bank of India- Rs. 1,00,000

(b) Income under the head "PGBP" - Rs. 2,22,000

(c) Contribution to P.P.F.- Rs.1,10,000

He wants to submit Form No. 15G to State Bank of India. Advise him.

Solution

Particulars	Rs.
Income under the head "PGBP"	2,22,000
FD interest with SBI	1,00,000
Gross Total Income (GTI)	3,22,000
Less: Deduction u/s 80C-Contribution to PPF	(1,10,000)
Total Income	2,12,000
Tax on estimated income	Nil

In this case FD interest Income (covered by Sec 194A) is Rs.1,00,000 which doesn't exceed exemption limit. Therefore, all the conditions of section 197A are satisfied. Hence, Mr. Jagat can submit form No. 15G to SBI in duplicate.

Reader's Note:

Practical 6

Consider following changes in above Practical.

"Instead of income under the head "PGBP", interest on debentures from Reliance Industries Limited is given".

Can Jagat submit Form No. 15G to State Bank of India as well as Reliance Industries Limited?

Solution

Here, total of [FD interest (sec 194A) and interest from Reliance industries Ltd. (section 193)] is Rs.3,22,000 [1,00,000+2,22,000] which exceeds Rs. 2,50,000 [exemption limit]. Therefore, condition 3 is not satisfied. Hence, Mr. Jagat cannot submit form 15G to SBI as well as Reliance Industries Limited.

Reader's Note:

27.7 PERSON RESPONSIBLE FOR PAYING

Section:- 204 - Effective from 1st April, 2017

In the case of furnishing information relating to payment to a non-resident/foreign company under section 195(6), "the person responsible for paying" shall be the payer himself, or if payer is a company then company itself including principle officer of such company.

27.8 MANDATORY REQUIREMENT OF FURNISHING PAN

Section:- 206CC - Effective from 1st April, 2017

Section 206CC has been inserted **(w.e.f. 1st April, 2017)** to provide that any person whose payments are subject to tax collection at source i.e. the collectee, shall mandatorily furnish his PAN to the collector failing which the collector shall collect tax at source at **higher of the following rates** –

(a) At twice the applicable rate of TCS or

(b) at the rate of 5%

This section further provides as under:

- No certificate under section 206C (9) will be granted by the Assessing Officer unless the application contains the PAN of the applicant.
- Tax is required to be collected at the rates (as suggested under this section) also in cases where the collectee files a declaration in Form 27C [[under section 206C(1A)] but does not provide his PAN.
- If the PAN provided to the collector is invalid or it does not belong to the collectee, it shall be deemed that the collecctee has not furnished his PAN to the collector. Accordingly, tax would be collectible at the highest of the two rates specified above.
- Both the collector and the collectee have to compulsorily quote the PAN of the collectee in all correspondence, bills, vouchers and other documents exchanged between them.
- The provisions of this section shall not apply to Non-resident who does not have permanent establishment in India. For this purpose, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on

28 – ADVANCE TAX

28.1 INSTALMENTS OF ADVANCE TAX AND DUE DATES

Section:- 211

Due date of instalment	**Amount payable in case of all assessee (except an eligible assessee referred to in section 44AD or 44ADA of the Act)**	**Amount payable in case of an eligible assessee in respect of an eligible business referred to in section 44AD or 44ADA of the Act**
On or before June 15 of the previous year	Upto 15 percent of advance tax payable	NA
On or before September 15 of the previous year	Upto 45 percent of advance tax payable	NA
On or before December 15 of the previous year	Upto 75 percent of advance tax payable	NA
On or before March 15 of the previous year	Upto 100 percent of advance tax payable	**Upto 100 percent of advance tax payable**

Any payment of advance tax made on or before 31st day of March shall also be treated as advance tax paid during the financial year

29 – INTEREST U/S 234A, 234B, 234C & 234D

29.1 INTEREST FOR DEFERMENT OF ADVANCE TAX.

Section:- 234C

(1) Period for which and amount on which interest is payable

(A) Eligible assessee under section 44AD or 44ADA of the Act

Dates of Installment	*Advance Tax Paid Till Date*	*Advance Tax Payable*	*Amount on which interest is payable [(3)-(2)]*	*Period for which interest is payable*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
15.03.**18**		100%		1 month

(B) Other assessee

Dates of Installment	*Advance Tax Paid Till Date*	*% of "tax due on returned income"*	*Amount on which interest is payable [(3)-(2)]*	*Period for which interest is payable*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
15.06.**17**		15%		3 months
15.09.**17**		45%		3 months
15.12.**17**		75%		3 months
15.03.**18**		100%		1 month

However, no interest under section 234 C shall be levied for the first and second instalment, if advance tax paid by the assessee is not less than 12% or 36% of tax due on returned income.

(2) Points to remember

(a) Meaning of "Tax due on returned income"

Particulars	**Rs.**
Tax on returned income	xxx
Less: TDS or TCS/ Relief u/s 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Tax due on returned income	**xxxx**

(b) Calculation of interest under section 234C is always with reference to "tax due on returned Income". Therefore interest under section 234C will not undergo change even if assessing officer may complete the assessment at higher figure under section 143(1) / 143(3) / 144 / 147 / 153A, as the case may be.

(3) Short payment of advance tax in case of capital gains/lottery income etc.

No interest will be levied in respect of any shortfall in the payment of advance tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate-

(a) the amount of capital gains; or

(b) income of the nature referred to in section 2(24)(ix) (i.e., winning from lottery, crossword puzzle income, races including horse race etc.); or

(c) income under the head "PGBP" in cases where the income accrues or arises under that head for the first time

(d) income of the nature referred to in section 115BBDA (i.e. dividends received from domestic companies in excess of Rs. 10 lakhs during the year),

and the assesse has paid the whole of the amount of tax payable in respect of such income, as part of the remaining instalments of advance tax which are due or if no such instalments are due, then such tax is paid by the 31st day of March of the financial year.

Practical 1

Zandu & Co, a partnership firm submits the following information for the previous year **2017-18**.

Income under the head "PGBP"	5,00,000
LTCG on sale of land dated 1st November, 2017	99,515

You are required to compute the minimum amount of advance tax payable by Zandu & Co. for each of the installments in such a way that it will not attract interest liability under section 234C.

Solution

Particulars	**Minimum amount of advance tax (Rs.)**
1st Instalment of advance tax payable {15.06.2017} [upto 12%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 x 12%	**18,540**
2nd Instalment of advance tax payable { 15.09.2017} [upto 36%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 x 36%	**37,080** **[55,620-18,540]**
3rd Instalment of advance tax payable {15.12.2017} [upto 75%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 Add: Tax on LTCG Rs. 99,515 @ 20.60% =Rs. 20,500 Total Tax =Rs.1,75,000 x 75%	**75,630** **[1,31,250-18,540-37,080]**

4th Instalment of advance tax payable {15.03.2018} [100%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 Add: Tax on LTCG Rs. 99,515 @ 20.60% =Rs. 20,500 Total Tax =Rs.1,75,00 x 100%	**43,750** **[1,75,000-18,540-37,080-75,630]**

Readers Note:

30 – SETTLEMENT OF CASES

30.1 MEANING OF CASE

Section:- 245A(b)

- **A pending proceeding is a "case"**
  A "case" means any proceeding for assessment under the Act of any person, in respect of any assessment year which may be pending before the Assessing Officer on the date on which an application under section 245C(1) is made.
- **When a proceeding is taken as "pending proceeding"**

Sr. No.	Proceedings for	Date of commencement of proceedings	Date of conclusion of proceedings
1.	Assessment or reassessment or re-computation u/s 147	From the date on which a notice u/s 148 is issued	No mention under the Act
2.	Any other assessment year or years for which a notice u/s 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 u/s 139 or in response to a notice u/s 142	From the date on which a notice under section 148 is issued in Case No. 1 above.	No mention under the Act
3.	Search Cases (i.e. Section 153A or 153C)	From the date of issue of notice requiring assessee to file returns for six assessment years	The date on which assessment is made. *
4.	Making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment	From the date on which order under section 254 or 263 or 264, setting aside or cancelling the assessment is passed	No mention under the Act
5.	Other cases – If assessment is made	from the date on which return of income is furnished u/s 139 or in response to a notice u/s 142	The date on which assessment is made.*
	Other cases – If assessment is not made	from the date on which return of income is furnished under section 139 or in response to a notice u/s 142	**Time specified for completion of assessment u/s 153(1)- Substituted by Finance Act, 2017 w.e.f. 1-4-2017**

* The assessment proceedings shall be deemed to have been completed only on the date of service of assessment order to the applicant. – Circular No. 3/ 2008, dated 12th March, 2008.

Practical 1

Whether following proceedings shall be taken as "case" for the purpose of Settlement commission?

1. Proceedings initiated by issuing notice under section 143(2) of Income Tax Act
2. Proceedings initiated by issuing notice under section 271(1)(c) of Income Tax Act
3. Proceeding initiated by issuing notice under section 148 of Income Tax Act
4. Appellate proceedings pending before CIT(A) under section 246A of Income Tax Act

Solution

Considering the definition of case discussed above,

Sr. No.	Nature of pending Proceeding	Solution	Reason
1.	Proceedings initiated by issuing notice under section 143(2) of Income Tax Act	It is a "Case"	It is an assessment proceeding.
2.	Proceedings initiated by issuing notice under section 271(1)(c) of Income Tax Act	Not a "Case"	Not an assessment proceeding, it is a penalty proceeding.
3.	Proceeding initiated by issuing notice under section 148 of Income Tax Act	It is a "Case"	It is a reassessment proceeding.
4.	Appellate proceedings pending before CIT(A) under section 246A of Income Tax Act	It is not a "Case"	Not an assessment proceeding, It is an appellate proceedings.

Readers Note:

31 – ADVANCE RULINGS

31.1 SCOPE OF APPLICANT FOR AAR RESTRUCTURED

Section:- 245N – Effective from 1st April, 2017

On account of the merger of Authority for Advance Rulings for Income – Tax, Central Excise, Customs Duty and Service Tax, the definition of applicant would now also include an applicant defined under the Central Excise Act, 1944, Customs Act, 1962 and the Finance Act, 1994.

31.2 CONSTITUTION OF AUTHORITY OF ADVANCE RULING

Section:- 245-O – Effective from 1st April, 2017

Section 245-O has been amended with effect from October 1, 2014. The amended provisions are given below.

1. The Central Government shall constitute an Authority for giving advance rulings, to be known as "Authority for Advance Rulings".
2. The Authority shall consist of a Chairman and such number of Vice-chairmen, Revenue Members and Law Members as the Central Government may by notifications appoint.
3. A person shall be qualified for appointment as –

Chairman	Who has been a Judge of the Supreme Court or the Chief Justice of a High Court or at least seven years a Judge of a High Court
Vice-Chairman	Who has been Judge of a High Court
Revenue Member	**(i) From the Indian Revenue Service, who is, or is qualified to be, a Member of the Board,** **(ii) From the Indian Customs and Central Excise Service, who is, or is qualified to be, a Member of Central Board of Excise and Customs, on the date of occurrence of a vacancy.**
Law Member	From the Indian Legal Service, who is, *or is qualified to be*, an Additional Secretary to the Government of India on the **date of occurrence of a vacancy**.

4. The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed.
5. The Central Government shall provide to the Authority with such officers and employees, as may be necessary, for the efficient discharge of the functions of the Authority under the Act.
6. The powers and functions of the Authority may be discharged by its Benches as may be constituted by the Chairman from amongst the Members thereof.
7. In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the senior-most Vice-chairman shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

8. In case the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Vice-Chairman shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.]
9. A Bench shall consist of the Chairman or the Vice-chairman and one revenue Member and one law Member.

The Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at such places as the Central Government may, by notification specify.

32 – REQUIREMENT AS TO MODE OF ACCEPTANCE PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX

32.1 MODE OF UNDERTAKING TRANSACTIONS

Section:- 269ST - Effective from 1st April, 2017

No person shall receive an amount of two lakh rupees or more—

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that the provisions of this section shall not apply to—

(i) any receipt by—

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(ii) transactions of the nature referred to in section 269SS;

(iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.

Practical 1

From the given information, ascertain the violation of provisions of section 269STof the Act, if any.

(a) ABC Private Limited made following cash sales on "15th August"" to following customers.

Name of the Customer	Bill No.	Rs.
Mr. Hasmukh	32	60,000
Mr. Mansukh	35	80,000
Mr. Hasmukh	48	1,50,000
Mr. Mansukh	59	40,000

(b) PQR Private Limited has made credit Sales to Mr. Narendra for Rs. 8,00,000 on 1st August, 2017. Mr. Narendra discharged his liability in following manner :-

Date of Payment	Mode of Payment	Rs.
5th August, 2017	Account Payee Cheque	3,00,000
18th August, 2017	Cash	1,50,000
19th September,2017	Bearer Cheque	1,60,000
10th October, 2017	RTGS (ECS)	1,90,000

(c) Mr. Jagga received following payments in cash from Mr. Shetty on the occasion of marriage of Anushka (daughter of Mr. Shetty):

Date of Payment	Work undertaken by Mr. Jagga	Amount
18th August, 2017	Decoration	1,45,000
20th August, 2017	Video Shooting	1,05,000

Solution

(a) The provisions of section 269ST restrict acceptance of Rs. two lakh or more in aggregate from a person in a day otherwise than by an account payee cheque or an account payee draft or ECS. However, this limit is person-wise day-wise. Therefore, ABC Private limited committed violation of section 269ST in respect of cash sales made to Mr. Hasmukh since aggregate amount exceeded Rs.2,00,000 .

(b) The provision of section 269ST restrict acceptance of Rs. two lakh or more in respect of single transaction otherwise than by an account payee cheque or an account payee draft or ECS. Therefore, PQR private limited committed violation of section 269ST in respect of single transaction done with Mr. Narendra by accepting Rs. 3,10,000 (Rs. 1,50,000 in cash and Rs. 1,60,000 bearer cheque).

(c) The provisions of section 269ST restrict acceptance of Rs. two lakh or more in aggregate in respect of transactions relating to one event or occasion from a person otherwise than by an account payee cheque or an account payee draft or ECS. Therefore, Mr. Jagga committed violation of section 269ST in respect of transactions relating to marriage event of Anushka by accepting Rs. 2,50,000 (Rs. 1,45,000 for decoration and Rs. 1,05,000 for video shooting) in cash.

Readers Note:

32.2 PRESS RELEASE, CIRCULARS AND NOTIFICATIONS

1. **Press release dated 5th April 2017**

   The CBDT has issued a press release dated 5th April 2017 by which it has provided important clarification regarding the restriction imposed on cash transaction by sections 269ST & 271DA inserted by the Finance Act 2017 to the Income-tax Act. These sections provide that no person (other than those specified therein) shall receive an amount of two lakh rupees or more (a) in aggregate from a person in a day; (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account. **The CBDT has clarified that the said cash transaction limit of Rs 2 lakh will not apply to withdrawal from banks, cooperative bank and post offices.**

2. **Circulars**

   Circular No. 22 of 2017 Dated 03rd July, 2017

   Clarifications in respect of section 269ST of the Income-tax Act, 1961

   (a) Representations have been received from non-banking financial companies (NBFCs) and housing finance companies (HFCs) as to whether the provisions of section 269ST of the Act shall apply to one instalment of loan repayment or the whole amount of such repayment.

(b) In this context, it is clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

32.3 PENALTY FOR FAILURE TO COMPLY WITH PROVISIONS OF SECTION 269ST

Section:- 271DA – Effective from 1st April, 2017

Nature of default	Penalty leviable	Competent IT Authority to levy penalty
Person receives any sum in contravention of provisions of section 269ST.	Amount equal to the sum so received	Joint Commissioner

33 – PENALTIES

33.1 FURNISHING INCORRECT INFORMATION IN ANY REPORT OR CERTIFICATE BY AN ACCOUNTANT OR A MERCHANT BANKER OR A REGISTERED VALUER

Section:- 271J – Effective from 1st April, 2017

Nature of default	Penalty leviable	Competent IT Authority to levy penalty
Where the Assessing Officer or the Commissioner (Appeals), finds that an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate furnished under any provision of this Act or the rules made thereunder.	Rs. 10,000 for each such report or certificate.	Assessing Officer / CIT(A)

33.2 PENALTY NOT TO BE IMPOSED IN CERTAIN CASES

Section:- 273B – Effective from 1st April, 2017

No penalty is imposable for any failure under sections 271(1)(b), 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FAB, 271FB, 271G, 271GA, 271GB, 271H, 271-I, **271J (inserted by Finance Act,2017),** 272A(1)(c) or (d), 272A(2), 272AA(1), 272B, 272BB(1), 272BB(1A), 272BBB(1), 273(1)(b), 273(2)(b) and 273(2)(c) if the person or assessee proves that there was reasonable cause for such failure.

34 – PROSECUTIONS

-

35 – CONVERSION OF FIRM INTO COMPANY

-

36 – CONVERSION OF SOLE PROPRIETARY BUSINESS INTO COMPANY

-

37 – AMALGAMATION

-

38 – SET-OFF OF LOSSES OF A BANKING COMPANY AGAINST THE PROFIT OF A BANKING INSTITUTION UNDER A SCHEME OF AMALGAMATION

-

39 – DEMERGER

39.1 HOW TO FIND OUT CAPITAL GAINS WHEN FOREIGN RESULTING COMPANY SELLS (TRANSFER) THE SHARES OF INDIAN COMPANY RECIVED FROM FOREGIN DEMERGED?

Section:- 49(1)

(a) Section 49(1)(iii) (e) has been amended to provide that cost of acquisition of the shares in Indian Company [which were received on demerger after meeting conditions of section 47(vic)] in the hands of resulting foreign company shall be the cost incurred by previous owner (i.e. cost for which demerged foreign company acquired shares of Indian Company).

By virtue of **section 47(vic)**, any transfer of shares held in an Indian company by a demerged foreign company to the resulting foreign company is not treated as transfer if the following conditions are satisfied:

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

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

(b) Further, to find out whether such share of Indian company are long-term capital assets or not, the period of holding shall be determined from date of acquisition of such assets by the previous owner (i.e. demerged foreign company.)– **Explanation 1 to section 2(42A).**

(c) Following the decision of Bombay High Court in CIT v. Manjula J. Shah 16 Taxman 42, resulting foreign company can claim indexation benefit from the previous year in which the capital asset was acquired by the previous owner. (i.e. demerged foreign compnay)

Practical 1

Under the scheme of demerger, the shares of PQR Industries Private Limited, Indian Company held by U.K. Ltd. (i.e. foreign demerged company in U.K.) got transferred to USA INC. (i.e. foreign resulting company in U.S.). The scheme of demerger was made effective on 10-07-2017 and all the shareholders of U.K. Ltd. agreed to be a shareholder of USA INC. The U.K. Ltd. acquired the shares of PQR Industries Private Ltd. for Rs. 1,00,000 on 10-08-2014. Discuss taxability of capital gain in the hands of U.K. Ltd assuming that United Kingdom does not levy tax on transactions relating to demerger.

Continuing above problem, USA INC sold all the shares of PQR Industries Private Limited on 13-12-2017 for Rs. 1,90,000. Find out capital gain in the hands of USA INC.

Solution

Since all the conditions of section 47(vic) are satisfied, hence no capital gain shall be taxed in the hands of U.K. Ltd.

Computation of Long Term Capital Gain in the hands of USA INC.

Period of Holding: From 10-08-2014 to 13-12-2017

Type of Capital Asset : Long Term

Particulars	Rs.
Full value of consideration	1,90,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	1,90,000
Less: Indexed Cost of Acquisition $(\text{Rs.}\ 1{,}00{,}000) \times \frac{272}{240}$	1,13,333
Taxable Long Term Capital Gain	**76,667**

Readers Note:

40 – AMALGAMATION OR DEMERGER OF CO-OPERATIVE BANK

-

41 – CORPORATISATION AND DEMUTUALISATION OF STOCK EXCHANGE

-

42 – CONVERSION OF UNLISTED COMPANY INTO LIMITED LIABILITY PARTNERSHIP

-

43 – TRANSFER OF ASSETS BETWEEN HOLDING AND SUBSIDIARY COMPANY

-

44 – SLUMP SALE

44.1 DEFINITION

Section:- 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***."

44.2 TAX CONSEQUENCES UNDER THE HEAD "CAPITAL GAINS"

Section:- 50B

The provisions of section 50B, applicable for computation of capital gains in the case of slump sale, are given below—

(a) Any profits or gains arising from the slump sale affected in the previous year shall be chargeable as long-term capital gains and shall be deemed to be the income of the previous year in which the transfer took place.
Where, however, any capital asset being one or more undertakings owned and held by the assessee for not more than 36 months is transferred under the slump sale, then capital gain shall be deemed to be short-term capital gain.

(b) In the case of slump sale of the capital asset being one or more undertaking, the "net worth" of the undertaking shall be taken as cost of acquisition and cost of improvement. "Net worth" for this purpose is the 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 the books of account.
Computation of net worth shall be as under—

Particulars	Base of Valuation
Depreciable Assets	sub-item (C) of Section 43(6)(c)(i)
Capital Assets u/s 35AD	Nil
Other Assets	Book Value
Sub Total	XXXXXXXXXXX
Less: Liabilities	Book Value
Net worth	**YYYYYYYYYYY**

Any change in the value of assets on account of revaluation of assets shall be ignored for the purpose of computing the net worth.

(c) The benefit of indexation will not be available.

(d) Every assessee, in the case of slump sale, shall furnish along with the return of income, a report of a chartered accountant in Form No. 3CEA indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at.

44.3 STEPS TO FIND OUT WRITTEN DOWN VALUE IN THE HANDS OF TRANSFEROR AFTER SLUMP SALE

Sections:- 43(6)(c)(i)

Step 1	Find out the depreciated value of the block at the beginning of the previous year.
Step 2	Add "actual cost" of the asset acquired during the previous year.
Step 3	Balance
Step 4	Deduct money received/receivable (together with scrap value) in respect of that asset (falling within the block of assets) which is sold, discarded, demolished or destroyed during the previous year. **(Step 4 amount shall not exceed Step 3 amount)**
Step 5	Find out Balance
Step 6- is called Sub item (C) of Section 43(6)(c)(i)	Deduct WDV of assets transferred under slump sale as if it is the only asset in a block **(Step 6 amount shall not exceed Step 5 amount)**
Step 7	WDV in the hands of transferor after slump Sale

Practical 1

PQR Limited has two units - one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for Rs. 385 lacs to a new company called S Limited, in which it holds 74% equity shares.

The balance sheet of PQR limited as on 31st March 2018, being the date on which software unit has been transferred, is given hereunder –

Balance Sheet as on 31.3.2018

Liabilities	Rs. in lacs	Assets	Rs. in lacs
Paid up Share Capital	300	**Fixed Assets**	
General Reserve	150	Hardware unit	170
Share Premium	50	Software unit	200
Revaluation Reserve	120	**Debtors**	
Current Liabilities		Hardware unit	140
Hardware unit	40	Software unit	110
Software unit	90	**Inventories**	
		Hardware unit	95
		Software unit	35
	750		**750**

Following additional information are furnished by the management:

(i) The Software unit is in existence since May, 2014 (ii) Fixed assets of software unit includes land which was purchased at Rs. 40 lacs in the year 2007 and revalued at Rs. 60 lacs as on 31.03.2018. (iii) Fixed assets of software unit mirrored at Rs. 140 lacs (Rs. 200 lacs minus land value Rs. 60 lacs) is written down value of depreciable assets as per books of account. However, the written down value of these assets u/s 43(6) of the Income-tax Act, 1961 is Rs. 90 lacs.

(a) Ascertain the tax liability, which would arise from slump sale to PQR Limited.

(b) What would be your advice as a tax-consultant to make the restructuring plan of the company more tax-savvy, without changing the amount of sale consideration?

Solution

(a) As per section 50B, any profits and gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before slump sale, the capital gain shall be deemed to be long-term capital gain. Indexation benefit is not available in case of slump sale as per section 50B(2).

Ascertainment of tax liability of PQR Limited from slump sale of software unit

Particulars	Rs. in lacs
Sale consideration for slump sale of Software Unit	385
Less: Cost of acquisition being the networth of Software Unit	185
Long term capital gains arising on slump sale	200
(The capital gains is long-term as the Software Unit is held for more than 36 months)	
Tax liability on LTCG	
Under Section 112@20% on Rs.200 lacs	40.00
Add: Surcharge @7%	2.80
	42.80
Add: Education cess@2% and SHEC @1%	1.28
	44.08

Working Note:- Computation of net worth of Software Unit

Particulars	Rs. in lacs
(1) Book value of non-depreciable assets	
(i) Land (Revaluation not to be considered)	40
(ii) Debtors	110
(iii) Inventories	35
(2) Written down value of depreciable assets under section 43(6) (Refer Note)	90
Aggregate value of total assets	275
Less: Current Liabilities of software unit	90
Net Worth of software unit	**185**

Note: For computing net worth, the aggregate value of total assets in the case of depreciable assets shall be the written down value of the block of assets as per section 43(6).

(b) Tax advice

(i) Transfer of any capital asset by a holding company to its 100% Indian subsidiary company is exempt from capital gains under section 47(iv). Hence, PQR Limited should try to acquire the remaining 26% equity shares in S Limited then make the slump sale in the above said manner, in which case the slump sale shall be exempt from tax. For this exemption, PQR Limited will have to keep such 100% holding in S Limited for a period of 8 years from the date of slump sale, otherwise the amount exempt would be deemed to be income chargeable under the head "Capital Gains" of the previous year in which such transfer took place.

(ii) Alternatively, if acquisition of 26% share is not feasible, PQR Limited may think about demerger plan of Software Unit to get benefit of section 47(vib) of the Income-tax Act, 1961.

Readers Note:

45 – DEPRECIATION

45.1 MEANING OF ACTUAL COST

Section:- 43(1) and Explanation to section 43(1) - Effective from A.Y.2018-19

Proviso to section 43(1) inserted by Finance Act, 2017

"Actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

Following proviso has been inserted by Finance Act, 2017

Where the assessee incurs any expenditure for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs.10,000, such expenditure shall be ignored for the purposes of determination of actual cost.

Consequently, one cannot claim depreciation/additional depreciation under section 32 and investment allowance under section 32AD pertaining to such payment.

Practical 1

Zig Ltd. is engaged in manufacturing of computer hardware. It provides following information for the previous year 2017-18.

Particulars of Block – Plant and Machinery	
Rate of depreciation	60%
Depreciated value of the block of April 1, 2017 (Consisting of 85 computers)	Rs. 4,00,000
Purchased 101 computers of uniform cost on 22nd June, 2017 and put to use on the same day. (Rs.20,00,000 was paid by account payee cheque and balance in cash)	Rs. 20,20,000
Sold out 80 computers on 10th March, 2018	Rs. 25,20,000

Find out the amount of depreciation, additional depreciation and capital gains, if any.

Solution

(a) Computation of Amount of Depreciation

Particulars	Rs.
Depreciated value of the block consisting of 45 computers on April 1, 2017	4,00,000
Add: Actual Cost of 100 computers	20,00,000
Less: Sale proceeds of 80 computers	(-)25,20,000
Written down value of the block for the previous year 2017-18	Nil
Less: Depreciation for the previous year 2017-18 (60% on Nil)	**Nil**
Less: Additional Depreciation for the previous year 2017-18	4,00,000
Depreciated value of the block consisting of 65 computers	Nil

(b) Computation of Additional Depreciation

Particulars	Rs.
Actual cost of 100 computers	20,00,000
Additional Depreciation (20% of Rs.20,00,000)	**4,00,000**

Note:

(c) Computation of Capital Gains

Here block becomes Nil due to sale of assets and therefore, section 50 is attracted and therefore, short term capital gain shall be worked out as under:

Particulars	Rs.
Full value of consideration	25,20,000
Less: Cost of Block of Assets (Opening W.D.V Rs.4,00,000 + Addition Rs.20,00,000)	24,00,000
Short Term Capital Gain under section 50	**1,20,000**

Readers Note:

Proviso to Explanation 13 of section 43(1) inserted by Finance Act,2017

As per explanation 13 to section 43(1) of the Act, if assessee has claimed benefit of section 35AD in respect of asset, then actual cost of such asset shall be taken to be NIL in the hands of assessee.

Following proviso has been inserted to above explanation which read as under:

Provided that where any capital asset in respect of which deduction or part of deduction allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of section 35 AD (7B), the actual cost of the asset to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used for the purpose of business since the date of its acquisition.

Provisions of section 35AD(7B) of the Act.

(a) An asset (in respect of which a deduction has been 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.

(b) If such asset is used for any purpose other than the specified business during the abovementioned 8 years, then following shall be deemed to be income of the assese of the previous year in which the asset is so used. [Section 35AD(7B)]

Particulars	Rs. in lakhs
Total amount of deduction claimed under section 35AD	XXXXX
Less: Amount of depreciation allowable in accordance with the provisions of section 32, as if no deduction had been allowed under section 35AD	(XXX)
Deemed income under section 35AD (7B)	XXXXX

(c) 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 above mentioned 8 years.

(d) If any sum received or receivable on account of any capital asset, in respect of which deduction has been claimed u/s 35AD, being demolished, destroyed, discarded or transferred then same shall be treated as income and chargeable to tax under the head "Profits and gains of business or profession". [Sec. 28(vii)]

Practical 2

ABC Ltd. set up warehousing unit for storage of agricultural produce on **10.06.2015.** The construction cost of warehouse was Rs. 75 lacs on which deduction was claimed under section 35AD. However, it started using this warehouse for storage of edible oils with effect from **01.04.2017.** Discuss tax consequences for the assessment year **2018-19** in the hands of ABC Ltd.

Solution

Since the warehouse of specified business has been used for non-specified business (for storage of edible oils) in the **P.Y.2017-18**, the deeming provision under section 35AD(7B) shall be applicable.

Particulars	Rs.
Total amount of deduction claimed under section 35AD [150% of Rs. 75 Lacs)	1,12,50,000
Less: Depreciation allowable u/s 32 (Refer working note)	14,25,000
Deemed income under section 35AD(7B)	**98,25,000**

Working Note: Computation of depreciation allowable u/s32 for earlier years had deduction u/s 35AD not claimed.

	Particulars	Rs.
	Cost of Building	75,00,000
Less:	Depreciation for the previous year **2015-16** [10%]	7,50,000
		67,50,000
Less:	Depreciation for the previous year **2016-17** [10%]	6,75,000
	Actual cost as per proviso to explanation 13 to Sec. 43(1)	**60,75,000**
	Total Depreciation [Rs.7,50,000 + Rs.6,75,000]	**14,25,000**

Reader's Note:

Practical 3

What would have been your answer in the above practical if ABC Ltd had sold out this warehouse building for Rs. 82 lacs on **01.04.2017**?

Solution

As per section 28(vii), entire amount received Rs. 82 lac on sale of building is deemed to be the business income for the **A.Y.2018-19.**

Reader's Note:

46 – TAX PLANNING

-

47 – TONNAGE TAXATION SCHEME

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48 – INCOME COMPUTATION AND DISCLOSURE SCHEME (ICDS)

49 – LIABILITY IN SPEICAL CASES

-

50 – REFUND

50.1 WITHHOLDING OF REFUND IN CERTAIN CASES

Section:- 241A - Effective from 1st April, 2017

For every assessment year commencing on or after the 1st day of April, 2017, where refund of any amount becomes due to the assessee under section 143(1) of the Act and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under section 143 (2) of the Act in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be, withhold the refund up to the date on which the assessment is made.

50.2 INTEREST ON REFUNDS

Section:- 244A(1B) – Effective from 1st April, 2017

Where refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII-B (TDS Provisions), such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which—

(a) claim for refund is made in the prescribed form; or

(b) tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262,

to the date on which the refund is granted.

51 – TAXATION OF MUTUAL CONCERNS

51.1 CONCEPT OF MUTUALITY AND ITS TAXATION

Observation of Calcutta High Court in case of General family Pension Fund Vs. Commissioner of Income Tax 14 ITR 488

- Mutual dealings arise out of a mutual association.
- To constitute a mutual association, a number of persons associate together to subscribe money for a fund for the purpose of it being spent upon a particular object, and the balance, if any, being returned to the subscribers and proportionately distributed amongst them. This balance is that part of the fund which is not absorbed by the particular object of the subscriptions. Those transactions are mutual dealings and the unrequired balance is the surplus.
- This surplus is not assessable to income-tax since it arises out of mutual dealings.

51.2 INCORPORATION OF A COMPANY TO CARRY ON THE ACTIVITIES OF CLUB MAY NOT AFFECT THE CLAIM OF EXEMPTION ON GROUND OF MUTUALITY

The Supreme Court in CIT vs. vs. Royal Western India Turf Club Ltd. (1953) 24 ITR 551, 560 (SC) laid down the principle as follows:

"Where a company collects money from its members and applies it for their benefit not as shareholders but as person who put up the fund the company makes no profit. In such cases, where there is identity the character of those who contribute and of those who participate in the surplus, the fact of incorporation may be immaterial and the incorporated company may well be regarded as a mere instrument, a convenient agent for carrying out what the members might more laboriously for themselves."

51.3 CONCEPT OF MUTUALITY EXTENDS TO THE INCOME FALLING UNDER HEAD HOUSE PROPERTY

Supreme Court in CHELMSFORD CLUB vs. COMMISSIONER OF INCOME TAX 243 ITR 89 (SC) made following observation:

"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 s. 22, will be outside the purview of the levy of income-tax. The business of the appellant is thus governed by the principle of mutuality even the deemed income from its property is governed by the said principle of mutuality. The Tribunal was legally correct in holding that the principle of mutuality applies to the property income and accordingly it is not taxable income of the assessee."

51.4 CONCEPT OF MUTUALITY FAILS FOR TAXING RENTAL INCOME WHEN MARRIAGE HALL LET OUT TO NON-MEMBERS

Kerala High Court in CIT V. Trivandrum Club 282 ITR 505 made following observation

Real contributors of income by availing of the facilities of the marriage hall are not the members but non-members. In order to enable them to avail of the facilities of the club, non-members are to be given temporary membership only for the purpose of availing of this benefit. Marriage hall was admittedly being rented out to nonmembers making them as temporary members only for the purpose of letting out the marriage hall and the amounts received from non-members are provided at the hands of the assessee. Principle of mutuality therefore, would not apply in such facts situation.

51.5 TRANSFER FEES RECEIVED BY A CO-OPERATIVE HOUSING SOCIETY FROM ITS INCOMING AND OUTGOING MEMBERS - EXEMPT ON THE GROUND OF PRINCIPLE OF MUTUALITY

Bombay High Court in case of SIND CO-OPERATIVE HOUSING SOCIETY vs. INCOME TAX OFFICER 317 ITR 47 made following observation:

The transfer fee can be appropriated only if the transferee is admitted to membership. The fact that a proposed transferee may make payment in advance by itself is not relevant. The amount can only be appropriated on the transferee being admitted as a member. As it is a transfer fee, if the transferee is not admitted as a member, the amount received will have to be refunded, as the amount is payable only on a transfer of rights of the transferor in the transferee.

Considering the bye-laws, the society is registered with the object principally of looking after the property including building thereon. There is no trading or business transactions. The members by adopting the bye-laws agree amongst themselves that a fee for transfer of flat / tenement when it is sold would be paid to the society. It may be that both incoming or outgoing members have to contribute to the common fund of the society. The amount paid however, is to be exclusively used for the benefits of the members as a class. There is no legal bar for the assessee to earn profits but the profit must come from a commercial activity in the nature of trade, business or the like in which event the assessee then will have to pay tax on such profits. Charging of transfer fees as per bye-laws has no element of trading or commerciality. Therefore, such transfer fee is not liable to tax.

51.6 CONCEPT OF MUTUALITY ENDS MOMENT THE CLUB DEPOSITS AMOUNT WITH ITS CORPORATE MEMBERS, BEING BANKS AND FINANCIAL INSTITUTIONS, WITH THE SOLE AIM OF EARNING INTEREST ON DEPOSITS.

The Andhra Pradesh High Court in case of **CIT v. Secunderabad Club Picket (2012) 340 ITR 121**, following the judgement of the Supreme Court in Bankipur Club Ltd (1997) 226 ITR 97, concluded that certain factors need to be considered to arrive at a conclusion as to what point the relationship of mutuality ends and that of trading begins. If the object of the assessee claiming to be a 'mutual concern' is to carry on a business and the same consideration is realized both from the members and from non-members by giving similar facilities to them, then, the resultant surplus would be an income liable to tax.

The High Court further held that the principle of mutuality ends the moment the club deposits the amount with its corporate members, being banks and financial institutions, with the sole aim of earning interest on the deposits. Also, the corporate members, i.e the banks and financial institutions, have treated the club as a regular customer, accepting deposits in the normal course of business. There is nothing to show that the interest on fixed deposits have been provided as a facility to the club. The social relationship and social activities of the club have nothing to do with its deposits with corporate members. Therefore, the interest earned on deposits made with its corporate members, being banks and financial institutions, is not exempt on the principle of mutuality. – This view is confirmed by the **Supreme Court in case of Banglore Club vs. Commissioner of Income Tax 350 ITR 509 (2013)**

51.7 EXPRESS PROVISION FOR TAXING MUTUAL CONCERNS

Section:- 2(24)

(1) **Section 2(24)(v) :** Income received by a trade or professional or similar association from specific services rendered to members.

(2) **Section 2(24)(vii) :** The profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule.

(3) **Section 2(24)(viia) :** The profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members.

51.8 SPECIAL DEDUCTIONS IN CASE OF TRADE PROFESSIONAL OR SIMILAR ASSOCIATION

Section:- 44A

(a) As per the definition of income and the provisions of section 28, where the mutual concern is a trade, professional or similar association, the income derived from specific services performed for its members, is chargeable to tax.

(b) Therefore, surplus of such mutual concerns from other activities is not chargeable to tax.

(c) As per the various judicial pronouncements, if source is exempt from tax, then loss from this source cannot be set-off against any other taxable income.

(d) However, section 44A is an exception to the above rule. As per this section, if assessee is a trade, professional or similar association, then lowest of the following shall be allowed as deduction

- loss from non-taxable activities
- 50% of total income of such association before claiming deduction under this section.

(e) The benefit of deduction under this section is not available to the institutions or associations whose income is exempt under section 10 (23A).

Practical 1

Andhra Chamber of Commerce provides following information:

Particulars	Situation 1 (Rs.)	Situation 2 (Rs.)	Situation 3 (Rs.)
Income derived from providing specific services to members.	1,25,000	1,00,000	1,12,000
Surplus (Deficit) from other activities	75,000	(-) 1,40,000	(-) 30,000

Find out total Income.

Solution

Computation of Total Income of Andhra Chamber of Commerce.

Particulars	Situation 1 (Rs.)	Situation 2 (Rs.)	Situation 3 (Rs.)
Income derived from providing specific services to members.	1,25,000	1,00,000	1,12,000
Less: Deduction under section 44A	NA	50,000	(-) 30,000
Total Income	**1,25,000**	**50,000**	**82,000**

Reader's Note:

52 – TAXATION OF SUBSIDIES/GRANT

-

53 – MISCELLENEOUS

-

54 – TAXATION OF NON-RESIDENT

54.1 HOW TO DETERMINE RESIDENTIAL STATUS OF A COMPANY?

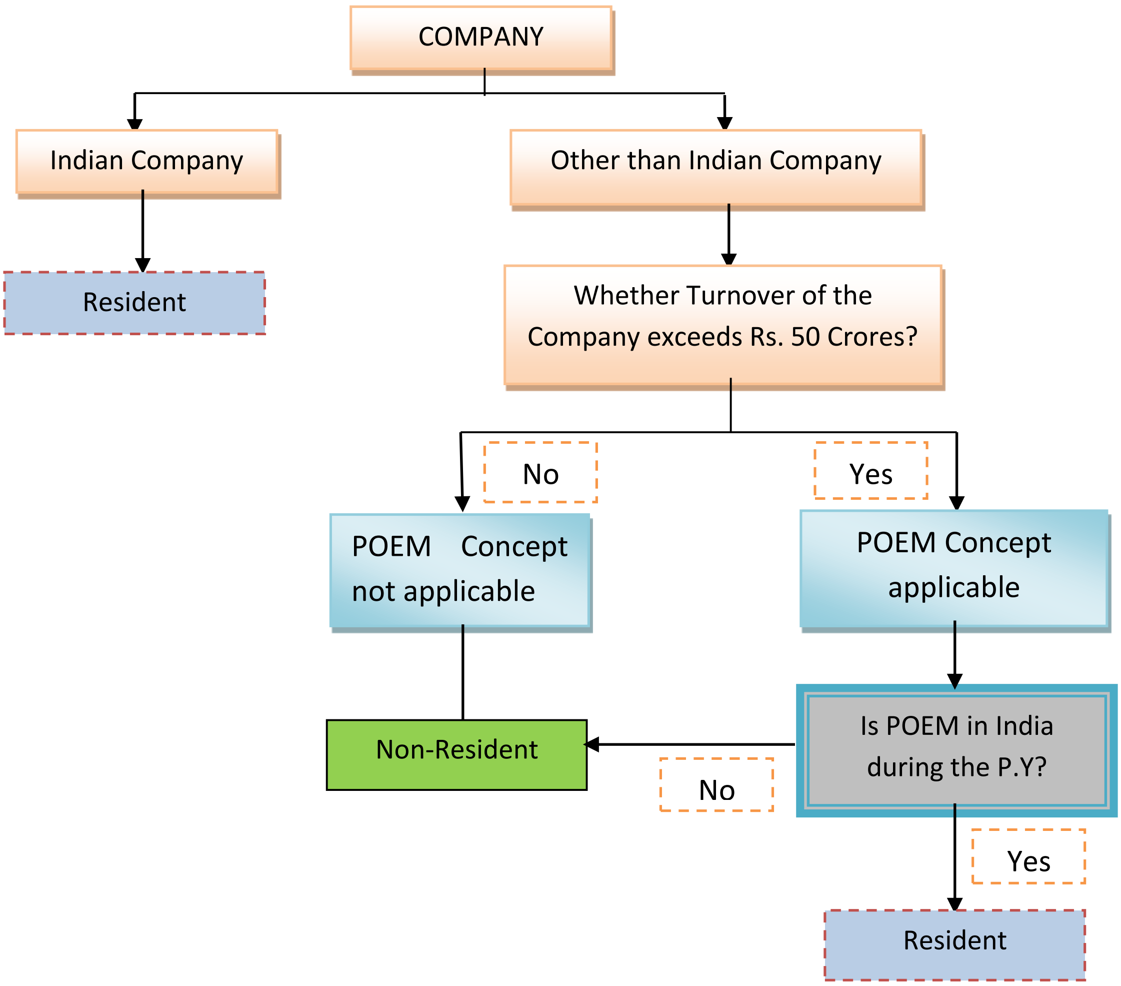
Section:- 6(3)

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

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India.

Explanation:- *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.*



GUIDING PRINCIPLES ON POEM

Circular No. 6/2017, dated 24.01.2017 & Circular No. 8/2017, dated 23-02-2017

Fundamental Points to be noted.

- Any determination of the POEM will depend upon the facts and circumstances of a given case.
- The POEM concept is one of substance over form.
- An entity may have more than one place of management, but it can have only one place of effective management at any point of time.
- Since "residential status" is to be determined for each year, POEM will also be required to be determined on year to year basis.

Process of determination of POEM

The process of determination of POEM would be primarily based on the fact as to **whether or not the company is engaged in active business outside India**.

Determination of POEM

→ Company is engaged in active business outside India

→ Company is not engaged in active business outside India

The guidelines provide a two-stage process for determination of POEM in case of companies not engaged in active business.

(a) First stage: Identifying the person(s) who actually make the key management and commercial decisions for the conduct of the company as a whole.

(b) Second stage: Determining the place where these decisions are, in fact, being made.

The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of POEM, it is the substance which would be conclusive rather than the form.

When company shall be said to be engaged in "active business outside India"?

A company shall be said to be engaged in "active business outside India"

- if the passive income is not more than 50% of its total income; **and**
- less than 50% of its total assets are situated in India; **and**
- less than 50% of total number of employees are situated in India or are resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

For the purpose of determining whether the company is engaged in active business outside India, the average of the data of the previous year and two years prior to that shall be taken into account. In case the company has been in existence for a shorter period, then, data of such period shall be considered. Where the accounting year for tax purposes, in accordance with laws of country of incorporation of the company, is different from the previous year, then, data of the accounting year that ends during the relevant previous year and two accounting years preceding it shall be considered.

Meaning of certain terms:

<table>
<tr><th>Term</th><th>Meaning</th></tr>
<tr><td>Income</td><td>(a) As computed for tax purpose in accordance with the laws of the country of incorporation; or
(b) As per books of account, where the laws of the country of incorporation does not require such a computation</td></tr>
<tr><td>Value of assets</td><td><table>
<tr><td>(a)</td><td>In case of an individually depreciable asset</td><td>The average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the previous year;</td></tr>
<tr><td>(b)</td><td>In case of pool of fixed asset, being treated as a block for depreciation</td><td>The average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the year;</td></tr>
<tr><td>(c)</td><td>In case of any other asset</td><td>Value as per books of account</td></tr>
</table></td></tr>
<tr><td>Number of employees</td><td>The average of the number of employees as at the beginning and at the end of the year. It shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees.</td></tr>
<tr><td>Pay roll</td><td>This term includes the cost of salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer</td></tr>
</table>

Passive income	It is the aggregate of, - (i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and (ii) income by way of royalty, dividend, capital gains, interest or rental income; However, any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation.

Examples on determination of POEM

Example 1: Company A Co. is a sourcing entity, for an Indian multinational group, incorporated in country X and is 100% subsidiary of Indian company (B Co.). The warehouses and stock in them are the only assets of company and are located in country X. All the employees of the company are also in country X. The average income wise breakup of the company's total income for three years is, -

(i) 30% of income is from transaction where purchases are made from parties which are non-associated enterprises and sold to associated enterprises;

(ii) 30% of income is from transaction where purchases are made from associated enterprises and sold to associated enterprises;

(iii) 30% of income is from transaction where purchases are made from associated enterprises and sold to non-associated enterprises; and

(iv) 10% of the income is by way of interest.

Interpretation: In this case passive income is 40% of the total income of the company. The passive income consists of, -

(i) 30% income from the transaction where both purchase and sale is from/to associated enterprises; and

(ii) 10% income from interest.

The A Co. satisfies the first requirement of the test of active business outside India. Since no assets or employees of A Co. are in India the other requirements of the test is also satisfied.

Therefore, company is engaged in active business outside India.

Example 2: *The basic facts are same as in Example 1. Further facts are that all the directors of the A Co. are Indian residents. During the relevant previous year 5 meetings of the Board of Directors is held of which two were held in India and 3 outside India with two in country X and one in country Y.*

Interpretation: The A Co. is engaged in active business outside India as the facts indicated in Example 1 establish. The majority of board meetings have been held outside India. Therefore, the POEM of A Co. shall be presumed to be outside India.

Example 3: *The facts are same as in Example 2 but it is established by the Assessing Officer that although A Co.'s senior management team signs all the contracts, for all the contracts above* Rs. *10 lakh the A Co. must submit its recommendation to B Co. and B Co. makes the decision whether or not the contract may be accepted. It is also seen that during the previous year more than 99% of the* *contracts are above* Rs. *10 lakh and over past years also the same trend in respect of value contribution of contracts above* Rs. *10 lakh is seen.*

Interpretation: These facts suggest that the effective management of the A Co. may have been usurped by the parent company B Co. Therefore, POEM of A Co. may in such cases be not presumed to be outside India even though A Co. is engaged in active business outside India and majority of board meeting are held outside India.

Example 4: *The other facts remain same as that in Example 1 with the variation that A Co. has a total of 50 employees. 47 employees, managing the warehouse, storekeeping and accounts of the company, are located in country X. The Managing Director (MD), Chief Executive Officer (CEO) and sales head are resident in India. The total annual payroll expenditure on these 50 employees is of* Rs. *5 crore. The annual payroll expenditure in respect of MD, CEO and sales head is of* Rs. *3 crore.*

Interpretation: Although the first limb of active business test is satisfied by A Co. as only 40% of its total income is passive in nature. Further, more than 50% of the employees are also situated outside India. All the assets are situated outside India. However, the payroll expenditure in respect of the MD, the CEO and the sales head being employees resident in India exceeds 50% of the total payroll expenditure.

Therefore, A Co. is not engaged in active business outside India.

Example 5: *An Indian multinational group has a local holding company A Co. in country X. The A Co. also has 100% downstream subsidiaries B Co. and C Co. in country X and D Co. in country Y. The A Co. has income only by way of dividend and interest from investments made in its subsidiaries. The Place of Effective Management of A Co. is in India and is exercised by ultimate parent company of the group. The subsidiaries B, C and D are engaged in active business outside India. The meetings of Board of Director of B Co., C Co. and D Co. are held in country X and Y respectively.*

Interpretation: Merely because the POEM of an intermediate holding company is in India, the POEM of its subsidiaries shall not be taken to be in India. Each subsidiary has to be examined separately. As indicated in the facts since companies B Co., C Co., and D Co. are independently engaged in active business outside India and majority of Board meetings of these companies are also held outside India. The POEM of B Co., C Co., and D Co. shall be presumed to be outside India.

List of some of the guiding principles which may be taken into account for determining the POEM for the companies not engaged in active business outside India

(a) The location where a company’s Board regularly meets and makes decisions
(b) Location of Executive Committee, in case powers are delegated by the board may be the company’s place of effective management
(c) Location of head office
(d) Use of modern technology
(e) Decisions via circular resolution or round robin voting
(f) Decisions made by Shareholders are not relevant factor in determination of POEM
(g) Day to day routine operational decisions are not relevant for determination of POEM

List of secondary factors which may be taken into account for determining the POEM for the companies not engaged in active business outside India

If the above factors do not lead to clear identification of POEM then the final guidelines provide that following secondary factors may be considered:

- Place where main and substantial activity of the company is carried out; or
- Place where the accounting records of the company are kept.

Determination of POEM is to be based on all the relevant facts and not on the basis of isolated facts

It needs to be emphasized that the determination of POEM is to be based on all relevant facts related to the management and control of the company, and is not to be determined on the basis of isolated facts that by itself do not establish effective management, **as illustrated by the following examples:**

(i) The fact that a foreign company is completely owned by an Indian company will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(ii) The fact that there exists a Permanent Establishment of a foreign entity in India would itself not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(iii) The fact that one or some of the Directors of a foreign company reside in India will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(iv) The fact of, local management being situated in India in respect of activities carried out by a foreign company in India will not, by itself, be conclusive evidence that the conditions for establishing POEM have been satisfied.

(v) The existence in India of support functions that are preparatory and auxiliary in character will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

While determining POEM, "Snapshot" approach should not be adopted

It is reiterated that the above principles for determining the POEM are for guidance only. No single principle will be decisive in itself. The above principles are not to be seen with reference to any particular moment in time rather activities performed over a period of time, during the previous year, need to be considered.

In other words a "snapshot" approach is not to be adopted. Further, based on the facts and circumstances if it is determined that during the previous year the POEM is in India and also outside India then POEM shall be presumed to be in India if it has been mainly /predominantly in India.

Duty of the assessing officer to obtain prior approval of the Principal Commissioner or Commissioner before concluding that POEM of a particular company in India

The Assessing Officer (AO) shall, before initiating any proceedings for holding a company incorporated outside India, on the basis of its POEM, as being resident in India, seek prior approval of the Principal Commissioner or the Commissioner, as the case may be.

Further, in case the AO proposes to hold a company incorporated outside India, on the basis of its POEM, as being resident in India then any such finding shall be given by the AO after seeking prior approval of the collegium of three members consisting of the Principal Commissioners or the Commissioners, as the case may be, to be constituted by the Principal Chief Commissioner of the region concerned, in this regard. The collegium so constituted shall provide an opportunity of being heard to the company before issuing any directions in the matter.

Practical 1

ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in **April, 2017** in compliance with RBI guidelines. It just spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day to day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine the residential status of ABC Inc. for **A.Y.2018-19.**

Whether ABC Inc. is required to file any statement under Income Tax Act, 1961?

Solution

- ABC Inc. has only a liaison office in India through which it looks after its routine day to day business operations in India. The place where decisions relating to day to day routine operations are taken and support functions that are preparatory or auxiliary in nature are performed are not relevant in determining the place of effective management.
- Considering the amendment in section 6(3) of the Act, ABC Inc., being a foreign company is a non-resident for **A.Y.2018-19**, since its place of effective management is outside India in the **P.Y.2017-18**
- ***As per section 285 of the Act,*** Every person, being a **non-resident having a liaison office in India** set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, **shall**, in respect of its activities in a financial year, **prepare and deliver or cause to be delivered to the Assessing Officer** having jurisdiction, **within sixty days from the end of such financial year, a statement in such form and** containing **such particulars as** may be **prescribed**. [As per notification no. 5/2012 dated 6-2-2012, form no. 49C shall be submitted in electronic form]

Readers Note:

54.2 INCOME THROUGH THE TRANSFER OF A CAPITAL ASSET SITUATED IN INDIA SHALL BE DEEMED TO ACCRUE OR ARISE IN INDIA.

Section:- 9(1)(i) – w.r.e.f 01.04.1962

The Finance Act, 2012 had inserted Explanation 5 in section 9(1)(i) w.r.e.f. 1.04.1962 to clarify 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 and shall always be deemed to have been **situated in India**, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

The above explanation has been amended by Finance Act, 2017 inserting following two provisos.

(a) The provisions of explanation 5 shall not apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Foreign Institutional Investors for the assessment years 2012-13 to 2014-15.

(b) The provisions of explanation 5 shall not apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category I or Category II foreign portfolio investor under the SEBI (Foreign Portfolio Investors) Regulations, 2014 for the assessment years 2015-16 and onwards.

54.3 PRESENCE OF ELIGIBLE FUND MANAGER IN INDIA NOT TO CONSTITUTE BUSINESS CONNECTION IN INDIA OF SUCH ELIGIBLE INVESTMENT FUND ON BEHALF OF WHICH HE UNDERTAKES FUND MANAGEMENT ACTIVITY

Section:- 9A – w.r.e.f A.Y.2016-17

In order to facilitate location of fund managers of off-share funds in India a specific provision **(Section 9A)** has been introduced in the Income Tax Act (with effect from the assessment year 2016-17):

As per this provision,

a. the tax liability in respect of income arising to the Fund from investment in India would be neutral to the fact as to whether the investment is made directly by the fund or through engagement of fund manager located in India; and

b. that income of the fund from the investments outside India would not be taxable in India solely on the basis that the Fund management activity in respect of such investments have been undertaken through a fund manager located in India.

The Eligible Investment Fund [Section 9A(3)]

The eligible investment fund means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils the following conditions, namely:—

(a) the fund is not a person resident in India;

(b) the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into *[or is established or* *incorporated or registered in a country or a specified territory notified by the Central Government in this behalf]*;– bracket inserted by Finance Act, 2016

(c) the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund;

(d) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;

(e) the fund has a minimum of twenty-five members who are, directly or indirectly, not connected persons;

(f) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten per cent;

(g) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty per cent;

(h) the fund shall not invest more than twenty per cent of its corpus in any entity;

(i) the fund shall not make any investment in its associate entity;

(j) the monthly average of the corpus of the fund shall not be less than one hundred crore rupees:

Provided that if the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than one hundred crore rupees at the end of such previous year;

Provided further *that nothing contained in this clause shall apply to a fund which has been wound up in the previous year;* ***[w.r.e.f. A.Y.2016-17-Amendment made by Finance Act, 2017]***

(k) the fund shall not carry on or control and manage, directly or indirectly, any business in India or ~~from India;~~ Words omitted by Finance Act, 2016

(l) the fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf;

(m) the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity :

Provided that the conditions specified in clauses (e), (f) and (g) shall not apply in case of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund, or such other fund as the Central Government may subject to conditions if any, by notification in the Official Gazette, specify in this behalf.

55 - DOUBLE TAXATION RELIEF

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56 - ADVANCE RULINGS

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57 - TRANSFER PRICING AND OTHER ANTI-AVOIDANCE MEASURES

57.1 SPECIFIED DOMESTIC TRANSACTIONS

Section:- 92BA –w.r.e.f A.Y. 2017-18

Section 92BA has been inserted with effect from the assessment year 2013-14. It provides the meaning of "specified domestic transaction" with reference to which the income is to be computed under section 92, having regard to arm's length price. The following transactions are covered within the meaning of "specified domestic transactions" if the aggregate of these transactions entered into by the assesse in a previous year exceeds Rs. 5 crore ***[Rs. 20 crore w.e.f A.Y. 2016-17 as amended by Finance Act, 2015]***.

(a) ~~any expenditure in respect of which payment has been made or is to be made to a person referred to in section 40A(2)(b)~~; **Omitted w.e.f. A.Y. 2017-18**
(b) any transaction referred to in section 80A;
(c) any transfer of goods or services referred to in section 80-IA(8);
(d) any business transacted between the assessee and other person as referred to in section 80-IA(10);
(e) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions section 80-IA(8)/(10) are applicable; or
(f) any other transaction as may be prescribed,

Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the above domestic transactions shall be computed having regard to the arm's length price. For this purpose, arm's length price shall be determined within the parameters of sections 92 to 92F.

Practical 1

Ganga Ltd., a domestic company, has two units Chambal and Damodar. The Chambal unit, which commenced business two years back, is engaged in the business of developing an irrigation project. The Damodar unit is carrying on the business of trading in water pumps. During the previous year 2017-18, the Damodar unit transferred water pumps amounting to Rs. 19.5 crores to the Chambal unit. Further, Ganga Ltd hires vehicles owned by Mr. Krishna's daughter and paid hiring charges of Rs. 1.5 crores during the previous year 2017-18. Mr. Krishna, a resident Indian, holds 30% equity share capital in Ganga Ltd.

Discuss whether the above transactions fall within the meaning of "specified domestic transaction"?

Solution

The Chambal Unit is eligible for deduction@100% of the profits derived from its eligible business (i.e., the business of developing an infrastructure facility, being an irrigation project) under section 80-IA. However, the Damodar Unit is not engaged in any "eligible business". Since the Damodar Unit has transferred water pumps to the Chambal Unit, it is an inter-Unit transfer of goods between eligible business and other business. Therefore, this transaction falls within the meaning of "specified domestic transaction" to attract transfer pricing provisions.

The payment of hiring charges has been made to a related person referred to in section 40A(2)(b) i.e., relative (i.e., daughter) of Mr. Krishna, who has substantial interest in the business of Ganga Ltd. **However, due to amendment made by Finance Act, 2017, this transaction does not fall within the meaning of "specified domestic transaction" under section 92BA.**

It is imperative to note here that; abovementioned transactions would be treated as a "specified domestic transaction" to attract transfer pricing provisions only if the aggregate of such transactions as specified in section 92BA during the year by Ganga Ltd. exceeds a sum of Rs. 20 crore.

Since aggregate of these transactions is Rs. 19.5 crore which is not exceeding Rs. 20 crore. Therefore, the said transactions are outside the purview of "specified domestic transaction".

Readers Note:

57.2 SECONDARY ADJUSTMENT IN CERTAIN CASES

Section:- 92CE – Effective from A.Y. 2018-19

(1) Meaning

"primary adjustment" to a transfer price, means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;

"secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

(2) Applicability of secondary adjustment :- [Section 92CE(1)]

Where a primary adjustment to transfer price,—

(i) has been made suo motu by the assessee in his return of income;

(ii) made by the Assessing Officer has been accepted by the assessee;

(iii) is determined by an advance pricing agreement entered into by the assessee under section 92CC;

(iv) is made as per the safe harbour rules framed under section 92CB; or

(v) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation,

the assessee shall make a secondary adjustment:

(3) When Secondary adjustment not required [Proviso to section 92CE(1)]

Secondary adjustment not required if,—

(i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; and

(ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.

(4) Quantification of Secondary Adjustment [Section 92 CE(2)]

Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

For the purpose of this section, "excess money" means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken.

Practical 2

Infybim Private Limited (IPL) is an Indian company in which Moon Inc.(Foreign Company) holds 26% equity. IPL provides following information:

(a) IPL provides system support services to Moon Inc.

(b) During the year 2017-18, IPL provided services to the tune of Rs. 12 crore.

(c) However, assessing officer determines arm’s length price at Rs.15.25 Crore and the same is accepted by IPL.

You are required to discuss the concept of “Primary adjustment” and “Secondary adjustment” assuming that excess money is not repatriated to India by Moon Inc.

Solution

The addition made by assessing officer to the total income of IPL is Rs. 3.25 crore – It is called primary adjustment.

Since this excess Rs. 3.25 crore has not been repatriated by Moon Inc. to IPL, it would be termed as deemed advance (a secondary adjustment) made by IPL to Moon Inc. Thereafter, interest shall be charged on such deemed advance in such manner as may be prescribed.

Reader’s Note:

57.3 LIMITATION ON INTEREST DEDUCTIBLE

Section:- 94B – Effective from A.Y. 2018-19

Sub - Section (1):- Excess Interest shall not be deductible

Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India,

being the borrower,

incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower,

the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :

Sub - Section (2):- Determination of Excess Interest

For the purposes of sub-section (1), the excess interest shall mean

(a) an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or

(b) interest paid or payable to associated enterprises for that previous year,

whichever is less.

Sub - Section (3):- Non- applicability of section 94B(1)

Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.

Sub - Section (4):- Carry forward of the excess interest

Where for any assessment year,

the interest expenditure is not wholly deducted against income under the head "PGBP",

so much of the interest expenditure as has not been so deducted,

shall be carried forward to the following assessment year or assessment years,

and

it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2):

Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

Sub - Section (5):- Meaning of Certain terms

"Debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession";

Deemed debt as per proviso to section 94B(1) : Where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

"permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Practical 3

TATU MFG Ltd. is an Indian subsidiary of JAGUAR Limited, UK based Company. TATU MFG Ltd. has borrowed from JAGUAR Limited. From the following information, find out disallowance to be made under section 94B of the Income Tax Act for the assessment years 2018-19.

Particulars	Rs. (in crore)
Earnings before interest, taxes, depreciation and amortisation	20
Interest to associated enterprise	5
Interest to others	2

Solution

Computation of Excess Interest (disallowance) under section 94 B of the Act for the A.Y. 2018-19

Sr. No.	Lower of	Amount (Rs. in crore)
(a)	Total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year **(Refer working Note)**	1
(b)	Interest paid or payable to associated enterprises for that previous year	5
(c)	**Excess Interest to be disallowed [Lower of (a) or (b)]**	**1**

Working Note:

Sr. No.	Particulars	Amount (Rs. in crore)
(a)	Total Interest (i.e. Interest to associated enterprise plus Interest to others)	7
(b)	30% of Earnings before interest, taxes, depreciation and amortization	6
(c)	**Total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year (a-b)**	**1**

Note:- Such excess interest of Rs. 1 Cr. shall be carried forward to the following assessment year or assessment years (maximum 8 years), and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with section 94B (2).

Reader's Note:

58 - TAXATION OF EQUALISATION LEVY

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PART - II

IMPORTANT CIRCULARS, NOTIFICATIONS AND CASE STUDIES

1 – BASICS OF INCOME TAX

1.1 CIRCULARS

1. **Circular No.13/2017, dated 11.04.2017 and Circular No.17/2017, dated 26.04.2017**
   Clarification regarding liability to income-tax in India of a non-resident seafarer receiving remuneration in NRE (non-resident external) account maintained with an Indian bank
   Accordingly, the CBDT has, vide this circular, clarified that that salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

1.2 NOTIFICATIONS

1. **Notification No. 77/2017, dated 03.08.2017**
   Notification of eligible investment funds in respect of which certain conditions specified under section 9A(3) would not apply
   Section 9A provides for special taxation regime to facilitate location of fund managers of off-shore funds in India. Under this regime, in case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund, subject to fulfilment of certain conditions.

   Eligible investment fund means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils, inter alia, the following conditions, namely -
   (a) the fund should have a minimum of twenty-five members who are, directly or indirectly, not connected persons;
   (b) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten per cent;
   (c) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty per cent.

   The above conditions, however, would not apply in case of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund, or such other fund as the Central Government may subject to conditions, if any, by notification, specify in this behalf.
   Accordingly, the Central Government has, vide this notification, specified that these conditions would not apply to an investment fund set up by a Category-I or Category-II Foreign Portfolio Investor registered under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, made under the Securities and Exchange Board of India Act, 1992.

1.3 CASE STUDIES

CITATION	ISSUE	CONCLUSION
CIT v. Alcatel Lucent Canada (2015) 372 ITR 476 (Del)	Can consideration for supply of software embedded in hardware tantamount to ‘royalty’ under section 9(1)(vi), where the software was no independent functional existence?	The High Court concurred with the decision of the Tribunal holding that where payment is made for hardware in which the software is embedded and the software does not have independent functional existence, no amount could be attributed as ‘royalty’ for software in terms of section 9(1)(vi).

2 – INCOME WHICH DO NOT FORM PART OF TOTAL INCOME

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3 – SALARY

3.1 PAYMENT OF GRATUITY (AMENDMENT) ACT, 2018

Payment of Gratuity (Amendment) Act, 2018 is notified in the Government Gazette on 29th March, 2018. The above amendment enables the employees to receive tax-free gratuity upto Rs.20 lakhs from existing Rs.10 lakhs under the Payment of Gratuity Act, 1972 has been increased from Rs. 10 lakhs to Rs. 20 lakh with effect from 29.03.2018

3.2 CASE STUDIES

CITATION	ISSUE	CONCLUSION
CIT (TDS) v. Director, Delhi Public School (2011) 202 Taxman 318 (Punj. & Har.)	Can the limit of Rs.1,000 per month per child be allowed as standard deduction, while computing the perquisite value of free or concessional education facility provided to the employee by the employer?	The Punjab and Haryana High Court, in the above case, held that on a plain reading of Rule 3(5), it flows that, in case the value of perquisite for free / concessional educational facility arising to an employee exceeds Rs. 1,000 per month per child, the whole perquisite shall be taxable in the hands of the employee and no standard deduction of Rs. 1,000 per month per child can be provided from the same. It is only in case the perquisite value is less than Rs. 1,000 per month per child, the perquisite value shall be nil. Therefore, Rs. 1,000 per month per child is not a standard deduction to be provided while calculating such a perquisite.

4 – HOUSE PROPERTY

4.1 CASE STUDIES

CITATION	ISSUE	CONCLUSION
New Delhi Hotels Ltd. v. ACIT (2014) 360 ITR 0187 (Delhi]	Whether the rental income derived from the unsold flats which are shown as stock-in-trade in the books of the assessee would be taxable under the head 'Profits and gains from business or profession' or under the head 'Income from house property', in a case where the actual rent receipts formed the basis of computation of income?	In this case, the Delhi High Court followed its own decision in the case of CIT vs. Discovery Estates Pvt. Ltd / CIT vs. Discovery Holding Pvt. Ltd., wherein it was held that rental income derived from unsold flats which were shown as stock-in-trade in the books of the assessee should be assessed under the head "Income from house property" and not under the head "Profits and gains from business or profession".
CIT v. Hariprasad Bhojnagarwala (2012) 342 ITR 69 (Guj.) (Full Bench)	Can benefit of self-occupation of house property under section 23(2) be denied to a HUF on the ground that it, being a fictional entity, cannot occupy a house property?	On the abovementioned issue, the Gujarat High Court observed that a firm, which is a fictional entity, cannot physically reside in a house property and therefore a firm cannot claim the benefit of this provision, which is available to an individual owner who can actually occupy the house. However, the HUF is a group of individuals related to each other i.e., a family comprising of a group of natural persons. The said family can reside in the house, which belongs to the HUF. Since a HUF cannot consist of artificial persons, it cannot be said to be a fictional entity. Also, it was observed that since singular includes plural, the word "owner" would include "owners" and the words "his own" used in section 23(2) would include "their own". The Court held that the HUF is entitled to claim benefit of self-occupation of house property under section 23(2).

5 – PROFITS AND GAINS FROM BUSINESS OR PROFESSION

5.1 CIRCULARS

1. **Circular no. 38/2016 dated 22.11.2016**
   Expenditure incurred on Keyman Insurance Policy

   Issue:
   Whether premium paid by the firm on the keyman Insurance policy of a partner, to safeguard the firm against disruption of the business, is an admissible expenditure under section 37 of the Act?
   Observation
   CBDT Circular no. 762/1998 dated 18.02.1998 clarifies that the premium paid on the Keyman Insurance Policy is allowable as business expenditure.
   The High Court of Punjab and Haryana has, in the case of M/s. Ramesh Steels, ITA No. 437 of 2015, vide judgement dated 2.2.2016, reiterating the above view, held that, "the said policy when obtained to secure the life of a partner to safeguard the firm against a disruption of the business is equally for the benefit of the partnership business which may be effected as a result of premature death of a partner. Thus, the premium on the Keyman Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure".
   Clarification from CBDT
   In view of the above, the CBDT has clarified that in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37 of the Act.

2. **Circular No. 3/2015, dated 12-02-2015**
   Clarification regarding disallowance of 'other sum chargeable' under section 40(a)(i)

   If there has been a failure in deduction or in payment of tax deducted in respect of any interest, royalty, fees for technical services or other sum chargeable under the Act either payable in India to non-corporate non-resident or a foreign company or payable outside India, then, disallowance of the related expenditure/ payment is attracted under section 40(a)(i) while computing income chargeable under the head "Profits and gains of business or profession".
   The interpretation of the term 'other sum chargeable' in section 195 has been clarified in this circular i.e. whether this term refers to the whole sum being remitted or only the portion representing the sum chargeable to income-tax under the Act.

   In its Instruction No. 2/2014, dated 26.02.2014, the CBDT has clarified that the Assessing Officer shall determine the appropriate portion of the sum chargeable to tax as mentioned in section 195(1), to ascertain the tax liability on which the deductor shall be deemed to be an assessee in default under section 201, in cases where no application is filed by the deductor for determining the sum so chargeable under section 195(2).

In this circular, the CBDT has, in exercise of its powers under section 119, clarified that for the purpose of making disallowance of 'other sum chargeable' under section 40(a)(i), the appropriate portion of the sum which is chargeable to tax shall form the basis of disallowance. Further, the appropriate portion shall be the same as determined by the Assessing Officer having jurisdiction for the purpose of section 195(1). Also, where the determination of 'other sum chargeable' has been made under sub-section (2), (3) or (7) of section 195 of the Act, such a determination will form the basis for disallowance, if any, under section 40(a)(i).

3. Circular No. 27/2017, dated 3-11-2017

Applicability of income-tax provisions under section 40A(3), section 269ST and Rule 114B to cash sale of agricultural produce by cultivators/agriculturists to traders

The provisions of section 40A(3) provide for the disallowance of expenditure exceeding Rs. 10,000 made otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account. However, Rule 6DD carves out certain exceptions from application of the provisions of section 40A(3) in some specific cases and circumstances, which inter alia, include payments made for purchase of agricultural produce to the cultivators of such produce. Therefore, no disallowance under section 40A(3) can be made if the trader makes cash purchases of agricultural produce from the cultivator.

Further, section 269ST, subject to certain exceptions, prohibits receipt of Rs. 2 lakh or more, otherwise than by an account payee cheque/draft or by use of electronic clearing system through a bank account from a person in a day or in respect of a single transaction or in respect of transactions relating to an event or occasion from a person. Therefore, any cash sale of an amount of Rs. 2 lakh or more by a cultivator of agricultural produce is prohibited under section 269ST.

Furthermore, the provisions relating to quoting of PAN or furnishing of Form No. 60 under Rule 114B do not apply to the sale transaction of Rs. 2 lakh or less.

In view of the above, it is clarified by the CBDT that cash sale of the agricultural produce by its cultivator to the trader for an amount less than Rs. 2 lakh will not -

(a) result in any disallowance of expenditure under section 40A(3) in the case of trader.

(b) attract prohibition under section 269ST in the case of the cultivator; and

(c) require the cultivator to quote his PAN/ or furnish Form No. 60.

5.2 CASE STUDIES

CITATION	ISSUE	CONCLUSION
CIT v. Gujarat State Road Transport Corpn (2014) 366 ITR 170 (Guj)	Can employees contribution to Provident Fund and Employee's State Insurance be allowed as deduction where the assessee-employer had not remitted the same on or before the "due date" under the relevant Act but remitted the same on or before the due date for filing of return of income under section 139(1)?	The High Court, accordingly, held that the delayed remittance of employees' contribution beyond the 'due date' prescribed in section 36(1)(va), is not deductible while computing the business income, even though such remittance has been made before the due date of filing of return of income under section 139(1).
Shasun Chemicals & Drugs Ltd v. CIT (2016) 388 ITR 1 (SC)	In a case where payment of bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, would the same be allowable under section 36(1)(ii) while computing business income?	The Apex Court held that section 36(1) contains various kinds of expenses which are allowable as deduction while computing the business income. The amount paid by way of bonus is one such expenditure which is allowable as deduction under section 36(1)(ii). It also held that the embargo contained in section 43B(b) or section 40A(9) does not come in the way of the assessee's claim, since the bonus was ultimately paid to the employees before the due date as per the statutory requirement. Therefore, the payment in respect of bonus is allowable as deduction, as there is no dispute that the amount was paid by the assessee to its employees before the due date by which such payment is supposed to be made in order to claim deduction under section 36(1)(ii).

6 – CAPITAL GAINS

6.1 CIRCULARS

1. **Circular No. 06/2015, dated 09-04-2015**

   Applicability of tax on capital gains in the hands of the unit holders where the term of the units of mutual funds under the fixed maturity plans has been extended

   The CBDT has, vide this Circular, clarified that the rollover of Fixed Maturity Plans (FMPs) in accordance with the provisions of Regulation 33(4) of the SEBI (Mutual Funds) Regulations, 1996 will not amount to transfer as the scheme remains the same. Accordingly, no capital gains will arise at the time of exercise of the option by the investor to continue in the same scheme. The capital gains will, however, arise at the time of redemption of the units or opting out of the scheme, as the case may be.

6.2 NOTIFICATIONS

Notification No. 47/2017, dated 08.06.2017 and Notification No. 79/2017, dated 08.08.2017
Long-term specified asset notified for the purpose of claiming exemption under section 54EC

Section 54EC provides exemption from chargeability of capital gain from the transfer of a long-term capital assets where the assessee has invested the whole or any part of the capital gain in a long-term specified asset. As per clause (ba) of Explanation to section 54EC "long term specified asset" means any bond redeemable after three years and issued on or after 01.04.07 by the National Highways Authority of India (NHAI) or by the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf.

Accordingly, the Central Government has, vide these notifications, notified any bond redeemable after three years and issued by the Power Finance Corporation Limited on or after 15.06.17 or by the Indian Railway Finance Corporation Limited on or after 08.08.17 as 'long-term specified asset'.

6.3 CASE STUDIES

CITATION	ISSUE	CONCLUSION
CIT v. Gita Duggal (2013) 357 ITR 153 (Delhi)	Where a building, comprising of several floors, has been developed and re-constructed, would exemption under section 54/54F be available in respect of the cost of construction of -	The High Court held that the fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54 or section 54F. It is neither expressly nor by necessary implication

	(i) the new residential house (i.e., all independent floors handed over to the assessee); or (ii) a single residential unit (i.e., only one independent floor)?	prohibited. Therefore, the assessee is entitled to exemption of capital gains in respect of investment in the residential house, comprising of independent residential units handed over to the assessee.
CIT v. Sambandam Udaykumar (2012) 345 ITR 389 (Kar.)	Can exemption under section 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter, etc?	The Court held that in this case the assessee would be entitled to exemption under section 54F in respect of the amount invested in construction within the prescribed period.
Gouli Mahadevappa v. ITO (2013) 356 ITR 90 (Kar.)	Where the stamp duty value under section 50C has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption under section 54F, irrespective of the source of funds for such reinvestment?	On the issue of exemption under section 54F, the High Court held that when capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of Rs. 36 lakhs under section 50C has been adopted as the full value of consideration, the entire amount of Rs. 24 lakhs reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment
Fibre Boards (P) Ltd v. CIT (2015) 376 ITR 596 (SC)	Can advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption under section 54G?	To avail exemption under section 54G in respect of capital gain arising from transfer of capital assets in the case of shifting of industrial undertaking from urban area to non-urban area, the requirement is satisfied if the capital gain is given as advance for acquisition of capital assets such as land, building and / or plant and machinery.

7 – INCOME FROM OTHER SOURCES

7.1 CIRCULARS

1. **Circular No. 19/2017, dated 12.06.2017**
   Clarification regarding trade advance not to be treated as deemed dividend under section 2(22)(e)

   Issue: Whether trade advances in the nature of commercial transactions would fall within the ambit of the provisions of section 2(22)(e) or not?

   Clarification from CBDT:

   After considering the various judicial pronouncement on this issue, the CBDT, vide this circular, clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in section 2(22)(e) and therefore, the same would not to be treated as deemed dividend.

   [CIT vs. Creative Dyeing & Printing Pvt. Ltd. [NJRS] 2009-LL-0922-2, ITA No. 250 of 2009, Delhi High Court],

   [CIT vs Amrik Singh, [NJRS] 2015-LL-0429-5, ITA No. 347 of 2013, P & H High Court], [CIT, Agra vs Atul Engineering Udyog, [NJRS] 2014-LL-0926-121, ITA No. 223 of 2011, Allahabad High Court].

7.2 CASE STUDIES

CITATION	ISSUE	CONCLUSION
CIT v. Manjoo and Co. (2011) 335 ITR 527 (Kerala)	Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed under section 115BB?	The High Court, therefore, held that the rate of 30% prescribed under section 115BB is applicable in respect of winnings from lottery received by the distributor.

8 – CLUBBING OF INCOME

-

9 – SET OFF AND CARRY FORWARD OF LOSSES

-

10 – DEDUCTIONS FROM GROSS TOTAL INCOME

10.1 CIRCULAR

1. **Circular No. 16/2017, dated 25.04.2017**

   Lease rent from letting out buildings/developed space along with other amenities in an industrial park /SEZ - to be treated as business income

   Issue

   The issue whether income arising from letting out of premises/developed space along with other amenities in an Industrial Park/SEZ is to be charged under head 'Profits and Gains of Business' or under the head 'Income from House Property' has been subject matter of litigation in recent years. Assessees claim the letting out as business activity, the income arising from which to be charged to tax under the head 'Profits and Gains of Business', whereas the Assessing Officers hold it to be chargeable under the head 'Income from House Property'.

   Observation

   In the case of Velankani Information Systems Pvt Ltd (NJRS Citation [2013-LL-0402-44]), the Karnataka High Court observed that any other interpretation would defeat the object of section 80-IA and Government schemes for development of Industrial Parks in the country. SLPs filed in this case by the Department have been dismissed by the Supreme Court.

   Clarification from CBDT

   In view of the above, it is now a settled position that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting out of premises/developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business.

2. **Circular No.37/2016, Dated 02.11.2016**

   Admissibility of deduction under Chapter VI-A on the profits enhanced due to disallowance of expenditure related to business activity

   Issue:

   Chapter VI-A of the Income-tax Act, 1961, provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act.

At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits.

The issue is whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

Clarification from CBDT

The courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. The CBDT has accepted this settled position by issuing this circular.

3. **Circular No. 39/2016, dated 29.11.2016**

Transport, Power and Interest Subsidies received by an industrial undertaking - eligibility for deduction under sections 80-IB, 80-IC etc.,

Issue:

The issue of whether revenue receipts such as transport, power and interest subsidies received by an Industrial Undertaking/eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/80-IC of the Income-tax Act, 1961 and, thus, eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'Income from other sources' by the Assessing Officers.

Observations of CBDT

The Hon'ble Supreme Court in its judgment dated 9.3.2016 in the case of Meghalaya Steels Ltd and other cases has held that the subsidies of transport, power and interest given by the Government to the Industrial Undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profit and gains of the industrial undertaking/business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the Industrial Undertaking and are not to be included under the head 'Income from other sources'. Therefore, deduction is admissible under section 80-1B/80-IC of the Act on such revenue receipts derived from the Industrial Undertaking.

Clarification from CBDT

In view of the above, the CBDT has clarified that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the Industrial Undertaking/eligible business, and are thus, admissible for applicable deduction under Chapter VI-A of the Act.

10.2 NOTIFICATIONS

Notification No. 9 /2018 dated 16-2-2018

Contributory Health Service Scheme notified for the purpose of section 80D

Under section 80D, a deduction to the extent of Rs. 25,000 (Rs. 30,000, in case of resident senior citizens) is allowed in respect of premium paid to effect or keep in force an insurance on the health of self, spouse and dependent children or any contribution made to the Central Government Health Scheme or such other health scheme as may be notified by the Central Government.

Accordingly, the Central Government has, vide this notification, notified the Contributory Health Service Scheme of the Department of Atomic Energy, contribution to which would qualify for deduction under section 80D.

10.3 CASE STUDIES

CITATION	ISSUE	CONCLUSION
CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245 (Kar.)	Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction under section 80-IA be set off against income of another non-eligible business of the assessee?	The Court held that the assessee was entitled to the benefit of set off of loss of eligible business against the profits of non-eligible business. However, once set-off is allowed under section 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under section 70(1) has to be first deducted while computing profits eligible for deduction under section 80-IA in the subsequent year.
CIT v. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. v. DCIT (2010) 322 ITR 631 (Delhi)	Does the period of exemption under section 80-IB commence from the year of trial production or year of commercial production? Would it make a difference if sale was effected from out of the trial production?	The High Court observed that with mere trial production, the manufacture for the purpose of marketing the goods had not started which starts only with commercial production, namely, when the final product to the satisfaction of the manufacturer has been brought into existence and is fit for marketing. However, in this case, since the assessee had effected sale in March 1998, it had crossed the stage of trial production and the final saleable product had been manufactured and sold. The quantum of commercial sale and the purpose of sale (namely, to obtain registration of excise / sales-tax) is not material. With the sale of those articles, marketable quality was established. Therefore, the conditions stipulated in section 80-IB were fulfilled with the commercial sale of the two items in that assessment year, and hence the five year period has to be reckoned from A.Y.1998-99.
Praveen Soni v. CIT (2011) 333 ITR 324 (Delhi)	Can an assessee who has not claimed deduction under section 80-IB in the initial years, start claiming deduction	On the above issue, the Delhi High Court held that the provisions of section 80-IB nowhere stipulated a condition that the claim for deduction under this section had to be made from the first year of qualification of deduction failing which the claim will not be allowed in the remaining years of eligibility. Therefore, the

	thereunder for the remaining years during the period of eligibility, if the conditions are satisfied?	deduction under section 80-IB should be allowed to the assessee for the remaining years up to the period for which his entitlement would accrue, provided the conditions mentioned under section 80-IB are fulfilled.

11 – COMPUTATION OF TOTAL INCOME AND TAX LIABILITY

12 – ASSESSMENT OF FIRMS / LLP

13 – ASSESSMENT OF AOP OR BOI

14 – ASSESSMENT OF CO-OPERATIVE SOCIETIES

15 – ASSESSMENT OF COMPANIES

15.1 CIRCULAR

1. **Circular No. 24/2017 dated 25.07.2017**
Clarifications on computation of book profit for the purposes of levy of Minimum Alternate Tax (MAT) under section 115JB of the Income-Tax Act, 1961 for IND AS compliant companies

After amendment in section 115JB for computation of book profit for the purposes of levy of Minimum Alternate Tax (MAT) for Indian Accounting Standards (Ind AS) compliant companies, CBDT received representations from various stakeholders seeking clarifications on certain issues arising therefrom.
Accordingly, the CBDT has vide this circular, clarified these issues by way of the following FAQs:

Question 1: The profit for the period may include Marked to market (MTM) gains/ losses on account of fair value adjustments on various financial instruments recognised through profit or loss (FVTPL). A situation may arise where the losses on account of fair value adjustments could be added back in view of clause (i) of Explanation 1 to section 115JB(2) of the Act. Whether the losses on such instruments require any adjustment for computing book profits for the purposes of MAT?
Answer: Since MTM gains recognised through profit or loss on FVTPL classified financial instruments are included in book profits for MAT computation, it is clarified that MTM losses on such instruments recognised through profit or loss shall not require any adjustments as provided under clause (i) of Explanation 1 to section 115JB(2) of the Act. However, in case of provision for diminution/ impairment in value of assets other than FVTPL financial instruments, the existing adjustment of clause (i) of Explanation 1 to section 115JB (2) of the Act shall apply.
It is further clarified that for financial instruments where gains and losses are recognised through Other Comprehensive income (OCI), the amended provisions of MAT shall continue to apply.

Question 2: For the purposes of section 115JB of the Act, what shall be the starting point for computing Book profits for Ind AS compliant companies? Whether Profit before other comprehensive income [Item number XIII in Part 2 (Statement of Profit and Loss) of Division II of

Schedule III to the Companies Act 2013] or Total Comprehensive Income (including other comprehensive income) [Item number XV in Part 2 (Statement of Profit and Loss) of Division II of Schedule III to the Companies Act 2013] shall be the starting point?

Answer: Starting point for computing Book profits for Ind AS compliant companies shall be Profit before other comprehensive income [Item number XIII in Part 2 (Statement of Profit and Loss) of Division II of Schedule III to the Companies Act 2013]

Question 3: As per Explanation to Section 115JB(2C) of the Act, the convergence date is defined as the first day of the first Indian Accounting standards reporting period as defined in Ind AS 101. The Memorandum explaining the provisions of the Finance Bill 2017 mentions that the adjustment as on the last day of the comparative period is to be considered. It may be clarified as to what would be the appropriate manner for computation of transition amount on convergence date, 1st April i.e. at the start of the day or at the end of the day?

Answer: In the first year of adoption of Ind AS, the companies would prepare Ind AS financial statement for reporting year with a comparative financial statement for immediately preceding year. As per Ind AS 101, a company would make all Ind AS adjustments on the opening date of the comparative financial year. The entity is also required to present an equity reconciliation between previous Indian GAAP and Ind AS amounts, both on the opening date of preceding year as well as on the closing date of the preceding year. The amounts as on start of the opening date of the first year of adoption should be considered for the purposes of computation of transition amount.

For example, companies which adopt Ind AS with effect from 1st day of April 2016 are required to prepare their financial statements for the year 2016-17 as per requirements of Ind AS. Such companies are also required to prepare an opening balance sheet as of 1st day of April 2015 and restate the financial statements for the comparative period 2015-16. In such a case, the first time adoption adjustments as of 31st day of March 2016 should be considered [i.e. the start of business on 1st day of April 2016 (or, equivalently, close of business on 31st day of March 2016)] for computation of MAT liability for previous year 2016-17 (Assessment year 2017-18) and thereafter.

Question 4: As per Indian GAAP, proposed dividend was required to be recognized in the financial statements for the year for which it pertained to even though these were declared in the subsequent year. Section 115JB of the Act already provides for adjustments for dividend for computation of book profit. As per Ind AS, the amount of proposed dividend (including dividend distribution taxes) is required to be recognized in the year in which it has been declared rather than the year for which it pertains to. Accordingly, on transition to Ind AS, the amount of proposed dividend for FY 2015-16 which was recognized in profit and loss account in FY 2015-16 is required to be reversed and credited to Retained Earnings. For the computation of MAT, whether these balances would form part of the transition amount and thus be adjusted over a period of 5 years?

Answer: Adjustment of proposed dividend (including dividend distribution taxes) shall not form part of the transition amount.

Question 5: Under Ind AS, adjustments on the transition date may have a corresponding impact on deferred taxes. Should the deferred taxes on such amounts be considered for the purpose of transition amount?

Answer: Any deferred taxes adjustments recorded on the transition date shall be ignored for the purpose of computing Transition Amount.

Question 6: As mentioned in Question No.1, clause (i) of Explanation 1 to Section 115JB(2) of the Act provides for adjustments for computation of book profit for the amount or amounts set aside as provision for diminution in the value of any asset. Convergence date adjustments may include adjustment for Provision for Bad and Doubtful Debts (Expected Credit Loss adjustment) at the time of transition. Whether these adjustments would form part of the transition amount referred to in section 115JB(2C) of the Act?

Answer: Adjustments relating to provision for diminution in the value of any assets other than the ones mentioned in Question Number 1 above, shall not be considered for the purpose of computation of the Transition Amount. Therefore, adjustments relating to provision for doubtful debts shall not be considered for the purpose of computation of the transition amount.

Question 7: Under Section 115JB of the Act, transition amount has been defined as the amount or the aggregate of the amounts adjusted in the 'Other Equity' (excluding capital reserve and securities premium reserve) on the convergence date. Whether changes in share application money on reclassification to 'Other Equity' would form part of the Transition Amount?

Answer: Share application money pending allotment which is reclassified to Other Equity on transition date shall not be considered for the purpose of computing Transition Amount.

Question 8: Under Ind AS, Investments in preference share is considered to be a liability and the corresponding dividend expense is debited to Profit and loss account as interest cost. Should such interest expenses on preference shares be deducted for the purpose of MAT computation?

Answer: For the purpose of computation of MAT, profit/Transition Amount shall be increased by dividend/interest on preference share (including dividend distribution taxes) whether presented as dividend or interest.

Question 9: How do we account for items such as equity component, if any, of financial instruments like Non-Convertible debentures (NCDs), Interest free loan etc. included in other equity as per Ind AS for the computation of transition amount under MAT?

Answer: Items such as equity component of financial instruments like NCD's, Interest free loan etc. would be included in the Transition Amount.

Question 10: Where revaluation/fair value adjustments have been made to items of Property, Plant & Equipment (PPE) under Ind AS, as per section 115JB of the Act, the book profit of the previous year in which the items of PPE are retired, disposed or realised shall be increased or decreased, as the case may be, by the revaluation amount relatable to such items of PPE. Whether the revaluation amount to be considered for adjustment should be the gross amount of the revaluation or the amount after adjustment of the depreciation on the revaluation amount?

Answer: The book profit of the previous year in which the items of PPE are retired, disposed, realised or otherwise transferred shall be increased or decreased, as the case may be, by the revaluation amount after adjustment of the depreciation on the revaluation amount relatable to such asset. This has been explained by an illustration as under:

Particulars	**Erstwhile Indian GAAP**	**Ind-AS (considering fair value/revaluation adjustment on PPE)**	**Fair Value / Revaluation Adjustments and corresponding depreciation**
WDV/Deemed Cost as on 1 April 2015	100	1000	900
Depreciation @10% for F.Y. 2015- 16	10	100	90
WDV as on 1 April 2016	90	900	810
Depreciation @10% for F.Y. 2016- 17	9	90	81
WDV as on 1 April 2017	81	810	729*
Sale value as on 1 April 2017	900	900	
Profit on sale credited to P & L	819	90	
Adjustment for MAT - revaluation amount after adjustment of the depreciation	0	729*	
Profit on sale to be considered for MAT	**819**	**819**	

Question 11: How should adjustments for service concession arrangements be treated for the purpose of computation of book profit under MAT?

Answer: Adjustments on account of Service Concession arrangements would be included in the Transition Amount and also on an ongoing basis.

Question 12: Existing clause (iii) of explanation to section 115JB(2) of the Act provides for deduction of lower of the amount of loss brought forward or unabsorbed depreciation as per books of account for computation of book profits. In case where, on adjustment of transition amount, the losses as per books of account gets wiped off, whether deduction for the said amount would be available for assessment year 2017-2018 onwards?

Answer: For assessment year 2017-2018, the deduction of lower of depreciation or losses shall be allowed based on the position as on 31 March 2016. For the subsequent periods, the position as per books of account drawn as per Ind AS shall be considered for computing lower of loss brought forward or unabsorbed depreciation.

Question 13: How Capital Reserves or Securities Premium existing as per old Indian GAAP reclassified to Retained Earnings/ Other Reserves on Convergence date be treated for MAT purpose.

Answer: The Capital Reserves or Securities Premium existing as on the convergence date as per the erstwhile Indian GAAP which are reclassified to Retained Earnings/ Other Reserves under Ind AS and vice versa, shall not be considered for the purposes of Transition Amount.

It is further clarified, that even after such reclassifications, the amount of revaluation reserve shall continue to be considered as revaluation reserve for the purposes of computation of book profit and shall also include transfer to any other reserves by whatever name called or capitalised.

Question 14: Companies which follow accounting year other than March, 2017 ending for Companies Act purposes and are required to transition to Ind AS will have to prepare financial statements for MAT purposes for FY 2016-17 partly under Indian GAAP and partly under Ind AS. How should such companies compute MAT on transition to Ind AS?

Answer: In view of second proviso to section 115JB (2) of the Act, companies will be required to follow Indian GAAP for the pre-convergence period and Ind AS for the balance period.

For example, a Company following December ending will be required to prepare, accounts for MAT purposes under Indian GAAP for 9 months upto December 2016 and under Ind AS for 3 months thereafter. The transition amount will be calculated with reference to 1st January, 2017.

15.2 NOTIFICATIONS

Notification No.103/2016, dated 7-11-2016
Manner of determining depreciation for the companies opting 115BA

Accordingly, the CBDT has, vide Notification No.103/2016, dated 7-11-2016, with effect from A.Y 2017-18 inserted a proviso in Rule 5(1) to provide that in case of a domestic company which has exercised option under section 115BA, the deduction under section 32(1)(ii) in respect of normal depreciation of any block of assets entitled to more than 40% would be restricted to 40% on the written down value of such block of the assets.

15.3 PRESS RELEASE

Press Release, dated 6-1-2018
Relaxation in the provisions relating to levy of Minimum Alternate Tax (MAT) in case of companies against whom an application for corporate insolvency resolution process has been admitted under the Insolvency and Bankruptcy Code, 2016

The existing provisions of section 115JB, inter alia, provide, that, for the purposes of levy of Minimum Alternate Tax (MAT) in case of a company, the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account shall be reduced from the book profit.

In this regard, the CBDT has received representations from various stakeholders that the companies against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016, are facing hardship due to restriction in allowance of brought forward loss for computation of book profit under section 115JB.

With a view to minimize the genuine hardship faced by such companies, with effect from Assessment Year 2018-19 (i.e. Financial Year 2017-18), in case of a company, against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the IBC, the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB.

16 – ALTERNATE MINIMUM TAX

17 – ASSESSMENT OF HINDU UNDIVIDED FAMILY (HUF)

18 – TAXATION OF BUSINESS TRUST

19 – TAXATION OF TRUST/INSTITUTIONS AND POLITICAL PARTIES

19.1 CIRCULARS

1. **Circular No - 21/2016 dated: May 27, 2016**

   Clarification regarding cancellation of registration u/s 12aa of the income-tax act, 1961 in certain circumstances

   The CBDT has clarified that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut-off specified (20% of the total receipts) in the proviso to section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution.

   If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary on the ground(s) prescribed under the Act.

19.2 CASE STUDIES

CITATION	ISSUE	CONCLUSION
Queen's Educational Society v. CIT (2015) 372 ITR 699 (SC)	Where an institution engaged in imparting education incidentally makes profit, would it lead to an inference that it ceases to exist solely for educational purposes?	Based on the above principles and tests, the Apex Court upheld the Tribunal's view that the assessee was engaged in imparting education and the profit was only incidental to the main object of spreading education. Hence, it satisfies the conditions laid down in section 10(23C)(iiiad) for claim of exemption thereunder
DIT (Exemptions) v. Ramoji Foundation (2014) 364 ITR 85 (AP)	Is the approval of Civil Court mandatory for amendment of trust deed, even in a case where the settler has given power to the trustees to alter the trust deed?	Accordingly, in this case, the High Court held that the Tribunal has correctly dealt with the matter and the trust deed amended by the trustees can be relied upon by the Revenue authorities for the purpose of granting registration under section 12AA.

20 – RETURN, ASSESSMENT, REASSESSMENT AND RECTIFICATION

20.1 CIRCULARS

1. **Circular No.40/2016 dated 9.12.2016**

   Circumstances when income is deemed to have escaped assessment

   The CBDT has, vide Circular No.40/2016 dated 9.12.2016, clarified that reopening of cases under section 147 is feasible only when the Assessing Officer "has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and not merely on the basis of any reason to suspect. Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, past assessments cannot be reopened merely on the ground that the current year's turnover has increased.

2. **Circular No.24/2015, dated 31-12-2015**

   Applicability of Supreme Court guidelines on recording of satisfaction note under section 158BD to apply to proceedings under section 153C for the purposes of assessment of income of a person other than the person in respect of whom search is initiated under section 132 or books of account are requisitioned under section 132A

   Issue:

   The issue of recording of satisfaction for the purposes of section 153C has been subject matter of litigation.

   Observation of CBDT:

   The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No. 3958 of 2014 dated 12-3-2014 (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a pre-requisite and the satisfaction note must be prepared by the Assessing Officer before he transmits the record to the other Assessing Officer who has jurisdiction over such other person u/s 158BD5. The Supreme Court held that

   "the satisfaction note could be prepared at any of the following stages:

   (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC; or

   (b) in the course of the assessment proceedings under section 158BC; or

   (c) immediately after the assessment proceedings are completed u/s 158BC of the searched person.

   Several High Courts have held that the provisions of section 153C are substantially similar/ pari-materia to the provisions of section 158BD and therefore, the above guidelines of the Supreme Court, apply to proceedings under section 153C, for the purposes of assessment of income of other than the searched person.

   Clarification from CBDT:

   This view has been accepted by CBDT. It is further clarified that even if the Assessing Officer of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

20.2 NOTIFICATIONS

1. **Notification No 66/2016, dated 09.08.2016**

   Scope of qualifications for e-return intermediary extended to include company secretaries, cost accountants and tax return preparer

   Section 139(1B) provides for an alternative method to furnish return of income. Vide Notification No 210/2007, dated 27.07.2007, an Electronic Furnishing of Return of Income Scheme, 2007 was notified for the said purpose.

   Para 5 of the said Notification lays down the qualifications of an e-Return Intermediary. A firm of Chartered Accountants or Advocates, which has been allotted a Permanent Account Number, as well as a Chartered Accountant or an Advocate who has been allotted a Permanent Account Number, inter alia, qualified to be an e-Return intermediary.

   Vide this Notification, a firm of Company Secretaries or Cost Accountants, if the firm has been allotted PAN as well as a Company Secretary or a Cost Accountant or Tax Return Preparer, who has been allotted a Permanent Account Number, would also qualify to be an e-Return intermediary.

2. **Notification No. 4/2018, dated 19-01-2018**

   Amendments to the Tax Return Preparer Scheme, 2006 as notified u/s 139B

   Section 139B provides that for the purpose of enabling any specified class or classes of persons in preparing and furnishing returns of income, the CBDT may, without prejudice to the provisions of section 139, frame a Scheme, by notification in the Official Gazette, providing that such persons may furnish their returns of income through a Tax Return Preparer (TRP) authorised to act as such under the Scheme.

   Accordingly, vide Notification No 358/2006 dated 28.11.2006, the CBDT had notified the "Tax Return Preparer Scheme, 2006". Later on, the said scheme was amended vide Notification No 84/2010 dated 22.11.2010. Vide this notification, the said scheme is further amended so as to widen the scope of the Scheme. The amended portion is given in bold italics in the second column below:

Particulars	**Contents**
Tax Return Preparer	Any individual who has been issued a "Tax Return Preparer Certificate" and a "unique identification number" under this Scheme by the Partner Organisation to carry on the profession of preparing the returns of income in accordance with the Scheme. However, the following person are not entitled to act as TRP: (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) an accountant.
Educational qualification for Tax Return Preparers	**An individual, who holds a bachelor degree from a recognised Indian University or institution, or has passed the intermediate level examination conducted by the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India or the Institute of Cost Accountants of India, shall be eligible to act as TRP.**

3. **Notification No. 37/2017 dated 11.05.2017**

Persons who are not required to quote Aadhar Number or Enrolment ID in application form for allotment of PAN and in return of income.

Section 139AA requires every person who is eligible to obtain Aadhar Number to mandatorily quote Aadhar Number or Enrolment ID of Aadhar application form, on or after 1st July, 2017 in the application form for allotment of PAN and in the return of income. However, this provision shall not applicable to such person or class or classes of persons or any State or part of any State as may be notified by the Central Government.

Accordingly, the Central Government has, vide this notification effective from 01.07.2017, notified that the provisions of section 139AA relating to quoting of Aadhar Number would not apply to an individual who does not possess the Aadhar number or Enrolment ID and is:

(i) residing in the States of Assam, Jammu & Kashmir and Meghalaya;

(ii) a non-resident as per Income-tax Act, 1961;

(iii) of the age of 80 years or more at any time during the previous year;

(iv) not a citizen of India.

20.3 CASE STUDIES

CITATION	ISSUE	CONCLUSION
Vipin Walia v. ITO (2016) 382 ITR 19 (Del)	Would the reassessment proceedings initiated under section 147 against the legal heirs of the deceased assessee be valid if notice of reassessment was sent to the legal heirs after the limitation period, though a notice addressed to the deceased assessee was sent prior to the limitation period?	The High Court, accordingly, held that issue of notice on the legal representatives beyond the limitation time would render the reassessment proceedings invalid.
CIT v. Tony Electronics Limited (2010) 320 ITR 378 (Del.)	Would the doctrine of merger apply for calculating the period of limitation under section 154(7)?	The High Court held that once an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the order of the Assessing Officer merges with the order of the appellate authority. After merger, the order of the original authority ceases to exist and the order of the appellate authority prevails. Thus, the period of limitation of 4 years for the purpose of section 154(7) has to be counted from the date of the order of the Appellate Authority.

21 – APPEAL

21.1 CASE STUDIES

CITATION	ISSUE	CONCLUSION
CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112 (SC)	Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits?	The Supreme Court went ahead to further observe that it is clear on a cursory reading of section 260A(7), that it does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.
CIT v. Subrata Roy (2016) 385 ITR 570 (SC)	Can High Court exercise its inherent power to recall its order by exercising jurisdiction under section 260A(7) read with the relevant Rule of the Code of Civil Procedure, 1908 even if that order is not an ex-parte order?	The Apex Court held that the order passed by the High Court is not an ex-parte order for invoking the provisions of the Code of Civil Procedure, 1908, since the order of the High Court contains the submissions of the counsel of the assessee (though not that of the senior counsel for whose presence a short adjournment was prayed). Therefore, the High Court did not have the jurisdiction to recall the order passed by it previously. The inherent power under the Code of Civil Procedure, 1908 is hedged by certain pre-conditions and unless the pre-conditions are satisfied the power thereunder cannot be exercised. Accordingly, the Supreme Court set aside the order dated 21.2.2014 of the High Court

22 – REVISION

22.1 CASE STUDIES

CITATION	ISSUE	CONCLUSION
Bombay High Court ruling in CIT v. Lark Chemicals Ltd (2014) 368 ITR 655	Should time limit under section 263 to be reckoned with reference to the date of assessment order or the date of reassessment order, where the revision is in relation to an item which was not the subject matter of reassessment?	The High Court, thus, held that the jurisdiction under section 263 could not be assumed on issues which were not the subject matter of issues dealt with in the order of reassessment but were part of the original assessment, for which the period of limitation expired long ago.
CIT v. New Mangalore Port Trust (2016) 382 ITR 434 (Karn)	Can the original assessment order under section 143(3), which was subsequently modified to give effect to the revision order under section 264, be later on subjected to revision under section 263?	The High Court, accordingly, held that the order passed by the Commissioner under section 263, revising the non-existing order is void ab initio and is a nullity in the eyes of law

23 – ASSESSMENT ON REMAND

24 – INCOME TAX AUTHORITIEIS AND THEIR POWERS

24.1 CASE STUDIES

CITATION	ISSUE	CONCLUSION
Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 (All)	Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?	The High Court, accordingly, held that the Assessing Officer was justified in his conclusion that it is only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Therefore, in the present case, the first proviso to section 132B(1)(i) would not be attracted. The High Court, thus, dismissed the writ petition

25 – ASSESSMENT IN CASE OF SEARCH OR REQUISITION

26 - COLLECTION AND RECOVERY OF TAX

27 – TAX DEDUCTION AND COLLECTION AT SOURCE

27.1 CIRCULARS

1. **Circular No. 11/2017, dated 24.03.2017**
   Guidelines for waiver of interest charged under section 201(1A) of the Income-Tax Act, 1961

   In exercise of the powers conferred under section 119(2)(a), the CBDT has directed that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 201(1A)(i) in the classes of cases specified below for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax may deem fit. However, no reduction or waiver of such interest shall be ordered unless the principal demand under sections 200A, 201(1) or 234E, as the case may be, stands fully paid or satisfactory arrangements for payment of the principal demand under these sections have been made. The Chief Commissioner of Income-tax or Director General of Income-tax may also impose any other condition as deemed fit for the said reduction or waiver of interest.

   The class of cases in which the reduction or waiver of interest under section 201(1A)(i) can be considered, are as follows:

   (i) Where during the course of proceedings for search and seizure under section 132, or otherwise, the books of account and other documents necessary for making deduction under Chapter XVIIB of the Act were seized and the assessee was not able to, within the time specified, deduct tax at source from any sum credited to any account (whether called "suspense account" or by any other name) in his books of account

   (ii) Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct tax at source in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India or a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such financial year was found to be less than the tax deductible on such sums paid or payable.

   (iii) Where the default under section 201 relates to non-deduction or a lower deduction of tax under section 195 in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into an agreement referred to in section 90 or 90A of the Act, and where —

(a) a dispute regarding the tax payable in India in respect of the said payment had been referred to the Competent Authority in India mentioned in Rule 44H of the Income-tax Rules, 1962 under the said agreement under section 90 or 90A of the Act;

(b) such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default under section 201;

(c) the dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the said agreement; and

(d) the person in default under section 201 has given his acceptance to the resolution and has withdrawn his appeal(s) pending on the issue, within the meaning of Rule 44H(4) of the Income-tax Rules, within a period of one month of the date on which the resolution is communicated to him

Even if the interest under section 201(1A)(i) has already been paid by the deductor, the same can be considered for waiver, subject to the conditions above and a refund may be given to the deductor, if waiver is ordered.

The Chief Commissioner of Income-tax or Director General of Income-tax examining an application for waiver of interest under this order shall pass a speaking order after providing adequate opportunity of being heard to the applicant.

The CBDT reserves the power to examine any grievance arising out of an order passed or not passed by Chief Commissioner of Income-tax or Director General of Income-tax, as the case may be, and issue suitable directions to these authorities for proper implementation of this order. However, no review of or appeal against the orders passed on merits by such authorities would be entertained by the CBDT.

2. Circular No. 21/2017, dated 12.06.2017

No requirement to deduct tax at source under section 194-I on remittance of passenger service fees (PSF) by an airline to an airport operator

Issue:

Whether payment of Passenger Service Fees (PSF) by an airline to an Airport Operator qualifies as rent to attract TDS under section 194-I?

CBDT observation

The Bombay High Court relied on the Apex Court ruling in Japan Airlines and Singapore Airlines case, wherein it was observed that the primary requirement for any payment to qualify as rent is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I. Accordingly, the Bombay High Court declined to admit the ground relating to applicability of the provisions of section 194-I on PSF charges holding that no substantial question of law arises.

Clarification from CBDT

The CBDT, accepting the view of the Bombay High Court, has clarified that the provisions of section 194-I shall not be applicable on payment of PSF by an airline to Airport Operator.

3. **Circular No. 23/2017 dated 19.07.2017**

Clarification regarding TDS on Goods and Services Tax (GST) component comprised in payments made to residents

The CBDT has, vide this circular, clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component.

GST shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.

4. **Circular No.23/2015, dated 28-12-2015**

Applicability of provisions for deduction of tax at source under section 194A on interest on fixed deposit made in the name of the registrar general of court or the depositor of the fund on directions of courts

Issue:

Whether Tax deduction shall be made under section 194A of the Act on interest on FDRs made in the name of Registrar General of Court?

Observation of CBDT

In the case of UCO Bank in Writ Petition No. 3563 of 2012 and CM No. 7517/2012 vide judgment dated 11/11/2014, the Hon'ble Delhi High Court has held that the provisions of section 194A do not apply to fixed deposits made in the name of Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court. In such cases, till the Court passes the appropriate orders in the matter, it is not known who the beneficiary of the fixed deposits will be. Amount and year of receipt is also unascertainable. The Delhi High Court, thus, held that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. At that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. The High Court has also quashed Circular No.8/2011.

Clarification from CBDT

The CBDT has accepted the aforesaid judgment. Accordingly, it is clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.

5. **Circular No.23/2015, dated 28-12-2015**

Applicability of section 197A(1D) and section 10(15)(viii) to interest paid by IFSC Banking Units (IBUs)

The CBDT Circular clarifies that in accordance with the provisions of section 197A(1D), tax is not required to be deducted on interest paid by IFSC Banking Units, on deposit made on or after 1.4.2005 by a non-resident or a person who is not ordinarily resident in India, or on borrowings made on or after 1.4.2005 from such persons.

6. **Circular No. 29/2017, dated 05-12-2017**

   Guidance on income-tax deduction from salaries under section 192 during the financial year 2017-18

   This CBDT Circular contains the rates for deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2017-18 and explains certain provisions of the Income-tax Act, 1961 and Income-tax Rules, 1962, including the broad scheme of TDS from Salaries, persons responsible for deducting tax at source from Salaries and their duties, computation of income under the head "Salaries" etc.

27.2 NOTIFICATIONS

1. **Notification No. 05/2017, dated 29.05.2017**

   Deduction of tax at source on interest income accrued to minor child, where both the parents have deceased

   The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), specified that in case of minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.

2. **Notification No. 08/2017, dated 13.09.2017**

   Deduction of tax at source on interest on deposits made under Capital Gains Accounts Scheme, 1988 where depositor has deceased

   The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), vide this notification, specified that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased:

   (i) TDS on the interest income accrued for and upto the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and

   (ii) TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir,

   unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.

27.3 CASE STUDIES

CITATION	ISSUE	CONCLUSION
UCO Bank v. Dy. CIT (2014) 369 ITR 335 (Del)	Is section 194A applicable in respect of interest on fixed deposits in the name of	The High Court observed that in the absence of a payee, the machinery provisions for deduction of tax to his credit are ineffective. The expression "payee" under section 194A would mean the

	Registrar General of High Court?	recipient of income whose account is maintained by the person paying interest. The Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a 'payee' for the purposes of section 194A. The credit by the bank in the name of the Registrar General would, thus, not attract the provisions of section 194A.
CIT v. Intervet India P Ltd (2014) 364 ITR 238 (Bom)	Can incentives given to stockists and distributors by a manufacturing company be treated as "commission" to attract – (i) the provisions for tax deduction at source under section 194H; and (ii) consequent disallowance under section 40(a)(ia) for failure to deduct tax at source?	The High Court, accordingly, held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of the Explanation (i) to section 194H. Accordingly, the High Court affirmed the order of the Tribunal which held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.
Indus Towers Ltd v. CIT (2014) 364 ITR 114 (Del)	Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?	The High Court held that the submission of the assessee that the transaction is not "renting" is incorrect. Also, the Revenue's contention that the transaction is primarily "renting of land" is also incorrect. The underlying object of the arrangement was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises. It directed that tax deduction be made at 2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.
CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.)	In respect of a co-owned property, would the threshold limit mentioned in section 194-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract	Since the payment of rent is made to each co-owner by way of separate cheque and their share is definite, the threshold limit mentioned in section 194-I has to be seen separately for each co-owner. Hence, the assessee would not be liable to deduct tax on the same and no interest under section 201 is leviable.

	liability to deduct tax at source?	
CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC)	Would transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source under section 194J?	The Apex Court, accordingly, held that the service provided by the BSE for which transaction charges are paid failed to satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service. Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.
CIT v. Priya Blue Industries (P) Ltd (2016) 381 ITR 210 (Guj)	Can items of finished products from ship breaking activity which are usable as such be treated as "Scrap" to attract provisions for tax collection at source under section 206C?	The High Court concurred with the views of the Tribunal and held that any material which is usable as such would not fall within the ambit of the expression 'scrap' as defined in clause (b) of the Explanation to section 206C

28 – ADVANCE TAX

29 – INTEREST U/S 234A, 234B, 234C & 234D

30 – SETTLEMENT OF CASES

31 – ADVANCE RULINGS

32 – REQUIREMENT AS TO MODE OF ACCEPTANCE PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX

33 – PENALTIES

33.1 CIRCULARS

1. Circular No.9/2016 dated 26.4.2016

Commencement of limitation for penalty proceedings under sections 271D and 271E

There are conflicting interpretations of various High Courts on the issue whether the limitation for imposition of penalty under sections 271D and 271E commences at the level of the Assessing Officer (below the rank of Joint Commissioner of lncome-tax) or at level of the Range authority i.e., the Joint Commissioner of Income tax/Additional Commissioner of lncome-tax.

The Kerala High Court, in Grihalaxmi Vision v. Addl. CIT, observed that the question to be considered is whether proceedings for levy of penalty are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice by the Joint Commissioner. From the statutory provisions, it is clear that the competent authority to levy penalty is the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under section 271D and 271E are initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice by the Joint Commissioner to the assessee to which he has filed his reply.

The CBDT Circular clarifies that the above judgement reflects the "Departmental View". Accordingly, the Assessing Officers (below the rank of Joint Commissioner of income-tax) have to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer (below the rank of Joint Commissioner of Income-tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed under section 275(1)(c).

The Circular further clarifies that where any High Court decides this issue contrary to the "Departmental View", the "Departmental View" thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the Central Technical Committee (CTC). The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.

2. **Circular No.10/2016 dated 26.4.2016**
   Limitation for penalty proceedings under section 271D and 271E – whether to be determined u/s 275(1)(a) or u/s 275(1)(c)

The issue whether the limitation for imposition of penalty under sections 271D and 271E, is determined under section 275(1)(a) or section 275(1)(c), has given rise to considerable litigation.
The Delhi High Court, in CIT v. Worldwide Township Projects Ltd., has considered this issue and observed that is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of section 269SS is not related to the income that may be assessed or finally adjudicated. In this view, section 275(1)(a) would not be applicable and the provisions of section 275(1)(c) would be attracted. The judgment has been accepted by the CBDT.

34 – PROSECUTIONS

34.1 CASE STUDIES

CITATION	ISSUE	CONCLUSION
Union of India v. Bhavecha Machinery and Others (2010) 320 ITR 263 (MP)	Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?	In this case, it was observed that there were sufficient grounds for delay in filing the return of income and such delay was not willful. Therefore, prosecution proceedings under section 276CC are not attracted in such a case.

35 – CONVERSION OF FIRM INTO COMPANY

36 – CONVERSION OF SOLE PROPRIETARY BUSINESS INTO COMPANY

37 – AMALGAMATION

38 – SET-OFF OF LOSSES OF A BANKING COMPANY AGAINST THE PROFIT OF A BANKING INSTITUTION UNDER A SCHEME OF AMALGAMATION

39 – DEMERGER

40 – AMALGAMATION OR DEMERGER OF CO-OPERATIVE BANK

41 – CORPORATISATION AND DEMUTUALISATION OF STOCK EXCHANGE

42 – CONVERSION OF UNLISTED COMPANY INTO LIMITED LIABILITY PARTNERSHIP

43 – TRANSFER OF ASSETS BETWEEN HOLDING AND SUBSIDIARY COMPANY

44 – SLUMP SALE

45 – DEPRECIATION

45.1 CIRCULAR

1. **Circular No. 15/2016, dated 19-5-2016**
   Eligibility for grant of additional depreciation under section 32(1)(iia) in the case of an assessee engaged in printing or printing and publishing

   Issue:
   An assessee, engaged in the business of manufacture or production of an article or thing, is eligible to claim additional depreciation under section 32(1)(iia) in addition to the normal depreciation under section 32(1).

Clarification from CBDT

The CBDT has, vide this Circular, clarified that the business of printing or printing and publishing amounts to manufacture or production of an article or thing and is, therefore, eligible for additional depreciation under section 32(1)(iia).

45.2 NOTIFICATION

1. **Notification No. 103/2016, dated 7 November 2016**

The CBDT has, vide Notification No. 103/2016, dated 7-11-2016, with effect from A.Y. 2018-19 reduced the higher rate of normal depreciation of 50%, 60%, 80% or 100%, as the case may be to 40%.

Rates of Depreciation for various Blocks

Sr. No.	Name of Block	Assets Covered	Rate of Depreciation
1.	Buildings	Residential buildings which are mainly used for residential purposes.	5%
2.	Buildings	Buildings other than those used mainly for residential purposes and not covered by Sr. No. 1 and 3.	10%
3.	Buildings	- Buildings acquired on or after of 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 clause (i) of sub-section (4) of section 80-IA. - Purely temporary erections such as wooden structures.	40%
4.	Furniture & Fittings	Any furniture/fittings including electrical fittings **Note:** Electrical fittings" include electrical wiring, switches, sockets, other fittings and fans, etc.	10%
5.	Plant and Machinery	- Any plant or machinery (not covered by Sr. No. 6, 7, 8, 9, 10, 11 or 12) - Motor cars (other than those used in a business of running them on hire)	15%
6.	Plant and Machinery	- Ocean going ships - Vessels ordinarily operating on inland waters including speed boats.	20%
7.	Plant and Machinery	- Motor buses, motor lorries and motor 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%

8.	Plant and Machinery	- Aeroplanes - Aeroengines - Life saving medical equipment - Plant and Machineries which satisfies the conditions of Rule 5(2)	40%
9.	Plant and Machinery	Containers made of glass or plastic used as refills	40%
10.	Plant and Machinery	- Computers including computer software. - Books (other than annual publication) owned by a professional **Note:-**"Computer software" means any computer program recorded on any disc, tape, perforated media or other information storage device.	40%
11.	Plant and Machinery	- Energy saving devices - Renewable energy devices - Rollers in flour mills, - Rollers in Sugar works - Iron and steel industry – Rolling mill rolls	40%
12.	Plant and Machinery	- Air pollution control equipment; - Water pollution control equipment; - Solid waste control equipment, - Solid waste 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 facility - Wooden parts used in artificial silk manufacturing machinery - Cinematograph films, bulbs of studio lights - Wooden match frames - Few plants used in mines, quarries and salt works - Books (being annual publications) owned by assessee carrying on a profession or - Books carrying on business in running lending libraries	40%
13.	Intangible Assets	Know-how, Patent, Copyright, Trademark, Licenses, Franchises or any other business or commercial right of similar nature.	25%

46 – TAX PLANNING, TAX AVOIDANCE AND TAX EVASION

46.1 CIRCULARS

1. **Circular No.7 of 2017 dated 27-1-2017**

   Clarifications on certain queries about implementation of GAAR

   Implementation of GAAR Provisions under the Income Tax Act, 1961

   The provisions of Chapter X-A of the Income Tax Act, 1961 relating to General Anti-Avoidance Rule will come into force from 1st April, 2017. Certain queries have been received by the Board about implementation of GAAR provisions. The Board constituted a Working Group in June, 2016 for this purpose. The Board has considered the comments of the Working Group and the following clarifications are issued:

   Question no. 1: Will GAAR be invoked if SAAR applies?

   Answer: It is internationally accepted that specific anti avoidance provisions may not address all situations of abuse and there is need for general anti-abuse provisions in the domestic legislation. The provisions of GAAR and SAAR can coexist and are applicable, as may be necessary, in the facts and circumstances of the case.

   Question no. 2: Will GAAR be applied to deny treaty eligibility in a case where there is compliance with LOB test of the treaty?

   Answer: Adoption of anti-abuse rules in tax treaties may not be sufficient to address all tax avoidance strategies and the same are required to be tackled through domestic anti-avoidance rules. If a case of avoidance is sufficiently addressed by LOB in the treaty, there shall not be an occasion to invoke GAAR.

   Question no. 3: Will GAAR interplay with the right of the taxpayer to select or choose method of implementing a transaction?

   Answer: GAAR will not interplay with the right of the taxpayer to select or choose method of implementing a transaction.

   Question no. 4: Will GAAR provisions apply where the jurisdiction of the FPI is finalised based on non-tax commercial considerations and such FPI has issued P-notes referencing Indian securities? Further, will GAAR be invoked with a view to denying treaty eligibility to a Special Purpose Vehicle (SPV), either on the ground that it is located in a tax friendly jurisdiction or on the ground that it does not have its own premises or skilled professional on its own roll as employees.

   Answer: For GAAR application, the issue, as may be arising regarding the choice of entity, location etc., has to be resolved on the basis of the main purpose and other conditions provided under section 96 of the Act. GAAR shall not be invoked merely on the ground that the entity is located in a tax efficient jurisdiction. If the jurisdiction of FPI is finalized based on non-tax commercial considerations and the main purpose of the arrangement is not to obtain tax benefit, GAAR will not apply.

Question no. 5: Will GAAR provisions apply to (i) any securities issued by way of bonus issuances so long as the original securities are acquired prior to 01 April, 2017 (ii) shares issued post 31 March, 2017, on conversion of Compulsorily Convertible Debentures, Compulsorily Convertible Preference Shares (CCPS), Foreign Currency Convertible Bonds (FCCBs), Global Depository Receipts (GDRs), acquired prior to 01 April, 2017; (iii) shares which are issued consequent to split up or consolidation of such grandfathered shareholding?

Answer: Grandfathering under Rule 10U(1)(d) will be available to investments made before 1st April 2017 in respect of instruments compulsorily convertible from one form to another, at terms finalized at the time of issue of such instruments. Shares brought into existence by way of split or consolidation of holdings, or by bonus issuances in respect of shares acquired prior to 1st April 2017 in the hands of the same investor would also be eligible for grandfathering under Rule 10U(1)(d) of the Income Tax Rules.

Question no. 6: The expression "investments" can cover investment in all forms of instrument - whether in an Indian Company or in a foreign company, so long as the disposal thereof may give rise to income chargeable to tax. Grandfathering should extend to all forms of investments including lease contracts (say, air craft leases) and loan arrangements, etc.

Answer: Grandfathering is available in respect of income from transfer of investments made before 1st April, 2017. As per Accounting Standards, 'investments' are assets held by an enterprise for earning income by way of dividends, interest, rentals and for capital appreciation. Lease contracts and loan arrangements are, by themselves, not 'investments' and hence grandfathering is not available.

Question no. 7: Will GAAR apply if arrangement held as permissible by Authority for Advance Ruling?

Answer: No. The AAR ruling is binding on the PCIT / CIT and the Income Tax Authorities subordinate to him in respect of the applicant.

Question no. 8: Will GAAR be invoked if arrangement is sanctioned by an authority such as the Court, National Company Law Tribunal or is in accordance with judicial precedents etc.?

Answer: Where the Court has explicitly and adequately considered the tax implication while sanctioning an arrangement, GAAR will not apply to such arrangement.

Question no. 9: Will a Fund claiming tax treaty benefits in one year and opting to be governed by the provisions of the Act in another year attract GAAR provisions? An example would be where a Fund claims treaty benefits in respect of gains from derivatives in one year and in another year sets-off losses from derivatives transactions against gains from shares under the Act.

Answer: GAAR provisions are applicable to impermissible avoidance arrangements as under section 96. In so far as the admissibility of claim under treaty or domestic law in different years is concerned, it is not a matter to be decided through GAAR provisions.

Question no. 10: How will it be ensured that GAAR will be invoked in rare cases to deal with highly aggressive and artificially pre-ordained schemes and based on cogent evidence and not on the basis of interpretation difference?

Answer: The proposal to declare an arrangement as an impermissible avoidance arrangement under GAAR will be vetted first by the Principal Commissioner / Commissioner and at the second stage by an Approving Panel, headed by judge of a High Court. Thus, adequate safeguards are in place to ensure that GAAR is invoked only in deserving cases.

Question no. 11: Can GAAR lead to assessment of notional income or disallowance of real expenditure? Will GAAR provisions expand the scope of charging provisions or scope of taxable base and/or disallow the expenditure which is actually incurred and which otherwise is admissible having regard to diverse provisions of the Act?

Answer: If the arrangement is covered under section 96, then the arrangement will be disregarded by application of GAAR and necessary consequences will follow.

Question no. 12: A definite timeline may be provided such as 5 to 10 years of existence of the arrangement where GAAR provisions will not apply in terms of the provisions in this regard in section 97(4) of the IT Act.

Answer: Period of time for which an arrangement exists is only a relevant factor and not a sufficient factor under section 97(4) to determine whether an arrangement lacks commercial substance.

Question no. 13: It may be ensured that in practice, the consequences of a transaction being treated as an 'impermissible avoidance arrangement' are determined in a uniform, fair and rational basis. Compensating adjustments under section 98 of the Act should be done in a consistent and fair manner. It should be clarified that if a particular consequence is applied in the hands of one of the participants, there would be corresponding adjustment in the hands of another participant.

Answer: Adequate procedural safeguards are in place to ensure that GAAR is invoked in a uniform, fair and rational manner. In the event of a particular consequence being applied in the hands of one of the participants as a result of GAAR, corresponding adjustment in the hands of another participant will not be made. GAAR is an anti-avoidance provision with deterrent consequences and corresponding tax adjustments across different taxpayers could militate against deterrence.

Question no. 14: Tax benefit of INR 3 crores as defined in section 102(10) may be calculated in respect of each arrangement and each taxpayer and for each relevant assessment year separately. For evaluating the main purpose to be obtaining of tax benefit, the review should extend to tax consequences across territories. The tax impact of INR 3 crores should be considered after taking into account impact to all the parties to the arrangement i.e. on a net basis and not on a gross basis (i.e. impact in the hands of one or few parties selectively).

Answer: The application of the tax laws is jurisdiction specific and hence what can be seen and examined is the Tax Benefit' enjoyed in Indian jurisdiction due to the 'arrangement or part of the arrangement'. Further, such benefit is assessment year specific. Further, GAAR is with respect to an arrangement or part of the arrangement and therefore limit of Rs. 3 crores cannot be read in respect of a single taxpayer only.

Question no. 15: Will a contrary view be taken in subsequent years if arrangement held to be permissible in an earlier year?

Answer: If the PCIT/Approving Panel has held the arrangement to be permissible in one year and facts and circumstances remain the same, as per the principle of consistency, GAAR will not be invoked for that arrangement in a subsequent year.

Question no. 16: No penalty proceedings should be initiated pursuant to additions made under GAAR at least for the initial 5 years.

Answer: Levy of penalty depends on facts and circumstances of the case and is not automatic. No blanket exemption for a period of five years from penalty provisions is available under law. The assessee, may at his option, apply for benefit u/s 273A if he satisfies conditions prescribed therein.

47 – TONNAGE TAXATION SCHEME

48 – INCOME COMPUTATION AND DISCLOSURE SCHEME (ICDS)

48.1 CIRCULARS

1. **Circular No. 10/2017, dated 23-03-2017**

   Clarification on Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961
   Rescinding of initially notified Income Computation Disclosure Standards (ICDSs) [Notification No S.O. 3078(E) dated 29.9.2016] and Notification of new ICDSs to be applicable from A.Y.2017-18 [Notification No. S.O. 3079(E) dated 29-09-2016]

   Circular No. 10/2017, dated 23-03-2017

   Clarification on Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961

   The CBDT has, vide this circular, issued the following clarification on certain issues arising out of the notified ICDSs:

Question 1: Preamble of ICDS I states that this ICDS is applicable for computation of income chargeable under the head “Profits and gains of business or profession" or "Income from other sources" and not for the purposes of maintenance of books of account. However, Para 1 of ICDS I states that it deals with significant accounting policies. Accounting policies are applied for maintenance of books of accounts and preparing financial statements. What is the interplay between ICDS I and maintenance of books of accounts?

Answer: As stated in the Preamble, ICDS is not meant for maintenance of books of accounts or preparing financial statements. Persons are required to maintain books of accounts and prepare financial statements as per accounting policies applicable to them. For example, companies are required to maintain books of account and prepare financial statements as per requirements of Companies Act, 2013. The accounting policies mentioned in ICDS-I being fundamental in nature shall be applicable for computing income under the heads "Profits and gains of business or profession" or "Income from other sources".

Question 2: Certain ICDS provisions are inconsistent with judicial precedents. Whether these judicial precedents would prevail over ICDS?

Answer: The ICDSs have been notified after due deliberation and after examining judicial views for bringing certainty on the issues covered by it. Certain judicial pronouncements were pronounced in the absence of authoritative guidance on these issues under the Act for computing Income under the head "Profits and gains of business or profession" or Income from other sources. Since certainty is now provided by notifying ICDS under section 145(2), the provisions of ICDS shall be applicable to the transactional issues dealt therein in relation to assessment year 2017-18 and subsequent assessment years.

However, Delhi High Court in case of "The Chamber of Tax Consultants & Anr v. UOI W.P.(C) 5595/ 2017 & CM APL 23467/ 2017" held that section 145(2) of the Act has to be read down to restrict power of the Central Government to notify ICDS that do not seek to override binding judicial precedents or provisions of the Act.

Question 3: Does ICDS apply to non-corporate taxpayers who are not required to maintain books of account and/or those who are covered by presumptive scheme of taxation like sections 44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. of the Act?

Answer: ICDS is applicable to specified persons having income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources'. Therefore, the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme. For example, for computing presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on Construction Contract or Revenue recognition shall apply for determining the receipts or turnover, as the case may be.

Question 4: If there is conflict between ICDS and other specific provisions of the Income-tax Rules,1962 governing taxation of income like Rules 9A, 9B etc. of the Rules, which provisions shall prevail?

Answer: ICDS provides general principles for computation of income. In case of conflict, if any, between the provisions of Rules and ICDS, the provisions of Rules, which deal with specific circumstances, shall prevail.

Question 5: ICDS is framed on the basis of accounting standards notified by Ministry of Corporate Affairs (MCA) vide Notification No. GSR 739(E) dated 7th December, 2006 under section 211(3C) of erstwhile Companies Act 1956. However, MCA has notified in February, 2015 a new set of standards called 'Indian Accounting Standards' (Ind-AS). How will ICDS apply to companies which adopted Ind-AS?

Answer: ICDS shall apply for computation of taxable income under the head " Profit and gains of business or profession" or "Income from other sources" under the Income-tax Act. This is irrespective of the accounting standards adopted by companies i.e. either Accounting Standards or Ind-AS.

Question 6: Whether ICDS shall apply to computation of Minimum Alternate Tax (MAT) under section 115JB of the Act or Alternate Minimum Tax (AMT) under section 115JC of the Act?

Answer: MAT under section 115JB of the Act is computed on 'book profit' that is net profit as shown in the Profit and Loss Account prepared under the Companies Act subject to certain specified adjustments. Since, the provisions of ICDS are applicable for computation of income under the regular provisions of the Act, the provisions of ICDS shall not apply for computation of MAT.

AMT under section 115JC of the Act is computed on adjusted total income which is derived by making specified adjustments to total income computed as per the regular provisions of the Act. Hence, the provisions of ICDS shall apply for computation of AMT.

Question 7: Whether the provisions of ICDS shall apply to Banks, Non-banking financial institutions, Insurance companies, Power sector, etc.?

Answer: The general provisions of ICDS shall apply to all persons unless there are sector specific provisions contained in the ICDS or the Act. For example, ICDS VIII contains specific provisions for banks and certain financial institutions and Schedule I of the Act contains specific provisions for Insurance business.

Question 8: Para 4(ii) of ICDS-1 provides that Marked to Market (MTM) loss or an expected loss shall not be recognized unless the recognition is in accordance with the provisions of any other ICDS. Whether similar consideration applies to recognition of MTM gain or expected incomes?

Answer: Same principle as contained in ICDS-I relating to MTM losses or an expected loss shall apply mutatis mutandis to MTM gains or an expected profit.

Question 9: ICDS-1 provides that an accounting policy shall not be changed without 'reasonable cause'. The term 'reasonable cause' is not defined. What shall constitute 'reasonable cause'?

Answer: Under the Act, 'reasonable cause' is an existing concept and has evolved well over a period of time conferring desired flexibility to the tax payer in deserving cases.

Question 10: Which ICDS would govern derivative instruments?

Answer: ICDS -VI (subject to para 3 of ICDS-III) provides guidance on accounting for derivative contracts such as forward contracts and other similar contracts. For derivatives, not within the scope of ICDS-VI, provisions of ICDS-1 would apply.

Question 11: Whether the recognition of retention money, receipt of which is contingent on the satisfaction of certain performance criterion is to be recognized as revenue on billing?

Answer: Retention money, being part of overall contract revenue, shall be recognised as revenue subject to reasonable certainty of its ultimate collection condition contained in para 9 of ICDS III on Construction contracts.

Question 12: Since there is no specific scope exclusion for real estate developers and Build-Operate-Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS III and ICDS IV should be applied by real estate developers and BOT operators. Also, whether ICDS is applicable for leases.

Answer: At present, there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply to these transactions as may be applicable.

Question 13: The condition of reasonable certainty of ultimate collection is not laid down for taxation of interest, royalty and dividend. Whether the taxpayer is obliged to account for such income even when the collection thereof is uncertain?

Answer: As a principle, interest accrues on time basis and royalty accrues on the basis of contractual terms. Subsequent non-recovery in either cases can be claimed as deduction in view of amendment to section 36(1)(vii). Further, the provision of the Act (e.g. Section 43D) shall prevail over the provisions of ICDS.

Question 14: Whether ICDS is applicable to revenues which are liable to tax on gross basis like interest, royalty and fees for technical services for non-residents u/s. 115A of the Act.

Answer: Yes, the provisions of ICDS, also apply for computation of these incomes on gross basis for arriving at the amount chargeable to tax.

Question 15: Para 8 of ICDS-V states expenditure incurred on commissioning of project, including expenditure incurred on test runs and experimental production shall be capitalized. It also states that expenditure incurred after the plant has begun commercial production i.e., production intended for sale or captive consumption shall be treated as revenue expenditure. What shall be the treatment of expense incurred after the conduct of test runs and experimental production but before commencement of commercial production?

Answer: As clarified in Para 8 of lCDS-V, the expenditure incurred till the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as capital expenditure.

Question 16: What is the taxability of opening balance as on 1st April 2016 of Foreign Currency Translation Reserve (FCTR) relating to non-integral foreign operation, if any, recognised as per Accounting Standards (AS) 11?

Answer: FCTR balance as on 1 April 2016 pertaining to exchange differences on monetary items for non-integral operations, shall be recognised in the previous year relevant for assessment year 2017-18 to the extent not recognised in the income computation in the past.

Question 17: For subsidy received prior to 1st April 2016 but not recognised in the books pending satisfaction of related conditions and achieving reasonable certainty of receipt, how shall the same be recognised under ICDS on or after 1st April 2016?

Answer: Para 4 of ICDS VII read with Para 5 to Para 9 of ICDS-VII provides for timing of recognition of government grant. The transitional provision in Para 13 of ICDS-VII provides that a government grant which meets the recognition criteria on or after 1st April 2016 shall be recognised in accordance with ICDS VII. All government grants actually received prior to 1st April 2016 shall be deemed to have been recognised on its receipt in accordance with Para 4(2) of ICDS VII and accordingly will be outside the transitional provision and therefore the government grants received on or after 1st April 2016 and for which recognition criteria provided in Para 5 to Para 9 of ICDS VII is also satisfied thereafter, the same shall be recognised as per the provisions of ICDS VII. The grants received prior to 1st April 2016 shall continue to be recognised as per the law prevailing prior to that date.

For example, if out of total subsidy entitlement of Rs. 10 Crore an amount of Rs.6 Crore is recognised in the books of account till 31st March 2016 and recognition of balance Rs. 4 Crore is deferred pending satisfaction of related conditions and/or achieving reasonable certainty of receipt. The balance amount of Rs. 4 Crore will be taxed in the year in which related conditions are met and reasonable certainty is achieved. If these conditions are met over two years, the amount of Rs. 4 Crore shall be taxed over the period of two years. The amount of Rs. 6 Crore for which recognition criteria were met prior to 1st April 2016 shall not be taxable post 1st April 2016.

But if the subsidy is already received prior to 1st April 2016, Para 13 of ICDS-VII shall not apply even if some of the related conditions are met on or after 1 April 2016. This is in view of Para 4(2) of ICDS-VII which provides that Government grant shall not be postponed beyond the date of actual receipt. Such grants shall continue to be governed by the provisions of law applicable prior to 1st April 2016.

Question 18: If the taxpayer sells a security on 30th April 2017. The interest payment dates are December and June. The actual date of receipt of interest is on 30th June 2017 but the interest on accrual basis has been accounted as income on 31st March 2017. Whether the taxpayer shall be permitted to claim deduction of such interest i.e. offered to tax but not received while computing the capital gain?

Answer: Yes, the amount already taxed as interest income on accrual basis shall be taken into account for computation of income arising from such sale.

Question 19: Para 9 of ICDS-VIII on securities requires securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value (NRV) at the end of that previous year, whichever is lower. Para 10 of Part-A of ICDS-VIII requires the said exercise to be carried out category wise. How the same shall be computed?

Answer: For subsequent measurement of securities held as stock-in-trade, the securities are first aggregated category wise. The aggregate cost and NRV of each category of security are compared and the lower of the two is to be taken as carrying value as per ICDS-VIII. This is illustrated below-

Security	Category	Cost	NRV	Lower of cost or NRV	ICDS Value
A	Share	100	75	75	
B	Share	120	150	120	
C	Share	140	120	120	
D	Share	200	190	190	
	Total	560	535	505	535
E	Securities	150	160	150	
F	Securities	105	90	90	
G	Securities	125	135	125	
H	Securities	220	230	220	
	Total	600	615	585	600
Securities Total		**1160**	**1150**	**1090**	**1135**

Question 20: There are specific provisions in the Act read with Rules under which a portion of borrowing cost may get disallowed under sections like 14A, 43B, 40(a)(i), 40(a)(ia), 40A(2)(b), etc. of the Act. Whether borrowing costs to be capitalized under ICDS-IX should exclude portion of borrowing costs which gets disallowed under such specific provisions?

Answer: Since specific provisions of the Act override the provisions of ICDS, it is clarified that borrowing costs to be considered for capitalization under ICDS IX shall exclude those borrowing costs which are disallowed under specific provisions of the Act. Capitalization of borrowing cost shall apply for that portion of the borrowing cost which is otherwise allowable as deduction under the Act.

Question 21: Whether bill discounting charges and other similar charges would fall under the definition of borrowing cost?

Answer: The definition of borrowing cost is an inclusive definition. Bill discounting charges and other similar charges are covered as borrowing cost.

Question 22: How to allocate borrowing costs relating to general borrowing as computed in accordance with formula provided under Para 6 of ICDS-IX to different qualifying assets?

Answer: The capitalization of general borrowing cost under ICDS-IX shall be done on asset by-asset basis.

Question 23: What is the impact of Para 20 of ICDS X containing transitional provisions?

Answer: Para 20 of ICDS X provides that all the provisions or assets and related income shall be recognised for the previous year commencing on or after 1st day of April 2016 in accordance with the provisions of this standard after taking into account the amount recognised, if any, for the same for any previous year ending on or before 31st day of March, 2016.

The intent of transitional provision is that there is neither 'double taxation' of income due to application of ICDS nor there should be escapement of any income due to application of ICDS from a particular date. This is explained as under –

Provision required as per ICDS on 31 March 2017 for items brought forward from 31st day of March 2016 (A)	INR 3 Crores
Provisions as per ICDS for FY 2016-17 (B)	INR 5 Crores
Total gross provision (C) =(A)+(B)	INR 8 Crores

Less: Provision already recognised for computation of taxable income in FY 2016-17 or earlier (D)	INR 2 Crores
Net provision as per ICDS in FY 2016-17 to be recognised as per transition provision (E) = (C) - (D)	INR 6 Crores

Question 24: Expenditure on most post-retirement benefits like provident fund, gratuity, etc. are covered by specific provisions. There are other post-retirement benefits offered by companies like medical benefits. Such benefits are covered by AS-15 for which no parallel ICDS has been notified. Whether provision for these liabilities are excluded from scope of ICDS X?

Answer: It is clarified that provisioning for employee benefit which are otherwise covered by AS 15 shall continue to be governed by specific provisions of the Act and are not dealt with by ICDS-X.

Question 25: ICDS-1 requires disclosure of significant accounting policies and other ICDS requires specific disclosures. Where is the taxpayer required to make such disclosures specified in ICDS?

Answer: Net effect on the income due to application of ICDS is to be disclosed in the Return of income. The disclosures required under ICDS shall be made in the tax audit report in Form 3CD. However, there shall not be any separate disclosure requirements for persons who are not liable to tax audit.

49 – LIABILITY IN SPEICAL CASES

50 – REFUND

51 – TAXATION OF MUTUAL CONCERNS

51.1 CASE STUDIES

CITATION	ISSUE	CONCLUSION
Madras Gymkhana Club v. DCIT (2010) 328 ITR 348 (Mad.)	Would the interest earned on surplus funds of a club deposited with institutional members satisfy the principle of mutuality to escape taxability?	The High Court held that interest earned from investment of surplus funds in the form of fixed deposits with institutional members does not satisfy the principle of mutuality and hence cannot be claimed as exempt on this ground. The interest earned is, therefore, taxable.
Sind Co-operative Housing Society v. ITO (2009) 317 ITR 47 (Bom)	Can transfer fees received by a co-operative housing society from its incoming and outgoing members be exempt on the ground of principle of mutuality?	The High Court, therefore, held that transfer fees received by a co-operative housing society, whether from outgoing or from incoming members, is not liable to tax on the ground of principle of mutuality since the predominant activity of such co-operative society is maintenance of property of the society and there is no taint of commerciality, trade or business. Further, section 28(iii), which provides that income derived by a trade, professional or similar association from specific services performed for its members shall be treated as business income, can have no application since the co-operative housing society is not a trade or professional association.

52 – TAXATION OF SUBSIDIES/GRANT

53 – MISCELLENEOUS

53.1 NOTIFICATIONS

1. **Notification No. 95/2015, dated 30-12-2015**
   Furnishing of statement of financial transaction [RULE 114E]

   The statement of financial transaction required to be furnished under section 285BA(1) of the Income-tax Act, 1961 shall be furnished by every person mentioned in column (3) of the Table below in respect of all the transactions of the nature and value specified in the corresponding entry in column (2) of the said Table, which are registered and recorded by him on or after 1st April, 2016.

Sr. No.	Nature and value of transaction	Class of person (reporting person)
(1)	(a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to Rs. 10 lakh or more in a financial year. (b) Payments made in cash aggregating to Rs. 10 lakh or more during the financial year for purchase of pre-paid instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007. (c) Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to Rs. 50 lakhs or more in a financial year, in or from one or more current account of a person	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act)
(2)	Cash deposits aggregating to Rs. 10 lakhs or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898.
(3)	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to Rs. 10 lakhs or more in a financial year of a person	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);

		(ii) Post Master General as referred to in the Indian Post Office Act, 1898; (iii) Nidhi referred to in section 406 of the Companies Act, 2013; (iv) NBFC which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.
(4)	Payments made by any person of an amount aggregating to- (i) Rs. 1 lakh or more in cash; or (ii) Rs. 10 lakh or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year.	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.
(5)	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).	A company or institution issuing bonds or debentures.
(6)	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring shares (including share application money) issued by the company.	A company issuing shares
(7)	Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to Rs. 10 lakh or more in a financial year	A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013.
(8)	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.
(9)	Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or	Authorised person as referred to in section 2(c) of the Foreign Exchange Management Act, 1999

	through issue of travellers cheque or draft or any other instrument of an amount aggregating to Rs. 10 lakh or more during a financial year	
(10)	Purchase or sale by any person of immovable property for an amount of Rs. 30 lakhs or more or valued by the stamp valuation authority referred to in section 50C at Rs. 30 lakhs or more	Inspector-General appointed under the Registration Act, 1908 or Registrar or Sub-Registrar appointed under that Act
(11)	Receipt of cash payment exceeding Rs. 2 lakh for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10 of this rule, if any).	Any person who is liable for audit under section 44AB of the Act
(12)	Cash deposits during the period 09th November, 2016 to 30th December, 2016 aggregating to— (i) twelve lakh fifty thousand rupees or more, in one or more current account of a person; or (ii) two lakh fifty thousand rupees or more, in one or more accounts (other than a current account) of a person.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).]
(13)	Cash deposits during the period 1st of April, 2016 to 9th November, 2016 in respect of accounts that are reportable under Sl.No.12.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).]

Manner of application of threshold limit:

The reporting person mentioned in column (3) of the Table under sub-rule (2) [other than the person at Sl.No.10 and Sl. No. 11] shall, while aggregating the amounts for determining the threshold amount for reporting in respect of any person as specified in column (2) of the said Table,-

(a) take into account all the accounts of the same nature as specified in column (2) of the said Table maintained in respect of that person during the financial year;

(b) aggregate all the transactions of the same nature as specified in column (2) of the said Table recorded in respect of that person during the financial year;

(c) attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained or transaction is recorded in the name of more than one person;

(d) apply the threshold limit separately to deposits and withdrawals in respect of transaction specified in item (c) under column (2), against Sl. No. 1 of the said Table.

Practical 1

A private bank has not filed its statement of financial transaction in relation to the specified financial transactions for the financial year 2017-18. A notice was issued by the prescribed income-tax authority on 1st July,2018 requiring the bank to furnish the return by 31st July,2018. The bank, however, furnished the AIR only on 2nd September,2018. What would be the penalty leviable u/s 271FA?

Solution

Non-compliance of section	Penalty under section 271FA	Period	Quantum of penalty under section 271FA	
(1)	**(2)**	**(3)**	**(2) X (3)**	**(Rs.)**
285BA(1)	Rs.100 per day of continuing default	1.06.2018 to 31.07.2018	61 days × Rs. 100	6,100
285BA(5)	Rs.500 per day of continuing default	1.08.2018 to 02.09.2018	33 days × Rs. 500	16,500
				22,600

Reader's Note:

53.2 CASE STUDIES

CITATION	ISSUE	CONCLUSION
Dr. Manoj Kabra v. ITO (2014) 364 ITR 541 (All)	Can the Assessing Officer suo moto assume jurisdiction to declare sale of property as void under section 281?	Applying the rationale of the Apex Court ruling, the High Court held that the Assessing Officer has no jurisdiction under section 281 to suo moto declare the sale as void.

54 – TAXATION OF NON-RESIDENT

54.1 NOTIFICATIONS

1. Notification No. 70/2015 dated 17.8.2015

According to Rule 126, for the purposes of section 6(1), in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the following period:

Period to be excluded

Period commencing from		Period ending on
the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage	and	the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

Practical 1

Mr. Navin , a citizen of India and a member of crew of a Foreign Bound Ship “ARJUN” provides following information for the previous year **2017-18**:-

The number of days as per continuous discharge certificate for an “eligible voyage” :-195 days

Whether Navin is said to be resident for the previous year **2017-18**?

Solution

Considering the notification, total period of stay in India for Mr. Navin is computed as under:

Particulars	No. of Days
Total No. of days in previous year **2017-18**	365
Less: No. of days as per continuous discharge certificate	(195)
Presence in India	**170**

Since presence of Mr. Navin in India is less than 182 days, he is said to be non-resident for the previous year **2017-18**.

Readers Note:

2. Circular No. 6/2017, dated 24.01.2017 & Circular No. 8/2017, dated 23-02-2017

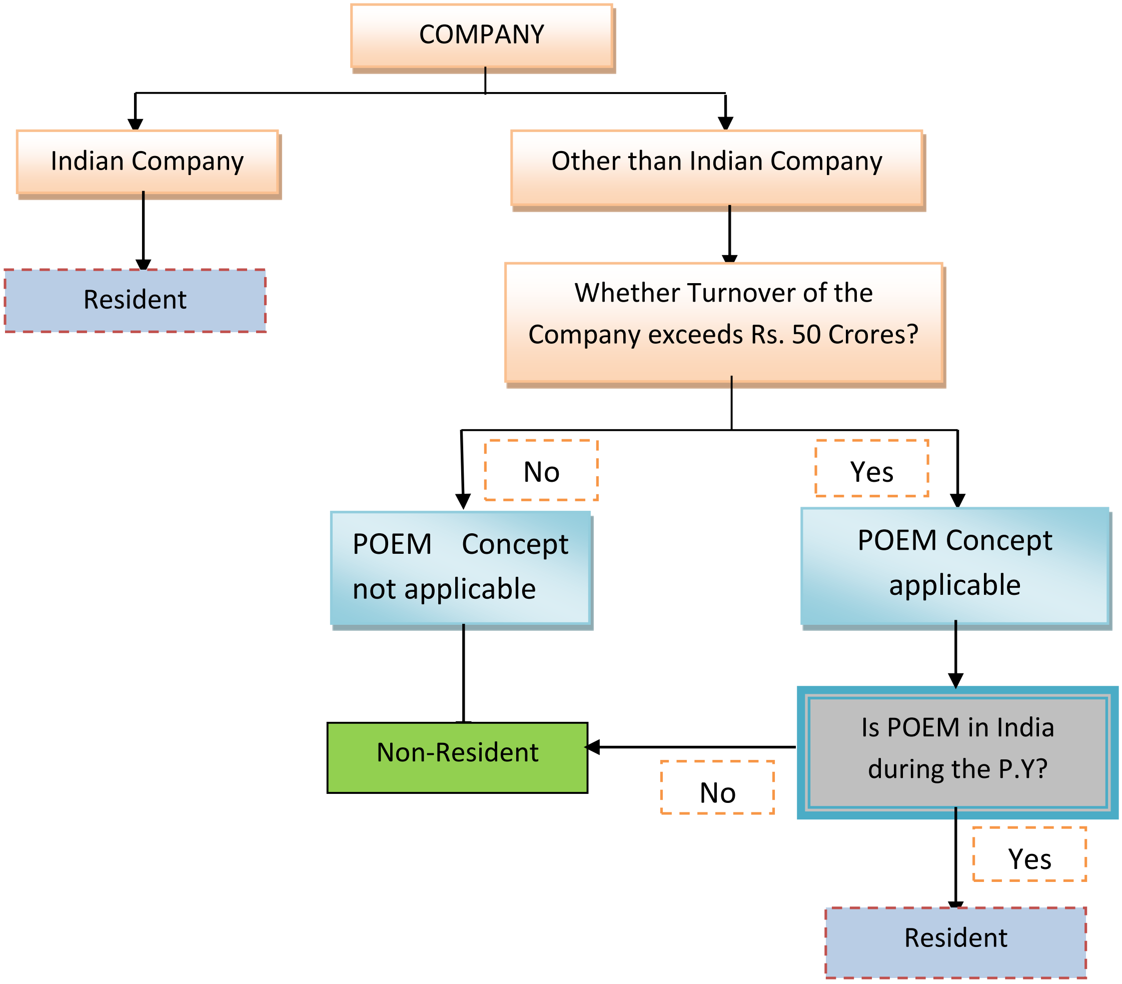
In case of a Company [Section 6(3)]

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

  (i) it is an Indian company; or

  (ii) its place of effective management, in that year, is in India.

  Explanation:- *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.*



GUIDING PRINCIPLES ON POEM

Circular No. 6/2017, dated 24.01.2017 & Circular No. 8/2017, dated 23-02-2017

Fundamental Points to be noted.

- Any determination of the POEM will depend upon the facts and circumstances of a given case.
- The POEM concept is one of substance over form.
- An entity may have more than one place of management, but it can have only one place of effective management at any point of time.
- Since "residential status" is to be determined for each year, POEM will also be required to be
- determined on year to year basis.

Process of determination of POEM

The process of determination of POEM would be primarily based on the fact as to **whether or not the company is engaged in active business outside India**.

Determination of POEM

Company is engaged in active business outside India

POEM of a company engaged in active business shall be presumed to be outside India if the majority of the board meetings are held outside India.

However, in case the Board is not exercising its powers of management and such powers are being exercised by either the holding company or any other person, resident in India, then POEM shall be considered to be in India.

Company is not engaged in active business outside India

The guidelines provide a two-stage process for determination of POEM in case of companies not engaged in active business.

(a) **First stage:** Identifying the person(s) who actually make the key management and commercial decisions for the conduct of the company as a whole.

(b) **Second stage:** Determining the place where these decisions are, in fact, being made.

The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of POEM, it is the substance which would be conclusive rather than the form.

When company shall be said to be engaged in "active business outside India"?

A company shall be said to be engaged in "active business outside India"

- if the passive income is not more than 50% of its total income; **and**
- less than 50% of its total assets are situated in India; **and**
- less than 50% of total number of employees are situated in India or are resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

For the purpose of determining whether the company is engaged in active business outside India, the average of the data of the previous year and two years prior to that shall be taken into account. In case the company has been in existence for a shorter period, then, data of such period shall be considered. Where the accounting year for tax purposes, in accordance with laws of country of incorporation of the company, is different from the previous year, then, data of the accounting year that ends during the relevant previous year and two accounting years preceding it shall be considered.

Meaning of certain terms:

<table>
<tr><th>Term</th><th>Meaning</th></tr>
<tr><td>Income</td><td>(a) As computed for tax purpose in accordance with the laws of the country of incorporation; or
(b) As per books of account, where the laws of the country of incorporation does not require such a computation</td></tr>
<tr><td>Value of assets</td><td><table>
<tr><td>(a)</td><td>In case of an individually depreciable asset</td><td>The average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the previous year;</td></tr>
<tr><td>(b)</td><td>In case of pool of fixed asset, being treated as a block for depreciation</td><td>The average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the year;</td></tr>
<tr><td>(c)</td><td>In case of any other asset</td><td>Value as per books of account</td></tr>
</table></td></tr>
<tr><td>Number of employees</td><td>The average of the number of employees as at the beginning and at the end of the year. It shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees.</td></tr>
<tr><td>Pay roll</td><td>This term includes the cost of salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer</td></tr>
<tr><td>Passive income</td><td>It is the aggregate of, -
(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and
(ii) income by way of royalty, dividend, capital gains, interest or rental income;
However, any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation.</td></tr>
</table>

Examples on determination of POEM

Example 1: Company A Co. is a sourcing entity, for an Indian multinational group, incorporated in country X and is 100% subsidiary of Indian company (B Co.). The warehouses and stock in them are the only assets of company and are located in country X. All the employees of the company are also in country X. The average income wise breakup of the company's total income for three years is, -

(i) 30% of income is from transaction where purchases are made from parties which are non-associated enterprises and sold to associated enterprises;

(ii) 30% of income is from transaction where purchases are made from associated enterprises and sold to associated enterprises;

(iii) 30% of income is from transaction where purchases are made from associated enterprises and sold to non-associated enterprises; and

(iv) 10% of the income is by way of interest.

Interpretation: In this case passive income is 40% of the total income of the company. The passive income consists of, -

(i) 30% income from the transaction where both purchase and sale is from/to associated enterprises; and

(ii) 10% income from interest.

The A Co. satisfies the first requirement of the test of active business outside India. Since no assets or employees of A Co. are in India the other requirements of the test is also satisfied.

Therefore, company is engaged in active business outside India.

Example 2: *The basic facts are same as in Example 1. Further facts are that all the directors of the A Co. are Indian residents. During the relevant previous year 5 meetings of the Board of Directors is held of which two were held in India and 3 outside India with two in country X and one in country Y.*

Interpretation: The A Co. is engaged in active business outside India as the facts indicated in Example 1 establish. The majority of board meetings have been held outside India. Therefore, the POEM of A Co. shall be presumed to be outside India.

Example 3: *The facts are same as in Example 2 but it is established by the Assessing Officer that although A Co.'s senior management team signs all the contracts, for all the contracts above* Rs. *10 lakh the A Co. must submit its recommendation to B Co. and B Co. makes the decision whether or not the contract may be accepted. It is also seen that during the previous year more than 99% of the contracts are above* Rs. *10 lakh and over past years also the same trend in respect of value contribution of contracts above* Rs. *10 lakh is seen.*

Interpretation: These facts suggest that the effective management of the A Co. may have been usurped by the parent company B Co. Therefore, POEM of A Co. may in such cases be not presumed to be outside India even though A Co. is engaged in active business outside India and majority of board meeting are held outside India.

Example 4: *The other facts remain same as that in Example 1 with the variation that A Co. has a total of 50 employees. 47 employees, managing the warehouse, storekeeping and accounts of the company, are located in country X. The Managing Director (MD), Chief Executive Officer (CEO) and sales head are resident in India. The total annual payroll expenditure on these 50 employees is of* Rs. *5 crore. The annual payroll expenditure in respect of MD, CEO and sales head is of* Rs. *3 crore.*

Interpretation: Although the first limb of active business test is satisfied by A Co. as only 40% of its total income is passive in nature. Further, more than 50% of the employees are also situated outside India. All the assets are situated outside India. However, the payroll expenditure in respect of the MD, the CEO and the sales head being employees resident in India exceeds 50% of the total payroll expenditure.

Therefore, A Co. is not engaged in active business outside India.

Example 5: *An Indian multinational group has a local holding company A Co. in country X. The A Co. also has 100% downstream subsidiaries B Co. and C Co. in country X and D Co. in country Y. The A Co. has income only by way of dividend and interest from investments made in its subsidiaries. The Place of Effective Management of A Co. is in India and is exercised by ultimate parent company of the group. The subsidiaries B, C and D are engaged in active business outside India. The meetings of Board of Director of B Co., C Co. and D Co. are held in country X and Y respectively.*

Interpretation: Merely because the POEM of an intermediate holding company is in India, the POEM of its subsidiaries shall not be taken to be in India. Each subsidiary has to be examined separately. As indicated in the facts since companies B Co., C Co., and D Co. are independently engaged in active business outside India and majority of Board meetings of these companies are also held outside India. The POEM of B Co., C Co., and D Co. shall be presumed to be outside India.

List of some of the guiding principles which may be taken into account for determining the POEM for the companies not engaged in active business outside India

(a) The location where a company's Board regularly meets and makes decisions

(b) Location of Executive Committee, in case powers are delegated by the board may be the company's place of effective management

(c) Location of head office

(d) Use of modern technology

(e) Decisions via circular resolution or round robin voting

(f) Decisions made by Shareholders are not relevant factor in determination of POEM

(g) Day to day routine operational decisions are not relevant for determination of POEM

List of secondary factors which may be taken into account for determining the POEM for the companies not engaged in active business outside India

If the above factors do not lead to clear identification of POEM then the final guidelines provide that following secondary factors may be considered:

- Place where main and substantial activity of the company is carried out; or
- Place where the accounting records of the company are kept.

Determination of POEM is to be based on all the relevant facts and not on the basis of isolated facts

It needs to be emphasized that the determination of POEM is to be based on all relevant facts related to the management and control of the company, and is not to be determined on the basis of isolated facts that by itself do not establish effective management, as illustrated by the following examples:

(i) The fact that a foreign company is completely owned by an Indian company will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(ii) The fact that there exists a Permanent Establishment of a foreign entity in India would itself not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(iii) The fact that one or some of the Directors of a foreign company reside in India will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(iv) The fact of, local management being situated in India in respect of activities carried out by a foreign company in India will not, by itself, be conclusive evidence that the conditions for establishing POEM have been satisfied.

(v) The existence in India of support functions that are preparatory and auxiliary in character will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

While determining POEM, "Snapshot" approach should not be adopted

It is reiterated that the above principles for determining the POEM are for guidance only. No single principle will be decisive in itself. The above principles are not to be seen with reference to any particular moment in time rather activities performed over a period of time, during the previous year, need to be considered.

In other words a "snapshot" approach is not to be adopted. Further, based on the facts and circumstances if it is determined that during the previous year the POEM is in India and also outside India then POEM shall be presumed to be in India if it has been mainly /predominantly in India.

Duty of the assessing officer to obtain prior approval of the Principal Commissioner or Commissioner before concluding that POEM of a particular company in India

The Assessing Officer (AO) shall, before initiating any proceedings for holding a company incorporated outside India, on the basis of its POEM, as being resident in India, seek prior approval of the Principal Commissioner or the Commissioner, as the case may be.

Further, in case the AO proposes to hold a company incorporated outside India, on the basis of its POEM, as being resident in India then any such finding shall be given by the AO after seeking prior approval of the collegium of three members consisting of the Principal Commissioners or the Commissioners, as the case may be, to be constituted by the Principal Chief Commissioner of the region concerned, in this regard. The collegium so constituted shall provide an opportunity of being heard to the company before issuing any directions in the matter.

Practical 2

ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in **April, 2017** in compliance with RBI guidelines. It just spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day to day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine the residential status of ABC Inc. for **A.Y.2018-19.**

Whether ABC Inc. is required to file any statement under Income Tax Act, 1961?

Solution

- ABC Inc. has only a liaison office in India through which it looks after its routine day to day business operations in India. The place where decisions relating to day to day routine operations are taken and support functions that are preparatory or auxiliary in nature are performed are not relevant in determining the place of effective management.
- Considering the amendment in section 6(3) of the Act, ABC Inc., being a foreign company is a non-resident for **A.Y.2018-19**, since its place of effective management is outside India in the **P.Y.2017-18**
- ***As per section 285 of the Act,*** Every person, being a **non-resident having a liaison office in India** set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, **shall**, in respect of its activities in a financial year, **prepare and deliver or cause to be delivered to the Assessing Officer** having jurisdiction, **within sixty days from the end of such financial year, a statement in such form and** containing **such particulars as** may be **prescribed**. [As per notification no. 5/2012 dated 6-2-2012, form no. 49C shall be submitted in electronic form]

Readers Note:

3. Circular No. 25/2017, dated 23.10.2017
Clarification related to guidelines for establishing 'Place of Effective Management' (PoEM) in india

Issue:

Stakeholders had expressed concerns that as per the extant guidelines, PoEM may be triggered in cases of certain multinational companies with regional headquarter structure merely on the ground that certain employees having multi-country responsibility or oversight over the operations in other countries of the region are working from India, and consequently, their income from operations outside India may be taxed in India.

Clarification from CBDT

It is clarified that so long as the Regional Headquarter operates for subsidiaries/ group companies in a region within the general and objective principles of global policy of the group laid down by the parent entity in the field of Pay roll functions, Accounting, HR functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; it would, in itself, not constitute a case of BoD of companies standing aside and such activities of Regional Headquarter in India alone will not be a basis for establishment of PoEM for such subsidiaries/ group companies.

Warning from CBDT

It is further mentioned in the said Circular that the provisions of General Anti-Avoidance Rule contained in Chapter X-A of the Income-tax Act, 1961 may get triggered in such cases where the above clarification is found to be used for abusive/ aggressive tax planning.

4. Circular No. 28/2017, dated 7-11-2017

Clarification on applicability of section 9(1)(i) relating to indirect transfer in case of redemption of share or interest outside India [

Section 9(1)(i) 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 situate in India, shall be deemed to accrue or arise in India.

Explanation 5 to section 9(1)(i), clarifies that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

Concerns were raised by investment funds, including private equity funds and venture capital funds that on account of the extant indirect transfer provisions in the Act, non-resident investment funds investing in India, which are set up as multi-tier investment structures, suffer multiple taxation of the same income at the time of subsequent redemption or buyback.

However, in respect of investments in Category I and II FPIs by non-residents, which are already exempted from indirect transfer provisions through insertion of second proviso to Explanation 5 to section 9(1)(i) by the Finance Act, 2017 with effect from 1.4.2015, such multiple taxation will not take place. In other cases, such taxability arises firstly at the level of the fund in India on its short-term capital gain/business income and then at every upper level of investment in the fund chain on subsequent redemption or buyback. The CBDT has received representations to exclude investors above the level of the direct investor who is already chargeable to tax in India on such income from the ambit of indirect transfer provisions of the Act.

In order to address this concern, the CBDT has, vide this Circular, clarified that the provisions of section 9(1)(i) read with Explanation 5, shall not apply in respect of income accruing or arising to a non-resident on account of redemption or buyback of its share or interest held indirectly (i.e. through upstream entities registered or incorporated outside India) in the specified funds (namely, investment funds, venture capital company and venture capital funds) if such income accrues or arises from or in consequence of transfer of shares or securities held in India by the specified funds and such income is chargeable to tax in India.

However, the above benefit shall be applicable only in those cases where the proceeds of redemption or buyback arising to the non-resident do not exceed the pro-rata share of the non-resident in the total consideration realized by the specified funds from the said transfer of shares or securities in India. It is further clarified that a non-resident investing directly in the specified funds shall continue to be taxed as per the extant provisions of the Act.

55 - DOUBLE TAXATION RELIEF

55.1 NOTIFICATION

1. Notification No. 9/2017, dated 19.09.2017

Procedure for filing statement of income from a country or specified territory outside India and foreign tax credit

An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in Rule 128 of the Income-tax Rules, 1962.

As per rule 128(9), the statement in Form No. 67 referred to in Rule 128(8)(i) and the certificate or the statement referred to in rule 128(8)(ii) has to be furnished on or before the due date specified for furnishing the return of income under section 139(1), in the manner specified for furnishing such return of income.

Accordingly, the Principal Director General of Income-tax (Systems), has, in exercise of the powers delegated by the CBDT, vide this notification, laid down the following procedures in this regard:

(i) Online filing of Form 67: All assessees who are required to file return of income electronically under section 139(1) as per Rule 12(3), are required to prepare and submit Form 67 online along with the return of income, if credit for the amount of any foreign tax paid by the assessee in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.

(ii) Preparation and Submission of Form 67: Form 67 shall be available to all assessees when they login into the e-filing portal using their valid credentials. A link for filing the Form has been provided under "e-File → Prepare and Submit Online Forms (Other than ITR)". Select Form 67 and assessment year from the drop down. The completed Form 67 can be submitted by clicking on "Submit" button. Digital Signature Certificate or Electronic Verification Code is mandatory to submit Form 67.

(iii) Submission of Form 67 shall precede filing of return of income.

56 - ADVANCE RULINGS

57 - TRANSFER PRICING AND OTHER ANTI-AVOIDANCE MEASURES

57.1 NOTIFICATIONS

1. Notification No. 92/2017, dated 31.10.2017

Rules for maintaining information and documents and furnishing report in respect of International Group in line with BEPS Action Plan - Country-By-Country reporting and of master file prescribed

Section 286 was inserted to implement the recommendations of 2015 Final Report on Action 13, titled "Transfer Pricing Documentation and Country-by-Country (CbC) Reporting", identified under the OECD Base Erosion and Profit Shifting (BEPS) Project, to provide for a specific reporting regime in respect of CbC reporting and also the master file in the Income-tax Act, 1961.

Section 286 provides that every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority, on or before the prescribed date, in the form and manner, as may be prescribed,

- whether, it is the alternate reporting entity of the international group or
- the details of the parent entity or the alternate reporting entity of the international group and the country or territory of which the said entities are resident.

Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, furnish a report, in respect of the international group of which it is a constituent, on or before the due date specified under section 139(1), in the form and manner, as may be prescribed.

The proviso to section 92D requires a person, being a constituent entity of an international group, to also keep and maintain such information and document in respect of an international group as may be prescribed. Further, section 92D(4) requires such person to furnish such information and documents to the authority prescribed under section 286(1) in the prescribed manner on or before the prescribed date.

CBDT has notified rules in this regard. For detail study of **Notification No. 92/2017 refer** https://incometaxindia.gov.in/communications/notification/notification92_2017.pdf

57.2 SAFE HARBOUR

Rule:- 10TD

The revised Safe Harbor rules are tabulated below:

Sr. No.	Eligible International Transaction	Circumstances in which tax authorities shall accept the transfer price declared by the assessee
(1)	(2)	(3)
1.	**Provision of software development services** referred to in item (i) of rule 10TC.	**The operating profit margin** declared by the eligible assessee from the eligible international transaction **in relation to operating expense** incurred is - **(i)** **not less than 17 per cent**, where the value of international transaction does not exceed a sum of one hundred crore rupees; or **(ii)** **not less than 18 per cent**, where the value of international transaction exceeds a sum of one hundred crore rupees but does not exceed a sum of two hundred crore rupees.
2.	**Provision of information technology enabled services** referred to in item (ii) of rule 10TC.	**The operating profit margin** declared by the eligible assessee from the eligible international transaction **in relation to operating expense** is - **(i)** **not less than 17 per cent**, where the aggregate value of such transactions entered into during the previous year does not exceed a sum of one hundred crore rupees; or **(ii)** **not less than 18 per cent**, where the aggregate value of such transactions entered into during the previous year exceeds a sum of one hundred crore rupees but does not exceed a sum of two hundred crore rupees.
3.	**Provision of knowledge process outsourcing services** referred to in item (iii) of rule 10TC.	The value of international transaction does not exceed a sum of two hundred crore rupees and the operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is - **(i)** not less than 24 per cent. and the Employee Cost in relation to the Operating Expense is at least sixty per cent. **(ii)** not less than 21 per cent. and the Employee Cost in relation to the Operating Expense is forty per cent. or more but less than sixty per cent. or **(iii)** not less than 18 per cent and the Employee Cost in relation to the Operating Expense does not exceed forty per cent.

4.	**Advancing of intra-group loans** referred to in item (iv) of rule 10TC where the amount of loan is denominated **in Indian Rupees** (INR).	The interest rate declared in relation to the eligible international transaction is **not less than the one-year marginal cost of funds lending rate of State Bank of India as on 1st April of the relevant previous year plus**,- (i) **175 basis points**, where the associated enterprise has CRISIL credit rating between AAA to A or its equivalent; (ii) **325 basis points**, where the associated enterprise has CRISIL credit rating of BBB-, BBB or BBB+ or its equivalent; (iii) **475 basis points**, where the associated enterprise has CRISIL credit rating between BB to B or its equivalent; (iv) **625 basis points**, where the associated enterprise has CRISIL credit rating between C to D or its equivalent; or (v) **425 basis points,** where credit rating of the associated enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises in Indian Rupees does not exceed a sum of one hundred crore rupees in the aggregate as on 31st March of the relevant previous year.
5.	**Advancing of intra-group loans** referred to in item (iv) of rule 10TC **where the amount of loan is denominated in foreign currency**.	The interest rate declared in relation to the eligible international transaction is **not less than the six-month London Inter-Bank Offer Rate of the relevant foreign currency as on 30th September of the relevant previous year plus**, - (i) **150 basis points**, where the associated enterprise has CRISIL credit rating between AAA to A or its equivalent; (ii) **300 basis points**, where the associated enterprise has CRISIL credit rating of BBB-, BBB or BBB+ or its equivalent; (iii) **450 basis points**, where the associated enterprise has CRISIL credit rating between BB to B or its equivalent; (iv) **600 basis points**, where the associated enterprise has CRISIL credit rating between C to D or its equivalent; or (v) **400 basis points**, where credit rating of the associated enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises does not exceed a sum equivalent to one hundred crore Indian rupees in the aggregate as on 31st March of the relevant previous year.
6.	**Providing corporate guarantee** referred to in sub-item (a) or sub-item (b) of item (v) of rule 10TC.	The commission or fee declared in relation to the eligible international transaction is at the rate **not less than one per cent per annum on the amount guaranteed.**

7.	**Provision of contract research and development services** wholly or partly **relating to software development** referred to in item (vi) of rule 10TC.	The **operating profit margin** declared by the eligible assessee from the eligible international transaction **in relation to operating expense** incurred is **not less than 24 per cent,** where the value of the international transaction does not exceed a sum of two hundred crore rupees.
8.	**Provision of contract research and development services** wholly or partly **relating to generic pharmaceutical drugs** referred to in item (vii) of rule 10TC.	The **operating profit margin** declared by the eligible assessee from the eligible international transaction **in relation to operating expense** incurred is **not less than 24 per cent**, where the value of the international transaction does not exceed a sum of two hundred crore rupees.
9.	**Manufacture and export of core auto components** referred to in item (viii) of rule 10TC.	The **operating profit margin** declared by the eligible assessee from the eligible international transaction **in relation to operating expense** is **not less than 12 per cent**.
10.	**Manufacture and export of non-core auto components** referred to in item (ix) of rule 10TC.	The **operating profit margin** declared by the eligible assessee from the eligible international transaction **in relation to operating expense** is **not less than 8.5 per cent**.
11.	**Receipt of low value-adding intra-group services** in item (x) of rule 10TC.	**The entire value of the international transaction, including a mark-up not exceeding 5 per cent**., does not exceed a sum of ten crore rupees: **Provided** that the method of cost pooling, the exclusion of shareholder costs and duplicate costs from the cost pool and the reasonableness of the allocation keys used for allocation of costs to the assessee by the overseas associated enterprise, is certified by an accountant.

58 - TAXATION OF EQUALISATION LEVY

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PART III

LASTED CASE STUDIES

By ICAI

In Question Answer Form

CRITICAL JUDICIAL RULINGS IN QUESTION – ANSWER FORM

Case Study 1

Honda Siel Cars India Ltd. (assessee), is a joint venture company between Honda Motors, a Japanese company and Siel Ltd., an Indian company. The assessee and Honda Motors entered into a technical collaboration agreement (TCA) on May 21, 1996 under which a technical fee of 30.5 million USD was payable by the assessee in five equal instalments on a yearly basis. Under the agreement, TCA Honda Motors had to provide manufacturing facilities, know-how, technical information, information regarding intellectual property rights to the assessee which the assessee was entitled to exploit only as a licensee, without any proprietary rights.

Whether the technical fee of 30.5 million USD payable by the assessee is in the nature of revenue expenditure or capital expenditure?

Solution

Honda Siel Cars India Ltd. v. CIT [2017] 395 ITR 713 (SC)

The Supreme Court observed that if a limited right to use technical know-how is obtained for a limited period for improvising existing business, the expenditure is revenue in nature.

However, if technical know-how is obtained for setting up a new business, the position may be different. (That means it would be of capital nature)

Supreme Court further observed that there is no single principle or test for determining the nature of expenditure; it is a question to be answered based on the circumstances in each case.

In the given facts, the very purpose of the TCA was to set up the Joint Venture. The collaboration included not only transfer of technical information, but, complete assistance, actual, factual and on the spot, for establishment of plant, machinery, etc. so as to set up a manufacturing unit. Upon termination of TCA, the joint venture itself would come to an end.

Though the TCA is framed in a manner to look like a licence for a limited period having no enduring nature but a close scrutiny into the said agreement shows otherwise.

The Supreme Court held that, in this case, technical fee is capital in nature since upon termination of TCA, the joint venture itself would come to an end.

Readers Note:

Case Study 2

There have been conflicting interpretations by judicial authorities regarding disallowance under section 40(a)(ia). In that one of the view in favour of assessee was that disallowance under section 40(a)(ia) would be invoked only in respect of the amount which remained payable at the end of relevant financial year and not in respect of the amount which had actually been paid during the previous year without deduction of tax at source. This conflict has been done away by Supreme Court. You are required to mention that in whose favour conflict has been resolved and what are the reasons awarded by Supreme Court for bringing down the conflict.

Solution

Supreme Court in case of Palam Gas Service vs. CIT dated 4th May, 2017 held that Section 40(a)(ia) covers not only those cases where the amount is payable but also when it is paid. In this behalf, one has to keep in mind the purpose with which Section 40 was enacted and that has already been noted above. We have also to keep in mind the provisions of Sections 194C and 200. Once it is found that the aforesaid Sections mandate a person to deduct tax at source not only on the amounts payable but also when the sums are actually paid to the contractor, any person who does not adhere to this statutory obligation has to suffer the consequences which are stipulated in the Act itself. Certain consequences of failure to deduct tax at source from the payments made, where tax was to be deducted at source or failure to pay the same to the credit of the Central Government, are stipulated in Section 201 of the Act. This Section provides that in that contingency, such a person would be deemed to be an assessee in default in respect of such tax. While stipulating this consequence, Section 201 categorically states that the aforesaid Sections would be without prejudice to any other consequences which that defaulter may incur. Other consequences are provided under Section 40(a)(ia) of the Act, namely, payments made by such a person to a contractor shall not be treated as deductible expenditure. When read in this context, it is clear that Section 40(a)(ia) deals with the nature of default and the consequences thereof. Default is relatable to Chapter XVIIB (in the instant case Sections 194C and 200, which provisions are in the aforesaid Chapter). When the entire scheme of obligation to deduct the tax at source and paying it over to the Central Government is read holistically, it cannot be held that the word 'payable' occurring in Section 40(a)(ia) refers to only those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid. If the provision is interpreted in the manner suggested by the appellant herein, then even when it is found that a person, like the appellant, has violated the provisions of Chapter XVIIB (or specifically Sections 194C and 200 in the instant case), he would still go scot free, without suffering the consequences of such monetary default in spite of specific provisions laying down these consequences.

Readers Note:

Case Study 3

Raj Dadarkar and Associates(assessee) acquired the right to conduct a market on certain land from Municipal Corporation, Greater Bombay under an auction on May 28, 1993. The premises allotted to it was a bare structure and it was for the assessee. The appellant spent substantial sums to construct 95 shops and 30 stalls. From the years 1999 to 2004, the assessee treated income from sub-letting of such shops and stalls as business income. The return of the assessee for assessment year 2000-2001 was reopened by Assessing Officer by issuing notice under section 148 treating the same as income under the under the head 'Income from house property'. Whether the action of assessing officer is justified?

Solution

Raj Dadarkar and Associates v. Assistant Commissioner of Income Tax [2017] 394 ITR 592 (SC)

The Supreme Court held that wherever there is an income from leasing out of premises, it is to be treated as income from house property. However, it can be treated as business income if letting out of the premises itself is the business of the assessee. The question has to be decided based on the facts of each case as was held in Sultan Brothers Pvt Ltd. v. CIT [1964] 51 ITR 353 (SC).

In the given facts, it was an undisputed fact that the assessee **would be considered to be a deemed owner under section 27(iiib)** read with section 269UA(f) as it had a leasehold right for more than 12 years.

The only evidence adduced for proving that letting out and earning rents is the main business activity of the appellant was the object clause of the partnership deed. The clause provided that "The Partnership shall take the premises on rent to sub-let or do any other business as may be mutually agreed by the parties from time to time."

The Supreme Court held the clause to be inconclusive and observed that the assessee had failed to produce sufficient material to show that its entire or substantial income was from letting out of the property.

The Supreme Court, accordingly, held that, in this case, the income is to be assessed as "Income from house property" and not as business income, on account of lack of sufficient material to prove that the substantial income of the assessee was from letting out of the property. Therefore, the contention of the assessing officer is justified in this case.

Readers Note:

Case Study 4

Berger Paints India Ltd (assessee) is a company engaged in the manufacture of paints. For the relevant assessment years, the assessee claimed deduction under section 35D of a sum representing share premium as being a part of the capital employed. However, the assessing officer stick to the definition of capital employed given under section 35D of the Act and therefore, not included share premium under "capital employed". Whether the action of assessing officer is justified?

Solution

Berger Paints India Ltd v. CIT [2017] 393 ITR 113 (SC)

The Supreme Court observed that the share premium collected by the assessee on its subscribed issued share capital could not be part of "capital employed in the business of the company" for the purpose of section 35D(3)(b). If it were the intention of the legislature to treat share premium as being "capital employed in the business of the company", it would have been explicitly mentioned.

Moreover, column III of the form of the annual return in Part II of Schedule V to the Companies Act, 1956 under Section 159 dealing with capital structure of the company provides the break-up of "issued share capital" which does not include share premium at the time of subscription.

Hence, in the absence of the reference in section 35D, share premium is not a part of the capital employed. Also, section 78 of the Companies Act, 1956 requires a company to transfer the premium amount to be kept in a separate account called "securities premium account".

Considering the above, the action of assessing officer not treating share premium as a part of "capital employed" is justified.

Readers Note:

Case Study 5

The assessee was a foreign company engaged in shipping business and was a tax resident of Denmark. The assessee had agents working for it across the globe, who booked cargo and acted as clearing agents. In India, the assessee had three agents. The assessee had set up and maintained a vertically integrated communication system called Maersk net system in order to help all its agents. The agents paid for the system on a pro rata basis. The Assessing Officer contended that the amounts paid by the Indian agents were fees for technical services taxable under Article 13(4) of the India and Denmark DTAA. The assessee argued that the arrangement was merely a cost sharing system and the payments were only a reimbursement of expenses. Whether the contention of assessee is correct?

Solution

Director of Income-Tax (International Taxation) v. A.P. Moller Maersk [2017] 392 ITR 186 (SC)

The Supreme Court observed that, for the sake of convenience of its agents, the assessee had set up a centralised communication system which was an integral part of the international shipping business of the assessee. The expenditure incurred for running this system was shared by all the agents and payments to assessee were merely as reimbursement of expenses incurred. The payments could not be treated as fees for technical services.

Moreover, the Revenue authorities had accepted that assessee's freight income in the relevant assessment years was not chargeable to tax as it arose from the operation of ships in international waters in terms of Article 9 of the India and Denmark DTAA.

Once that was accepted and it was found that the communication system was an integral part of the shipping business, payments received from agents could not be treated as in lieu of any technical services.

The SC, accordingly, held that amounts paid by Indian agents to the non-resident company would not be liable to tax as fee for technical services under Article 13(4) of the India and Denmark DTAA.

Readers Note:

Case Study 6

Whether payment of sums due, after the deadline stipulated by the Settlement Commission, would save the petitioner from withdrawal of immunity from prosecution?

Solution

Sandeep Singh v Union of India [2017] 393 ITR 77 (SC)

The Supreme Court explained that in case payments are not made within the time granted by the Settlement Commission or in case the person fails to comply with any other condition, subject to which the immunity was granted, the immunity shall stand withdrawn.

It is not in dispute that all payments were made by the assessee on January 20, 2016 before approaching the Supreme Court. Though the time originally granted was only up to July 31, 2015, all sums having been paid now, there is no need to relegate the assessee to the Settlement Commission. Settlement Commission has the power to extend the timelines. Hence, in the instant case, it shall be taken that the assessee has made the payments within the time granted under section 245H(1A).

The Supreme Court held that the assessee having cleared all taxes due vide order of Settlement Commission, albeit after stipulated deadline, is immune from prosecution.

Readers Note:

Case Study 7

Is loan toHUF who is a shareholder in a closely held company chargeable to tax as deemed dividend?

Solution

Gopal & Sons (HUF) v. CIT (2017) 391 ITR 1 (SC)

Facts of the case:

The assessee is a HUF which holds 37.12% shares in M/s. G.S. Fertilizers (P.) Ltd., a closely held company. During the relevant previous year, it received loans and advances from the company. Its return was scrutinized by the Assessing Officer who treated the loans and advances as deemed dividend under section 2(22)(e). The company declared in its annual return that the advances were given to the HUF but the share certificates were issued in the name of the HUF's Karta, Shri Gopal Kumar Sanei. The assessing officer treated such advance as deemed dividend under section 2(22)€ of the Act. Whether action of assessing officer is correct?

Supreme Court's Observations:

When a loan is given by a closely held company, it is chargeable to tax as deemed dividend if the loan was given to a shareholder (having more than 10% shares in the company) or to a concern in which the shareholder has substantial interest (having more than 20% share in the concern). 'Concern' includes HUF.

In the instant case, loans were given to the HUF. There was some dispute as to who was the shareholder - the Karta or the HUF as share certificates were issued in the name of the former but the annual return mentioned the latter. The Court observed that in either scenario, section 2(22)(e) would be attracted. If the HUF was the shareholder, as it held more than 10% shares, situation was covered. If the Karta was the shareholder, the HUF would be the concern in which the Karta has substantial interest.

Further, on the issue whether a HUF can be a shareholder or not, it was observed that on account of Explanation 3 to section 2(22)(e), a concern includes a HUF.

The Supreme Court, accordingly, held that the loan amount is to be assessed as deemed dividend under section 2(22)(e).

Therefore, the action of assessing officer treating this advance as deemed dividend is in accordance with law.

Readers Note:

Case Study 8

The assessee owned vast area of agricultural land. The State Government acquired the property for development of a techno park. The assessee was awarded compensation of Rs.14.37 lakhs. Aggrieved by the amount, the assessee initiated negotiations with the Collector, further to which compensation was increased to Rs.38.42 lakhs. The assessee claimed exemption from capital gains under section 10(37)(iii) stating that the transfer of agricultural land was on account of compulsory acquisition. The Revenue authorities contended that the exemption should be denied as it was not a compulsory acquisition but a voluntary sale. Whether contention of revenue is correct?

Solution

Balakrishnan v. Union of India & Others (2017) 391 ITR 178 (SC)

The Supreme Court observed that the acquisition process was initiated under the Land Acquisition Act, 1894. The assessee entered into negotiations only for securing the market value of the land without having to go to the Court.

Merely because the compensation amount is agreed upon, the character of acquisition will not change from compulsory acquisition to a voluntary sale.

The Court also drew attention to a recently enacted legislation titled, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which empowers the Collector to pass an award with the consent of the parties. Despite the provision for consent, the acquisition would continue to be compulsory.

The Supreme Court held that when proceedings were initiated under the Land Acquisition Act, 1894, even if the compensation is negotiated and fixed, it would continue to remain as compulsory acquisition. The claim of exemption from capital gains u/s 10(37)(iii) is, therefore, tenable in law.

Considering the above, the action of revenue authority is not justified

Readers Note:

Case Study 9

The assessee had a diagnostic laboratory in Kollam and a branch at Kottarakara. A survey under Section 133A was conducted, consequent to which the assessee filed its return of income. On the basis of certain incriminating documents and materials unearthed during the survey, a notice under section 148 was issued. Subsequently, the incomes were assessed for assessment years 2009-10 and 2010-11 under section 143(3) read with section 147.

The assessee raised additional jurisdictional grounds before the Appellate Tribunal. The assessee contended that for the assessment year 2009-10, the assessment was completed under section 143(3) read with section 147. However, a notice under section 143(2) was not issued. The assessee participated in re-assessment proceedings. Whether failure to issue notice under section 143(2) would vitiate the assessment notwithstanding the assessee's participation in the proceedings? Would section 292BB come to the rescue of the Revenue authority if they omit to issue notice under section 143(2)?

Solution

Travancore Diagnostics (P) Ltd v. Asstt. CIT (2017) 390 ITR 167 (Ker)

High Court observed that the Apex Court had, in Asstt. CIT v. Hotel Blue Moon (2010) 321 ITR 362, held that without the statutory notice under section 143(2), the Assessing Officer could not assume jurisdiction. Here, Assessing Officer recorded his inability to generate a notice as the return was not filed electronically. Such defect cannot be cured subsequently, since it is not procedural but one that goes to the root of the jurisdiction.

Even though the assessee had participated in the proceedings, in the absence of mandatory notice, section 292BB cannot help the Revenue officers who have no jurisdiction, to begin with. Section 292BB helps Revenue in countering claims of assessees who have participated in proceedings once a due notice has been issued.

Readers Note:

Case Study 10

Is interest on enhanced compensation under section 28 of the Land Acquisition Act, 1894 assessable as capital gains or as income from other sources?

Solution

Movaliya Bhikhubhai Balabhai v. ITO (TDS) (2016) 388 ITR 343 (Guj)

The High Court observed that the assessee has received interest under section 28 of the Land Acquisition Act, 1894 which represents enhanced value of land and thus, partakes the character of compensation and not interest. Hence, the interest under section 28 is liable to be taxed under the head of 'Capital Gains' and not under 'Income from Other Sources'.

On the other hand, interest under section 34 of the Land Acquisition Act, 1894 is for the delay in making payment after the compensation amount is determined. Such amount is liable to be taxed under the head 'Income from Other Sources'.

High Court's Decision: The High Court held that the interest awarded under section 28 of the Land Acquisition Act, 1894 was not liable to tax under the head of 'Income from other sources' and thus, was not deductible at source. The Revenue authority had erred in refusing to grant a certificate under section 197 to the petitioner for non-deduction of tax at source.

Readers Note:

Case Study 11

Whether the Assessing Officer is bound to consider the report of Departmental Valuation Officer (DVO) when it is available on record for the purpose section 50C of the Act?

Solution

Principal CIT v. Ravjibhai Nagjibhai Thesia (2016) 388 ITR 358 (Guj)

The High Court observed that when the Assessing Officer has referred the matter to DVO, the assessment has to be completed in conformity with the estimate given by the DVO.

As the DVO has estimated the value of the capital asset at an amount lower than the value assessed by the stamp valuation authority, as per 50C(2), it is such valuation which is required to be taken into consideration for the purposes of assessment.

Readers Note:

Case Study 12

Does the CIT (Appeals) have the power to change the status of assessee?

Solution

High court in case of Mega Trends Inc. v. CIT (2016) 388 ITR 16 (Mad) observed that, under section 251(1), the powers of the first appellate authority are coterminous with those of the Assessing Officer and the appellate authority can do what the Assessing Officer ought to have done and also direct him to do what he had failed to do. If the Assessing Officer had erred in concluding the status of the assessee as a firm, it could not be said that the Commissioner (Appeals) had no jurisdiction to go into the issue. The appeal was in continuation of the original proceedings and unless fetters were placed upon the powers of the appellate authority by express words, the appellate authority could exercise all the powers of the original authority.

The High Court therefore held that the power to change the status of the assessee is available to the assessing authority and when it is not used by him, the appellate authority is empowered to use such power and change the status. For this purpose, the Court relied on a full bench decision of the Madras High Court in State of Tamil Nadu v. Arulmurugan and Co. reported in [1982] 51 STC 381 to come to such conclusion.

Readers Note:

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