Income from House Property

1. Section 24 - Deductions from Annual Value

The income chargeable under the head HP shall be computed after making the following deduction:

- A sum equal to 30% of the annual value
- Where the property has been acquired, constructed, repaired, renewed or reconstructed, with borrowed capital, the amount of any interest payable on such capital.
- However, where self-occupied property is acquired or constructed with capital borrowed on or after 1.4.99, deduction for interest upto Rs.1,50,000 will be allowed if the acquired or construction is completed within 3 years from the end of the FY in which the capital was borrowed. It is provided that no such deduction shall be allowed in respect of such interest unless the person extending the loan facility certifies that such interest is payable in respect of the amount advanced for acquired or construction of the house or as refinance of the principal amount outstanding under an earlier loan taken. This however is applicable only in case of a self-occupied property. Where the property has been acquired or constructed with borrowed capital, the interest pertaining to the period prior to acquisition or construction of the property [as reduced by the deduction already allowed u/s 56, 36(i)(iii) & 37(i)] shall be deducted in 5 equal installments.

2. Section 25 - Amounts not deductible from income from house property.

Notwithstanding anything contained in section 24, any interest chargeable under this Act which is payable outside India, on which tax has not been paid or deducted and in respect of which there is no person in India who may be treated as an agent under section 163 shall not be deducted.

3. Section 25AA - Unrealised rent received

If the assessee cannot realise rent from a property let to a tenant and subsequently the assessee has realised any amount in respect of such rent, the amount so realised shall be deemed to be income from HP charged to tax as the income of that previous year in which such rent is realised whether or not the assessee is the owner of that property in that previous year.

4. Section 25B - Arrears of rent received

This provision shall apply if the assessee is the owner of any property which has been let to a tenant and has received any amount, by way of arrears of rent from such property, which has not been charged to income-tax for any previous year.

The amount so received, after deducting 30% of such amount, shall be deemed to be the income chargeable under the head “Income from house property”. Such amount shall accordingly be charged to income-tax as the income of that previous year in which such rent is received, whether the assessee is the owner of that property in that year or not.

5. Section 26 - Co-owners

Where an HP is owned by 2 or more persons and their respective shares are definite and ascertainable, such persons shall not be assessed as an AOP but the share of each such person in the HP income shall be included in his Total Income. Co-widows inheriting certain immovable property in equal share would be co-owners as ruled by the Apex Court in the case of CIT vs. Indira Balkrishna.

6. Section 27 - Deemed Ownership

An individual who transfers otherwise than for adequate consideration any HP to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child, not being a married daughter, shall be deemed to be the owner of the HP.

The holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised therein.

Income from Salary – Relevant provisions

Following payments by the employer for the benefit of the employee shall not be regarded as perquisite

(*i*) the value of any medical treatment provided to an employee or any member of his family[1] in any hospital[2] maintained by the employer;

(*ii*) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family:

(*a*) in any hospital maintained by the Government or any local authority or any other hospital approved by the Government for the purposes of medical treatment of its employees;

(*b*) in respect of the prescribed diseases or ailments, in any hospital approved by the Chief Commissioner[3].

(*iii*) any portion of the premium paid by an employer in relation to an employee, to effect or to keep in force an insurance on the health of such employee under any scheme approved by the Central Government or the IRDA;

(iv) any sum paid by the employer in respect of any premium paid by the employee to effect or to keep in force an insurance on his health or the health of any member of his family under any scheme approved by the Central Government or the IRDA for the purposes of section 80D;

(v) any sum to the extent of Rs. 15,000 p.a., paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family other than the treatment referred to in clauses (*i*) and (*ii*);

(*vi*) any expenditure incurred by the employer on or reimbursed by the employer to the employee:

(*1*) medical treatment of the employee, or any member of the family of such employee, outside India;

(*2*) travel and stay abroad of the employee or any member of the family of such employee for medical treatment;

(*3*) travel and stay abroad of one attendant who accompanies the patient in connection with such treatment, subject to the condition that:

(*A*) the expenditure on medical treatment and stay abroad shall be excluded from perquisite only to the extent permitted by the RBI; and

(*B*) the expenditure on travel shall be excluded from perquisite only in the case of an employee whose gross total income[4], as computed before including therein the said expenditure, does not exceed Rs. 2 lakhs;

Section 17(3) - Profits in lieu of or in addition to any salary or wages

Section 17(3) defines Profits in Lieu of Salary in an inclusive manner and it includes the following:

(*i*) The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;

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[1] Family in relation to an individual, means the spouse and children of the individual and the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual;

[2] Hospital includes a dispensary or a clinic or a nursing home.

[3] The employee shall attach with his return of income a certificate from the hospital specifying the disease or ailment for which medical treatment was required and the receipt for the amount paid to the hospital.

[4] Gross Total Income means the total income computed in accordance with the provisions of this Act, before making any deduction under section 80's (Chapter VIA)

(*ii*) 1. Any payment from unrecognized PF or such other fund to the extent to which it does not consist of contributions by the assessee or interest on such contributions; or

2. Any sum received by the employee under the Keyman Insurance Policy including the sum allocated by way of bonus on such policy; or

3. Any payment due to received by an assessee from his employer or former employer except the following:

(a) Gratuity exempted u/s 10(10);
(b) HRA exempted u/s 10(13A);
(c) Commuted Pension u/s 10(10A);
(d) Retrenchment compensation exempted u/s 10(10B);
(e) Payment from an approved Superannuation Fund u/s 10(13);
(f) Payment for Statutory PF or PPF;
(g) Payment from a recognised PF to the extent it is exempt u/s 10(12);

(*iii*) any amount due to or received, whether in lump sum or otherwise, by any assessee from any person:

(*A*) before his joining any employment with that person; or

(*B*) after cessation of his employment with that person.

1. Treatment of Provident Fund

Particulars	**SPF**	**RPF**	**URPF**	**PPF**
1. Employee's/ assessees' contribution	Deduction from GTI available u/s 80C	Deduction from GTI available u/s 80C	Deduction from GTI not available u/s 80C	Deduction from GTI available u/s 80C
2. Employer's contribution	Fully exempt from tax	Exempt upto 12% of salary. Amount in excess of 12% is included in gross salary.	Not exempt but also not taxable every year. For taxability see point 4 below	Not applicable as there is only assessees own contribution.
3. Interest on Provident Fund	Fully exempt from tax	Exempt u/s 10(12) upto 8.5% p.a. Interest credited in excess of 8.5% p.a. is included in gross salary	Not exempt but also not taxable every year. For taxability see point 4 below.	Fully exempt
4. Repayment of lumpsum amount on retirement / resignation / termination	Fully exempt u/s 10(11)	Exempt u/s 10(12) subject to certain conditions. See Note A.	Accumulated employee's contribution is not taxable accumulated employer's contribution + interest on Employer's contribution (till date) is taxable as profit in lieu of salary. Interest on employees (till date) is taxable as income from other sources	Fully exempt u/s 10(11)

A. The accumulated balance due and becoming payable to an employee participating in a recognized provident fund shall be exempt in the following cases:

(i) If the employee has rendered continuous service with his employer for a period of 5 years or more, or

(ii) If, though he has not rendered such continuous service of 5 years, the service has been terminated (a) by reason as such employee's ill health or (b) by the contraction or discontinuance of the employer's business or (c) or other cause beyond the control of the employee, or

(iii) If, on the occasion of his employment, the employee obtains employment with any other employer, to the extent the accumulated balance due and becoming payable to him is transferred to his individual account in any recognized provident fund maintained by such other employer.

However in a situation mentioned under clause (iii) above for calculating period of service for clause (i) and (ii) above the period or periods for which such employee rendered continuous service under his former employer or employers aforesaid shall also be included.

If the accumulated balance due to an employee participating in a recognized provident fund is paid to him otherwise than in the circumstances referred to above, as for instance, in cases where the employee voluntarily resigns from the post before the completion of 5 years service with the employer, the amount paid to the employee is brought within the ambit of taxation. In such cases, the employee is required to pay, in addition to normal tax payable to him, an amount equal to the difference between the aggregate tax which would have been payable by him if certain tax concession allowed to the employees participating in recognized provident fund had not been allowed to the employee in the years in which he made contribution to the fund and the aggregate tax actually paid by him for these years. In other words tax relief allowed to the assessee shall be withdrawn. Further, the total employer's contribution plus interest thereon, which was not taxed earlier, shall be taxable as profit in lieu of salary.

Transferred balance of URPF when it is converted into recognized provident fund

Payment from URPF is taxable to the extent of employer's contribution and interest thereon. On the other hand, payment from RPF is exempt, subject to certain conditions. As such, if URPF is later on converted into RPF, out of the total amount standing to the credit of the employee in the fund, the employee may opt to transfer the whole or a part of the accumulated balance to the recognized provident fund. The part of the accumulated balance, which is not transferred, and which relates to the employer's contribution and interest thereon is taxable as profits in lieu of salary. That part of the sum transferred from URPF to RPF is taxable as under:

A. It will be assumed, as if, such URPF was recognized right from the beginning.

B. As URPF will be treated as RPF right from the beginning, contribution by the employer every year in excess of 12% from plus interest credited to the provident fund every year in excess of 8.5% shall be aggregated till the date of conversion of the URPF to RPF. This aggregate will be included in the gross salary in the previous year in which the conversion took place provided the whole accumulated balance is transferred to recognized provident fund account. Where part of the accumulated balance is transferred to recognized provident fund, then proportionate amount of the aggregate amount thus computed shall be taxable. Further, the part of the accumulated balance which is not transferred to the recognized provident fund shall also be taxable to the extent it relates to employees contribution included in such accumulated balance will be taxable under the head income from other source. In other words, if the contribution by the employer to URPF in the past years was 12% or less than 12% of the salary, as the case may be, and the interest credited to URPF was 8.5% or less than 8.5% there will be no Transferred Balance. Hence nothing will be taxable.

Income from Other Sources

1. Section 56 - Income from other sources

(i) Income[5] of every kind which is not to be excluded from the total income shall be chargeable under the head "Income from other sources", if it is not chargeable to income-tax under any other heads.

(ii) The following income(s) specifically would be chargeable under this head-

(a) dividends;

(b) Winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever, being the income referred to in clause 2(24)(viii);

(c) Any sum received by the assessee from his employees towards welfare fund contributions such as provident fund, superannuation fund etc, being the income referred to in clause 2(24)(ix);

(d) Any sum received under a keyman insurance policy including the sum allocated by way of bonus on such policy, being the income referred to in clause 2(24)(x), if such income is not chargeable under the head PGBP;

(e) income by way of interest on securities, if the income is not chargeable under PGBP;

(*f*) income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable under the head PGBP;

(g) where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable under the head PGBP;

(i) Non-complete fee and any compensation for not sharing of any intangible asset such as know-how, patent, trademark, being the income referred to in clause 2(24)(xi), if such income is not chargeable under PGBP or under the head Salaries.

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[5] Section 2(24) – Income is defined to include:

(i) Profits and gains
(ii) Divdend;
(iii) Voluntary contributions received by a charitable or religious trust or institution;
(iv) Value of any perquisite or profit in lieu of salary taxable u/s. 17 and special allowance or benefit specifically granted either to meet personal expenses or for the performance of duties of an office or an employment of profit;
(v) Export incentives;
(vi) Any interest, salary, bonus, commission or remuneration earned by a partner of a firm from such firm;
(vii) Any capital gains chargeable u/s. 45;
(viii) Winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever;
(ix) Any sum received by the assessee from his employees towards welfare fund contributions such as provident fund, superannuation fund etc;
(x) Any sum received under a keyman insurance policy including the sum allocated by way of bonus on such policy;
(xi) Non-complete fee and any compensation for not sharing of any intangible asset such as know-how, patent, trademark referred to in clause (va) to sec. 28.
(xii) Any sum referred to in sec.56(2)(vi).

1.1 Section 56(2) - Gifts to be considered as income

Income, being any sum of money exceeding Rs. 50,000 in aggregate in any previous year is received without consideration by an individual or a HUF from any person, shall be chargeable to income-tax under the head Income from other sources. This provision shall not apply to the following receipts. In other words the entire amount received shall be exempt from tax:

(i) Any sum of money, which is received by way of consideration.

(ii) Any sum of money, which is received from any relative.

For the purpose of this section relative means	**Practical application - If the taxpayer is X**
spouse of the individual;	Mrs. X
brother or sister of the individual;	Brothers or sisters of X
brother or sister of the spouse of the individual;	Brothers / sisters of Mrs. X
brother or sister of either of the parents of the individual;	Brothers or sisters of father or mother of X
any lineal ascendant or descendant of the individual;	Lineal ascendant or decendant of X
any lineal ascendant or descendant of the spouse of the individual;	Lineal ascendant or decendant of Mrs. X.
Spouse of the persons referred to in clauses (ii) to (v).	Spouse of the aforesaid persons.

(iii) Any sum of money, which is received on the occasion of the marriage of the individual.

(iv) Any sum of money, which is received under a will or by way of inheritance.

(v) Any sum of money, which is received in contemplation of death of the payer.

(vi) in contemplation of death of the payer; or

(vii) from any local authority; or

(viii) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in section 10(23C); or

(ix) from any trust or institution registered under section 12AA

1.2 Section 57 – Deductions from IFOS

The income chargeable under the head Income from other sources shall be computed after making the following deductions, namely :

(i) in the case of dividends, (other than 115-O dividends) or interest on securities, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee;

(ii) in the case of income being any sum received under a keyman insurance policy including the sum allocated by way of bonus on such policy, as referred to in section 2(24)(x), deductions, so far as may be, in accordance with the provisions of section 36(1)(va);

(iii) in the case of income being income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable under the head PGBP, deductions under section 30, 31 and 32. The deductions however are subject to the provisions to section 38;

(iv) in the case of income in the nature of family pension[6], a deduction of a sum equal to 33.33% of such income or fifteen thousand rupees, whichever is less.

(v) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.

1.3 Section 58 - Amounts not deductible

This section overrides section 57. The following amounts shall not be allowed as deduction namely:

(i) any personal expenses of the assessee ;

(ii) any interest chargeable under this Act which is payable outside India on which tax has not been paid or deducted;

(iii) any payment which is chargeable under the head “Salaries”, if it is payable outside India, unless tax has been paid thereon or deducted therefro ;

(iv) Any sum paid on account of Wealth tax;

(v) The provisions of section 40A shall equally apply.

(vi) Any expenditure or allowance in connection with the income by way of any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature, whatsoever. However, the amount of lottery income foregone by the winner to the Government shall be deductible.

Nothing contained here shall apply in computing the income of an assessee, being the owner of horses maintained by him for running in horse races[7], from the activity of owning and maintaining such horses.

1.4 Section 59 - Profits chargeable to tax

The provisions of section 41(1) shall apply, in computing the income of an assessee under section 56.

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[6] Family pension means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death.

[7] Horse race means a horse race upon which wagering or betting may be lawfully made.

2. Section 68 - Cash credits

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory, in the opinion of the AO, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

3. Section 69 - Unexplained investments

If in a financial year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not satisfactory, in the opinion of the AO, the value of the investments may be deemed to be the income of the assessee of such financial year.

4. Section 69A - Unexplained money, etc.

In any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income.The assessee offers no explanation about the nature and source of acquisition of the same, or the explanation offered by him is not satisfactory, in the opinion of the AO, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

In the case of CIT v. Daulat Ram Rawatmull[8] the Supreme Court ruled that a person can still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money is found to be not correct. From the simple fact that the explanation regarding the source of money furnished by Mr A in whose name the money is lying in deposit has been found to be false, it would be a remote and far-fetched conclusion to hold that the money belongs to Mr. B.

Supreme Court in the case of Chuharmal v. CIT[9] ruled that where of wrist watches were found in the possession of a person, and that person did not adduce any evidence, and also did not discharge the onus, of proving that wrist watches did not belong to him, the value of the wrist watches could be treated as the income.

The Kerala High Court in the case of CIT v K.I. Pavunny[10] has ruled that where the articles are recovered from the possession of the assessee, the onus is on the assessee to prove that the articles in question belonged to someone else and not to him. Simply because the law prohibits retention of a property (like contraband gold), that does not mean that such a property is without ownership. Even contraband or prohibited articles can be owned and possessed unlawfully. It is entirely a different thing that the law may not permit the owner of given articles to retain possession of them or the articles may be liable under law to be confiscated. Thus, in respect of gold articles recovered from the assessee's premises, the assessee cannot contend that the articles are not owned by him, on the ground that the contraband gold articles in question could not be owned and possessed by anyone, and no possession could be conceived without legal ownership.

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[8] [1973] 87 ITR 349 (SC).
[9] [1988] 172 ITR 250 (SC).
[10] 1998 232 ITR 837 (Ker)

5. Section 69B - Amount of investments, etc., not fully disclosed in books of account

If in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the AO finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not satisfactory, in the opinion of the AO, the excess amount may be deemed to be the income of the assessee for such financial year.

6. Section 69C - Unexplained expenditure, etc.

If an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not satisfactory, in the opinion of the AO, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income for that year.

Notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

7. Section 69D - Amount borrowed or repaid on hundi

If any amount is borrowed on a hundi from, or any amount due thereon is repaid[11] to, any person otherwise than through an account payee cheque, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be.

If in any case any amount borrowed on a hundi has been deemed to be income, it shall not be liable to tax again on repayment of such amount.

8. Section 115BB - Winnings from Lottery etc.

Where the total income of an assessee includes any income by way of winnings from any lottery or crossword puzzle or race including horse race or card game and other game of any sort6 or from gambling or betting of any form, tax shall be calculated at the rate of 30% on such income plus surcharge.

The taxability of income in the nature of winnings from any lotteries, crossword puzzles, race etc. are subject to the following:

- No expenditure or allowance can be allowed against such income;
- No deduction under Chapter VI-A can be allowed;
- No benefit of carry forward and setoff of loss / unabsorbed depreciation allowance is available against such income; and
- No basic exemption limit is available.

[11] The amount repaid shall include the amount of interest paid on the amount borrowed.

Charitable Trusts – Relevant provisions

In order to avail the exemption under section 11 and section 12, the person in receipt of the income shall make an application for registration of the trust or institution to the Commissioner and such trust or institution is registered under section 12AA. Where an application has been made, the exemption of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.

The application for registration can be filed at any point of time, even much after formation of the trust. However, w.e.f. 1st June, 2007, the provisions of sections 11 and 12 shall apply from the assessment year relevant to the financial year in which the application is made i.e. the exemption would be available only with effect from the assessment year relevant to the previous year in which the application is filed. It would not be available in respect of any earlier assessment year.

The power of the Commissioner to grant registration for past years, by condoning the delay in filing such application, has been removed.

Section 12AA - Procedure for registration

The Commissioner, on receipt of an application for registration of a trust shall call for such documents or information as he thinks necessary and may also make such inquiries as he may deem necessary in this behalf. After satisfying himself about the objects of the trust or institution and the genuineness of its activities, he shall pass an order in writing registering the trust or institution. If he is not so satisfied, pass an order in writing refusing to register the trust or institution. A copy of such order shall be sent to the applicant. However, before rejecting an application the CIT shall provide a reasonable opportunity of being heard.

An order granting or refusing registration shall be passed within 6 months fom the end of the month in which the application was received by the CIT.

A trust or an institution to whom registration has been granted and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution. However, a reasonable opportunity of being heard shall be provided before cancellation.

1. Section 13 – Permitted Investments by Charitable Trusts

(i) Section 13 provides that the exemption provisions contained in sections 11 and 12 shall not apply to a charitable or religious trust or institution if any investments are made in shares of a company, other than that of a Government company or of a corporation established by or under a Central, State or Provincial Act.

(ii) This condition has now been relaxed to permit the charitable or religious trusts and institutions to invest in shares of a public sector company and shares prescribed as a form or mode of investment.

1 Under the provisions of Section 11(1), a trust which derives income from property held under the trust wholly for charitable and religious purposes, is fully exempted to the extent such income is applied for the said purposes in India. Further, if any such income is accumulated for application for such purposes in India, upto 15% of the income from such property shall be fully exempted from tax. In other words, the Trust should have applied 85% of its income in the PY for charitable or religious purposes or should have invested in specified securities.

2. According to Section 11(1)(d), any income in the form of voluntary contribution made with a specific direction that they shall form part of the corpus of the Trust, shall be fully exempted from tax. Other voluntary contributions may be exempt on fulfillment of undermentioned conditions. However, in case the trust does not qualify for exemption, both the voluntary contributions shall become taxable.

3. According to the provisions of Section 11(2), if 85% of the income derived from the property held under a Trust is not applied for or is not deemed to have been applied for, the reason that the whole or any part of the income has not been received during that year or for any other reason, for charitable purposes in India during the PY but is accumulated, will not be included in the total income of the PY provided the following conditions are met –

   - Where the income or part of the income which has not been received during that year, then so much of the income applied to such purposes in India during the PY in which the income is received or during the PY immediately following, should not be less than 85% of the income derived from the property.
   - Due to any other reason not covered above, then 85% of such income should have been applied for such purposes in the PY immediately following the PY in which income was derived. However, the person in receipt of the income has to execute in writing that he shall meet either of the above two conditions. The person has to execute the documents in writing before the due date of filing the ROI. On doing so, it shall be deemed that the income has been applied for charitable purposes in the relevant PY.

4. Any amount paid or credited, out of income from property held under the Trust which is not applied for charitable purposes (but is accumulated or set apart), to any Trust or Institution registered u/s 12AA or to any Fund or Institution or Trust or University or hospital referred to in Section 10(23C) either during the period of accumulation or thereafter, shall not be treated as application of income for charitable or religious purposes.

   Thus, payment to any other Trust or Institution, out of income from property held under Trust, in the year of receipt, would continue to be treated as application of income. However, any such payment out of the accumulated income shall not be treated as application of income and will be taxed accordingly.

5. Further, as per Section 11(3)(d), the accumulated income referred above if paid or credited to the aforesaid authorities or institutions, then such payment or credit shall be deemed to be income of the person in receipt of income from property of the PY in which such payment or credit is made.

6. In respect of the accumulated income, following compliances are to be made to treat the same as exempt from tax:

   - Such person has to specify by notice to the AO the purpose for which the income is being accumulated or set apart and the period, not exceeding 5 years, for which the income is accumulated.
   - The income so accumulated is invested or deposited in the modes specified in Section 11(5).

7. Exemption from tax to Trusts shall not be available if such Trust or Institution does not render accounts of income to the prescribed authority within the prescribed time u/s 80G.

8. **Tax implication for Capital Gain income**

- If a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder:

  (a) If the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain ;

  (b) If only a part of the net consideration is utilised for acquiring the new capital asset, the capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset.

9. **Tax implication for business income**

(i) Section 11 grants exemption to the income derived by the trust from any property held under trust.

(ii) Section 11(3A) provides that "Property held under trust" includes a business undertaking so held. If the assessee makes a claim that the business income is not to be included in the total income of the trust, the AO shall have power to determine the business income in accordance with the provisions of this Act relating to assessment. If the business income so determined is in excess of the income as shown in the accounts, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

(iii) The exemption under section 11 shall not apply in relation to any business income of a trust or an institution, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

2. Section 115BBC – Taxation of anonymous donation

This section applies to university, other educational institutions, hospital and other funds or institutions referred to in section 10(23C) and any fund or institution referred to in section 11.

(i) Any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed Rs. 1 crore; or

(ii) any hospital or other institution for the reception and treatment of persons suffering from illness requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the Rs. 1 crore;or

(iii) any other fund or institution established for charitable purposes which may be notified by the Central Government; or

(iv) any trust or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be notified by the Central Government;

(v) any other university or other educational institution existing solely for educational purposes and not for purposes of profit, which may be approved by the prescribed authority; or

(vi) any other hospital or other institution for the reception and treatment of persons suffering from illness requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, which may be approved by the prescribed authority

(vii) Any trust wholly for charitable or religious purposes falling under section 11.

If the total income of such assessees includes any income by way of anonymous donation[12], the income tax payable shall be aggregate of:

(a) income tax @ 30% on the income by way of anonymous donation;

(b) on other income the income tax as applicable.

However, the above provisions will not apply to anonymous donation received by the following:

(i) Any trust or institution created or established wholly for religious purposes;

(ii) Any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

[12] Anonymous donation would mean any voluntary contribution, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

Case Study

A Charitable Trust derives the following income

Voluntary contribution (with specific direction that they shall form part of the Corpus of the Trust)	12,00,000
Voluntary contribution (without any specific directions)	18,00,000
Income from property held in Trust	8,00,000

During the PY, the Trust spent as follows-

Donation to other Charitable Trusts	1,00,000
Other charitable purposes	3,00,000
Amount set aside for construction of a Charitable hospital upto 31.3.09	14,00,000

Out of the accumulated amount, the Trust as follows-

For construction of charitable hospital (amt. spent upto 31 March 2009)	12,50,000
Donation given to other institution [approved by AO u/s 11(3A)]	1,10,000

Solution

Computation of income of the Trust for the AY 2006-07

Income from property held under Trust	8,00,000
(+) Voluntary contribution	18,00,000
	26,00,000
(-) 15% thereof	390,000
	22,10,000
(-) Amt. spent during the CY	4,00,000
Shortfall	**18,10,000**
(-) Amt. set apart for Ch. Hospital	14,00,000
Net Income	**4,10,000**

Computation of income for the AY 2009-10

Amt. set aside for Charitable Hospital	14,00,000
(-) Amt. spent on contribution upto 31.3.09	12,50,000
Deemed income of the Trust for the PY 2008-09	1,50,000

Section 80G for donees

Conditions to be fulfilled by general institutions for 80G benefit

The institution should be established in India for a charitable purpose and fulfills the following conditions:

(i) Where the institution derives any income, such income should be exempt from tax under section 11 / 12 / 10(23AA) / 10(23C); However, if the institution derives any business income, the aforesaid condition that income should be exempt shall not apply if:

- The institution maintains separate books of account in respect of such business;
- The donations made to the institutions is not used by it, directly or indirectly, for the purposes of such business;
- The institution issues to the person making the donation a certificate to the effect that it maintains separate books of accounts in respect of such business and that the donations received by it will not be used directly or indirectly, for the purposes of such business.

(ii) the instrument of formation of the institution or the rules there under should not contain any provision for transfer or application of the income or assets of the institution for any purpose other than a charitable purpose.

Section 2(*15*) defines Charitable purpose to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

However, advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

It is clarified that charitable purpose does not include any purpose the whole or substantially the whole of which is of a religious nature.

(iii) The institution is not expressed to be for the benefit of any particular religious community or caste; However, an institution may incur expenditure of a religious nature, during any previous year, of an amount not exceeding 5% of its total income in that previous year.

(iv) The institution maintains regular accounts of its receipts and expenditure

(v) The institution is either constituted as public charitable trust or is registered under Societies Registration Act, 1860 or under section 25 of the Companies Act, 1956 or is a University or education institution recognised by the Government.

Note:

The deduction granted under section 80G to a contributor for donation made to any institution shall not be denied merely for the reason that subsequent to the donation the institution loses its eligibility under section 80G due to compliance of any of the provisions or any part of the income of the institution has become chargeable to tax due to non-compliance with any of the provisions of section 11, section 12 or section 12A.

No deduction shall be allowed under this section in respect of any donation made in kind.

Income Exempt under Chapter III – Relevant provisions

1. Section 2(*1A*) – Definition of Agriculture Income

Agricultural income means:

(i) any rent or revenue derived from land[13] which is situated in India and is used for agricultural purposes;

(ii) Any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

(iii) any income derived from such land13 by:

(a) agriculture; or

(b) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(c) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in point (b) above ;

(iv) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land13, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in point (b) and point paragraphs (c) above, is carried on. However, any income derived from any building or land arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under point (a) or point (b) shall not be agricultural income.

The building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building.

1.1. Section 10(1) exempts fully agriculture income. However, Capital Gain income arising from transfer of agricultural land shall not be exempt under section 10(1).

Rule	Produce	Agriculture Income	Business Income
7A	Rubber - Income[14] from centrifuged latex or cenex or latex based crepes or technically	65%	35%

[13] The land is either assessed to land revenue in India or is subject to a local rate. If the land is not so assessed to land revenue or not subject to a local rate, it should not be situated:

(*a*) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than 10,000 according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

(b) in any area within such distance, not being more than 8 Kms, from the local limits of any municipality or cantonment board, as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

	specified block rubber manufactured from rubber plants.		
7B(1)	Coffee - Income14 from sale of Coffee grown and cured by the seller in India	75%	25%
7B(2)	Coffee - Income14 from sale of coffee grown, cured, roasted and grounded by the seller in India whether with or without mixing of Chicory	60%	40%
8	Tea - Income14 from sale of tea grown and manufactured by the seller in India	60%	40%
7	Others - Income which is partially agricultural income and partially Business income, in determining taxable business income the market value[15] of any agricultural produce which has been raised by the assessee or received by him as rent-in-kind and which has been utilised as a raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted. No further deduction shall be made in respect of any expenditure incurred as a cultivator or receiver of rent-in-kind.		

2. Section 10(10BC) - Exemption of compensation received on account of disaster

(i) This clause exempts any amount received or receivable as compensation by an individual or his legal heir on account of any disaster.

(ii) Such compensation should be granted by the Central Government or a State Government or a local authority.

(iii) The exemption would not be available in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act.

[14] In computing the income, an allowance shall be made in respect of the cost of planting rubber plants / coffee plants / bushes in replacement of plants /bushes that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy referred to in section 10(31).

[15] Market value shall be deemed to be

(*a*) where agricultural produce is ordinarily sold in the market in its raw state, or after application to it of any process ordinarily employed to make it marketable, the value calculated according to the average price at which it has been so sold during the relevant previous year;

(*b*) where agricultural produce is not ordinarily sold in the market in its raw state or after application to it of any process aforesaid, the aggregate of—

(*i*) the expenses of cultivation;

(*ii*) the land revenue or rent paid for the area in which it was grown; and

(*iii*) such amount as the AO finds, having regard to all the circumstances in each case, to represent a reasonable profit.

(iv) Disaster means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence. It should have the effect of causing -

(1) substantial loss of life or human suffering; or

(2) damage to, and destruction of, property; or

(3) damage to, or degradation of, environment.

It should be of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

3. Section 10(13) - Approved Superannuation Fund

Any payment from an approved superannuation fund is exempt from tax if it is made:

(i) On the death of a beneficiary; or

(ii) To an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement; or

(iii) By way of refund of contributions on the death of the beneficiary.

4. Section 10 (23EC) – Contribution to Investor Protection Fund

Any income, by way of contributions received from commodity exchanges and the members thereof, of such Investor Protection Fund set up by commodity exchanges in India. If any amount standing to the credit of the said Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a commodity exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax.

5. Section 10(39) – Exemption of income from any international sporting event

Any specified income[16] arising, from any international sporting even held in India, to the person or persons notified by the Central Government. The exemption of income shall be available if such international sporting event:

(a) has participation by more than two countries;

(c) is notified by the Central Government[17] .

6. Section 10(40) – Exemption of income received by way of grant

Any income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation, transmission of distribution of power if such receipt is for settlement of dues in connection with reconstruction or revival of an existing business of power generation.

The exemption shall be available if reconstruction or revival of any existing business of power generation is by way of transfer of such business to the Indian company notified under section 80IA(4)(v).

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[16] The specified income means the income, of the nature and to the extent arising from the international sporting event, which the Central Government may notify in this behalf.

[17] (i) The Commonwealth Games Federation;

(ii) The Commonwealth Games 2010 to be held in India, as the international sporting event;

(iii) The income arising to Commonwealth Games Federation from Commonwealth Games 2010 on account of Host Fee, received or receivable from the Organising Committee Commonwealth Games 2010.

7. Section 10(42) – Specified income arising to a body or authority

Any income arising to a body or authority which has been established or constituted under a treaty or an agreement entered into by the Central Government with other countries or a convention signed by the Central Government, to the extent notified by the Central Government shall be exempt from tax, if the following conditions are met:

(i) The body or the authority is constituted not for profit purposes.

(ii) It is notified by the Central Government in the official gazette.

8. Section (26AAA) – Exemption of income to a person domiciled in Sikkim

Any income which accrues or arises to a Sikkimese[18] , from any source in the State of Sikkim or by way of dividend or interest on securities, shall be fully exempt from tax.

However, in case of a Sikkimese woman who, on or after 1.4.2008, marries a non Sikkimese individual shall not be eligible for exemption.

9. Section 10(15)(vi)

Interest on Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999

10. Section 10(19) Family pension received by widow / children / nominated heirs of members of armed forces.

Family Pension received by the widow or the children or nominated heirs of a member of the Armed Forces of the Union, where the death of such member has occurred in the course of operational duties[19] subject to such conditions as may be prescribed.

[18] Sikkimese shall mean an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 or an individual, whose name is included in the Register of Sikkim Subjects or any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individual's father or husband or paternal grandfather or brother from the same father has been recorded in that register.

[19] The circumstances of death of a member of the armed forces in the course of operational duties shall be the following, namely:
(i) acts of violence or kidnapping or attacks by terrorists or anti-social elements;
(ii) action against extremists or anti-social elements;
(iii) enemy action in international war;
(iv) action during deployment with a peace keeping mission abroad;
(v) border skirmishes;
(vi) laying or clearance of mines including enemy mines as also mine sweeping operations;
(vii) explosions of mines while laying operationally oriented mine-fields or lifting or negotiation mine-fields laid by the enemy or own forces in operational areas near international borders or the line of control;
(viii) in the aid of civil power in dealing with natural calamities and rescue operations;
(ix) in the aid of civil power in quelling agitation or riots or revolts by demonstrators.

Co-operative Society – Relevant provisions

Co-op Society is defined u/s 2(19) and means a society under the Co-op. Societies Act. For the purpose of the I.T. Act, a Regional Rural Bank is deemed to be co-op. society.

In computing the taxable income of the co-op. society, the following procedure should be followed –

- First, compute the GTI removing the income exempt under 10.
- Then deduct permissible deductions under Chapter VI A.
- The resultant figure is the taxable income.

Deductions available u/s 80P

1. Entire income from specific business activities such as providing banking or credit facilities to its members, cottage industry, marketing of agricultural produce grown by its members, purchase of agricultural implements, seeds, livestock or other articles for agriculture for the purpose of supplying them to its members.

   However, these provisions shall not apply to any co-operative bank other than a primary agriculture credit society or a primary co-operative agriculture and rural development bank.

2. Entire income of a co-op society being a primary society engaged in supplying milk raised by its members to a federal milk co-op society.
3. Entire income of labour co-op. societies engaged in fishing and allied activities is deductible if the voting rights are restricted to members who constitute the labour force. Similarly, entire income of primary co-operative society engaged in oil seeds, fruits or vegetables raised by its members to federal milk co-op. society, Government, local authority and statutory corporation.
4. In case of a co-op society engaged in activities other than or in addition to above mentioned activities shall be eligible for the following deduction:
   - If the co-op society is a consumer co-op. society Rs. 1 lakh;
   - In any other case Rs.50,000.
5. Entire income by way of the interest, dividend derived by a co-op. society from its investment in any other co-op. society.
6. Entire income derived by a co-op society from letting out of godowns or warehouses for storage or processing or facilitating the marketing of commodities.
7. In case of a co-op society, not being a housing society or an urban consumer society or a society carrying on transport business or a society engaged in manufacturing with the aid of power, whose GTI does not exceed Rs.20,000, any amount of income by way of interest on securities or income chargeable under the head House Property.

Taxation of Film Industry

1. Section 285B - Submission of statements by producer of cinematograph films

Any person carrying on the production of a cinematograph film during the whole or any part of the FY shall, in respect of the period during which such production is carried on, prepare and deliver a statement in the prescribed form. Such statement should be delivered within 30 days from the end of the FY or within 30 days from the date of completion of the film, whichever is earlier. The statement shall contain particulars of all payments of over Rs.50,000 in aggregate made by him or due to him from each person engaged in such production.

2. Rule 9A - Deduction in respect of expenditure on production of feature films

In computing the profits and gains of the business of production of feature films carried on by a film producer, the deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year shall be allowed as follows:

(i) Where the film producer sells all rights of exhibition of the film, the entire coast of production is allowed.

- Where the film producer himself exhibits the film or sells the rights of some of the areas or himself exhibits the film in certain areas and sells the rights in respect of all or some of the remaining areas and the film is released for exhibition on a commercial basis at least 90 days before the end of such previous year, the entire cost of production shall be allowed as a deduction. If the film is not so released at least 90 days before the end of such previous year, the cost of production shall be allowed to the extent of the amount realized by the film producer and balance shall be carried forward to the next following previous year and allowed as a deduction in that year.
- Where during the previous year in which a feature film is certified for release by the Board of Film Censors, the film producer does not exhibit the film or does not sell, no deduction shall be allowed for cost of production in that year and the entire cost of production shall be carried forward and allowed as deduction in the next following previous year.

(ii) Cost of production in relation to a feature film means the expenditure incurred on the production of the film but it does not include the expenditure incurred for the preparation of the positive prints of the film and the expenditure in connection with the advertisement of the film after it is certified for release by the Censor Board.

2. Rule 9B - Deduction of expenditure on acquisition of distribution rights of feature films

In computing the profits and gains of the business of the distribution if the feature films carried on by a person, the deduction in respect of cost of acquisition of a feature film shall be allowed as follows:

- Where the film distributor sells all the rights of exhibition of the film, the cost of acquisition is allowed.
- Where the film distributor himself exhibits the film or sells the rights of exhibition in respect of some of the areas or himself exhibits the film in certain areas and sells the right in respect of all or some of the remaining areas and the film is released for exhibition on a commercial basis at least 90 days before the end of such previous year, the entire cost of acquisition shall be allowed as a deduction. If the film is not

so released at least 90 days before the end of such previous year, the cost of acquisition shall be allowed to the extent of the amount realized by the film distributor and balance shall be carried forward to the next following previous year and allowed as a deduction in that year.

- Where during the previous year in which a feature film is acquired by the film distributor, the film distributor does not exhibit the film or does not sell, no deduction shall be allowed for the cost of acquisition in that year and the entire cost of acquisition shall be carried forward and allowed as deduction in the next following previous year.

Cost of acquisition in relation to a feature film means the amount paid to the film producer or to another distributor under an agreement for acquiring the rights of exhibition and where the rights of exhibition have been acquired on minimum guarantee basis, the minimum guaranteed. However, cost of acquisition does not include the amount of expenditure by the film distributor for the preparation of the positive prints and the expenditure incurred in connection with the advertisement of the film.

Penalty & Prosecution

1. *Section 271(1) – Penalty for concealment of income*

An order imposing a penalty shall not be made unless the assessee has been given an opportunity of being heard.

If the AO or the CIT (A) or the CIT, in the course of any proceedings under the Act, is satisfied[20] that a person has committed the following acts, he may impose penalty as mentioned therein:

- He has failed to comply with the notice u/s 115WD(2) / 115WE(2) / 142(1) or 143(2) or has failed to get his books audited u/s 142(2A). A penalty of Rs. 10,000 in addition to any tax payable shall be levied for each such failure.
- He has concealed the particulars of his income or the fringe benefits or furnished inaccurate particulars of such income or particulars of fringe benefits, he may direct such person to a penalty of a sum not less than 100% but not exceeding 300% of the tax sought to be evaded21 by concealment of particulars of the income or fringe benefits.

A person shall be deemed to have concealed the particular of his income in the following cases:

- In respect of the computation of the total income, the person fails to offer an explanation or offers an explanation, which is found to be false. Further, if the person has offered an explanation, which he is not able to substantiate, and fails to prove that the explanation is bonafide, and that all facts relating to computation of his income have been disclosed by him. The amount added or disallowed by the AO in computing the total income shall be deemed to represent the income, which has been concealed.
- Where any person fails without any reasonable cause to furnish within 2 years from the end of the relevant AY a ROI which was required to be furnished u/s 139 and until the expiry of such period no notice has been issued u/s 142(1) or 148 for filing the ROI and the AO or CIT (A) is satisfied that the person has taxable income for that year, then he shall be deemed to have concealed the particulars of his income.
- Where in the course of a search initiated under section 132, the assessee is found to be the owner of:

  (i) any money, bullion, jewellery or other valuable article or thing and the assessee claims that such assets have been acquired by him by utilizing (wholly or in part) his income for any PY; or

  (ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,

  which has ended before the date of the search and the due date for filing the return of income for such year has expired and the assessee has not filed the return, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.

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[20] If any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under section 271(1)(*c*), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings.

[21] - In any case where the amount of income has been concealed, has the effect of reducing the loss declared in return or converting that loss into income, means the tax that would have been chargeable on the income which has been concealed had such income been the TI;
- Where no return has been filed as stated in (b) above, means the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148;
- In respect of cases not falling above, tax sought to be evaded means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the concealed income.

- Where the source of any receipt, deposit, outgoing or investment in any assessment year is claimed by any person to be an amount added in computing the income or deducted in computing the loss in any earlier AY but in respect of which no penalty has been levied, that part of the amount shall be treated as income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for such earlier year.

2. *Section 271AAA - Penalty where search has been initiated*

(i) This provision overrides all other provisions of the Act.

(ii) Where search has been initiated under section 132, the AO, may direct that, the assessee shall pay penalty @ 10% of the undisclosed income[22] of the specified previous year.

(iii) The above provision of penalty shall not apply if the assessee:

- in the course of the search, in a statement, admits the undisclosed income and specifies the manner in which such income has been derived;
- substantiates the manner in which the undisclosed income was derived; and
- pays the tax, together with interest, if any, in respect of the undisclosed income.

(iv) No penalty shall be imposed under section 271(1)(c) upon the assessee in respect of the undisclosed income referred in this section.

(v) The provisions of sections 274 and 275 shall, so far as may be, apply in relation to the penalty referred to in this section.

3. Section 271A – Penalty for failure to keep, maintain or retain books of accounts

If a person fails to keep and maintain or retain for a period of 6 years, the prescribed books of accounts, a penalty of Rs.25,000 shall be imposed.

4. Section 271B - Penalty for failure to get accounts audited

If any person fails to get his accounts audited in respect of any PY, or fails to furnish the audit report within the time permitted u/s 44AB, the AO may direct such person to pay penalty being lower of 0.5% of total sales/turnover/gross receipts, or Rs. 1 Lac.

5. Section 271D - Penalty for failure on non compliance with section 269SS

If a person takes or accepts any loan or deposit in contravention of the provision of section 269SS, he shall be liable to a penalty equal to 100% of the loan or deposit so taken or accepted.

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[22] Undisclosed income means:
(*i*) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—

(*A*) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or

(*B*) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of the search; or

(*ii*) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted;

(*b)* specified previous year means the previous year—

(*i*) which has ended before the date of search, but the date of filing the return of income under section 139(1) for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date; or

(*ii*) in which search was conducted.

6. **Section 271E - Penalty for failure on non compliance with section 269T**

If a person repays any deposit referred to in section 269T, otherwise than as permitted, he shall be liable to pay penalty equal to 100% of the deposit so repaid.

7. **Section 271FB - Penalty for failure to furnish return of fringe benefits.**

If an employer, fails to furnish a return of fringe benefits within the time prescribed, the Assessing Officer may direct that such employer shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

8. **Section 272B - Penalty for failure to comply with Section.139A**

If a person fails to comply with the provisions regarding application for PAN, a penalty of Rs.10,000.

If a person fails to quote his PAN in any document prescribed in Section 139A or fails to intimate his PAN to the payer or quotes or intimated a false PAN, he shall be liable to a penalty of Rs.10,000.

The penalty shall be imposed only after the assessee had been given an opportunity of being heard.

9. **Section 273A - Power to waive or reduce the penalty in certain cases**

This section overrides all other provisions of the Act.

The CIT has been granted discretionary powers either on application or suo-moto to reduce or waive the amount of penalty imposed due to concealment of income u/s 271(1)(c), if he is satisfied that such person has, prior to detection by the AO of the concealment of particulars of income, furnished, in respect of such income voluntarily and in good faith, full and true disclosure of such income and also has co-operated in any inquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for payment of tax or interest for the relevant AY.

Where the penalty imposable u/s 271(1)(c) relates to more than one AY and the aggregate amount of corresponding concealed income exceeds Rs. 5 lakhs, the CIT has to take prior approval of the CCIT or DG before reducing or waiving off the penalty.

The CIT may, on an application made by the assessee, reduce or waive the amount of penalty imposed under any provision of the Act, or stay or compound any proceedings for the recovery of any such amount if he is satisfied that:

- If would cause genuine hardship to the assessee. CBDT has clarified that the genuine hardship should exist at the time at which the application is made by the assessee before the Commissioner and should so exists even at the time of passing of order u/s 273A(4) by the Commissioner.
- The assessee has co-operated in any inquiry relating to the assessment or proceedings for the recovery of any amount due.
- Where the amount of any penalty payable or where such application relates to more than one penalty, the aggregate amount of such penalties exceeds Rs. 1,00,000 no order reducing or waiving the amount shall be made except with the previous approval of the CCIT or DG

Every order passes under this section shall be final and shall not be appealed against.

Where an order under this section has been made in favour of any person, whether relating to one or more AYs, he shall not be entitled to any further relief for any other AY after an order had been passed under this section.

10. Section 273AA - Power of Commissioner to grant immunity from penalty

(i) A person may make an application to the Commissioner for granting immunity from penalty, if:

(a) he has made an application to the Settlement Commission and the proceedings for settlement have abated under section 245HA; and

(b) the penalty proceedings have been initiated under this Act.

(ii) Application to the Commissioner cannot be made where penalty is imposed subsequent to abatement.

(iii) The Commissioner may, grant to the person immunity from the imposition of any penalty. However, he should be satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.

(iv) The immunity granted shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted. Thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(v) If the Commissioner is satisfied that the person had, in the course of any proceedings (after abatement) concealed any particulars material to the assessment from the income-tax authority or had given false evidence the immunity granted may be withdrawn at any time. Thereupon such person shall become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

11. Section 273B – Penalty not to be imposed in certain cases

This section overrides all other provisions of the Act. No penalty shall be imposable for any failure or non-compliance if the assessee proves that there was reasonable cause for the said failure.

In the case of Aziz Unnisa Begum (SC), the AO had served a notice for penalty hearing. Thereafter, due to transfer of the AO, there was a change in the incumbents' office. The new AO imposed the penalty without issuing a further notice. The court ruled that no fresh notice was required, as the assessee had already been served with a notice.

12. Section 275 - Time period for imposing penalty

The penalty orders shall be passed within the following permitted time:

- Where a penalty order to be passed is in reference to an assessment or other order and such order is a subject matter of an appeal to the ITAT, the penalty order should be passed within the following period, whichever expires later:

  (a) Within the FY in which the proceedings, in course of which action for imposition of penalty has been initiated, are completed; or

  (b) Within 6 months from the end of the month in which the order of the ITAT is received by the CIT.

- Where a penalty order to be passed is in reference to an assessment or other order and such order is a subject matter of an appeal to the CIT (A), the penalty order should be passed within the following period, whichever expires later:

(a) Within the FY in which the proceedings, in course of which action for imposition of penalty has been initiated, are completed; or

(b) Within 1 year from the end of the financial year in which the order of the CIT (A) is received by the CIT or the CCIT.

(c) Where the assessment or other order is picked up for revision u/s 263 or 264, then the penalty order should be passed within 6 months from the end of the month in which the revisionary order is passed.

(d) In any other case not covered above, the penalty order should be passed within the FY in which the proceedings, in course of which penalty proceedings have been initiated, are completed, or 6 months from the end of the month in which the action for imposition of penalty is initiated, whichever period expires later.

In a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) or an appeal to the Appellate Tribunal or an appeal to the High Court or an appeal to the Supreme Court or revision under section 263 or section 264 and an order imposing or enhancing or reducing or canceling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264:

Order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall not be passed:

(a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;

(b) after the expiry of six months from the end of the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed.

13. Section 271FA - Failure to furnish annual information return

A person who is required to furnish an annual information return, as required u/s. 285BA(1), fails to furnish such return within the time prescribed, the income-tax authority may direct that such person shall pay, by way of penalty, a sum of Rs. 100 for every day during which the failure continues.

Prosecution

1. Section 277A - Falsification of books

If any person willfully and with intent to enable any other person to evade any tax or interest or penalty chargeable and imposable under the Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of accounts or other documents, then such person shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 3 years and with fine.

For the purposes of establishing the charge, it shall not be necessary to prove that the other person has actually evaded any tax, penalty or interest chargeable or imposable under the Act.

2. Section 278B – Offences by Companies

Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, no such person shall be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Company means a body corporate and includes a firm and an AOP or BOI whether incorporated or not.

Director, in relation to a firm, means a partner in the firm, in relation to any AOP or BOI, means any member controlling the affairs thereof.

3. Section 278AB - *Power of Commissioner to grant immunity from prosecution*

(i) A person may make an application to the Commissioner for granting immunity from prosecution, if he has made an application to the Settlement Commission and the proceedings for settlement have abated under section 245HA.

(ii) Application to the Commissioner cannot not be made after institution of the prosecution proceedings subsequent to abatement.

(iii) The Commissioner may, grant to the person immunity from prosecution. However, he should be satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.

If the application for settlement had been made before 1.6.2007, the Commissioner may grant immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force.

(iv) The immunity granted shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted. Thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(v) The immunity granted to a person may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings.

Miscellaneous Provisions

1. Section 276C - Willful attempt to evade tax

If a person willfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest, he shall in addition to the penalty, be liable to imprisonment and fine. A willful attempt to evade any tax, penalty or interest shall include a case where any person:

(a) Has in his possession or control any books of accounts or other documents containing a false entry;

(b) Makes or causes to be made any false entry in such books of accounts;

(c) Willfully omits or causes to be omitted any relevant entry in the books of accounts;

(d) Creates circumstances, which have the effect of enabling such person to evade any tax.

2. Section 281 – Certain transfers to be void

Where during the pendency of any proceedings or after the completion thereof but before the service of notice by the TRO, any assessee creates a charge or parts with a possession of any of his assets in any manner whatsoever in favour of any other person, such charge or transfer shall be void as against any claim of tax or other sum payable by the assessee. This provision shall apply where the amount of tax payable exceeds Rs.5000 and the assets charged exceed Rs.10,000.

However, the above charge or transfer shall not be void if the following conditions are satisfied:

(a) Was made with the previous permission of the AO; and

(b) Was made for adequate consideration and no notice for pendency proceedings or tax was received by the assessee.

The assets referred to in this section shall not include stock in trade.

3. Section 282 - Service of notice generally

A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court. Any such notice or requisition may be addressed:

(*a*) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family;

(*b*) in the case of a local authority or company, to the principal officer thereof ;

(*c*) in the case of any other association or body of individuals, to the principal officer or any member thereof ;

(*d*) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

4. Section 284 - Service of notice in the case of discontinued business

Where an assessment is to be made under section 176 in case of discontinued business, the AO may serve on the person whose income is to be assessed, or, in the case of a firm or an association of persons, on any person who was a member of such firm or association at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice.

5. **Section 283 - Service of notice when family is disrupted or the firm is dissolved**

(a) Where the AO has accepted and recorded the total partition of the HUF, then the notices shall be served on the last Karta of the HUF or if such person is dead, then on all members who were adult before partition, in respect of the income of the HUF.

(b) In respect of a firm, AOP or BOI, notice may be served on any person who was a partner (other than minor) before dissolution.

6. **Section 282A - Authentication of notices and other documents**

(i) All notices or other documents issued by any income-tax authority shall be signed in manuscript by that authority.

(ii) Every notice or other document to be issued, served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.

7. **Section 292BB - *Notice deemed to be valid in certain circumstances***

(i) If an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act. The assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was:

(*a*) not served upon him; or
(*b*) not served upon him in time; or
(*c*) served upon him in an improper manner;

(ii) However, if the assessee has raised such objection before the completion of such assessment or reassessment the aforesaid deeming fiction shall not apply.

8. **Section 269SS - Mode of taking or accepting certain loans and deposits**

No person shall take or accept from any other person any loan or deposit otherwise than by an account payee cheque or account payee draft if:

- The amount of such loan or deposit or the aggregate amount of such loan and deposit; or
- On the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment had fallen due or not including interest), the amount or the aggregate amount remaining unpaid; or
- The amount or aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), - is Rs. 20,000 or more.

Exceptions

The provisions of this section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by:

- Government;
- Any banking company, Post office Savings Bank, or Co-operation bank;
- Any statutory corporation;
- Any Government company; and
- Such other institutions, which the Central Government may notify.
- Where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax.

9. Section 269T - Mode of repayment of certain loans or deposits

No branch of a banking company or co-operation bank and no other company or cooperative society and no firm or other person shall repay any loan or deposit[23] made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit if:

- The amount of the loan or deposit together with the interest, if any, payable thereon; or
- The aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank, or as the case may be, the other company or cooperative society or the firm or other persons either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loan or deposits, is Rs. 20,000 or more.

Where the repayment is by a branch of a banking company or cooperative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account, if any, with such branch of the person to whom such loan or deposit has to be repaid.

The provision of this section does not apply to repayment of any loan or deposit taken or accepted from:

- Government or any statutory corporation;
- Any banking company, Post office Savings Bank, or Co-operation bank;
- Any Government company and such other institutions, which the Central Government may notify.

10. Section 142A - Estimate by Valuation Officer in certain cases.

For the purposes of making an assessment or reassessment (including where a reassessment is required to be made in terms of section 153A), if an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him. The Valuation Officer to whom a reference is made shall have all the powers that he has under section 38A of the Wealth-tax Act.

On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment.

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[23] Loan or deposit means any loan or deposit of money, which is repayable after the notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.

11. Section 285BA - Annual Information Return

(i) Any of the following person shall furnish an annual information return (AIR) in respect of specified financial transaction, which is registered or recorded by him during any financial year:

Class of person	Nature and value of transaction
A Banking company 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).	Cash deposits aggregating to ten lakh rupees or more in a year in any savings account of a person maintained in that bank. CBDT has clarified that only the aggregate of all the cash deposits in the savings account of a person is required to be reported as one transaction.
A Banking company 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) or any other company or institution issuing credit card.	Payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to two lakh rupees or more in the year. CBDT has clarified that only the aggregate of all payments made by a person is required to be reported as one transaction.
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.	Receipt from any person of an amount of two lakh rupees or more for acquiring units of that Fund. If the person receives from a transacting party an amount higher than the threshold limit for allotment of units, bonds, debentures or shares but the actual allotment may have been made of an amount lower than the threshold value. CBDT has clarified that all such transactions where the receipt is more than the threshold limit specified are to be reported in the AIR. It is further clarified that the amount actually received from a transacting party, and not the amount relating to the allotment, is to be reported in the AIR
A company or institution issuing bonds or debentures.	Receipt from any person of an amount of five lakh rupees or more for acquiring bonds or debentures issued by the company or institution.

A company issuing shares through a public or rights issue.	Receipt from any person of an amount of one lakh rupees or more for acquiring shares issued by the company.
Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908.	Purchase or sale by any person of immovable property valued at thirty lakh rupees or more. If the transaction is in respect of a property valued at more than rupees thirty lakhs involving joint parties and the value for one or more party is less than rupees thirty lakhs. Cbdt has clarified that all such transactions are to be reported in the AIR, giving requisite details in respect of all the joint parties, even though the value of the transaction in the hands of one or more of the joint parties is less than the threshold limit
A person being an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934, who is duly authorized by the Reserve Bank of India in this behalf.	Receipt from any person of an amount or amounts aggregating to five lakh rupees or more in a year for bonds issued by the Reserve Bank of India. CBDT has clarified that only the aggregate of all receipts from a person is required to be reported as one transaction.

In respect of the following persons presently no transactions have been specified.

- the registering authority under the Motor Vehicles Act;
- the postmaster General;
- the Collector;
- the recognized stock exchange;
- a depository under the Depositories Act

(ii) Obligation for filing AIR arises if the above person(s) is responsible for registering or maintaining books of accounts or other documents containing record of any specified financial transaction under any law for the time being in force.

The annual information return shall be furnished within 31 August after the end of each financial year in form 61A in computer readable media to the NSDL.

(iii) The AIR shall be signed and verified by in a case where the person furnishing the return is an assessee, by a person authorised to sign the return of income u/s 140. In any other case, by the person referred to in Table.

(iv) Where the prescribed income-tax authority considers that the annual information return furnished is defective, he may intimate the defect to the person who has furnished such a return and give him an opportunity to rectify the defect within one month from the date of defect is not so rectified, such return shall be treated as an invalid return and the provisions of the Act shall apply as if such person has failed to furnished the annual information return.

(v) Where a person fails to furnish an annual information return, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such return within such time not exceeding 60 days. Then such person shall furnish the annual information within the time specified in the notice.

12. Section 7 - Income deemed to be received

The following incomes shall be deemed to be received in the previous year:

(i) the annual accretion in the previous year to the balance at the credit of an employee participating in a recognised provident fund;

(ii) the transferred balance in a recognised provident fund;

(iii) the contribution made, by the Central Government or other employer in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD.

13. Tax implications on Local Authority

As per section 10(20) the income of a local authority which is chargeable under the head HP, Capital Gains or Other Sources or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area, shall be fully exempt from income tax.

14. Section 288A - Rounding off of income

The amount of total income shall be rounded off to the nearest multiple of ten rupees. Any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten. The amount so rounded off shall be deemed to be the total income.

15. Section 288B - Rounding off amount payable and refund due.

Any amount payable, and the amount of refund due, shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten.

Marginal relief for the Assessment Year 2009-10

Marginal relief in the case of Individual/HUF/AOP/ BOI

If net income exceeds Rs. 10,00,000, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a net income of Rs. 10,00,000 by more than the amount of income that exceeds Rs. 10,00,000.

If net income exceeds Rs. 10,00,000, surcharge is 10%. To avoid hardship, in the case of a taxpayer whose income is slightly higher than Rs. 10,00,000, a provision has been made to provide relief in marginal cases.

Case Studies

Mrs. X (66 years) is non-resident. Her net income for the assessment year 2009-10 is Rs. 10,30,000 (Situation I); or Rs. 10,31,000 (Situation 2).

	Income – 10,30,000	**Income 10,31,000**
	Situation 1	**Situation 2**
Income-tax on net income	2,14,000	2,14,300
Add: Surcharge 10%	21,400	21,430
Income-tax and surcharge under normal computation (a)	**2,35,400**	**2,35,730**
Computation for marginal relief		
Step 1 - Income-tax on Rs. 10,00,000	2,05,000	2,05,000
Step 2 - Tax @ 100% of income in excess of Rs. 10 lakh	30,000	31,000
Tax under marginal relief computation (b)	2,35,000	2,36,000
Normal tax or tax under marginal relief, whichever is lower		
[(a) or (b), whichever is lower] (c)	2,35,000	2,35,730
Add: Education cess @ 2% of (c)	4,700	4,715
Add: Secondary and higher education cess @ 1 % of (e)	2,350	2,357
Tax liability (rounded off)	**2,42,050**	**2,42,800**

X is resident but not ordinarily resident in India. His date of birth is 20 February 1943. Consequently, he is resident senior citizen for the assessment year 2008-09. His gross income is Rs. 11,15,000 (salary: Rs. 4,00,000, lottery winnings: Rs. 2,27,000 and long-term capital gain: Rs. 4,88,000). He is entitled for a deduction of Rs. 95,000 under sections 80C to 80U.

Particulars	Amount
Salary income	4,00,000
Long-term capital gain	4,88,000
Lottery winnings	2,27,000
Gross total income	11,15,000
Less: Deductions	95,000
Net income	**10,20,000**
Tax computation under normal provisions	
Tax on lottery winnings of Rs. 2,27,000 @ 30%	68,100
Tax on long-term capital gain of Rs. 4,88,000 @ 20%	97,600
Tax on remaining income of Rs. 3,05,000	
(first Rs. 1,95,000; Nil, next Rs. 55,000 @ 20% : Rs. 11,000;	
next Rs. 55,000 @ 30% : Rs. 16,500)	8,500

Total Tax	1,74,200
Add: Surcharge @ 10%	17,420
Total	**1,91,620**

Tax computation under marginal relief

Step 1 - Find out the tax payable if income is Rs. 10,00,000 (it may be assumed that salary is Rs. 3,05,000, lottery winning is Rs. 2,07,000 and long-term capital gain is Rs. 4,88,000):

Tax on Rs. 3,05,000	8,500
Tax on Rs. 2,07.000 @ 30%	62,100
Tax on Rs. 4,88,000 @ 20%	97,600
Total	**1,68,200**
Step 2 - To the tax determined on Rs. 10,00,000 under Step 1. add tax @ 100% in respect of income exceeding Rs. 10,00,000 (Le., Rs. 20,000)	20,000

The aggregate tax is Rs. 1,88,200 (i.e., Rs. 1,68,200 + Rs. 20,000) which is lower than the regular tax of Rs. 1,91,620. Hence marginal relief would be available. Therefore, total tax liability will be calculated in this case as follows-

Tax as computed above	1,88,200
Add: Education cess @ 2%	3,764
Add: Secondary and higher education cess @ 1 %	1,882
Tax liability (rounded off)	**1,93,850**

Marginal relief in the case of a Company

If net income exceeds Rs. 1 crore, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a net income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore.

Case Studies

X Ltd. is a domestic company. Net income of the company for the assessment year 2009-10 is Rs. 1.02 crore (Situation I), or Rs. 1.1 crore (Situation 2). Minimum alternate tax is not applicable as book profit is just Rs. 5 lakh.

	Situation 1 **Rs in thousand**	**Situation 2** **Rs in thousand**
Income-tax on net income	3,060	3,300
Add: Surcharge @10%	306	330
Income-tax and surcharge under normal computation (a)	3,366	3,630
Computation for marginal relief		
Step 1 - Income-tax on Rs. 1 crore	3,000	3,000
Step 2 - Tax @, 100% of income in excess of Rs. 1 crore	200	1,000
Tax under marginal relief computation (b)	3,200	4,000
Normal tax or tax under marginal relief, whichever is lower [(a) or (b), whichever is lower] (c)	3,200	3,630
Add: Education cess @ 2% of (c)	64	72.60
Add: Secondary and higher education cess @ 1 % of (c)	32	36.30
Tax liability (Rounded off)	**3,296**	**3,739**

X Ltd. is a domestic company. It is engaged in the business of dealing in shares. Besides, it has a manufacturing plant situated in Madhya Pradesh. Income of the company for the assessment year 2009-10 is as follows-

	(Rs. in thousand)
Dealing in shares (computed under the Income-tax Act but after deducting securities transaction tax of Rs. 1,000)	4.00
Income from manufacturing (computed under the Income-tax Act)	6.00
Book profit after deducting securities transaction tax	1.00,70

Particulars	**Amount (Rs. P)**
Income from dealing in shares	
(Rs. 4,00,000 + Rs. 11,000)	4,00,000
Income from manufacturing	6,00,000
Net income	**10,00,000**
Income-tax	**3,00,000**
Add: Surcharge	Nil
Income-tax and surcharge (a)	3,00,000
Minimum alternate tax (under nonnal provisions)	
Tax on book profit of Rs. 1,00,70,000 @ 10%	10,07,000
Add: Surcharge @10%	1,00,700
Tax on book profit and surcharge (b)	11,07,700
Minimum alternate tax (under marginal relief)	
Tax on book profit of Rs. 1,00,00,000 @ 10%	10,00,000
Add: 100% of book profit in excess of Rs. 1,00,00,000	70,000
Total (c)	10,70,000
Minimum alternate tax (including surcharge) after marginal relief	
[(b) or (c) whichever is lower] (d)	10,70,000
Normal tax or minimum alternate tax whichever is higher	
[(a) or (d) whichever is higher]	10,70,000
Add: Education cess	21,400
Add: Secondary and higher education cess	10,700
Tax liability of the company for the assessment year 2008-09 (e)	11,02,100
Less: Tax liability if minimum alternate tax is ignored	
[(a) + EC + SHEC] (f)	3,09,000
Tax credit available under section 115JAA(2A)	7,93,100