AMENDMENTS BY FINANCE ACT 2010 (DIRECT TAXES)

FOR

CA FINAL May. 2011

COMPILED BY

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MUMBAI (INDIA)

Section	Effective Date	Explanation
2(15)	***1-4-2009***	Section 2(*15*) defines charitable purpose to include, *inter alia*, the advancement of any other object of general public utility. The proviso to the said clause provides that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. A second proviso is inserted in clause (*15*) to provide that the first proviso shall not apply if the aggregate value of receipts from the activities referred to in the first proviso is **ten lakh rupees or less** in the previous year.
2(24)	***1-6-2010***	Section 2(24)(xv) provides that any sum of money or value of property referred to in clause (vii) of subsection (2) of section 56 will fall within the definition of income. Sub-clause (xv) is amended to also make a reference therein to value of property referred to in the newly inserted clause (viia) of sub-section (2) of section 56. This amendment is consequential to the amendment made in section 56 Explanation to section 9 provides that, for the removal of doubts, for the purposes of section 9, where income is deemed to accrue or arise in India under clauses (v), (vi) and (vii) of sub-section (1), such income shall be included in the total income of the non-resident, **whether or not, the non-resident has a residence or place of business or business connection in India**. Explanation is substituted so as to provide that the income of a non resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of subsection (1) and shall be included in the total income of the non-resident, whether or not, *(i)* the non-resident has a residence or place of business or business connection in India; or *(ii)* the non-resident has rendered services in India.
10(21)	***1-4-2011***	Under section 10(21), in computing the total income of the previous year of any person, any income of a scientific research association for the time being approved for the purpose of clause (ii) of sub-section (1) of section 35 is not included. Clause (21) is amended so as to make it also applicable to a research association which has as its object, undertaking research in social science or statistical research, provided such research association is approved and notified under clause (iii) of subsection (1) of section 35. Consequently, the income of such association shall not be included in its total income.
10AA	***1-4-2010***	Under section 10AA (7), as it would stand before its amendment by the Finance (No. 2) Act, 2009, the profits derived from the export of articles or things or services shall be the amount which bears to the profits of the business of the undertaking, being the unit, the same proportion as the export turnover in respect of such

		articles or things or services bears to the total turnover of the business carried on by the assessee. The aforesaid provision was amended by the Finance (No. 2) Act, 2009, so as to substitute the reference to assessee by the word undertaking. The said amendment was to become effective from 1-4-2010 and accordingly, apply in relation to the assessment year 2010-11 and subsequent year. A new proviso is inserted to subsection (7) so as to make the provisions of the said amended section effective retrospectively for the assessment year beginning on 1-4-2006 and subsequent assessment years.
12AA	***1-6-2010***	Under section 12AA(3), if the activities of the trust or institution referred to in sub-section (1), which has been granted registration under sub-section (1), are not genuine or are not being carried out in accordance with the objects of the trust or institution, the Commissioner shall, after giving a reasonable opportunity of being heard to the said trust or institution, pass an order in writing cancelling the registration granted under clause (b) of sub-section (1). Sub-section (3) is amended so as to also provide for cancellation of registration where any trust or institution has obtained registration at any time under section 12A before its amendment.
32	***1-4-2011***	Section 32 provides that the aggregate depreciation allowable to the predecessor and successor business entities in case of succession or amalgamation shall not exceed in any previous year the deduction allowable at prescribed rates as if the succession or amalgamation had not taken place and such deduction shall be apportioned between the two entities in the ratio of the number of days for which the assets were used by them. Amendment makes a reference to clause (xiiib) of section 47 in the fifth proviso to sub-section (1) of section 32 to provide that in case of succession of a private company or unlisted public company by limited liability partnership, the aggregate depreciation allowable to the predecessor company and the successor limited liability partnership shall not exceed, in any previous year, the deduction calculated at the prescribed rate as if no succession has taken place.
35	***1-4-2011***	Section 35(1)(ii) provides for weighted deduction to the extent of one hundred twenty-five per cent of any sum paid to a scientific research association which has the object of undertaking scientific research or to a university, college or other institution to be used for scientific research. Clause (ii) is amended so as to enhance the said weighted deduction from one hundred and twenty-five per cent to one **hundred and seventy-five per cent.** Section 35(1)(iii) provides that weighted deduction shall be allowed in respect of contributions made to an approved university, college or institution to be used for research in social science or statistical research. Clause (iii) is amended to include research associations, which have as their object, undertaking of research in social science or statistical research provided such research associations are approved and notified. Accordingly, any sum paid to such research associations shall be eligible for

		weighted deduction. Section 35(2AA)(a) provides for a weighted deduction to the extent of one hundred and twenty-five per cent of any sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person for the purpose of an approved scientific research programme. Clause (a) is amended to enhance the said weighted deduction from one hundred and twenty-five per cent to one hundred and seventy-five per cent. Section 35(2AB)(1) provides for weighted deduction of one hundred and fifty per cent of the expenditure incurred by a company on scientific research on an approved in-house research and development facility. Clause (1) is amended so as to enhance the said weighted deduction from one hundred and fifty per cent to two hundred per cent.
35AD	***1-4-2010***	**SEE SEPARATE NOTE IN BUSINESS INCOME AT THE END OF TABLE. VVI FOR MAY 2011.**
35DDA	***1-4-2011***	Section 35DDA provides that where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee at the time of his voluntary retirement under any scheme of voluntary retirement, one fifth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year and the balance shall be deducted in equal instalments for each of the four immediately succeeding previous years. A new sub-section (4A) is inserted to provide that in case of succession of a private company or unlisted public company by a limited liability partnership, the provisions of the said section shall apply to the successor limited liability partnership as they would have applied to the predecessor company. Sub-section (5) is amended to provide that in case of such conversion, no deduction under the said section shall be allowed to the predecessor company in the previous year in which the conversion takes place.
40(*a*)(*ia*)	***1-4-2010***	The existing provisions of section 40 (a)(ia) provide for the disallowance of expenditure like interest, commission, brokerage, professional fees, etc. if tax on such expenditure was not deducted, or after deduction was not paid during the previous year. However, in case the deduction of tax is made during the last month of the previous year, no disallowance is made if the tax is deposited on or before the due date of filing of return. Amended section 40(a)(ia) provides that no disallowance will be made if after deduction of tax during the previous year, the same has been paid on or before the due date of filing of return of income specified in subsection (1) of section 139.
43(1)	***1-4-2011***	Explanation 13 to section 43(1) provides that the actual cost of any capital asset on which deduction has been allowed or is allowable under section 35AD shall be treated as in specified circumstances. A reference to clause (xiiib) of section 47 is made in sub-clause (iii) of clause (b) of Explanation 13, to provide that in case of succession of a private company or unlisted public company by a limited liability partnership, the actual cost of capital assets on which deduction has been allowed under section 35AD to the predecessor company shall be taken as nil in case of the successor limited liability partnership.

43(6)	***1-4-2011***	A new Explanation 2C shall be inserted in clause (6) so as to provide that in case of succession of private company or unlisted public company by limited liability partnership, the actual cost of the block of assets in case of successor limited liability partnership shall be the written down value of the block of assets as in the case of the predecessor company on the date of conversion.
44AB	***1-4-2011***	The existing provisions contained in clause (a) of section 44AB make it obligatory for every person carrying on business to get his accounts of any previous year relevant to the assessment year audited by an accountant before the specified date if the total sales, turnover or gross receipts in business for the previous year exceeds forty lakh rupees. The said limit is enhanced from forty lakh rupees to sixty lakh rupees. The existing provisions contained in clause (b) of section 44AB make it obligatory for every person carrying on profession to get his accounts of any previous year relevant to the assessment year audited by an accountant before the said specified date if his gross receipts in profession for the previous year exceed ten lakh rupees. The said limit is enhanced from **ten lakh rupees to fifteen lakh rupees**.
44AD	***1-4-2011***	Sub-clause (ii) of clause (b) of the Explanation to section 44AD defines the term eligible business to mean any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE and whose total turnover or gross receipts in previous year does not exceed forty lakh rupees for the purpose of computing profits and gains of business on presumptive basis. The said limit shall be enhanced from forty lakh rupees to sixty lakh rupees.
44BB	***1-4-2011***	Under section 44BB(1), income of a non-resident assessee who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils is computed at ten per cent of the aggregate of the amounts paid or payable to the assessee or to any person on his behalf, whether in or out of India on account of the provisions of such services and facilities. The proviso to the said subsection provides that the said subsection shall not apply in a case where the provisions of section 42 or section 44D or section 115A or section 293A apply for the purposes of computing profits or gains or any other income referred to in those sections. The reference of section 44DA is inserted in the proviso to sub-section (1) of section 44BB so as to clarify that the provisions of section 44BB shall also not apply in case where the provisions of section 44DA become applicable.
44DA	***1-4-2011***	Section 44DA provides the procedure for computing income by way of royalty or fees for technical services, in case the right, property or contract giving rise to such income are effectively connected with the permanent establishment of the non-resident, through which business is carried out in India. A second proviso is inserted in section 44DA so as to clarify that the provisions of section 44BB shall not apply in respect of income referred to in section 44DA.
47	***1-4-2011***	New clause (xiiib) shall be inserted in section 47 to exempt capital gain on transfer of assets at the time of conversion of a private limited company or unlisted public limited company into a LLP

		(For details see separate write up at the end) VVI for MAY 2011
47A	***1-4-2011***	A new sub-section (4) shall be inserted in section 47A which provides that where any of the conditions stipulated in the proviso to clause (xiiib) of section 47 are not complied with, the amount of profits or gains arising from the transfer of capital assets or intangible asset or share or shares not charged under section 45 by virtue of conditions laid down in the said proviso shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership or the shareholder of the predecessor company, as the case may be, for the previous year in which the requirements of the said proviso are not complied with.
49	***1-4-2011***	Sub-clause (e) of clause (iii) of subsection (1) of section 49 is amended so as to make a reference to clause (xiiib) of section 47 in the said sub clause (e) to provide that in case of succession of a private company or unlisted public company by a limited liability partnership, the cost of acquisition of the assets for the successor limited liability partnership shall be deemed to be the cost for which the predecessor company acquired it. Newly inserted sub-section (2AAA) provides that where the capital asset being rights of a partner referred to in section 42 of the Limited Liability Partnership Act, 2008 became the property of the assessee on conversion as referred to in clause (xiiib) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the company immediately before its conversion. Under sub-section (4) of section 49, where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under clause (vii) of sub-section (2) of section 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (vii). Sub-section (4) is amended so as to provide that the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purpose of clause (viia) of sub-section (2) of section 56also.
56(2)(*vii*)	***1-10-2009***	This amendment is consequential to the amendment made to section 56(2) by inserting a new clause (viia) Under section 56(2)(vii)(b), if an assessee being an individual or a Hindu undivided family receives any immovable property without consideration or for inadequate consideration, the value of the said property shall be treated as income in the hands of assessee and shall be liable to tax. Sub-clause (b) of clause (vii) of subsection (2) is substituted so as to provide that clause (vii) of subsection (2) of section 56 would apply only if the immovable property is received without any consideration; the stipulation as regards inadequate consideration has been removed. Under clause (d) of the Explanation to clause (vii) of section 56(2), certain properties have been enumerated within the definition of property. Clause (d) of the Explanation to clause (vii) of sub-section (2) is amended so as to specify that clause (vii) of sub-section (2) of section 56 will have application to property which is in the nature of capital asset of the assessee. A new sub-clause (ix) is inserted in clause (d) of the said Explanation so as to include bullion within

		the specified categories of property. A new clause (viia) is inserted in section 56(2) so as to include the transactions undertaken in shares of a company not being a company in which the public are substantially interested where the recipient is a firm or a company not being a company in which the public are substantially interested.
72A	***1-4-2011***	A new sub-section (6A) shall be inserted which provides that in case of succession of business, whereby, a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (xiiib) of section 47, notwithstanding anything contained in any other provisions of the Act, the accumulated loss and the unabsorbed depreciation of the predecessor company shall be deemed to be the loss or, as the case may be, allowance for depreciation of the successor limited liability partnership for the previous year in which business reorganisation was effected and the other provisions of the Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly. However, if the conditions stipulated in the proviso to clause (xiiib) of section 47 are not complied with, the set off of loss or allowance of depreciation which had been allowed shall be deemed to be the income chargeable to tax of the successor limited liability partnership for the previous year in which the conditions stipulated in the proviso to clause (xiiib) of section 47 are not complied with. Clause (a) and clause (b) of subsection (7) define the expressions accumulated loss and unabsorbed depreciation respectively for the purpose of the aforesaid section.
80A	***1-4-2011***	A new sub-section (7) shall be inserted to provide that where a deduction under any provision of this Chapter under the heading C Deductions in respect of certain incomes is claimed and allowed in respect of profits of any of the specified business referred to in clause (c) of sub-section (8) of section 35AD for any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year.
80CCF	***1-4-2011***	A new section shall be inserted so as to provide that a sum of rupees twenty thousand in addition to the existing limit of rupees one lakh for tax savings under the Income-tax Act may be allowed as a specific deduction in computing the total income of an assessee being an individual or a Hindu undivided family if such sum is paid or deposited at any time during the previous year relevant to the assessment year beginning on 1-4- 2011 as subscription to long-term infrastructure bonds as may be notified by the Central Government.
80D(2)	***1-4-2011***	Under clause (a) of section 80D(2), the whole of the amount paid by any mode, other than cash, in the previous year out of the income of the assessee, being an individual, to effect or keep in force an insurance on his health or the health of his family as does not exceed in the aggregate fifteen thousand rupees, is allowed to be deducted in computing the total income of the assessee. Clause (a) is amended so as to also allow the benefit of the deduction in respect of a contribution made by the assessee during the previous year to the Central Government Health Scheme within the said limit.
80GGA (2)	***1-4-2011***	Clause (aa) of section 80GGA(2) provides that donations made to a university, college or other institution to be used for research in social science or statistical

		research qualify for deduction under that section provided such university, college or institution is approved for the purposes of clause (iii) of sub-section (1) of section 35. Clause (aa) is amended so as to also include a research association which has as its object undertaking of research in social science or statistical research and which for the time being is approved for the purposes of clause (iii) of sub-section (1) of section 35. Accordingly, any sum paid to such research association will be eligible for deduction under section 80GGA.
80-IB(10)	***1-4-2010***	Under sub-section (10) of section 80- IB, hundred per cent deduction is available in respect of profits derived by an undertaking from developing and building housing projects approved by a local authority before 31-3-2008. It is further provided in clause (a) that where a housing project has been, or, is approved by the local authority on or after 1-4- 2004, it should be completed within four years from the end of the financial year in which the housing project is approved by the local authority. The period for completion of a housing project, approved on or after 1-4-2005, is increased from four years to five years. Under the existing provisions contained in clause (d) of sub-section (10) of section 80-IB, the built-up area of the shops and other commercial establishments included in the housing project should not exceed five per cent of the aggregate built-up area of the housing project or 2,000 square feet, whichever is less. The existing limit is revised to **three per cent of the aggregate built-up area of the housing project or 5,000 square feet, whichever is higher.**
80-ID(2)	***1-4-2011***	Clause (i) of section 80-ID(2) provides that the provisions of the said section apply to any undertaking engaged in the business of hotel located in the specified area, if such hotel is constructed and has started or starts functioning at any time during the period beginning on 1-4-2007 and ending on 31-3-2010. The said period is **extended up to 31- 7-2010.** The existing clause (ii) of sub-section (2) provides that the provisions of the said section apply to any undertaking engaged in the business of building, owning and operating a convention centre, located in the specified area, if such convention centre is constructed at any time during the period beginning on 1-4-2007 and ending on 31-3-2010. The said period is **extended up to 31- 7-2010.**
115JAA	***1-4-2011***	Section 115JAA provides that where any amount of tax is paid under subsection (1) of section 115JB by a company for any assessment year beginning on or after 1-4-2006, credit in respect of tax so paid shall be allowed to it in accordance with the provisions of section 115JAA. A new sub-section (7) shall be inserted in section 115JAA to provide that the provisions of section 115JAA shall not apply to a limited liability partnership which has been converted from a private company or unlisted public company under the Limited Liability Partnership Act, 2008.

115JB(1)	***1-4-2011***	Under sub-section (1) of section 115JB in case of a company, if the tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after 1-4-2010, is less than fifteen per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be **fifteen per cent** of such book profit. Sub-section (1) is amended to provide that if the income-tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after 1-4-2011 is less than eighteen per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be **eighteen per cent** of such book profit.
115WE (1B)	***1-4-2010***	Under sub-section (1B) of section 115WE, the Central Government may, save as otherwise expressly provided, for the purpose of giving effect to the scheme made under subsection (1A) of that section, by notification in the Official Gazette, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. However, no direction is to be issued after 31-3-2010. The time limit is extended from 31-3- 2010 to 31-3-2011.
139(4C)	***1-4-2011***	Under sub-section (4C) of section 139, every scientific research association referred to in clause (21) of section 10, shall, if the total income in respect of such scientific research association (without giving effect to the provisions of section 10) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year. Sub-section (4C) is amended in order to require a research association having as its object undertaking research in social science or statistical research to also furnish its return of income.
142A(1)	***1-7-2010***	Sub-section (1) of section 142A provides that where 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 for the purpose of making an assessment or reassessment under the Act, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him. Sub-section (1) is amended so as to also enable the Assessing Officer to make reference to the Valuation Officer for making an estimate of fair market value of any property referred to in sub-section (2) of section 56 of the Act.
143	***1-4-2010***	Under sub-section (1B) of section 143, the Central Government may, save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A) of that section, by notification in the Official Gazette, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. However, no direction is to be issued after 31-3-2010. The time limit is extended from 31-3- 2010 to 31-3-2011. Under proviso to sub-section (3) of section 143, the Assessing Officer is under

		obligation to intimate the Central Government or the prescribed authority any contravention of provisions of clause (21) of section 10, by the association referred to in the said clause. The provisions also state that the Assessing Officer shall not withdraw exemption under section 10 unless the intimation has been given by him to the prescribed authority and the approval granted to the association has been withdrawn. The first proviso to sub-section (3) is amended for giving effect to the applicability of clause (21) of section 10 to a research association which has as its object undertaking research in social science or statistical research. Accordingly, the references to scientific research association are to be substituted by references to research association.
194B	***1-7-2010***	Under section 194B, any person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in excess of five thousand rupees is required to deduct income-tax on such payment at the rates in force. The said limit is enhanced from five thousand rupees to **ten thousand** rupees.
194BB	***1-7-2010***	Under section 194BB, a bookmaker or a licensee for horse racing in any race course or for arranging any wagering or betting in any race course, who is responsible for paying to any person any income by way of winnings from any horse race in excess of two thousand five hundred rupees is required to deduct income tax on such payments at the rates in force. The said limit is enhanced from **two thousand five hundred rupees to five thousand rupees.**
194C(5)	***1-7-2010***	Under sub-section (5) of section 194C, no deduction of income-tax shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor if such sum does not exceed twenty thousand rupees. However, if the aggregate of such sums credited or paid or likely to be credited or paid during the financial year **exceeds fifty thousand rupees**, the person responsible for paying such sums shall be liable to deduct income-tax. The said limit is enhanced from twenty thousand rupees for a single transaction to thirty thousand rupees and from fifty thousand rupees for the aggregate transactions during the financial year to **seventy five thousand rupees.**
194D,	***1-7-2010***	Under section 194D, no deduction of income-tax shall be made in a case where the amount of such income, or the aggregate of the amount of the income, relating to remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business, credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee does not exceed five thousand rupees. The said limit is enhanced from **five thousand rupees to twenty thousand rupees**.
194H	***1-7-2010***	Under section 194H, no deduction shall be made in a case where the amount of income or the aggregate of the amounts of income relating to commission or brokerage credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee does not exceed two thousand five hundred rupees. The said limit is enhanced from **two thousand five hundred rupees to five thousand rupees.**

194-I	***1-7-2010***	Under section 194-I, no deduction of income-tax shall be made where the amount of income or the aggregate of the amounts of income relating to rent credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee does not exceed one hundred and twenty thousand rupees. The said limit is enhanced from **one hundred and twenty thousand rupees to one hundred and eighty thousand rupees**.
194J(1)	***1-7-2010***	Under section 194J, no deduction of income-tax shall be made where the amount of such sum or the aggregate of the amounts of such sums, relating to fees for professional or technical services or royalty or any sum referred to in clause (va) of section 28, credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee does not exceed twenty thousand rupees. The said limit is enhanced from **twenty thousand rupees to thirty thousand rupees**.
201(1A)	***1-7-2010***	Under sub-section (1A) of section 201, the person, principal officer and the company referred to in subsection (1) of the aforesaid section, in case of failure of deduction or payment of tax, are liable to pay simple interest at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200. Sub-section (1A) is amended so as to increase the interest chargeable under that sub-section from one per cent to one and one-half per cent for every month or part of a month for tax deducted but not paid.
203(3)	***1-4-2010***	Under sub-section (3) of section 203, where the tax has been deducted or paid in accordance with the provisions of Chapter XVII-B on or after 1-4-2010, there is no requirement to furnish a certificate referred to in sub-section (1) or, as the case may be, under sub-section (2) of the aforesaid section, by the deductor to the deductee. Sub-section (3) of section 203 is now omitted.
206C(5)	***1-4-2010***	The first proviso to sub-section (5) of section 206C provides that on or after 1-4-2010, no certificate shall be required to be furnished where the tax has been collected in accordance with the provisions of the aforesaid section. The aforesaid proviso to sub-section (5) of section 206C is now omitted.
245A(b)	***1-6-2010***	Under clause (b) of section 245A, the expression case means any proceeding for assessment of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of section 245C is made. It, inter alia, provides that a proceeding of assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A and, in clause (b) of sub-section (1) of section 153B, in case of a person referred to in section 153A or section 153C, shall not be a proceeding for assessment for the purposes of this clause. In the Explanation, clause (ii) omitted; clause (iiia) inserted; and certain words substituted in clause (iv) Clauses (ii) and (iii) of the proviso to clause (b) of section

		245A are omitted so as to include within the definition of case, a proceeding for assessment or reassessment referred to in clause (b) of sub-section (1) of section 153A, and clause (b) of sub-section (1) of section 153B, in case of a person referred to in section 153A or section 153C. Further, the Explanation is amended to specify the date on which the proceedings for assessment or reassessment shall be deemed to have commenced and concluded, in case of a person referred to in section 153A or section 153C.
245C(1)	***1-6-2010***	Under section 245C an application can be made before the Settlement Commission, if the additional amount of income-tax payable on the income disclosed in the application exceeds three lakh rupees. The proviso of section 245C is substituted so as to provide that an application can be made before the Settlement Commission, in cases where proceedings for assessment or reassessment have been initiated as a result of search under section 132 or books of account, other documents or any assets requisitioned under section 132A, if the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees. It is further provided that, in other cases, an application can be made before the Settlement Commission, if the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees.
245D (4A)	***1-4-2010***	Under sub-section (4A) of section 245D, the Settlement Commission shall pass an order within twelve months from the end of the month in which the application was made. Clause (ii) of sub-section (4A) is amended so as to provide that the Settlement Commission shall, in respect of an application made on or after 1-6-2007 but before 1-6-2010, pass an order within the said period of twelve months. Further, clause (iii) is inserted so as to provide that the Settlement Commission shall, in respect of an application made on or after 1-6- 2010, pass an order within eighteen months from the end of the month in which the application was made.
256(2A)	***1-6-1981***	Sub-section (2) of section 256 provides that if, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly. A new sub-section (2A) is inserted so as to empower the High Court to admit an application after the expiry of said period of six months, if it is satisfied that there was sufficient cause for not filing the same within the said period.
260A (2A)	***1-10-1998***	Clause (a) of section 260A(2) provides one hundred and twenty days from the date of receipt of the order appealed against, as the period of limitation for filing of an appeal to the High Court. A new sub-section (2A) is inserted so as to empower the High Court to admit an appeal after the expiry of said period of one hundred and twenty days if it is

		satisfied that there was sufficient cause for not filing the appeal within the said period.
271B	***1-4-2011***	Section 271B provide that if any person fails to get his accounts audited in respect of any previous year relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may impose a penalty equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or a sum of one lakh rupees, whichever is less. The said limit is enhanced from **one lakh rupees to one lakh fifty thousand rupees.**
282B(1)/ (3)	***1-10-2010***	Under section 282B, the income-tax authority is required to allot a computer generated Document Identification Number before issue of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon. It also provides that every document, letter or correspondence received by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number. The provisions of this section will come into force with effect from 1-10-2010. Section 282B is amended so as to provide that Document Identification Number will be required to be allotted on or after 1-7-2011.
First Schedule, rule 5(b)	***1-4-2011***	Under clause (b) of rule 5 of Schedule I, as inserted by the Finance (No. 2) Act, 2009, adjustment shall be made by way of deduction in respect of any amount either written off or provided in the accounts to meet diminution in or loss on realisation of investments in accordance with the regulations made by the Insurance Regulatory and Development Authority. Adjustment shall also be made by way of increase in respect of any amount taken credit for in the accounts on account of appreciation of or gains on realisation of investments in accordance with the regulations made by the Insurance Regulatory and Development Authority. Clause (b) is substituted so as to provide that any gain or loss on realisation of investments shall be added or deducted, as the case may be, if such gain or loss is not credited or debited to the profit and loss account and any provision for diminution in the value of investment debited to the profit and loss account shall be added back.
WEALTH-TAX ACT, 1957 **22A(b)**	***1-6-2010***	Under clause (b) of section 22A, the word case means any proceeding for assessment of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of section 22C is made. It, inter alia, provides that a proceeding of assessment or reassessment for any of the assessment years which may be initiated on the basis of a search under section 37A or requisition under section 37B shall not be a proceeding for assessment for the purpose of this clause. Clause (iii) of the proviso to clause (b) is omitted so as to include within the definition of case, the proceedings of assessment or reassessment which may be initiated on the basis of a search under section 37A or requisition under section 37B. Explanation to clause (b) provides for the date on which proceedings for assessment or reassessment shall be deemed to have commenced. Explanation is amended to specify the date on which the proceedings for assessment or

		reassessment shall be deemed to have been initiated and concluded pursuant to a search under section 37A or requisition made under section 37B.
22D(4A)	***1-4-2010***	Under sub-section (4A) of section 22D, Settlement Commission shall pass an order within twelve months from the end of the month in which the application was made. Sub-section (4A) is amended so as to provide that the Settlement Commission shall pass an order in respect of an application made on or after 1-6-2007 but before 1-6-2010, within twelve months and in respect of application made on or after 1-6- 2010 within eighteen months from the end of the month in which the application was made.

BUSINESS INCOME

Depreciation in case of conversion of company into Limited Liability Partnership (LLP)

4.1 The fifth proviso to section 32 relating to depreciation provides as follows:

(*a*) the aggregate depreciation allowable to the predecessor and successor business entities in case of succession or amalgamation or demerger shall not exceed in any previous year, the deduction allowable at the prescribed rates as if the succession or amalgamation or demerger had not taken place; and

(*b*) such deduction shall be apportioned between the two entities in the ratio of number of days for which the assets were used by them.

This proviso has been amended, with effect from 1-4-2011, to make it applicable to a conversion of company into LLP exempt under section 47(*xiiib*).
For this purpose, the company would be considered to have used the assets till the date of conversion.

4.1-1 Illustration

a. WDV of a block of assets as on 1-4-2010	: 1000
b. Rate of depreciation	: 15%
c. Depreciation for the full year 2010-11 as if conversion has not taken place ($a - b$)	: 150
d. Date of conversion : 1-1- 2010	
e. No. of days for which the block of assets used by Company	: 275
f. No. of days for which the block of assets used by LLP	: 90
g. Pro rata depreciation to the company [150 Ã— 275/365]	: 113
h. Pro rata depreciation to the LLP [*c* - *g*]	: 37

The fifth proviso to section 32 applies to a succession referred to in section 47(*xiii*)/(*xiiib*)/(*xiv*).
While the word succession has been used in section 47(*xiii*) (transfer of assets by a firm into a company) and section 47(*xiv*) (transfer of assets by a sole proprietary concern to a company), it has not been used in section 47(*xiiib*) relating to conversion of companies to LLPs.

Scientific research expenditure [Section 35]

4.2 The Finance Act, 2010, carries out the following amendments, with effect from 1-4-2011:
__ Increasing the quantum of weighted deduction for scientific research and development under section 35
__ Extension of weighted deduction on contribution to a social science and statistical research association and
__ Extending compliance conditions to a social science and statistical research association

Increase in the quantum of weighted deduction for scientific research and development under section 35

4.2-1 Section 35(1)(*ii*) of the Act allows weighted deduction of 125% of the contribution to an approved scientific research association (having the object of undertaking scientific research) or university or college or other institution (to be used for scientific research).
Section 35(2AA) allows a weighted deduction of 125% where any sum is paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person with a direction that it shall be used for scientific research undertaken under a programme approved by the prescribed authority.

Section 35(2AB) provides that companies engaged in the business of biotechnology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule, shall be allowed a weighted deduction of 150% on the expenditure incurred on scientific research (other than land or building) on approved in house research and development facility.
The Finance Act, 2010 has, with effect from assessment year 2011-12, enhanced extent of the above weighted deductions as follows :

To illustrate,
suppose the assessee makes a contribution of say Rs.100,000 to a scientific research association. The deduction available on such contribution would be Rs. 175,000 for assessment year 2011-12 onwards (as against Rs. 125,000 hitherto allowable).

Extension of weighted deduction on contribution to research association engaged in research in social science or statistical research

4.2-2 Section 35(1)(*iii*) of the Act, presently, allows weighted deduction on any sum paid to a University, college or other institution to be used for research in social science or statistical research. The Finance Act, 2010 has amended the above provision, for allowance of the weighted deduction, in respect of any sum paid to a research association, which has as its object the undertaking of research in social science or statistical research, with effect from 1-4-2011, that is, assessment year 2011-12.

The research association must have, as its object, undertaking research in social science or statistical research. The condition does not stipulate that undertaking of research in social science or statistical research should be the only object or the main object [say, as used in section 35(1)(*iia*) in case of a contribution to a company for use in scientific research]. If any association has the object of undertaking research in social science or statistical research, it appears, that it should be considered as satisfying the condition. However, such association needs to use it only for research in social science or statistical research.

Extension of compliance conditions
4.2-3 Section 35(1) of the Act, *inter alia,* allows weighted deduction in respect of contributions made to:
__ A scientific research association, to be used for scientific research [section 35(1) (*ii*)]; and
__ A university, college or other institution, to be used for research in social science or statistical research [section 35(1)(*iii*)].
Further, it, *inter alia,* also provides for:
__ Approval thereof [section 35(1)(*ii*)/(*iii*)];
__ Application for approval [first proviso to section 35(1)];
__ Compliance with information requirement, for the purposes of approval [second proviso to section 35(1)]; and
__ Allowance of contributions should not be denied where the approval is withdrawn subsequent to the contribution [*Explanation* below section 35(1)].

Section	*Deduction up to A.Y. 2010-11*	*Deduction from A.Y. 2011-12 onwards*
35(1)(*ii*)	125%	175%
35(2AA)	125%	175%
35(2AB)	150%	200%

The above provisions, while making a reference to various bodies eligible for the weighted deduction, employ the language **scientific research association**.
With the extension of exemption under section 10(*21*) as also allowance of weighted deduction in respect of contribution made to a research association engaged in research in social science or statistical research (social science/statistical research association), the Finance Act, 2010 has amended section 35(1), with effect from 1-4-2011 (that is, assessment year 2011-12) and substituted the words scientific research association by research association, so as to apply the above provisions also to a social science/statistical research association.

Accordingly, a social science/statistical research association will also have to comply with the conditions relating to approval, application therefore and furnishing information. Further, in a case where a contribution is made to a social science/statistical research association and subsequently, the approval is withdrawn, the contributory would not be denied deduction merely on that ground.

Deduction in respect of expenditure on specified business [Section 35AD]

4.3 Section 35AD was inserted by the Finance (No. 2) Act, 2009 with effect from assessment year 2010-11 to provide for an investment linked tax incentive to specified businesses.

The salient features of the said section are as follows:
(*a*) The whole of expenditure of capital nature incurred wholly and exclusively for the purposes of any specified business carried on by the assessee is eligible for deduction. For this purpose, expenditure of capital nature shall not include any expenditure incurred on the acquisition of any land or goodwill or financial instrument.
(*b*) The section applies to specified business mentioned in section 35AD.
(*c*) The specified business should fulfil the conditions mentioned in the section (*e.g.* not set up by splitting up, or reconstruction of a business already in existence, etc.).

Following five amendments have been made to this section by the Finance Act, 2010 :

Deduction is now available to hotels/hospitals/slum development projects

4.3-1 The category of specified business has been widened and the following categories of businesses have been included within the purview of **specified business** :
(*i*) building and operating a new hotel of two-star or above category, as classified by the Central Government, anywhere in India;
(*ii*) building and operating anywhere in India a new hospital with at least 100 beds for patients; and
(*iii*) developing and building a housing project in a scheme for slum redevelopment or rehabilitation framed by either the Central Government or a State Government and notified by the Board in this behalf in accordance with prescribed guidelines.

The hotel/hospital/slum development project should commence its operations on or after 1-4-2010. Thus, an assessee building and operating a hotel or hospital or developing and building a housing project and satisfying the conditions in the section will be eligible to a deduction under the section.

4.3-1a HOTEL/HOSPITAL - The deduction is available to an assessee who **builds and operates** a hotel/hospital. In view of the use of the word **and**, an assessee should build as well as operate a hotel / hospital in order to be eligible to a deduction under this section and a person who merely builds the hotel/hospital but gives it to another for operating it or a person who merely operates a hotel/hospital without building it may not be eligible for the deduction. At the same time, the provision does not prescribe any time limit up to which the assessee should continue to operate the hotel/hospital. The deduction should be available even in respect of expansion by an existing assessee, subject to fulfilment of necessary conditions.

4.3-1b HOUSING PROJECT - The deduction is available to an assessee carrying on the business of **developing and building**. Hence, it will not be available to a mere contractor, who is not in the business of development.
The deduction is available *qua* housing projects, a term which has not been defined in the Act. Its meaning would possibly be governed by the scheme. The deduction is available only to capital expenditure and in a developers case most of his expenditure would be in relation to acquisition of land and construction of buildings, both of which are revenue expenditure. Further, section 35AD(8)(*f*) in any case provides that expenditure of capital nature shall not include any expenditure incurred on the acquisition of any land. Hence, a developer will not be eligible to claim deduction of such expenditure under section 35AD.

Amendment in condition relating to business of pipeline network
4.3-2 Specified business includes laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network. The Finance (No. 2) Act, 2009 provided that the said business should make at least one-third of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person.
The Petroleum & Natural Gas Regulatory Board has, by regulations, specified a common carrier capacity condition of one-third for a natural gas pipeline network and one-fourth for petroleum product pipeline network. In order to align the two provisions, section 35AD(2) has been amended with effect from assessment year 2010-11 to provide that the proportion of the total pipeline capacity to be made available for use on common carrier basis should be as specified by the said regulations.

Bar on deduction under section 35AD if deduction claimed and allowed under Chapter VI-A

4.3-3 In certain cases the profits of specified business as defined in section 35AD(8)(*c*) are also eligible for deduction under Chapter VI-A [*e.g.* section 80-IA(2)].
Section 35AD(3), inserted by the Finance (No. 2) Act, 2009, provided that an assessee shall not be allowed any deduction in respect of a specified business under the provisions of Chapter VIA under the heading ***C.-Deductions in respect of certain incomes***. This provision has been amended with effect from assessment year 2011-12 to provide that where a deduction under section 35AD is claimed and allowed for any assessment year, no deduction shall be allowed under the provisions of Chapter VI-A under the heading *C.-Deductions in respect of certain incomes* in relation to such specified business for the same or any other assessment year. Similar provision is inserted in section 80A(7), to provide for the converse, that is, if an assessee has claimed deduction under Chapter VIA, he cannot claim a deduction under section 35AD in the same or any other year.

4.3-3a ANALYSIS

(*a*) While the section is applicable with effect from assessment year 2010-11, the aforesaid amendment is applicable from assessment year 2011-12.

(*b*) On a literal reading, the pre-amended provision suggested that the assessee would not be allowed deduction under Chapter VI-A whether or not it claimed a deduction under section 35AD. To avoid such literal interpretation, the amendment now expressly provides that a deduction under Chapter VI-A will not be granted only if a deduction is claimed and allowed under section 35AD.

(*c*) The deductions under section 35AD and Chapter VI-A are now mutually exclusive. If a deduction under section 35AD is allowed, then deduction under Chapter VI-A cannot be claimed and if it is claimed and allowed the deduction under section 35AD will be withdrawn.

(*d*) The amendments are widely worded and on a literal reading a claim under Chapter VIA could entail disallowance of deduction under section 35AD in respect of earlier years, same year, and subsequent years.

To illustrate: suppose a specified business is set up in previous year relevant to assessment year 2011-12 and the assessee claims and is allowed deduction in assessment years 2011-12 to 2013-14. The assessee is eligible and accordingly claims deduction under Chapter VI-A for the first time in assessment year 2014-15. On a literal reading, the deduction under section 35AD in respect of assessment years 2011-12 to 2013-14 is liable to be withdrawn.

Thus, once an assessee exercises the option of claiming either of the deduction, he would not be able to change it any time. However, an assessee, who has claimed deduction under this section in assessment year 2010-11 would not be eligible for the option.

(*e*) Apparently, an assessee still has an option not to claim the deduction under section 35AD and be governed by the normal provisions of the Act, without claiming deduction under Chapter VIA.

Amortization of expenditure incurred under Voluntary Retirement Scheme [Section 35DDA]

4.4 Section 35DDA provides that the expenditure incurred by way of payment of any sum to an employee at the time of his voluntary retirement in accordance with any scheme would be allowed as a deduction over a period of five years and once a deduction is allowed under this section, no deduction will be allowed under any other provisions of the Act.

Section 35DDA (4A) has been inserted with effect from assessment year 2011-12 to provide that where a company is succeeded by an LLP fulfilling the conditions laid down in the proviso to section 47(*xiiib*), the provisions of section 35DDA shall apply to the LLP as they would have applied to the company if re-organisation of business had not taken place. To illustrate, if the company has availed of a deduction under section 35DDA for two years, the LLP would be eligible for amortization during the next three years.

Liberalisation of provision relating to disallowance of deduction in respect of payments for which TDS is not paid [Section 40(a)(ia)]

4.5 Section 40(*a*)(*ia*) of the Act provides that any specified payment (interest, commission, etc.) to a resident from which tax is deductible at source under Chapter XVII-B of the Act will not be allowable as a deduction if (*a*) the tax had not been deducted or (*b*) after deduction, had not been paid in time as provided therein.

Position prior to amendment

4.5-1 Prior to the amendment by the Finance Act, 2010, the position for deductibility in respect of various situations is as tabulated below:

Particulars of deduction	***Particulars of payment***	***Year of deduction in computing business income***
In any month other than last month of the previous year (say, Year 1)	Any day up to last day of the previous year (Year 1)	Previous year (Year 1)
In any month other than last month of the previous year (say, Year 1)	After the end of the previous (year 1) [*i.e.*, in subsequent previous year (Year 2)]	Previous Year (Year 2) in which tax is paid.
In the last month of the previous year (Year 1)	On or before the due date for filing of return of income specified in section 139(1)	Previous year (Year 1)
In the last month of the previous year (Year 1)	After the aforesaid due date for filing of return of income.	Previous Year (Year 2) in which tax is paid.

Amendment

4.5-2 Finance Act, 2010 has amended the provision [section 40(*a*)(*ia*)] and substituted the proviso, with effect from 1-4-2010, that is, assessment year 2010-11 to provide as follows:

_ If tax is deducted during a previous year (say Year 1) and paid before the due date of filing return, then the expenditure on commission, etc., (from which tax is deducted) would be allowable in the same previous year (Year 1);

_ If tax is deducted during a previous year (say Year 1); and paid after the due date of filing return [in the subsequent previous year (Year 2)], then the expenditure on commission, etc., (from which tax is deducted) would be allowable in the subsequent previous year (Year 2); and

_ If tax not deducted during a previous year (say Year 1) is deducted in the subsequent previous year (Year 2); and paid, then the expenditure on commission, etc., (from which tax is deducted) would be allowable in the subsequent previous year (Year 2).

Essentially, the amendment does away with distinction between first 11 months and the last month of a previous year, for the purposes of allowance, as explained earlier. After the amendment, delayed payment of entire previous year, if paid before the due date of filing return would be allowable as a deduction in the same previous year.

Analysis

4.5-3 The substitution of the proviso is likely to create a difficulty. To illustrate, an assessee had deducted tax at source in February 2009 but paid in April 2009. As per the provision, prior to the amendment, since the TDS was paid in April 2009, the expenditure from which it was deducted was allowable in the subsequent financial year, that is, 2009-10, relevant to assessment year 2010-11.

However, the said proviso is substituted and as per the new proviso, any payment (in respect of delayed payment) after due date of filing return is allowable in the subsequent financial year. Accordingly, in the above case, *prima facie,* although the amount is paid, it would not be allowable. The result of the substitution of the proviso, it appears, is not intended.

There could be two possible contentions in favour of the allowance of the expenditure.

Contention 1 : The right to claim the expenditure in the subsequent financial year 2009-10 relevant to the assessment year 2010-11 has accrued to the assessee in terms of the proviso prior to substitution. Accordingly, in the instance considered in illustration, the allowance is still governed by the proviso substituted.

Contention 2 : However, if it is considered that the amendment made by the Finance Act, 2010 is retrospective in nature having regard to the Supreme Court decisions in *Allied Motors (P.) Ltd.* v. *CIT* [1997] 224 ITR 677/91 Taxman 205 and *CIT* v. *Alom Extrusions Ltd.* [2009] 185 Taxman 416 (SC), then, the aforesaid situation may not arise and it could be argued that the payment made in April 2009 is before the due date of filing the return of income for the financial year 2008-09, and hence, it is allowable in computing the income of the same previous year relevant to assessment year 2009-10.

In that case, an assessee having a situation similar to the one considered in the illustration, he will have to take care to make a claim in assessment year 2009-10, by revising the return of income or otherwise.
An amendment similar to the one discussed above in section 40(*a*)(*ia*) is not carried out in section 40 (*a*)(*i*) of the Act, which disallows a payment to a non-resident, in respect of expenditure, on account of non-deduction or after deduction, non-payment of the tax deducted.

Amendment in definition of actual cost for businesses referred to in section 35AD

4.6 Section 43(*1*) was amended with effect from assessment year 2010-11 by inserting *Explanation 13* to provide that the actual cost of any capital asset on which deduction has been allowed or is allowable to an assessee under section 35AD, shall be treated as ***nil.***
(*a*) in the case of such assessee; and
(*b*) in any other case, if the capital asset is acquired or received,
(*i*) by way of gift or will or in irrevocable trust; or
(*ii*) on any distribution on liquidation of the company; and
(iii) by such mode of transfer as is referred to in section 47(i)/(iv)/(v)/(vi)/(vib)/(xiii)/ (xiv).
The aforesaid section has been amended with effect from assessment year 2011-12 to cover cases falling under section 47(*xiiib*).

To illustrate, if a company carrying on a specified business is converted into an LLP pursuant to which an asset referred to in section 35AD vests in the LLP, then the actual cost of such asset for the LLP shall be *nil* for the purpose of computation of business income. However, so far as the cost of acquisition for capital gains is concerned, it will be the actual cost to the company (*see* **para 2.8**).

The *Explanation* refers to such mode of transfer as is referred to in clause (*xiiib*) of section 47; unlike some other sections [*see* section 35DDA (4A)], it does not provide that the transfer should fulfil the conditions laid down in the proviso to section 47(*xiiib*). It appears that the *Explanation* would apply whether or not the conditions are fulfilled.

Actual cost in case of conversion of a company into LLP

4.7 *Explanation 2C* has been inserted in section 43(*6*) with effect from assessment year 2011-12 to provide that the actual cost of the block of assets in the case of the successor LLP shall be the written down value of the block of assets as in the case of the predecessor company on the date of conversion.

4.7-1 Analysis

(*a*) The placement of the *Explanation* is along with the *Explanations* relating to the computation of written down value. However, strangely, it provides for computation of actual cost for the LLP. It appears that the WDV of the company should be the WDV of the LLP as on the date of conversion.

(*b*) *Illustration*

a. WDV as on 1-4-2010	1000
b. Rate of depreciation	15%

c. Depreciation for the full year 2010-11 as if conversion had not taken place (a — b)	150
d. Pro rata depreciation to the company (say 50%)	75
WDV for the LLP (a - d)	925

(*c*) If there is any change in the depreciation claimed by the company as a result of its assessments, the WDV of the assets would change and consequently this would require redetermination of the WDV of the assets of the LLP. To explain, in the illustration given above, if pursuant to the assessment of the company, the aggregate WDV of its block of assets is increased to Rs. 1,100, the WDV for the LLP would increase to Rs.1,017.50 from Rs. 925.
[1100 - (50% of 15% of 1,100)].
(*d*) The *Explanation* applies to block of assets **transferred** by a company : it is a moot point whether a conversion results in a transfer (*see* **para 2.2**).
(*e*) If the conversion does not fulfil the conditions in section 47(*xiiib*), the *Explanation* would not apply. In that case, what would be the WDV for the LLP? Section 43(*6*)(*a*) provides that in the case of assets acquired in a previous year WDV means the actual cost to the assessee. Thus, one will have to determine the actual cost to the LLP, which is defined in section 43(*1*) as actual cost of the assets to the assessee as reduced by the amount of cost met by any other person.

According to one view, the value at which the assets are transferred to the LLP should be taken as the actual cost in the case of LLP for purposes of depreciation.

According to the other view, the WDV of the company should be regarded as the WDV for the LLP, notwithstanding that the conversion does not satisfy the conditions of section 47(*xiiib*). This is because in the case of a statutory vesting from the company to the LLP there is no transfer : there is a succession and for all practical purposes the assessee should be regarded as the same. Further, the case of an assessee who does not comply with the conditions in section 47(*xiiib*) cannot be better than the case of an assessee who complies with the conditions. Again, the interpretation of the fifth proviso to section 32 also becomes relevant. On a literal reading, the said proviso states that in case of a succession, the depreciation in **any** previous year would be calculated as if the succession had not taken place. Hence, applying the literal reading of proviso, the revenue authorities could contend that depreciation to LLP should be calculated as if the conversion did not take place which would mean that the WDV of the company should be regarded as the WDV of the LLP.

The matter is not free from doubt : while the first view appears to be legally possible, the matter would be highly litigatious.
(*f*) The *Explanation* provides that it is applicable to a case of conversion and the conditions specified in the proviso to section 47(*xiiib*) are satisfied by the conversion.

What happens if the conditions are satisfied on the date of conversion, but are not fulfilled subsequently? There could be three views on this : On a literal reading it appears that the satisfaction of the conditions have to be seen on the date of conversion and the WDV of the company on the date of conversion would continue to be the WDV of the LLP, even if some of the conditions are not fulfilled in a subsequent year (also *see* **para 2.9** regarding distinction in the Act regarding initial satisfaction of conditions and subsequent non-fulfilment of conditions).

This view is supported by the decision in *Dalmia Ceramic Industries Ltd.* v. *CIT* [2005] 277 ITR 219/144 Taxman 669 (Delhi). In this case, the assessee purchased buildings from its holding company in the previous year relevant to the assessment year 1975-76. The assessee had shown in the books of account the original cost to it. For tax purposes, it being a subsidiary company, it had shown the value of machinery as well as non factory buildings at the WDV of the holding company. However, for assessment year 1976-77, the assessee was no more a subsidiary company and it contended that it was required to show the amount paid by it as the actual cost as per section 43(*1*) of the Act, and, was entitled to get depreciation on that value year to year. It was held that in view of *Explanation 6* to section 43(*1*), the WDV of the holding company had to be taken as the actual cost to the assessee and not the amount paid by the assessee to the holding company and the actual cost once determined under section 43(*1*) read with *Explanation 6*, would remain the same for the assessee.

The second view is that the *Explanation* is applicable till the year in which the conditions are satisfied and in the year in which the conditions are not satisfied, it would cease to apply and the WDV should be recomputed with prospective effect on the basis of the amounts paid. This view is based on the rationale that the restriction on WDV is imposed only because the conversion is exempt from capital gains and if the exemption is withdrawn subsequently, the restriction should no longer apply and the value at which the assets are transferred should be the actual cost for the LLP.
The third view is that the *Explanation* ceases to apply with retrospective effect from the year of conversion. To the extent the depreciation can be reworked for the past years it should be done and the difference between the actual cost and the additional depreciation granted in earlier years should be added to the written down value.
To illustrate :

(*a*) WDV of the company adopted as WDV of the LLP	: 1000
(*b*) Rate of depreciation	: 10%
(*c*) Depreciation	
In Year 1	100
In Year 2	90
(*d*) Year in which conditions in 47(*xiiib*) are not fulfilled	: 3rd
(*e*) Actual cost of assets to the LLP	: 5000

If re-computation of depreciation is not possible in year 1 and year 2, the revised WDV in year 3 would be : Rs. 4,810 [Rs. 5,000 *less* Rs. 100 *less* Rs. 90]
The matter is not free from doubt.

Taxation of non-resident providing services in connection with mineral oil industry [Sections 44BB and 44DA]

4.8 Section 44BB(*i*) provides that income of a non-resident taxpayer who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire, used in the prospecting for, or extraction or production of, mineral oils is computed @ 10% of the aggregate of the amount paid to him.
The proviso to section 44BB(1) provides that section 44BB would not apply in a case where the provisions of section 44D or section 115A apply.
The proviso to section 44BB(1) has been amended with effect from assessment year 2011-12 to provide that section 44BB would not apply in a case where the provisions of section 44DA apply. Simultaneously, a proviso has been inserted in section 44DA to provide that the provisions of section 44BB shall not apply to the income covered under section 44DA.

Analysis

4.8-1 Under section 44D, income by way of royalty or fees for technical services received by a non-resident company from the Government or an Indian concern under an agreement made on or after 1- 4-1976 but before 1-4-2003 is computed on a gross basis without any deduction for any expenditure or allowance.

Section 44DA provides the procedure for computing income of a non-resident, including a foreign company, by way of royalty or fee for technical services, in case the right, property or contract giving rise to such income are effectively connected with the permanent establishment of the said non-resident. This income is computed as per the books of account maintained by the assessee.

Section 115A provides the rate of taxation in respect of income of a non-resident, including a foreign company, in the nature of royalty or fee for technical services, that is, income in the nature of royalty and fee for technical services which is not connected with the permanent establishment of the non-resident.

On a plain reading of the provisions of sections 44BB and 44DA (prior to the amendment of section 44BB), if the income of a non-resident is in the nature of fee for technical services and if the condition of section 44DA do not apply, it shall be taxable by applying the provisions of section 44D. On the other hand, if the conditions of section 44DA apply, it could be taxed under section 44BB (since the proviso did not expressly cover section 44DA). Further, in a ruling in *Geofizyka Torun Sp.* 30.0 (AAR No. 813/2009), AAR has taken the view that section 44BB being a specific and special provision providing for computation of income arising from such services rendered in connection with the prospecting for or exploration of mineral oil, such income has to be computed under that section and section 44DA cannot be applied in preference to section 44BB even if the income partook the characteristics of fees for technical service within the meaning of *Explanation 2* to section 9(1)(*vii*). This was subsequently followed by AAR in *Wavefield Insers ASA, In re* [2010] 2 taxmann.com 21 (AAR)

The Memorandum explaining the provisions of the Finance Bill, 2010 states as follows:
Combined effect of the provisions of sections 44BB, 44DA and 115A is that if the income of a non-resident is in the nature of fee for technical services, it shall be taxable under the provisions of either section 44DA or section 115A irrespective of the business to which it relates. Section 44BB applies only in a case where consideration is for services and other facilities relating to exploration activity which are not in the nature of technical services.

However, owing to judicial pronouncements, doubts have been raised regarding the scope of section 44BB *vis-a-vis* section 44DA as to whether fee for technical services relating to the exploration sector would also be covered under the presumptive taxation provisions of section 44BB.

In order to remove doubts and clarify the distinct scheme of taxation of income by way of fee for technical services, the proviso to section 44BB has been amended with effect from assessment year 2011-12 so as to exclude the applicability of section 44BB to income which is covered under section 44DA. Similarly, section 44DA is also proposed to be amended with effect from assessment year 2011-12 to provide that provisions of section 44BB shall not apply to the income covered under section 44DA.

As a result of the amendment
(*a*) FTS will be taxed under section 44D/44DA
(*b*) Other consideration will be taxed under section 44BB.

No deduction under section 35AD if deduction under Chapter VIA is claimed
4.9 Section 80A(7) has been inserted with effect from assessment year 2011-12 to provide that where deduction under any provision of Chapter VI-A under the heading *C-Deductions in respect of certain incomes* is claimed and allowed in respect of profits of any of the specified business referred to in section 35AD(8)(*c*) for

any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year.
In such a case, the profits eligible for deduction under Chapter VI-A, should be recomputed as profits before any deduction under section 35AD.

To illustrate:

Profits before deduction under section 35AD	100
Amount eligible for deduction under section 35AD	30
Profits after section 35AD	70

In the above case if a deduction is claimed under Chapter VI-A such claim could be made with reference to profits of 100 (before deduction under section 35AD) and not 70.

Tax audit turnover limit [Section 44AB]

4.10 An assessee is liable to tax audit under section 44AB of the Act, if, *inter alia*:

- his total sales, turnover or gross receipts, as the case may be, in business carried on Profits before deduction under section 35AD 100
- Amount eligible for deduction under section 35AD Profits after section 35AD exceeds Rs. 40 lakhs, in any previous year; or
- his gross receipts in profession carried on exceed Rs. 10 lakhs, in any previous year.

The Finance Act, 2010 has amended section 44AB, with effect from 1-4-2011, that is, assessment year 2011-12 (relevant to the previous year 2010-11) to increase the above limits as follows:

- **In case of business, the revised limit is Rs. 60 lakhs; and**
- **In case of profession, the revised limit is Rs. 15 lakhs.**

Accordingly, an assessee would be liable to tax audit from assessment year 2011-12 and thereafter, if:

- his total sales, turnover or gross receipts as the case may be, in business carried on exceeds Rs. 60 lakhs, in any previous year; or
- his gross receipts, in profession carried on exceed Rs. 15 lakhs, in any previous year.

The liability to tax audit or the turnover limit specified in section 44AB of the Act, in case of an individual or a HUF, is also relevant for determining his or its liability to deduct tax at source under section 194C or 194H or 194-I or 194J of the Act.

Section 194C of the Act obliges an individual or a HUF to deduct tax at source if he or it was liable to tax audit of accounts during the financial year immediately preceding the financial year in which the sum is credited or paid to the account of the contractor. Accordingly, in case of an individual or a HUF, if he or it was liable to tax audit during the financial year 2009-10 (based on the turnover limit of Rs. 40 lakhs or Rs. 10 lakhs, as the case may be), during the financial year 2010-11, he or it would be liable to deduct tax at source under section 194C of the Act.

Section 194H or 194-I or 194J of the Act, while obliging an individual or a HUF to deduct tax at source in similar circumstances employ a different language, which reads as follows:

"an individual or a Hindu undivided family, whose total sales from the business or profession carried on by him exceed the monetary limit specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum by way of fees is credited or paid, shall be liable to deduct income tax under the section."

Based on the above language, a question arises which limit shall be applied? The one applicable during the preceding financial year, that is, 2009-10 of Rs. 40 lakhs or Rs. 10 lakhs, as the case may be, or the one applicable from the financial year 2010-11 of Rs. 60 lakhs or Rs. 15 lakhs, as the case may be.

It appears that the limit as applicable to the preceding financial year should be applied. The limits are specified only for the purposes of determining the liability to tax audit during a particular financial year. The objective behind such proviso is to make an individual or a HUF liable to deduct tax at source, if he or it is liable to tax audit. Having regard to that, it is difficult to interpret the proviso in a manner to say that the newly specified limit should be applied to the preceding financial year (during which the old limits applied). A different view may entail non-allowance of the expenditure under section 40(*a*)(*ia*) of the Act.

Increase in turnover limit for taxation of small business on presumptive basis [Section 44AD]

4.11 Section 44AD of the Act (effective from assessment year 2011-12) lays down the scheme for taxation of Small-business on presumptive basis. Presently, the scheme is applicable to any business having a maximum turnover or gross receipts of Rs. 40 lakhs.

The Finance Act, 2010 has amended the provision to revise the limit to Rs. 60 lakhs, with effect from 1-4-2011, that is, assessment year 2011-12.

Accordingly, any assessee having a small-business (in terms of the provision) having a turnover not exceeding Rs. 60 lakhs in the previous year to end on 31-3-2011, he would be eligible for the scheme of presumptive taxation, as per the provision. For the purpose, presumptive amount of profit is 8% of revenue. Accordingly, assuming a turnover of Rs. 60 lakhs, the presumptive amount of profit would be Rs. 4.8 lakhs.

Source: Taxman.com

Note:

Friends, In case of any query , please feel free to mail your query to " bikashbogi@yahoo.co.in". or contact me at +91-9930934403 .

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Success is not the matter of being the BEST & WINNING the race: Success is a matter of HANDLING the WORST & FINISHING the Race.