SUPER SUMMARY OF INCOME TAX

AGRICULTURAL INCOME

PARTICULARS	SECTIONS
Definition of agricultural income	**2(1A)**
• Rent or revenue derived from agricultural land	**2(1A)(a)**
• Income derived from agricultural land by agricultural operations	**2(1A)(b)**
• Income of a farm building	**2(1A)(c)**
Exemption of agricultural income	**10(1)**
Income which is partially agricultural and partially from business	**Rule 7**
Income from growing and manufacturing of rubber	**Rule 7A**
Income from growing and manufacturing of coffee	**Rule 7B**
Income from growing and manufacturing of tea	**Rule 8**

Question 1. [V. Imp.] Explain meaning of agricultural income.
Answer:
Meaning of Agricultural Income Section 2(1A)
The term Agricultural Income is defined in three parts under Income Tax Act under section 2(1A) (a), 2(1A) (b), 2(1A) (c) as given below:

Income from leasing out of agricultural land Section 2(1A) (a)
Any rent or revenue derived from land which is situated in India and is used for agricultural purposes, shall be considered to be agricultural income.

Example
Mr. X has ten acres of agricultural land in India which is given on lease at a rent of ` 2,00,000. It will be considered to be agricultural income.

If rent is received in kind, still it will be considered to be agricultural income.

If rent to be received is in arrears and accordingly interest has been received, such interest shall not be considered to be agricultural income, rather it is his income under the head other sources.

If the agricultural land is situated outside India, income from agricultural land is taxable as income from other sources.

Income from Agricultural Operations Section 2(1A)(b)
Any income derived from such land by—

(i) Agriculture; or

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

(iii) The sale by a cultivator or receiver of rent-in-kind of the produce raised or
Received by him, in respect of which no process has been performed other than a marketing process.

Meaning of Agriculture
The term agriculture and agricultural purposes has not been defined under Income Tax Act, accordingly its

meaning has been explained in the following case:

CIT v Raja Benoy Kumar Sahas Roy, (1957) 32 ITR 466 (SC)
Agriculture shall include the following two main operations:

1. Basic Operations:
In order to constitute agriculture, there must be some basic operations like expenditure of human skill and labour upon the land to make it fit for agricultural purposes, like ploughing of land, sowing of seeds, planting and similar kind of operations on the land.

2. Subsequent Operations:
After carrying out basic operations, there must be subsequent operations like **weeding, digging the soil around the growth, removal of undesirable undergrowth, watering of the plant at regular intervals, using pesticides to protect the crop** etc.

If there are basic and subsequent operations, it will be considered to be agricultural income even if what is produced is not food grains, example:

(i) If a person is growing betel, coffee, tea, spices etc through basic and subsequent operations, it will be agricultural income.
(ii) If a person is growing commercial crops like cotton, flax, jute, indigo etc. through basic and subsequent operations, it will be considered to be agricultural income.
(iii) If a person is growing trees like Sal, Seesam, Sangwan etc for obtaining timber, it will be considered to be agricultural income, provided there are basic and subsequent operations.

Process employed by a cultivator to make the crop fit to be taken to the market (marketing operations /marketing process):
Sometimes a cultivator may not get the ready market to sell the crop in the form in which it was grown, rather some essential processes are required to be carried out to make the crop fit for sale. In such cases, the income shall continue to be agricultural income.

Example
Threshing is done in case of wheat crop to render it fit for sale, similarly, tobacco leaves are dried to make them fit for sale. In all such cases, it will continue to be agricultural income. Other such processes may be winnowing, cleaning, crushing etc.

Income which is partially agricultural and partially from business Rule 7
If agricultural produce can be sold in the market without employing any ordinary process, but still the assessee has employed some process, it will be called industrial process and income shall be computed as per rule 7.

It will be presumed that the assessee has sold the agricultural produce to the industrial unit at the market price and agricultural income shall be computed accordingly.

While computing the income of industrial unit, such market price shall be considered to be cost of raw material.

Example
Mr. X is engaged in growing of sugarcane and also has a sugar factory. He has incurred expenses of `3,00,000 in connection with growing of sugarcane crop. Entire sugarcane crop was transferred to the industrial unit when market price of sugarcane was ` 10,00,000. In this case, agricultural income of Mr. X shall be ` 7,00,000. While computing income of sugar factory, ` 10,00,000 shall be debited to profit and loss account as the cost of raw material.

Where agricultural produce is not ordinarily sold in the market in its raw state, and accordingly market value is not available, in that case, the expenses of cultivation and also any other expenses permitted by the Assessing Officer shall be allowed to be debited to profit and loss account of the industrial unit as the cost of raw material.

Example

Mr. B grows sugarcane and uses the same for the purpose of manufacturing sugar in his factory.
50% of sugarcane produce is sold for `10 lacs, and the cost of cultivation of such sugarcane is `3 lacs.
The cost of cultivation of the balance sugarcane (50%) is 3 lacs and the market value of the same is `10 lacs.
After incurring `1.5 lacs in the manufacturing process on the balance sugarcane, the sugar was sold for `25 lacs.
Compute B's business income and agricultural income.

Solution:

Agricultural income = Actual sale of sugarcane + Market value of sugarcane transferred to the manufacturing unit – Cost of cultivation
= [`10 lacs + `10 lacs] – [`3 lacs + `3 lacs]
= `20 lacs – `6 lacs
= `14 lacs

Business income = Sales – Market value of 50% of sugarcane produce – Manufacturing expenses
= `25 lacs – 10 lacs – 1.5 lacs
= 13.5 lacs

Computation of income in case of growing and manufacturing of Rubber Rule 7A

Income derived from the sale of centrifuged latex or cenex, manufactured from rubber plants grown by the seller in India shall be computed as if it were income derived from business and 35% of such income shall be deemed to be income liable to tax.

Computation of income from the growing and manufacturing of Coffee Rule 7B

Income derived from the sale of coffee grown and cured by the seller in India shall be computed as if it were income derived from business, and 25% of such income shall be deemed to be income liable to tax.

Income derived from the sale of coffee grown and manufactured by the seller in India, with or without mixing of chicory or other flavouring ingredients, shall be computed as if it were income derived from business, and 40% of such income shall be deemed to be income liable to tax.

Computation of income in case of persons Growing and Manufacturing Tea Rule 8

In case of persons who are growing as well as manufacturing tea, income shall be computed as if it was income derived from business and 40% of such income shall be deemed to be income liable to tax.

Dividends received by a shareholder from the company having agricultural income

If any shareholder has received dividend from a company having income from agricultural activities, such income shall not be considered to be agricultural income rather it will be considered to be dividend income. However, if the company paying dividend is an Indian company, dividend shall be exempt under section 10(34) and the company has to pay additional income tax under section 115-O @ 15% plus surcharge @ 5% plus EC @ 3%.

If it is a foreign company, its agricultural income in India shall also be exempt and if the company has paid dividend, it will be taxable in the hands of the shareholder and the company shall be exempt from additional income tax.

Share received by a partner out of the profits of the partnership firm having Agricultural Activities

If any partner has received share from a partnership firm having income from agricultural activities, it will not be considered to be agricultural income in the hands of the partner rather it will be considered to be his income exempt from tax under section 10(2A)

Section 10(2A) In the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm is exempt from tax.

CIT v. R.M. Chidambaram Pillai, (1977) (SC)
If any partner has received any salary or interest on capital from the firm having agricultural activities, it will be considered to be his agricultural income u/s 10(1).

Income derived from animal husbandry, fisheries, poultry farming, dairy farming etc. shall not be considered to be agricultural income.

Income derived from saplings or seedlings growing in a nursery shall be considered to be agricultural income.

Income from sale of agricultural land shall not be considered to be agricultural income rather it will be considered to be capital gain.

Illustration 1: Mr. Sony has estates in rubber, tea and coffee. He derives income from them. He has a nursery wherein he grows and sells the plants. For the previous year ending 31.03.2013, he furnishes the following particulars of his income from estates and sale of plants. You are requested to compute the taxable income and tax liability for the assessment year 2013-14:

	`
(i) Growing and manufacturing of rubber	5,00,000
(ii) Sale of coffee grown and cured	3,50,000
(iii) Growing and manufacturing of tea	7,00,000
(iv) Sale of plants from nursery	1,00,000

He has long term capital gain on the sale of agricultural land in Delhi `3,13,500. He has received rent of `7,000 p.m. by letting out one farm house near Delhi and he has incurred `20,000 on the repairs of the farm house. He has not paid municipal taxes for the last ten years in connection with farm house and MCD has issued him a notice for selling of farm house, hence he has paid municipal tax of `90,000.

Solution:

	Agricultural Income	**Business Income**
(a) Income from growing and manufacturing of Rubber {Rule 7A} [Agricultural income 65% and business income 35%]	3,25,000	1,75,000
(b) Income from Coffee grown and cured {Rule 7B} [Agricultural income 75% and business income 25%]	2,62,500	87,500
(c) Income from growing and manufacturing of Tea {Rule 8} [Agricultural income 60% and business income 40%]	4,20,000	2,80,000
(d) Income from growing and selling of plants	1,00,000	----------
Total	**11,07,500**	**5,42,500**

Computation of Income under the head House Property	`
Gross Annual Value (7,000 x 12)	84,000.00
Less: Municipal Taxes	90,000.00
Net Annual Value	(6,000.00)
Less: 30% of NAV u/s 24(a)	Nil
Less: Interest on capital borrowed u/s 24(b)	Nil
Loss under the head House Property	(6,000.00)

In this case loss of `6,000 can be set off either from long term capital gain or from business income, if loss is set off from Long term capital gain, there is tax saving of `6,000 x 20% = `1,200 and if it is set off from normal income, there is tax saving of `6,000 x 30% = `1,800, hence it is beneficial to set it off from business income hence after set off, business income shall be

5,42,500 – 6,000 =	5,36,500.00

Computation of Total Income

Income under the head Business/Profession	5,36,500.00
Income under the head Capital gain (LTCG)	3,13,500.00
Gross Total Income	8,50,000.00
Less: Deduction under section 80C to 80U	Nil
Total Income	8,50,000.00

Computation of Tax Liability

Tax on total of Agricultural + non-agricultural income (11,07,500 + 5,36,500)	3,23,200.00
Tax on 2,00,000 + agricultural income (2,00,000 + 11,07,500)	2,22,250.00
Tax on Normal Income (3,23,200 – 2,22,250)	1,00,950.00
Tax on long term capital gain `3,13,500 @ 20% u/s 112	62,700.00
Tax before education cess	1,63,650.00
Add: Education cess @ 2%	3,273.00
Add: SHEC @ 1%	1,636.50
Tax Liability	1,68,559.50
Rounded off u/s 288B	1,68,560.00

Income from a Farm Building Section 2(1A)(c)

If any building is in the agricultural field or is very near to the agricultural field and it is being used for storing agricultural produce or for storing agricultural implements or it is being used as dwelling unit by the farmer himself, such building is called farm building and its income shall be computed as per provisions given under the head house property and income shall be considered to be agricultural income.

Such building must be in the rural area. If it is in the urban area, it should be constructed on the land which has been classified as agricultural land.

A farm house shall not be considered to be farm building and income of farm house shall be taxable.

Judicial Decisions

CIT v. B. Gupta (Tea) Private Ltd., (1969) (Cal)

Compensation received from an insurance company on account of damage caused to the crops is agricultural income.

Mustafa Ali Khan (Raja) v. CIT, (1948) (PC)

Income from sale of forest trees, wild grass etc without involving basic and subsequent operations is not agricultural income.

Venkataswamy Naidu (R.), (1956) (SC)

Income from butter and cheese making is not agricultural income.

Sri Ranga Vilas Ginning & Oil Mills v. CIT, (1982) (Mad)

Income from supplying surplus water to other agriculturists is not agricultural income.

CIT v. New Ambadi Estates Ltd., (1967) (SC)

Harvest crops on purchased land is not agricultural income.

Brihan Maharashtra Sugar Syndicate Ltd v. CIT, (1946) (Bom)

Process of converting sugarcane into gur shall not be considered to be ordinary process to make the

agricultural produce fit for sale, accordingly income is partly agricultural and partly non-agricultural.
K. Lakshmansa & Co. v CIT, (SC)
If the assessee was growing mulberry leaves, feeding them to silkworms and obtaining silk cocoons, income from sale of silk cocoons would not be agricultural income.

Illustration 2: Mr. X is employed in MP Agricultural University and getting basic pay `20,000 p.m. He claims that it is his agricultural income. Discuss.

Solution:
Income from an agricultural university cannot be considered to be agricultural income rather it is his income under the head salary.

Illustration 3: Mr. X has sold his agricultural land in Delhi and there are long term capital gains of `10,00,000. Mr. X claims it to be his agricultural income. Discuss.

Solution:
Income from sale of agricultural land cannot be considered to be agricultural income and accordingly it is chargeable to tax under the head capital gains.

Illustration 4: Mr. X holds shares in ABC Ltd., an Indian Company, which is engaged in agricultural operations. He has received dividends of `1,20,000 from ABC Ltd. and claims that it is his agricultural income. Discuss.

Solution:
Dividend from a company which is engaged in agricultural operations cannot be considered to be agricultural income rather it is dividend income of the recipient. However, dividend income is exempt from tax under section 10(34).

PRACTICE PROBLEMS
TOTAL PROBLEMS 6

Problem 1.

Mr. X (non-resident, aged 68 years) has incomes as given below:

(i) Income under the head Salary `3,00,000
(ii) Income under the head House Property `1,20,000
(iii) Income from long term capital gains `50,000
(iv) Casual income `30,000
(v) Agricultural income `60,000
(vi) Deductions under section 80D to 80U `1,40,000
(vii) He has invested `40,000 in Kisan Vikas Patra, `20,000 in equity shares of infrastructure development companies.

Compute his total income and tax liability for the assessment year 2013-14.

Answer: Total Income: `3,40,000; Tax Liability: `25,750

Problem 2.

Mrs. X (aged 58 years) has income and losses as given below:

(i) Income from growing and manufacturing of Rubber `3,00,000
(ii) Income from growing and curing coffee `2,00,000
(iii) Income under the head Salary `2,40,000
(iv) Loss under the head House Property `1,00,000
(v) Income from short term capital gains `40,000
(vi) Income from long term capital gains `50,000
(vii) Casual income `60,000

Compute her total income and tax liability for the assessment year 2013-14.

Answer: Total Income: `4,45,000; Tax Liability: `56,650

Problem 3.

Mrs. X (resident but not ordinarily resident) have incomes as given below:

(i) Income from growing and manufacturing of Tea in India `10,00,000
(ii) Income from house property situated outside India `3,50,000, received outside India.
(iii) Income from agriculture in Nepal `1,50,000, received in India
(iv) Income from business in Paris, which was set up in India and income is received in Paris `1,00,000

Compute her total income and tax liability for the assessment year 2013-14.

Answer: Total Income: `5,50,000; Tax Liability: `87,550

Problem 4.

Mr. X (resident but not ordinarily resident) have incomes and losses as given below:

(i) Loss from house I in India `80,000
(ii) Income from house II in India `1,00,000
(iii) Carried forward loss assessment year 1998-99 from house III in India `50,000
(iv) Income under the head Business/Profession in India `2,20,000
(v) Royalty received in the UK for use of formula in U.K. `30,000
(vi) Long term capital gains in India `1,00,000
(vii) Income from agriculture in Indonesia but received in India and subsequently invested it in Indonesia `50,000

(viii) Income from agriculture in India `2,00,000

Compute his total income and tax liability for the assessment year 2013-14.

Answer: Total Income: `3,90,000; Tax Liability: `29,870

Problem 5.

A partnership firm XY has agricultural income `2,00,000, income under the head business/profession `1,00,000 and long term capital gains `10,000.

Compute its tax liability for the assessment year 2013-14.

Answer: Tax Liability: `32,960

Problem 6.

A partnership firm Z & Co. has agricultural income `20,00,000 and its partner Mr. Z has received `5,00,000 being his share in the profits of partnership. Mr. Z has income under the head house property `2,25,000.

Compute tax liability of the partnership firm and also that of Mr. Z.

Answer: Tax Liability: Partnership Firm: Nil; Mr. Z: `2,580

SOLUTIONS

TO

PRACTICE PROBLEMS

Solution 1:

	`
Income under the head Salary	3,00,000
Income under the head House Property	1,20,000
Income under the head Capital Gains (LTCG)	50,000
Income under the head Other Sources (Casual Income)	30,000
Gross Total Income	5,00,000
Less: Deduction u/s 80C	20,000
Less: Deduction u/s 80D to 80U	1,40,000
Total Income	3,40,000
Agricultural income	60,000

Computation of Tax Liability

Tax on (agricultural income + non agricultural income)	
i.e. Tax on 3,20,000	12,000
Tax on (agricultural income + 2,00,000)	6,000
Tax on normal income (12,000 – 6,000)	6,000
Tax on Long term capital gain `50,000 @ 20% u/s 112	10,000
Tax on casual income `30,000 @ 30% u/s 115BB	9,000
Tax before education cess	25,000
Add: Education cess @ 2%	500
Add: SHEC @ 1%	250
Tax Liability	25,750

Note: Benefit of the slab rate for senior citizen is not available to non-resident assessee.

Solution 2:

	Agricultural Income	**Business Income**
Income from growing and manufacturing of Rubber {Rule 7A}		
Agricultural income 65% and business income 35%	1,95,000	1,05,000
Income from Coffee grown and cured {Rule 7B}		
Agricultural income 75% and business income 25%	1,50,000	50,000
Total	3,45,000	1,55,000

Option I

House property loss can be set off from normal income

	`
Income under the head Salary	2,40,000
Loss under the head House Property	(1,00,000)
Income under the head salary after adjusting house property loss	1,40,000
Income under the head Business/Profession	1,55,000
Income under the head Capital Gains	
Short term capital gains	40,000
Long term capital gains	50,000
Income under the head Other Sources (Casual Income)	60,000
Gross Total Income	4,45,000
Less: Deductions u/s 80C to 80U	Nil
Total Income	4,45,000
Agricultural income	3,45,000

Computation of Tax Liability

Tax on (agricultural income + non-agricultural income)

i.e. Tax on 6,80,000	66,000
Tax on (agricultural income + 2,00,000)	39,000
Tax on normal income (66,000 – 39,000)	27,000
Tax on Long term capital gain `50,000 @ 20% u/s 112	10,000
Tax on casual income `60,000 @ 30% u/s 115BB	18,000
Tax before education cess	55,000
Add: Education cess @ 2%	1,100
Add: SHEC @ 1%	550
Tax Liability	56,650

Option II

<u>House property loss can be set off from LTCG</u>	`
Income under the head Capital Gains (LTCG)	50,000
Loss under the head House Property	50,000
Income under the head Capital Gains (LTCG) after adjusting house property loss	Nil
Income under the head Capital Gains (STCG)	40,000
Income under the head Salary	2,40,000
Loss under the head House Property	50,000
Income under the head salary after adjusting house property loss	1,90,000
Income under the head Business/Profession	1,55,000
Income under the head Other Sources (Casual income)	60,000
Gross Total Income	4,45,000
Less: Deduction u/s 80C to 80U	Nil
Total Income	4,45,000
Agricultural Income	3,45,000

Computation of Tax Liability

Tax on (agricultural income + non-agricultural income)	
i.e. Tax on 7,30,000	76,000
Tax on (agricultural income + 2,00,000)	39,000
Tax on normal income (76,000 – 39,000)	37,000
Tax on casual income `60,000 @ 30% u/s 115BB	18,000
Tax before education cess	55,000
Add: Education cess @ 2%	1,100
Add: SHEC @ 1%	550
Tax Liability	56,650

Tax liability is same in both the options. Therefore, house property loss can be set off either from income of normal business or from income of long term capital gain.

<u>Solution 3:</u>

	Agricultural Income	**Business Income**
Income from growing and manufacturing of Tea {Rule 8}		
Agricultural income 60% and business income 40%	6,00,000	4,00,000
Total	6,00,000	4,00,000

	`
Income under the head business/Profession	4,00,000
Income from agriculture in Nepal but received in India	1,50,000
Income under the head Other Sources	1,50,000
Gross Total Income	5,50,000
Less: Deductions u/s 80C to 80U	Nil

Total Income	5,50,000
Agricultural income	6,00,000

Computation of Tax Liability

Tax on (agricultural income + non-agricultural income)	
i.e. Tax on 11,50,000	1,75,000
Tax on (agricultural income + 2,00,000)	90,000
Tax on normal income (1,75,000 – 90,000)	85,000
Add: Education cess @ 2%	1,700
Add: SHEC @ 1%	850
Tax Liability	87,550

<u>Solution 4:</u>	`
Income from House II	1,00,000
Loss from House I	80,000
Income under the head House Property	20,000
Income under the head Business/Profession	2,20,000
Income under the head Capital Gains (LTCG)	1,00,000
Income under the head Other Sources	
{Income from agriculture in Indonesia, received in India}	50,000
Gross Total Income	3,90,000
Less: Deduction u/s 80C to 80U	Nil
Total Income	3,90,000
Agricultural Income	2,00,000

Computation of Tax Liability

Tax on (agricultural income + non-agricultural income)	
i.e. Tax on 4,90,000	29,000
Tax on (agricultural income + 2,00,000)	20,000
Tax on normal income (29,000 – 20,000)	9,000
Tax on Long term capital gain `1,00,000 @ 20% u/s 112	20,000
Tax before education cess	29,000
Add: Education cess @ 2%	580
Add: SHEC @ 1%	290
Tax Liability	29,870

<u>Solution 5:</u>	`
Income under the head Business/Profession	1,00,000
Income under the head Capital Gains (LTCG)	10,000
Gross Total Income	1,10,000
Less: Deduction u/s 80C to 80U	Nil
Total Income	1,10,000
Agricultural income	2,00,000

Computation of Tax Liability

Tax on `1,00,000 @ 30%	30,000
Tax on Long term capital gain `10,000 @ 20% u/s 112	2,000
Tax before education cess	32,000
Add: Education cess @ 2%	640
Add: SHEC @ 1%	320
Tax Liability	32,960

<u>Note:</u> Partial integration is not applicable in case of a partnership firm or a company.

Solution 6:

	`
Computation of Tax Liability of Partnership firm	
Agricultural income	20,00,000
Tax liability	Nil

Computation of Tax Liability of Mr. Z	
Share of profit from partnership firm {exempt u/s 10(2A)}	Nil
Income under the head House Property	2,25,000
Gross Total Income	2,25,000
Less: Deduction u/s 80C to 80U	Nil
Total Income	2,25,000
Tax on `2,25,000 at slab rate	2,500
Add: Education cess @ 2%	50
Add: SHEC @ 1%	25
Tax Liability	2,575
Rounded off u/s 288B	2,580

EXAMINATION QUESTIONS

PCC NOV – 2011

Question 4 **(4 Marks)**

Mr. Asim, a 60 years old individual, is engaged in the business of roasting and grinding of coffee, derives income `10 lacs during the financial year 2012-13. Compute the tax payable by him assuming he has not earned any other income during the financial year 2012-13. (Modified)

Answer:

<u>Computation of income from the growing and manufacturing of Coffee</u> <u>Rule 7B</u>

Income derived from the sale of coffee grown and cured by the seller in India shall be computed as if it were income derived from business, and 25% of such income shall be deemed to be income liable to tax.

Income derived from the sale of coffee grown and manufactured by the seller in India, with or without mixing of chicory or other flavouring ingredients, shall be computed as if it were income derived from business, and 40% of such income shall be deemed to be income liable to tax.

In the given case, assessee is not engaged in growing of coffee hence entire income is business income and tax liability shall be as given below:

	`
Total income	10,00,000
Tax + EC	1,28,750

PCC MAY – 2011

Question 1 **(2 Marks)**

Mr. Anil earned `5,00,000 from sale of Coffee grown and cured (processed) by him. He claims the entire income as agricultural income, hence exempt from tax. Is he correct?

Answer.

Mr. Anil is not correct in claiming the entire income as agricultural income. As per rule 7B, in the case of income derived from the sale of coffee grown and cured (processed) by the seller in India, 25% of such income is taxable as business income under the head ‘Profits and gains from business or profession’ and the balance (i.e. 75%) is agricultural income. Hence, only ` 3,75,000 (75% of `5,00,000) being agricultural income is exempt from tax.

PCC JUNE – 2009

Question 1 **(2 Marks)**

Whether the income derived from saplings or seedlings grown in a nursery is taxable under the Income-tax Act, 1961?

Answer .

As per Explanation 3 to section 2(1A) of the Act, income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income and exempt from tax, whether or not the basic operations were carried out on land.

PE-II NOV – 2004

Question 1 **(5 Marks)**

Mr. Tony has estates in Rubber, Tea and Coffee. He derives income from them. He has also a nursery wherein he grows plants and sells. For the previous year ending 31.03.2013, he furnishes the following particulars of his sources of income from estates and sale of Plants.

You are requested to compute the taxable income and tax liability for the assessment year 2013-14.

	`
(i) Manufacture of rubber	5,00,000
(ii) Manufacture of coffee grown and cured	3,50,000
(iii) Manufacture of tea	7,00,000
(iv) Sale of plants from nursery	1,00,000

(Modified)

Answer:

	Agricultural Income	Business Income
Income from growing and manufacturing of Rubber {Rule 7A}		
Agricultural income 65% and business income 35%	3,25,000	1,75,000
Income from Coffee grown and cured {Rule 7B}		
Agricultural income 75% and business income 25%	2,62,500	87,500
Income from growing and manufacturing of Tea {Rule 8}		
Agricultural income 60% and business income 40%	4,20,000	2,80,000
Income from growing and selling of plants	1,00,000	xxxxx
Total	11,07,500	5,42,500

Computation of Tax Liability

Tax on agricultural income + non-agricultural income	3,25,000.00
Tax on agricultural income + 2,00,000	2,22,250.00
Tax before education cess (3,25,000 – 2,22,250)	1,02,750.00
Add: Education cess @ 2%	2,055.00
Add: SHEC @ 1%	1,027.50
Tax Liability	1,05,832.50
Rounded off u/s 288B	1,05,830.00

PE-II MAY – 1998

Question 2 **(9 Marks)**

From the following information, compute taxable income and tax liability of Mrs. X for the assessment year 2013-14.

	`
Income from business – letting cycles on hire	2,40,000
Sale proceeds of agricultural lands situated in a village	1,20,000
Fixed deposit interest received from companies on deposits made of sale proceeds of land	18,000
Dividends from an Indian company having rubber plantations	6,000
Salary received as a partner from a firm growing and manufacturing tea	40,000
Sale of agricultural produce	1,75,000
Payment of government tax on agricultural lands	6,000
Expenses on power, irrigation cess and farm labour	10,000
Purchase of seeds	1,000
Tractor hire charges (for agricultural operations)	2,500

Answer:

Computation of income from agriculture

Salary from firm growing and manufacturing tea	24,000
40,000 x 60% (as per decision in R.M. Chidambaram Pillai v CIT)	
Sale of agricultural produce	1,75,000
Less : Government tax	(6,000)
Power, Irrigation cess etc	(10,000)
Purchase of seeds	(1,000)

Tractor hire charges	(2,500)
Agricultural income	1,79,500

Computation of Non agricultural income :

Income from Business:	
Cycle hire charges	2,40,000
Salary from firm (non –agricultural part – 40,000 x 40%)	16,000
Other sources:	
Dividends from Plantation company – exempt u/s.10(34)	Nil
Interest on fixed deposit with companies:	18,000
Non-Agricultural Income	**2,74,000**

Computation of Tax Liability

Tax on agricultural income + non-agricultural income	
Tax on 1,79,500 + 2,74,000 at slab rate	25,350
Tax on agricultural income + `2,00,000	
Tax on 1,79,500 + 2,00,000 at slab rate	17,950
Tax liability (25,350 – 17,950)	7,400
Add: Education cess @ 2%	148
Add: SHEC @ 1%	74
Tax Liability	7,622
Rounded off u/s 288B	7,620

CLUBBING OF INCOME
(INCOME OF OTHER PERSONS INCLUDED IN ASSESSEE'S TOTAL INCOME)

SECTION 60 TO 65

PARTICULARS	SECTIONS
Transfer of income without transfer of assets	**60**
Revocable transfer of assets	**61**
Transfer irrevocable for a specified period	**62**
Transfer and revocable transfer	**63**
Income of an individual to include income of spouse, minor child etc.	**64**
Remuneration of a spouse from a concern in which the other spouse has substantial interest	**64(1)(ii)**
Income from assets transferred to the spouse	**64(1)(iv)**
Income from assets transferred to son's wife	**64(1)(vi)**
Income from assets transferred to any person for the benefit of the spouse of the transferor	**64(1)(vii)**
Income from assets transferred to any person for the benefit of son's wife of the transferor	**64(1)(viii)**
Clubbing of income of a minor child	**64(1A)**
Income from self acquired property converted to joint family property	**64(2)**
Liability of person in respect of income included in the income of another person	**65**

In general a person has to pay tax only on his own income but sometimes incomes of other persons is added to his income to charge tax from him, it is called 'clubbing of income'. Clubbing provision are applicable to check tax evasion.

Clubbing provision are applicable in the following cases: -

Transfer of income without transferring the asset   Section 60
If any person has transferred any income without transferring the asset, in such cases clubbing provision shall be applicable.

Example
Mr. Pulkit Bhatia has two deposits of `10 lakhs each and interest income of each deposit is `1.5 lakhs. He has transferred income of one of the deposit to his brother Mr. Vinay Bhatia. In this case, clubbing provision shall be applicable and income shall be taxable in the hands of Mr. Pulkit Bhatia.

Transfer of asset through revocable transfer   Section 61
If any person has transferred any asset through revocable transfer, income from that asset shall be clubbed in the income of transferor.

Example
Mr. Neeraj Gupta has transferred a deposit of `10 lakhs to his friend Mr. Surender Jaswal with the condition that the deposit can be taken back by him at any time. In this case, clubbing provision shall be applicable.

Transfer of an asset through irrevocable transfer Section 62, 63

If any person has transferred any asset through irrevocable transfer, in this case clubbing provision shall not apply. However, if the transferor has any right to interfere with the asset in any manner or has any right to derive any benefit from the asset, clubbing provision shall be applicable.

All income arising to any person by virtue of any such transfer shall be chargeable to income-tax as the income of the transferor as and when the power to revoke the transfer arises.

If any person has transferred any asset through a transfer which is not revocable during the life time of the beneficiary, in this case clubbing provision shall not apply.

Example

Mr. Saurabh Arora has transferred one asset to Mr. Nishant Tandon with the condition that the asset shall be retained by Mr. Nishant Tandon as long as he is alive and after that the asset shall be taken back by Mr. Saurabh Arora. In this case, clubbing provision shall not apply.

Meaning of revocable transfer

A transfer shall be deemed to be revocable if it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or it, in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets.

Section 64(1)(i) OMITTED

Salary income from a concern in which the spouse has substantial interest Section 64(1)(ii)

1. If any person is getting salary, commission, fee or any other remuneration whether in cash or in kind from a concern in which his or her spouse has substantial interest and further salary etc. is being received **without any technical or professional qualification**, in such case, salary etc. so received shall be clubbed in the income of the spouse having substantial interest.

If the spouse has substantial interest along with his relative, even in that case clubbing provisions are applicable.

Example

Mr. Karan Yadav is holding 11% shares of ABC Ltd. and his father is holding 10% shares in ABC Ltd. and his wife Mrs. Dipti Yadav is employed in ABC Ltd. without any technical or professional qualification, in this case, salary income of Mrs. Dipti Yadav shall be clubbed in the income of Mr. Karan Yadav.

2. Technical and professional qualification shall include not only degree or membership but also any experience or expertise or any natural talent also, as decided in **Batta Kalyani v. CIT, (1985) (AP).**

3. **As per section 2(41), Relative**, means the husband, wife, brother or sister or any lineal ascendant or descendant.

4. **As per section 2(32), Substantial Interest** means having 20% or more of the equity shares in a company or having 20% of more of the shares in profits in any other concern.

5. If husband and wife both have substantial interest either alone or alongwith their relatives in a concern and both are employed without any technical or professional qualification, in such cases salary income of both of them shall be clubbed in the income of spouse having higher income before taking into consideration the income to be clubbed. E.g. Mr. X has 8% equity shares and his brother has 3% equity shares and Mrs. X has 10% equity shares and father of Mrs. X has 4% equity shares in ABC Ltd. and Mr. X and Mrs. X both are employed without any technical or professional qualification and Mr. X is getting salary of `2,00,000 and Mrs. X is getting salary of `5,00,000 and Mr. X has income under the head house property `4,00,000 and Mrs. X has income under the head house property `1,50,000, in this case salary income of both of them shall be clubbed in the income of Mr. X.

6. If any person has substantial interest in the holding company, but the spouse is employed in the subsidiary company, in that case clubbing provision shall not apply.

<u>SECTION 64(1)(iii)</u> **<u>OMITTED</u>**

<u>TRANSFER OF ASSETS TO SPOUSE</u> **<u>SECTION 64(1)(iv) [V. IMP.]</u>**

1. If any person has transferred any asset, other than a house property to his or her spouse directly or indirectly without adequate consideration, in such cases, income of the asset shall be clubbed in the income of transferor.

2. If the asset is transferred for adequate consideration, clubbing provisions are not applicable. Similarly if the asset is transferred under an agreement to live apart, clubbing provision shall not apply.

Example

Mr. Aman Narula has transferred one deposit to his wife Mrs. Shweta Narula by charging full consideration of `10,00,000. In this case, interest income shall not be clubbed in the income of Mr. Aman Narula.

3. If there is inadequate consideration, clubbing provisions shall be applicable only with regard to the income relating to that part of the consideration which is considered to be inadequate.

Example

Mr. Arjun Aggarwal has transferred one deposit of `10,00,000 for a consideration of `7,00,000 and there is interest income of `1,00,000 from the said deposit, in this case income of `30,000 shall be clubbed.

4. In order to apply clubbing provision relationship of husband and wife must exist on the date of transfer of the asset and also on the date of accrual of income otherwise clubbing provision shall not be apply, as decided in **<u>Philip Johan Plasket Thomas v. CIT [1963] (SC).</u>**

Example

Mr. Naveen Sehgal has transferred certain assets on 01.01.2013 to his would be wife. He got married on 10.01.2013, in this case clubbing provision shall not apply.

5. If any person has transferred the asset to the spouse and the income from the asset was further invested by the spouse, in this case, any fresh income shall not be clubbed, as decided in **<u>CIT v. M. P. Birla [1983] (Bom.).</u>**e.g. Mr. X gifted certain shares to Mrs. X and Mrs. X has received bonus shares, dividend from bonus shares shall not be clubbed and also capital gains on sale of bonus shares shall not be clubbed.

6. Where the asset transferred directly or indirectly by an individual to the spouse has been invested by the transferee in any business, the income arising out of the business to the transferee in any previous year, which bears the same proportion to the income of the transferee from the business as the value of the assets aforesaid as on the first day of the previous year bears to the total investment in the business by the transferee as on the said day.

Example

Mr. Gaurav Goel has gifted `5,00,000 to his wife Mrs. Shruti Goel. She invested it in the proprietary business and there were profits of `2,00,000. In this case, entire income of `2,00,000 shall be clubbed in the income of Mr. Gaurav Goel.

<u>Illustration 1:</u> A proprietary business was started by Smt. Rani in the year 2009. As on 01.04.2011 her capital in business was `4,00,000. Her husband gifted `3,00,000, on 10.04.2011, which Smt. Rani invested in her business on the same date. Smt. Rani earned profits from her proprietary business for the financial years 2011-12, `2,50,000 and financial year 2012-13 `4,90,000.

Compute the income to be clubbed in the hands of Rani's husband for the assessment 2013-14.

Solution:

	`
Capital as on 01.04.2012 (4,00,000 + 3,00,000 + 2,50,000)	9,50,000.00
Total profits	4,90,000.00
Amount to be clubbed (4,90,000 x 3,00,000 / 9,50,000)	1,54,736.84

7. If any person has transferred the asset to the spouse and the spouse has invested it in some partnership firm as capital contribution or otherwise, in this case interest received from the partnership firm shall be clubbed in the income of the transferor, but if any salary has been received from partnership firm, it will not be clubbed. If any share has been received from the profits of partnership firm, such shares shall be exempt under section 10(2A).

8. If any person has transferred any asset to the spouse and spouse has further transferred this asset, in this case, capital gain shall be considered to be the income of the transferor. **Seventi Lal Manek Lal Sheth v. CIT (1968) (SC).**

9. **Cross-transfers are also covered -** A chain of transfers, if not comprehended by the word 'indirectly' would easily defeat the object of the law which is to tax income of the wife arising out of assets transferred to her by her husband. It is not necessary that there should be consideration in the technical sense. If two transfers are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method has been adopted as a device to evade implications of section 64, the case will fall within that section - **CIT v. C.M. Kothari [1963] (SC).**

Example

Mr. Rajeev Dikshit transferred one deposit of `10,00,000 to Mrs. Kanika Arora, wife of Mr. Praveen Arora and Mr. Praveen Arora transferred one deposit of `10,00,000 to Mrs. Sakshi Dikshit, wife of Mr. Rajeev Dikshit, the two transactions are cross transfers hence clubbing provision shall apply.

10. If any person has given loan to the spouse, income from such loan shall not be clubbed.

Section 64(1)(v) Omitted

Transfer of the asset to the son's wife Section 64(1)(vi)

If any person has transferred the asset to the son's wife, in this case, clubbing provision shall apply in the similar manner as in the case of transfer of the assets to the spouse.
Such clubbing provisions are applicable from 01.06.1973.

Transfer of assets to any other person Section 64(1)(vii)/ (viii)

If any person has transferred the asset to any other person, clubbing provision shall not be applicable, but if the transferor has any right to receive any benefit from the asset or the benefit shall be received by the spouse of the transferor or by the son's wife of the transferor, in that case, clubbing provision shall be applicable.

Asset held by Minor Child Section 64(1A) [V. IMP.]

1. If any income accrues or arises to a minor child, such income shall be clubbed in the income of mother or father whosoever has higher income before taking into consideration the income to be clubbed.

2. If the marriage of mother, father doesn't subsist, in that case, income shall be clubbed in the income of mother or father whosoever maintains the minor child.

3. Minor child for this purpose shall include even an adopted child and also step child, however, it will not include the minor child suffering from a disability mentioned under section 80U. e.g. Minor son of Mr. X has interest income of `2,00,000 and the minor child is suffering from a disability, in this case, clubbing provisions shall not be applicable.

4. If any minor child has income through

(i) Manual labour or

(ii) has income through activity involving application of his skill, talent or specialized knowledge and experience,

in this case, clubbing provision shall not apply, rather it will be considered to be the income of minor child and his tax liability shall be computed separately but the return shall be filed by his father as his guardian as per section 60.

5. If the income of minor child is to be clubbed, exemption shall be allowed under section 10(32) upto `1,500 per annum per child.

6. If any minor child has income from manual labour or through activity involving application of his skill, talent or specialized knowledge and experience, such income shall not be clubbed but if such income has been invested further, any new income shall be clubbed in the income of mother or father.

Example

Minor son of Mr. Rajender Choudhary is a child actor. He has income of `5,00,000 from stage acting, this income will not be clubbed but if this amount was invested by him in a bank as fixed deposit, interest received by him shall be clubbed.

Transfer of the asset by the member of Hindu Undivided Family to the Hindu undivided family Section 64(2)

If an individual who is a member of a Hindu Undivided Family, having separate property has, converted the property as belonging to the Hindu Undivided Family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family or it has been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual, the income derived from the converted property shall be deemed to arise to the individual and not to the family.

Where the converted property has been the subject-matter of a partition (whether partial or total) amongst the members of the family, the income derived from such converted property as is received by the spouse on partition shall be deemed to arise to the spouse from assets transferred indirectly by the individual to the spouse and the clubbing provisions shall apply accordingly.

- Income for the purpose of clubbing includes loss also.

Under section 65, if any particular income has been clubbed, but tax could not be recovered from the person in whose income, income of any other person has been clubbed, in such cases tax can be demanded from the person whose income was clubbed but only with regard to the income which was clubbed.

Illustration 2: Mr. Korani transferred 2,000 debentures of `100 each of Wild Fox Ltd. to Mrs. Rekha Korani on 03.04.2012 without consideration. The company paid interest of `30,000 in September, 2012 which was deposited by Mrs. Korani with Kartar Finance Co. in October, 2012. Kartar Finance Co. paid interest of `3,000 upto March, 2013. How would both the interest income be charged to tax in assessment year 2013-14?

Solution :

As per section 64(1), income arising from assets transferred without adequate consideration by an individual to his spouse is liable to be clubbed in the hands of the individual, but if there is accretion to the asset, any income on such accretion should not be clubbed.

Therefore, `30,000, being the interest on debentures received by Mrs. Korani in September, 2012 will be clubbed with the income of Mr. Korani, since he had transferred the debentures of the company without consideration to her.

However, the interest of `3,000 upto March 2013 earned by Mrs. Korani on the interest of the debentures deposited by her with Kartar Finance Company shall be taxable in her individual capacity and will not be clubbed with the income of Mr. Korani.

Illustration 3: Antaryami settled 1/4th share of his property under a trust for the education and maintenance of his minor daughter, Poulomi. Under the terms of the trust deed, the income accruing to the trust, after meeting the expenses of maintenance and education of Poulomi, was to be accumulated and paid over to her on her attaining majority. The Assessing Officer assessed the income arising from 1/4th share of the property, settled for the benefit of Poulomi, in the hands of Antaryami. Examine the correctness of the assessment.

Solution:
As per section 64(1A), all income of minor child are to be clubbed with the income of the parent. Even if the trust is created for the benefit of the minor child, the income of the trust shall be clubbed with the income of the parent. In the present case, the income accruing to the trust shall be clubbed with income of Mr. Antaryami.

Illustration 4: H, a mentally retarded minor, has a total income of `1,20,000 for the assessment year 2013-14. The total income of his father L and of his mother R for the relevant assessment year is `2,40,000 and `1,80,000 respectively. Discuss the treatment to be accorded to the total income of H for the relevant assessment year.

Solution:
Section 64(1A) provides that all income accruing or arising to a minor child has to be included in the income of that parent, whose total income is greater. However, the income of a minor child suffering from any disability of the nature specified in section 80U shall not be included in the income of the parents but shall be assessed in the hands of the child. Thus, the total income of H has to be assessed in his hands and cannot be included in the total income of either his father or his mother.

Illustration 5: Mr. Z gifted a house property to Miss. Shweta on 15.03.2012. Miss Shweta married Mr. Z’s son S on 01.02.2013. The income from the gifted property was `1,30,000, which was added by the Assessing officer in the hands of Mr. Z under the provisions of section 64(1). Is this inclusion justified in law?

Solution:
The inclusion of the income from property in the hands of Mr. Z is not correct. Under section 64(1), the income arising directly or indirectly to the son’s wife from assets transferred to her by such individual otherwise than for adequate consideration is taxable in the hands of the individual. The relationship of father-in-law/mother-in-law and the daughter-in-law should subsist both at the time of transfer of asset and at the time of accrual of income. Therefore if assets are transferred before marriage to the would be daughter-in-law for inadequate consideration, then there will be no clubbing even after the marriage. Since Shweta was not the daughter-in-law on the date of the transfer by Mr. Z, the income from the transferred property cannot be taxed in the hands of Mr. Z.

Illustration 6: Mr. X gifts `1 lakh to his wife Mrs. X on April 1, 2012 which she invests in a firm on interest rate of 14% per annum. On January 1, 2013, Mrs. X withdraws the money and gift it to her son’s wife. She claims that interest which has accrued to the daughter-in-law, from January 1, 2013 to March 31, 2013 on investment made by her is not assessable in her hands but in the hands of Mr. X. Is this correct? What would be the position, if Mrs. X has gifted the money to minor grandson, instead of the daughter-in-law?

Solution:

Section 64(1) provides that in computing the total income of any individual, there shall be clubbed all such income as arises directly or indirectly to the son's wife, of such individual, from assets transferred directly or indirectly to the son's wife by such individual otherwise than for adequate consideration.

There is an indirect transfer by Mr. X to the daughter-in-law and therefore, the interest income shall be clubbed with income of Mr. X.

If Mrs. X had gifted the money to her minor grandson, then the interest income arising to the minor shall be clubbed under section 64(1A) in the total income of that parent (son/daughter-in-law) whose total income (before including such income) is higher.

EXAMINATION QUESTIONS

IPCC NOV – 2012

Question No. 2(a) **(8 Marks)**

Mr. B is the Karta of an HUF, whose members derive income as given below:

	`
(i) Income from B's profession	45,000
(ii) Mrs. B's Salary as fashion designer	76,000
(iii) Minor son D (interest on fixed deposits with a bank which were gifted to him by his uncle)	10,000
(iv) Minor daughter P's earning from sports	95,000
(v) D's winning from lottery (gross)	1,95,000

Discuss the tax implications in the hands of Mr. and Mrs. B. (Modified)

Answer:

Computation of income of Mr. B and Mrs. B

	Mr. B	**Mrs. B**
Income from B's Profession	45,000	-------
Salary as fashion designer	------	76,000
Bank Interest to Minor Son D (10,000-1,500) `1500 exempt u/s 10(32)	------	8,500
Income of Minor Daughter from Sports (since she is earning income from her own talent, sports, income is not to be clubbed)	-------	------
Lottery income to minor son D	-------	1,95,000
TOTAL	**45,000**	**2,79,500**

IPCC MAY – 2012

Question 2 **(4 Marks)**

Mr. Sharma has four children consisting 2 daughters and 2 sons. The annual income of 2 daughters were `9,000 and `4,500 and of sons were `6,200 and `4,300 respectively. The daughter who has income of `4,500 was suffering from a disability specified under section 80U. Compute the amount of income earned by minor children to be clubbed in hands of Mr. Sharma. (Modified)

Answer:

Computation of Amount of Income of minor children to be clubbed in the income of Mr. Sharma

	`
(i) Income of First Daughter	9,000
Less: Exempt u/s 10(32)	1,500
	7,500
(ii) Income of Second Daughter who is suffering from disability shall not be clubbed	
(iii) Income of First Son	6,200
Less: Exempt u/s 10(32)	1,500
	4,700
(iv) Income of Second Son	4,300
Less: Exempt u/s 10(32)	1,500
	2,800
Total Income to be clubbed (7,500 + 4,700 + 2,800)	15,000

Question 5 **(8 Marks)**

During the previous year 2012-13 the following transactions occurred in respect of Mr. A.

(a) Mr. A had a fixed deposit of ` 5,00,000 in Bank of India. He instructed the bank to credit the interest on the deposit @ 9% from 01.04.2012 to 31.03.2013 to the savings bank account of Mr. B, son of his brother, to help him in his education.

(b) Mr. A holds 75% share in a partnership firm. Mrs. A received a commission of `25,000 from the firm for promoting the sales of the firm. Mrs. A possesses no technical or professional qualification.

(c) Mr. A gifted a flat to Mrs. A on April 1, 2012. During the previous year the flat had income under the head House Property `52,000 to Mrs. A.

(d) Mr. A gifted `2,00,000 to his minor son who invested the same in a business and he got a share income of ` 20,000 from the investment.

(e) Mr. A's minor son derived an income of `20,000 through a business activity involving application of his skill and talent.

During the year Mr. A got a monthly pension of `10,000. He had no other income. Mrs. A received salary of ` 20,000 per month from a part time job.

Discuss the tax implications of each transaction and compute the total income of Mr. A, Mrs. A and their minor child. (Modified)

Answer:

(a) As per Section 60 of the Income Tax Act, if any person has transferred any income without transferring the asset in such case clubbing provision shall be applicable.

In the given case, Mr. A transferred interest on fixed deposit to Mr. B (son of his brother) without transferring the fixed deposit, such income shall be clubbed in the hands of Mr. A as per section 60.

Amount to be clubbed = `5,00,000 x 9% = `45,000

(b) As per Section 64(1) of the Income Tax Act, if any person is getting salary, commission etc. from a concern in which his or her spouse has substantial interest and further salary etc. is received without any professional or technical qualification, in such case, salary etc. so received shall be clubbed in the income of the spouse having substantial interest.

In the given case Mr. A is having substantial interest in the partnership firm and Mrs. A received a commission of `25,000 from the firm for promoting the sales of the firm without any technical or professional qualification. So the commission shall be clubbed in the hands of Mr.A

(c) As per section 27, An individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart shall be deemed to be the owner of the house property so transferred.

In the given case Mr. A transfers flat to Mrs. A without adequate consideration on April 1, 2012.

So Mr. A shall be deemed to be the owner of the house property and income `52,000 shall be considered as income of Mr. A.

(d) As per section 64(1A), if any income accrues or arises to a minor child, such income shall be clubbed in the income of mother or father whosoever has higher income before taking in to consideration the income to be clubbed. So in the given case, income of ` 20,000 shall be clubbed in the income of mother or father whosoever has higher income before taking in to consideration the income to be clubbed. Amount to be clubbed = 20,000 – 1500 = `18,500

(e) As per section 64(1A), if any minor child has income from manual labour or through activity involving application of his skill, talent or specialized knowledge and experience, such income shall not be clubbed but if such income has been invested further, any new income shall be clubbed in the income of mother or father.

In the given case clubbing provision is not applicable as Mr. A's minor son derived an income of `20,000 through a business activity involving application of his skill and talent.

Computation of Total Income of Mr. A	`
Income under the head Salary	
Pension (10,000 x 12)	1,20,000.00
Income under the head Salary	1,20,000.00
Income under the head House property	
(Since asset is transferred to wife hence deeming provision shall apply)	
Income under the head house property	52,000.00
Income under the head other sources	
Commission given to Mrs. A	25,000.00
(Since Mr. A is having substantial interest in firm)	
Interest on Fixed deposit transferred to Mr. B	45,000.00
Income from investment made by Minor son	18,500.00
Income under the head other sources	88,500.00
Gross Total Income	2,60,500.00
Less: Deduction u/s 80C to 80U	Nil
Total Income	2,60,500.00

Computation of Total Income of Mrs. A	
Income from Salary	2,40,000.00
Gross Total Income	2,40,000.00
Less: Deduction u/s 80C to 80U	Nil
Total Income	2,40,000.00

Computation of Total Income of Minor Child	
Income from Business	20,000.00
Gross Total Income	20,000.00
Less: Deduction u/s 80C to 80U	Nil
Total Income	20,000.00

IPCC NOV – 2011

Question 1 **(5 Marks)**

Shri Madan (age 67 years) gifted a building owned by him to his son's wife Smt. Hema on 01.10.2012. The building fetched a rental income of `10,000 per month throughout the year. Municipal tax for the first half-year of `5,000 was paid in June 2012 and the municipal tax for the second half-year was not paid till 30.09.2013.

Incomes of Shri Madan and Smt. Hema other than income from house property are given below:

Name	Business income	Capital gain	Other sources
Shri. Madan	`1,00,000	`50,000 (long-term)	`1,50,000
Smt.Hema	`(75,000)	`2,00,000 (short-term)	`50,000

Note: Capital gain does not relate to gain from shares and securities.

Compute the total income of Shri. Madan and Smt. Hema taking into account income from property given above and also compute their income-tax liability for the assessment year 2013-14. (Modified)

Answer:

Computation of total income and income tax liability of Shri Madan `

Income under the head Business Profession	1,00,000.00
Income under the head Capital gains	
LTCG	50,000.00
Income under the head House property	
(Since asset is transferred to son's wife hence clubbing shall be done)	
Gross Annual Value	1,20,000.00
Less: Municipal Taxes	5,000.00
Net Annual Value	1,15,000.00
Less: 30% of NAV u/s 24(a)	34,500.00
Less: Interest on capital borrowed u/s 24(b)	Nil
Income under the head house property	80,500.00
Income under the head other sources	1,50,000.00
Gross Total Income	3,80,500.00
Less: Deduction u/s 80C to 80U	Nil
Total Income	3,80,500.00
Computation of Tax Liability	
Tax on `3,30,500 at slab rate	8,050.00
Tax on capital gains @ 20%	10,000.00
Tax before education cess	18,050.00
Add: Education Cess @ 2%	361.00
Add: SHEC @ 1%	180.50
Tax Liability	18,591.50
Rounded off u/s 288B	18,590.00

Computation of total income and tax liability of Smt. Hema

Income from house property	Nil
Loss from business profession	(75,000.00)
Income under the head Other Sources	50,000.00
Income under the head Capital Gains (STCG)	2,00,000.00
Gross Total Income	1,75,000.00
Less: Deduction u/s 80C to 80U	Nil
Total Income	1,75,000.00
Tax Liability	Nil

PCC NOV – 2011

Question 1 **(5 Marks)**

Mr. Vaibhav started a proprietary business on 01.04.2011 with a capital of `5,00,000. He incurred a loss of `2,00,000 during the year 2011-12. To overcome the financial position, his wife Mrs. Vaishaly, a software Engineer gave a gift of `5,00,000 on 01.04.2012, which was immediately invested in the business by Mr. Vaibhav. He earned a profit of `4,00,000 during the year 2012-13. Compute the amount to be clubbed in the hands of Mrs. Vaishaly for the Assessment Year 2013-2014. If Mrs. Vaishaly gave the said amount as loan, what would be the amount to be clubbed? (Modified)

Answer:

<u>Computation of amount to be clubbed</u>	`
Capital of Mr. Vaibhav as on 01.04.2012	
Opening Capital	5,00,000
Less: Loss from the business during 2011-12	(2,00,000)
Capital as on 01.04.2012	3,00,000
<u>Amount to be clubbed</u>	
= 4,00,000 x 5,00,000/(5,00,000 + 3,00,000)	2,50,000

In case it has been given as loan, then no clubbing shall be done.

IPCC MAY – 2011

Question 1 **(5 Marks)**

Mr. Janak bought 200 listed shares on 19.04.2011 @ `2,000 per share.

He gifted these shares to his wife Mrs. Janki on 21.03.2012.

On 01.04.2012, bonus shares were allotted in the ratio of 1:1.

All these shares were sold by Mrs. Janki as under:

Date of sale	**Manner of sale**	**No. of shares**	**Net sales value (`)**
10.04.2012	Private sale, to her friend Mrs. Hema (Market value on this date was `2,10,000)	100 original shares	1,70,000
21.05.2012	Sold in recognized stock exchange, STT paid	100 original shares	2,20,000
21.07.2012	Private sale to an outsider	All bonus shares	2,50,000

Briefly state the income-tax consequences in respect of the sale of the shares by Mrs. Janki, showing clearly the person in whose hands the same is chargeable, the quantum and the head of income in respect of the above transactions. Detailed computation of total income is **NOT** required.

Net sales value represents the amount credited after all taxes, levies, brokerage, etc., and the same may be adopted for computing the capital gains. (Modified)

Answer.

Where an asset has been transferred by an individual to his spouse otherwise than for adequate consideration, the income arising from the sale of the said asset by the spouse will be clubbed in the hands of the individual.

Where there is any accretion to the asset transferred, income arising to the transferee from such accretion will not be clubbed. Hence, the profit from sale of bonus shares allotted to Mrs. Janki will be chargeable to tax in the hands of Mrs. Janki.

Therefore, the capital gains arising from the sale of the original shares has to be included in the hands of Mr. Janak, and the capital gains arising from the sale of bonus shares would be taxable in the hands of Mrs. Janki.

Income/loss to be clubbed in the hands of Mr. Janak

		`
(i)	**100 Original shares sold on 10.04.2012**	
	Sale consideration	1,70,000.00
	Less: Cost of acquisition of 100 shares (` 2,000 x 100)	2,00,000.00
	Short term capital loss to be included in the hands of Mr. Janak	(30,000.00)
(ii)	**100 Original shares sold on 21.05.2012**	
	100 shares sold on 21.05.2012 in a recognized stock exchange, STT paid. Long-term capital gains on sale of such shares is exempt under section 10(38)	Nil

Income taxable in the hands of Mrs. Janki Short-term capital gains (on sale of 200 bonus shares)

Bonus shares	`
Sale consideration	2,50,000
Less: Cost of acquisition of bonus shares	Nil
Short-term capital gains	**2,50,000**

Taxability in the hands of Mrs. Hema under the head "Income from other sources"

Mrs. Hema has received shares from her friend, Mrs. Janki, for inadequate consideration. Even though shares fall within the definition of "property" under section 56, the provisions of section 56 would not be attracted in the hands of Mrs. Hema, since the difference between the fair market value of shares and actual sale consideration does not exceed `50,000.

PCC NOV – 2010

Question 1 **(5 Marks)**

Mrs. Kasturi transferred her immovable property to ABC Co. Ltd. subject to a condition that out of the rental income, a sum of `36,000 per annum shall be utilized for the benefit of her son's wife.

Mrs. Kasturi claims that the amount of `36,000 (utilized by her son's wife) should not be included in her total income as she no longer owned the property.

State with reasons whether the contention of Mrs. Kasturi is valid in law? (Modified)

Answer.

The clubbing provisions under section 64(1) are attracted in case of transfer of any asset, directly or indirectly, otherwise than for adequate consideration, to any person to the extent to which the income from such asset is for the immediate or deferred benefit of son's wife. Such income shall be included in computing the total income of the transferor-individual. Therefore, income of `36,000 meant for the benefit of daughter-in-law is chargeable to tax in the hands of transferor i.e., Smt. Kasturi in this case. The contention of Smt. Kasturi is, hence, not valid in law.

Note – In order to attract the clubbing provisions under section 64(1)(viii), the transfer should be otherwise than for adequate consideration. In this case, it is presumed that the transfer is otherwise than for adequate consideration and therefore, the clubbing provisions are attracted.

PCC MAY – 2010

Question 3 **(8 Marks)**

Mr. John commenced a proprietary business in the year 2003. His capital as on 01.04.2011 was `6,00,000. On 10.04.2011 his wife gifted `2,00,000 which he invested in the business on the same date.

Mr. John earned profit from his proprietary business as given below:

Previous year 2011-12	=	Profit `3,00,000
Previous year 2012-13	=	Profit `4,40,000

During the Previous Year 2012-13, he sold a vacant site which resulted in chargeable long-term capital gain of `5,00,000 (computed). The vacant site was sold on 20.12.2012.

Compute the total income and tax liability of Mr. John and the installments of advance tax payable for the previous year 2012-13. (Modified)

Answer.

Computation of business income of Mr. John		`
Capital as on 01.04.2011		6,00,000
Add: Gift from wife (10.04.2011)		2,00,000
		8,00,000
Add : Profit for the year ended 31.03.2012		3,00,000
Capital as on 01.04.2012		**11,00,000**
Profit for the year ended 31.03.2013		4,40,000
Income proportionately assessable in the hands of Mr. John ` 4,40,000 x 9,00,000/11,00,000		3,60,000
Amount of income taxable in the hands of Mrs. John by virtue of Clubbing provisions under section 64(1) `4,40,000 x 2,00,000/11,00,000		80,000
Total Income of Mr. John:		
Income from Business		3,60,000
Long term capital gain		5,00,000
Gross Total Income		8,60,000
Less: Deduction u/s 80C to 80U		Nil
Total Income		**8,60,000**
Tax liability on normal income of ` 3,60,000	16,000	
On LTCG @ 20% on ` 5,00,000		1,00,000
		1,16,000
Add: Education cess @ 2%		2,320
Secondary and Higher Education cess @ 1%		1,160
Tax Liability		1,19,480

Tax Liability excluding the amount of capital gain

Total Income		3,60,000
Tax + EC + SHEC		16,480

Advance tax payable by Mr. John

Upto 15th Sept 2012	16,480 x 30%	4,944
Upto 15th Dec 2012	16,480 x 60%	9,888
Upto 15th March 2013	1,19,480 x 100%	1,19,480

Question 5 **(4 Marks)**

In whose hands the income from an asset is chargeable to tax in the case of transfer which is not revocable during the life time of the beneficiary/transferee?

Answer.

As per section 61, all income arising to any person by virtue of a revocable transfer of assets is to be included in the total income of the transferor.

As per section 62 the clubbing provisions are not attracted, if there is a transfer of asset which is not revocable during the life time of the transferee, the income from the transferred asset is not includable in the total income of the transferor provided the transferor derives no direct or indirect benefit from such income.

PCC MAY – 2008

Question 1 **(2 Marks)**

Mr. X has transferred through a duly registered document the income arising from a godown, to his son, without transferring the godown. In whose hands will the rental income from godown be charged?

Answer.

Section 60 expressly states that where there is transfer of income from an asset without transfer of the asset itself, such income shall be included in the total income of the transferor. Hence, the rental income derived from the godown shall be charged in the hands of Mr. X.

Question 4 **(8 Marks)**

Mr. Dhaval and his wife Mrs. Hetal furnish the following information:

	`
(i) Salary income (computed) of Mrs. Hetal	4,60,000
(ii) Income of minor son ‘B’ who suffers from disability specified in Section 80U	1,08,000
(iii) Income of minor daughter ‘C' from singing	86,000
(iv) Income from profession of Mr. Dhaval	7,50,000
(v) Cash gift received by 'C' on 02.10.2012 from friend of Mrs. Hetal	48,000
(vi) Income of minor married daughter ‘A’ from company deposit	30,000

Compute the total income of Mr. Dhaval and Mrs. Hetal for the assessment year 2013-14. (Modified)

Answer.

Computation of Total Income of Mr. Dhaval and Mrs. Hetal for the A.Y. 2013-14

Particulars	**Mr. Dhaval**	**Mrs. Hetal** `
Salaries		4,60,000
Profits and gains of business or profession	7,50,000	
Income from other sources		
Income by way of interest from company deposit earned by minor daughter A		

[See Note (iv)]	30,000		
Less: Exemption under section 10(32)	1,500	28,500	
Gross Total Income		7,78,500	4,60,000
Less: Deduction u/s 80C to 80U		Nil	Nil
Total Income		**7,78,500**	**4,60,000**

Notes:

(i) The income of a minor child suffering from any disability of the nature specified in section 80U shall not be included in the hands of the parents. Hence, ` 1,08,000 being the income of minor son 'B' who suffers from disability specified under section 80U shall not be included in the hands of either of his parents.

(ii) The income derived by the minor from manual work or from any activity involving exercise of his skill, talent or specialized knowledge or experience will not be included in the income of his parent. Hence, in the given case ` 86,000 being the income of the minor daughter 'C' shall not be clubbed in the hands of the parents.

(iii) Under section 56, cash gifts received from any person/persons exceeding ` 50,000 during the year in aggregate are taxable. Since the cash gift in this case does not exceed ` 50,000 the same is not taxable.

(iv) The clubbing provisions are attracted even in respect of income of minor married daughter. The income of the minor will be included in the income of that parent whose total income is greater. Hence, income of minor married daughter 'A' from company deposit shall be clubbed in the hands of the Mr. Dhaval and exemption under section 10(32) of ` 1,500 per child shall be allowed in respect of such income.

PCC NOV – 2007

Question 4 **(5 Marks)**

Mr. Ghose has four minor children consisting 2 daughters and 2 sons. The annual income of 2 daughters was ` 7,500 and ` 5,000 and of sons was ` 5,500 and ` 1,250 respectively. The daughter who was having income of ` 5,000 was suffering from a disability specified under section 80U. Work out the amount of income earned by minor children to be clubbed in the hands of Mr. Ghose. (Modified)

Answer.

Income earned by minor children to be clubbed with the income of Mr. Ghose

(i) Income of two daughters (7,500 + Nil)	7,500
Less: Income exempt u/s 10(32)	1,500
Total (A)	6,000
(ii) Income of two sons	
5,500 – 1,500	4,000
1,250 – 1,250	Nil
Total (B)	4,000
Total Income to be clubbed as per section 64(1A) (A+B)	**10,000**

The income of daughter suffering from disability specified under section 80U is not to be clubbed with the income of Mr. Ghose.

PE-II NOV – 2005

Question 1 **(7 Marks)**

Compute the total income of Mr. & Mrs. A from the following information:

	`
(a) Salary Income (computed) of Mrs. A	2,30,000
(b) Income from profession of Mr. A	3,90,000

(c) Income of minor son B from company deposit	15,000
(d) Income of minor daughter C from special talent	32,000
(e) Interest from bank received by C on fixed deposit made out of her special talent	3,000
(f) Gift received by C on 30.09.2012 from friend of Mrs. A	2,500

Brief working is sufficient. Detailed computation under various heads of income is NOT required.

(Modified)

Answer:

	`	`
Total income of Mrs. A		
Salary income		2,30,000
Total income of Mr. A		
Income from profession		3,90,000
Clubbed income		
Interest income (minor son B)	15,000	
Less: exemption u/s 10(32)	1,500	13,500
Interest income (minor daughter C)	3,000	
Less: exemption u/s 10(32)	1,500	1,500
Total income		4,05,000

Note: Income for minor daughter 'C' arises out of an activity involving application of her talent and is therefore not to be included in the taxable income of her parents [Section 64(1A)].

PE-II NOV – 2004

Question 1 **(6 Marks)**

A proprietary business was started by Smt. Rani in the year 2010. As on 01.04.2011 her capital in business was `3,00,000. Her husband gifted `2,00,000, on 10.04.2011, which amount Smt. Rani invested in her business on the same date. Smt. Rani earned profits from her proprietary business for the financial years 2011-12, `1,50,000 and financial year 2012-13 `3,90,000.

Compute the income, to be clubbed in the hands of Rani's husband for the assessment year 2013-14 with reasons. (Modified)

Answer:

	`
Capital as on 01.04.2012 (3,00,000 + 2,00,000 + 1,50,000)	6,50,000
Total profits	3,90,000
Amount to be clubbed (3,90,000 x 2,00,000 / 6,50,000)	1,20,000

Income relating to the amount gifted shall be clubbed and not any subsequent income from the income so clubbed.

PE-II NOV – 1999

Question 1 **(10 Marks)**

Balu is the Karta of a HUF, whose members derive income as given below:

`

(i) Income from Balu's own business	50,000
(ii) Mrs. Balu a dermatologist draws salary	80,000
(iii) Minor son Deepak (earning interest on fixed deposits with bank, which were gifted to him by his grandfather)	15,000
(iv) Minor daughter Priya gave a dance performance and received remuneration	1,00,000
(v) Deepak got winnings from lottery (gross)	2,00,000

Explain how the above will be taxed. (Modified)

Answer:

Taxable income of Mr. Balu, Mrs. Balu and Ms. Priya	`
Total Income of Mr. Balu	50,000
Total Income of Mrs. Balu	2,93,500

Working Note:		`
Salary		80,000
Income under the head salary		80,000
Clubbed Income		
Interest income (minor son - Deepak)	15,000	
Income of lottery (minor son - Deepak)	2,00,000	
Total	2,15,000	
Less: exemption u/s 10(32)	1,500	2,13,500
Gross Total Income		2,93,500
Less: Deduction u/s 80C to 80U		Nil
Total Income		2,93,500

Deepak	Nil
Priya	1,00,000

Note 1: Income of Priya arises out of an activity involving application of her talent and is therefore not to be included in the taxable income of her parents [Section 64(1A)].

Note 2: Whether exemption under section 10(32) shall be allowed from casual income or not is controversial.

PE-II NOV – 1998

Question 3 **(9 Marks)**

Mr. Singh is a trader. Particulars of his income and those of the members of his family are given below. These incomes relate to the previous year ended 31st March, 2013:

	`
(i) Income from business—Mr. Singh's	90,000
(ii) Salary derived from an educational institution by Mrs. Singh. She is the principal of the institution	50,000
(iii) Interest on company deposits derived by master Deep Singh (minor son). These deposits were made in the name of Deep Singh by his father's father about 6 years ago (Gross)	12,000

(iv) Receipts from sale of paintings and drawings made by minor Dipali Singh (minor daughter and noted child artist) 60,000

(v) Income by way of lottery earnings by Master Dipindar Singh (minor son) 6,000

Discuss whether the above will form part of the assessable income of any individual and also compute the assessable income of Mr. Singh. (Modified)

Answer:

Yes, as per section 64(1A), any income derived by minor child except disabled minor child, will be clubbed in the hand of parents whose income is higher. Further income from natural talent or skill etc. shall not be clubbed.

Computation of Total Income of Mr. Singh

	`	`
Business Income		90,000
Interest Income shall be clubbed in hands of Mr. Singh	12,000	
Less: Exemption u/s 10(32)	1,500	10,500
Lottery income shall be clubbed in hands of Mr. Singh	6,000	
Less: Exemption u/s 10(32)	1,500	4,500
Total Income		1,05,000

Note: Whether exemption under section 10(32) shall be allowed from casual income or not is controversial.

INCOME UNDER THE HEAD OTHER SOURCES

SECTION 56 TO 59

PARTICULARS	SECTIONS
Income from other sources	**56**
Deductions while computing income under the head other sources	**57**
Amounts not deductible	**58**
Deemed income chargeable to tax	**59**
Deemed dividend	**2(22)**
Interest on securities	**2(28B)**
Bond washing transaction	**94**
Rate of tax in case of winnings from lotteries, crossword puzzles, races etc.	**115BB**
Method of accounting	**145**

THEORY QUESTION

Q1. [Imp.] Discuss the deductions allowable under section 57 of the Income Tax Act, 1961, in respect of income from other sources.
Q2. [Imp.] Write a note on taxability of interest income.
Q3. [V. Imp.] Write a note on taxability of casual income.
Q4. Write a note on taxability of income from owning and maintaining of race horses.
Q5. [Imp.] Write short note on set off and carry forward of loss arising under the head "Income from other sources".
Q6. [V. Imp.] Write a note on taxability of dividend income.

Income from Other Sources Section 56
Incomes taxable in general under the head other sources Section 56(1)
Any income which cannot be taxed under the first four heads shall be taxable under the head other sources.

Specific incomes taxable under the head other sources Section 56(2)
In particular the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely:—

1. Income by way of **interest**.

2. 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.

3. Dividends.

4. Gift in excess of `50,000.

5. Family pension.

6. Any **sum received** under a **Keyman insurance policy** including the sum allocated by way of bonus on such policy, if such income is not chargeable to income-tax under the head “Profits and gains of business or profession” or under the head “Salaries”.

7. Income from **machinery, plant or furniture belonging** to the assessee and let on hire, if the income is **not chargeable** to income-tax **under the head “Profits and gains of business or profession”.**

8. Where an assessee lets on hire **machinery, plant** or **furniture** belonging to him and also **buildings**, and the letting of the buildings is **inseparable** from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head “Profits and gains of business or profession”.

9. Any other income which is not taxable under first four heads.

Question 1 [Imp.]: Discuss the deductions allowable under section 57 of the Income Tax Act, 1961, in respect of Income from Other Sources.
Answer:
Deductions allowable under Section 57
While computing income under the head other sources, expenses incurred in connection with earning of such income shall be allowed to be deducted.

In the case of income in the nature of **family pension**, a deduction of a sum equal to **33-1/3%** of such income or **`15,000**, whichever is less shall be allowed. E.g. Mrs. X is getting family pension of `5,000 p.m., in this case taxable amount shall be (5,000 x 12)minus 1/3 of `60,000 or `15,000 whichever is less i.e. taxable amount shall be `45,000

“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.

As per section 145A, interest received for late payment of compensation from the Government or other similar agency in connection with compulsory acquisition of land or building shall be taxable in the year in which it has been received and it will be taxable under the head other sources however, deduction shall be allowed @ 50% of such interest. e.g. Government has acquired one land of Mr. X in Noida in 2006 and payment was given by the Government in the year 2012-13 and has also paid interest of `1,00,000, in this case, taxable amount shall be `1,00,000 – `50,000 = `50,000.

Amounts not deductible Section 58
While computing income, any personal expense shall not be allowed to be deducted and also in case of capital expenditure only depreciation shall be allowed.

As per section 58(4), no deduction in respect of any expenditure or allowance shall be allowed in computing 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.

e.g. Mr. X purchased lottery tickets of `10,000 and he had a winning of `1,00,000, in this case, his income shall be considered to be `1,00,000 and expenditure of `10,000 shall not be allowed.

Profits chargeable to tax Section 59
If the assessee has claimed any expenditure while computing income and subsequently he has recovered the same amount, the amount so recovered shall be considered to be income of the year in which amount has been recovered.

Question 2 [Imp.]: Write a note on taxability of interest income.

Answer:

<u>Taxability of interest income</u>   <u>Section 56</u>

- Interest income under Income Tax Act do not accrue on day to day basis rather it is considered to be the income of the person who is holding the security on due date.

Example

Mr. Sameer Khanna has invested ` 10,00,000 on 01.04.2012 in ABC Ltd. @ 10%. The interest is due on half yearly basis i.e. on 30^{th} Sept and 31^{st} March of each year but Mr. Sameer Khanna was in urgent need of money hence he has sold the security on 01.09.2012 to Mr. Dinesh Tayal. In this case, interest income of Mr. Sameer Khanna shall be nil and that of Mr. Dinesh Tayal shall be `1,00,000.

- As per section 57, if any expenditure has been incurred in connection with interest income, such expenditure shall be allowed to be deducted and it will also include any sum paid as commission or service charges to a banker or any other person for the purpose of realising such interest.

<u>Illustration 1:</u> Mr. Sahil Anand has taken a loan of `1,00,000 @ 10%. The amount was invested by him in the securities of one company. During the year he has received gross interest of `18,000 and has paid collection charges to the bank `500. He has paid interest `10,000 on the loan taken by him for investment and has long term capital gain of `2,00,000.

Compute his tax liability for assessment year 2013-14.

<u>Solution:</u>

	`
Gross Interest	18,000
Less:	
(i) Bank Charges u/s 57	500
(ii) Interest paid for borrowing the amount u/s 57	10,000
Income under the head Other Sources	7,500
Income under the head Capital Gains (LTCG)	2,00,000
Total Income	2,07,500
Computation of Tax Liability	
Tax on `7,500 (`2,00,000 – `1,92,500) @ 20% u/s 112	1,500
Tax on `7,500 at slab rate	Nil
Add: Education cess @ 2%	30
Add: SHEC @ 1%	15
Tax Liability	1,545
Rounded off u/s 288B	1,550

- **<u>As per section 58</u>**, any personal expense of the assessee is not deductible.
- Similarly as per section 58, any interest which is payable outside India and on which tax has not been deducted at source shall not be allowed to be deducted.

<u>Bond Washing Transactions</u>   <u>Section 94</u>

- If any person has transferred any security in the name of any other person some time before the due date and has reacquired it sometime after the due date in order to evade tax, it will be considered to be a bond washing transaction and income shall be considered to be of the person who has manipulated in this manner.

Example

Mr. Yuvraj Arora has purchased security of `10,00,000 in ABC Ltd. on 01.04.2012 @ 10% and interest is due on half yearly basis i.e. on 30^{th} Sept and 31^{st} March of every year. If Mr. Yuvraj Arora has transferred this security just before the due date in the name of any other person through a fictitious sale transaction and

has re-transferred it in his name after the due date through a fictitious purchase transaction so that he can evade tax, it will be called bond washing transaction and in such cases interest income is taxable in the hands of Mr. Yuvraj Arora.
[This practice is generally adopted by high-income class assessees to evade the tax by transferring securities to low income class assessee on the eve of due date of payment of interest.]

➢ **Interest income exempt from tax Section 10(15)**
Certain interest incomes notified under section 10(15) shall be fully exempt from income tax and such incomes are –

1. Interest on Capital Investment Bonds issued by the Government.
2. Interest on Relief Bonds issued by RBI.
3. Interest on Post Office Savings Bank Account to the extent of `3,500 per year and in the case of joint account, exemption shall be allowed upto `7,000 per year. (Notification No. 32/2011 dated 3rd June 2011.)
4. Any other interest income notified under section 10(15).

➢ **Books of Accounts Section 145**
If any person is not maintaining any books of accounts or he is maintaining books of accounts on the basis of mercantile system of accounting, in this case interest income shall be taxable on due basis otherwise interest income is taxable on receipt basis.

Example
Mr. Abhishek Choudhary has deposited `10,00,000 in ABC Ltd. @ 10% p.a. and interest income is due on yearly basis on 31st March every year. Interest income which was due on 31.03.2013 was received on 01.04.2013. In this case, if the assessee is not maintaining any books of accounts, interest income is taxable in the previous year 2012-13 and if the assessee is maintaining books of account on the basis of mercantile system of accounting, still income is taxable in previous year 2012-13, and if the books are maintained on cash basis, income is taxable in the previous year 2013-14.

➢ **Interest or dividend income from UTI or Mutual Funds Section 10(35)**
If any person has received any interest or dividend from the UTI or Mutual Fund notified under section 10(23D), such income is exempt from income tax.

If UTI or Mutual Funds have distributed any interest or dividend, as per section 115R, 115S, 115T UTI or Mutual Funds, have to pay additional income tax (Corporate dividend tax) at the rate of 12.5% plus surcharge @ 5% plus education cess @ 2% plus SHEC @ 1%, if the amount is distributed to individual or Hindu Undivided Family.

If amount is distributed to any other person, rate shall be 30% plus surcharge @ 5% plus education cess @ 2% plus SHEC @ 1%.

Question 3 [V. Imp.]: Write a note on taxability of Casual Income.
Answer:
Casual Income Section 56
Under section 2(24)(ix), casual income shall include **card games, cross word puzzles, betting, races including horse races, any game show on electronic media or any other gambling.**

While computing income from casual income, as per section 58(4) no expenditure or allowance or deductions shall be allowed and accordingly the gross receipt itself shall be considered to be income.

Example
Mr. Pankaj Tiwari purchased one lottery ticket of `10,000 and there was a winning of `1,20,000. In this case, his tax liability shall be `37,080.

- Since no expenditure etc. is allowed hence there cannot be any loss from casual income, accordingly set off and carry forward is not applicable.
- Casual income shall be taxed at flat rate of 30%.

Question 4. Write a note on taxability of income from Owning and Maintaining of Race Horses.
Answer:
Income from Owning and Maintaining of Race Horses   Section 56
If any person has income from owning and maintaining of race horses, such income shall be **taxable under the head other sources** and income shall be computed in the **normal manner** and will be taxed at the **normal rates**.

If any person has any loss from the activities of owning and maintaining race horse, such loss is not allowed to be set off from any income under any head. However, if the assessee has any other business of owning and maintaining race horses, loss of one such business can be set off from the income of other such business. If the loss can not be set off, it will be allowed to be carried forward as per section 74A but such carry forward is allowed for a maximum period of **four years** and brought forward loss can be set off only from the income of owning and maintaining race horses.

Income from owning and maintaining of any other animal
If the assessee is engaged in the business of owning and maintaining any other animal, his income shall be computed **under the head business/profession** because section 56 includes only income from owning and maintaining race horses.

Illustration 2: Mrs. Shweta is getting family pension of `7,000 p.m. and has incurred `50 p.m. as bank collection charges. She also has dividend income from domestic company of `7,00,000 and bank collection charges are `1,000. She has long term capital gain of `3,89,000.

Compute her tax liability for assessment year 2013-14.

Solution:

	`	`
Family Pension	84,000	
(7,000 x 12)		
Less: Deduction u/s 57	15,000	69,000
1/3 of `84,000 or `15,000 whichever is less		
Dividend income (exempt u/s 10(34))		Nil
Income under the head other sources		69,000
Income under the head Capital Gains		
Long term capital gain		3,89,000
Gross Total Income		4,58,000
Less: Deduction u/s 80C to 80U		Nil
Total Income		4,58,000

Computation of Tax Liability

Tax on `2,58,000 (`3,89,000 – `1,31,000) @ 20% u/s 112	51,600	
Tax on `69,000 at slab rate		Nil
Add: Education cess @ 2%		1,032
Add: SHEC @ 1%		516
Tax Liability		53,148
Rounded off u/s 288B		53,150

Income from letting out of Buildings alongwith Plant & Machinery, Furniture & Fixtures etc. provided they are inseparable   Section 56
If any person has let out any house property, income is taxable under the head house property and if any

person has let out plant and machinery etc. income is taxable under the head business/profession. e.g. Mr. Karan Singh has the business of letting out generators, in this case, income is taxable under the head business/profession.

If any person has let out any house property alongwith plant and machinery furniture and fixtures etc. and they are inseparable. e.g. Letting out of a factory building, in such cases, income is taxable under the head other sources but after deducting all the expenses in connection with such building or plant and machinery etc. and the various expenses may be repairs, insurance premium, depreciation, municipal taxes etc.

If any person has let out any building alongwith furniture fixtures etc. and they are inseparable, income shall be computed under the head other sources as per section 56 and all expenditure covered under section 30, 31 and 32 shall be allowed as per section 57.

Illustration 3: Mr. Ashish Goyal has one factory building along with machines and furniture in Bombay which has been let out @ `50,000 p.m. Repair charges of the building is `7,000 and that of furniture fixtures are `4,000, insurance premium paid `3,000 and depreciation is `27,000.

Compute his income under the head other sources.

Solution:

	`
Gross Rent (50,000 x 12)	6,00,000
Less: Repair of building	7,000
Less: Repair of Furniture and fixtures	4,000
Less: Insurance premium	3,000
Less: Depreciation	27,000
Income under the head Other Sources	5,59,000

Illustration 4: Mr. Sachin Kumar has one factory building with machines and furniture, which has been let out @ `50,000 p.m. and repair charges of the building are `10,000, insurance premium ` 7,000 and repair charges of plant & machinery is `3,000. Insurance premium `1,000 and depreciation with regard to building plant & machinery etc. is `12,000.

Compute his income under the head other sources.

Solution:

	`
Gross Rent (50,000 x 12)	6,00,000
Less: Repair of building	10,000
Less: Insurance premium	7,000
Less: Repair of plant and machinery	3,000
Less: Insurance premium	1,000
Less: Depreciation	12,000
Income under the head other sources	5,67,000

Question 5 [Imp.]: Write short note on Set Off and Carry Forward of loss arising under the head "Income from Other Sources".

Answer:

Set Off and Carry Forward of Losses under the head "Income from Other Sources"

As per section 70, if there is loss in one source under the head other sources, such loss can be set off from income of any other source under the same head.

However, as per section 58(4), no deduction or set off shall be allowed from 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 whatsoever.

As per section 71, if the loss can not be set off under the same head, it can be set off from the incomes of other heads.

If the loss can not be set off even from the incomes of other heads, its carry forward is not allowed.

Question 6 [V. Imp.]: Write a note on taxability of Dividend Income.
Answer:
Dividend Income   Section 56
Dividend income from the domestic company shall be exempt from tax in the hands of the shareholder as per section 10(34). (however dividends from a foreign company shall continue to be taxed in the hands of the shareholder. Similarly dividend from co-operative society shall be chargeable to tax.).

As per section 115O, 115P, 115Q, the domestic company has to pay additional income tax @ 15% + surcharge @ 5% + education cess @ 2% + SHEC @ 1% and such additional income tax has to be paid maximum within 14 days from the date of declaration or distribution whichever is earlier.

Example
ABC Ltd. is a domestic company and has earned a net profit `125,00,000. It has declared the dividends of `10,00,000 and one of the shareholders Mr. Mohit Bhatia gets dividends of ` 25,000. In this case, tax liability of the company and Mr. Mohit Bhatia shall be:

Tax liability of company 125,00,000 x 30% + 5% + 2% + 1% = `40,55,625
Rounded off `40,55,630

Additional income tax payable by the company under section 115-O
10,00,000 x 15% + 5% + 2% + 1% = `1,62,225
Rounded off `1,62,230
Tax liability of Mr. Mohit Bhatia shall be nil.

Illustration 5: ABC Ltd. has current profits of `150 lakhs and the company has distributed dividends of `55 lakhs. Compute income tax liability of the company and that of shareholder.

Calculate additional income tax payable by the company also.

Solution:

	`
Profit before tax	150,00,000.00
Income tax on `150,00,000 @ 30%	45,00,000.00
Surcharge @ 5%	2,25,000.00
Education cess @ 2%	94,500.00
SHEC @ 1%	47,250.00
Income tax liability	48,66,750.00
Dividend	55,00,000.00
Additional income tax @ 15% of `55 lakhs	8,25,000.00
Add: Surcharge @ 5%	41,250.00
Add: Education cess @ 2%	17,325.00
Add: SHEC @ 1%	8,662.50
Additional income tax	8,92,237.50
Rounded off u/s 288B	8,92,240.00

Meaning of domestic company
As per section 2(22A), Domestic Company means an Indian company, or any other company which, has made the prescribed arrangements for the declaration and payment, within India, of the Dividend income.

Meaning of prescribed arrangements for declaration and payment of dividends within India Rule 27
A company shall be considered to have made prescribed arrangements if it has complied with the following conditions:

1) The share-register of the company for the shareholders shall be regularly maintained at its principal place of business within India in respect of any assessment year from a date not later than 1st April of such year.

2) The AGM for passing the accounts and for declaring the dividends shall be held only at a place within India.

3) The dividends declared, shall be payable only within India to all shareholders.

Dividend chargeable to tax
If any person has received any dividend from a foreign company such dividends shall be chargeable to tax in the hands of the shareholder.

MEANING OF DIVIDEND SECTION 2(22)

The term dividend has a very limited meaning under Companies Act but it has a very wide meaning under Income Tax Act and is called deemed dividend and it includes:

Dividends covered under section 2(22)(a), 2(22)(b), 2(22)(c) and 2(22)(d) shall be exempt in the hands of shareholders under section 10(34) and domestic company has to pay additional income tax under section 115-O.

Dividends covered under section 2(22)(e) shall be taxable in the hands of the shareholder and company shall be exempt from payment of additional income tax under section 115-O.

- **Distribution in cash or as assets Section 2(22)(a)**

If any company has distributed any amount to its shareholders either in cash or in kind, it will be considered to be dividend but only to the extent of accumulated profits whether capitalised or not.

(Capitalised profits are profit converted into capital like bonus shares.)

Example
ABC Ltd. has share capital of ` 35 lakhs. The company has general reserve of ` 25 lakhs and has distributed dividends. One of the shareholders Mr. Garvit Gulati has received dividend of ` 27,000 and is holding 2% of the shares. In this case, his share in the accumulated profits is `50,000 hence entire amount of `27,000 received by him shall be considered to be dividend.

- **Issue of debentures/bonus shares etc. Section 2(22)(b)**

If any company has issued bonus shares to the equity shareholders, it will not be considered to be dividend but if the bonus shares have been issued to the preference shareholders, it will be considered to be dividend but to the extent of accumulated profits whether capitalised or not. Further, market value of the bonus shares shall be taken into consideration.

Example
Mr. Nikhil Sharma is holding 100 preference share in ABC Ltd. The company has issued him 100 bonus shares and their market value is ` 1,200. In this case, it will be considered to be dividend but only to the extent of accumulated profits whether capitalized or not.

Self Reading

Section 85 of Companies Act, 1956

(1) "Preference share capital" means, with reference to any company limited by shares, whether formed before or after the commencement of this Act, that part of the share capital of the company which fulfils both the following requirements, namely : -

(*a*) that as respects dividends, it carries or will carry a preferential right to be paid a fixed amount or an amount calculated at a fixed rate, which may be either free of or subject to income-tax ; and

(*b*) that as respects capital, it carries or will carry, on a winding up or repayment of capital, a preferential right to be repaid the amount of the capital paid-up or deemed to have been paid-up, whether or not there is a preferential right to the payment of either or both of the following amounts, namely :

(*i*) any money remaining unpaid, in respect of the amounts specified in clause (*a*), up to the date of the winding up or repayment of capital ; and

(*ii*) any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.

Explanation. - Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:

(*i*) that, as respects dividends, in addition to the preferential right to the amount specified in clause (*a*), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid ;

(*ii*) that, as respects capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in clause (*b*), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

(2) "Equity share capital" means, with reference to any such company, all share capital which is not preference share capital.

(3) The expressions "preference share" and "equity share" shall be construed accordingly.

- **<u>Distribution on liquidation</u>** **<u>Section 2(22)(c)</u>**

If any company has distributed any amount to its shareholders in connection with its liquidation, it will be considered to be dividend but only to the extent of accumulated profits whether capitalized or not and any excess over it shall be considered to be full value of consideration as per section 46 and capital gains shall be computed accordingly.

Example

ABC Ltd. has 1,00,000 equity shares of `10 each and the company goes into liquidation on 31.07.2012 and company has net distributable amount of `60 lakhs after discharging all the liabilities including income tax and additional income tax and it includes accumulated profits of ` 20 lakhs and the entire amount was distributed among the shareholders and Mr. X is holding 10,000 equity shares which were purchased by him on 01.03.2012 for ` 1,50,000, in this case, tax treatment shall be as given below:

	`
Net Distributable Amount	60,00,000
Share of Mr. X (10%)	6,00,000
Share of Mr. X out of accumulated profits which is considered dividend u/s 2(22)(c)	(2,00,000)
Balance to be considered full value of consideration	4,00,000
Less: Cost of acquisition of shares	1,50,000
Short term Capital Gain	2,50,000

Dividend u/s 2(22)(c) shall be exempt u/s 10(34)

Tax liability on ` 2,50,000 at slab rate	5,000
Add: Education Cess @ 2%	100
Add: SHEC @ 1%	50
Tax Liability	5,150

➢ **<u>Distribution on reduction of share capital</u>** **<u>Section 2(22)(d)</u>**

Any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits whether capitalized or not.

Example

ABC Ltd. has issued bonus shares to its equity shareholders. Subsequently company has reduced its share capital and has refunded `5 per share to the shareholders, the amount so received by the shareholders shall be considered to be dividend to the extent of accumulated profit.

➢ **<u>Loan and advance by a closely held company</u>** **<u>Section 2(22)(e)</u>**

If any closely held company has given any loan or advance to an equity shareholder who is beneficial owner of equity shares holding not less than 10% of the voting power of the company, in such cases such loan or advance shall be considered to be dividend in the hands of such shareholder but only to the extent of accumulated profits excluding capitalized profits.

Example

ABC Pvt. Ltd. a closely held company has general reserves of `7,00,000 and current profits of `2,00,000. The company has given a loan of `3,00,000 to one such shareholder Mr. Aman Chhabra. In this case, it will be considered to be dividend in the hands of Mr. Aman Chhabra.

If loan given by the company is `10,00,000, the amount of dividend shall be `9,00,000.

If the loan or advance has been given to any concern in which such a shareholder has substantial interest, such loan or advance shall also be considered to be dividend in the hands of such concern but only to the extent of accumulated profits excluding capitalized profits.

Example

Mr. Kapil Bansal is the beneficial owner of 10% equity shares in ABC Pvt. Ltd. and the company has general reserve of `10,00,000 and has given a loan of `6,00,000 to a partnership firm XY in which Mr. Kapil Bansal is holding 20% shares. In this case, the loan so given shall be considered to be dividend in the hands of partnership firm.

If the loan or advance has been given to any person on behalf of such a shareholder, it will also be considered to be dividend.

If any such loan was given to more than one such shareholders, accumulated profits shall be reduced by the amount of the loan given to the earlier shareholder. As decided in **<u>CIT v G. Narasimhan, (1979) (Madras).</u>**

Example

ABC Pvt. Ltd. has general reserves of `10,00,000. The company has given a loan of `6,00,000 on 01.10.2012 to Mr. Vinay Mahajan holding 10% of the voting power and the company has given a loan of `7,00,000 on 10.10.2012 to Mr. Prakash Badal who is also holding 10% of the voting power. In this case, dividend in the hands of Mr. Vinay Mahajan shall be `6,00,000 and in the hands of Mr. Prakash Badal it will be `4,00,000.

If loan or advance was given to any such shareholder and subsequently the loan amount was repaid by him, even in such cases the loan or advance shall be considered to be dividend. As decided in **<u>Tarulata Shyam v CIT (1977) (SC).</u>**

If any such company has the business of lending as substantial part of its business, in such cases the above provisions shall not apply.

<u>'Concern'</u> means a Hindu Undivided Family, or a firm or an association of persons or a body of individuals or a company.

Substantial interest – A person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the income of such concern.

PRACTICE PROBLEMS

TOTAL PROBLEMS 17

Problem 1.
Mrs. Ridhi Grover has received incomes as given below during the previous year 2012-13:

1. Interest on savings bank account with State Bank ` 15,500 (gross).
2. Interest from Government securities `1,000 on 01.01.2013 (collection charge paid to the bank @ 1.5%).
3. Interest from ABC Ltd on non listed debentures `4,000 (gross) on 01.03.2013 (collection charge paid to the bank `30).
4. Interest credited to post office savings bank account during the year ` 230.
5. Interest credited to public provident fund during the year ` 12,000.
6. Interest received from XYZ Ltd on listed debentures ` 5,000 (gross).
   (Collection charge `30) The amount was invested by taking a loan of `1,00,000 @ 7% p.a.
7. Mrs. Ridhi Grover has income from house property `2,30,000.

Compute her tax liability for the assessment year 2013-14.

Answer = Tax Liability: `3,960

Problem 2.
Mr. Arun Garg has income from business of owning and maintaining race camels `60,000, loss from owning and maintaining race horses `7,000 and income from horse races `7,000. He has brought forward business loss of `7,000 of the assessment year 1998-99 and brought forward business loss of `7,000 of the assessment year 2009-10.

Compute his tax liability for the assessment year 2013-14.

Answer = Total Income: `60,000; Tax Liability: `2,160; Carry forward loss from owning and maintaining race horses: `7,000

Problem 3.
Mr. Deepak Kumar has income from owning and maintaining of race horses ` 4 lakhs and loss from horse races ` 10 lakhs.

Determine his tax liability for the assessment year 2013-14.

Answer = Tax Liability: `20,600

Problem 4.
Mr. Sunny Goel has loss from owning and maintaining of race horses ` 4 lakhs and income from owning and maintaining of race camels ` 4 lakhs.

Determine his tax liability for the assessment year 2013-14.

Answer = Tax `20,600; Carry forward loss from owning and maintaining of race horses: `4,00,000

Problem 5.

Find the tax liability of Mrs. Gupta (age 40 years), a resident individual, for the assessment year 2013-14. From the following particulars of her incomes and spending for the previous year ending March 31st, 2013.

	`
Income from house property (Computed)	90,000
Dividend from UTI	35,000
Family pension (gross)	90,000
Interest on bank FD (gross)	14,000
Dividend from foreign company	36,000
Gift received from her sister	26,000
Winnings from lotteries (gross)	70,000
Long-term capital gain	1,20,000
Payment for purchase of National Savings Certificates (VIII issue)	35,000

Answer = Tax Liability: `42,230

Problem 6.

ABC Ltd a domestic company has accumulated profits of ` 225 lakhs has distributed dividends of `12 lakhs and one of the shareholders Mr. Sumit Monga has received dividend of ` 1 lakh.

Compute tax payable by the shareholder and also additional income tax payable by the company.

Answer = Tax payable by the shareholder Nil; Additional Income tax payable by the company `1,94,670

Problem 7.

Mr. Varun Talwar is holding 100 shares of ABC Ltd. which were purchased by him on 01.10.1978 @ `10/- per share. Market value of one share on 01.04.1981 was ` 25/- and total number of shares issued by the company is 10,000. The company goes into liquidation on 01.10.2012 and has net distributable amount of ` 25 lakhs after discharging all the liabilities including any additional income tax under section 115-O. Out of ` 25 lakhs, ` 10 lakhs is accumulated profits.

Compute dividends in the hands of Mr. Varun Talwar.

Answer = Dividend under section 2(22)(c) `10,000

Problem 8.

ABC Ltd. a closely-held company has bonus share capital of `10 lakhs, General Reserves of `6 lakhs and current profits of `2 lakhs. The company has given a loan of ` 9 lakhs to one of the shareholders, who is beneficial owner of equity shares holding 10% of the voting power.

Compute amount of dividend in the hands of shareholder.

Answer = `8,00,000

Problem 9.

Mr. Rohit Aggarwal is beneficial owner of equity shares holding 10% of the voting power in ABC Ltd, a closely held company. He is partner in a partnership firm XY and has 20% share in the firm. The company has given a loan of `5 lakhs to the firm and company's accumulated profits are ` 6 lakhs.

Compute amount of dividend in the hands of shareholder and the firm.

Answer = Dividend in the hands of Shareholder: Nil; dividend in the hands of Firm: `5,00,000

Problem 10.

Accumulated profits of ABC Ltd, a closely-held company is 3 lakhs on 01.07.2012. A loan of ` 2 lakhs was advanced to Ranjeet Sharma holding 13% shares on 01.07.2012 and a loan of ` 1.5 lakhs was advanced to Saurabh Gupta on 01.10.2012 holding 11% shares.

Compute amount of dividend in the hands of Mr. Ranjeet Sharma and Mr. Saurabh Gupta.

Answer = Mr. Ranjeet Sharma: ` 2,00,000; Mr. Saurabh Gupta: `1,00,000

Problem 11.

Mr. Prince Manchanda is holding 10% equity shares in ABC Ltd, a closely-held company and he has taken a loan of `3 lakhs on 01.10.2012. The loan was repaid after ten days. The company has accumulated profits of `10 lakhs.

Compute amount of dividends in the hands of Mr. Prince Manchanda.

Answer = `3,00,000

Problem 12.

ABC Ltd. is a company in which public are not substantially interested. The company has Bonus share capital of ` 5 lakh and General Reserve of ` 7 lakh and the company has given a loan of ` 8 lakh to one of the shareholders who is holding 10% of the voting power.

Compute amount of dividend in the hands of shareholder and also his tax liability.

Answer = Dividend `7,00,000; Tax Liability `72,100

Problem 13.

There is a partnership firm XY. Mr. Suresh Kumar is holding 10% of the voting power of the closely held company and he has 20% share in profits of the firm. A loan of `3 lakh has been given to this partnership firm by the company having General Reserve of `10 lakhs.

Compute amount of dividend and discuss its taxability.

Answer = Dividend `3,00,000; Tax Liability `92,700

Problem 14.

If a closely held company has accumulated profits of ` 10 lakhs. A loan of `7 lakh was given to one of the shareholders who is holding 10% of voting power and subsequently loan of ` 6 lakh was given to another similar shareholder.
Compute amount of dividend and discuss its taxability.

Answer = 1st shareholder Dividend: `7,00,000; Tax Liability: `72,100; 2nd shareholder Dividend: `3,00,000; Tax Liability: `10,300

Problem 15.
Mr. Ankush Jain holds shares carrying 25% of voting power in a domestic company in which public are not substantially interested. On 01.09.2012, he obtained a loan of ` 5 lakhs @ 14% p.a. from the company, as on that date the company had accumulated profit of `4 lakhs.

Explain the tax implication in the hands of the company and also in the hands of shareholder.

Answer = Dividends in the hands of the shareholder shall be `4,00,000

Problem 16.
Mr. Vibhor Gupta is holding 12% equity shares in ABC Ltd., a company in which public are not substantially interested. Mr. Vibhor Gupta needs `7,00,000 to purchase a car for his personal use. He can either borrow this money at an interest rate of 11% p.a. from ABC Ltd. or from a finance company @ 15% p.a. Business of ABC Ltd. is not money lending but it has sufficient accumulated profits to advance the requisite loan. Suggest from tax point of view, whether he should borrow from ABC Ltd. or the finance company?

Answer = It is beneficial to take loan from the finance company. (if the loan is taken from ABC Ltd., total amount payable is `1,49,100 and if loan is taken from finance company, amount payable is `1,05,000)

Problem 17.

Mr. X has submitted information given below.

i) Income from owning and maintaining of race horse ` 2,00,000.

ii) Income from owning and maintaining of race camels ` 1,00,000.

iii) He had winning of ` 1,60,000 from horse race on 01.12.2012 and winning from camel race `1,80,000 on 07.12.2012.

iv) He purchased lottery tickets of `10,000 on 01.02.2013 and had winning of `2,00,000 on 12.02.2013.

v) He has received Royalty of book of literary nature @ 50% of print price of ` 600 and total copies sold are 2,000

vi) He has paid advance tax as given below:

Upto 15.09.2012	` 30,000
Upto 15.12.2012	` 80,000
Upto 15.03.2013	` 1,30,000

Balance was paid on 10.06.2013

Compute tax liability for the A.Y 2013-14 and interest under section 234A, 234B and 234C.

Answer = Tax Liability: `2,43,080; Interest under section 234A: Nil; 234B: `3,390; 234C: `1,991

SOLUTIONS

TO

PRACTICE PROBLEMS

<u>Solution 1:</u>

		`
Income under the head other sources		
Gross interest from State Bank of India		15,500.00
Interest from Government securities		
{`1,000 – `15}	985.00	
Interest from ABC Ltd		3,970.00
{`4,000 – `30}		
Interest on P.O.S.B (exempt u/s 10(15))		Nil
Interest on PPF (exempt u/s 10(15))		Nil
Interest from XYZ Ltd.		(2,030.00)
{Gross interest = `5,000		
Less: Collection charges = `30		
Less: Interest paid on loan = `7,000}		
Income under the head Other Sources		18,425.00
Income under the head House Property		2,30,000.00
Gross Total Income		2,48,425.00
Less: Deduction u/s 80TTA (`15,500 or `10,000 whichever is less)		10,000.00
Total Income (rounded off u/s 288A)		2,38,430.00
Computation of tax liability		
Tax on `2,38,430 at slab rate		3,843.00
Add: Education cess @ 2%		76.86
Add: SHEC @ 1%		38.43
Tax Liability		3,958.29
Rounded off u/s 288B		3,960.00

<u>Solution 2:</u>

		`
Income under the head Business/Profession		60,000
Less: Brought forward business loss		7,000
Income under the head Business/Profession		53,000
Income under the head Other Sources (horse races)		7,000
Gross Total Income		60,000
Less: Deductions u/s 80C to 80U		Nil
Total Income		60,000
Computation of tax liability		
Tax on `7,000 @ 30%	2,100	
Tax on `53,000 at slab rate		Nil
Add: Education cess @ 2%		42

Add: SHEC @ 1%	21
Tax Liability	2,163
Rounded off u/s 288B	2,160
Carry forward loss from owning and maintaining race horses	7,000

Solution 3:

	`
Income under the head Other Sources	4,00,000
Gross Total Income	4,00,000
Less: Deductions u/s 80C to 80U	Nil
Total Income	4,00,000
Tax on `4,00,000 at slab rate	20,000
Add: Education cess @ 2%	400
Add: SHEC @ 1%	200
Tax Liability	20,600

Note: Loss from casual income has no tax treatment and hence it is dead loss.

Solution 4:

	`
Income under the head Business/Profession	4,00,000
Gross Total Income	4,00,000
Less: Deductions u/s 80C to 80U	Nil
Total Income	4,00,000
Tax on `4,00,000 at slab rate	20,000
Add: Education cess @ 2%	400
Add: SHEC @ 1%	200
Tax Liability	20,600
Carry forward loss from owning and maintaining race horses	4,00,000

Solution 5:

	`
Income from House Property	90,000

Computation of income under the head Other Sources

Dividend from UTI {exempt u/s 10(35)}	Nil
Pension	75,000

Working Note:
Received = `90,000
Exempt = 1/3 of pension or `15,000,whichever is less
Taxable = `75,000

Interest on bank FD	14,000
Dividend from foreign company	36,000
Winning from lottery	70,000
Income under the head Other Sources	1,95,000
Income under the head Capital Gains (LTCG)	1,20,000
Gross Total Income	4,05,000
Less: Deduction u/s 80C	35,000
Total Income	3,70,000

Computation of Tax Liability

Tax on Long term capital gain `1,00,000 (1,20,000 – 20,000) @ 20% u/s 112	20,000
Tax on casual income `70,000 @ 30% u/s 115BB	21,000

Tax on `1,80,000 at slab rate	Nil
Tax before education cess	41,000
Add: Education cess @ 2%	820
Add: SHEC @ 1%	410
Tax Liability	42,230

Solution 6:

	`
Tax payable by Mr. Sumit Monga [Section 10(34)]	Nil

Additional Income Tax Payable by ABC Ltd.

Dividend	12,00,000.00
Additional income tax @ 15% of `12 lakhs	1,80,000.00
Add: Surcharge @ 5%	9,000.00
Add: Education cess @ 2%	3,780.00
SHEC @ 1%	1,890.00
Additional income tax	1,94,670.00

Solution 7:

	`
Share of Mr. Varun Talwar 25,00,000 / 10,000 x 100	25,000
Dividend out of ` 25,000 (1% of 10,00,000)	10,000

Solution 8:
In this case dividends under section 2(22)(e) in the hands of the shareholder shall be `8 lakhs i.e. to the extent of the accumulated profits of the company excluding capitalized profits.

Solution 9:
In this case dividend in the hands of the shareholder is nil and in hands of the firm are `5 lakhs as per section 2(22)(e).

Solution 10:
In this case deemed dividends in the hands of Ranjeet Sharma are `2 lakhs and in the hands of Saurabh Gupta are `1 lakh, because for the purpose of sec 2(22)(e), accumulated profits shall get reduced by the amount of dividend already charged u/s 2(22)(e) as decided in: *CIT v G. Narasimhan, (1979) (Mad)*

Solution 11:
In this case dividend in the hands of Prince Manchanda shall be `3 lakhs. Because if any loan is taken it is dividend, even if it is repaid in the same year or at any other time as decided in *Tarulata Shyam v CIT (1977) (SC)*

Solution 12:
In this case there will be deemed dividend of ` 7 lakhs and tax liability `72,100 and further section 10(34) is not applicable with regard to such dividends and also section 115-O is not applicable with regard to such dividend. i.e. dividends are taxable in the hands of shareholder. Tax liability `72,100.

Solution 13:
In this case, deemed dividend in the hands of partnership firm shall be ` 3 lakhs and tax liability `92,700 {3,00,000 x 30% + Education cess @ 2% + SHEC @ 1%}

Solution 14:
In this case dividends in the hands of 1st shareholder shall be ` 7 lakh and tax liability `72,100 and dividend in the hands of 2nd shareholder shall be `3 lakh and tax liability `10,300

Solution 15:

In the given case there will be deemed dividend under section 2(22)(e) to the extent of ` 4 lakhs and the shareholder shall be liable to pay tax and there are no tax implication in the hands of company.

Solution 16:

If Mr. Vibhor Gupta has taken loan from the company, he has to pay interest of `77,000 and also entire loan amount shall be considered to be dividend and accordingly tax payable by him shall be `72,100 i.e. total amount payable shall be `1,49,100

If the loan is taken from finance company, interest payable by him shall be `1,05,000. It is beneficial to take loan from the finance company.

Solution 17:

Computation of Total Income for the A.Y 2013-14

	`
Income under head Other Source	
Income from owning and maintaining race horse	2,00,000
Income from Royalty	6,00,000
Income from winning horse race (casual income)	1,60,000
Income from winning camel race (casual income)	1,80,000
Income from lottery income (casual income)	2,00,000
Income under head Other Sources	13,40,000
Income under head Business/Profession	
Income from owning and maintaining race camel	1,00,000
Gross Total Income	14,40,000
Less: Deduction u/s 80QQB (WN 1)	1,80,000
Total Income	12,60,000
Computation of Tax Liability	
Tax on ` 7,20,000 at slab rate	74,000
Tax on casual income i.e. ` 5,40,000 @ 30%	1,62,000
Tax before education cess	2,36,000
Add: Education cess @ 3%	7,080
Tax Liability	2,43,080
Interest u/s 234A	
	Nil
Interest u/s 234B	
2,43,080 – 1,30,000= 1,13,080 = 1,13,000 x 1% x 3	3,390

Interest u/s 234C

Date	Advance tax paid	Amount payable	Shortfall	Interest
upto 15.09.2012	30,000	22,866 (74,000 x 103% x 30%)	NIL	NIL
upto 15.12.2012	80,000	1,08,768 [(74,000 + 1,02,000) x 103% x 60%]	28,768 (28,700 x 1% x 3)	861
upto 15.03.2013	1,30,000	2,43,080	1,13,080 (1,13,000 x 1% x 1)	1,130

<u>Interest u/s 234C</u>	**1,991**
Total Interest Payable	5,381
Rounded off u/s 288B	5,380

<u>Working Notes:</u>

1. **<u>Maximum deduction allowed u/s 80QQB</u>**
   15% of print price i.e. ` 600 x 15% x 2,000= `1,80,000.

EXAMINATION QUESTIONS

IPCC NOV – 2011

Question 6 **(4 Marks)**

On 10.10.2012, Mr. Govind (a bank employee) received `5,00,000 towards interest on enhanced compensation from State Government in respect of compulsory acquisition of his land effected during the financial year 2007-08.

Out of this interest, `1,50,000 relates to the financial year 2009-10; `1,65,000 to the financial year 2010-11; and `1,85,000 to the financial year 2011-12. He incurred `50,000 by way of legal expenses to receive the interest on such enhanced compensation.

How much of interest on enhanced compensation would be chargeable to tax for the assessment year 2013-14? (Modified)

Answer:

Computation of amount chargeable to tax	`
Interest on enhanced compensation received	5,00,000.00
Less: Deduction u/s 57	(2,50,000.00)
(5,00,000 x 50/100)	
Amount chargeable to tax	2,50,000.00

PCC MAY – 2011

Question 1 **(5 Marks)**

Rahul holding 28% of equity shares in a company took a loan of `5,00,000 from the same company. On the date of granting the loan, the company had accumulated profit of `4,00,000. The company is engaged in some manufacturing activity.

(i) Is the amount of loan taxable as deemed dividend in the hands of Rahul, if the company is a company in which the public are substantially interested?

(ii) What would be your answer, if the lending company is a private limited company (i.e.) a company in which the public are not substantially interested? (Modified)

Answer:

Any payment by a company, other than a company in which the public are substantially interested, of any sum by way of advance or loan to an equity shareholder, being a person who is the beneficial owner of shares holding not less than 10% of the voting power, is deemed as dividend under section 2(22)(e), to the extent the company possesses accumulated profits.

(i) The provisions of section 2(22)(e), however, will not apply where the loan is given by a company in which public are substantially interested. In such a case, the loan would not be taxable as deemed dividend in the hands of Rahul.

(ii) However, if the loan is taken from a private company (i.e. a company in which the public are not substantially interested), which is a manufacturing company and not a company where lending of money is a substantial part of the business of the company, then, the provisions of section 2(22)(e) would be attracted, since Rahul holds more than 10% of the equity shares in the company.

The amount chargeable as deemed dividend cannot, however, exceed the accumulated profits held by the company on the date of giving the loan. Therefore, the amount taxable as deemed dividend in the hands of Rahul would be limited to the accumulated profit i.e., ` 4,00,000 and not the amount of loan which is `5,00,000.

IPCC NOV – 2010

Question 7 **(4 Marks)**

State under which heads the following incomes are taxable:

(i) Rental income in case of dealer in property

(ii) Dividend on shares in case of a dealer in shares

(iii) Salary by a partner from his partnership firm

(iv) Rental income of machinery

(v) Winnings from lotteries by a person having the same as business activity

(vi) Salaries payable to a Member of Parliament

(vii) Receipts without consideration

Answer.

	Particulars	**Head of Income**
(i)	Rental income in case of dealer in property	Income from house property
(ii)	Dividend on shares in case of a dealer in shares	Income from other sources
(iii)	Salary by partner from his partnership firm	Profit and gains of business or profession
(iv)	Rental income of machinery (See Note below)	Income from other sources/ Profits and gains of business or profession
(v)	Winnings from lotteries by a person having the same as business activity	Income from other sources
(vi)	Salaries payable to a Member of Parliament	Income from other sources
(vii)	Receipts without consideration	Income from other sources

Note –

As per section 56(2)(ii), rental income of machinery would be chargeable to tax under the head "Income from Other Sources", if the same is not chargeable to income-tax under the head "Profits and gains of business or profession".

IPCC JUNE – 2009

Question 1 **(2 Marks)**

Mr. P, a shareholder of a closely held company, holding 16% shares, received advances from that company which is to be deemed as dividend from an Indian Company, hence exempted under section 10(34) of the Income-tax Act, 1961.

Answer.

False, as per section 10(34) of the Act, only income by way of dividend referred to in section 115-O shall be exempt in the hands of shareholders. Corporate dividend tax is not leviable on deemed dividend under section 2(22)(e) and hence, such deemed dividend is not exempt under section 10(34).

PCC MAY – 2008

Question 4 **(8 Marks)**

Mr. X purchased 10,000 equity shares of Rejesh Co. Pvt. Ltd. on 28.02.2012 for ` 1,20,000. The company was wound up on 31.07.2012. The following is the summarized financial position of the company as on 31.07.2012:

Liability	`	Assets	`
1,00,000 Equity shares	10,00,000	Land	42,00,000
General reserve	40,00,000	Cash at bank	10,50,000
Provision for taxation	2,50,000		
	52,50,000		**52,50,000**

The tax liability (towards dividend distribution tax) was ascertained at ` 3,00,000. The remaining assets were distributed to the shareholders in the proportion of their shareholding. The market value of land as on 31.07.2012 is `100,00,000.

The land received above was sold by Mr. X on 28.02.2013 for ` 15,00,000.

Discuss the tax consequences in the hands of the company and Mr. X (Modified)

Answer.

In the hands of the company:

As per section 46, distribution of capital assets amongst the shareholders on liquidation of the company is not regarded as "transfer" in the hands of the company. Consequently, there will be no capital gains in the hands of the company.

In the hands of Mr. X (shareholder)

Particulars	**Amount (`)**
Mr. X holds 1/10th of the shareholding of the company	
Market value of land received (1/10 x 100,00,000)	10,00,000
Cash at bank [1/10th of ` (10,50,000 – ` 3,00,000)]	75,000
	10,75,000
Less: Deemed Dividend u/s 2(22)(c) 1/10th of (` 40,00,000-` 50,000)	3,95,000
Consideration for computing Capital Gain	6,80,000
Cost of acquisition of Shares	1,20,000
Short term capital gains	**5,60,000**

Where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to capital gains in respect of that asset under section 46, the cost of acquisition means the fair market value of the asset on the date of distribution. Hence, the short-term capital gains in the hands of Mr. X (shareholder) at the time of sale of urban land should be computed as follows:

Particulars	`
Sale consideration	15,00,000
Less : Fair market value of the land on the date of distribution	10,00,000
Short term capital gain	**5,00,000**

Dividend u/s 2(22)(c) ` 3,95,000 will be exempt under section 10(34).

DEDUCTION OF TAX AT SOURCE

SECTION 190 TO 206AA

- **Section 190 – Deduction at source and advance payment**
- **Section 191 – Direct payment**
- **Section 192 – Deduction of tax from salary income**
- **Section 193 – Deduction of tax from interest on securities**
- **Section 194 – Deduction of tax from Dividend income**
- **Section 194A – Deduction of tax from interest other than "interest on securities"**
- **Section 194B – Deduction of tax from winnings from lottery, crossword puzzle, card game, etc.**
- **Section 194BB – Deduction of tax from winnings from horse races**
- **Section 194C – Deduction of tax from payment to contractors (V. Imp.)**
- **Section 194D – Deduction of tax from insurance commission**
- **Section 194E – Payments to non-resident sportsmen or sports associations**
- **Section 194G – Deduction of tax from commission, etc. on sale of lottery tickets**
- **Section 194H – Commission or brokerage**
- **Section 194-I – Deduction of tax from rent (V. Imp.)**
- **Section 194J – Deduction of tax from fees for professional or technical services**
- **Section 194LA – Payment of compensation on acquisition of certain immovable property**
- **Section 194LB – Income by way of interest from Infrastructure Debt Fund**
- **Section 194LC – Income by way of interest from Indian company engaged in certain business**
- **Section 195 – Other sums**
- **Section 196 – Interest or dividend or other sums payable to Government, Reserve Bank or certain corporations**
- **Section 197 – Certificate for deduction at lower rate (V. Imp.)**
- **Section 200 – Duty of person deducting tax (V. Imp.)**
- **Section 201 – Consequences of failure to deduct or pay (V. Imp.)**
- **Section 203 – Certificate for tax deducted**
- **Section 203A – Tax deduction and collection account number**
- **Section 203AA – Furnishing of statement of tax deducted**
- **Section 204 – Meaning of "person responsible for paying"**
- **Section 206AA – Requirements to furnish Permanent Account Number**

Deduction at Source and Advance Payment Section 190

Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction or collection at source or by advance payment.

Direct Payment Section 191

In the case of income in respect of which provision is not made for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted income-tax shall be payable by the assessee direct.

If any person referred to in section 200 and in the cases referred to in section 194, the principal officer and the company of which he is the principal officer does not deduct the whole or any part of the tax and such tax has not been paid by the assessee direct, then, such person, the principal officer and the company shall be deemed to be an assessee in default.

Deduction of Tax at Source with regard to Salary Income Section 192

Every person responsible for payment of salary income shall estimate the tax liability of the recipient and the tax so estimated shall be deducted in 12 monthly installments. However, while estimating the tax liability assessee shall be allowed deduction under section 80C to 80U but only the notified deductions like 80C, 80CCC, 80CCD, 80D, 80DD,80E, 80GG, 80U and some part of 80G shall be considered.

<u>Illustration 1:</u> Mr. X is employed in ABC Ltd. getting basic pay `50,000 p.m. and he has invested `50,000 in NSC. In this case, tax to be deducted at source at the time of payment of salary shall be:

	`
Basic salary (50,000 x 12)	6,00,000.00
Income under the head Salary	6,00,000.00
Gross Total Income	6,00,000.00
Less: Deduction u/s 80C {NSC}	50,000.00
Total Income	5,50,000.00
Tax on `5,50,000 at slab rate	40,000.00
Add: Education cess @ 2%	800.00
Add: SHEC @ 1%	400.00
Tax Liability	41,200.00
Per installment	3,433.33

If any employer has failed to deduct tax at source, in such cases penalties may be imposed on the employer equal to the amount of tax which he has failed to deduct.

If any person is working with two or more employers, in that case he should submit the particulars of his salary income from all the employers to one of the employer who will deduct tax at source taking into consideration income from all employers. (Information has to be given in Form 12B)

Example

Mr. X is working with two employer A Ltd. and B Ltd. and is getting basic pay of `15,000 p.m. from each of the employer. In this case, he must inform one of the employer regarding his salary income from other employer and such employer shall deduct tax at source taking into consideration income from other employer.

If any employee has income under any other head, the employee shall be allowed even to report such incomes to the employer and the employer shall deduct the amount of tax accordingly.

If any employee has loss under the head house property, the employee shall be allowed even to report such loss and the employer shall take it into consideration.

<u>Issue of certificate for not deducting tax at source</u>

<u>As per section 197,</u> if any employee finds that his tax liability shall be less than the amount of tax deducted at source, in that case he may apply to the Assessing Officer to issue him a certificate for not deducting the tax at source or for deducting the tax at a lower rate.

As per Rule 28, application should be given in Form No.13.

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

Interest on Securities Section 193

Section 2(28B) "interest on securities" means,—

(i) Interest on any security of the **Central Government** or a **State Government**.
(ii) Interest on debentures or other securities of a **local authority** or a **company** or a **corporation established by a Central, State or Provincial Act.**

The person responsible for paying to a resident any interest on securities shall deduct income-tax @ **10%**.
No tax shall be deducted from –

1. Any interest payable on any security of the Central Government or a State Government.

2. Any interest payable to a resident individual or a Hindu Undivided Family on debentures issued by a company in which the public are substantially interested and the interest is paid by the company by an account payee cheque and amount of interest paid or likely to be paid during the financial year by the company to such individual does not exceed **`5,000**.

3. Any interest being paid to life insurance corporation of India or General Insurance Corporation of India.

4. Interest payable by a company in connection with security held in dematerialised form

5. Any other interest income notified under section 193.

Example

(i) ABC Ltd. has to pay interest of `2,00,000 to Mr. X in connection with listed debentures, amount of TDS shall be ` 20,000.

(ii) ABC Ltd. has to pay interest of `12,00,000 to Mr. X in connection with listed debentures, amount of TDS shall be `1,20,000

Crediting the amount to suspense account or any other similar account

Where any income by way of interest on securities is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and it will be liable to TDS.

Issue of certificate for not deducting tax at source

As per section 197, if the person receiving the payment finds that his tax liability shall be less than the amount of TDS, he may apply to the Assessing Officer to issue him a certificate not to deduct tax at source or to deduct tax at a lower rate and such certificate shall be submitted to the person making the payment and he shall be bound to comply with.

As per section 197A, if any individual or Hindu Undivided Family has interest income (including income covered under section 194 and 194A) not exceeding the exemption limit and also his tax liability is nil, such individual or HUF can furnish a declaration in Form No. 15G to the person making payment of interest and in that case no tax shall be deducted at source. A senior citizen can give a declaration in Form No 15H if his tax liability is nil.

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

Illustration 2: Mr. Puneet Kumar has invested some amount in ABC Ltd. and the company has paid him interest of `2,70,000 after deducting tax at source @ 10%. The cheque was collected by the bank and the bank charges were 1%. He has also received dividend from domestic company of `65,000 and bank charges are 1%.

Compute his tax liability and tax refund for assessment year 2013-14.

Solution:

	`
Gross interest (2,70,000 x 100 /90)	3,00,000.00
Less: bank charges u/s 57 (1% of 2,70,000)	2,700.00
Income under the head Other Sources	2,97,300.00
Total Income	2,97,300.00

Computation of Tax Liability

Tax on `2,97,300 at slab rate	9,730.00
Add: Education cess @ 2%	194.60
Add: SHEC @ 1%	97.30
Tax Liability	10,021.90
Less: TDS	30,000.00
Refund	19,978.10
Rounded off u/s 288B	19,980.00

Illustration 3: Mr. Lalit Bose has borrowed `1,00,000 from the market. The amount was invested in some company and the assessee has received a cheque for ` 36,000 (after TDS @ 10%) being the amount of interest and assessee has paid interest of ` 11,000.

The cheque was given for collection to a bank and the bank has deducted collection charges of 2%.

Mr. Lalit Bose has income under the head house property ` 2,00,000.

Compute his tax liability / tax payable for assessment year 2013-14.

Solution:

	`
Income under the head House Property	2,00,000.00
Income under the head other sources	28,280.00
(36,000 x 100 / 90) -11,000-720}	
(40,000 – 11,000 – 720)	
Gross Total Income	2,28,280.00
Less: Deduction u/s 80C to 80U	Nil
Total Income	2,28,280.00

Computation of Tax Liability

Tax on `2,28,280 at slab rate	2,828.00
Add: Education cess @ 2%	56.56
Add: SHEC @ 1%	28.28
Tax Liability	2,912.84
Less: TDS	4,000.00
Tax Refund	1,087.16
Rounded off u/s 288B	1,090.00

Interest other than "Interest on Securities" Section 194A

Any person, who is paying to a resident any interest other than interest on securities, shall at the time of payment shall **deduct tax at source @ 10%.**

TDS in case of payment by an individual or Hindu Undivided Family
An individual or Hindu Undivided Family shall be required to deduct tax at source only if they are liable to auditing under section 44AB during the financial year immediately preceding the relevant year.

No tax shall be deducted at source where the amount of such income or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year does not exceed:

(a) **`10,000**, where the payer is a bank/co-operative bank or post office.

(b) **`5,000** in any other case.

Example
(i) Punjab National Bank has to pay interest of `1,00,000 to Mr. X. In this case, amount of TDS shall be `10,000.

(ii) Punjab National Bank has to pay interest of `10,00,000 to Mr. X. In this case, amount of TDS shall be `1,00,000.

(iii) Punjab National Bank has to pay interest of `1,00,000 to X Ltd. In this case, amount of TDS shall be `10,000.

(iv) Punjab National Bank has to pay interest of `1,00,000 to an Hindu Undivided Family. In this case, amount of TDS shall be `10,000.

(v) Punjab National Bank has to pay interest of `1,000 to a Hindu Undivided Family. In this case, amount of TDS shall be Nil.

(vi) Punjab National Bank has to pay interest of `9,900 to Mr. X. In this case, amount of TDS shall be Nil.

Issue of certificate for not deducting tax at source
As per section 197, if the person receiving the payment finds that his tax liability shall be less than the amount of TDS, he may apply to the Assessing Officer to issue him a certificate not to deduct tax at source or to deduct tax at a lower rate and such certificate shall be submitted to the person making the payment and he shall be bound to comply with.

As per section 197A, if any individual or Hindu Undivided Family has interest income (including income covered under section 193 and 194) not exceeding the exemption limit and also his tax liability is nil, such individual or HUF can furnish a declaration in Form No. 15G to the person making payment of interest and in that case no tax shall be deducted at source. A senior citizen can give a declaration in Form No 15H if his tax liability is nil.

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

The provisions of section 194A will not apply in the following cases where the –

(1) Interest paid by a firm to a partner of the firm;

(2) Interest paid to any Banking Company or any Financial Corporation or Life Insurance Corporation of India or Unit Trust of India or any Associations or Bodies notified by the Central Government;

(3) Interest paid by a co-operative society to their member;

(4) Interest paid in respect of deposits under any scheme framed by the Central Government and notified by it;

(5) Interest income credited or paid by the Central Government under any provision of the Income-tax Act, the Wealth-tax Act etc.;

(6) Income paid in relation to a Zero Coupon Bond.

Illustration 4: Mrs. Nupur Sharma is getting a family pension of `7,000 p.m. Bank is deducting @ 2% as service charge. She has also received interest on fixed deposit of `36,000 after deducting tax at source of `4,000. The bank has deducted collection charges @ 1.5%.

Compute her tax liability for assessment year 2013-14.

Solution:

	`	`
Family Pension	84,000	
(7,000 x 12)		
Less: Deduction u/s 57	15,000	69,000
1/3 of `84,000 or `15,000 whichever is less		
Interest	40,000	
Less: Bank Charges [36,000 @ 1.5 %]	540	39,460
Income under the head Other Sources		1,08,460
Tax Liability		Nil

Dividends Section 194

Every domestic company responsible for making payment of dividend covered under section 2(22)(e) shall deduct income-tax at the rate of **10%**.

No such deduction shall be made in the case of a shareholder, being an individual, if—

(a) The dividend is paid by the company by an account payee cheque; and

(b) the amount of such dividend or, as the case may be, the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder, does not exceed **`2,500**.

The provisions of this section shall not apply to such income credited or paid to—

(a) The Life Insurance Corporation of India.

(b) The General Insurance Corporation of India.

(c) Any other insurer.

Issue of certificate for not deducting tax at source

As per section 197, if the person receiving the payment finds that his tax liability shall be less than the amount of TDS, he may apply to the Assessing Officer to issue him a certificate not to deduct tax at source or to deduct tax at a lower rate and such certificate shall be submitted to the person making the payment and he shall be bound to comply with.

As per section 197A, if any individual or Hindu Undivided Family has dividend income (including income covered under section 193 and 194A) not exceeding the exemption limit and also his tax liability is nil, such individual or HUF can furnish a declaration in Form No. 15G to the person making payment of interest and in that case no tax shall be deducted at source. A senior citizen can give a declaration in Form No 15H if his tax liability is nil.

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

Winnings from Lottery or Crossword Puzzle etc. Section 194B

The 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 an amount exceeding **`10,000** shall, at the time of payment thereof, **deduct income-tax thereon @ 30%**.

Provided that in a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

Example

(i) ABC Ltd. has to pay winnings of a lottery `3,00,000 to Mr. X, amount of TDS shall be `90,000.

(ii) Z Ltd. has to pay winnings of lottery `7,00,000 to Mr. Y, amount of TDS shall be `2,10,000.

Section 197 is not applicable

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

Example

Mr. Sushil Kumar a computer operator won ` 5 Crore in the Kaun Banega Crorepati (KBC).Calculate the amount of TDS required to be deducted by KBC under section 194B.

Solution:

TDS under section 194B = 5,00,00,000 x 30% = 1,50,00,000.

Winnings from Horse Race Section 194BB

Any person, being a bookmaker or a person to **whom a licence has been granted by the Government under any law for the time being in force for horse racing in any race course or for arranging for 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 an amount exceeding **`5,000** shall, at the time of payment thereof, **deduct income-tax thereon @ 30%**.

Example

ABC Ltd. has to pay winnings of horse race `3,00,000 to Mr. X, amount of TDS shall be `90,000 but if the amount to be paid is `2,000, amount of TDS shall be Nil.

❖ **Section 197 is NOT applicable**

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

Illustration 5: Mr. X purchased 20 lottery tickets of ` 250 each with a winning of `3.5 lakhs (Gross). He has also received dividend of ` 1.25 lakh from ABC Ltd, an Indian company and dividend of `57,000 from a foreign company. He has incurred expenditure of `3,000 and `5,000 respectively in connection with dividend income. He has also received interest of `72,000 after deducting tax at source of `8,000 and the cheque was collected by bank and service charges @ 2% was deducted. He has income from subletting of house property `7,000 p.m. He has received family pension of ` 4,000 p.m.

Compute his tax liability for assessment year 2013-14.

Solution:

	`	`
Income from lottery		3,50,000.00
Dividend from Indian company (exempt u/s 10(34))		Nil
Dividend from Foreign company	57,000	
Less: Expenses u/s 57	5,000	52,000.00
Interest (See Note)	80,000	
Less: Bank charges u/s 57 (2% of `72,000)	1,440	78,560.00
Sub-letting of house property (7,000 x 12)		84,000.00
Family pension	48,000	
Less: 1/3 of income or `15,000 whichever is less	15,000	33,000.00
Income under the head Other Sources		5,97,560.00

Computation of Tax Liability

Tax on casual income `3,50,000 @ 30% u/s 115BB	1,05,000.00
Tax on `2,47,560 at slab rate	4,756.00
Tax before education cess	1,09,756.00
Add: Education cess @ 2%	2,195.12
Add: SHEC @ 1%	1,097.56
Tax Liability	1,13,048.68
Rounded off u/s 288B	1,13,050.00

Note: Interest received is a interest other than interest on deposit in a saving bank account with bank, co-operative society, post office i.e. not eligible for deduction under section 80TTA.

Payments to Contractors Section 194C (V. Imp.)

---

1. Any person responsible for making payment to a resident contractor for carrying out any work including supply of labour for carrying out any work shall deduct tax at source @ **2%** and in case of payment to individual or Hindu Undivided Family, the rate of TDS shall be **1%** provided the amount being paid is exceeding **`30,000** or the amount paid or payable during the financial year exceeds **`75,000**.

Example

(i) If DDA has to pay a sum of `5,00,000 to Mr. X in connection with a particular contract, amount of TDS shall be `5,000.

(ii) If in the above case amount is to be paid to X Ltd. An Indian company, amount of TDS shall be `10,000.

2. TDS in case of payment by individual or Hindu Undivided Family

An individual or Hindu Undivided Family or body of individuals or association of persons shall be required to deduct tax at source only if they are liable to tax audit under section 44AB during the financial year immediately preceding the relevant year.

Example

If Mr. X is engaged in a business and turnover of business is `41,00,000 in the previous year 2011-12 and he has to pay `1,00,000 to Mr. Y in the previous year 2012-13 in connection with a contract, amount of TDS shall be Nil but if his turnover in previous year 2011-12 was `110,00,000, amount of TDS shall be `1,000 but if payment is to given to Y Ltd., amount of TDS shall be `2,000.

3. No individual or HUF shall deduct tax at source if the amount is paid for personal purpose of such individual or HUF.

Example

If in the above case, Mr. X has to pay `1,00,000 to Mr. Y in connection with a contract which is for personal purpose of Mr. X, TDS shall be Nil.

4. Contract for this purpose shall include every type of contract e.g.

(a) Advertising contract

(b) Broadcasting and telecasting including production of programmes for such broadcasting or telecasting

(c) Carriage of goods and passengers by any mode of transport other than by railways

(d) Catering

(e) Contract for construction

(f) Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

(g) Contract for courier services

(h) Contract of maintenance of plant and machinery etc.

(i) Any other contract

5. No tax shall be deducted at source in case of payment to a contractor in connection with transportation of goods provided the person receiving the payment has furnished permanent account number.

6. While making payment under contract, tax shall be deducted at source including the amount of service tax.

7. As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

8. <u>Issue of certificate for not deducting tax at source</u>

<u>As per section 197</u>, if the person receiving the payment finds that his tax liability shall be less than the amount of TDS, he may apply to the Assessing Officer to issue him a certificate for not deducting tax at source or for deducting tax at a lower rate and such certificate shall be submitted to the person making the payment and he shall be bound to comply with.

Example 1

ABC Limited provides 10 labour to XYZ Limited on Monthly Basis @ 1,00,000/- plus service tax and raised bill on 31st July, 2012. XYZ Limited makes the payment on 18.08.2012. Compute the amount of tax to be deducted at source by XYZ Limited under section 194C. Also mention the due date of deposit of TDS amount.

Solution:

Tax shall be deducted at source including the amount of service tax, hence amount of TDS shall be

= [1,00,000 + 12,360] x 2% = 2,247.2
Rounded off u/s 288B `2,247

TDS is required to be deducted on 18.08.2012 by XYZ Limited and is required to be deposited to the credit of Central Government upto 7th September, 2012.

Example 2

Mr. X purchases cloth from Raymonds for `60,00,000. He stitches shirts as per specification of Blackberry Ltd. and supplies to Blackberry Limited and raised the invoice as follows:

Material Purchased	`60,00,000
Stitching Charges	`30,00,000
	90,00,000

Calculate the amount of tax to be deducted at source by Blackberry Limited under section 194-C.

Solution:

The transaction given in the question are in the nature of sale and not covered under the definition of work as given under section 194-C. TDS is not applicable since material has been purchased from other than customer.

Example 3.

'X' Transport Co. Provides transport services to Mr. B who sends goods to Mr. C from Delhi to Chennai. 'X' raised a bill of `5,00,000 plus service tax for the service in the name of Mr. B. 'X' Transport Co. does not furnishes its PAN to Mr. B. Calculate the amount of TDS required to be deducted by Mr. B under section 194-C. (Presume Mr. B is liable for tax audit in the preceding financial year)

(b) Presume Mr. B is not liable for tax audit in the preceding financial year.

(c) Presume in the above example transport company furnished its PAN to Mr. B.

Solution:

As per section 194C, TDS is not required to be deducted on payments made or credited to transport operator provided the transporting co furnishes the PAN, If transporter does not furnishes his PAN than TDS shall be deducted @ 20% as per section 206AA.

In the given case, since the 'X' transport Co. does not furnish its PAN to Mr. B, So TDS shall be deducted @ 20% on the invoice value at the time of payment.

TDS = [5,00,000 + (5,00,000 x 12.36%)] x 20% = 1,12,360/-

(b) As per section 194C, an individual or HUF shall be required to deduct TDS only if they are liable to tax audit under section 44AB during the financial year immediately preceding the relevant year.

In the given case, Mr. B is not liable for Tax Audit under section 44AB in the preceding year so no TDS is required to be deducted by Mr. B.

(c) As per section 194-C, TDS is not required to be deducted on payments made or credited to transport operator provided the transporter furnishes the PAN. In the given case, TDS is not required to be deducted by Mr. B.

Example 4.
Suppose in the above example TDS was required to be deducted by Mr. B on 01.06.2012 but was deducted on 25.06.2012 and paid by Mr. B on 27.07.2012. Calculate the amount of interest payable under section 201.

Solution:
Interest under section 201

Period of default = 01.06.2012 to 25.06.2012= 25 days
1,12,360 x 1% x 1 = `1,123.60
Rounded off `1,124

Period of default = 25.06.2012 to 27.07.2012= 33 days
1,12,360 x 1.5% x 2 = `3,370.80
Rounded off `3,371

Insurance Commission Section 194D

Any person responsible for paying to a resident any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax @ **10%**.

Provided further that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year does not exceed **`20,000**.

Issue of certificate for not deducting tax at source
As per section 197, if the person receiving the payment finds that his tax liability shall be less than the amount of TDS, he may apply to the Assessing Officer to issue him a certificate not to deduct tax at source or to deduct tax at a lower rate and such certificate shall be submitted to the person making the payment and he shall be bound to comply with.

While making payment of commission by the insurance company, tax shall be deducted at source excluding the amount of service tax.

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

Payments to non-resident sportsmen or sports association Section 194E

(1) This Section provides for deduction of tax at source in respect of any income referred to in section 115BBA payable to a non-resident sportsman (including an athlete) or an entertainer who is not a citizen of India or a non-resident sports association or institution.

(2) Deduction of tax at source @ 20% should be made by the person responsible for making the payment.

(3) The following are the income referred to in section 115BBA –

(i) income received or receivable by a non-resident sportsman (including an athlete) by way of –

(a) participation in any game or sport in India (However, games like crossword puzzles, horse races etc, taxable under section 115BB are not included herein); or

(b) advertisement; or

(c) Contribution of articles relating to any game or sport in India in newspapers, magazines or journals.

Commission, etc., on the Sale of Lottery Tickets Section 194G

Any person who is responsible for paying to any person, who is or has been stocking, distributing, purchasing or selling lottery tickets, any income by way of commission, remuneration or prize on such tickets in an amount exceeding `1,000 shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of **10%**.

Issue of certificate for not deducting tax at source

As per section 197, if the person receiving the payment finds that his tax liability shall be less than the amount of TDS, he may apply to the Assessing Officer to issue him a certificate not to deduct tax at source or to deduct tax at a lower rate and such certificate shall be submitted to the person making the payment and he shall be bound to comply with.

While making payment of commission, tax shall be deducted at source excluding the amount of service tax.

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

Commission or Brokerage Section 194H

Any person, not being an individual or a Hindu Undivided Family, who is responsible for paying, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, deduct income-tax thereon at the rate of **10%**.

If the amount paid or payable during a particular year to a particular person is not exceeding **`5,000**, in that case no tax shall be deducted at source.

TDS in case of payment by individual or Hindu Undivided Family

An individual or Hindu Undivided Family shall be required to deduct tax at source only if they are liable to auditing under section 44AB during the financial year immediately preceding the relevant year.

Section 197 is applicable.

While making payment of commission, tax shall be deducted at source excluding the amount of service tax.

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

Example

Manoj trading limited rendered services in relation to sale of mustard oil to Ashish oils limited and commission charged is `7,00,000 plus service tax, in this case, tax to be deducted at source by Ashish oils limited shall be 7,00,000 x 10% = `70,000 and amount payable to Manoj trading limited shall be

Commission	7,00,000
Add: Service Tax @ 12.36%	86,520
Total	7,86,520
Less: TDS(7,00,000 x 10%)	70,000
Amount Payable	7,16,520

Rent Section 194-I (V. IMP.)

1. Any person who is responsible for paying to a resident any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of—

(a) **2%** for the use of any machinery or plant or equipment.

(b) **10%** for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings.

2. No deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed `1,80,000.

3. TDS in case of payment by individual or Hindu Undivided Family
An individual or Hindu Undivided Family shall be required to deduct tax at source only if they are liable to auditing under section 44AB during the financial year immediately preceding the relevant year.

Example
(i) Amount of TDS in the following cases shall be:

Person receiving the payment	Mr. Y	Mr. X	XY Firm	X Ltd. (Indian company)
Person making the payment	Individual (not having audit in P.Y. 11-12)	Individual (having audit in P.Y. 11-12)	Partnership firm	Company (Indian company)
Rent for house property Amount of TDS	`2,00,000 Nil	`2,00,000 `20,000	`2,00,000 `20,000	`2,00,000 `20,000
Rent for plant and machinery Amount of TDS	`2,00,000 Nil	`2,00,000 `4,000	`2,00,000 `4,000	`2,00,000 `4,000
Rent for house property Amount of TDS	`1,00,000 Nil	`1,00,000 Nil	`1,00,000 Nil	`1,00,000 Nil
Rent for plant and machinery Amount of TDS	`1,00,000 Nil	`1,00,000 Nil	`1,00,000 Nil	`1,00,000 Nil

4. "Rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any, –

(a) Land; or

(b) Building (including factory building); or

(c) Land appurtenant to a building (including factory building); or

(d) Machinery; or

(e) Plant; or

(f) Equipment; or

(g) Furniture; or

(h) Fittings,

Whether or not any or all of the above are owned by the payee.

5. <u>Issue of certificate for not deducting tax at source</u>

<u>As per section 197,</u> if the person receiving the payment finds that his tax liability shall be less than the amount of TDS, he may apply to the Assessing Officer to issue him a certificate not to deduct tax at source or to deduct tax at a lower rate and such certificate shall be submitted to the person making the payment and he shall be bound to comply with.

As per Circular No. 4/2008 dated 28.04.2008, if any payment is being made by the tenant, tax shall be deducted at source excluding the amount of service tax.

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

<u>Example 1.</u>

IT Enfra Services Private Limited raised an invoice of `3,00,000/-(excluding service tax) to ACL Limited for renting of commercial building. The above figure includes `50,000/-(excluding service tax) of parking charges. The bill is raised on 30th June, 2012 and ACL Limited made the payment on the same date.

Compute the Amount of TDS required to be deducted by ACL Limited and the due date of deposit of TDS amount and last date of filing of quarterly Statement?

<u>Solution:</u>

Service tax amount = 300000 x 12.36% = 37,080

TDS = 3,00,000 x 10% = 30,000/- to be deducted on 30th June, 2012 under section 194-I.

Last date of deposit = 7th July, 2012.

Last date of filing of quarterly Statement = 15th July, 2012.

<u>Example 2</u>

DLF limited has let out one commercial building to Idea cellular limited at Gurgaon and rent charged is `2,50,000 per month plus service tax , in this case, tax to be deducted at source by Idea cellular limited shall be 2,50,000 x 12 x 10% = `3,00,000 and amount payable to DLF limited shall be

<u>Solution:</u>

Rent	30,00,000
Add: Service Tax @ 12.36%	3,70,800
Total	33,70,800
Less: TDS(30,00,000 x 10%)	3,00,000
Amount payable	30,70,800

Fees for Professional or Technical Services Section 194J

1. Every person responsible for making payment to any resident in connection with professional services or technical services or any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company or royalty or any sum for not pursuing any business or profession, shall deduct tax at source at the time of making the payment at the rate of **10%** of the sum payable. No tax shall be deducted at source where the amount paid or payable during the year do not exceed **`30,000**.

2. TDS in case of payment by individual or Hindu Undivided Family
An individual or Hindu Undivided Family shall be required to deduct tax at source only if they are liable to auditing under section 44AB during the financial year immediately preceding the relevant year.

3. "Professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section.

4. "Fees for technical services" or royalty shall have the same meaning as given in section 9.

Example
(i) If ABC Ltd. has to pay a sum of `2,00,000 to an architect, amount of TDS shall be `20,000.

(ii) If ABC Ltd. has to pay `10,00,000 to a Chartered Accountant, amount of TDS shall be `1,00,000.

(iii) If Mr. X has to pay `50,000 to an advocate, amount of TDS shall be Nil and if Mr. X was required to get his accounts audited during 2011-12, amount of TDS shall be `5,000.

(iv) If Z Ltd. has to pay `15,000 in connection with technical services, amount of TDS shall be Nil.

5. If individual or HUF is making payment for **professional services** and it is for personal purpose, no tax shall be deducted at source.

6. Issue of certificate for not deducting tax at source
As per section 197, if the person receiving the payment finds that his tax liability shall be less than the amount of TDS, he may apply to the Assessing Officer to issue him a certificate not to deduct tax at source or to deduct tax at a lower rate and such certificate shall be submitted to the person making the payment and he shall be bound to comply with.

While making payment for professional / technical services, tax shall be deducted at source including the amount of service tax.

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

Payment of Compensation on Acquisition of certain Immovable Property Section 194LA

Any person responsible for paying to a resident any compensation or the enhanced compensation on account of compulsory acquisition of any immovable property, deduct an amount equal to **10%** of such sum.

However no deduction shall be made if the aggregate amount of such payment to a resident during the financial year does not exceed **`2,00,000**.
Section 197 is applicable.

As per section 206AA, if the person receiving the payment has not submitted PAN, TDS shall be at the applicable rate or 20%, whichever is higher.

Income by way of interest from infrastructure debt fund Section 194LB

Where any income by way of interest is payable to a non-resident, not being a company, or to a foreign company, by an infrastructure debt fund referred to in clause (47) of section 10, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.

Income by way of interest from Indian company engaged in certain business Section 194LC (Self Reading)

(1) Where any income by way of interest referred to in sub-section (*2*) is payable to a non-resident, not being a company or to a foreign company by a specified company, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of five per cent.

(2) The interest referred to in sub-section (*1*) shall be the income by way of interest payable by the specified company,—

(*i*) in respect of monies borrowed by it at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015 in foreign currency, from a source outside India under a loan agreement approved by the Central Government in this behalf; and

(*ii*) to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment.

Explanation.—For the purpose of this section—

(*a*) "foreign currency" shall have the meaning assigned to it in clause (*m*) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);

(*b*) "specified company" means an Indian company engaged in the business of—

(*i*) generation or distribution or transmission of power; or

(*ii*) operation of aircraft; or

(*iii*) manufacture or production of fertilizers; or

(*iv*) construction of road including toll road or bridge; or

(*v*) construction of port including inland port; or

(*vi*) construction of ships in a shipyard; or

(*vii*) construction of dam; or

(*viii*) developing and building a housing project as referred to in sub-clause (*vii*) of clause (*c*) of sub-section (*8*) of section 35AD.

Other sums Section 195 (Self Reading)

(1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries") shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :

Provided that in the case of interest payable by the Government or a public sector bank within the meaning of clause (*23D*) of section 10 or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode:

Provided further that no such deduction shall be made in respect of any dividends referred to in section 115-O.

Explanation.—For the purposes of this section, where any interest or other sum as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(2) Where the person responsible for paying any such sum chargeable under this Act (other than salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

(3) Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorizing him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

(4) A certificate granted under sub-section (3) shall remain in force till the expiry of the period specified therein or, if it is cancelled by the Assessing Officer before the expiry of such period, till such cancellation.

(5) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (3) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

(6) The person referred to in sub-section (1) shall furnish the information relating to payment of any sum in such form and manner as may be prescribed by the Board.

Interest or Dividend or other sums payable to Government, Reserve Bank or Certain Corporations Section 196 (Self Reading)

No deduction of tax shall be made by any person from any sums payable to—

(i) the Government, or

(ii) the Reserve Bank of India, or

(iii) a corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income-tax on its income, or

(iv) a Mutual Fund specified under clause (23D) of section 10,

where such sum is payable to it by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it.

Certificate for Deduction at Lower Rate Section 197 (V. Imp.)

If on income of any person, income-tax is required to be deducted at the time of payment under section 192, 193, 194, 194A,194C, 194D,194G, 194H, 194-I, 194J, 194K, 194LA, and 195 and the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.

Application should be given in Form No. 13.

(Section 197 is not applicable in case of TDS under section 194B, 194BB, 194E)

Duty of Person Deducting Tax Section 200 (V. Imp.)

Payment of TDS to the Government Section 200 / Rule 30

Any person deducting any sum in accordance with the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.

As per Rule 30, the payment is to be made in general within 7 days from the last day of the month in which the deduction is made.

If the tax has been deducted in the month of March, tax should be deposited on or before 30th April.

In certain cases, Assessing Officer may permit the payments on quarterly basis.

Quarterly Statement of Tax Deducted at Source Section 200 / Rule 31A

Every person deducting tax at source has to submit quarterly statement containing details of the tax deducted at source. The statement should be submitted latest by 15th of the month succeeding the relevant quarter but statement for the quarter ending March can be submitted upto 15th May. e.g. Statement for quarter ending March, 2013 can be submitted upto 15th May, 2013.

If there is any delay in submitting the statement, penalty shall be charged @ **`200** per day but maximum to the extent of tax deducted at source.

(Form No. 24Q Quarterly statement for salary)

(Form No. 26Q Quarterly statement for others)

Consequences of Failure to Deduct or Pay Section 201 (V. Imp.)

If any person does not deduct the tax or after deducting fails to pay the tax as, he shall be deemed to be an assessee in default in respect of the tax :

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(*i*) has furnished his return of income under section 139;

(*ii*) has taken into account such sum for computing income in such return of income; and

(*iii*) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

Provided that no penalty shall be charged under section 221 from such person, principal officer or company unless the Assessing Officer is satisfied that such person or principal officer or company, as the case may be, has without good and sufficient reasons failed to deduct and pay the tax.

If any such person, principal officer or company does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(i) 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 deducted; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of section 200.

Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso of sub-section (*1*), the interest under clause (*i*) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.

Example
Assessee deducts the TDS on 10.10.2012 but pays TDS on 31.12.2012. Now as amendment by Finance Act, 2010 interest under section 201 shall be charged from 10.10.2012 to 31.12.2012 @ 1.5% per month i.e., for 3 months.

Example
Assessee failed to deduct TDS and deduct TDS on 31.12.2012. Assessee pays TDS on 17.01.2013.
(i) Interest under section 201 shall be charged for 3 months @ 1% for the period 10.10.2012 to 31.12.2012.
(ii) Interest under section 201 shall be charged @ 1.5% per month for one month from 31.12.2012 to 17.01.2013.

Certificate for Tax Deducted   Section 203 / Rule 31

TDS Certificate

Every person deducting tax at source shall issue a certificate to the person with regard to whom tax has been deducted at source. In case of payment of salary, certificate shall be issued in Form No. 16 and in other cases it will be in Form No. 16A.

The certificate in Form No. 16 should be given upto 31st May of the succeeding year in case of an employee and it will be an annual certificate.

In other cases certificate in Form No. 16A should be issued on quarterly basis and it should be issued within 15 days from the last date of submitting the quarterly statement under section 200.

Tax Deduction Account Number (TAN)   Section 203A

Every person, deducting tax or collecting tax, who has not been allotted a tax deduction account number shall, within such time as may be prescribed, apply to the Assessing Officer for the allotment of a "tax deduction and collection account number".

As per Rule 114A, application should be given in Form No.49B within one month from the end of the month in which tax was deducted for the first time.

Furnishing of Statement of Tax Deducted   Section 203AA / Rule 31AB

Income Tax Authorities shall prepare annual statement for every person with regard to whom tax has been deducted at source and such statement shall be prepared in the Form No. 26AS on the basis of quarterly return filed by the person deducting tax at source. Such statement shall be sent to every person upto 31st July of assessment year. Tax credit can be claimed on the basis of such statement. In case of any discrepancy, such person shall report it to the Income Tax Department.

Meaning of "Person Responsible for Paying"   Section 204

The person responsible for paying means –

(i) In case of salary payments, the employer and if the employer is a company, it will include the company and also its principal officer.

(ii) In case of interest on securities, the local authority, corporation or the company including its principal officer.

(iii) In any other case the person making the payment.

Requirement to Furnish Permanent Account Number   Section 206AA

Every person on whose behalf, tax is being deducted at source shall submit his PAN to the person deducting tax at source otherwise rate of TDS shall be the actual rate or 20% whichever is higher. The person deducting tax at source has to mention such PAN in the quarterly statement.

Question: Explain provisions of Tax Deduction at Source (TDS) with regard to Service Tax.

Answer:

If any service recipient has to make the payment to the service provider and tax has to be deducted at source, in that case, while deducting tax at source, service tax shall also be included in some of the cases and it will not be included in some other cases and is as given below:

TDS excluding Service Tax

1. If the service recipient is making payment of **Rent**, tax shall be deducted at source under section 194-I @ 10% and tax shall be deducted excluding service tax.

Example

ABC Ltd. has let out one commercial building to XYZ Ltd. and rent charged is `20,00,000 plus service tax, in this case, tax to be deducted at source by XYZ Ltd. shall be 20,00,000 x 10% = `2,00,000 and amount payable to ABC Ltd. shall be

Rent	20,00,000
Add: Service Tax @ 12.36%	2,47,200
Total	22,47,200
Less: TDS (20,00,000 x 10%)	2,00,000
Amount Payable	20,47,200

2. If the service recipient is making payment of **Commission / Brokerage**, tax shall be deducted at source under section 194-H @ 10% and tax shall be deducted excluding service tax.

Example

Mr. X a property dealer has rendered services for getting one commercial building on rent to XYZ Ltd. and Commission charged is `5,00,000 plus service tax, in this case, tax to be deducted at source by XYZ Ltd. shall be 5,00,000 x 10% = `50,000 and amount payable to ABC Ltd. shall be

Commission	5,00,000
Add: Service Tax @ 12.36%	61,800
Total	5,61,800
Less: TDS (5,00,000 x 10%)	50,000
Amount Payable	5,11,800

3. If the service recipient is making payment of **Commission for Sale of Lottery Tickets**, tax shall be deducted at source under section 194-G @ 10% and tax shall be deducted excluding service tax.

Example

Haryana Government has given contract for sale of lottery Tickets to XYZ Ltd. and XYZ Ltd. has charged commission of `20,00,000 plus service tax from Haryana Government, in this case, tax to be deducted at source by Haryana Government shall be 20,00,000 x 10% = `2,00,000 and amount payable to ABC Ltd. shall be

Commission	20,00,000
Add: Service Tax @ 12.36%	2,47,200
Total	22,47,200
Less: TDS (20,00,000 x 10%)	2,00,000
Amount Payable	20,47,200

4. If the service recipient is making payment of **Commission for Insurance Business**, tax shall be deducted at source under section 194-D @ 10% and tax shall be deducted excluding service tax. There is a Reverse Charge and service tax has to be paid by the Insurance Company (Such services are called Insurance Auxiliary Services)

Example

If LIC has to commission of `2,00,000 to their agent Mr. X in connection with insurance business, amount of TDS shall be `2,00,000 x 10% = `20,000 and service tax of `24,720 shall be paid directly by LIC to the Government under Reverse Charge under Rule 2(1)(d).

TDS including Service Tax

1. If the service recipient is making payment for **Professional / Technical** services, tax shall be deducted at source under section 194-J @ 10% and tax shall be deducted including service tax.

Example

Mr. X, a Chartered Accountant has given professional services to XYZ Ltd. and charged `20,00,000 plus service tax, in this case, tax to be deducted at source by XYZ Ltd. shall be 22,47,200 x 10% = `2,24,720 and amount payable to Mr. X shall be

Professional Charges	20,00,000
Add: Service Tax @ 12.36%	2,47,200
Total	22,47,200
Less: TDS (22,47,200 x 10%)	2,24,720
Amount Payable	20,22,480

2. If the service recipient is making payment for any **Contract** e.g. **Advertising Contract** or **Catering Contract** etc tax shall be deducted at source under section 194-C @ 2% but if payment is being given to any individual or HUF, tax shall be deducted at source @ 1% and tax shall be deducted including service tax.

Example

ABC Ltd. has rendered advertising services to XYZ Ltd. and charged `20,00,000 plus service tax, in this case, tax to be deducted at source by XYZ Ltd. shall be 22,47,200 x 2% = `44,944 and amount payable to ABC Ltd. shall be

Advertising Charges	20,00,000
Add: Service Tax @ 12.36%	2,47,200
Total	22,47,200
Less: TDS (22,47,200 x 2%)	44,944
Amount Payable	22,02,256

EXAMINATION QUESTIONS

IPCC NOV – 2012

Question No. 7(a) **(4 Marks)**

(i) Bharghav doing textiles business furnishes you the following information:

Total turnover for the financial year:

	`
2011-12	101,00,000
2012-13	95,00,000

State whether the provisions of tax deduction at source are attracted for the following expenses incurred during the financial year 2012-13;

	`
Interest paid to Indian Bank on Term Loan	92,800
Advertisement expenses to R (two individual expense of `24,000 and `34,000)	58,000
Factory rent paid to C	1,85,000
Brokerage paid to B, a sub-broker	6,000

(Modified)

Answer.

As the turnover of Bharghav for F.Y.2011-12, i.e. ` 101 lakh, has exceeded the limit prescribed under section 44AB, he has to comply with the tax deduction provisions during the financial year 2012-13.

(i) TDS under section 194A is not attracted in respect of interest paid to a banking company.

(ii) Advertisement =TDS on `34,000 @ 1% = `340 (Sec 194C is applicable if single payment exceeds `30,000)

(iii) Tax has to be deducted under section 194-I as the rent amount exceeds `1,80,000.

TDS @ 10% on ` 1,85,000 = `18,500

(iv) Tax has to be deducted under section 194-H as the commission exceeds `5,000.

TDS @ 10% on ` 6,000 = `600

IPCC NOV – 2011

Question 7 **(4 Marks)**

State the applicability of TDS provisions and TDS amount in the following cases:

(a) Rent paid for hire of machinery by B Ltd. to Mr. Raman `2,10,000.

(b) Fee paid to Dr. Sunder by Sundar (HUF) `35,000 for surgery performed to a member of the family.

Answer.

(a) Since the rent paid for hire of machinery by B Ltd. to Mr. Raman exceeds `1,80,000, the provisions of section 194-I for deduction of tax at source are attracted.

The rate applicable for deduction of tax at source under section 194-I on rent paid for hire of plant and machinery is 2% assuming that Mr. Raman had furnished his permanent account number to B Ltd.

Therefore, the amount of tax to be deducted at source:
= `2,10,000 x 2% = `4,200

Note: In case Mr. Raman does not furnish his permanent account number to B Ltd., tax shall be deducted @ 20% on `2,10,000, by virtue of provisions of section 206AA.

(b) As per the provisions of section 194J, a Hindu Undivided Family is required to deduct tax at source on fees paid for professional services only if it is subject to tax audit under section 44AB in the financial year preceding the current financial year.

However, if such payment made for professional services is exclusively for the personal purpose of any member of Hindu Undivided Family, then, the liability to deduct tax is not attracted.

Therefore, in the given case, even if Sundar (HUF) is liable to tax audit in the immediately preceding financial year, the liability to deduct tax at source is not attracted in this case since, the fees for professional service to Dr. Sunder is paid for personal purpose i.e. the surgery of a member of the family.

PCC NOV – 2011

Question 6 **(6 Marks)**

Compute amount of tax to be deducted at source on the following payments made by M/s S Ltd. during the financial year 2012-13 as per the provisions of the Income-Tax Act, 1961.

Sr. No.	Date	Nature of Payment
(i)	01.10.2012	Payment of `2,00,000 to Mr. "R" a transporter who is having PAN.
(ii)	01.11.2012	Payment of fee for technical services of `45,000 to Mr. Shyam who is having PAN.
(iii)	30.06.2012	Payment of `25,000 to M/s X Ltd. for repair of building.
(iv)	01.01.2013	Payment of `2,00,000 made to Mr. A for purchase of diaries made according to specifications of M/s S Ltd. However, no material was supplied for such diaries to Mr. A by M/s S Ltd.
(v)	01.01.2013	Payment made `80,000 to Mr. Bharat for compulsory acquisition of his house as per Law of the State Government.
(vi)	01.02.2013	Payment of commission of 6,000 to Mr. Y.

(Modified)

Answer.

(i) No tax shall be deducted at source in case of payment to a transporter who has submitted his PAN.

(ii) Tax shall be deducted at source under section 194J @ 10% because the total amount payable is exceeding `30,000 and amount of TDS shall be = 45,000 x 10% = `4,500

(iii) It is covered under section 194C but payment is not exceeding `30,000 hence no tax shall be deducted at source.

(iv) Tax shall not be deducted at source in case of puchase of goods.

(v) Since payment is not exceeding `2,00,000 hence no tax shall be deducted at source under section 194LA.

(vi) Tax shall be deducted at source u/s 194H and shall be = 6,000 x 10% = `600

PCC MAY – 2011

Question 5 **(5 Marks)**

List any 5 instances where the tax deductible at source in terms of section 194A will not apply.

Answer.

The provisions of section 194A will not apply in the following cases where the –

(1) Interest is paid by a firm to a partner of the firm;

(2) Interest paid to any Banking Company or any Financial Corporation or Life Insurance Corporation of India or Unit Trust of India or any Associations or Bodies notified by the Central Government;

(3) Interest paid by a co-operative society to their member;

(4) Interest income credited or paid by the Central Government under any provision of the Income-tax Act, the Wealth-tax Act etc.;

(5) Income paid in relation to a Zero Coupon Bond.

Question 7 **(4 MARKS)**

Ashwin doing manufacture and wholesale trade furnishes you the following information:

Total turnover for the financial year	`
2011-12	115,00,000
2012-13	105,00,000

State whether tax deduction at source provisions are attracted for the below said expenses incurred during the financial year 2012-13: `

Interest paid to UCO Bank	41,000
Contract payment to Raj (2 contracts of `12,000 each)	24,000
Shop rent paid (one payee)	1,90,000
Commission paid to Balu	7,000

(Modified)

Answer.

As the turnover of Ashwin for F.Y.2011-12, i.e. ` 115 lakh, has exceeded the monetary limit prescribed under section 44AB, he has to comply with the tax deduction provisions during the financial year 2012-13, subject to however the exemptions provided for under the relevant sections for applicability of TDS provisions.

Interest paid to UCO Bank

TDS under section 194A is not attracted in respect of interest paid to a banking company.

Contract payment of `24,000 to Raj for 2 contracts of `12,000 each

TDS provisions under section 194C would not be attracted if the amount paid to a contractor does not exceed ` 30,000 in a single payment or `75,000 in the aggregate during the financial year. Therefore, TDS provisions under section 194C are not attracted in this case.

Shop Rent paid to one payee – Tax has to be deducted under section 194-I as the rental payment exceeds `1,80,000.

<u>Commission paid to Balu –</u> Tax has to be deducted under section 194-H as the commission exceeds `5,000.

IPCC NOV – 2010

Question 4 **(4 Marks)**
Explain the consequences of not deducting tax and paying to Govt. account under section 201 of the Income Tax Act, 1961.

Answer.
If any person does not deduct the tax or after deducting fails to pay the tax, he shall be deemed to be an assessee in default in respect of the tax :

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(i) Has furnished his return of income under section 139;

(ii) Has taken into account such sum for computing income in such return of income; and

(iii) Has paid the tax due on the income declared by him in such return of income,
and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

Provided that no penalty shall be charged under section 221 from such person, principal officer or company unless the Assessing Officer is satisfied that such person or principal officer or company, as the case may be, has without good and sufficient reasons failed to deduct and pay the tax.

If any such person, principal officer or company does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(i) 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 deducted; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of section 200.

Example
Assessee deducts the TDS on 10.10.2012 but pays TDS on 31.12.2012. Now as amendment by Finance Act, 2010 interest under section 201 shall be charged from 10.10.2012 to 31.12.2012 @ 1.5% per month i.e., for 3 months.

Example
Assessee failed to deduct TDS and deduct TDS on 31.12.2012. Assessee pays TDS on 17.01.2013.

(i) Interest under section 201 shall be charged for 3 months @ 1% for the period 10.10.2012 to 31.12.2012.

(ii) Interest under section 201 shall be charged @ 1.5% per month for one month from 31.12.2012 to 17.01.2013.

IPCC MAY – 2010

Question 4 **(2 Marks)**

State the concessions granted to transport operators in the context of deduction of tax at sources under section 194-C.

Answer.

No deduction is required to be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor, during the course of the business of plying, hiring or leasing goods carriages, if the contractor furnishes his permanent account number (PAN) to the person paying or crediting such sum.

PCC MAY – 2010

Question 4 **(8 Marks)**

State with reasons, whether tax deduction at source provisions are applicable to the following transactions and if so, the rate of tax deduction:

(i) X & Co. (Firm) engaged in wholesale business assigned a contract for construction of its godown building to Mr. Ravi, a contractor. It paid `25,00,000 to Mr. Ravi as contract payment.

(ii) Y & Co. engaged in real estate business conducted a lucky dip and gave Maruti car to a prize winner.

(iii) An Insurance Company paid `45,000 as Insurance Commission to its agent Mr. Hari.

(iv) AB Ltd. allowed a discount of `50,000 to XY & Co. (a firm) on prompt (immediate) payment towards supply of automobile parts.

Answer.

(i) Section 194C provides for deduction of tax at source from the payment made to resident contractors and sub-contractors. Therefore, tax is deductible at source under section 194C for the contract payments made for the construction of godown building. The rate of TDS under section 194C on payments made to contractors who are individuals or HUF shall be @ 1%. Hence, X & Co. (firm) must deduct tax at source on the contract payments made to Mr. Ravi.

(ii) In respect of lucky dip conducted by Y & Co., the provisions of Section 194B would apply. As per Section 194B, winning from lottery or crossword puzzle or card game or other game of any sort exceeding `10,000 payable by any person to any other person, subject to tax deduction at the rate of 30%. Since the value of prize i.e. Maruti car would exceed `10,000 tax is deductible at source @ 30%. As the winning is in kind, the winner must deposit 30% of the prize value to Y & Co. for remitting the same as tax. Only after such deduction / recovery, the Maruti car is to be delivered to the prize winner.

(iii) As per section 194D, any person paying insurance commission in excess of `20,000 to any resident person is liable to deduct tax at the rate of 10% in case of all assesses. Therefore, the insurance company must deduct tax at source @ 10% in respect of the insurance commission paid to Mr. Hari.

(iv) Discount allowed to a customer for prompt payment is not covered by any of the tax deduction at source provisions of the Income tax Act, 1961. Therefore, AB Ltd. need not deduct any tax at source since no payment was involved in allowing discount to its customer viz. (namely) XY & Co.

IPCC NOV – 2009

Question 2 **(6 Marks)**

From the following particulars of Pankaj for the previous year ended 31st March, 2013 compute the income under the head “Income from other sources”:

		`
(i)	Directors Fee from a company	10,000
(ii)	Interest on bank deposits	3,000
(iii)	Income from undisclosed source	12,000
(iv)	Winnings from Lotteries (Net)	35,000
(v)	Royalty on a book written by him	9,000
(vi)	Lectures in Seminars	5,000
(vii)	Interest on loan given to a relative	7,000
(viii)	Interest on debentures of a company (listed in a Recognised Stock Exchange) net of taxes	3,600
(ix)	Interest on Post Office Savings Bank Account	500
(x)	Interest on Government Securities	2,200
(xi)	Interest on Monthly Income Scheme of Post office	33,000

He paid `1,000 for typing the manuscript of book written by him. (Modified)

Answer.

Computation of income of Pankaj chargeable under the head "Income from other sources" for the A.Y. 2013-14

Particulars	`	`
1. Directors' fees		10,000
2. Interest on bank deposit		3,000
3. Income from undisclosed source		12,000
4. Royalty on books written **(See Note below)**	9,000	
Less: expenses	1,000	8,000
5. Lectures in seminars		5,000
6. Interest on loan given to a relative		7,000
7. Interest on listed debentures		
3,600/ 90% x 100%		4,000
8. Interest on Post Office Savings Bank [exempt under section 10(15)]		-
9. Interest on Government securities		2,200
10. Interest on Post Office Monthly Income Scheme		33,000
11. Winnings from lotteries		
35,000 / 70% x 100%		50,000
Income from Other Sources		**1,34,200**

Note –

Royalty income would be charged to tax under the head "Income from Other Sources", only if it is not chargeable to tax under the head "Profits and gains of business or profession". This problem has been solved assuming that the same is not taxable under the head "Profits and gains of business or profession" and hence, is chargeable to tax under the head "Income from other sources".

Question 4 **(4 Marks)**
Explain the consequences of not deducting tax and paying to Govt. account under section 201 of the Income Tax Act, 1961.

Answer.
Refer to Answer given in IPCC NOV – 2010 Question No.4

PCC NOV – 2009

Question 1 **(2 Marks)**
State with reasons, whether the following statements are true or false having regard to the provisions of the Income-tax Act, 1961, for the assessment year 2013-14:

An AOP having gross receipts of `110 lacs during the financial year 2011-12 is not required to deduct tax at source under section 194C of the Income-tax Act, 1961, on payment made to contractors during the financial year 2012-13.
Answer.
False: Association of persons and Body of Individuals whose total sales/gross receipts/turnover from the business or profession exceeds the monetary limits specified in section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor. Thus, such AOPs and BOIs are subject to tax audit in the immediately preceding financial year and are liable to deduct tax at source from payments to resident contractors.

Question 3 **(4 Marks)**
Mrs. Indira, a landlord, derived income from rent from letting a house property to M/s Vaibhav Corporation Ltd. of `1,00,000 per month. She charged the service tax @ 12.36% on lease rent charges. Calculate the deduction of tax at source (TDS) to be made by M/s Vaibhav Corporation Ltd. on payment made to Mrs. Indira and narrate related formalities in relation to TDS. What are the consequences of failure to deduct or pay TDS? (Modified)
Answer.
(1) As per Circular No. 4/2008 dated 28th April, 2008 by the CBDT, the service tax paid by the tenant does not partake the nature of income of the landlord. The landlord only acts as a collecting agency for collection of Service tax. Therefore, tax deducted at source under section 194-I would be required to be made on the amount of rent i.e. on `12,00,000 only excluding the amount of service tax.

(2) TDS shall be applicable @ 10%.

(3) Hence, in the given case, TDS under section 194-I @ 10% on `12,00,000 comes to `1,20,000 i.e. `10,000 will be deducted every month and cheque for net amount of (`1,12,360 – `10,000 = `1,02,360) will be issued by M/s. Vaibhav Corporation Ltd. to Mrs. Indira.

(4) Tax deducted will be deposited within one week from the last day of the month in which deduction is made but if the tax has been deducted in the month of March, tax should be deposited on or before 30th April.

(5) Form No. 16-A has to be issued by M/s. Vaibhav Corporation Ltd. to Mrs. Indira within 15 days from the last date of submitting the quarterly return under section 200.

(6) Assessee should file quarterly statement upto 15th of the month succeeding the relevant quarter but for the last quarter ending March can be sumitting upto 15th May.

Consequences of failure to deduct or pay tax (Section 201)
Refer to Answer given in IPCC NOV – 2010 Question No.4

Question 5 **(4 Marks)**

Explain the difference between tax deduction at source and tax collection at source.

Answer:

Tax deduction of source means any tax which has been deducted while paying sum to someone. Persons responsible for making payment of income covered by the scheme of tax deduction are required to be deducting tax at source at the prescribed rates. Tax so deducted should be deposited within the prescribed time. Tax is always deducted on expense and not supply of goods.

Tax collection at source arises on the part of the seller. Certain specified goods when sold must be subjected to tax collection at source and taxes collected thereon must be remitted into government's accounts as done in the case of TDS. As per section 206C, rate of collection of tax at source shall be

TABLE

Sl. No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(i)	Alcoholic Liquor for human consumption	One per cent
(ii)	Tendu leaves	Five per cent
(iii)	Timber obtained under a forest lease	Two and one-half per cent
(iv)	Timber obtained by any mode other than under a forest lease	Two and one-half per cent
(v)	Any other forest produce not being timber or tendu leaves	Two and one-half per cent
(vi)	Scrap	One per cent
(vii)	Parking lot	Two per cent
(viii)	Toll plaza	Two per cent
(ix)	Mining and quarrying	Two per cent
(x)	Minerals, being coal or lignite or iron ore	One per cent

PCC JUNE – 2009

Question 1 **(2 Marks)**

When will tax not required to be deducted at source on interest payable to a resident on any bond or security issued by a company though the aggregate amount of interest exceeds `5,000, the basic exemption limit under section 193 of the Act?

Answer.

As per section 193 of the Act, no tax is required to be deducted at source on any interest payable to a resident on any bond or security issued by a company, where the following conditions are satisfied –

(i) where such security is in dematerialised form and

(ii) is listed on a recognised stock exchange in India.

PCC MAY – 2008

Question 1 **(2 Marks)**

Mrs. Hemalatha has made payments of ` 5 lacs to a contractor (for business purposes) during the last two quarters of the year ended 31.03.2013. Her turnover for the year ended 31.03.2012 was ` 115 lacs. Is there any obligation to deduct tax at source?

Answer.

In the case of an individual, the provisions of section 194C shall apply, where the turnover from business has exceeded the prescribed limit for tax audit during the financial year immediately preceding the financial year in which such payment is made and payment is made for a purpose other than the personal purpose. In the given case, since the turnover of Mrs. Hemalatha has exceeded the prescribed limit for the year ended

31st March 2012 and the payment is relating to business activities, she shall be liable to deduct tax at source in respect of payment made to a contractor at the applicable rate.

PCC NOV – 2007

Question 5 **(4 Marks)**

Briefly explain the provisions of section 197 in respect of obtaining certificate for deduction of tax at a lower rate.

Answer.

Section 197 applies where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or payment, as the case may be, at the rates in force as per the provisions of sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA and 195 of the Act.

The assessee can make an application to the Assessing Officer for deduction of tax at a lower rate or for non-deduction of tax.

If the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at lower rates or no deduction of income-tax, as the case may be, he may give to the assessee a certificate to this effect.

The person responsible for paying the income shall deduct income-tax at such lower rates or deduct no tax as specified in the certificate until such certificate is cancelled by the Assessing Officer.

PCC MAY – 2007

Question 5 **(4 Marks)**

What are the consequences of failure to deduct tax at source or pay the tax deducted at source to the credit of Central Government?

Answer.

Refer to Answer given in IPCC NOV – 2010 Question No.4

SET OFF AND CARRY FORWARD OF LOSSES

SECTION 70 TO 80

PARTICULARS	SECTIONS
Set off of loss from one source against income from another source under the same head of income	**70**
Set off of loss from one head against income from another head	**71**
Carry forward and set off of loss from house property	**71B**
Carry forward and set off of business losses	**72**
Carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.	**72A**
Losses in speculation business	**73**
Losses by specified business	**73A**
Losses under the head "Capital gains"	**74**
Losses from certain specified sources under the head "Income from other sources"	**74A**

THEORY QUESTIONS

Q1 [V. Imp.]. Write a note on set off and carry forward of losses under the head House Property.
Q2 [Imp.]. Write a note on set off and carry forward of losses under the head Business/ Profession.
Q3 [V. Imp.]. Write a note on Unabsorbed Depreciation.
Q4 [V. Imp.]. Write a note on set off and carry forward of loss from Speculative Business.
Q5 [V. Imp.]. Write a note on set off and carry forward of loss under the head Capital Gains.
Q6. Write a note on set off and carry forward of losses under the head "Income from other sources".
Q7. Write a note on set off and carry forward of losses in case of Amalgamation.
Q8. Write a note on set off and carry forward of losses in case of Demerger
Q9. Write a note on set off and carry forward of losses in case of Conversion of Proprietary Concern or Partnership Firm into a Company.
Q10. Write a note on carry forward and set off of losses in case of change in Constitution of Firm or on Succession.
Q11. Write a note on set off and carry forward of losses in case of Conversion of Private Company or Unlisted Public Company into Limited Liability Partnership Firm.
Q12: "Loss can be carried forward only by the person, who has incurred the loss". – Discuss.

Question 1 [V. Imp.]: Write a note on Set Off and Carry Forward of Losses under the head House Property.
Answer:
As per section 70, if any person has loss from any house property, such loss can be set off from income of any other house property and it is called inter-source adjustment or intra-head adjustment. E.g. Mr. X has two houses: there is loss of `34,000 from one house and income of `80,000 from the other house, in this case, loss of one source (house) can be set off from income of the other source (house).

As per section 71, unadjusted loss can be set off from incomes of other heads but as per section 58(4), such loss can not be set off from casual income and it is called inter-head adjustment. E.g. Mr. X has loss from house property `3,00,000 and income from business/profession `5,00,000, in this case, loss is allowed to be set off but if he has any casual income, loss can not be set off from casual income.

As per section 71B, unadjusted loss is allowed to be carried forward to the subsequent years but for a maximum period of 8 years starting from the year subsequent to the year in which the loss was incurred and in the subsequent years, loss can be set off only from income under the head house property. E.g. Mr. X has incurred loss under the head house property in the previous year 2012-13/assessment year 2013-14 and it could not be set off in the same year, it can be carried forward upto previous year 2020-21/assessment year 2021-22 (as shown below)

Year 1	Previous year 2013-14	Assessment Year 2014-15
Year 2	Previous year 2014-15	Assessment Year 2015-16
Year 3	Previous year 2015-16	Assessment Year 2016-17
Year 4	Previous year 2016-17	Assessment Year 2017-18
Year 5	Previous year 2017-18	Assessment Year 2018-19
Year 6	Previous year 2018-19	Assessment Year 2019-20
Year 7	Previous year 2019-20	Assessment Year 2020-21
Year 8	Previous year 2020-21	Assessment Year 2021-22

E.g. Mr. X has loss under the head house property of the previous year 2004-05/assessment year 2005-06 `5,00,000 and income under the head house property `5,00,000 in previous year 2012-13/assessment year 2013-14, in this case, loss shall be allowed to be set off because it will be allowed to be carried forward upto a period of 8 years starting from previous year 2005-06/assessment year 2006-07 and is as shown below:

Year 1	Previous year 2005-06	Assessment Year 2006-07
Year 2	Previous year 2006-07	Assessment Year 2007-08
Year 3	Previous year 2007-08	Assessment Year 2008-09
Year 4	Previous year 2008-09	Assessment Year 2009-10
Year 5	Previous year 2009-10	Assessment Year 2010-11
Year 6	Previous year 2010-11	Assessment Year 2011-12
Year 7	Previous year 2011-12	Assessment Year 2012-13
Year 8	Previous year 2012-13	Assessment Year 2013-14

If the loss can be set off, it has to be set off compulsorily i.e. it is not voluntary. E.g. Mr. X has loss under the head house property `2,00,000 in previous year 2012-13/assessment year 2013-14 and income under the head business/profession `2,00,000 in the same year, in this case loss has to be set off.

Question 2 [Imp.]: Write a note on Set Off and Carry Forward of Losses under the head Business/ Profession.

Answer:

As per section 70, if any person has loss from any business/profession, such loss can be set off from income of any other business/profession and it is called inter-source adjustment or intra-head adjustment. E.g. Mr. X has two business: there is loss of `34,000 from one business and income of `80,000 from the other business, in this case, loss of one source (business) can be set off from income of the other source (business).

As per section 71, unadjusted loss can be set off from incomes of other heads except salary but as per section 58(4), such loss can not be set off from casual income and it is called inter-head adjustment. E.g. Mr. X has loss from business/profession `3,00,000 and income from house property `5,00,000, in this case, loss is allowed to be set off but if he has any casual income, loss can not be set off from casual income. Similarly it can not be set off from income under the head salary.

As per section 72, unadjusted loss is allowed to be carried forward to the subsequent years but for a maximum period of 8 years starting from the year subsequent to the year in which the loss was incurred and in the subsequent years, loss can be set off only from income under the head business/profession. E.g. Mr. X has incurred loss under the head business/profession in the previous year 2012-13/assessment year 2013-14 and it could not be set off in the same year, it can be carried forward upto previous year 2020-21/assessment year 2021-22 (as shown below)

Year 1	Previous year 2013-14	Assessment Year 2014-15
Year 2	Previous year 2014-15	Assessment Year 2015-16
Year 3	Previous year 2015-16	Assessment Year 2016-17
Year 4	Previous year 2016-17	Assessment Year 2017-18
Year 5	Previous year 2017-18	Assessment Year 2018-19
Year 6	Previous year 2018-19	Assessment Year 2019-20
Year 7	Previous year 2019-20	Assessment Year 2020-21
Year 8	Previous year 2020-21	Assessment Year 2021-22

Loss of the current year shall be adjusted first and only after that brought forward loss can be adjusted. E.g. Mr. X has loss under the head house property `5,00,000 and income from business/profession `5,00,000 in previous year 2012-13 and also brought forward loss of business/profession `5,00,000 of previous year 2004-05, in this case, loss of house property shall be adjusted from income of business/profession and loss of previous year 2004-05 shall lapse.

<u>Illustration 1:</u> Mr. X has loss under the head House Property `5,00,000 and income under the head Salary `3,00,000 and income under the head Business/Profession `10,00,000 and LTCG `6,00,000 and Casual income `2,00,000 and unadjusted loss of Business/Profession `4,00,000 of Assessment Year 2008-09 and loss of Business/Profession `3,00,000 of Assessment Year 2009-10.

Compute his tax liability for assessment year 2013-14.

Solution:

`

The assessee has the option to adjust loss of house property from normal income or from LTCG.

<u>Option I</u>
<u>Loss of house property is set off from normal income</u>

Income under the head Salary	3,00,000.00
Less: loss of house property	3,00,000.00
Income under the head Salary	Nil
Income under the head Business/Profession	10,00,000.00
Less: Brought forward business loss of A.Y. 2008-09	4,00,000.00
Less: Brought forward business loss of A.Y. 2009-10	3,00,000.00
Less: Loss of house property	2,00,000.00
Income under the head Business/Profession	1,00,000.00
Long term capital gain	6,00,000.00
Casual Income	2,00,000.00
Gross Total Income	9,00,000.00
Less: Deduction u/s 80C to 80U	Nil
Total Income	9,00,000.00

Computation of Tax Liability

Tax on LTCG `5,00,000 (`6,00,000 – `1,00,000) @ 20%	1,00,000.00
Tax on Casual income `2,00,000 @ 30%	60,000.00

Tax on Normal income `1,00,000 at slab rate	Nil
Tax before education cess	1,60,000.00
Add: Education cess @ 2%	3,200.00
Add: SHEC @ 1%	1,600.00
Tax Liability	1,64,800.00

Option II

Loss of house property is set off from LTCG

Income under the head Salary	3,00,000.00
Income under the head Business/Profession	10,00,000.00
Less: Brought forward business loss of A.Y. 2008-09	4,00,000.00
Less: Brought forward business loss of A.Y. 2009-10	3,00,000.00
Income under the head Business/Profession	3,00,000.00
Long term capital gain	6,00,000.00
Less: loss of house property	5,00,000.00
Long term capital gain	1,00,000.00
Casual Income	2,00,000.00
Gross Total Income	9,00,000.00
Less: Deduction u/s 80C to 80U	Nil
Total Income	9,00,000.00

Computation of Tax Liability

Tax on LTCG `1,00,000 @ 20%	20,000.00
Tax on Casual income `2,00,000 @ 30%	60,000.00
Tax on Normal income `6,00,000 at slab rate	50,000.00
Tax before education cess	1,30,000.00
Add: Education cess @ 2%	2,600.00
Add: SHEC @ 1%	1,300.00
Tax Liability	1,33,900.00

Option II is better.

Illustration 2: Mrs. X has income and losses as given below:

1. Income under the head Salary	` 5,00,000
2. Loss under the head House Property	`10,00,000
3. Income under the head Business/Profession	`12,00,000
4. Income from STCG	` 2,00,000
5. Income from STCG u/s 111A	`10,00,000
6. Casual Income	` 3,00,000
Deduction under section 80C to 80U	` 1,00,000
Brought forward Business/Profession loss for	
- Previous year 2003-04	` 3,00,000

- Previous year 2005-06 ` 6,00,000
- Previous year 2006-07 ` 3,00,000

Compute tax liability of Mrs. X for Assessment Year 2013-14.

Solution:

	`
<u>Option I</u>	
<u>Loss of house property is set off from normal income</u>	
Income under the head Salary	5,00,000.00
Less: Loss of house property	5,00,000.00
Income under the head Salary	Nil
Income under the head Business/Profession	12,00,000.00
Less: loss of house property	3,00,000.00
Less: Brought forward business/profession loss P.Y. 2005-06	6,00,000.00
Less: Brought forward business/profession loss P.Y. 2006-07	3,00,000.00
Income under the head Business/Profession	Nil
Short term capital gain	2,00,000.00
Less: loss of house property	2,00,000.00
Short term capital gain	Nil
Short term capital gain u/s 111A	10,00,000.00
Casual Income	3,00,000.00
Gross Total Income	13,00,000.00
Less: Deduction u/s 80C to 80U	Nil
Total Income	13,00,000.00
Computation of Tax Liability	
Tax on STCG u/s 111A `8,00,000 (`10,00,000 – `2,00,000) @ 15%	1,20,000.00
Tax on Casual income `3,00,000 @ 30%	90,000.00
Tax on Normal income at slab rate	Nil
Tax before education cess	2,10,000.00
Add: Education cess @ 2%	4,200.00
Add: SHEC @ 1%	2,100.00
Tax Liability	2,16,300.00
<u>Option II</u>	
<u>Loss of house property is set off from STCG u/s 111A</u>	
Income under the head Salary	5,00,000.00
Income under the head Business/Profession	12,00,000.00
Less: Brought forward business/profession loss P.Y. 2005-06	6,00,000.00
Less: Brought forward business/profession loss P.Y. 2006-07	3,00,000.00
Income under the head Business/Profession	3,00,000.00
Short term capital gain	2,00,000.00
Short term capital gain u/s 111A	10,00,000.00
Less: loss of house property	10,00,000.00
Short term capital gain u/s 111A	Nil
Casual Income	3,00,000.00

Gross Total Income	13,00,000.00
Less: Deduction u/s 80C to 80U	1,00,000.00
Total Income	12,00,000.00

Computation of Tax Liability

Tax on STCG u/s 111A		Nil
Tax on Casual income `3,00,000 @ 30%		90,000.00
Tax on Normal income `9,00,000 at slab rate	1,10,000.00	
Tax before education cess		2,00,000.00
Add: Education cess @ 2%		4,000.00
Add: SHEC @ 1%		2,000.00
Tax Liability		2,06,000.00

Option II is better.

Question 3 [V. Imp.]: Write a note on Unabsorbed Depreciation.
Answer:
Unabsorbed Depreciation Section 32(2)
An assessee having business or profession shall debit all expenditures of business/profession before debiting depreciation i.e. depreciation shall be debited at the end. If there is a loss by debiting other expenditure, it will be called loss under the head business/profession. Depreciation shall be debited only if income is available under the head business/profession and the depreciation which can not be debited shall be called unabsorbed depreciation and it will be allowed to be adjusted from any income under any head except casual income.

If it can not be adjusted in the same year, its carry forward is allowed for unlimited period and in the subsequent years, it can be set off from any income under any head except casual income.

If any assessee has brought forward business loss as well as depreciation, business loss shall be adjusted first and depreciation afterwards.

E.g. Mr. X has income under the head business/profession `10,00,000 after debiting all expenditures except depreciation of `13,00,000, in this case, depreciation of only `10,00,000 can be debited to the profit and loss account and balance `3,00,000 shall be called unabsorbed depreciation and it can be set off from any income under any head except casual income and even in the subsequent years, it can be set off from any income under any head except casual income and such carry forward is allowed for unlimited periods.

Question 4 [V. Imp.]: Write a note on Set Off and Carry Forward of loss from Speculative Business.
Answer:
Set Off and Carry forward of loss from Speculative Business Section 73
If any assessee has loss from speculative business, such loss can not be set off from any income under any head however, if the assessee has two or more similar business, loss of one such business can be set off from the income of other such business.

Unadjusted loss is allowed to be carried forward but for a maximum period of 4 years starting from the year subsequent to the year in which the loss was incurred. Even in the subsequent years, loss can be set off only from income of speculative business.

Loss under the head house property, loss from normal business, unabsorbed depreciation, loss under the head other sources can be set off from the income of speculative business.

e.g. Mr. X has loss from speculative business `5,00,000 and income from normal business `5,00,000, in this case, loss is not allowed to be set off however its carry forward is allowed but for a maximum period of 4 years and in the subsequent years its can be set off only from income of speculation business.

e.g. Mr. X has loss from house property `5,00,000 and income from speculative business `5,00,000, in this case, loss can be set off from income of speculative business.

e.g. Mr. X has loss of speculative business `5,00,000 and income from some other speculative business `5,00,000, in this case, loss can be set off from income of such speculative business.

Question 5 [V. Imp.]: Write a note on Set Off and Carry Forward of losses under the head Capital Gains.

Answer:

Set off and Carry forward of Loss under the head Capital Gain Section 70, 71 and 74

Set off of loss from one source against income from another source under the same head of income Section 70

If any person has short term loss, it can be set off either from short term or from long term gain but if any person has long term loss, it can be set off only from long term gains i.e. set off from short term is not allowed.

Example

Mr. X has long term loss of `5,00,000 and short term gain of `5,00,000, in this case, long term loss can not be set off from short term gains and his tax liability shall be `30,900 but if he has long term gain of `5,00,000 and short term loss of `5,00,000, in this case, set off is allowed and his tax liability shall be nil.

If Mr. X has long term loss on sale of equity shares on which STT has been paid, such loss can not be set off from any income because loss from an exempt source can not be set off from taxable income.

e.g. If Mr. X has short term loss under section 111A and has long term gain, such loss can be set off from long term gain and also it can be set off from short term gain under section 111A or from normal short term gain.

Set off of loss from one head against income from another Section 71

Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to have such loss set off against income under the other head.

Example

Mr. X has short term loss `5,00,000 and business income of `5,00,000, his tax liability shall be `30,900

Carry forward of losses under the head "Capital Gains" Section 74

If any assessee has short term loss or long term loss which could not be set off, such losses shall be allowed to be carried forward but for a maximum period of 8 years starting from the year next to the year in which the loss was incurred.

Brought forward short term loss can be set off either from short term or from long term gain but brought forward long term loss can be set off only from long term gain and not from short term gain.

Question 6: Write a note on Set Off and Carry Forward of Losses under the head "Income from Other Sources".

Answer:

Set off and Carry forward of Losses under the head "Income from Other Sources"

As per section 70, if the assessee has loss under the head other sources, such loss is allowed to be set off from any income under the same head except casual income.

As per section 71, unadjusted loss can be set off even from incomes of other heads.

Carry forward of the loss is not allowed.

Set Off and Carry Forward of losses in connection with Owning and Maintaining of Race Horses Section 74A

If any assessee has loss from the business of owning and maintaining race horses, such loss can not be set off from any income under any head but if the assessee has two or more business of owning and maintaining race horses, loss of one such business can be set off from the income of other such business.

Unadjusted loss is allowed to be carried forward but for a maximum period of 4 years starting from the year subsequent to the year in which the loss was incurred and even in the subsequent year, the loss can be set off only from income of business of owning and maintaining race horses.

If the assessee has business of owning and maintaining any other race animal, income shall be taxable under the head business/profession and loss will have the same treatment as in case of loss under the head business/profession. E.g. If Mr. X has loss from business of owning and maintaining race camels, the loss will have the same treatment as the loss under the head business/profession.

Question 7: Write a note on Carry Forward and Set Off of Losses in case of change in Constitution of firm or on Succession.

Answer:

Carry forward and Set off of Losses in case of change in Constitution of Firm or on Succession Section 78

If any partner is retired or is expired, in such cases his share in the losses of the partnership firm shall be allowed to be carried forward and set off only to the extent of his share in the profits of the partnership firm, however such provisions are not applicable for depreciation and partnership firm shall be entitled to carry forward and set off unabsorbed depreciation.

Example

XYZ partnership firm has 3 partners Mr. X, Mr. Y and Mr. Z and each one has 1/3 share. The partnership firm had business loss of `6,00,000 and unabsorbed depreciation of `3,00,000 in previous year 2011-12. Mr. X is retired w.e.f. 01.04.2012 and the remaining partners Mr. Y and Mr. Z have continued the partnership firm and the firm had business income of `9,00,000 in previous year 2012-13, in this case, tax treatment shall be as given below:

Income under the head business/profession before adjusting loss/depreciation	9,00,000
Less: Brought forward business loss	(4,00,000)
(share of Mr. X is not allowed to be adjusted)	
Less: Depreciation	(3,00,000)
(Section 78 has not put any restriction on depreciation)	
Total income of firm	2,00,000
Tax + EC	61,800

(b) Presume Mr. X is retired w.e.f. 01.10.2012

Income under the head business/profession before adjusting loss/depreciation	9,00,000
Less: Brought forward business loss	(4,00,000)
Share of Mr. X in the profits of partnership firm shall be 9,00,000 / 2 x 1/3 = 1,50,000	
Hence share of Mr. X in the losses shall be allowed to be adjusted to the extent of	(1,50,000)
Less: Depreciation	(3,00,000)
(Section 78 has not put any restriction on depreciation)	
Total income of firm	50,000
Tax + EC	15,450

(c) Presume Mr. X is retired w.e.f. 01.01.2013

Income under the head business/profession before adjusting loss/depreciation	9,00,000
Less: Brought forward business loss	(4,00,000)
Share of Mr. X in the profits of partnership firm shall be 9,00,000 / 3/4 x 1/3 = 2,25,000	
Hence share of Mr. X in the losses shall be allowed to be adjusted to the extent of	(2,00,000)
Less: Depreciation	(3,00,000)
(Section 78 has not put any restriction on depreciation)	
Total income of firm	NIL
Tax + EC	NIL

Illustration 3: A partnership firm ABC & Co. has three partners, Mr. A, Mr. B and Mr. C and profit sharing ratio is 1:2:1 and in P.Y. 2011-12, the partnership has unadjusted business loss of ` 8 lakhs and unadjusted short term capital loss of ` 2 lakhs and Mr. A is retired w.e.f 01.04.2012 and remaining partners are continuing the firm and the firm has income under head Business/Profession of ` 11 lakhs and LTCG ` 6 lakhs before adjusting brought forward losses.

Compute tax liability of the partnership firm for Assessment Year 2013-14.

(b) Presume Mr. A is retired w.e.f 01.10.2012.

(c) Presume Mr. A is retired w.e.f 01.01.2013.

Solution:

	`
Income under head Business/ Profession	11,00,000.00
Less: Share of B & C in b/f business loss ` 8,00,000 x 3/4	6,00,000.00
Less: Share of Mr. A to be adjusted u/s 78	Nil
Income under head Business/ Profession	5,00,000.00
Long Term Capital Gain	6,00,000.00
Less: Share of B & C in b/f short term loss	1,50,000.00
Less: Share of Mr. A to be adjusted u/s 78	Nil
Long Term Capital Gain	4,50,000.00
Gross Total Income	9,50,000.00
Less: Deduction u/s 80C to 80U	Nil
Total Income	9,50,000.00

Computation of Tax Liability

Tax on normal income ` 5,00,000 @ 30 %	1,50,000.00
Tax on LTCG ` 4,50,000 @ 20%	90,000.00
Tax before education cess	2,40,000.00
Add: EC @ 2%	4,800.00
Add: SHEC @ 1%	2,400.00
Tax Liability	2,47,200.00

Solution: (b)

Income from Business /Profession	11,00,000.00
Less: Share of B & C in Business loss ` 8,00,000 x 3/4	6,00,000.00
Less: Share of Mr. A to be adjusted u/s 78 (Ref WN 1)	1,37,500.00
Income from Business/ Profession	3,62,500.00
Long term capital gain	6,00,000.00

Less: Share of B & C in b/f short term loss		1,50,000.00
Less: Share of Mr. A to be adjusted u/s 78 (Ref WN 2)		50,000.00
Long term capital gain		4,00,000.00
Gross Total Income		7,62,500.00
Less: Deduction u/s 80C to 80U	N	Nil
Total Income		7,62,500.00

Computation of Tax Liability

Tax on normal income ` 3,62,500 @ 30 %	1,08,750.00
Tax on LTCG ` 4,00,000 @ 20%	80,000.00
Tax before Education cess	1,88,750.00
Add: EC@ 2%	3,775.00
Add: SHEC @ 1%	1,887.50
Tax Liability	1,94,412.50
Rounded off u/s 288B	1,94,410.00

Working Note 1.

(a) Share of A in current year profit till date of retirement
` 11,00,000 x 1/2 x 1/4 = ` 1,37,500
OR
(b) Share in Loss i.e. ` 8,00,000 x ¼ = ` 2,00,000
Lower of (a) or (b) can be set off i.e. ` 1,37,500

Working Note 2.

(a) Share of A in current LTCG
` 6,00,000 x ½ x ¼ = ` 75,000
OR
(b) Share in loss i.e. ` 2,00,000 x ¼ = ` 50,000
Lower of (a) or (b) can be set off i.e. ` 50,000

Solution (c):

Income from Business /Profession		11,00,000.00
Less: Share of B & C in Business loss ` 8,00,000 x ¾		6,00,000.00
Less: Share of Mr. A to be adjusted u/s 78 (Ref WN 3)		2,00,000.00
Income from Business/ Profession		3,00,000.00
Long term capital gain		6,00,000.00
Less: Share of B & C in b/f short term loss		1,50,000.00
Less: Share of Mr. A to be adjusted u/s 78 (Ref WN 4)		50,000.00
Long term capital gain		4,00,000.00
Gross Total Income		7,00,000.00
Less: Deduction u/s 80C to 80U	N	Nil
Total Income		7,00,000.00

Computation of Tax Liability

Tax on normal income ` 3,00,000 @ 30 %	90,000.00
Tax on LTCG ` 4,00,000 @ 20%	80,000.00
Tax before education cess	1,70,000.00
Add: EC @ 2%	3,400.00
Add: SHEC @ 1%	1,700.00
Tax Liability	1,75,100.00

Working Note 3.

(a) Share of A in current year profit till date of retirement
` 11,00,000 x 3/4 x 1/4 = ` 2,06,250
OR
(b) Share in business loss i.e. ` 8,00,000 x ¼ = ` 2,00,000
Lower of (a) or (b) can be set off i.e. ` 2,00,000

Working Note 4.

(a) Share of A in current LTCG
` 6,00,000 x 3/4 x 1/4 = ` 1,12,500
OR
(b) Share in b/f short term loss i.e. ` 2,00,000 x ¼ = ` 50,000
Lower of (a) or (b) can be set off i.e. ` 50,000

Question 8: Write a note on Set Off and Carry Forward of Losses in case of Amalgamation.
Answer:
Set off and carry forward in case of Amalgamation Section 72A

If any company owning an industrial undertaking or a ship or a hotel has been amalgamated with some other company or a banking company has been amalgamated with specified bank, the unabsorbed depreciation and the loss under the head business/profession which the amalgamating company is allowed to carry forward and set off shall be considered to be the depreciation and loss of the amalgamated company incurred in the year of amalgamation e.g. ABC Ltd. an industrial undertaking has incurred losses as given below:

(i) Previous Year 2005-06 `20,00,000
(ii) Previous Year 2006-07 `25,00,000
(iii) Previous Year 2007-08 `22,00,000
(iv) Previous Year 2008-09 `24,00,000
(v) Previous Year 2009-10 `21,00,000
(vi) Previous Year 2010-11 `23,00,000
(vii) Previous Year 2011-12 `26,00,000

If amalgamation has taken place on 01.11.2012 with Z Ltd. and ABC Ltd. has incurred business losses till 01.11.2012 `18,00,000, all the losses amounting to `1,79,00,000 shall be considered to be the business losses of Z Ltd. incurred in the previous year 2012-13 and set off and carry forward shall be allowed accordingly.

Question 9: Write a note on Set Off and Carry Forward of Losses in case of Demerger
Answer:
Set Off and Carry Forward in case of Demerger Section 72A

In the case of a demerger, unabsorbed depreciation and the loss under the head business/profession of the demerged company shall—

(a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company;

(b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.

Question 10: Write a note on Set Off and Carry Forward of losses in case of Conversion of

Proprietary Concern or Partnership Firm into a Company.
Answer:
Set Off and Carry Forward in case of Conversion Section 72A
If any proprietary concern or partnership firm has been converted into a company and certain conditions given under section 47 have been complied with, in that case, the unabsorbed depreciation and the loss under the head business/profession shall be considered to be the depreciation and loss of the company as if incurred in the year of conversion and set off and carry forward shall be allowed accordingly.

The conditions for conversion of a proprietary concern shall be
(a) all the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;

(b) the shareholding of the sole proprietor in the company is not less than fifty per cent of the total voting power in the company and his shareholding continues to remain as such for a period of five years from the date of the succession; and

(c) the sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company.

The conditions for conversion of a partnership firm shall be
(a) all the assets and liabilities of the firm or of the association of persons or body of individuals relating to the business immediately before the succession become the assets and liabilities of the company;

(b) all the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of the succession;

(c) the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and

(d) the aggregate of the shareholding in the company of the partners of the firm is not less than fifty per cent of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession.

Question 11: Write a note on Set Off and Carry Forward of Losses in case of conversion of Private Company or Unlisted Public Company into Limited Liability Partnership Firm.
Answer:
Set Off and Carry Forward in case of Conversion Section 72A
If any private company or unlisted public company has been converted into a Limited Liability Partnership Firm and certain conditions given under section 47 have been complied with, in that case, the unabsorbed depreciation and the loss under the head business/profession shall be considered to be the depreciation and loss of the LLP as if incurred in the year of conversion and set off and carry forward shall be allowed accordingly.

The conditions as per section 47 are as given below:
(a) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;

(b) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;

(c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;

(d) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;

(e) the total sales, turnover or gross receipts in the business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and

(f) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

Additional points:

1. Set off and carry forward is mandatory not voluntary. e.g. Mr. X has loss under the head house property `50,000 and income under the head business/profession `50,000 during the assessment year 2013-14, in this case, loss of house property has to be set off from business income of assessment year 2013-14 and Mr. X is not allowed to carry forward the loss of house property.

2. Any loss has to be set off first within the same head and only after that under some other heads.

3. If any person has dividend income from shares or units held as stock in trade, such dividend income is taxable under the head other sources and if there is any brought forward business loss, such loss can be set off from such dividend income (considering it to be business income). **Western States Trading Co. (P.) Ltd. v. CIT (1971) (SC).**

Question 12: "Loss can be carried forward only by the person, who has incurred the loss". – Discuss.
Answer:
Loss can be carried forward only by the person who has incurred the loss, however, there are exceptions as given below:

(i) Amalgamation of a company Section 72A

(ii) Demerger of a company Section 72A

(iii) Conversion of sole proprietary concern into company Section 72A

(iv) Conversion of firm into company Section 72A

(v) Conversion of private company or unlisted public company into limited liability partnership firm Section 72A

(vi) Succession by inheritance Section 78

EXAMINATION QUESTIONS

IPCC NOV – 2012

Question No. 5(a) **(8 Marks)**

Mr. Rahul an assessee aged 61 years gives the following information for the previous year 31.03.2013:

Sr.	**Particulars**	`
a.	Loss from profession	1,05,000
b.	Capital loss on the sale of property-short term	55,000
c.	Capital gains on sale of shares-long term	2,05,000
d.	Loss in respect of self occupied property	15,000
e.	Loss in respect of let out property	30,000
f.	Share of loss from firm	1,60,000
g.	Income from card games	55,000
h.	Winnings from lotteries	1,00,000
i.	Loss from horse races in Mumbai	40,000
j.	Medical insurance premium paid by cheque	18,000

Compute the total income of Mr. Rahul for the assessment year 2013-14. (Modified)

<u>Solution:</u>

	`
<u>Income from Capital Gains</u>	
Long term capital Gain	2,05,000
Short term capital loss on sale of property	(55,000)
Long Term Capital Gain	1,50,000
<u>Income from House Property</u>	
Loss from Self Occupied House	(15,000)
Loss from Let out House	(30,000)
Loss from House Property	(45,000)
<u>Income from Business /Profession</u>	
Loss from profession	(1,05,000)

Loss from house property and loss from PGBP can be set off against income from capital gains (LTCG)

Income from Capital Gains (LTCG)	1,50,000
Less: Loss from House Property	45,000
Less: Loss from Business/Profession	1,05,000
Income under the head Capital Gains	Nil

Income from Other Sources

Winning from lottery	1,00,000
Income from card game	55,000
Income under the head Other Sources	1,55,000
Gross Total Income	1,55,000
Less: Deduction u/s 80C to 80U (Deductions are not allowed from casual incomes)	Nil
Total Income	1,55,000

Working Notes:

1. Share of loss from firm is exempt in the hands of partner u/s 10(2A)
2. Loss from races can neither be set off nor be carried forward.

PCC NOV – 2011

Question 1 **(5 Marks)**

Mr. Batra furnishes the following details for year ended 31.03.2013.

	`
Short term capital gain	1,40,000
Loss from speculative business	60,000
Long term capital gain on sale of land	30,000
Long term capital loss on sale of shares (securities transaction tax not paid)	1,00,000
Income from business of textile (after allowing current year depreciation)	50,000
Income from activity of owning and maintaining race horses	15,000
Income from salary	1,00,000
Loss from house property	40,000

Following are the carry forward losses:

(i) Losses from activity of owning and maintaining race horses-pertaining to A.Y. 2010-11 `25,000.

(ii) Carry forward loss from business of textile `60,000- Loss pertains to A.Y. 2005-06.

Compute gross total income of Mr. Batra for the assessment year 2013-14.

Also state the eligible carry forward losses for the assessment Year 2013-14. (Modified)

Answer:

Calculation of Gross Total Income of Mr. Batra for the assessment year 2013-14

	`
Income under the head Business/Profession	
Income from Business of textile	50,000
Less: Loss Carried forward from textile business (A.Y. 2005-06)	(50,000)
Balance loss of `10,000 shall lapse	

<u>Income under the head Salary</u>

Salary	1,00,000
Less: Loss from house property	(40,000)
Income under the head Salary after set off	60,000

<u>Income under the head Other Sources</u>

Income from owning and maintaining race horses	15,000
Less: Loss carried forward to be adjusted (A.Y. 2010-11)	(15,000)
(Balance brought forward loss of `10,000 to be carried forward to next year)	

<u>Income under the head Capital Gains</u>

Short Term Capital Gains	1,40,000
Long Term Capital Gains	30,000
Less: Long term loss	(30,000)
(Balance of loss of 70,000 shall be carried forward)	
Gross Total Income	2,00,000

Loss from speculative business of A.Y. 2013-14 `60,000 to be carried forward for 4 years starting from assessment year 2014-15.

IPCC MAY – 2011

Question 4 **(4 Marks)**

The following are the details relating to Mr. Srivatsan, a resident Indian, aged 57, relating to the year ended 31.03.2013:

	(`)
Income from salaries	2,20,000
Loss from house property	1,90,000
Loss from cloth business	2,40,000
Income from speculation business	30,000
Long-term capital gains from sale of urban land	2,50,000
Long-term capital loss from sale of listed shares in recognized stock exchange (STT paid)	1,10,000
Loss from card games	32,000
Income from betting	45,000
Life insurance premium paid	1,20,000

Compute the total income and show the items eligible for carry forward. (Modified)

Answer.

Computation of total income of Mr. Srivatsan for the A.Y. 2013-14

Particulars	`	`
Salaries		
Income from salaries	2,20,000	
Less: Loss from house property	<u>1,90,000</u>	30,000
Profits and gains of business or profession		
Income from speculation business	30,000	

Less: Loss from cloth business set off	30,000	Nil
Capital gains		
Long-term capital gains from sale of urban land	2,50,000	
Less: Loss from cloth business set off	2,10,000	40,000
Income from other sources		
Income from betting		45,000
Gross total income		**1,15,000**
Less: Deduction under section 80C (life insurance premium paid)		30,000
Total income		**85,000**

Losses to be carried forward	`
(1) Loss from cloth business **(2,40,000-30,000-2,10,000)**	Nil

Notes

(i) Long-term capital gains from sale of listed shares in a recognized stock exchange is exempt under section 10(38). Loss from an exempt source cannot be set off against profits from a taxable source. Therefore, long-term capital loss on sale of listed shares cannot be set-off against long-term capital gains from sale of urban land.

(ii) Business loss cannot be set off against salary income. However, the balance business loss of `2,10,000 (` 2,40,000 – `30,000 set-off against income from speculation business) can be set-off against long-term capital gains of ` 2,50,000 from sale of urban land. Consequently, the taxable long-term capital gains would be ` 40,000.

(iii) Loss from card games can neither be set off against any other income, nor can it be carried forward.

(iv) For providing deduction under Chapter VIA, gross total income has to be reduced by the amount of long-term capital gains and casual income. Therefore, the deduction under section 80C in respect of life insurance premium paid has to be restricted to `30,000 [i.e., Gross Total Income of `1,15,000 – `40,000 (LTCG) – `45,000 (Casual income)].

(v) Income from betting is chargeable at a flat rate of 30% under section 115BB and no expenditure or allowance can be allowed as deduction from such income, nor can any loss be set-off against such income.

PCC MAY – 2011

Question 4 **(6 Marks)**

Balamurugan furnishes the following information for the year ended 31.03.2013:

	`
Income from business	(1,35,000)
Income from house property	(15,000)
Lottery winning (Gross)	3,00,000
Speculation business income	1,00,000
Income by way of salary	60,000
Long term capital gain	70,000

Compute his total income, tax liability and advance tax obligations.

Answer.

Computation of total income of Balamurugan for the year ended 31.03.2013

Particulars	`	`
Salaries	60,000	
Less: Loss from house property	(15,000)	
Net Salary (after set off of loss from house property)		45,000
Profits and gains of business or profession		
Speculation business income	1,00,000	
Less: Business loss set-off	(1,35,000)	
Net business loss to be set-off against long-term capital gain	(35,000)	
Capital Gains		
Long term capital gain	70,000	
Less: Business loss set-off	(35,000)	
Long term capital gain after set off of business loss		35,000
Income from other sources		
Lottery winnings (Gross)		3,00,000
Total Income		3,80,000

Computation of tax liability

Particulars	`
On total income of `80,000 (excluding lottery winning)	Nil
On lottery winnings of `3,00,000 @ 30%	90,000
Add: Education Cess @ 2% and Secondary and higher education cess @ 1%	2,700
Total tax liability	**92,700**

The assessee need not pay advance tax since the total income (excluding lottery income) liable to tax is below the basic exemption limit. Further, in respect of lottery income, tax would have been deducted at source @ 30% under section 194B. Since the remaining tax liability of `2,700 (`92,700 – `90,000) is less than `10,000, advance tax liability is not attracted.

Note

(1) The basic exemption limit of `2,00,000 has to be first exhausted against salary income of `45,000. The unexhausted basic exemption limit of `1,55,000 can be adjusted against long-term capital gains of `35,000 as per section 112, but not against lottery winnings which are taxable at a flat rate of 30% under section 115BB.

(2) The first proviso to section 234C provides that since it is not possible for the assessee to estimate his income from lotteries, the entire amount of tax payable (after considering TDS) on such income should be paid in the remaining installments of advance tax which are due. Where no such installment is due, the entire tax should be paid by 31st March, 2013. The first proviso to section 234C would be attracted in case of non-deduction or short-deduction of tax at source under section 194B.

IPCC NOV – 2010

Question 1 **(5 Marks)**

Mr. Soohan submits the following details of his income for the assessment year 2013-14.

Income from salary	3,00,000.00
Loss from let out house property	40,000.00

Income from sugar business	50,000.00
Loss from iron ore business b/f (discontinued in 2006-07)	1,20,000.00
Short term capital loss	60,000.00
Long term capital gain	40,000.00
Dividend	5,000.00
Income received from lottery winning (Gross)	50,000.00
Winning in card games (Gross)	6,000.00
Agricultural income	20,000.00
Long term capital gain from shares (STT paid)	10,000.00
Short term capital loss under section 111A	10,000.00
Bank interest on fixed deposit	5,000.00

Calculate gross total income and losses to be carried forward. (Modified)

Answer.

Computation of gross total income of Mr. Soohan for the A.Y. 2013-14

Particulars	`	`
Salaries		
Income from salary	3,00,000	
Less: Loss from house property set-off against salary income as per section 71	(40,000)	2,60,000
Profits and gains of business or profession		
Income from sugar business	50,000	
Less: Brought forward loss from iron-ore business set-off as per section 72	(50,000)	Nil
Balance business loss of `70,000 of P.Y.2006-07 carried forward to A.Y.2014-15		
Capital gains		
Long term capital gain	40,000	
Less: Short term capital loss set-off	(40,000)	Nil
Balance short-term capital loss of `20,000 to be carried forward		
Short-term capital loss of `10,000 under section 111A to be carried forward		
Income from other sources		
Winnings from lottery	50,000	
Winnings from card games	6,000	
Bank interest on fixed deposit	5,000	61,000
Gross Total Income		**3,21,000**
Losses to be carried forward to A.Y. 2014-15		
Loss of iron-ore business	70,000	
Short term capital loss	30,000	

Notes:

1. The following income are exempt under section 10 –

   (i) Dividend income [Exempt under section 10(34)], assuming that dividend is received from a domestic company.

   (ii) Agricultural income [Exempt under section 10(1)]

   (iii) Long-term capital gains on which STT is paid [Exempt under section 10(38)]

2. It is presumed that loss from iron-ore business relates to P.Y.2006-07, the year in which the business was discontinued.

PCC NOV – 2010

Question 1 **(5 Marks)**

Determine the total income of Mr. Chand from the following information for the Assessment Year 2013-14:

		`
(i)	Interest received on enhanced compensation (It relates to transfer of land in the financial year 2007-08. Out of the above `65,000 relates to financial year 2012-13 and the balance relate to preceding years)	4,00,000
(ii)	Business loss relating to discontinued business of the assessment year 2007-08 brought forward and eligible for set off.	1,50,000
(iii)	Current year business income (i.e. financial year 2012-13) (Computed)	1,10,000

(Modified)

Answer.

Computation of total income of Mr. Chand for A.Y. 2013-14

Particulars	Amount (`)	Amount (`)
Profits and gains of business or profession		
Current year business income	1,10,000	
Less: Brought forward business loss of discontinued business `1,50,000 set-off to the extent of current year business income as per section 72	1,10,000	Nil
Income from other sources		
Interest on enhanced compensation taxable on receipt basis under section 56(2)(viii)	4,00,000	
Less: Deduction under section 57(iv) @ 50%	2,00,000	2,00,000
Total Income		**2,00,000**

The unabsorbed business loss of `40,000 (`1,50,000 – `1,10,000) of A.Y. 2007-08 relating to discontinued business will be carried forward for set-off against income from any business in the next year i.e. A.Y. 2014-15.

Question 7 **(4 Marks)**

Discuss briefly on carry forward and set off of losses in the case of change in constitution of firm or succession.

Answer.

Carry forward and set off of losses in cases of change in constitution of firm or on succession [Section 78]

(i) Where there is a change in the constitution of firm, so much of the loss proportionate to the share of a retired or deceased partner remaining unabsorbed, shall not be allowed to be carried forward by the firm.

(ii) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, such other person shall not be allowed to carry forward and set off against his income, any loss incurred by the predecessor.

(iii) Where there is a succession by inheritance, the legal heirs are entitled to set off the business loss of the predecessor. Such carry forward and set off is possible even if the legal heirs constitute themselves as partnership firm. In such a case, the firm can carry forward and set off the business loss of the predecessor.

PCC MAY – 2010

Question 4 **(6 Marks)**

Mr. Banerjee furnishes you the following details for the year ended 31.03.2013:

Income (loss) from house property	`
House – 1	36,000
House – 2 Self occupied	(20,000)
House – 3	60,000
Profits and gains from Business or Profession	
Textile Business	2,00,000
Automobile Business	(3,00,000)
Speculation Business	2,00,000
Capital Gains	
Long-term capital gain from sale of shares (STT paid)	1,50,000
Long-term capital gain from sale of vacant site	2,00,000
Short-term capital loss from sale of building	1,00,000

(Note: Assume that the figures given above are computed and arrived at after considering eligible deductions).

Other sources:	
Gift from a Friend (non-relative) on 05.06.2012	60,000
Gift from Maternal Uncle on 25.02.2013	1,00,000
Gift from Grandfather's Younger Brother on 10.02.2013	1,00,000

Compute the total income of Mr. Banerjee for the Assessment Year 2013-14. (Modified)

Answer.

Computation of total income of Mr. Banerjee for the Assessment year 2013-14

	`	`
Income (loss) House property		
House –I	36,000	
House-2 –Self occupied	(20,000)	
House-3	60,000	
Income from House Property		76,000
Profits and gains of business and profession		
Textile business	2,00,000	
Automobile business	(3,00,000)	

Speculation business	2,00,000	
Income from business or profession representing speculation business profit (after set off of loss of automobile business)		1,00,000
Capital Gains		
Long term capital gain from sale of shares (STT paid) ` 1,50,000 – exempt u/s. 10(38)	Nil	
Long term capital gain from sale of vacant site	2,00,000	
Short term capital loss from sale of building	(1,00,000)	
Long term capital gain-after set off of short term loss against long term capital gain		1,00,000
Income from Other sources		
Gift from a friend (non relative) on 05.06.2012	60,000	
Gift from maternal uncle (on 25.02.2013) ` 1,00,000, not taxable since maternal uncle is covered by the definition of the term' relative' given in explanation to section 56(2)	Nil	
Gift from grand father's younger brother on 10.02.2013. This amount is taxable as grandfather's younger brother is not covered by the definition of 'relative'.	1,00,000	1,60,000
Gross Total Income		4,36,000
Less: Deduction u/s 80C to 80U		Nil
Total income		**4,36,000**

IPCC NOV – 2009

Question 3 **(10 Marks)**

Mr. Rajat submits the following information for the financial year ending 31st March, 2013. He desires that you should :

(a) Compute the total income and

(b) Ascertain the amount of losses that can be carried forward.

	`
(i) He has two houses :	
(a) House No. I – Income after all statutory deductions	72,000
(b) House No. II – Current year loss	(30,000)
(ii) He has three proprietary businesses :	
(a) Textile Business :	
(i) Discontinued from 31st October, 2012 – Current year loss	40,000
(ii) Brought forward business loss of the A.Y. 2009-2010	95,000
(b) Chemical Business :	
(i) Discontinued from 1st March, 2011 – hence no Profit/Loss	Nil
(ii) Bad debts allowed in earlier years recovered during this year	35,000
(iii) Brought forward business loss of the A.Y. 2011-12	50,000
(c) Leather Business : Profit for the current year	1,00,000
(d) Share of profit in a firm in which he is Partner since 2005	16,550

(iii) (a) Short-term Capital Gain	60,000
(b) Long-term Capital Loss	35,000
(iv) Contribution to LIC towards Premium	10,000

Answer.

Computation of total income of Mr. Rajat for the A.Y. 2013-14

Particulars	`	`
1. Income from house property		
House No. I	72,000	
House No. II	(-) 30,000	42,000
2. Profits and gains of business or profession		
Profit from leather business	1,00,000	
Less: Current year loss of textile business	(-) 40,000	
	60,000	
Bad debts recovered taxable under section 41(4)	35,000	
	95,000	
Less: Brought forward business loss of textile business for A.Y.2009-10 set off against the business income of current year	95,000	Nil
3. Capital Gains		
Short-term capital gain		60,000
Gross Total Income		**1,02,000**
Less: Deduction under chapter VI-A		
Under section 80C – LIC premium paid		10,000
Total Income		**92,000**

Statement of losses to be carried forward to A.Y. 2014-15

Particulars	
Business loss of A.Y. 2011-12 to be carried forward under section 72	50,000
Long term capital loss of A.Y. 2013-14 to be carried forward under section 74	35,000

Notes:

(i) Share of profit from firm of `16,550 is exempt under section 10(2A).

(ii) Long-term capital loss cannot be set-off against short-term capital gains. Therefore, it has to be carried forward to the next year to be set-off against long-term capital gains of that year.

Question 4 **(4 Marks)**

Discuss briefly on carry forward and set off of losses in the case of change in constitution of firm or succession.

Answer.

Refer to Answer given in PCC NOV – 2010 Question No.7

PCC JUNE – 2009

Question 4 **(8 Marks)**

Ms. Geeta, a resident individual, provides the following details of her income / losses for the year ended 31.03.2013:

(i) Salary received as a partner from a partnership firm ` 7,50,000.

(ii) Loss on sale of shares listed in BSE ` 3,00,000. Shares were held for 15 months and STT paid on sale.

(iii) Long-term capital gain on sale of land ` 5,00,000.

(iv) ` 51,000 received in cash from friends in party.

(v) ` 55,000, received towards dividend on listed equity shares of domestic companies.

(vi) Brought forward business loss of assessment year 2012- 13 ` 12,50,000.
The return for assessment year 2012-13 was filed in time.

Compute gross total income of Ms. Geeta for the assessment year 2013 -14 and ascertain the amount of loss that can be carried forward. (Modified)

Answer.

Computation of Gross Total Income of Ms. Geeta for the Assessment Year 2013-14

Particulars		`
Profits and gains of business and profession		
Salary received as a partner from a partnership firm is taxable under the head "Profits and gains of business and profession"		7,50,000
Less: brought forward business loss of assessment year 2011-12 to be set-off against business income		7,50,000
		Nil
Capital Gains		
Long term capital gain on sale of land – (See Note (ii))		5,00,000
Income from other sources		
Cash gift received from friends - since the value of cash gift exceeds `50,000, the entire sum is taxable	51,000	
Dividend received from a domestic company is exempt under section 10(34)	Nil	51,000
Gross Total Income		**5,51,000**

Notes –

(i) Balance brought forward business loss of assessment year 2012-13 of `5,00,000 has to be carried forward to the next year.

(ii) Long-term capital loss on sale of shares cannot be set-off against long-term capital gain on sale of land since loss from an exempt source cannot be set-off against profit from a taxable source. Further, long-term capital gain on sale of listed shares on which STT is paid is exempt under section 10(38), loss on sale of listed shares is a loss from an exempt source. So it cannot be set-off against long-term capital gain on sale of land, which is a profit from a taxable source.

PCC NOV – 2008

Question 4 **(6 Marks)**

Mr. P, a resident individual, furnishes the following particulars of his income and other details for the previous year 2012-13:

	`
(i) Income from salary	18,000
(ii) Net annual value of house property	70,000
(iii) Income from business	80,000
(iv) Income from speculative business	12,000
(v) Long term capital gain on sale of land	15,800
(vi) Loss on maintenance of race horse	9,000
(vii) Loss on gambling	8,000

Depreciation allowable under the Income-tax Act comes to `8,000 for which no treatment is given above.

The other details of unabsorbed depreciation and brought forward losses of previous year 2009-10 are:

	`
(i) Unabsorbed depreciation	9,000
(ii) Loss from speculative business	16,000
(iii) Short term capital loss	7,800

Compute the gross total income of Mr. P, for the Assessment year 2013-14, and the amount of loss that can or cannot be carried forward. (Modified)

Answer.

Computation of Gross Total Income of Mr. P for the A.Y. 2013-14

	`	`
(i) Income from salary		18,000
(ii) Income from House Property		
Net annual value	70,000	
Less: Deduction under section 24(a) (30% of `70,000)	21,000	49,000
(iii) Income from business and profession		
(a) Profit from business	80,000	
Less: Current year depreciation	8,000	
	72,000	
Less: Unabsorbed depreciation	9,000	63,000
(b) Income from speculative business	12,000	
Less: Brought forward loss from speculative business	12,000	Nil
(Balance loss of `4,000 (i.e. `16,000 – `12,000) can be carried forward to the next year)		
(iv) Income from capital gain		
Long term capital gain on sale of land	15,800	
Less: Brought forward short term capital loss	7,800	8,000
Gross total income		**1,38,000**

Amount of loss to be carried forward to the next year

Particulars	`
Loss from speculative business (to be carried forward as per section 73)	4,000
Loss on maintenance of race horses (to be carried forward as per section 74A)	9,000

Notes:
(i) Loss on gambling can neither be set-off nor be carried forward.

(ii) It has been assumed that the brought forward losses relate to P.Y. 2009-10 or thereafter. Only then speculative business loss can set off against income from speculative business of the current year and the balance loss can be carried forward to A.Y. 2014-15. It may be noted that speculative business loss can be carried forward for a maximum of four years as per section 73.

PCC MAY – 2008

Question 3 **(9 Marks)**
M/s. Vivitha & Co., a partnership firm, with four partners A, B, C and D having equal shares, furnishes the following details, summarised from the valid returns of income filed by it:

Assessment Year		Item eligible for carry forward and set off
2011-12	:	Unabsorbed business loss `1,20,000
2012-13	:	Unabsorbed business loss `1,90,000
2012-13	:	Unabsorbed depreciation `1,20,000
2012-13	:	Unabsorbed long term Capital loss:
		- from shares `1,10,000 STT not paid
		- from building `1,90,000

C who was a partner during the last three years, retired from the firm with effect from 01.04.2012.

The Summarized results of the firm for the assessment year 2013-14 are asunder:

	`
Income under the head house property	70,000
Income from business:	
Speculation	2,20,000
Non-speculation	(50,000)
Capital Gains:	
Short-term (from sale of shares) STT not paid	40,000
Long-term (from sale of building)	2,10,000
Income from other sources	60,000

Briefly discuss, how the items brought forward from earlier years can be set off in the hands of the firm for the assessment year 2013-14, in the manner most beneficial to the assessee. Also show the items to be carried forward. Computation of total income is not required. (Modified)

Answer.
As per section 78, if there is a change in the constitution of a firm, so much of the loss proportionate to the share of a retired or deceased partner remaining unabsorbed shall not be allowed to be carried forward by the

firm. However, unabsorbed depreciation can be carried forward. Therefore, the firm will be allowed to carry forward the following losses/depreciation.

Unabsorbed business loss for assessment year 2011-12 (1,20,000 x 75%)	90,000
Unabsorbed business loss for assessment year 2012-13 (1,90,000 x 75%)	1,42,500
Unabsorbed depreciation for assessment year 2012-13	1,20,000
Unabsorbed long term capital loss for assessment year 2012-13	
From Shares (1,10,000 x 75%)	82,500
From building (1,90,000 x 75%)	1,42,500
The above losses should be adjusted against the income of assessment year 2013-14.	
Income under the head house property	70,000
Less: Unabsorbed deprecation	(70,000)
	Nil
Income from speculation business	2,20,000
Less: Loss from non-speculation business	(50,000)
Less: Brought forward business loss for assessment year 2011-12	(90,000)
Less: Brought forward business loss for assessment year 2012-13	(80,000)
Income from Business/Profession	Nil
Income from Capital Gains	
Income from short term capital gains	40,000
Income from long term capital gains	2,10,000
Less: Brought forward long term capital gains	(2,10,000)
Income from capital gains	40,000
Income from Other Sources	60,000
Less: Brought forward unabsorbed depreciation	50,000
Income from other Sources	10,000
Carried forward losses:	
Unabsorbed business loss for assessment year 2012-13	62,500
Unabsorbed long term capital gain for assessment year 2012-13	15,000

PCC NOV – 2007

Question 5 **(4 Marks)**

Discuss in brief the provisions relating to set off and carry forward of losses in speculation business.

Answer.

(i) The loss of a speculation business of any assessment year is allowed to be set off only against the profits and gains of another speculation business in the same assessment year.

(ii) The speculation loss not set-off in the same assessment year, is allowed to be carried forward to subsequent years and set-off only against income of any speculation business.

(iii) The loss in speculation business can be carried forward only for a maximum period of 4 years from the end of the relevant assessment year in respect of which the loss was computed.

(iv) Loss from the activity of trading in derivatives, however, is not to be treated as speculative loss.

(v) According to the Explanation to section 73, where any part of the business of a company consists in the purchase and sale of shares of other companies such company shall be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares.

However, this Explanation does not apply to-

(a) a company whose gross total income consists mainly of income which is chargeable under the heads "Income from house property", "Capital gains" and "Income from other sources"; and

(b) a company the principal business of which is the business of banking or money lending.

PCC MAY – 2007

Question 4 **(6 Marks)**

Simran, engaged in various types of activities, gives the following particulars of her income for the year ended 31.03.2013:

	`
(a) Profit of business of consumer and house-hold products	50,000
(b) Loss of business of readymade garments	10,000
(c) Brought forward loss of catering business which was closed in Asst. Year 2012-13	15,000
(d) Short-term loss on sale of securities and shares	15,000
(e) Profit of speculative transactions entered into during the year	12,500
(f) Loss of speculative transactions of Asst. Year 2008-09 not set off till Asst. Year 2012-13	15,000

Compute the total income of Simran for the A.Y. 2013-14. (Modified)

Answer. **Computation of total income of Simran for the A.Y. 2013-14**

Particulars	`	`
Profit of business of consumer and house-hold products	50,000	
Less: Loss of business of readymade garments for the year adjusted under section 70(1)	10,000	
	40,000	
Less: Brought forward loss of catering business closed in A.Y. 2012-13 set off against business income for the year as per section 72(1)	15,000	25,000
Profit of speculative transaction		12,500
Total Income		**37,500**

Notes –

(i) Loss of speculative transaction of A.Y. 2008-09 is not allowed to be set off against the profit of speculative transaction of the A.Y. 2013-14, since, as per the provisions of section 73(4), such loss can be carried forward for set-off for a maximum period of 4 years only i.e. up to A.Y. 2012-13

(ii) Short term capital loss of `15,000 on sale of securities and shares has to be carried forward as per section 74 since there is no income under the head Capital Gains for the A.Y. 2013-14. The loss is to be carried forward for set off in future years against income chargeable under the head Capital Gains. Such loss can be carried forward for a maximum period of 8 assessment years.

Question 5 **(4 Marks)**

State the factors to be borne in mind relating to carry forward and set off of losses in case of change in constitution of firm or succession under section 78.

Answer.

Refer to Answer given in PCC NOV – 2010 Question No.7

PROVISIONS FOR FILING OF RETURN OF INCOME

PARTICULARS	SECTIONS
Submission of return of income	**139(1)**
Return of loss	**139(3)**
Belated return	**139(4)**
Return of income of charitable institutions	**139(4A)**
Return of income of political party	**139(4B)**
Return of income of certain associations and institutions	**139(4C)**
Revised return	**139(5)**
Defective return	**139(9)**
Permanent account number	**139A**
Scheme for submission of returns through Tax Return Preparers	**139B**
Return by whom to be signed	**140**

THEORY QUESTION

Q1 [V. Imp.]. Write a note on filing of return of income. Sec 139(1)
or
Write a note on filing of voluntary return of income.
Q2 [V. Imp.]. Write a note on Return of Loss Sec 139(3).
Q3 [V. Imp.]. Write a note on belated return of income Sec 139(4).
Q4 [V. Imp.]. Write a note on revised return of income Sec 139(5).
Q5 [V. Imp.]. Write a note on defective return of income Sec 139(9).
Q6 [V. Imp.]. Write a note on permanent account number Sec 139A.
Q7. [V. Imp.] Write a note on submission of returns through Tax Return Preparers. Sec. 139B
Q8. Write a note on signing of return of income. Sec. 140

Question 1 [V. Imp.]: Write a note on filing of return of income.
Or
Write a note on filing of voluntary return of income.

Answer:

Filing of return of income/ filing of voluntary return of income

Under section **139(1)**, a return of income is to be filed by the following persons:

(i) Every **company assessee** or **partnership firm**.

(ii) Every person other than a company assessee and partnership firm, whose total income without giving effect to the provisions of section 10A, 10B, 10BA or Chapter VIA (deduction under section 80C to 80U) **is exceeding the income exempt from tax.**

Example

If for previous year 2012-13 gross total income of Mrs. Madhuri Bajaj is `2,05,000 and deductions allowed under section 80C to 80U are `60,000 and total income is `1,45,000 and tax liability shall be nil but still Mrs. Madhuri Bajaj has to file her return of income.

(iii)Every person who is **assessable on behalf of any other person** and the person on whose behalf he is assessable has gross total income more than the income exempt from tax, in such cases also, the person is required to file a return of income on behalf of such person.

(iv) A person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6, who is not required to furnish a return under this sub-section and who during the previous year has any asset (including any financial interest in any entity) located outside India or signing authority in any account located outside India, shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed.

Example
Minor son of Mr. Ashish Singh has gross total income from film acting ` 5 lakhs. In this case, Mr. Ashish Singh has to file a return of income on behalf of his minor son.

A person, being a resident, who is not required to furnish a return under this sub-section and who during the previous year has any asset (including any financial interest in any entity) located outside India or signing authority in any account located outside India, shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed.

Under section 139(4A), Every charitable trust has to file a return of income if its total income before permitting exemption under section 11 and 12, is exceeding the income exempt from tax, shall be required to file the return of income.
Example
XY charitable trust has income of `10,00,000 out of which `9,00,000 is exempt under section 11 and 12 and balance income which is taxable is `1,00,000, in this case tax liability shall be nil because income of trust shall be taxable at slab rate, however, the trust has to file its return of income because income before taking exemption under section 11 and 12 shall be taken into consideration.

If income of a charitable trust is `2,00,000 and it is exempt under section 11 and 12, in this case the trust need not file any return.

Under section 139(4B), Every political party having total income before permitting exemption under section 13A, more than the income exempt from income tax is also required to file a return of income.

Example
If income of a political party is `5,00,000 and it is exempt to the extent of `4,00,000 under section 13A, the political party has to file the return.

Under section 139(4C), A research association, a news agency, trade or professional association, trade union etc. whose incomes are exempt from tax are also required to file their return of income if their total income is exceeding the income exempt from tax before permitting exemption under section 10.

Under section 139(4D), Every university, college or other institution referred in section 35, which is not required to furnish return of income or loss under any other provision of this section, shall furnish the return in respect of its income or loss in every previous year and all the provisions of this Act shall apply.

Return of income not to be filed in certain cases
As per N.N. 36/2011 dated: 23.06.2011, if any individual whose total income is not exceeding `5,00,000 and he has income only under the head salary, shall be exempt from filing the return of income and also he may have interest income from his savings bank account in a bank upto `10,000. Such individual should obtain

certificate in Form No.16 from his employer and the employer should deducted tax at source and also PAN of the employee is mentioned in the form. The employee should not have any refund claim.

Example

(i) If an individual has salary income of ` 4,90,000 and interest income from savings bank account not exceeding `10,000 (which has been reported to the employer and tax has been deducted thereon), then the taxpayer would be exempt from the requirement of filing income-tax returns since the total income from both the above sources does not exceed five lakh rupees.

(ii) A taxpayer having salary income of ` 4,98,000 and interest income from savings bank account of `2,000 (which has been reported to the employer and tax has been deducted thereon), would also be eligible under this Scheme.

(iii) A taxpayer having salary income up to ` 5,00,000 and nil interest income would also be eligible under this Scheme.

(iv) A taxpayer having salary income of `5,50,000, interest income from savings bank account of `8,000(which has been reported to the employer and tax has been deducted thereon), and who has claimed deduction of ` 70,000 under section 80C (on account of certain payments/investments/savings) would also be eligible under the Scheme.

(v) A taxpayer having salary income of ` 5,90,000, interest income from savings bank account of ` 10,000 (which has been reported to the employer and tax has been deducted thereon), and who has claimed deduction of ` 1,00,000 under section 80C (on account of certain payments/investments/savings), and a further deduction of ` 15,000 under section 80D (Health Insurance Premium) would also be eligible under the Scheme.

Due date for filing the return of income

Return is to be filed in general upto 31st July of the assessment year, however, in the following cases, the last date shall be 30th September of the assessment year.

1. Every company assessee

Example

For the previous year 2012-13, ABC Ltd. has to file its return of income upto 30.09.2013.

2. Any other person who is required to get his accounts audited either under Income Tax Act or under any other Act.

Example

Mr. Ankur Kumar has his own business and his turnover for previous year 2012-13 is `102 lakhs. In this case, the last date of filing the return of income shall be 30.09.2013, but if turnover is ` 97 lakhs, the last date shall be 31.07.2013.

Similarly if a partnership firm XY has turnover of its business ` 65 lakhs for previous year 2012-13, in this case, the last date of filing of return of income shall be 31.07.2013.

3. Every political party, co-operative society, charitable trust.

4. Working partner of a partnership firm whose accounts are required to be audited.

The return of income is to be filed in the prescribed form. It should be verified in the prescribed manner. It should be signed by the authorized person.

E-Filing of Return

An assessee has the option to e-file the return but e-filing is compulsory in case of a company and also in case of other assesses who are required to get their accounts audited.

As per Circular No. 639, Dated November 13, 1992, if the last day of filing the return of income or loss is a day on which the office is closed, the assessee can file the return on the next day afterwards on which the office is open.

Problem 1. ABC Ltd. has turnover of its business `70 lakhs for the assessment year 2013-14, in this case the company has to file its return of income for the assessment year 2013-14 upto ______________.
Hint: 30.09.2013

Problem 2. Mr. Deepak Aggarwal has turnover of its business for the assessment year 2013-14 `105 lakhs, the last date for filing the return of income shall be _______________.
Hint: 30.09.2013

Problem 3. XY partnership firm has turnover of its business for the assessment year 2013-14 `60 lakhs, the last date for filing the return of income shall be ______________.
Hint: 31.07.2013

Problem 4. ABC Ltd. has loss of `75 lakhs for the assessment year 2013-14. In this case, company is not required to file any return of income. (True/False)
Hint: False

As per Rule 12, every assessee has to file return of income in the prescribed form and such form are as given below:

SAHAJ (ITR-1)	Individuals, whose total income includes income chargeable under the head – "Salaries" or income in the nature of family pension; or "Income from house property", where the assessee does not own more than one house property and does not have any brought forward loss under the head; or "Income from other sources", except winnings from lottery or income from race horses.
Form No. ITR-2	For Individuals and HUFs not having Income from Business or Profession
Form No. ITR- 3	For Individuals/HUFs being partners in firms and not carrying out business or profession under any proprietorship
Form No. ITR-4	For individuals & HUFs having income from a proprietary business or profession
SUGAM (ITR-4S)	Presumptive Business Income A person being an individual or a Hindu undivided family deriving business income and such income is computed in accordance with special provisions, referred to in section 44AD and section 44AE of the Act.
Form No. ITR-5	For firms, AOPs and BOIs
Form No. ITR- 6	For Companies other than companies claiming exemption under section 11
Form No. ITR-7	For persons including companies required to furnish return under section 139(4A) or section 139(4B) or section 139(4C) or section 139(4D)
Form No. ITR-V	Where the data of the Return of Income in Form SAHAJ, ITR-2, ITR-3, ITR-4S (SUGAM) & ITR-7 transmitted electronically without digital signature

Question 2 [V. Imp.] : Write a note on Return of Loss Section 139(3).

Answer:

Return of Loss Section 139(3)

If any person has sustained any loss under the head Business/Profession or under the head capital gains or the loss is from owning and maintaining of race horses and such person claims that the loss is to be carried forward, such person has to file a return of loss and such return shall be examined by the Assessing Officer and the loss computed by the assessee shall be confirmed by the Assessing Officer by sending an intimation under section 157 and only after that carry forward of loss shall be allowed to the assessee.

Return under section 139(3) has to be submitted within the time allowed under section 139(1) and it should be in the prescribed form and it should be verified in the prescribed manner.

Under section 80, if any loss has not been determined on the basis of Return of Loss filed under section 139(3), it will not be allowed to be carried forward and set off.

Example
For previous year 2012-13 ABC Ltd. has incurred business loss of ` 90 lakhs. In this case, the company must file return of loss under section 139(3) maximum upto 30.09.2013, otherwise carry forward of the loss is not allowed.

The above provisions are not applicable with regard to loss under the head house property and also it is not applicable with regard to unabsorbed depreciation.

If any return is filed under section 139(3), all the provisions of this Act shall apply as if it were a return under section 139(1).

Question 3 [V. Imp.]: Write a note on Belated Return of Income Section 139(4).
Answer:
Belated Return of Income Section 139(4)
Every person is required to file a return of income within the time allowed under section 139(1) however return of income can be filed even after the due date but maximum within one year from the end of relevant assessment year.

Example
For previous year 2012-13 ABC Ltd. has to file its return of income upto 30.09.2013. However, belated return is allowed under section 139(4) but maximum upto 31.03.2015 but the assessee has to pay interest under section 234A after the expiry of the due date for filing the return of income and also penalty of `5,000 shall be imposed under section 271F, if the return has been filed after the expiry of the relevant assessment year.

If any person has not filed his return of income upto the due date and it has come to the notice of the Assessing Officer, in that case, Assessing Officer may issue him a notice under section 142(1) and the assessee shall be bound to file the return within the time allowed by the Assessing Officer otherwise Assessing Officer may do best judgment assessment under section 144 i.e. Assessing Officer can fix the tax liability of the assessee on the basis of his own judgment. Belated return shall not be accepted after completion of best judgment assessment. Further under section 271(1)(b), if any person has failed to comply with a notice given under section 142(1), Assessing Officer may direct such a person to pay a penalty of `10,000 for each such failure.

Example
For previous year 2012-13 ABC Ltd. has not filed its return of income upto 30.09.2013 and the Assessing Officer has issued a notice under section 142(1) on 10.11.2013 directing the company to file its return upto 25.11.2013. In this case, the company must file its return upto 25.11.2013 otherwise Assessing Officer may do best judgment assessment under section 144 and after completion of best judgment assessment, belated return shall not be accepted.

If in the above case the company has not filed the return upto 25.11.2013 and Assessing Officer has completed best judgment assessment on 11.12.2013, belated return shall not accepted from 11.12.2013 onwards.

If a return is filed after the completion of best judgment assessment under section 144 but before serving the demand notice on the assessee, such return is not a valid return i.e. the return must be filed before completion of best judgment assessment.

Example
If a best judgment assessment is made on 10.12.2013 and the assessee files a return on 15.12.2013 and notice with regard to completion of best judgment assessment is served on 20.12.2013, it is not a valid return because best judgment assessment has already been completed.

Question 4 [V. Imp.]: Write a note on Revised Return of Income Section 139(5).
Answer:
Revised Return of Income   Section 139(5)
If any person has furnished a return under section **139(1)** or in pursuance of a notice issued under section **142(1)** and such person has discovered any **bonafide omission or wrong statement**, he may furnish a revised return at any time before expiry of one year from the end of the relevant assessment year.

Example
If ABC Ltd. has filed its return of income on 30.09.2013 for previous year 2012-13 and subsequently the company has detected any bonafide error, in this case, the company is allowed to revise its return of income under section 139(5) but maximum upto 31.03.2015.

If the assessment on the return has already been completed, revision is not allowed after completion of assessment.

Example
For the previous year 2012-13 ABC Ltd. has filed its return of income on 30.09.2013. This return was checked by the Assessing Officer on 01.03.2014 and the company wish to file a revised return on 10.04.2014. In this case, revised return shall not be accepted.

An assessee is allowed to revise the return of income any number of times, however, if the earlier return has already being assessed, revised return shall not be allowed.

The term **'omission'** and **'wrong statement'** refers to an unintentional act or neglect to perform what the law requires i.e. the omission should be bonafide omission. If any person has given a wrong information knowingly, revision is not allowed as decided in **CIT v. Radhey Shyam [1980] (All.)**.

Omission or wrong statement in the original return must be due to a bonafide inadvertence or mistake on the part of the assessee **Sunanda Ram Deka v. CIT [1994] (Gauhati).**

Revision is allowed only with regard to a return, which was filed under section 139(1) or in pursuance of a notice issued under section 142(1) i.e. if the return has been filed under any other section, its revision is not allowed.

However, the return filed under section 139(3) is considered to be return under section 139(1), its revision is allowed.

If any return was filed under section 139(4), its revision is not allowed as decided in **Kumar Jagdish Chandra Sinha v. CIT (1996) (SC).**

Example

If ABC Ltd. has filed its return of income on 10.11.2013 under section 139(4), its revision is not allowed.

Revised return replaces Original Return

Any revised return shall substitute the original return i.e. it will be presumed that revised return was filed on the date on which the original return was filed as decided in **Dhampur Sugar Mills Ltd. v. CIT (1973) (All)**

Certain information required in the return of income Section 139(6)

The prescribed form of the returns shall, in such cases as may be prescribed, require the assessee to furnish the following particulars

- Income exempt from tax,
- Assets of the prescribed nature, value and belonging to him,
- Bank account and credit card held by him
- Expenditure exceeding the prescribed limits incurred by him under prescribed heads and such other outgoings as may be prescribed.

Question 5 [V. Imp.]: Write a note on Defective Return of Income Section 139(9).

Answer:

Defective Return of Income Section 139(9)

Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of **fifteen days from the date of such intimation** or within such further period which, the Assessing Officer may, allow and if the defect is not rectified within the said period, then the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return.
Provided that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

A Return of income shall be regarded as defective unless all the annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computation of gross total income and total income have been duly filled in.

CIT v. Dr. Krishan Lal Goyal [1984] (Punjab & Harayana)

A return which is not verified by the assessee is not valid in the eye of law, i.e. it is an invalid return and not the defective return.

Behari Lal Chatterji v. CIT [1934] (Allahabad)
Khialdas & Sons v. CIT [1997] (M.P.).

An unsigned return is not a valid return at all i.e. it will not be considered to be defective return rather it is an invalid return.

As per Rule 12(2), no documents shall be enclosed with the return of income rather the assessee should retain such documents with him and only on demand the documents should be submitted.

Question 6 [V. Imp.]: Write a note on Permanent Account Number Section 139A.

Answer:

Permanent Account Number Section 139A

The following persons have to apply for allotment of permanent account number.

1. Every person having total income more than the income exempt from tax and also every person who is assessable on behalf of any other person and the person on whose behalf he is assessable has income more than the income exempt from tax.

2. Every person who is engaged in business/profession and his turnover is likely to exceed `5 lakh during

the year.

3. Every charitable trust who is required to file a return of income under section 139(4A).

4. Every person who has been notified by the Central Government.

5. Any person who is willing to take permanent account number.

6. The Assessing Officer, having regard to the nature of the transactions as may be prescribed, may also allot a permanent account number, to any other person (whether any tax is payable by him or not), in the manner and in accordance with the procedure as may be prescribed.

7. A person who is entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVII-B in any financial year, before the end of such financial year.

The department shall allot a 10 digit alphanumeric number on a laminated card, which contains the photograph of the assessee.

Example
AAEPG 8996E
The purpose to issue permanent account number is to have better identification of the assessee and to facilitate faster correspondence between the department and the assessee.

Permanent account number is being used to detect concealed income and for this purpose the assessee has to mention permanent account number in the following transaction as per **Rule 114B**.

1. Sale/Purchase of immovable property of ` 5 lakhs or more.

2. Sale/purchase of shares and securities exceeding ` 1 lakh.

3. Applying for a telephone.

4. Sale/purchase of motor vehicles.

5. Opening any account in a bank not being a time deposit account.

6. Opening a time deposit account in a bank exceeding ` 50,000.

7. Making a payment of hotel or restaurant bill exceeding ` 25,000.

8. Deposit in cash aggregating `50,000 or more with a banking company during any one day.

9. Payment in cash for purchase of a bank draft or a pay order or banker's cheque for an amount aggregating `50,000 or more during any one day.

10. Payment in cash in connection with travel to any foreign country of an amount exceeding twenty-five thousand rupees at any one time.

11. Making an application to any banking company or to any other company or institution, for issue of a credit card/debit card

12. Payment of an amount of fifty thousand rupees or more to a Mutual Fund for purchase of its units.

13. Payment of an amount of fifty thousand rupees or more to a company for acquiring shares issued by it.

14. Payment of an amount of fifty thousand rupees or more to a company or an institution for acquiring debentures or bonds issued by it.

15. Payment of an amount of fifty thousand rupees or more to the Reserve Bank of India, for acquiring bonds issued by it.

16. Payment of an amount aggregating `50,000 or more in a year as life insurance premium to an insurer.

17. Payment to a dealer of an amount of `5,00,000 or more at any one time for purchase of bullion or jewellery.

18. Any other transaction notified for this purpose.

Penalty for non-compliance
If any person has failed to comply with the provision of section 139A, Assessing Officer may impose penalty under section **272B** of **`10,000**.

Question 7. [V. Imp.] Write a note on submission of returns through Tax Return Preparers.
Answer:
Scheme for submission of returns through Tax Return Preparers Section 139B
In order to enable a specified class of persons to prepare and furnish return of income, income tax department shall appoint Tax Return Preparer. The tax return preparer shall hold a graduation degree from a recognised Indian university or other specified qualifications but such persons should not be a Chartered Accountant or other specified persons.

The Directorate of Income Tax constituted for this purpose shall be called Resource Centre. The resource centre shall enter into an agreement with the Partner Organization for recruitment and training of Tax Return Preparer. The partner organization will select and recruit the required number of TRPs.

A person may approach a TRP for filing the return of income but any person who is required to get his accounts audited shall not be allowed to file the return through the Tax Return Preparer.

Similarly any non-resident shall not be allowed to file return through Tax Return Preparer.

The resource centre shall pay a commission of **3%** of the tax paid on the income declared in the return or **`1,000 whichever is less**. A TRP shall be entitled for a minimum payment of **`250** and if commission paid is less than `250, he can receive the difference amount from the assessee whose return is being filed.

The resource centre shall have the powers to cancel the certificate of TRP if fails to comply with the prescribed conditions.

If an assessee is filing return for more than one year, commission payable shall be **3%** for first return, **2%** for the second return and **1% for the third return**.

Question 8: Write a note on Signing of Return of Income.
Answer:
Signing of return of income
Return by whom to be signed Section 140

The return under section 139 shall be signed and verified—

1. in the case of an individual,—
- (i) by the individual himself.
- (ii) where he is absent from India, by the individual himself or by some person duly authorized by him in this behalf.
- (iii) where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf and
- (iv) where, for any other reason, it is not possible for the individual to sign the return, by any person duly authorized by him in this behalf.

Provided that in a case referred to in sub-clause (ii) or sub-clause (iv), the person signing the return holds a valid power of attorney from the individual to do so, which shall be attached to the return.

2. in the case of a Hindu Undivided Family, by the karta, and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family.

3. in the case of a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to sign and verify the return, or where there is no managing director, by any director thereof.

Provided that where the company is not resident in India, the return may be signed and verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return.

Provided further that,—

(a) where the company is being wound up, whether under the orders of a court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be signed and verified by the liquidator.

(b) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be signed and verified by the principal officer thereof.

4. in the case of a firm, by the managing partner, or where for any unavoidable reason such managing partner is not able to sign and verify the return, or where there is no managing partner as such, by any partner thereof, not being a minor.

5. in the case of a limited liability partnership, by the designated partner thereof, or where for any unavoidable reason such designated partner is not able to sign and verify the return, or where there is no designated partner as such, by any partner thereof.

6. in the case of a local authority, by the principal officer.

7. in the case of a political party referred to in sub-section (4B) of section 139, by the chief executive officer of such party (whether such chief executive officer is known as secretary or by any other designation).

8. in the case of any other association, by any member of the association or the principal officer.

9. in the case of any other person, by that person or by some person competent to act on his behalf.

Behari Lal Chatterji v. CIT [1934] (Allahabad)

Khialdas & Sons v. CIT [1997] (M.P.).

An unsigned return is not a valid return at all i.e. it will not be considered to be defective return rather it is an invalid return.

PRACTICE PROBLEMS

Question 1. During the previous year 2012-13, Mr. X has income under the head house property `7,00,000. In this case, his last date of filing of return shall be ____________________.

Question 2. A partnership firm XY has turnover of his business `75,00,000 and income under the head Business/Profession `5,00,000 for previous year 2012-13. In this case, the last date of filing of return of income shall be ____________.

Question 3. ABC Ltd. has loss under the head Business/Profession `3,00,000 for previous year 2012-13. In this case, the company has to file the return latest by ____________________.

Question 4. A partnership firm XY has turnover of the business `105,00,000 and income from business `7,00,000 for the previous year 2012-13, the last date for filing of return of income shall be ______________.

Question 5. ABC Ltd. do not have any income for the previous year 2012-13. In this case, company is not required to file any return of income. Discuss.

Question 6. ABC Ltd. has loss under the head Business/Profession `7,00,000 for the previous year 2012-13 and the company has filed the return of loss on 01.11.2013 under section 139(3). Discuss whether set off or carried forward and set off of the loss is allowed or not.

Question 7. For the previous year 2012-13, Mr. X an assessee shall be allowed to file belated return of income latest upto ____________________.

Question 8. For the previous year 2012-13, Mr. X has filed original return of income on 01.07.2013, he can file revised return of income latest upto_________________.

Question 9. For the previous year 2012-13, Mr. X has filed original return of income on 01.11.2013, he can file revised return of income latest upto ____________________.

Question 10. Mr. X has filed original return for previous year 2012-13 on 01.07.2013 and revised return on 01.11.2013 and he further wants to revise the return on 01.01.2014. Discuss whether he is allowed to do so or not.

Ans 1. 31.07.2013

Ans 2. 31.07.2013

Ans 3. 30.09.2013

Ans 4. 30.09.2013

Ans 5. As per section 139(1), every company has to file return of income in every case.

Ans 6. The company is allowed to set off the loss during the previous year 2012-13 but its carried forward is not allowed because return of loss has to be filed within the time allowed under section 139(1) i.e. 30.09.2013 in the above case.

Ans 7. 31.03.2015

Ans 8. 31.03.2015

Ans 9. As per Supreme Court decision in Kumar Jagdish Chandra Sinha v. CIT, revision of belated return is not allowed.

Ans 10. A revised return can also be revised further any number of times, however, if the earlier return has already been assessed, revised return is not allowed subsequently. In the given case, revised return can be filed on 01.01.2014.

EXAMINATION QUESTIONS

IPCC NOV – 2012

Question No. 7(a) **(4 Marks)**

(ii) Enumerate the circumstances in which an individual assessee is empowered to sign and verify his return of income u/s 139 by himself or otherwise by an authorised signatory.

Answer:

Signing of return of income

The return under section 139 shall be signed and verified—

(i) in general-by the individual himself.

(ii) where he is absent from India by the individual himself or by some person duly authorized by him in this behalf.

(iii) where he is mentally incapacitated from attending to his affairs by his guardian or any other person competent to act on his behalf and

(iv) where, for any other reason, it is not possible for the individual to sign the return- by any person duly authorized by him in this behalf.

Provided that in a case referred to in sub-clause (ii) or sub-clause (iv), the person signing the return holds a valid power of attorney from the individual to do so, which shall be attached to the return.

IPCC MAY – 2012

Question 2 **(4 Marks)**

Paras is resident of India. During the F.Y. 2012-13 interest of `1,88,000 was credited to his Non-resident (External) Account with SBI. `30,000 being interest on fixed deposit with SBI was credited to his saving bank account during this period. He also earned `3,000 as interest on this saving account. Is Paras required to file return of income?

What will be your answer, if he owns one shop in Kerala having area of 150 sq. ft.? (Modified)

Answer:

	`
Computation of Total Income	
Income under the head Other Sources	
Interest credited to Non-Resident (External) Account with SBI	Exempt u/s 10(4)
Interest on Fixed Deposit	30,000
Interest on Saving Account	3,000
Income under the head Other Sources	33,000
Gross Total Income	33,000
Less: Deduction u/s 80TTA	3,000
Total Income	30,000

No, Paras is not required to file return of income as his gross total income do not exceeds the exemption limit i.e. `2,00,000 during the financial year 2012-13.

Answer will remain same even if Paras owns one shop at Kerala.

IPCC NOV – 2011

Question 7 **(4 Marks)**

State with reasons whether you agree or disagree with the following statements:
Return of income of Limited Liability Partnership (LLP) could be signed by any partner.

Answer:

Disagree. In case of limited liability partnership return is to be signed by designated partner, in case due to any unavoidable circumstances designated partner is not available then any partner can sign.

PCC NOV – 2011

Question 7 **(4 Marks)**

(i) State when a return of income can be treated as defective?

(ii) An assessing officer finds a defect in the return of income and intimated the defect vide letter dated 09.10.2012, which was received by Mr. Ram on 11.10.2012, What is the date by which Mr. Ram has to rectify the defect, assuming that Mr. Ram has not applied for extension of time.

Answer:

(i) Refer to Question No. 5
(ii) Date by which Mr. Ram has to rectify the mistake:-
= 09.10.2012 + 15 days = 24.10.2012

IPCC MAY – 2011

Question 7 **(4 Marks)**

Specify the persons who are authorized to sign and verify under section 140, the return of income filed under section 139 of the Income-tax Act, 1961 in the case of:

(i) Political party;

(ii) Local authority;

(iii) Association of persons, and

(iv) Limited Liability Partnership (LLP)

Answer.

The following persons (mentioned in Column III below) are authorised as per section 140, to sign and verify the return of income filed under section 139.

I	II	III
(i)	Political party	Chief Executive Officer of such party (whether known as secretary or by any other designation)
(ii)	Local authority	Principal Officer thereof
(iii)	Association of Persons	Any member of the association or the principal officer thereof.
(iv)	LLP	Designated partner, or Any partner, - where the designated partner is not able to sign and verify the return for any unavoidable reason;

		- where there is no designated partner

PCC MAY – 2011

Question 3 **(4 Marks)**

State whether filing of income-tax return is mandatory for the assessment year 2013-14 in respect of the following cases:

(i) Research association eligible for exemption under section 10(21) having total income of `2,10,000.

(ii) Registered trade union eligible for exemption under section 10(24) having following incomes:

Income from house property (computed)	`60,000
Income from other sources (computed)	`40,000

(iii) A charitable trust registered under section 12AA, having total income of `2,10,000.

(iv) A Limited Liability Partnership (LLP) with business loss of `1,30,000.

Answer.

(i) As per section 139(4C), a research association referred to in section 10(21) must file its return of income within the due date under section 139(1) if its total income, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax.

Since the total income of the research association exceeds the basic exemption limit of `2,00,000, it has to file its return of income for the A.Y.2013-14.

(ii) As per section 139(4C), a registered trade union referred to in section 10(24) must file its return of income if the total income exceeds the basic exemption limit without giving effect to the provisions of section 10.

Since the total income of the trade union is less than the basic exemption limit of ` 2,00,000, it need not file its return of income for the A.Y. 2013-14.

(iii) As per section 139(4A), a charitable trust registered under section 12AA must file its return of income, if its total income computed as per the provisions of the Income tax Act, 1961, without giving effect to the provisions of sections 11 and 12, exceeds the maximum amount which is not chargeable to income-tax. Since the total income of the charitable trust exceeds `2,00,000, it has to file its return of income for the A.Y. 2013-14.

(iv) As per section 139(1), every company or firm shall furnish on or before the due date the return in respect of its income or loss in every previous year. Since LLP is included in the definition of firm under the Income-tax Act, 1961, it has to file its return mandatorily, even though it has incurred a loss.

IPCC MAY – 2010

Question 4 **(4 Marks)**

What are the particulars required to be furnished with the return of income, as per section 139(6)?

Answer.

Particulars to be furnished with the return of income [Section 139(6)]

As per section 139(6), the prescribed form of return of income, shall in certain prescribed cases, require the assessee to furnish the particulars of:

(i) income exempt from tax;

(ii) assets of the prescribed nature and value, belonging to the assessee;

(iii) details of bank account and credit card held by the assessee;

(iv) expenditure exceeding the prescribed limits incurred by the assessee under prescribed heads; and

(v) such other outgoings, as may be prescribed.

PCC NOV – 2008

Question 5 **(4 Marks)**

Explain with brief reason whether the return of income can be revised under section 139(5) of the Income-tax Act, 1961 in the following cases:

(i) Defective or incomplete return filed under section 139(9).

(ii) Belated return filed under section 139(4).

(iii) Return already revised once under section 139(5).

(iv) Return of loss filed under section 139(3).

Answer.

Any person who has furnished a return under section 139(1) or in pursuance of a notice issued under section 142(1) can file a revised return if he discovers any omission or any wrong statement in the return filed earlier. Accordingly:-

(i) A defective or incomplete return filed under section 139(9) cannot be revised. However, the defect can be removed.

(ii) A belated return filed under section 139(4) cannot be revised. Only a return furnished under section 139(1) or in pursuance of a notice issued under section 142(1) can be revised.

(iii) A return revised earlier can be revised again as the first revised return replaces the original return. Therefore, if the assessee discovers any omission or wrong statement in such a revised return, he can furnish a second revised return within the prescribed time i.e. within one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

(iv) A return of loss filed under section 139(3) is deemed to be return filed under section 139(1), and therefore, can be revised under section 139(5).

PCC NOV – 2007

Question 5 **(4 Marks)**

Enumerate eight transactions for which quoting of Permanent Account Number is mandatory.

Answer.

Quoting of PAN is mandatory in the case of following transactions:

(1) In all returns to, or correspondence with, any income tax authority,

(2) Sale or purchase of any immovable property valued at ` 5 lakhs or more.

(3) A time deposit exceeding ` 50,000 with a banking company.

(4) A contract for sale or purchase of securities exceeding value of ` 1,00,000.

(5) Cash payment in excess of ` 25,000 in connection with travel to any foreign country at any one time.

(6) Bill payments to hotels and restaurants exceeding ` 25,000 at any one time.

(7) Cash deposit aggregating ` 50,000/- or more with a banking company during any one day.

(8) Making an application to any bank or banking institution or company or any institution for issue of a credit card.

PCC MAY – 2007

Question 1 **(2 Marks)**
From 01.06.2006 onwards, the Assessing Officer has the power, inter alia, to allot PAN to any person by whom no tax is payable.

Answer.
True: Section 139A has been substituted w.e.f. 01.06.2006, to provide that the Assessing Officer may, having regard to the nature of transactions as may be prescribed, also allot a PAN to any other person, whether any tax is payable by him or not, in the manner and in accordance with the procedure as may be prescribed.

Question 1 **(2 Marks)**
Where the Karta of an HUF is absent from India, the return of income can be signed by any male member of the family.

Answer.
False: Section 140 provides that where the Karta of a HUF is absent from India, the return of income can be signed by any other adult member of the family; such member can be a male or female member.

Question 5 **(4 Marks)**
Discuss briefly about the scheme to facilitate submission of return of income through Tax Return Preparers.

Answer.
Scheme to facilitate submission of return of income through Tax Return Preparers [Section 139B]
(1) Section 139B provides that, for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income, the CBDT may notify a Scheme to provide that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the Scheme.

(2) The Tax Return Preparer shall assist the persons furnishing the return in a manner that will be specified in the Scheme, and shall also affix his signature on such return.

(3) A Tax Return Preparer can be an individual, other than –
- (i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.
- (ii) any legal practitioner who is entitled to practice in any civil court in India.
- (iii) a chartered accountant.
- (iv) an employee of the 'specified class or classes of persons'.

(4) The "specified class or classes of persons" for this purpose means any person, other than a company or a person, whose accounts are required to be audited under section 44AB or under any other existing law, who is required to furnish a return of income under the Act.

CHARITABLE TRUST/ RELIGIOUS TRUST

SECTION 11, 12, 13

Meaning of Charitable Purpose Section 2(15)

Charitable purpose includes

- relief of the poor,
- education,
- medical relief,
- preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,
- advancement of any other object of general public utility

advancement of any other object of general public utility should not be in the nature of business however if the gross receipt is upto `25,00,000, it will be considered to be charitable purpose but if gross receipt is exceeding `25,00,000, it will not be considered as charitable purpose.

Example

One charitable trust has the business of publishing of books on social and religious matters and gross receipt is `15,00,000, in this case, it will be considered to be charitable purpose but if gross receipt is more than `25,00,000, entire income shall be taxable.

Similarly, one such trust is running a coaching centre for sports and games and gross receipt is `20,00,000, in this case, it will be considered to be charitable purpose but if gross receipt is exceeding `25,00,000, entire income shall be taxable.

Any trust having the above objectives shall be considered to be charitable or religious trust.

Trust will include any other institutions or organizations also i.e. it will include even Society registered under Societies Registration Act, 1860, company registered under section 25 of Companies Act, 1956, or other similar institutions, provided they are for charitable purpose.

Exemption in case of income of Charitable or Religious Trust Section 11

The following incomes of a charitable or religious trust or other similar institution like a company registered under section 25 of the companies Act, shall be exempt from income tax.

1. Any income derived from the property held by such charitable or religious trust or institution. It will also include any capital gains.

2. Income in the form of voluntary contributions.

3. Property held under trust shall include a business undertaking so held, however the above business must **be incidental to the attainment of the objectives of the trust and separate books of account are maintained by such trust or institution.**

Conditions for Exemptions

(i) Exemption is allowed provided 85% of such income is applied for charitable or religious purposes in India.

(ii) If income is to be accumulated or set apart for charitable or religious purposes, accumulation is allowed upto 15% of the income.

(iii) If any voluntary contribution has been received with a specific direction that they shall form part of the corpus of the trust or institution, in that case there is no condition to apply 85% of such income for charitable or religious purposes.

(iv) If 85% of the income derived during a particular year has not been applied for charitable or religious purposes in that previous year, it can be applied for such purposes during the previous year immediately following the previous year in which the income was derived, but in that case the assessee has to give such option in writing before the expiry of the time allowed for furnishing the return of income. If the income is not applied to charitable or religious purposes even by the end of such previous year, it will be considered to be income of such previous year i.e. in the year immediately following the previous year in which the income was derived.

Example

XY Charitable Trust has derived income of 10 lakhs in the previous year 2012-13. It can accumulate maximum to the extent of 1.5 Lakhs and balance amount of 8.5 lakhs must be applied for charitable or religious purposes in India during the year to get exemption however any deficiency shall be allowed to be utilised upto 31.03.2014. If still the income is not utilised, such unutilised amount shall be considered to be income of the previous year 2013-14.

If in the above case the trust has applied only `5,00,000 for charitable purposes upto 31.03.2013 and `2,00,000 more in the year 2013-14, balance amount of `1,50,000 (8,50,000 – 5,00,000 – 2,00,000) shall be considered to be income of previous year 2013-14.

(v) If any income is derived in a particular year but it was received in some other year, 85% of such income can be applied for charitable purposes upto the end of the year in which the income was received and if there is any deficiency it can be applied upto the end of the subsequent year and if there is any unutilised amount, it shall be considered to be income of such subsequent year. However, above relaxation is allowed only if the trust has given a declaration in writing at the time of filing of return of income latest by the time allowed for furnishing the return of income.

Example

Income of XY charitable trust for previous year 2012-13 is ` 10 lakhs out of which 3 lakhs have been received on 10.04.2013. In this case, the trust can save upto ` 1.5 lakhs and balance amount must be utilized for charitable purpose upto 31.03.2014 but 3 lakhs received on 10.04.2013 can be utilized upto 31.03.2015.

Special provisions for Capital Gains Section 11(1A)

If there is capital gains on transfer of any asset of the trust and entire net consideration has been invested in acquiring new capital asset, in that case, entire amount of capital gain shall be exempt otherwise capital gains, to the extent, amount invested exceeds the cost of the transferred asset shall be exempt from tax.

Example

XY charitable trust purchased an asset on 01.10.2010 for ` 5 Lakhs and sold it on 01.10.2012 for `11 Lakhs and purchased an asset for ` 11 Lakhs or more, in that case, entire capital gains shall be exempt from tax and if the new asset was purchased for ` 5.5 Lakhs, in that case exemption allowed shall be `50,000.

Special provision for accumulation of more than 15% of the Income Section 11(2)

The trust can accumulate and set apart more than 15% of the income provided the trust under Rule 17 applies in Form No. 10 to the Assessing Officer mentioning the purpose for which the income is to be accumulated and specifies the period for which income is to be accumulated. However, total period cannot exceed 5 years. Further, the income so accumulated should be invested or deposited as given in section 11(5).

Forms and modes of investing or depositing the money Section 11(5)

1. Investment in savings certificates notified by the Central Government.
2. Deposit in any account with the Post Office.
3. Deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking.
4. Investment in units of Unit Trust of India.
5. Investment in any security issued by the Central Government or a State Government.
6. Investment in debentures issued by any company or corporation which are guaranteed by the Government.
7. Investment or deposit in any public sector company.
8. Investment in any bonds issued by a financial corporation which is engaged in providing long term finance for the Industrial development in India and which is approved by the Central Government.
9. Investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long term finance for construction or purchase of houses in India and which is approved by Central Government.
10. Investment in immovable property.
11. Deposits with the Industrial Development Bank of India.
12. Investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.
13. Investment by way of acquiring shares of a depository as defined in section 2(1)(e) of the Depositories Act, 1996.
14. Investment in shares of, or deposit in any public sector company.
15. Any other mode prescribed by the government.

Taxability of the income of Charitable Trust in Certain Cases

Income of the charitable trust shall become taxable in the following cases:

1. If it is applied to purposes other than charitable or religious purposes, or
2. If it ceases to be accumulated or set apart for application thereto, or

3. It ceases to remain invested or deposited as per the modes given in 11(5), or

4. It is not utilized for the purpose for which it is so accumulated or during the specified period. or

5. If any part of the income from the property held under a trust is not utilised for the benefit of the public. or

6. If the trust or institution is created for the benefit of a particular religious community or caste. Or

7. If the income is for the benefit of a person referred to in section 13(3) and the person referred to in Section 13(3) are:

   (a) The author of the trust or founder of the institution.

   (b) Any person who has made a substantial contribution to the trust or institution (That is to say any person whose total contribution upto the end of the relevant previous year exceeds ` 50,000.

   (c) Where such author, founder or the person is Hindu Undivided Family, in that case, any member of the family.

   (d) Any trustee of the trust or manager of the institution.

   (e) Any relative of any such author, founder, person, member, trustee or manager as aforesaid.

   (f) Any concern in which any of the persons mentioned above has a substantial interest.

   <u>The term relative shall include:</u>

   1. Spouse of the individual.

   2. Brother or sister of the individual.

   3. Brother or sister of the spouse of the individual.

   4. The lineal ascendant or descendant of the individual.

   5. Any lineal ascendant or descendent of the spouse of the individual.

   6. Spouse of a person referred to at Serial No. 2,3,4,5.

   7. Any lineal descendant of a brother or sister of the individual.

   8. Any lineal descendant of a brother or sister of the spouse of the individual.

- **<u>Under section 13(2)</u>**: Income of the trust shall be deemed to have been used or applied for the benefit of the persons referred to in section 13(3) in the following cases:

1. Any part of the income or property of the trust is lent to any person of 13(3) for any period without adequate security or interest or both.

2. If any land, building or other property is made available for use of any person without charging adequate rent or other compensation.

3. Any amount paid as salary, allowance etc. to the extent it is unreasonable.

4. If services are made available to any such person without adequate compensation.

5. If any share, security etc. is purchased during the previous year for consideration, which is more than adequate.

6. If any share, security etc. are sold on behalf of trust, or consideration which is less than adequate.

7. If any property of the trust or income is diverted in favour of any such person and its value is more than `1000.

8. If any funds of the trust or institution remain invested in any concern in which any of the persons referred to in section 13(3) has a substantial interest.

Registration of Trusts Section 12A/12AA

Exemption to a trust is allowed if the trust is registered. The trust must make an application under **Rule 17A in form No.10A**. Exemption is allowed from the 1st day of the financial year in which the application has been made.

e.g. One charitable trust comes into existence on 01.01.2012 and it has given application for registration on 01.05.2012 and registration is granted on 01.06.2012, in this case, exemption shall be available wef 01.04.2012 but if application was given upto 31.03.2012, exemption shall be available from 01.01.2012

The Commissioner on receiving an application for registration of trust shall call for such documents and information as are necessary. After satisfying himself, he shall pass the order for registration or he can refuse registration if he is not satisfied. In such case applicant has to be given an opportunity of being heard. **Order must be passed before expiry of six months from the end of the month in which the application was received.**

Where a trust or an institution has been granted registration u/s 12A 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:

Return of income of charitable or religious trust or institution Section 139(4A)

If the total income of a charitable or religious trust or institution before exemption under sections 11 and 12 exceeds the maximum amount not chargeable to tax, then the trust or institution is under an obligation to furnish the return of income within the time allowed under section 139(1) and all provisions of the Income-tax Act shall apply as if it were a return furnished under section 139(1).

Note 1: The tax rates applicable to a religious/ charitable trust/ institution are the same as applicable to an individual.

Note 2: As per section 12A, exemption under section 11 & 12 is available only if the trust / institution gets its accounts audited in case the total income of the trust/ institution before exemption under section 11 & 12 exceeds `2,00,000/-. Audit report should be submitted under rule 17B in form No. 10B.

Note 3: The due date for filing of return under section 139(4A) is 30th September of the assessment year.

Note 4: Return furnished under section 139(4A) is deemed to be return furnished under section 139(1) and can therefore be revised under section 139(5).

Religious/Charitable Trust

	Case I	Case II
Receipts	5,00,000	5,00,000
Exemption under section 11 & 12	4,75,000	3,00,000
Total Income	25,000	2,00,000

In both the above cases, the trust is required to furnish the return under section 139(4A).

Anonymous Donations   Section 115BBC

If any charitable trust or other similar organization has received anonymous donation, it will be taxable @ 30% however exemption shall be allowed to the extent of 5% of total donation or `1,00,000 whichever is higher. e.g. One such trust has received total donations of `100,00,000 out of which anonymous donations are `40,00,000, in this case, exemption allowed shall be 5% of `100,00,000 or `1,00,000 whichever is higher i.e. `5,00,000 and balance anonymous donations i.e. `35,00,000 (40,00,000 – 5,00,000) shall be taxable @ 30%.

The provisions shall not apply to any anonymous donation received by any trust or institution created or established wholly for religious purposes.

- **Applying the income for religious purpose** 'Apply' will include both revenue expenditure as well as capital expenditure. Board has clarified vide circular No. 100 dated: 24/1/73 that even repayment of loan originally taken to fulfill one of the object of the trust will amount to an application of income

— Expenditure by payment of tax out of current years income has to be considered as application for charitable purposes – **CIT v Janaki Ammal Ayya Nadar Trust, (1985) (Mad).**

— Donation by one charitable trust to the other charitable trust shall be considered to be application of income.

— Capital exp. incurred on improving or maintaining property of the trust shall be considered to be application of income. – **CIT v Kannika Parameswari Devasthanam & Charities, (1982) (Mad).**

— Excess expenditure in one year may be set off against next year's income—**CIT v Maharana of Mewar Charitable Foundation, (1987) (Raj.).**

- **Promotion of sports (Circular No. 395 Dated: 24/9/84)**

Board has clarified that promotion of sports and games shall be considered to be charitable purpose.

- **Relief of poor – CIT v M. Jamal Mohamad Sahib (1941) (Mad.)**

Relief must not be only to a group of private individuals rather it should be a relief to the poor in general.

- **Education – D.V. Arur v CIT, (1945) (Bom).**

Education must relate to the public in general, instead of providing education only to specific group. Education only to the members of a particular family shall not be considered to be charitable purpose.

- **Trust in the name of private person. – CWT v HEH The Nizam's Supplemental & Religious Endowment Trust, (1973) (AP).**

If the trust is for charitable purpose, in that case it do not matter in whose name that trust has been started.

INCOMES OF POLITICAL PARTIES
SECTION 13A

Any income of a political party which is chargeable under the head Income from house property or Income from other sources or Capital gains or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party :

Provided that

(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by a Chartered Accountant.

Provided further that if the treasurer of such political party or any other person authorized by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 for a financial year, no exemption under this section shall be available for that political party for such financial year.

Explanation. For the purposes of this section, political party means a political party registered under section 29A of the Representation of the People Act, 1951.

EXAMINATION QUESTIONS

PCC MAY – 2012

Question 4 **(4 Marks)**

Will a charitable trust be forfeited of tax exemption granted to it, if it holds shares in a public sector company? Will a charitable trust having business receipt and income of `20,00,000 and `2,00,000 respectively be denied the tax exemption?

Answer.

As per section 11(5), charitable trust is allowed to make investment in the shares or bonds of public sector company and accordingly exemption shall not be forfeited. If any charitable trust is engaged in business for the advancement of any object of general public utility and gross receipt is upto `25,00,000, such charitable trust shall be allowed exemption under section 11 and 12, hence in the given case trust will not be denied tax exemption.

IPCC NOV – 2010

Question 4 **(4 Marks)**

Can a political party claim exemption of its income under section 13A of the Income tax Act, 1961?

Answer.

Under section 13A, a political party registered under section 29A of the Representation of the People Act, 1951, can claim exemption under the following heads - Income from house property, capital gains and income from other sources. The income by way of voluntary contributions received by such political party is also exempt under section 13A.

These exemptions are subject to the following conditions:-

(i) The political party must keep and maintain such books of account and other documents as would enable the Assessing Officer to properly deduce its income there from.

(ii) The political party should keep and maintain a record of each such voluntary contribution in excess of `20,000 and the names and addresses of such contributors.

(iii) The accounts of the political party must be audited by a Chartered Accountant.

IPCC MAY – 2010

Question 1 **(2 Marks)**

What is the time limit for filing application seeking registration in the case of Charitable Trusts/ Institutions under section 12AA of the Act?

Answer.

Section 12AA requires that the person in receipt of income should make an application for registration of the charitable trust or institution in the prescribed form and prescribed manner to the Commissioner of Income-tax.

Provisions of section 11 and 12 shall apply in relation to income of such trust and institution from the assessment year immediately following the financial year in which such application is made. The application can therefore be filed at any time.

Question 4 **(4 Marks)**

What are the conditions to be fulfilled by a Charitable Trust under section 12A for applicability of exemption provisions contained in section 11 and 12?

Answer.

Conditions for applicability of sections 11 and 12 [Section 12A]

The exemption provisions contained in sections 11 and 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled –

(i) An application for registration of the trust or institution in the prescribed form and in the prescribed manner should be made to the Commissioner and the trust or institution should be registered under section 12AA.

(ii) 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.

(iii) Where the total income of the trust or institution, without giving effect to the provisions of sections 11 and 12, exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution must be audited by a Chartered Accountant and the report of such audit in the prescribed form duly signed and verified by such accountant setting forth such prescribed particulars, should be furnished along with the return of income.

IMPORTANT DEFINITIONS IN INCOME TAX ACT

Assessee Section 2(7)
"Assessee" means a person by whom any tax or any other sum of money is payable under Income tax Act, and includes—

(a) every person in respect of whom any proceeding under Income tax Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person.

(b) every person who is deemed to be an assessee under any provision of Income tax Act.

(c) every person who is deemed to be an assessee in default under any provision of Income tax Act.

Assessment Year Section 2(9)
"Assessment year" means the period of twelve months commencing on the 1^{st} day of April every year.

Business Section 2(13)
"Business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

Child Section 2(15B)
"Child", in relation to an individual, includes a step-child and an adopted child of that individual.

Income Section 2(24)
"Income" includes—

1. any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living.

2. any special allowance or benefit, other than perquisite included under clauses (2) and (3) of section 17, specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit.

3. the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17.

4. the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid.

5. any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

6. profits and gains.

7. any sum chargeable to income-tax under section 28(ii), 28(iii), 28(iiia), 28(iiib), 28(iiic), 28(iv), 28(v), 28(va) or section 41 or section 59.

- Under section 28(ii) if any compensation or other payment has been received by any person for termination of agency, it will be considered to be his income

Example

XY partnership firm was appointed a dealer of Maruti Udyog Ltd. for a period of five years but the dealership was cancelled after 2 years and a compensation of `5 lakhs was paid, in this case it will be considered to be income of XY partnership firm.

- Under section 28(iii), income derived by a trade, professional or similar association from specific services performed for its members shall be considered to be its income .

Example

Chamber of Commerce is providing specilised training in export management and is charging a fees of `30,000, in this case it will be considered to be his income.

- Under section 28(iiia), profits on sale of licence granted under the Imports (Control) Order, 1955 shall be considered to be his income.

Example

ABC Ltd. has transferred import entitlement licence for a profit of `2,00,000, it will be considered to be income of ABC Ltd.

- Under section 28(iiib), cash assistance received by any person against export under any scheme of the Government of India shall be considered to be income.

Example

A sum of `40,000 is received by X Ltd. as cash assistance against exports from the Government of India. It is treated as "income" as of X Ltd.

- Under section 28(iiic), Any duty of customs or excise re-paid as drawback to any person against exports shall be considered to be income.

Example

ABC Ltd. exports goods from India and gets as duty drawback a sum of `85,000, it will be considered to be "income" of ABC Ltd.

- Under section 28(iv), the value of any non-monetary benefit or perquisite arising from business or the exercise of a profession shall be considered to be income.

Example

A dealer has received one car as gift from the manufacturer for achieving the turnover. The value of the car is `4,00,000, it will be considered to be income of the dealer.

- Under section 28(v), any interest, salary, bonus, commission or remuneration received by a partner from a firm shall be considered to be income.

Example

Mr. Saleem is a partner is XYZ, a partnership firm. He gets `3,000 per month as salary from the firm. `3,000 per month is treated as "income" of Mr. Saleem.

- Under section 28(va), any sum received for not carrying out any activity in relation to any business or not to share any knowhow, patent, copyright, trademark, etc. shall be considered to be income.

Example

X Ltd. a Publishing House received `3,00,000 for not publishing books on taxation, it will be considered to be his income.

- Under section 41 or 59, deemed profit taxable under section 41 to 59 shall be considered to be income.

Example

ABC Ltd. debited sales tax of `5,00,000 in 2008-09 but a refund of `1,00,000 was received in the year 2012-13, it will be considered to their income.

8. the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members.

9. any capital gains chargeable under section 45.

10. dividend.

11. 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.

Explanation.—For the purposes of this sub-clause,—

(i) “lottery” includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called.

(ii) “card game and other game of any sort” includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game.

12. Taxable amount of gift as per section 56

13. any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees’ State Insurance Act, 1948, or any other fund for the welfare of such employees.

14. voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution.

15. the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary.

16. the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule.

India Section 2(25A)

“India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters.

Interest on Securities Section 2(28B)

“Interest on securities” means,—

(i) interest on any security of the Central Government or a State Government.

(ii) interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.

Maximum Marginal Rate SECTION 2(29C)

“Maximum marginal rate” means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, association of persons or, as the case may be, body of individuals as specified in the Finance Act of the relevant year.

Non-Resident Section 2(30)
"Non-resident" means a person who is not a "resident".

Meaning of Person Section 2(31)
"Person" includes—
(i) an individual,
(ii) a Hindu Undivided Family,
(iii) a company,
(iv) a firm,
(v) an association of persons or a body of individuals, whether incorporated or not,
(vi) a local authority, and
(vii) every artificial juridical person, not covered above.

Explanation— An association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains.

Person who has a Substantial Interest in the Company Section 2(32)
"Person who has a substantial interest in the company", in relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power

Previous Year Section 2(34)
"Previous year" means the previous year as defined in section 3.

Profession Section 2(36)
"Profession" includes vocation.

Meaning of Relative Section 2(41)
"Relative", means the husband, wife, brother or sister or any lineal ascendant or descendant of the individual.

Total Income Section 2(45)
"Total Income" means the total amount of income referred to in section 5. It is computed in the manner given below:
(i) Compute income under all the five heads.
(ii) Add up income under all the five heads to compute gross total income.
(iii) Permit deductions under section 80C to 80U to compute total income.

Infrastructure Capital Company Section 2(26A)
"Infrastructure capital company" means such company which makes investments by way of acquiring shares or providing long-term finance to any enterprise or undertaking wholly engaged in the business referred to in sub-section (4) of section 80-IA or sub-section (1) of section 80-IAB or an undertaking developing and building a housing project referred to in sub-section (10) of section 80-IB or a project for constructing a hotel of not less than three-star category as classified by the Central Government or a project for constructing a hospital with at least one hundred beds for patients.

Infrastructure Capital Fund Section 2(26B)
"Infrastructure capital fund" means such fund operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908) established to raise monies by the trustees for investment by way of acquiring shares or providing long-term finance to any enterprise or undertaking wholly engaged in the

business referred to in sub-section (4) of section 80-IA or sub-section (1) of section 80-IAB or an undertaking developing and building a housing project referred to in sub-section (10) of section 80-IB or a project for constructing a hotel of not less than three-star category as classified by the Central Government or a project for constructing a hospital with at least one hundred beds for patients.

Zero Coupon Bond Section 2(48)
"Zero coupon bond" means a bond—

(a) issued by any infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank on or after the 1st day of June, 2005;

(b) in respect of which no payment and benefit is received or receivable before maturity or redemption from infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank; and

(c) which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Previous Year Section 3
"Previous year" means the financial year immediately preceding the assessment year.

Example
For the assessment year 2013-14, its previous year shall be 2012-13.
Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, the date on which the source of income newly comes into existence and ending with the said financial year.

Example
Mr. Abhik started his business on 01.10.2012, first previous year shall be from 01.10.2012 to 31.03.2013.

Uniform Previous Year
With effect from assessment year 1989-90, all assessees are required to follow the finance year as a previous year. A calendar year cannot be taken as previous year.

Gross Total Income Section 80B
Gross Total Income means the total income computed in accordance with the provisions of Income tax Act, before making any deduction under chapter VI-A i.e. section 80C to 80U.

Basis of Charge
Charge of Income-Tax Section 4
(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person :

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

Application of Income/Diversion of Income
If any person has received any income and has paid the tax due on such income and subsequently the

income has been consumed, it will be called application of income.

But if a part of the income or full amount of income has been transferred to some other person before making the payment of tax because such other person had a right to receive such income, in that case it will be called diversion of income and the person who is diverting the income in this manner shall not be responsible to pay tax on the income diverted. Rather, the person who has received the income has to pay the tax.

Example

Mr. Ravi Sharma and Mr. Puneet Sharma have contributed one article in a magazine and as per the regulations of that particular magazine, full payment of `10,000 has been made to the person who had the first name and subsequently such person has paid half of the amount to the other person without making payment of tax, in this case, it will be called diversion of income.

Capital Receipt/Revenue Receipts

In general revenue receipts are considered to be income and capital receipt are not considered to be income hence there is a need to differentiate revenue receipt and capital receipt.

A receipt relating to fixed capital is called a capital receipt but a receipt relating to circulating capital would be a revenue receipt. Circulating capital is the capital which is turned over and in the process of being turned over yields profit or loss. Fixed capital is involved directly in the process but still remains unaffected by the process. Circulating capital or stock in trade is also known as trading asset and fixed capital as capital asset.

Though in general revenue receipt are chargeable to tax but there are exception under Income Tax Act and in some of the cases even capital receipt is taxable and is as given below:

1. Retrenchment compensation

2. Damages for breach of managing agency

3. Profits and gains on the transfer of a capital asset

Heads of Income Section 14

Any income received by a person is divided into 5 different categories of income which are called heads of income and are as given below:

(i) Salaries;

(ii) Income from house property;

(iii) Profits and gains of business or profession;

(iv) Capital gains and

(v) Income from other sources.

Significance of Heads of Income

Each head of income can be compared with a profit and loss account in accountancy i.e. each type of gross receipt is to be converted into income by permitting the expenses or deductions allowed under Income Tax Act. Income Tax Act as well as accountancy both lead to computation of income but the methods of computing income are somewhat different. Further under accountancy only one profit and loss account is prepared but under Income Tax Act, profit and loss account are prepared with regard to each type of income but finally the income is added up to compute gross total income.

The concept of heads of income is very important under the Income Tax Act. An income which is to be properly charged under one particular head cannot be charged under any other head of income. This is because the Act contains self-contained provisions in respect of each head of income. Specific deductions are permissible under each head of income. Therefore, if an income is charged under a wrong head of income, the assessee will lose the benefit of deductions available to him. For example, for the purpose of computing salary income, deduction towards entertainment allowance and deductions towards professional tax are available. If, for example, salary income is wrongly charged under another head, the assessee will lose the benefit of the above two deductions. Similarly reverse is possible. e.g. if a partner has received salary from a firm, it is his income under the head business/profession and if it wrongly taken to salary head, he will claim deductions of the salary head.

Hence various types of incomes are to be brought under specified heads and the income is to be computed under each head. After such computation income under various heads shall be added up to compute the gross total income.

From the gross total income, deductions permissible under Chapter VI-A shall be allowed to compute total income, which is the taxable income.

Expenditure incurred in relation to income not includible in Total Income Section 14A

(1) For the purposes of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income.

(3) The above provisions shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income.
However, the Assessing Officer shall not reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.

Question 1 [V. Imp.]: Discuss exceptions to the General Rule that the income of the Previous Year is taxed in the Assessment Year.

Answer:

Exceptions to the General Rule that the income of the Previous Year is taxed in the Assessment Year

Generally the income of the Previous Year is taxable in the immediately succeeding year called the assessment year. But, in the following cases, the income of the current year may be brought to tax in the same year–being exception to the general rule that incomes earned in the previous year are taxed in its assessment year following: -

1. Profits of non-resident from Shipping Business Section 172

The provisions of this section shall apply to any ship, belonging to a non-resident, which carries passengers, livestock, mail or goods shipped at a port in India.

Before the departure of any such ship from any port in India, the master of the ship shall prepare and furnish to the Assessing Officer a return of the full amount paid or payable on account of the carriage of all passengers, livestock, mail or goods shipped at that port since the last arrival of the ship.

If the Assessing Officer is satisfied that it is not possible for the master of the ship to furnish the return before the departure of the ship from the port and the master of the ship has made satisfactory arrangements for the filing of the return and payment of the tax by any other person, the Assessing Officer may, if the return is filed within thirty days of the departure of the ship, deem the filing of the return by the person so authorised by the master as sufficient compliance.

On receipt of the return, the Assessing Officer shall assess the income and tax.

A port clearance shall not be granted to the ship until the Collector of Customs is satisfied that the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment thereof.

Income of such person shall be computed in the manner given under section 44B.

2. Assessment of persons Leaving India Section 174

When it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and that he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India shall be chargeable to tax in that assessment year.

The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rates in force in that assessment year.

For the purpose of making an assessment the Assessing Officer may serve a notice upon such individual requiring him to furnish within such time, not being less than 7 days, a return in the prescribed manner setting forth his total income for completed previous year and his estimated total income for any part of the previous year.

Example

Mr. X is planning to leave India on 10th Dec 2012 with no intention to coming back, in this case Assessing Officer may direct him to pay his tax and file the return of P.Y. 2012-13.

3. Assessment of association of persons or Body of Individuals or Artificial Juridical Person formed for a particular event or purpose Section 174A

Where it appears to the Assessing Officer that any association of persons or a body of individuals or an artificial juridical person incorporated for a particular event or purpose is likely to be dissolved in the assessment year in which such association of persons or a body of individuals or an artificial juridical person was formed or immediately after such assessment year, the total income of such association or body or juridical person for the period up to the date of its dissolution shall be chargeable to tax in that assessment year.

4. Assessment of persons likely to transfer property to avoid tax Section 175

During the current assessment year, if it appears to the Assessing Officer that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under the provisions of this Act, the total income of such person for the previous year to the date when the Assessing Officer commences proceedings under this section shall be chargeable to tax in that assessment year.

Example

Assessing Officer comes to know on 01.11.2012 that Mr. Sultan Sharma is going to sell his house in December in order to avoid payment of some liability under Income Tax Act. He issues him a notice under section 175 on 15.11.2012 to submit return of income for the period from 01.04.2012 to 15.11.2012.

In this case, the income referred above shall be chargeable in the previous year 2012-13 itself.

5. Discontinued Business Section 176

Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year.

Any person discontinuing any business or profession shall give to the Assessing Officer notice of such discontinuance within 15 days thereof.
Where any business is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt.

Where any profession is discontinued in any year on account of the cessation of the profession because of retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance.

Example

Mr. Rajeev Kumar discontinues his business on 15.06.2012. In this case, the income for the period commencing from 01.04.2012 to 15.06.2012 shall be taxable in the previous year 2012-13 itself.

PRACTICE PROBLEMS
TOTAL PROBLEMS 6

Problem 1.
Mr. Sanjay Bansal sets up a new business on 20th June, 2012. What is the previous year for the assessment year 2013-14?

Answer = Previous year 20th June, 2012 to 31st March, 2013

Problem 2.
Mr. Abhay Gandhi commences his business on:
(i) 15.01.2013;
(ii) 31.07.2012;
(iii) 31.03.2012;
(iv) 31.03.2013;
(v) 01.05.2013

What will be his assessment year in each case?

Answer = (i) 2013-14; (ii) 2013-14; (iii) 2012-13; (iv) 2013-14; (v) 2014-15

Problem 3.
From the following information, what is the previous year:

(i) Mr. Sahil Chawla joins a multinational company on 15.12.2012 at a salary of `25,000 p.m. Prior to 15.12.2012, he is not in employment and he has no other source of income.

(ii) Mr. Vishesh starts a new business of computer software on 01.01.2013.

(iii) Mrs. Pooja Singh has one house which is let out on 01.09.2012 at `15,000 p.m.

Answer = (i) Previous year 15.12.2012 to 31.03.2013
(ii) Previous year 01.01.2013 to 31.03.2013
(iii) Previous year 01.09.2012 to 31.03.2013

Problem 4.
Determine the status of the following under section 2(31) of the Income Tax Act:

(i) Mr. Amit Jain, a manager in a Private Company

(ii) Delhi University

(iii) Life Insurance Corporation of India

(iv) A joint Hindu Undivided Family of Mrs. & Mr. Swami and their one son and daughter.

(v) Reliance Industries Ltd.

(vi) Mittal Group Housing Co-operative society

(vii) ABC & Co., firm of A, B and C.

Answer = (i) Individual; (ii) Artificial juridical person; (iii) Company; (iv) A Hindu Undivided Family; (v) Company; (vi) An association of persons; (vii) A firm

Problem 5.

On September 15, 2012, the Assessing Officer comes to know that Mr. Nitin Kumar will leave India on September 25, 2012 with no intention of coming back. Explain how he will be taxed with regard to the income earned between 01.04.2012 to 25.09.2012.

Answer = His income will be assessed in the financial year 2012-13 itself and two separate assessment shall be made, one for the previous year 2011-12 whose assessment year is 2012-13 and another for previous year 01.04.2012 to 25.09.2012 for which assessment year shall also be 2013-14.

Problem 6.

ABC Ltd. is an Indian shipping company. One of its ship leaves Chennai port on January 20, 2013. Discuss in which assessment year the income is taxable.

Answer = Assessment Year 2013-14

INCOME EXEMPT FROM INCOME TAX

SECTION 10, 10AA

Incomes not included in Total Income   Section 10
10(1) Agricultural Income
Any agricultural income in India shall be exempt from income tax. If agricultural income is from outside India, it is chargeable to tax.
[Discussed as separate chapter]

10(2) Share received by a member of hindu undivided family from income of Hindu Undivided Family
If any Hindu Undivided Family has paid income tax on the income of the family, such income shall not be taxable in the hands of its members.

10(2A) Share received by a partner from income of Partnership Firm
If any partner has received share out of the profits of the partnership firm, such share shall be exempt from income tax provided partnership firm has paid the tax.
[Discussed under the head Business/Profession]

10(5) Leave Travel Concession
[Discussed under the head Salary]

10(7) Foreign Allowance
[Discussed under the head Salary]

10(10) Gratuity
[Discussed under the head Salary]

10(10A) Commuted Pension
[Discussed under the head Salary]

10(10AA) Leave Salary
[Discussed under the head Salary]

10(10B) Retrenchment Compensation
[Discussed under the head Salary]

10(10BC) Compensation received or receivable on account of any disaster
Any amount received or receivable from the Central Government or a State Government or a local authority by an individual or his legal heir by way of compensation on account of any disaster, except the amount received or receivable to the extent such individual or his legal heir has been allowed a deduction under this Act on account of any loss or damage caused by such disaster.

Explanation. For the purposes of this clause, the expression disaster shall have the meaning assigned to it under clause (d) of section 2 of the Disaster Management Act, 2005.

10(10C) Voluntary Retirement
[Discussed under the head Salary]

10(10CC) Payment of Income Tax by the employer in connection with Non-Monetary Perquisite
[Discussed under the head Salary]

10(10D) Payment on Maturity of Life Policy
Any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than—

(*a)* any sum received under sub-section (3) of section 80DD or sub-section (3) of section 80DDA; or

(*b*) any sum received under a Keyman insurance policy; or

(*c*) any sum received under an insurance policy issued on or after the 1st day of April, 2003 but on or before the 31st day of March, 2012 in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent of the actual capital sum assured; or

(d) any sum received under an insurance policy issued on or after the 1st day of April, 2012 in respect of which the premium payable for any of the years during the term of the policy exceeds ten per cent of the actual capital sum assured:

Provided that the provisions of this sub-clause shall not apply to any sum received on the death of a person:

Provided further that for the purpose of calculating the actual capital sum assured under this sub-clause, effect shall be given to the Explanation to sub-section (3) of section 80C or the Explanation to sub-section (2A) of section 88, as the case may be.

Explanation.—For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person;

Explanation 2.—For the purposes of sub-clause (d), the expression "actual capital sum assured" shall have the meaning assigned to it in the Explanation to sub-section (3A) of section 80C.

10(11) Statutory Provident Fund
[Discussed under the head Salary]

10(12) Recognised Provident Fund
[Discussed under the head Salary]

10(13) Superannuation Fund
[Discussed under the head Salary]

10(13A) House Rent Allowance
[Discussed under the head Salary]

10(14) Special Allowance
[Discussed under the head Salary]

10(15) Certain interest incomes exempt from Tax
[Discussed under the head Other Sources]

10(16) Scholarships granted to meet the cost of education

10(17A) Exemption with regard to award or reward of State Government or Central Government
Any award or reward of the State Government or the Central Government shall be exempt from income tax. Similarly award or reward given by any other institution and approved by Central Government shall be exempt from income tax.

10(18) Pension income of Winners of Gallantry Award
[Discussed under the head Salary]

10(19) Family Pension in case of death of Members of Armed Forces
[Discussed under the head Salary]

10(21) Income of Research Association
Any income of a research association approved under section 35, provided that the research association applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established.

Provided also that nothing contained in this clause shall apply in relation to any income of the research association, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:
[Discussed under the head Business/Profession]

10(23FB) Income of Venture Capital Company or Venture Capital Fund
Any income of **venture capital company or venture capital fund** set to raise funds for investment in a venture capital undertaking shall be exempt from tax.

(a) **"Venture Capital Company"** means such company –

(i) Which has been granted a certificate of registration under the securities and Exchange Board of India Act, and regulations made there under;

(ii) Which fulfils the conditions as may be specified, with the approval of the Central Government, by the securities and Exchange Board of India, by notification in the Official Gazette, in this behalf;

(b) **"Venture Capital Fund"** means such fund –

(i) Operating under a trust deed registered under the provisions of the Registration Act, or operating as venture capital scheme made by the Unit Trust of India;

(ii) Which has been granted a certificate of registration under the Securities and Exchange Board of India Act, and regulations made there under;

(iii) Which fulfils the conditions as may be specified, with the approval of the Central Government, by the Securities and Exchange Board of India, by notification in the official Gazette, in this behalf; and

(c) **"Venture Capital Undertaking"** means a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992.

10(26AAA) Exemption in case of Income of an Individual being Sikkimese
In case of an individual, being a Sikkimese, any income which accrues or arises to him—

(*a*) from any source in the State of Sikkim; or
(*b*) by way of dividend or interest on securities:

Provided that nothing contained in this clause shall apply to a Sikkimese woman who, on or after the 1st day of April, 2008, marries an individual who is not a Sikkimese.

Explanation.—For the purposes of this clause, "Sikkimese" shall mean—

(*i*) an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (hereinafter referred to as the "Register of Sikkim Subjects"), immediately before the 26th day of April, 1975; or

(*ii*) an individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No. 26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or

(*iii*) any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individual's father or husband or paternal grand-father or brother from the same father has been recorded in that register.

10(32) Exemption in case of income of a Minor Child
[Discussed under the head Clubbing of Income]

10(34) Exemption in case of Dividends from Domestic Company
Any income by way of dividends referred to in section 115-O.
[Discussed under the head Other Sources]

10(35) Exemption in case of income from units of UTI or Mutual Funds
Any income by way of,—

(a) income received in respect of the units of a Mutual Fund specified under clause (23D) or

(b) income received in respect of units from the Administrator of the specified undertaking.
[Discussed under the head Other Sources]

10(37) Capital gains on compulsory acquisition of agricultural land
[Discussed under the head Capital Gains]

10(38) Capital gains on transfer of equity shares on which securities transaction tax has been paid
If any person has transferred equity shares or units of an equity oriented fund, which are long term, no capital gain shall be computed, provided such transaction is chargeable to Securities Transaction Tax. (STT is applicable w.e.f. 01.10.2004)

Example
Mr. Rishab Verma purchased equity shares of ABC Ltd. on 01.10.1999 and these shares were sold by him on 20.10.2012. He has paid Securities Transaction Tax. In this case, his capital gains shall be Nil.

Provided that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

"Equity oriented fund" means a fund—
(i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 65% of the total proceeds of such fund; and
(ii) which has been set up under a scheme of a Mutual Fund specified under clause (23D).

Provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.
[Discussed under the head Capital Gains]

10(43) Amount received under Reverse Mortgage

Any amount received by an individual as a loan, either in lump sum or in installment, in a transaction of reverse mortgage shall be exempt from income tax.

10(45) Allowances and perquisites of Chairman and members of UPSC

Any allowance or perquisite, as may be notified by the Central Government in the Official Gazette in this behalf, paid to the Chairman or a retired Chairman or any other member or retired member of the Union Public Service Commission.

UNION PUBLIC SERVICE COMMISSION, ALLOWANCE & PERQUISITE PAID TO CHAIRMAN/RETIRED CHAIRMAN OR ANY OTHER MEMBER/RETIRED MEMBER OF - NOTIFIED ALLOWANCE & PERQUISITE

NOTIFICATION NO. 49/2011 [F.NO. 149/113/2008-SO (TPL)] S.O. 2045(E), DATED 6-9-2011

In exercise of the powers conferred by clause (*45*) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the following allowances and perquisites for the purposes of the said clause, namely:—

(1) in case of serving Chairman and members of Union Public Service Commission :—

(*i*) the value of rent free official residence;

(*ii*) the value of conveyance facilities including transport allowance;

(*iii*) the sumptuary allowance;

(*iv*) the value of leave travel concession provided to a serving Chairman or member of the Union Public Service Commission and members of his family;

(2). in case of the retired Chairman and retired members of the Union Public Service Commission :—

(*i*) a sum of maximum Rs. 14,000 per month for defraying the service of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis;

(*ii*) the value of a residential telephone free of cost and the number of free calls to the extent of 1500 per month (over and above the number of free calls per month allowed by the telephone authorities).

2. This notification shall come into force retrospectively w.e.f. 1st day of April, 2008.

10(46) Incomes of Certain Board or Trust etc. notified by the Government

Any specified income arising to a body or authority or Board or Trust or Commission (by whatever name called) which—
(a) has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public;
(b) is not engaged in any commercial activity; and
(c) is notified by the Central Government in the Official Gazette for the purposes of this clause.
Explanation.—For the purposes of this clause, "specified income" means the income, of the nature and to the extent arising to a body or authority or Board or Trust or Commission (by whatever name called) referred to

in this clause, which the Central Government may, by notification in the Official Gazette, specify in this behalf.

STATUTORY BODY/AUTHORITY/BOARD/COMMISSION - NOTIFIED BODY OR AUTHORITY - NATIONAL SKILL DEVELOPMENT CORPORATION

NOTIFICATION NO. 11/2012 [F.NO.142/15/2011-SO (TPL)]/S.O. 343(E), DATED 28-2-2012

In exercise of the powers conferred by clause (*46*) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, the National Skill Development Corporation, a body constituted by the Central Government, in respect of the specified income arising to the said Corporation , as follows:-

(*a*) long-term or short-term capital gain out of investment in an organisation for skill development;

(*b*) dividend and royalty from skill development venture supported or funded by National Skill Development Corporation;

(*c*) interest on loans to Institutions for skill development;

(*d*) interest earned on fixed deposits with banks; and

(*e*) amount received in the form of Government grants.

2. This Notification shall be applicable for the specified income of the National Skill Development Corporation for the financial year 2011-12 to financial year 2015-16.

3. This notification shall be effective where-

(*i*) the activities and the nature of the specified income of the National Skill Development Corporation remain unchanged throughout the financial year; and

(*ii*) the National Skill Development Corporation files return of income in accordance with clause (*g*) of sub-section (4C) section 139 of the Act.

STATUTORY BODY/AUTHORITY/BOARD/COMMISSION - NOTIFIED BODY OR AUTHORITY - COMPETITION COMMISSION OF INDIA

NOTIFICATION NO. 12/2012 [F.NO.142/15/2011-SO (TPL)]/S.O. 344(E), DATED 28-2-2012

In exercise of the powers conferred by clause (*46*) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, the Competition Commission of India, a Commission established under sub-section (1) of section 7 of the Competition Act, 2002 (Act 12 of 2003), in respect of the specified income arising to the said Commission, as follows:-

(*a*) amount received in the form of Government grants;

(*b*) fee received under the Competition Act, 2002; and

(*c*) interest income accrued on Government grants and interest accrued on fee received under the Competition Act, 2002.

2. This Notification shall be applicable for the specified income of the Competition Commission of India for the financial year 2011-12 to financial year 2015-16.

3. The Notification shall be effective where-

(*i*) the activities and the nature of the specified income of the Competition Commission of India remain unchanged throughout the financial year, and

(*ii*) the Competition Commission of India files return of income in accordance with clause (*g*) of sub-section (4C) section 139 of the Act.

<u>10(47) Income of Infra structure Debt Fund</u>

Any income of an infra structure debt fund, set up in accordance with the guidelines as may be prescribed, which is notified by the Central Government in the Official Gazette for the purposes of this clause shall be exempt from income tax.

Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption under clause (*47*) of section 10.

Rule 2F. (1) The Infrastructure Debt Fund shall be set up as a Non-Banking Financial Company conforming to and satisfying the conditions provided by the Reserve Bank of India in the Infrastructure Development Fund - Non-Banking Financial Companies (Reserve Bank) Directions, 2011, *vide* Notification No. DNBS.233/CGM(US)-2011, dated 21st November, 2011.

(2) The funds of Infrastructure Debt Fund shall be invested only in the Public Private Partnership Infrastructure Projects and Post Commencement Operation Date Infrastructure Projects which have completed at least one year of satisfactory commercial operation and such Infrastructure Debt Fund is a party to tripartite agreement with the concessionaire and the project authority for ensuring compulsory buy out and termination payment.

(3) The Infrastructure Debt Fund shall issue rupee denominated bonds or foreign currency bonds in accordance with the directions of Reserve Bank of India (RBI) and the relevant regulations under the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000, as amended from time to time.

(4) The terms and conditions of any bond issued by the Infrastructure Debt Fund shall be in accordance with the said directions of the Reserve Bank of India and the regulations referred to in sub-rule (3).

(5) In case of an investor in the aforesaid bond being a non-resident, the original or initial maturity of bond, at time of first investment by such non-resident investor, shall not be less than a period of five years :

Provided that the investment made by a non-resident investor in such bonds shall be subject to a lock-in period of not less than three years, but the non-resident investor may transfer the bond to another non-resident investor within such lock-in period.

(6) The investment made by the Infrastructure Debt Fund in an individual project or project belonging to a group at any time, shall not exceed twenty per cent, of the corpus of the fund.

(7) No investment shall be made by the Infrastructure Debt Fund in any project where its sponsor or the associate enterprise or the group of such sponsor has a substantial interest.

(8) The Infrastructure Debt Fund shall file its return of income as required by sub-section (4C) of section 139 on or before the due date.

(9) In case the Infrastructure Debt Fund does not fulfil any of the conditions provided in this rule or directions of the Reserve Bank of India, all provisions of the Act shall apply as if it is not an Infrastructure Debt Fund referred to in clause (*47*) of section 10 of the Act.

Explanation. - For the purpose of this rule,-

(*i*) "associate enterprise" shall have the same meaning as assigned to it in section 92A of the Act;

(*ii*) "concern" shall have the same meaning as in clause (*a*) of *Explanation 3* of sub-section (*22*) of section 2 of the Act;

(*iii*) "concessionaire", "tripartite agreement" and "project authority" respectively shall have the same meaning as assigned to them in the Infrastructure Debt Fund-Non-Banking Financial Company (Reserve Bank) Directions, 2011;

(*iv*) "corpus" means the total funds of the Infrastructure Debt Fund raised for the purpose of investment;

(*v*) "group" means a group as defined in clause (*mm*) of section 2 of Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

(*vi*) a person shall be deemed to have substantial interest in -

> (*a*) a company if he is the beneficial owner (including beneficial ownership held by one or more of his relatives, in case the person is an individual) of shares (not being the shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10 per cent of the voting power; or
>
> (*b*) a concern other than a company if he is, at any time during the previous year, beneficially entitled to not less than 20 per cent of the income of such concern.

(*vii*) "relative", in relation to an individual, means—

> (*a*) spouse of the individual;
>
> (*b*) brother or sister of the individual;
>
> (*c*) brother or sister of the spouse of the individual;
>
> (*d*) brother or sister of either of the parents of the individual;
>
> (*e*) any lineal ascendant or descendant of the individual;
>
> (*f*) any lineal ascendant or descendant of the spouse of the individual;
>
> (*g*) spouse of the persons referred to in sub-clauses (*b*) to (*f*); or
>
> (*h*) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

(*viii*) "sponsor" means a non-banking financial company, or a bank which is allowed to act as sponsor of Infrastructure Debt Fund in accordance with the directions of Reserve Bank of India.'

10(48) Any income received in India in Indian currency by a foreign company on account of sale of crude oil

Any income received in India in Indian currency by a foreign company on account of sale of crude oil to any person in India:

Provided that—

(*i*) receipt of such income in India by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government;

(*ii*) having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf; and

(*iii*) the foreign company is not engaged in any activity, other than receipt of such income, in India.

Question 1 [V. Imp.]: Explain exemption in case of Units established in Special Economic Zone. Section 10AA
Answer:
Units established in Special Economic Zone
1. Exemption shall be allowed to all the assessees, may be individual, firm, company etc.

2. Exemption is allowed from the profits and gains of an undertaking which has been established in Special Economic Zone and it has started manufacturing or producing articles or things w.e.f. 01.04.2005 onwards.

3. **Quantum of exemption:**
Exemption shall be allowed to the manufacturing units in the Special Economic Zone for a continuous period of 15 years in the manner given below:

For first **5** Assessment Years	**100%** of export profits
For next **5** Assessment Years	**50%** of export profits
For next **5** Assessment Years	**50%** of the profit provided such profits have been **credited to the Special Economic Zone Re-investment Reserve Account.**

Export profits means $\frac{\text{Profits of Business x Export Turnover}}{\text{Total Turnover}}$

The amount credited to the Special Economic Zone Reinvestment Reserve Account should be utilised for acquiring a new plant and machinery within a period of 3 years and also it should be put to use within the period of 3 years. The period of 3 years shall be determined from the end of the previous year in which the reserve was created.

The amount should not be utilised for distribution of dividend or profits within this period of 3 years however it can be utilised for any other purpose of the business.

The particulars of the new plant and machinery is to be given to the Assessing Officer alongwith return of income in the prescribed form.

If the amount credited to the Special Economic Zone Reinvestment Reserve Account is not utilised within 3 years, it will be taxable in the 4th year.

If the amount is misutilised within the period of 3 years, it will be taxable in the year in which it was misutilised.

4. The assessee should furnish in the prescribed form a report of Chartered Accountant certifying that the deduction has been correctly claimed.

EXAMINATION QUESTIONS

PCC MAY – 2012

Question 1 **(4 Marks)**

State whether the following are chargeable to tax and the amount liable to tax.

(i) Arvind received `20,000 as his share from the income of the HUF.

(ii) Mr. Xavier a 'Param Vir Chakra' awardee received a pension of `2,20,000 during the financial year 2012-13.

(iii) Interest on enhanced compensation of `50,000 was received as per court decree in December 2012 by Mr. Yogesh. Out of the said amount a sum of `35,000 relates to preceding financial years.

(iv) A political party registered under section 29A of the Representation of the People Act, 1951 earned rental income of `6,00,000 by letting out premises.

(Modified)

Answer:

(i) Share of income received from HUF is exempt in the hands of member as per section 10(2).

(ii) Pension income of winners of Gallantry Award is exempt u/s 10(18). So Pension received by Mr. Xavier is exempt.

(iii) Interest on enhanced compensation is taxable to the extent of the following.

	`
Amount chargeable =	50,000
Less: Deduction @ 50% =	25,000
Taxable	25,000

(iv) As per section 13A, any income of a political party which is chargeable under the head house property received by a political party from any person shall not be included in the total income of the previous year of such political party. So the amount received in the given case is exempt.

IPCC MAY – 2011

Question 1 **(5 Marks)**

Nathan Aviation Ltd. is running two industrial undertakings, one in a SEZ (Unit S) and another in a normal area (Unit N). The brief summarized details for the year ended 31.03.2013 are as under:

	(` in lacs) S	N
Domestic turnover	10	100
Export turnover	120	Nil
Gross profit	20	10
Less: Expenses and depreciation	7	6
Profits derived from the unit	13	4

The brought forward business loss pertaining to Unit N is `2 lacs. Briefly compute the business income of the assessee. (Modified)

Answer.

Computation of business income of Nathan Aviation Ltd.

Particulars	**` in lacs**
Total profit dervied from Units S & N (`13 lacs + `4 lacs)	17
Less: Exemption under section 10AA [**See Working Note below**]	12
	5
Less: Brought forward business loss	2
	3

Working Note

Computation of exemption under section 10AA in respect of Unit S located in a SEZ	**` in lacs**
Domestic turnover of Unit S	10
Export turnover of Unit S	120
Total turnover of Unit S	**130**
Profit derived from Unit S	13
Exemption under section 10AA	
Profit of Unit S x $\frac{\text{Export turnover of Unit S}}{\text{Total turnover of Unit S}} = \frac{13 \times 120}{130}$	12

Note – 100% of the profit derived from export of articles or things or from services is eligible for deduction under section 10AA, assuming that F.Y. 2012-13 falls within the first five year period commencing from the year of manufacture or production of articles or things or provision of services by the Unit in SEZ.

PCC MAY – 2011

Question 7 **(4 MARKS)**

Y Co. Ltd. Furnishes you the following information for the year ended 31.03.2013: `

Total turnover of Unit A located in Special Economic Zone	100 lakhs
Profit of the business of Unit A	30 lakhs
Export turnover of Unit A	50 lakhs
Total turnover of Unit B located in Domestic Tariff Area (DTA)	200 lakhs
Profit of the business of Unit B	20 lakhs

Compute deduction under section 10AA for the assessment year 2013-14.

Answer.

100% of the profit derived from export of articles or things or services is eligible for deduction under section 10AA, assuming that F.Y.2012-13 falls within the first five year period commencing from the year of manufacture or production of articles or things or provision of services by the Unit in SEZ. As per section

10AA(7), the profit derived from 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 articles or things or services bears to the total turnover of the business carried on by the undertaking.

Deduction under section 10AA

$$= \text{Profit of the business of Unit A} \times \frac{\text{Export Turnover of Unit A}}{\text{Total Turnover of Unit A}}$$

$$= \text{` } 30 \text{ lakhs} \times \frac{50}{100}$$

$$= \text{` } 15 \text{ lakhs}$$