Chapter 1

Basic Concepts in Income Tax Act, 1961

Basis of Levy: The Income Tax Act, 1961 provides for levy of tax on income. The Income Tax Act, 1961 came into force with effect from 01/04/1962. It has 23 chapters and 298 sections. The Income Tax Act 1961 extends to the whole of India.

India means the territory of India, its territorial waters, continental Shelf and exclusive economic zone.

The Finance Minister presents Finance Bills in the both houses of the Parliament. Once the Finance Bill is approved by the Parliament and gets assent of the President, it becomes the Finance Act.

The first schedule of the Finance Act provides for rates of taxation. It contains four parts.

They are:
Part I – Rates applicable for the Current Assessment Year
Part II- TDS (Tax Deducted At Source) rates for the Current Financial Year (Other than Salary)
Part III – TDS for Salary and Advance Tax for the Current Financial Year (It becomes Part I of the Next Finance Act).
Part IV- Computation of Net agriculture income

Subordinated Legislation

The administration of the Income Tax is vested with Central Board of Direct Taxes (CBDT). Under section 295 of the Income Tax Act, 1961, CBDT is empowered to frame the rules from time to time to carry out the purpose and proper administration of the Act.

CBDT issues Circulars and Notifications from time to time, these circulars clarify the doubts regarding the scope and meaning of the various provisions of the Act. These Circulars are binding on the Assessing Officer but not on the assessee and Courts. These Circulars, clarifications and notifications shall not be contrary to the provisions of the Act.

The Supreme Court can give judgment on the question of law. The decision of the High Court is applicable to respective state while the decisions of Supreme Court becomes law and apply to whole of India except Jammu and Kashmir.

Person (Sec 2(31)): Includes:

Individual	HUF	Company	Firm	AOP/BOI	Local Authority	Artificial Judicial person

Assessee (Sec 2(7)): Assessee means any person by whom tax, interest or penalty is payable under any provisions of Income Tax Act, 1961 and includes:

- Every person in respect of whom any proceedings under the Act has been taken for the assessment of his income or loss or the amount of the refund due to him;
- Deemed Assessee; Assessee in Default (AID);
- Assessee who is assessable in respect of income or loss of another person(Clubbing Provisions);

Every person is a person; every person need not be assessed to tax. Where the term 'person' is used in any provision, it is implied that all persons, whether assessable to tax or not.

Income of the previous year is chargeable to tax in the assessment year at the rates applicable for the assessment year.

Previous Year (Sec 2(34)): Year immediately preceding to assessment year.

In case of newly set up business or profession, the first previous year commences on the date of setting up of business or profession or as the date on which the source of income of newly comes in to existence and ends on the immediately following March 31. Thus, in case of newly set up business or profession or new source of income, the first previous year is a period of 12 months or less. It can never exceed 12 months.

Assessment Year*:* The period of 12 months commencing on the 1st day of April every year is known as the assessment year. An assessment year is a financial year which immediately succeeds the relevant previous year.

Income of the previous year is taxed in the assessment year.

Exceptions:

Section 172:

- *Applicability*: Non Resident Owner or Charter of ship carrying of passengers/live stock/goods shipped at Indian Port.
- **7.5%** of amount on account of such carriage is deemed to income of the assessee.
- Such income is chargeable in the previous year in which income is earned.

Section 174:

- *Applicability:* If it appears to the Assessing Officer that any individual may leave India during current previous year or shortly after its expiry and he has no intention of returning to India.
- Total Income of individual from the first day of the previous year up to the probable date of his departure from India is chargeable to tax in the same previous year.

Section 174A:

- *Applicability:* If it appears to the Assessing Officer that AOP formed for particular purpose and likely to be dissolved during the previous year.
- Total Income of such AOP commencing from first day of the previous year up to the date of dissolution is taxable in the same previous year.

Section 175:

- *Applicability:* If it appears to the Assessing Officer any person is likely to sell any of his assets during the previous year with a view to avoid the payment of tax.
- Total income of such person commencing from the first day of previous year up to the date commencement of proceedings by the Assessing Officer is taxable in the same previous year.

Section 176:

- *Applicability:* where any business or profession is discontinued during the previous year.
- Income of the business or profession commencing from first day of the previous year up to the date of discontinuance is taxable in the same previous year **at the discretion of the Assessing Officer.**

Mutual Activity: A person cannot make taxable profit out of a transaction with himself. A surplus arising to mutual concern cannot be regarded as income chargeable to tax.

The concept of mutuality means that the contributors and the beneficiaries are identical.

Exceptions:

- Profits of an Insurance Business.
- In case of a trade, professional or similar association the income derived from specific services performed for its members is chargeable to tax u/s 28(iii).

Previous year of the Undisclosed Income:

Income	Year of Chargeability
Cash Credit (Sec 68)	In the year in which sum credited in the books of accounts
Unexplained Investments (Sec 69)	In the year in which investment is made
Unexplained Money (Sec 69A)	In the year in which it is found.
Amount of investment not fully disclosed (Sec 69B)	Investment is made.
Unexplained expenditure (Sec 69C)	In the year in which expenditure was made.
Amount borrowed or repaid on hundi (Sec 69D)	The year of borrowing or repayment.

The above incomes are taxable @ 30% as per section 115BBE. No deduction in respect of any expenditure or allowance shall be allowed under any provisions of the Act.

No deduction for expenses and other allowances will be allowed in respect of the above income.

The taxable income shall be rounded off to the nearest multiples of **TEN RUPEES.**

The amount of tax payable and the amount of refund due shall be rounded off to nearest **TEN RUPEES.**

Mode of Computation of Total Income:

Previous Year:
Assessment Year:

Income from Salaries **Income from House Property** **Profits and gains from Business or Profession** **Capital Gains** **Income from Other Sources**	@@@@ @@@@ @@@@ @@@@ @@@@	@@@ @@@ @@@ @@@ @@@
Total of above **Add: Clubbing of Income** **Less: Adjustment of Set off or carry forward of losses**	@@@@ @@@@ @@@@	@@@ @@@ @@@
Gross Total Income **Less: Deduction under Chapter VIA (Sec 80C to 80U)**	@@@@ @@@@	@@@ @@@
Total Income	@@@@	@@@

Computation of Tax Liability:

Tax on Total Income (1)	@@@@	
Add: Education Cess(2%) and SHEC (1%) on above (2)	@@@@	
Less: Relief U/S 89 (3)	@@@@	
Tax liability (1+2-3) (STEP-1)		@@@
Less: TDS (A) **TCS (B)** **Advance Tax (C)** **Self Assessment Tax (D)**	@@@@ @@@@ @@@@ @@@@	
Total (A+B+C+D) (STEP-2)	@@@@	
Tax Payable/Refundable (STEP1-STEP2)		@@@
Add: Interest under Section 234A, 234B and 234C		@@@
Total Amount payable (including interest)		@@@

TAXES RATES FOR THE ASSESSMENT YEAR 2014-15

PERSON	SLAB RATES		SURCHARGE
	TOTAL INCOME (Rs)	RATE	
Individual/AOP/BOI/HUF/AJP/ NR(Individual)	Up to Rs. 2 lakh 2,00,001- 5 lakh 5,00,001- 10 lakh Above 10 lakh	NIL 10% 20% 30%	@10% if Total Income exceed ₹1 crore[1]
Senior Citizen (60 yrs above less than 80 years)	Up to Rs. 2.50 lakh 2,50,001- 5 lakh 5,00,001- 10 lakh Above 10 lakh	NIL 10% 20% 30%	@10% if Total Income exceed ₹1 crore[1]
Very Senior Citizen (80 years or above)	Up to Rs. 5 lakh 5,00,001- 10 lakhs Above 10 lakh	NIL 20% 30%	@10% if Total Income exceed ₹1 crore[1]
Partnership Firm / LLP	30%		@10% if Total Income exceed ₹1 crore[1]
Company: Domestic Company Foreign Company	Up to ₹1 cr Above₹ 1 cr Up to ₹1 cr Above ₹1 cr	30% 40%	NIL 5%/10%[1] NIL 2%/5%[1]
Co-Operative Society	Up to ₹10,000 ₹10,000-₹20,000 ₹20,000 and above	10% 20% 30%	@10% if Total Income exceed ₹1 crore[1]
Local Authorities	30%		@10% if Total Income exceed ₹1 crore[1]

Cess: Education cess @ 2% and Secondary and Higher Education Cess @ 1% will be levied on income tax including surcharge.

[1.] Marginal Relief is available if the amount payable as income tax and surcharge shall not exceed total amount payable as income tax on total income of ₹ 1 crore by more than the amount of income exceed ₹ 1 crore.

In other words, **Marginal Relief=**

Tax on total income including surcharge (but excluding education cess) ****

Less: Tax on ₹ 1 crore (at the rates applicable)+ Income exceeds ₹ 1 crore ****

Rebate: A residential Individual having total income up to ₹5 lakh shall be eligible for a rebate of ₹ 2,000/- subject to tax payable by him.

Tax Rates specified in the Income Tax Act:

Section	Income	Rate of Tax
111A	Short term capitalgains.	15%
112	Long term capital gains.	20%/10%
115A(1)(a)(i)	Dividends received by Foreign Company or Non resident non corporate (Not subject to 115O).	20%
115A(1)(a)(ii)	Interest received by Foreign Company or Non resident non corporate from Govt./ Indian Concern on money borrowed / debt incurred in convertible foreign currency.	20%
115A(1)(a)(iia)	Interest from Infrastructure debt fund.	5%
115A(1)(a)(iiaa)	Interest from an Indian Company specified U/S 194LC.	5%
115A(1)(a)(iiab)	Interest of nature referred to in section 194LD.	5%
115A(1)(b)	Royalty or fees for technical services (other than referred in section 44DA) received by Foreign Company or Non resident non corporate from an Indian Concern or Central Government in pursuance of an agreement approved by the Central Government if the agreement made at any time after 31/03/1976.	25%
115AB	Longterm Capital Gain on transfer of units purchased in forex by Overseas Financial Organisation.	10%
115AC	Income from bonds/ GDR or on bonds/ GDR of Public Sector Company sold by Govt and purchased in forex/ LTCG therefrom.	10%
115ACA	Income(LTCG/Dividends, other than referred in 115O) from GDR held by resident individual who is employee of Indian Company engaged in InformationTechnology software/ services.	10%

115AD	FII income by way of : STCG referred in sec 111A Other STCG LTCG Interest referred U/S 194LD Other Income	 15% 30% 10% 5% 20%
115BB	Winning from lotteries, Crossword Puzzles, race including horse race (**Other than from activity of owning and maintaining of horse races**), Card game and other game of any sort or from gambling or betting.	30%
115BBA(1)(a)/(b)	Income of a non resident foreign citizen sportsman for participating in any game in India or received by way of adv or contribution of articles to any game or sports in India or income of a NR sport association by way of guarantee income.	20%

Note:
These rates are subject to surcharge, education cess and secondary and higher education cess.

Note: In case special rates are applicable the basic exemption limits mentioned above are not applicable.

Company [Sec 2(17)]: For all purposes of the Act the term "Company" has a much wider connation than that under the Companies Act.

Under the Act, the expression 'Company' means:

(1) Any Indian Company as defined in section 2(26) ;

(2) Any body corporate incorporated by or under the law of a country outside India;

(3) Any institution, association or body which is assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 or for any assessment year commencing on or before 01.04.1970 under the present Act;

(4) Any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by a general or special order of the CBDT

to be a company for such assessment years as may be specified in the CBDT order.

Domestic Company [Sec 2 (22A)]: Means an Indian company or any other company which, in respect of its income liable to income tax has made prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, payable out of such income.

Indian Company [Sec 2(26)]: Two conditions should be satisfied so that a company can be regarded as an Indian company-

(a) The company should have been formed and registered under any law relating to companies which was or is in force in any part of India, and

(b) The registered office or the principal office of the company should be in India.

The expression ' Indian Company' also includes-

(1) a Corporation established by or under a Central, State or Provincial Act;

(2) An institution or association or body which is declared by the Board to be a company under section 2(17)(iv) provided its registered or principal office is in India.

(3) In the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State.

(4) In the case of any the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry, a company formed and registered under any law for the time being in force in that Union territory.

Foreign Company [Section 2(23A)] – Foreign company means a company which is not a domestic company.

Company in which public are substantially interested [Sec 2(18)]: The following companies are said to be companies in which the public are substantially interested-

(1) A company owned by the Government (either central or State but not foreign) or the Reserve Bank of India (RBI) or in which not less than 40% of the shares are held by the Government or the RBI or corporation owned by that bank.

(2) A company which is registered under section 25 of the Companies Act, 1956 (formed for promoting commerce, arts, science, religion, charity etc)

(3) A company having no share capital which is declared by the Board for the specified assessment years to be a company in which public are substantially interested.

(4) A company which is not a private company as defined in the companies Act, 1956 and which fulfills any of the following conditions:

(a) its equity shares should have, as on the last day of the relevant previous year, been listed in a recognized stock exchange in India; or

(b) its equity share carrying at least 50% (40% in case of industrial companies) voting power should have been unconditionally allotted to or acquired by and should have been beneficially held throughout the relevant previous year by (a) Government or (b) a Statutory Corporation or (c) a company in which public are substantially interested or (d) any wholly owned subsidiary company mentioned in (c).

(5) A company which carries on its principal business of accepting deposit s from its members and which is declared by the central government under section 620A of the companies Act to be Nidhi or a Mutual Benefit society.

(6) A company whose equity shares carrying at least 50% of the voting power have been allotted unconditionally to or acquired unconditionally by and were beneficially held throughout the relevant previous year by one or more co-operative societies.

(This definition is relevant inter alia in the context of Gift provisions under the head Income from other sources, Set off and carry forward of losses etc.)

Income [2(24)]: Income includes:-

- Profits and gains;
- Dividend;
- Voluntary contribution received by a charitable or religious institution or association or university or educational institutions or hospitals or electoral trusts;
- Value of any perquisite or profit in lieu of salary taxable under section 17 and special allowance or benefit specifically granted either to meet personal expenses or for the performance of duties of an office or an employment of profit;
- Export incentives;
- Any interest, salary, bonus, commission or remuneration earned by a partner of a firm from such firm;
- Any capital gains chargeable under section 45;
- Profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society;
- Profits and gains of any business of banking carried on by a co-operative society with its members;
- 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 what so ever;
- Any sum received by the assessee from his employees towards welfare fund contributions such as provident fund, superannuation fund etc;

- Any sum received under a key man insurance policy including the sum allocated by way of bonus on such policy;
- Non- compete fee and any compensation for not sharing of any intangible asset such as know-how, patent, trademark;
- Any sum of money, moveable or immoveable property received as gift as stipulated in section 56(2).
- **Any consideration received for issue of shares as exceeds the fair market value of the shares referred to in section 56(2)(viib) in the hands of the company. (Inserted by Finance Act, 2012).**

Other Points:
Income arises either on receipt basis or on accrual basis. There is no distinction between temporary and permanent income. Income, whether received in lump sum or installments, is liable to tax. Even illegal income is taxable just like legal income.

Diversion of Income and Application of Income:
Income or portion of income diverted cannot be taxed in the hands of the recipient. Diversion of income by overriding title refers to where there is an obligation on the recipient to part with a portion of income in favour of the beneficiary, who possesses the right to receive such income.

Any expenditure or investment, after income is received is application of income. Income under the Income tax Act, which is chargeable to tax, is income before application of income. Any expenditure or investment out of such income is deductable only if it is permitted by the provisions of the Act or Income Tax Rules.

Revenue receipt is always taxable unless it is exempt under the express provision the act. Capital Receipt is exempt unless it is made taxable under the express provisions of the act.

AMALGAMATION [Sec. 2(1B)]:

Amalgamation for the purpose of Income-tax Act, it has to satisfy the following conditions:

- All the properties of the amalgamating company immediately before the amalgamation should become the property of the amalgamated company by virtue of the amalgamation.
- All liabilities of the amalgamating company immediately before the amalgamation should become the liabilities of the amalgamated company by virtue of the amalgamation.
- Shareholders holding **not less than 3/4 in value** of the shares in the amalgamating company (other than shares already held by the amalgamated company or by its nominee) should become shareholders of the amalgamated company by virtue of the amalgamation.

DEMERGER:- Demerger, in relation to the companies, means transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the companies Act, 1956, by a demerged company of its one or more undertakings to the resulting company in the following manner-

- All the property of the undertaking, being transferred by the demerged company, becomes the property of the resulting company.
- All the liabilities relatable to the undertakings being transferred by the demerged company become the liabilities of the resulting company.
- The property and the liabilities of the undertaking being transferred by the demerged

  Company is transferred at values appearing in its books of account immediately before the Demerger. For this purpose, any change in the value of assets consequent to their revaluation shall be ignored.
- The resulting company issues shares to the shareholders of the demerged company on a proportionate basis as a consideration for demerger.

- The shareholders holding not less than 3/4 in value of the shares in the demerged company (other than the shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company.
- The transfer of the undertaking is on a going concern basis.
- The demerger is in accordance with the conditions, if any, notified under section 72A (5).

Illustrations:

1. Mr.A is resident in India for the Assessment Year 2014-15. For the previous year 2013-14, his income chargeable to tax in India is ₹ 2,15,000/-. Find out the tax liability.

2. Mr. X has total income of ₹ 1,00,60,000/-. Compute his tax liability for the Assessment Year 2014-15.

3. M/S ABC, firm has total income of ₹ 1,00,60,000/-. Compute its tax liability for the Assessment Year 2014-15.

Chapter 2

Scope of Total Income and Residential Status

Scope of Total Income/Incidence of tax [Section 5]

Total income of an assessee cannot be computed unless we know his residential status in India during the previous year. According to the residential status, the assessee can either be:

(i) Residential in India; or

(ii) Non-resident in India

However, individual and HUF, if resident in India, will be either:

(iii) Resident and ordinarily resident in India; or

(iv) Resident but not ordinarily resident in India

In the case of Resident in India (resident and ordinarily resident in case of individual or HUF) [section 5(1)]

The following incomes from whatever source derived form part of Total Income in case of resident in India/ordinarily resident in India:

(a) Any income which is received or is deemed to be received in India in the relevant previous year by or on behalf of such person;

(b) Any income which accrues or arises or is deemed to accrue or arise in India during the relevant previous year;

(c) Any income which accrues or arises outside India during the relevant previous year.

In the case of Non-Resident [Section 5(2)]

The following incomes from whatever source derived form part of Total Income in the case of Non-Residents in India:

(a) Any income which is received or is deemed to be received in India during the relevant previous year by or on behalf of such person;

(b) Any income which accrues or arises or is deemed to accrue or arise to him in India during the relevant previous year.

Any income is to be included in the total income only if it is taxable as per the provisions of the Income-tax Act and shall be computed as per the provisions of the Act. Exempt income shall not form part of total income.

Receipt of income: For purposes of taxation what is relevant is the first receipt. If an amount is received outside India and then subsequently remitted to India, it shall be a receipt outside India and merely because it has been remitted to India would not make it an income received in India. For example, a non-resident receives rental income equivalent to ` 80, 000 in U.S.A but then remits it to India. This income would not be taxable in his hands because it is neither earned in India nor received in India.

Income in cash or in kind: Income is taxable whether it is received in cash or in kind. Where income is received in kind, its value should be determined as per the provisions of the Income-tax Act for purpose of inclusion in the taxable income.

Income should pertain to the previous year: The income to be taxed in a particular assessment year is the income which is earned or which arises during the relevant previous year. Therefore, if an income which was earned during any earlier year but which could not be taxed in India due to any reason, may be because of the fact that the assessee was a non-resident in that year, will not become taxable merely because it has been remitted to India during the previous year 2012-13 outside India and kept it outside India during that year but remitted this amount to India during the previous year 2013-14, it shall not be taxed as the income of this year.

Residential Status of an Assessee

An individual is said to be resident in India:

An individual is said to be resident in India if he satisfies any one of the following two conditions:

(1) He is in India for a periods amounting in all to 182 days or more in the relevant previous year; or

(2) He is in India for 60 days or more during the relevant previous year and has been in India for 365 days or more during 4 previous years immediately preceding the relevant previous year

Exceptions/Concession: There are two exception/concession to the above rule:

(1) In case of an individual, **who is a citizen of India** and who leaves India in any previous year of the **purpose of employment outside India**, the second condition mentioned above shall not be applicable. Hence, he shall not be a resident of India unless his stay in India is at least 182 days during the relevant previous year in which he leaves India

Similarly in case of an individual **who is a citizen of India** and who leaves India in any previous year as **a member of the crew of an Indian ship**, the second condition mentioned above shall not be applicable.

(2) In case of an individual, **who is a citizen of India, or is a person of Indian origin,** who, being outside India comes **on a visit to India** in any previous year, the second condition mentioned above shall not be applicable. Hence, he shall not be a resident unless his stay in India is at least 182 days during the relevant previous year in which he visits India.

1. The above conditions, with exceptions/concessions may be called as category 'A' conditions.
2. A person is said to be of Indian origin if he, or either of his parents or any of his grandparents was born in undivided India [Explanation to section 115C (e)]

***Meaning of employment*:** The term employment is not defined in the Income-tax Act.
A man may employ himself so as to earn profits in many ways. Thus he can set up an independent practice abroad or businessman can shift his business activities to a foreign country. A person merely undertaking tours abroad in connection with his employment in India would not be eligible for the relaxation provided under exception 1.

When an individual is said to be resident and ordinarily resident in India
An individual who is resident in India, shall be resident and ordinarily resident in *India if* ***he satisfies both t***he following conditions

(a) He has been resident in India for at least 2 out of 10 previous years immediately preceding the relevant previous year. This means that he must have satisfied any one of the conditions, with exceptions/concession (given above) for being a resident for at least 2 out of 10 previous years immediately preceding the relevant previous year.

(b) He has been in India for 730 days or more, during seven previous years immediately preceding the relevant previous year.

When an individual is said to be resident but not ordinarily resident in India [Section 6(6) (a)]:

An individual who is resident in India is said to be "not ordinarily resident in India" if he **does not satisfy *any or both*** of the conditions mentioned in clause (a) and (b) above

When an individual is said to be non-resident in India [Section 2(30)]:

An individual is said to be a non-resident, if he is not a resident in India i.e. none of the conditions (with exception/ concession) mentioned in is satisfied.

Residential Status of Hindu Undivided Family (HUF) [Section 6(2)]:

HUF said to be a resident in India:

A HUF is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

HUF said to be a Non-Resident:

A HUF is said to be non-resident in India if during the previous year, the control and management of its affairs is situated wholly outside India.

In other words it will be non-resident in India if no part of the control and management of its affairs are situated in India.

Control and management refers to the decisions taken regarding affairs of the HUF. The control and management lies at the place where decisions regarding the affairs of the HUF are taken.

HUF said to be Resident and Ordinarily Resident if Karta of HUF satisfies the additional conditions mentioned for Individuals.

A HUF, which is resident in India, is said to be resident but not ordinarily resident in India during the relevant previous year, if the manager (Karta) of the HUF does not satisfy anyone, or both, of the conditions mentioned in clause (a) and (b) above.

For determining whether HUF is a Resident or not, the residential status of its 'Karta' for the relevant previous year is of no relevance. But for determining whether HUF is ordinarily Resident in India or not, Karta's status for the preceding years becomes relevant.

Note: Excepting individual and HUF, all other persons are classified either as resident or non-resident. They are not to be further classified as ordinarily resident or as not ordinarily resident.

Residential Status of Firm, Association of Persons (AOP), Body of Individuals (BOI) and of other persons (except companies) [Sections 6(2) and 6(4)]:

These entities may either be resident or non-resident in India for any previous year.

Firm, AOP, BOI, etc. resident in India:

A firm, AOP, etc. is said to be resident in India in any previous year in all cases except where during that year the ***control and management of its affairs is situated wholly outside India.*** In the case of a firm, the control and management is in the hands of the partners and therefore, if the partners generally meet in India regarding the affairs of the firm, then the firm is said to be resident in India.

Firm, AOP, BOI, etc. said to be Non-Resident in India:

If the ***control and management of the affairs of these entities is wholly out of India*** during the relevant previous year then they are said to be non-resident. In other words, to be Non-resident, no part of the control and management should be in India

For purpose of determining the residential status of a firm or a HUF, the residential status of the partner of the firm or the members of the HUF, is immaterial except in cases where the residence of the partners or the members of the family affects its control and management. Therefore, the mere fact that all the partners of a firm are residents in India need not necessarily imply that the firm is also resident in India, because it may so happen that the entire control and management of the affairs of the firm might be exercised from outside India.

Residential Status of a Company [Section 6(3)]:

Company said to be resident in India:

A Company is said to be a resident in India in any previous year if:

(a) It is an Indian company, or

(b) During the relevant previous year, the control and management of its affairs is situated wholly in India.

Company said to be Non-resident in India:

A Company will be a non-Resident in any previous year if:

(a) It is not an Indian company; and

(b) The control and management of its affairs is situated wholly or partially outside India. Control and management refers to the central controlling power and not to the day-to-day affairs of the company. Generally the control and management of the company's affairs is said to be situated at a place where the Board of Directors' meeting are held. Therefore, in the case of a foreign company, if all the meetings of the Board of Directors are generally held in India and crucial decisions regarding the management of the company are taken in India, then the foreign company shall be a resident of India.

Incomes received or deemed to be received in India [Section 7]:

Received in India: Any income which is received in India, during the previous year by any assessee, is liable to tax in India, irrespective of the residential status of the assessee and the place of accrual of such income.

- ***Receipts means the first receipt:*** The receipt of income refers to the first occasion when the recipient gets the money under his own control. Once an amount is received as income, any remittance or transmission of the amount to another place does not result in receipt within the meaning of this clause at the other place.

The receipt chargeable on receipt basis to be finally included in the total income is not the sum of the gross receipt, but is the net receipt after all permissible allowances, i.e. the Net Income is taxable.

Income deemed to be received in India (Section 7): The following incomes shall be deemed to be received in India in the previous year even in the absence of actual receipt:

(i) The annual accretion in the previous year to the balance of an employee who is a member of a Recognized Provident Fund to the following extent:

(a) Contribution made by the employer in excess of 12% of the salary of the employee:

(b) Interest credited on the balance to the credit of the employee at a rate exceeding a rate fixed by the Central Government which at present is 9.5% p.a.

(ii) Transfer balance from the unrecognized fund to a Recognized Provident Fund (It has been discussed in the Chapter on 'Income from Salaries');

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

(iv) Tax deducted at source is deemed to be received in the hands of the payee [Section 198];

(v) Investments, expenditure, cash credits detected during the previous year, which are unexplained and cash, bullion, gold, jewellery or other valuable articles in respect of which the assessee offers no satisfactory explanation about the nature and source of its acquisition shall be treated as income deemed to be received. [Sections 68, 69, 69A, 69B and 69C];

(vi) Deemed profit chargeable to tax under sections 41 and 59.

Incomes which accrue or arise in India or are deemed to accrue or arise in India [Section 9] Accrue or arise in India:

The following incomes shall be deemed to accrue or arise in India:

(a) ***<u>Income from a business connection in India:</u>*** Any income which arises, directly or indirectly, from any activity or a business connection in India is deemed to be earned in India. Business connections may be in several forms e.g. a branch office in India or an agent or an organization of a non-resident in India.

Formation of a subsidiary company in India to carry on the business of the non-resident parent company would also be a business connection in India. Any profit of the non-resident which can be reasonably attributable to such part of operations carried out in India through business connections in India are deemed to be earned in India.

In the case of a Non-Resident the following ***shall not, however, be treated as business connection in India:***

(i) Operations confined to purchase of goods in India for purpose of exports;

(ii) Operations confined to collection of news and views for transmission outside India by or on behalf of Non-resident who is engaged in the business of running news agency or of publishing, newspapers, magazines or journals;

(iii) Operations confined to shooting of cinematograph films in India if such Non-Resident is:

(a) An individual-he should not be a citizen of India; or

(b) A firm-the firm should not have any partner who is a citizen of India or who is resident in India; or

(c) A company-the company does not have any shareholder who is a citizen of India or who is resident in India.

In the case of a business of which all the operations are not carried out in India, only such part of the income as is reasonably attributable to operations carried out in India shall be treated as deemed to accrue or arise in India.

(b) ***Income from any property, asset or source of income situated in India.***

(c) ***Income from the transfer of any capital asset situated in India***:

Apex Court's decision in Vodafone case and thereafter amendment made by FA, 2012

Section 9(1)(i) states that any capital gain earned by a person through transfer of any capital assets situated in India is deemed to be accrued or arised in India.

The Apex Court in this context gave the following verdicts in case of Vodafone International Holdings B.V Vs Union Of India [2012] 204 Taxman 408:

(i) Section 9(1)(i) does not give the legal meaning that if a foreign company has a subsidiary in India, then shares of foreign company will be deemed to be situated in India.

(ii) Section 9 does not cover income arising from indirect transfers.

(iii) Source with regards to an income has to be construed where transaction of sales take place and not where item of value which was subject to transaction was acquired / derived from.

(iv) Section 9(1)(i) is not a look through provision, merely because the word through is there in the section.

However, to supersede the aforesaid verdict, following has been inserted in section 9(1)(i) w.r.e.f 1/4/1962.

(i) The expression "through" shall mean and include "by means of", "in consequence of", "by reason of".
(ii) An asset or capital assets (being any share / interest in a company or entity registered or incorporated outside India) shall be deemed to be situated in India if the share or interest derives directly or indirectly its value substantially from the assets located in India.

Substantially from assets located in India: The term substantial does not mean major and there is nothing in law that suggest that in order to show that a part of the whole to be treated as "substantial part", the part must exceed 50% of the whole.

(d) ***Any income which falls under the head 'Salaries' if it is earned in India:*** Any income payable for services rendered in India shall be regarded as income earned in India though it may be paid in India or outside. It will also include salary of the rest period or leave period which is preceded and succeeded by service rendered in India and forms part of the service contract of employment.

(e) ***Salary payable by the Government to an Indian citizen/national for services rendered outside India.***

(f) ***Dividend paid by an Indian company outside India.***

(g) ***Interest payable by: (***i) Government; or ii) A person who is a resident in India, except where interest is payable in respect of money borrowed and used for the purpose of business or profession carried on outside India or earning any income from any source outside India; or (iii) A person who is a non-resident in India provided interest is payable in respect of money borrowed and used for a business or profession carried on in India, shall be income which is deemed to accrue or arise in India in the hands of the recipient.

(h) ***Royalty payable by:*** *(*i) Government; or (ii) A person who is a resident in India except where it is payable in respect of any right/information/property used for the purpose of a business or profession carried on outside India or earning any income from any source outside India; or (iii) A person who is a non-resident provided royalty is payable in respect of any right/information! property used for the purpose of the business or profession carried on in India or earning any income from any source in India, shall be income which is deemed to accrue or arise in India in the hands of the recipient.

(i) ***Fees for technical services payable by:*** (i) Government; or (ii) A person who is a resident in India, excepting where services are utilized for a business or profession carried on outside India or earning any income from any source outside India; or (iii) A person who is a non-resident provided fee is payable in respect of services for a business or profession carried on in India or earning any income from any source in India, shall be income which is deemed to accrue or arise in India in the hands of the recipient.

NOTE:

Where income is deemed to accrue or arise in India under clause (g), (h) or (i) above, such income shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India or whether or not the non-resident has rendered services in India. In such cases, it is not necessary to establish the territorial nexus between the incomes deemed to accrue or arise to the non-resident under the above clauses and the territory of India. [Explanation to section 9].

In broad terms, royalty means consideration received for transfer of right in respect of certain rights, property or information. However, there are certain cases on what will be / will not be included in royalty. Amendment is made in this section w.r.e.f. 1st April 1976 by inserting following explanations which will include royalty income to be accrued in India.

i. Transfer of all or any rights in respect of any right, property or information includes transfer of all or any right for use or right to use a computer software (including granting of license) irrespective of the medium through which such right is transferred.

ii. Royalty includes consideration in respect of any right, property or information whether or not (a) the possession or control of such right etc is with the payer (b) such right etc is used directly by the payer (c) the location of such right etc is in India.

iii. The expression "process" includes transmission by satellite (including up-linking, amplification, conversion for down linking of any signal), cable, optic fibre or any other similar technology whether or not such process is secret.

Incidence of tax for different taxpayers – tax incidence of different taxpayers is as follows –

	Individual and Hindu undivided family		
	Resident and ordinarily resident in India	**Resident but not ordinarily resident in India**	**Non-resident in India**
Indian income[1]	Taxable in India	Taxable in India	Taxable in India
Foreign income[2]	Taxable in India	Only two types of foreign incomes (i.e. Case 1 and Case 2 given below) are taxable in India Any other foreign income is not taxable in India	Not taxable in India

The following foreign incomes are taxable in the hands of a resident but not ordinarily resident in India -

Case 1 - If it is business income and business is controlled wholly or partly from India.

Case 2 - If it is income from a profession which is set up in India.

No other foreign income (like salary, rent, interest, etc.) is taxable in India in the hands of a resident but not ordinarily resident taxpayer.

	Any other taxpayer (like company, firm, co-operative society, association of persons, body of individual, etc.)	
	Resident in India	**Non-resident in India**
Indian income	Taxable in India	Taxable in India
Foreign income	Taxable in India	Non taxable in India

[1] Income accrued or deemed to accrued in India AND income received or deemed to received in India.

[2] Income other than Indian Income.

Illustrations:

1. Mr. C a foreigner comes to India for 100 days every year since the financial year 2001-02. Find out his residential status for the Assessment Year 2014-15.

2. Mr. a foreign citizen (not being a person of Indian Origin) comes to India for the first time on May 2, 2008. From May 2, 2008 to March 31,2014 he is present in India 862 days (2008-09 190 days, 2009-10 300 days, 2010-11 90 days, 2011-12 10 days, 2012-13 200 days, 2013-14 72 days).

3. For the previous year 2013-14, A reports the following income:

- Fees for technical services paid by a NR company for a project situated outside India (Income is received outside India and later on it is gifted to Mrs. A `97,000/-
- Income from a profession setup in India, service is rendered from India but amount is received in USA ` 1,24,000/-
- Rental income from house property situated in Kenya (amount is received in USA) ₹ 80,000/-
- Agriculture income from Bhutan (received in Nepal and agricultural operations are controlled from India) ₹ 2,00,000/-
- Agricultural income from Kerala ₹ 70,000/-
- Rental income of property situated in Kenya pertaining to the previous year 2012-13 is remitted to India in the current year ₹ 75,000/-

Find out the income of Mr. A for the Assessment Year 2014-15 if Mr. A is (i) Resident and Ordinary Resident; (ii) Resident and Not Ordinary Resident.

Chapter 3

Income Exempt from Tax

General

Section	Details	Remarks
10(1)	Agriculture Income	Partial integration is applicable
10(2)	Income of member of HUF out of family income	Individual and Coparcener
10(2A)	Share of Income of a partner	Firm assessed as such
10(4)	Interest on NRE account in a bank in India received by a person who is resident out side India as per FEMA	
10(4B)	Interest on notified savings certificates of Central Government bought in convertible forex by Non resident, being Citizen of India or Person of Indian Origin	Those issued before 01/6/2002
10(6)	Remuneration received by NR, not being Indian Citizen, as official of an embassy, high commission, legation, consulate or trade representative of Foreign State Or member of staff of any of these officials	
10(6A)	Tax paid by the CG/SG/Indian Concern in respect of income by way of royalty or fees for technical services received by the foreign company	It is received under an agreement made after 31/03/1976 but before 01/06/2002[1]
10(6B)	Tax paid by CG/SG/Indian Concern in respect of income other than salary, royalty, fees for technical services, on behalf of Non Resident / Foreign company[2]	Tax will not be gross up.
10(15A)	Amount received by Foreign Govt. or NR enterprise from Indian concern engaged in business of operation of aircraft	Under an agreement approved by CG.

[1] Such agreement is in accordance with the Industrial Policy of Government of India or it is approved by the Central Government.
[2] Such income is received in accordance with agreement entered before 1st June 2002 .

10(10D)	Any sum received under Life Insurance Policy including bonus[3]. **<u>Amendment FA,2013:</u>** *The amount of Premium payable on life insurance policy taken on life of person with disability or severe disability referred to in section 80U / Person suffering from disease or ailment as specified in the rules made under 80DDB* ***shall not exceed 15% of the Capital Sum assured.***	Other than policies referred to in80DD(3)/80DDA(3)/Keyman insurance policy .
10(16)	Scholarship amount received to meet the cost of education.	Surplus is not taxable
10(17)	Daily allowance received by MP/MLA. Any allowance received by MP. Constituency allowance received by MLA	---------
10(17A)	Specified awards and rewards received in cash or kind	----------
10(18)	Pension received by Individual or Family pension by family member if Individual awarded Vir Chakra or Mahavir Chakra or Param Vir Chakra or other notified gallantry awards.	----------
10(19)	Family pension received by widow/heir on death of member of armed forces during duty	----------
10(20)	The following incomes of Local authority • House property, capital gains, other sources & trade/business income from supply of: • Water or electricity within or outside its jurisdictional area • Any other commodity or service within own jurisdiction area	**Local Authority-** Municipality/Cantonment Board
10(21)	Income of a research association approved U/s 35	
10(22B)	Income of notified news agency	

[3] Premium payable for any of the years during the term of policy should not exceed 20% of the actual sum assured, if the policy is issued on or after 01/04/2003 before 01/04/2012. For policies issued after 01/04/2012 the said percentage is 10% of the capital sum assured.

10(23A)	Income of approved professional association or institution.	Other than income from rendering specific services, interest, dividends and Income from House property.
10(23AAA)	Income received by any person on behalf of the fund established for notified purpose for the Welfare of employees or their dependents and which fund employees are members	Cash benefits to member of the fund- (i) On Superannuation; (ii) In the event of his illness/his spouse/dependent children; Cash benefits to dependents of member of the fund in the event of the death of the member; Cost of medical test or medical checkups of a member/spouse/dependent children
10(23BBH)	Income of Prasar Bharti	
10(23C)	Income of Educational Institution which exist solely for educational purposes and not for the purpose of the profit.	It wholly or substantially financed by the Govt;/ If the aggregate annual receipts do not exceed ₹ 1 crore;/ Any University or other educational institutions other than above and which is approved by the Chief Commissioner;
	Hospital	Wholly or substantially financed by the Govt;/ If the aggregate annual receipts do not exceed ₹ 1 crore;/ Hospital approved by the Chief Commissioner;
10(23DA)	Income of Securitisation trust from the securitisation.	25% (+SC+EC)-Ind/HUF 30% (+SC+EC)- Others

10(35A)	Income of Investor holding Securities issued by Securitisation Trusts	
10(23D)	Any income of Mutual Fund (MF)	MF Registered under SEBI Act,1992; such MF set up by the public sector bank or public financial institution or authorized by the RBI and subject to such conditions as the Central Government specify in this behalf
10(23FB)	Income of Venture Capital Company or Venture Capital Fund from Investment in VCU	VCC satisfy conditions by the SEBI
10(24)	Income of Trade Union	Income from House Property Income from Other Sources;
10(32)	Clubbing of Income of Minor	₹1500
10(34)	Income received by way of dividends referred to Sec 115O	
10(35)	Income received of Mutual Fund	Income received in respects of the units of a MF specified under section 10(23D)
10(26AAA)	Income of Sikkimese Individual	Any source in the State of Sikkim; Dividend or Interest on Securities
10(37)	Capital gains arising to an individual or a HUF from transfer of agricultural land by way of compulsory acquisition.	Such exemption is available where the compensation or the enhanced compensation or consideration, as the case may be, is received on or after 1.4.2004. The exemption is available only when such land has been used for agricultural purposes during the preceding two years by such individual or a parent of his or by such HUF

10(38)	LTCG on sale of equity shares of a company or units of an equity oriented fund on or after 1.10.2004	This exemption is available only if such transaction is chargeable to securities transaction tax.
10(39)	Income arising from any International sporting event held in India	such event is Approved by international body regulating such sport; Has participation by more than two countries & is notified by CG for this clause.
10(43)	Any amount received by an individual as a loan, either in lump sum or in installment in a transaction of reverse mortgage	Reverse mortgage referred to Sec 47(xiv)
10(40)	Income of any subsidiary company by way of grants or otherwise received from an Indian company, being its holding company engaged in the business of generation or transmission or distribution of power.	The receipt of such income should be for settlement of dues in connection with reconstruction or revival of an existing business of power generation.
10(44)	Income received by an person for or on behalf of new pension System (NPS) established on 27th February 2008 under the provisions of Indian Trust Act 1882.	-------
10(47)	Any income of an infrastructure debt fund, set up as per prescribed guidelines which is notified by CGOVT.	--------
10(45)	Allowances and perquisites received by Chairman/ other member including retired Chairman/member of the UPSC	Value of rent free official residence;/TransportAllowance; Sumptuary Allowance;/ LTC; Retired Chairman and retired member of UPSC: ₹ 14,000/- p.m for meeting expenses on secretarial assistance on contract basis; ₹1500/- p.m residential telephone free of cost

10(46)	Income to body/ authority/ board/trust	**National Skill Development Corporation (NSDC)**- Capital Gain; Dividend and Royalty; Interest; Government Grants; **Competition Commission of India (CCI)**- Government Grants; Fee received under the Competition Act, 2002; Interest Income;
10(48)	Any foreign company received in India in Indian Currency on account of sale of crude oil or sale of other goods or rendering of services notified by Central Government to any person in India	Money received under agreement or arrangement, entered into by the Central Govt or approved it; Foreign company and arrangement or agreement has been notified by the Central Government; The receipt of the money is the only activity carried out by the foreign company in India;

<u>Section 10AA:</u>

CONDITIONS - The following conditions should be satisfied-

• The assessee is an entrepreneur (i.e., a person who has been granted a letter of approval by the Development Commissioner to set a unit in a Special Economic Zone).

• The unit in Special Economic Zone begins to manufacture or produce articles or things or provide services during the financial year 2005-06 or any subsequent year.

• It is not formed by the splitting up, or reconstruction, of a business already an existence.

• It is not formed by the transfer to a new business, of old plant or machinery. However, it can be formed by transfer of old plant or machinery to the extent of 20 per cent.

• The assessee has exported goods or provided services out of India from the Special Economic Zone by land, sea, air or by any other mode, whether physical or otherwise.

• Books of account of the taxpayer should be audited.

• Deduction should be claimed in the return of income.

AMOUNT OF DEDUCTION - Deduction depends upon quantum of profit derived from export of articles or things or services (including computer software). It is calculated as under-
Profits of the business of the "undertaking" x Export turnover ÷Total turnover of the undertaking.

1-5 Years: 100% ; 6-10 Years : 50% ; 11-15 Years : 50% or the amount transferred to SEZ reinvestment allowance reserve account, whichever is lower;

Export Turnover= Amount realized in the form of convertible foreign exchange before filling return of income. But it doesn't include:

*Freight; *Telecommunication Charges; *Insurance attributable to the delivery of the articles or things or computer software outside India; *expenses, if any, incurred in foreign exchange in providing the technical services outside India.

Exemption to Political Party (Sec 13A):
The following incomes of Political party are exempt from tax:

*Income from House Property; *Income from Other Sources; *Capital Gains; *Any income of Voluntary Contributions.

Conditions:
Such Political Party keeps and maintains such books of account and other documents as would enable the Assessing Officer to property deduce its income;

Voluntary contribution in excess of ₹ 20,000/- such political party keeps and maintains a record of such contribution and the name and address person who has made such contribution; and

The accounts of such political party are audited by a Chartered Accountant;

The political party should submit a report (before the due date of submission of return of income) of contribution received in excess of ` 20, 000 from a company/any person to the Election Commission.

Electoral Trust (Sec 13B):

Any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of such electoral trust.

Such electoral trust distributes to any political party, registered under Representation of the People Act 1951, during the previous year @95% of the aggregate donations received by it during the said previous year along with the surplus, if any brought forward from any earlier previous year.

Electoral Trust: It is a trust approved by CBDT in accordance with the scheme made in this regard by the Central Government.

Section 14A:

No deduction shall be made in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act.

For earning such income some expenditure has been incurred. If no expenditure is incurred for earning income exempt from tax, then section 14A is not applicable.

Having regard to the accounts of the assessee, the Assessing Officer is not satisfied with the correctness of the claim of the taxpayer, he shall determine the quantum of such expenditure in accordance with rule 8D.

The expenditure shall be aggregate of the following:

- The Expenditure directly relating to such income;
- A*B/C. A= Expenditure by way of interest of not included (not direct expenditure) B= Average value of investment, income from which does not form part of total income (On the basis of value as per BS on the first and last day of the previous year.) C= Average total assets in the BS on the basis of first and last day of the previous year.

- ½% of the Average value of investment, income from which does not form part of total income (On the basis of value as per BS on the first and last day of the previous year.)

Illustrations:

1. From the information given below find out the net income of M ltd for the Assessment Year 2014-15

Particulars	Unit A (₹ lakhs)	UnitB (₹ lakhs)	Unit C (₹ lakhs)
Net Profit as per Profit and Loss Account	90	-40	100
Turnover	1200	400	1500
Out of the above, Export Turnover	1180	10	---
Amount remitted in convertible foreign exchange up to 30/09/2014	1002	2	---
Freight and insurance charged from importers	10		---

2. Mr P has received the following amount during the previous year 2013-14:
   (a) Dividend income from Domestic Company and Units of mutual fund - ` ₹3,00,000/-
   (b) The value of investments in shares as on the first day and the last day of the previous year is `₹ 7,50,000/- and ` ₹9,00,000/-
   (c) The value of investment in Units of Mutual funds on the first day and last day of the previous year is `₹ 5,00,000/- and `₹ 2,00,000/-.
   (d) Total expenditure incurred by the assessee in earning the income is ` ₹1,50,000 and expenditure directly attributable to exempt is ` ₹10,000/-
   (e) Amount of the total assets as appearing in the Balance Sheet on the first day and last day of the previous year is ₹ 60,00,000/- and ₹80,00,000/-

   Find out the amount of expenditure disallowable under section 14A.

Chapter 4

Income from Salary

Introduction:

Relationship between payer and payee:

Amount received by an individual shall be treated as salary only if the relationship between payer and payee is of an employer and employee or master and servant. Employer may be an individual, firm, and association of persons, company, corporation, Central Government, State Government, public body or a local authority. Likewise, employer may be operating in India or abroad. The employee may be a full-time employee or part-time employee.

A Member of Parliament or of State Legislature is not treated as an employee of the Government. Salary and allowances received by him are, therefore, not chargeable to tax under the head "Salaries" but are chargeable to tax under section 56 under the head "Income from other sources".

Salary and wages:

Conceptually not different - Remuneration received by an individual is taxable under the head "Salaries" whether the remuneration is termed as salary or wages.

Salary from more than one source:

If an individual receives salary from more than one employer during the same previous year (maybe due to change of employment or due to employment with more than one employer simultaneously), salary from each source is taxable under the head "Salaries".

Salary from former employer, present employers or prospective employer:

Remuneration received (or due) during the previous year is chargeable to tax under the head "Salaries" irrespective of the fact whether it is received from a former, present or prospective employer.

Foregoing of salary:

Section 15 taxes salary on "due" basis even if it is not received. If, therefore, an employee foregoes his salary, it does not mean that salary so foregone is not taxable. Once salary has accrued to an employee its subsequent waiver does not make it exempt from tax liability. Such voluntary waiver or foregoing by an employee of salary due to him is merely an application of income and is nonetheless chargeable to tax.

Salary paid tax-free:
If salary is paid tax-free by the employer, the employee has to include in his taxable income not only salary received but also amount of tax paid by the employer. It does not make any difference whether tax is paid under terms of contract by the employer or voluntarily.

Voluntary payments:
Salary, perquisite or allowance may be given as a gift to an employee, yet it would be taxable. The Act does not make any distinction between gratuitous payment and contractual payment.

Contract of Service and Contract for Service:
Wherever there exists employer – employee relationship there is "**contract of service**". Employer can control and direct the work to be performed by the employee. In this case income received by a person shall be regarded as a salary. Where there is **no employer – employee relationship** then two people enjoy the relationship of **"contract for service".** In this contract there are no specific instructions about how it is to be done. In this case income shall be taxable as income of business and profession or income from other sources.
Salary Income Is Taxable On Receipt or Due Basis Which Ever Is Earlier [Sec 15]

<u>Salary under section 17(1):</u>
Under section 17(1), salary is defined to include the following:
a. wages;
b. any annuity or pension;
c. any gratuity;
d. any fees, commission, perquisites or profits in lieu of or in addition to any salary or wages;
e. any advance of salary;
f. any payment received by an employee in respect of any period of leave not availed by him;
g. the portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognized provident fund to the extent it is taxable;

h. transferred balance in a recognized provident fund to the extent it is taxable; and
i. the contribution made by the Central Government or any other employer to the account of an employee under a notified pension scheme referred to in section 80CCD.

Computation of salary in grade system:
If the employee joins the service on 01.05.2011 and is placed in the grade of `₹ 32,500-₹500-₹38,000-₹800-₹44,400. It means that:

- He will get a basic salary of `₹ 32,500 w.e.f 01.05.2011
- He will get annual increment of ` ₹500 pm w.e.f 01.05.2012 and onwards till his salary reaches ` ₹38,000.
- Thereafter, he will get on annual increment of ` ₹800 p.m till his salary reaches ` ₹44,400.

Advance Salary: Advance salary is taxable on receipt basis in the assessment year relevant to the previous year in which it is received.

Meaning of the salary for different purposes:

<table>
<tr><td>Purpose</td><td>Meaning</td></tr>
<tr><td>Entertainment Allowance</td><td>Basic salary only</td></tr>
<tr><td>Gratuity (Covered under Gratuity Act)</td><td>Basic + Dearness Allowance</td></tr>
<tr><td>Gratuity (Not covered under Gratuity Act)</td><td rowspan="5">Basic+DA (to the extent considered for retirement benefits)+commission as percentage of turnover.</td></tr>
<tr><td>Leave Salary</td></tr>
<tr><td>Voluntary Retirement Compensation</td></tr>
<tr><td>Contribution to RPF</td></tr>
<tr><td>HRA (due basis)</td></tr>
<tr><td>Rent free accommodation</td><td>Basic+DA(to the extent considered for retirement benefits)+ Bonus or Commission+ Taxable Allowance</td></tr>
<tr><td>NPS (80CCD)</td><td>Basic+DA (to the extent considered for retirement benefits)</td></tr>
</table>

Leave Salary[1](10(10AA)):

Encashment during the employment is taxable in case of all employees.

Govt. employees: Fully exempt.

Non. Govt employees: Least of

(1) Actual amount

(2) Avg. salary of last 10 months*Balance leave @ 30 days

(3) Avg. salary * 10 months

(4) Rs. 3, 00,000.

Note: Average Salary has to be computed preceding the date of retirement.

Salary paid to the legal heirs of the deceased employee in respect of privilege leave standing to the credit of such employee at the time of his/her death is not taxable as salary.

Sum equivalent of leave salary received by the family of a Government servant who died in harness, is not taxable in the hands of receipt.

Salary in lieu of notice period: It is taxable under section 15 *on receipt basis.*

Salary to a partner: Salary paid to a partner by a firm is an appropriation of profits. It is therefore, not chargeable to under the head "Salaries" but taxable under the head "Profits and gains of business or profession".

Fees and Commission: Fees and Commission are taxable as salary irrespective of the fact that they are paid in addition to or in lieu of salary. However, commission paid to a director (not being employee) for his giving guarantee for repayment of loan etc, is taxable under the head "Income from Other Sources".

[1] **Leave salary**:

If a leave (standing to the credit of an employee) is not taken within a year, as per the service rules, it may lapse or it may be encashed or it may be accumulated. The accumulated leaves standing to the credit of an employee may be availed by the employee during his service time or, subject to service rules, such leaves may be encashed at the time of retirement or leaving the job. Encashment of leave by surrendering leave standing to one's credit is known as "leave salary".

<u>Gratuity (10(10))- Retirement Benefit-</u>

(a) **Government Employee**: Fully Exempt.

(b) **Covered under Gratuity Act**- least of the following

(1) Actual Amount

(2) 15/26* Last drawn Salary* Completed Years of Service+ in excess 6 months

(3) ₹10,00,000/-

(c) **Other Employees**- Least of the following

(1) Actual Amount received

(2) 15/30* Avg. salary of 10 months*completed year of service (ignore fraction).

- **<u>Note</u>: 10 months should be reckoned from the immediately preceding month of retirement.**
- **Gratuity Received during the course of employment is taxable in case of all employees. Only gratuity received at the time of retirement is exempt to the extent mentioned above.**

- **If the assessee has previously claimed any exemption under this section, then amount of the said exemption claimed in the past should be reduced from Rs. 10, 00,000. Ex: If the assessee has received gratuity on retirement from A ltd in the PY 2010-11 and claimed exemption under this section to the extent of Rs. 3,00,000. He later joined in a new company and at the retirement received gratuity, the amount of Rs. 10,00,000 should be reduced by amount of Rs. 3,00,000/-**

Gratuity paid while in service - Any gratuity paid to an employee while he continues to remain in service (whether or not after he has put in a minimum specified period of service) is not exempt from tax.

Pension (10(10A)):

Uncommuted Pension (Monthly Pension): Fully taxable in the hands of all employees.

Commuted Pension: **Government Employees**- Fully Exempt.

Non Govt: 1/3 of the full pension(recd.gratuity)
½ of the full pension (no gratuity)

Full Pension = Commuted Portion/ percentage commutation *100
Ex: If an employee commuted 60% pension commuted for Rs. 3, 00,000/- , full pension = 3, 00,000/60*100= Rs. 5, 00,000/-.

Family pension received by the family members after the death of an employee, is taxable in the hands of recipient family member(s) under the head "Income from other sources".

Pension from UNO is not chargeable to tax.

National Pension Scheme:

National Pension Scheme (NPS) is applicable to new entrants to Government service or any other employer. As per the scheme, it is mandatory for persons entering the service on after January 1, 2004, to contribute 10 per cent of salary every month towards NPS. A matching contribution required to be made by the employer to the said account.

The tax treatment under NPS is as follows-

1. Contribution by the employer to NPS is first included under the head "Salaries" in hands of the employee
2. Such contribution is deductible (to the extent of 10 per cent of the salary of the employee) under section 80CCD (2).
3. Employee's contribution to the NPS (to the extent of 10 per cent of the salary of the employee) is deduction under section 80CCD (1).

4. When pension is received out of the aforesaid amount it will be chargeable to tax in the hands of recipient.

5. "Salary" for the purpose of points 1 and 2 (supra) includes dearness allowance, if the terms of employment: provide", but excludes all other allowances and perquisites.

6. The aggregate amount of deduction under sections 80C, 80CCC and 80CCD (1) [i.e., contribution employee (or any other individual) towards NPS] cannot exceed `₹ 1, 00,000.

Voluntary Retirement *[Section 10(10C)] & Rule 2BA*
<u>Conditions</u>: (i) 10 years of service or 40 years of age (ii) For all employees (*except directors of the company*) (iii) Reduction in number of employees (iv) Not to be filled up (v) No same management (vi) ***Minimum of*** *:* (a) Actual amount received (b) Last drawn salary* 3 months*No.of completed years of services (c) Last drawn salary* Balance period of service (d) Rs. 5,00,000/-. Where exemption has been allowed to an employee under section 10(10C) for any assessment year, no exemption there under shall be allowed to him in relation to any other assessment year.

<u>Retrenchment Compensation:</u>

Amount of compensation is exempt, to the extent of the least of the following:

(I) Amount actually received;

(II) Amount computed as per the provisions of Industrial Dispute Act[2]

(III) Rs. 5,00,000/-

[2] Avg monthly salary (3 months preceding the date of retirement)*15/26*No.of years of services (> 6months rounded)

Profits in lieu of salary [Sec. 17(3)]:

It is chargeable to tax. It includes the following-

1. The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment.
2. The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the modification of the terms and conditions of employment.
3. Any payment due to or received by an assessee from his employer or former employer except the following:
    a. payment of gratuity exempted under section 10(10);
    b. payment of house rent allowance exempted under section 10(13A);
    c. payment of commuted pension exempted under section 10(10A);
    d. payment of retrenchment compensation exempted under section 10(10B);
    e. payment from an approved Superannuation Fund under section 10(13);
    f. payment from statutory provident fund or public provident fund;
    g. payment from recognized provident fund to the extent it is exempt under section 10(12).
4. Any payment from unrecognized provident fund or such other fund to the extent to which it does not consist of contributions by the assessee or interest on such contributions.
5. Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.
6. Any amount received (in lump sum or otherwise) prior to employment or after cessation of employment.

Annuity: An annuity payable by a present employer is taxable as salary even if paid voluntarily without any contractual obligation of the employer. An annuity received from an ex-employer is taxed as profit in lieu of salary.

Remuneration for extra duties: Where an employee agrees to do something outside the duties of his office, there by enlarging scope of his office, for which he is given extra payment, that payment is taxable as salary.

DIFFERENT ALLOWANCE:

Allowance is generally defined as a fixed quantity of money given regularly in addition to salary for the purpose of meeting some particular requirements connected with the service rendered by the employee.

Fully Taxable Allowances:

- Dearness Allowance (DA)
- City Compensatory Allowance(CCA)
- Tiffin or Lunch Allowance
- Overtime allowance
- Fixed Medical Allowance
- Servant Allowance

Allowance exempt to the extent of amount spent:

- Travelling Allowance (on travel or transfer)
- Daily Conveyance Allowance
- Helper Allowance
- Academic Allowance
- Uniform Allowance
- Transfer Allowance(in connection with transfer, packing and transportation of personal effects on transfer)

Allowances exempt to the extent of specified limit:

Allowance	Specified Limit	Conditions
Education	Rs. 100 per child	Max of 2 children
Hostel	Rs. 300 per child	
Transport	Rs. 800(Rs. 1600 for Physically challenged)	
Tribal Area	Rs. 200 per month	
Under Ground	Rs. 800 per month	
Allowance to transport employees	Least of: 70% of the allowance or Rs. 10,000 per month	He is not receipt of daily allowance.

House rent allowance - Exemption in respect of house rent allowance is based upon the following

Particulars	Amount (`)
House rent allowance actually received	XXX
Less: Exempt under Sec. 10(13A): Minimum of	
(a) Actual amount received	
(b) Rent paid – 10% salary	
(c) 50% salary – If accommodation is in Mumbai, Kolkata, Delhi, Chennai	
40% of salary – For any other place	(XXX)
Taxable House Rent Allowance	XXX

• When exemption is not available - Exemption is denied where an employee lives in his own house, or in a house for which he does not pay any rent or pays rent which does not exceed 10 per cent of salary.

Mode of computation of exemption - The amount of exemption in respect of house rent allowance received b" employee depends upon the following.

a. "salary" of the employee;
b. house rent allowance;
c. rent paid; and
d. the place where house is taken on rent.

When these four are same throughout the previous year, the exemption should be calculated on “annual” basis. When, however, there is a change in respect of any of the aforesaid factors, and then the exemption shall be worked out on “monthly” basis.

PERQUISTIE

Perquisite may be defined as any casual emolument or benefit attached to an office or position in addition to salary or wages. It also denotes something that benefits a man by going into his own pocket. Perquisites may be provided in cash or in kind.

Perquisites are included in salary income only if they are received by an employee from his employer (maybe former, present or prospective). Perquisites, received from a person other than employer, under the head “Profits and gains of business or profession” or “Income from other sources”.

Perquisite includes:

The Value of rent free accommodation	The Value of accommodation provided by employer at concessional rate
The Value of benefit or amenity granted or provided free of cost or at a concessional rate in the case of Specified Employees	Any sum paid by the employer in respect of obligation which but for such payment would have been payable by the assessee
Any sum payable by an employer to effect assurance on the life of the assessee or to effect a contract of annuity	The value of specified securities or sweat equity shares allotted or transferred to employees by an employer or former employer free of cost or at a concessional rate
Any contribution to approved superannuation fund by the employer in respect of employee to the extent exceeds Rs. 1 lakh	Value of any fringe benefits provided.

Income tax paid on by the employer on behalf of employee (not TDS) is a perquisite in the hands of the employee.

Perquisites which are taxable only in the case of **specified employees**:

(i) services of sweeper, gardener, watchman or personal attendant;

(ii) Free or concessional use of gas, electricity;

(iii) Free or concessional educational facilities;

(iv) Use of motor car;

(v) Personal or private journey provided free of cost or at concessional rate to an employee or member of his household.

<u>Specified employee:</u> The following employees are known as specified employees:

1. <u>A director-employee:</u>
An employee, who is a director in the employer-company at any time during the previous year, is a specified employee of the company in which he is a director.

2. <u>An employee who has substantial interest in the employer-company</u>:
An employee who has a substantial interest in the employer-company at any time during the previous year is a specified employee of the company in which he has substantial interest. A person has substantial interest in the employer-company, if he is a beneficial owner of equity shares carrying 20 per cent or more voting power in the employer-company.

3. <u>An employee drawing in excess of ` ₹50,000</u> - An employee (not covered by the above two categories), whose income chargeable under the head "Salaries" (exclusive of the value of all benefits or amenities not provided by way of monetary payments) exceeds₹ ` 50,000, is a specified employee.

Where salary is received from more than one employer, the aggregate salary from these employers will have to be taken into account for the purpose of determining the aforesaid monetary ceiling.

<u>Value of Rent Free Accommodation:</u>

Base Value (unfurnished):

<table>
<tr><th>Owned by the Employer</th><th>Value</th><th>Not Owned by the Employer</th></tr>
<tr><td>Population exceeds 25,00,000</td><td>15% of salary(accrued)</td><td rowspan="3"><u>Least of :</u>
Actual amount of lease or rent paid or payable
Or
15% of Salary</td></tr>
<tr><td>Population exceeds 10,00,000 but not exceeds 25,00,000</td><td>10% of salary(accrued)</td></tr>
<tr><td>Other Place</td><td>7.5% of salary (accrued)</td></tr>
</table>

• **<u>Exception</u>** -It may be mentioned that rent-free official residence provided to a Judge of a High Court or Judge of the Supreme Court is exempt from tax. A similar exemption is extended to an official of Parliament Union Minister, a Leader of Opposition in Parliament and serving Chairman/ members of UPSC.

Furnished accommodation:
Add: 10% of cost of furniture or rent of the furniture to the Base Value.

Value of rent free furnished accommodation
Less: Rent recovered from employees
Resultant amount is Concessional accommodation.

Accommodation provided in a hotel:

- 24% of salary paid or payable for the period for which accommodation is provided in the previous year Or Actual hire charges paid by employer to such accommodation.

Exception: such accommodation is provided on transfer from one place to another subject to maximum period of 15 days.

Where on account of transfer of an employee from one place to another, the employee is provided with accommodation both at the existing place of working and in the new place of posting, the value of perquisite shall be determined with reference only ONE such accommodation which has the *lower value for a period* not exceeding 90 days and there after the value of perquisite shall be charged for both such accommodation.

Salary from all employers in respect of the period during which an accommodation is provided will be taken into consideration.

Provision for free or concessional educational facilities:

Circumstances	Valuation of Perquisites
Cost of education met by the employer	Actual expenditure incurred by the employer
Educational institution is owned and maintained by the employer **or** Free educational facility is provided in any other institution by reason of his employment with that employer. (Perquisite is exempt if free education is provided to the children of the employee and cost of education is up to Rs. 1000 p.m per child)	Cost of such education in a similar institution in or near the locality.
Note: Any amount paid or recovered from the employee shall be reduced.	

Gas, electricity, water sweeper or gardener, watchman (taxable only in case of specified employee):

Sweeper, gardener, watchman	**Actual Cost**
Gas, electricity, water supply	**Actual cost or maf cost**

Interest free loan:

Value of benefit resulting from the loans made available to the employee or any member of their household shall be:

Maximum Outstanding Monthly Balance*x Rate Charged by SBI as on 1st day of previous year	--------------
Less: Interest, if any, actually paid by him or any such member of his household.	---------------
*Aggregate outstanding balance for each loan as on the last day of each month	
Exemption: Where the amount of loans not exceeding in aggregate Rs. 20,000; Loan for medical treatment of diseases specified in rule 3A.	

Valuation of Motor Car:

Situation	Use	Value
Car Owned / Hired by Employer	Official	Exempt
	Private Use	Actual R&M + 10% of the cost / hire charged+ Actual chauffeur charges **Less:** Amount recovered from Employee
	Personal & Official: If R&M# expenses met by employer	For/below 1.6 cc -- ₹ 1800 p.m **Or** Above 1.6 cc-- ₹ 2400 p.m **Add** ₹ 900 p.m if chauffeur is provided.
	If R&M #exp met by employee	For/below 1.6 cc --₹ 600 p.m **Or** Above 1.6cc --₹ 900 p.m **Add** ₹ 900 p.m if chauffeur is provided.
Car owned / Hired by Employee	Official	Exempt
	Private	Actual Expenses incurred by the Employer
	Private & Official	Actual Expenses **Less:** ₹ 1800 (for/ below 1.6cc)/₹2400 (Above 1.6cc) **Less**: ₹ 900/- if chauffeur provided.

 # Amount recovered from the employee shall not be deducted.

Documents to be maintained by the Employer for non inclusion of value of motor car as a part of perquisites:

- Details of journey like date of journey, destination, mileage and expenditure incurred theron; and Issue a certificate stating that the expenditure incurred for wholly and exclusively for performance of official duties.

Month denotes completed calendar month and part of the month is left out of consideration.

If employee has been provided with more than one car, which is not used exclusively for official purpose then:
(i) Value of One Car shall be ₹ 1800 or ₹2400+₹900 p.m

(ii) The value of other cars is as if they used exclusively for personal purpose.

Perquisite in respect of traveling, touring, accommodation:

Nature of Perquisite	Taxable Value of Perquisite	Note
Where such facility is maintained by the employer, and is not available uniformly to all employees	Value at which such facilities are offered by other agencies to the public	Any amount recovered from the employee shall be reduced from value.
Where employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him.	The amount of expenditure so incurred	DO
Where any official tour is extended as a vocation	The value limited to the expenses incurred in relation to the such extended period of stay of vacation	DO
In any other case, where such facility is given to other employee or any member of house hold (Facility is available to uniformly to all employee)	The amount of the expenditure incurred by the employer.	DO

Valuation of perquisite in respect of gift, voucher or token:
Gift may be made either to an employee or any member of his household. It is taxable as a perquisite in the hands of an employee on the basis of actual expenditure of the employer. Gift-in-kind up to ` ₹5,000 per annum is exempt. Gift in cash or convertible into money (gift cheque) are not exempt.

Valuation of medical facilities:

Before discussing the broad provisions, one should note down the following points:

1. Fixed medical allowance is always chargeable to tax.
2. For the purpose of valuation of the perquisite in respect of medical facilities, "family" means-

a. the spouse and children of the employee; and

b. the parents, brothers and sisters of the employee or any of them, wholly or mainly dependent on the employee.

Medical treatment in India	Medical Treatment Outside India
→ Employer's hospital, Govt. Hospital, Notified hospital, Group medicine insurance, medical insurance under Sec. 80D (fully exempt) → Any other medical expenditure maximum of ` ₹15,000	→ Medical treatment and stay expenses abroad exempt (If permitted by RBI) → Travel expenditure is fully exempt if • GTI upto `₹ 2,00,000

Credit card or Add or card provided to employee or any member of his household:

Amount of expenses including the membership fees and annual fees charged to such credit card or reimbursed by the employer **Less**: Amount paid or recovered from the Employee.	Xxxxxxx Xxxxxxx
Balance is the Value of the perquisite.	Xxxxxxx
Exempt: If expenses are incurred wholly and exclusively for official purposes perquisite is exempt.	

Club facility provided to employee or any member of his household:

Amount of expenses including the annual fee or periodical fee paid or reimbursed by the employer **Less**: Amount paid or recovered from the Employee.	Xxxxxxx Xxxxxxx
Balance is the Value of the perquisite.	Xxxxxxx

Exempt: If expenses are incurred wholly and exclusively for official purposes perquisite is exempt. In case of corporate club membership, initial fee paid for acquiring for such membership is exempt. Use of health club, sports and similar facilities provided uniformly to all employees.

<u>Perquisite in respect of use of movable assets</u>: If *computer/laptop* is provided by an employer to his employee, *nothing is chargeable to tax* in the hands of employee

Use of movable Assets:

(1) 10% p.a. of actual cost OR (2) Actual rental charge

Transfer of Movable Assets:

Computer & electronic items	Dep. @ 50% for completed years (WDV)
Motor car	Dep. @ 20% for completed years (WDV)
Other assets	Dep. @ 10% for completed years (SLM)

Note:

- From the above, any amount recovered from the employee shall be reduced.
- The amount of depreciation is allowed for each completed year during which the asset is put to use by the employer

Free food and non alcoholic beverage:

Taxable	**Exemption**
Amount of the expenditure incurred by the employer **Less**: Amount recovered from the employee.	➢ Such facilities provided during working hours at office or business premises or through non transferable paid vouchers the value thereof does not exceed Rs. 50 per meal. ➢ Tea or snacks provided during working hours. ➢ Such facilities provided in a remote area or an offshore installation.

APPROVED SUPERANNUATION FUND:

Employers contribution towards an approved superannuation fund[3] will be chargeable to tax to the extent it exceeds ` ₹1 lakhs per annum. Employee's contribution qualifies for tax deduction under section 80C. Interest on accumulated balance is exempt from tax.

[3] Approved by the Commissioner of Income Tax.

Employee Stock Option Plan(ESOP)/ Sweat Equity: The value of any security or sweat equity shares allotted or transferred, directly or indirectly, by the employer or former employer, free of cost or at concessional rate to the assessee:

Fair market value of the security or sweat equity share on the date on which the option is exercised by the employee	xxxxxxxx
Less: Amount actually paid by or recovered from the assessee	Xxxxxxxx
Value of perquisite	xxxxxxxx

Any other benefit, amenity, etc.:

The value of benefit, amenity, service, right or privilege shall be determined on the basis of cost to the employer under an arm's length transaction as reduced by the employee's contribution, if any.

The perquisite in respect of telephone/mobile phone is not taxable in the case of any employee of any organization.

PERMISSIBLE DEDUCTIONS FROM SALARY INCOME:

The income chargeable under the head "Salaries" is computed after making the following deductions

a. entertainment allowance deduction; and b. professional tax.

Provident Fund Contributions and their tax treatment:

	Statutory provident fund	Recognized provident fund	Unrecognized provident fund	Public provident fund
1	2	3	4	5
Employer's contribution to provident fund	Exempt from tax	Exempt up to 12 percent of salary. Excess of employer's contribution over 12 percent of salary is taxable.	Exempt from tax	Employer does not contribute
Deduction under section 80C on employee's contribution	Available	Available	Not available	Available
Interest credited to provident fund	Exempt from tax	Exempt from tax if rate of interest does not exceed notified rate of interest; (i.e. 9.5 percent); excess of interest over notified rate of interest is Taxable.	Exempt from tax	Exempt from tax
Lump sum payment at the time of retirement or termination of service	Exempt from tax	Exempt from tax in some cases[4]; when not exempt provident fund will be treated as an unrecognized fund from the beginning	See Note.	Exempt from tax

Note:

- Employer's contribution and interest thereon is taxable under the head "Salaries".
- Interest on employee's contribution is taxable under the head "Income from Other Sources".

[4] If he has rendered service for a period of 5 years / if employee has been terminated beyond his control/ he joins with another employer who maintains RPF and overall period of service is 5 years.

Other Points: Remuneration received by foreign nationals as diplomatic personnel, consular personnel, trade commissioners, and staff of a foreign mission is exempt from tax.

Employee's obligation met by employer: Amount paid by an employer in respect of any obligation which otherwise would have been payable by the employee is taxable in all cases.

Valuation of leave travel concession in India: Leave travel assistance extended by an employer to an employee for going anywhere in India along with his family, is exempt on the basis of provisions given in table below. 'Family' for this purpose includes spouse and children of the employee. It also includes parents, brothers and sisters of the employee, who are wholly or mainly dependent upon the employee:

Different situations	Amount of exemption (exemption is available only in respect of fare for going anywhere in India along with family twice in a block of four year)
Where journey is performed by air	Amount of economy class air fare of the national carrier by the shortest route or the amount spent, whichever is less.
Where journey is performed by rail	Amount of air-conditioned first class rail fare by the shortest route or amount spent, whichever is less.
Where the places of origin of journey and destination are connected by rail and journey is performed by any other mode of transport.	Amount of air-conditioned first class rail fare by the shortest route or the amount spent, whichever is less.
Where the places or origin of journey and destination (or part thereof) are not connected by rail – Where a recognized public transport system exists.	First class or deluxe class fare by the shortest route or the amount spent, whichever is less.
Where no recognized public transport system exists	Air-conditioned first class rail fare by the shortest route (as if the journey had been performed by rail) or the amount actually spent, whichever is less.

If an assessee has not availed travel concession during any of the specified four-year block periods one of the two permitted occasions (or on both occasions); exemption can be claimed in the first calendar year of the next block (but in respect of only one journey). This is known as "carry over" concession. In such case, the exemption so availed will not be counted for the purposes of claiming the future exemptions allowable in respect of two journeys in the subsequent block.

The exemption above shall not be available to more than 2 surviving children of an individual after October 1, 1998.

However, this restriction does not apply in respect of children born before October 1, 1998 and also in respect of multiple births after one child.

The exemption will be admissible to only two surviving children born on or after October 1, 1998 (in reckoning this limit of two children, children born out of multiple births after the first child will be treated as' one child only').

Relief: Relief is available when the assessee is in receipt of advance salary, arrears of salary, salary received for more than 12 months, family pension paid in arrears etc……
Computation:

Particulars	**Year of receipt (YEAR-R)**	**Year of accrual (YEAR-A)**
Tax on total income(+EC) including arrears etc (A)	@@@@	@@@@@
Tax on total income(+EC) excluding arrears etc (B)	@@@@	@@@@@
Difference (A-B) (C)	@@@@	@@@@@
Relief = (C) of YEAR-R minus (C) of YEAR-A		

Computation of Taxable Income from Salary:

Particulars	**Amount in ₹**	**Amount in ₹**
Gross Salary		---------------
Dearness Allowance		---------------
Bonus		----------------
Commission		---------------
Employer's Contribution to >12% of salary		--------------
Interest in excess of 9.5% on RPF		-------------
Taxable Allowance		-------------
Taxable Perquisites		-------------
Taxable Gratuity		----------------
Taxable Part of Computation Pension		--------------
Leave Salary		--------------
Lump sum recived from URPF to the extent of employer's contribution and interest there on		-------------
Gross Salary		------------
Less: Deductions		
Entertainment Allowance		-------------
Tax on Employment		-------------
Taxable Salary		-------------

Chapter 5

Income from House property

Basis of charge

- → There must be a property consisting of building or land appurtenant thereto
- → The assessee should be owner of that property
- → Such property should not be used for Business or profession of assessee the profits of which are chargeable to tax

Some important points

- → It must be noted that the word property or part thereof means part or unit of that property
- → If there is any income from vacant piece of land such income would be charged under Profits and gains from business and profession or under income from other sources depending upon nature of the case.
- → Property not owned by assessee should not be charged under house property, stating and example we mention that income from subletting is charged under income from other sources.

Ownership

It includes legal owner as well as deemed owner. *The term ownership includes ownership of any kind and includes:*

- → Freehold property
- → Leasehold property
- → Deemed ownership

Property consisting of any buildings or lands appurtenant thereto:

The property should consist of any buildings or land appurtenant thereto. Rental income of a vacant plot (not appurtenant to building) is not chargeable to tax under the head "Income from house property", but is taxable either under the head "Profits and gains of business or profession" or under the head "Income from other sources", as the case may be.

"Building" - The word "building" is wide enough to include residential houses (whether let out or self-occupied), building let out for office use, or for storage or for use as factory. Even music halls, dance halls, lecture halls and other public auditoriums are "buildings".

“Land appurtenant thereto" - The appurtenant lands in respect of a building may be in the form of approach roads to and from public streets, compounds, courtyards, backyards, playgrounds, etc. It also includes car- parking spaces, roads connecting one department with another department, playgrounds for the benefits of employees, etc.

Deemed ownership Sec.27

The various cases in which owner would be counted as deemed owner of property are as follows:-

Transfer to spouse:	Where an individual transfers his/her house property to his/her spouse without any adequate consideration (except in an agreement to live apart), the transferor would be deemed to be owner of such house property. It is to be note that only house property is transferred and not any cash through which House property is purchased, in such a case, clubbing provisions will apply
Transfer to minor child	Where property is transferred to minor child (except married minor daughter), Transferor would be deemed to be owner of that house property.
Holder of an impartible estate	Such holder would be deemed to be owner of that property.
Member of co-operative estate	Person holding property under a co-operative estate as leasehold freehold property would be deemed to be owner of that property.
Person holding some rights of property under Sec, 53A of transfer of Property Act, 1882	**Conditions**: → There is an agreement in writing → Purchaser has paid consideration or agreed to pay the same → Purchase has taken possession of the property
Person holding lease of a property for not less than 12 years	Such a person would be deemed to be owner of that property provided that lease is renewed after a minimum period of 12 months

Disputed property	A person who holds the possession of a disputed property or enjoys income from that property is deemed to be owner of that property.

Use of House Property and its impact on Taxation

House property may be used for either commercial or residential purposes. Some cases of taxation are as follows:

→ Where property is held as stock in trade then also taxed under house property

→ When it is business to give property on rent, then also it is taxed under this head of house property

→ When hotel or P.G. accommodation building is given on rent then also taxed under house property but where separate rooms are given on rent then it is taxed either business or profession or under income from other sources.

→ Some exceptions to general rule of taxation under house property are:

- Where property is used for business of assessee
- Where P.G. or hostel accommodation is run by assessee
- Where property is given on rent for efficient conduct of business
- Where H.P. is given on rent to Govt. agency for locating branch etc. for conducting business efficiently, it is taxed under income from business and profession
- Where it is a case of composite rent.

Income from House Property not chargeable to tax

→ House property use for Business of Assessee

→ Building held for charitable purposes

→ Self-occupied property

→ Property of registered trade union

→ Palace of ex ruler

Composite rent:

Composite rent can be on amount of

→ Provision of facilities with House Property

→ Provision of assets with House Property

(a) Rent on account of House Property and other facilities like gas, etc. should be separated and rent on account of House Property would be taxed under income from house Property and rest would be taxable under either under the head Business & Profession or income under the head other sources.

(b) Rent on account of House Property and hire charges of assets is treated as follows:

- If assets form an integral part of lending, whole of the rent should be taxed under either Income under the head "Profits and gains from Business and Profession" (PGBP) or Income under the head "Income from Other sources" as the case may be.
  - If assets do not form an integral part of lending rent should be separated into:-
  - Rent for H.P and should be taxed under H.P
  - Rent for assets must be taxed under P.G.B.P or income from other sources.

Annual value sec.23:

Step 1	Take higher of (a) expected rent (which is computed by taking higher of municipal value of fair rent whichever is higher but limited to standard rent) or, (b) Actual rent received or receivable (c) But in this clause c, we compute actual rent which would have been there if there would have been no vacancy, if such rent is higher than expected rent, then rent computed under this clause(c) would be used otherwise rent computed in clause (a) that is the expected rent would be used.
Step 2	From this calculate GAV by taking rent as per above provisions and subtracting vacancy allowance on the basis of actual rent from the same.

Step 3	This is our Gross Annual Value (GAV)
Step 4	From GAV deduct Standard deduction @ 30% of GAV and municipal taxes actually paid and borne by the owner during the previous year
Step 5	Finally we have computed our Net Annual value or annual value

Unrealized rent:
Sometimes owner is not able to recover some portion of rent from the tenant such a rent is called as unrealized rent, unrealized rent is allowed as a deduction only when following 4 conditions given in Rule 4 are satisfied:

→ Tenancy is bonafide

→ Every step has been taken to get the property vacated

→ Every step has been taken to recover unrealized rent

→ Tenant is not in occupation of any other property of Owner

House property let out during part of year and part of year self-occupied

→ The income from such property is calculated as if let out for whole of the year. In this case, expected rent would be taken for whole year but actual rent would be taken for let out period only and no special allowance for this purpose is allowed.

→ However where property is acquired during the year itself expected rent would be taken for only that portion for which property has been owned by assessee and rest provisions remains the same.

Income from House Property – Self occupied for residence
When property is:

→ Self-occupied for residence or

→ Cannot be self-occupied for residence owing to reason of employment and he has to reside at some other place not belonging to him

Then, annual value of such property would be taken to be NIL.

Annual value not NIL:

→ House property Actually let out during the year

→ Any other benefit is derived from property.

Case where more than one house is for self-occupation:
Then the assessee has option to take any of the above houses as self-occupied and the other one would be treated as deemed let out property.
This option is available only to individuals and Hindu undivided families.

Deductions from Income from House Property Sec.24:
1. Standard deduction: A standard deduction of 30% of Net Annual value would be allowed as a deduction from net annual value, irrespective of expenditure incurred. No other deduction on account of any expenditure is allowed.

2. Deduction on account of interest: Any kind of interest on borrowed capital would be allowed as a deduction from House Property. income on “accrual” basis. Interest includes pre construction period interest installment.

Notes:

- Loan can be for any purpose like repairs, construction or any kind of extension to house property but should be connected with House Property.
- Fresh loan to merely repay original loan would be counted as if like original loan and interest would be allowed as a deduction.
- ***Interest of pre-construction period -*** Interest payable by an assessee in respect of funds borrowed for the acquisition or construction of a house property and pertaining to a period prior to the previous year in which such property has been acquired or constructed, to the extent it is not allowed as a deduction under any other provision of the Act, will be deducted in five equal annual installments, commencing from the previous year in which the house is acquired or constructed.
- What is pre-construction period - Interest of pre-construction period is deductible in five equal installments. The first installment is deductible in the year in which construction of property is completed or in which property is acquired. For this purpose" pre-construction period" means the period commencing on the date of borrowing and ending on (a) March 31 immediately prior to the date of completion of construction/ date of acquisition, or (b) date of repayment of loan, whichever is earlier.
- No deduction is allowed for any brokerage or commission for arranging the loan.

- Interest on borrowed capital is deductible fully without any maximum ceiling (in the case of a let out property).

- A non-refundable deposit will be included in rent received or receivable on pro rata basis.
- A refundable deposit cannot be included in rent received or receivable.

- Advance rent cannot be rent received/receivable of the year of receipt.

- Commission paid by the owner of a property to a broker for rental income is not deductible.

Deductions in case of self-occupied Property:

Deductions as written above are not fully applicable in case of a self-occupied property. The changes case of self-occupied property are as follows –

(1) No standard deduction of 30% would be allowed

(2) Deduction in case of money borrowed: Here also deduction is allowed subject to certain terms and conditions:-

These conditions are as follows:

→ Money is borrowed after 1-4-1999

→ Money is borrowed for construction or acquisition of property

→ Construction or acquisition of property is completed within 3 years from end of financial year in which money is borrowed.

→ Creditor gives a certificate that amount was borrowed for construction or acquisition of property.

In case above 4 provisions are satisfied the amount of deduction is Actual interest (inclusive of pre-construction period interest) or ₹. 150000. otherwise the amount of interest deduction would be ₹.30000.

Recovery of unrealized rent and arrears of rent:

Recovery of unrealized rent-

→ This provision is applicable only if unrealized rent is allowed as a deduction earlier.

→ Any amount recovered on account of unrealized rent should be directly added to house property income.

→ No standard deduction or any kind of deduction is allowed.

→ No other deduction is allowed on account of any expenditure

→ This provision is applicable whether property exists or not.

Recovery of arrears of rent:

→ This income is chargeable to tax under house property income.

→ Standard deduction of 30% is allowed to the assessee.

→ No other deduction is allowed on account of any expenditure.

→ This provision is applicable whether property exists or not.

Co-owners property:

→ If shares of co-owners are definite, then such property would be assessed in hands of individual persons.

→ If shares of individual owners are not definite then such property would be assessed as body of individuals/association of persons.

→ In case property is self-occupied than each co-owner would be allowed a deduction of ₹ 150,000/₹.30,000.

→ In case property is let out, we will ignore co-ownership and compute income and in the next step we will distribute the income among co-owners in ratio of co-ownership.

Income under the head House Property

[Format]

Particulars	**In case of Let out property (₹)**	**In case of self-occupied property (₹)**
Gross Annual Value	……	……
Less: Municipal Taxes	(……)	(……)
Net Annual Value	……	……
Less: Deduction under Sec. 24		
Standard deduction @ 30%	(……)	N.A
Deduction on account of Interest	(……)	(1,50,000 or 30,000)
Income under the head house property	……	……

Chapter 6

Profits and Gains from Business or profession

Basis of Charge [Sec. 28]:

The following incomes are chargeable to tax under the head "Profits and gains of business or profession":

- Profits and gains of any business or profession.
- Any compensation received by a person managing the whole or substantially the whole of affairs of a company, in connection with the termination of his office or the modification of any terms and conditions relating thereto.
- Any compensation received by a person holding an agency, in connection with termination of agency or the modification of any terms and conditions relating thereto.
- Income derived by a trade, professional or similar association from specific services performed for its members.
- The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.
- Export incentive available to exporters.
- Any profit on transfer of the Duty Entitlement Pass Book Scheme.
- Any interest, salary, bonus, commission or remuneration received by a partner from firm (to the extent allowed u/s 40(b) to the firm).
- Any sum received for
    - not carrying out any activity in relation to any business, or
    - Not to share any know-how, patent, copyright, trademark, etc.
- Any sum received under a Keyman insurance policy including bonus.

- Any sum received (or receivable) in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD.
- Income from speculative transaction. (However, such speculative business shall be deemed to be distinct and separate from other business).

Meaning of Profession or Vocation

Profession includes vocation. The word "profession" implies professed attainments in special knowledge such is "to be acquired only after patient study and application". "Vocation" implies natural ability of a person for some particular work. As profits and gains of a business, profession or vocation are chargeable tax under the head "Profits and gains of business or profession", distinction between "business", “profession" and "vocation" does not have any material significance.

Illegal Business

The income-tax law is not concerned with the legality or illegality of a business or profession. It can, therefore, be said that income of illegal business or profession is also taxable.

Computation of Business Income: Sec.29

Balance as per profit and loss or Income – expenditure account	**……**
Add: Expenses expressly disallowed but not debited to P&L A/c …… Expenses not allowed but debited to P&L A/c …… Incomes or receipts taxable under this head but not credited to A/c …… Capital expenses debited to P&L A/c …… Personal expenses debited to P&L A/c …… Expenses in excess of the allowed amount, debited to P&L A/c …… Losses not allowed but debited to P&L A/c …… Expenses not relating to the previous year but debited to P&L A/c …… Under – valuation of closing stock or over-valuation of opening stock	……
Less: Expenses expressly allowed but not debited to P&L A/c …… Expenses relating to the previous year but not debited to P&L A/c …… Losses allowed but not debited to P&L A/c …… Incomes or receipts not taxable under this head but credited to P&L A/c …… Capital receipts credited to P&L A/c …… Incomes or receipts taxable under other head but credited to P&L A/c ……Over-valuation of closing stock or under – valuation of opening stock	(……)
……Profits taxable under the head incomes from business or profession ……Income under the head PGBP	……

Rent, rates, taxes, repairs and insurance for building sec.30:

Nature of expenditure	Deduction if building is taken on rent	Deduction if building is owned
Rent paid	Allowed	-
Cost of repairs (Revenue nature)	Allowed	Allowed
Cost of repairs (capital nature)	Not allowed	Not allowed
Land revenue, Municipal tax, local rates	Allowed	Allowed
Premium on insurance of building against damage or destruction	Allowed	Allowed

For the purpose of sec.28 to 43 the word paid means actually paid or incurred according to the method of accounting upon the basis of which income is computed under the head PGBP.sec43(2)

__Note:__ 1. if an assessee takes premises on lease for carrying on a business or profession and agrees to pay arrears of rent of previous tenant, such arrears of rent cannot be deducted, whether arrears of rent are paid under legal obligation or voluntarily.

2. A fluctuating item like a share in profit cannot be treated as rent.
3. Painting the outside of a house is repair.

Repairs and insurance of plant and machinery sec.31

Nature	Deduction
Repairs (Revenue nature)	Allowed
Repairs (Capital nature)	Not allowed
Insurance against damage/destruction	Allowed
Note: Any expenses incurred for increasing efficiency of machinery will be also treated as revenue nature and it will be deductible.	

DEPRECIATION (SECTION 32)

Condition for allowance of Depreciation
1. Asset must be owned, wholly or partly by the assessee.
2. It must be used for the purpose of business or profession.

Asset should be owned by Assessee
The asset should be owned by the assessee or the assessee should be the Co-owner of the asset.
- Registered ownership is not necessary.
- In case of financial lease also, depreciation is available to the lessor (not to lessee).
- In the case of hire purchase, depreciation will be available to the hirer (hire purchaser).

Asset must be used for the purpose of Business or Profession
The asset, in respect of which depreciation is claimed, must have been put to use for the purpose of business or profession. Put to use means commercially put to use, taking trial run on plant & machinery cannot be said put to use. If a machine is kept ready for use, although in fact it has not worked during the year, the machinery can be said to be "used" for the purpose of the business. Any forced idleness of the machinery cannot disentitle the assessee from getting the benefit of depreciation allowance.

Important terms for computation of Depreciation Allowance
- Block of Assets
- Actual Cost
- Written Down Value

Block of Assets [Sec. 2(11)]

The term "block of assets" means a group of assets falling within a class of assets comprising

(a) Building

(B) Furniture & Fitting

(c) Plant & Machinery

(d) Intangible Assets

In respect of which the same percentage of depreciation is prescribed.

Nature of assets	**Rate of Depreciation**
Buildings	
Residential	5%
General	10%
Temporary Structure	100%
Furniture & Fittings	10%
Plant & Machinery	
General	15%
Motors cars other those used in a business of running them on hire	15%
Motor buses, lorries, vans and taxis used in a business of running them on hire	30%
Books owned by assesses carrying on a profession being annual publications	100%
Books owned by assesses carrying on a profession, not being annual publications	60%
Books by business assessee	15%
Books owned by assesses carrying business of running libraries	100%
Ships	20%
Airplanes	40%
Air pollution control equipments, water pollution control equipments	100%
Computers including computer software (Operating System only)	60%
Intangible Assets	
Software, know-how, patents, copy-rights, trade marks, licenses, franchises or any other business or commercial rights of similar nature	25%

The depreciation ordinarily allowable to an assessee in respect of any block of assets shall be calculated at the above specified rates on the WDV of such block of assets as are used for the purposes of the business or profession of the assessee at any time during the previous year.

Note:

(i) "Building" means the superstructure only and does not include site.

(ii) Buildings include roads, bridges, wells and tube wells.

(iii) A building shall be deemed to be used mainly for residential purposes if the built up floor area used for residential purposes is not less than 2/3rd of the total built up floor area.

(iv) No Depreciation will be allowed on the land. If land is purchased and then house is built up, depreciation will be allowed only on the construction cost. If house is purchased and land cost is not decided separately then also depreciation will be allowed on the cost of house only excluding the land cost on the basis of market value.

(v) The cost of wooden doors and windows in the house is a part of building and it is not a part of furniture and fitting.

(vi) "Plant" includes ships, vehicle, books, scientific apparatus and surgical equipments used for the purpose of business or profession. It does not include tea bushes or livestock.

(vii) One block for P&M eligible for 15% depreciation & Motor Car other than used for running on hire.

(viii) No specific rate of depreciation prescribed for Scooter, Motor Cycle, Tractor, Road-roller, so depreciation on such vehicle will allow @ 15%.

(ix) "Computer Software" means any computer programme recorded on any disc, tape, perforated media or other information storage device.

(x) Plant and Machinery in Windmill installed on or before 31st March, 2012 shall claim depreciation @ 800%.

(xi) Depreciation is mandatorily available (it is a must; it is not at the option of the assessee to claim, or not to claim, depreciation).

Actual Cost [Sec. 43(1)]:

It means the actual cost to the assessee as reduced by the proportion of the cost thereof, if any, as has been met, directly or indirectly, by any other person or authority.

The cost of the fixed asset is to **include**:

- Cost price of the asset
- Interest on money borrowed for purchase of the asset till the asset is put to use
- Bank charges
- Carriage inwards, loading and unloading charges
- Installation charges
- Cost of repairs and modification prior to use of the asset to make it workable
- Training expenses of the staff before the use of the plant
- Expenses on essential construction work such as, cold storage rooms, cooling towers, etc
- Expenses on insurance, power and fuel, incurred before commencement of business
- Expenditure on traveling incurred for acquiring assets

Actual cost in different situations:

Circumstance	**Actual Cost (Notional basis)**
Asset actually acquired for scientific research related to business and subsequently used for business purposes.	Actual Cost less deduction availed under Section 35 (i.e. NIL).
Asset acquired by way of gift or inheritance.	WDV to the previous owner.
Where assessee had transferred business asset owned by him and now, the same is reacquired by him.	Lower of WDV at the time of original transfer, or price paid for reacquiring it
Building previously used for private purposes, now brought into use for the business of the assessee. ***Note:*** *Rate of depreciation applicable in previous year of bringing the asset into business use is applied.*	Actual cost of building less notional depreciation calculated at rate applicable to that year up to year of bringing it to business use.
An asset acquired outside India by a non-resident, subsequently brought to India and used for his business and profession in India. **Note:** Depreciation is computed at rates that would have been allowable had the asset been used in India for his business/profession since the date of its acquisition. Purchase price less notional depreciation computed at respective rates from the date of its acquisition.	

Capital asset on which is deduction is allowed or allowable u/s 35AD	NIL

TREATMENT OF EXCHANGE RATE FLUCTUATIONS IN CASE OF PURCHASE OF AN ASSET FROM OUTSIDE INDIA [SECTION 43A]:

The provisions of this section apply if –

An asset is acquired from outside India for assessee's business or profession and subsequently, after the date of acquisition, there is a change in the rate of exchange of currency during any previous year;

Such exchange rate fluctuation results in increase or reduction in the liability of the assessee (as expressed in Indian currency) at the time of making the payment -

- ❖ Towards the whole or part of the cost of the asset; or
- ❖ Towards the repayment (along with interest) of whole or part of the moneys borrowed by him from any person in any foreign currency specifically for acquiring the asset.

The amount by which the liability is so increased or decreased (along with increase/decrease in interest) at the time of making payment, shall be added to or reduced from the following –

- ❖ Actual cost of asset, or Capital expenditure incurred on scientific research or family planning; or
- ❖ Cost of acquisition of capital asset (other than depreciable asset), in computing capital gains u/s 48.

These adjustments are to be made only on actual payment by assessee towards the cost of asset or repayment of the loan or interest irrespective of method of accounting adopted by assessee.

Where whole or part the liability is not met by assessee but is met by any other person, no adjustments of exchange rate fluctuations shall be made with respect to the liability so met.

Where assessee has entered into forward exchange contract with "authorized dealer" for purchase of foreign currency to discharge the liability as referred above, the increase or decrease in liability is computed with reference to rate of exchange specified in the contract."

Written Down Value [Sec. 43(6)]:
Written down value for the assessment year 2013-14 will be determined as under:

Depreciated value of the block on the April 1, 2013	xx
Add: Asset acquired during the PY 2013-14	xx
Less: Asset sold, discarded, or demolished during the PY 2013-14	xx
WDV of Block relevant for depreciation of AY 2014-15	xx

Note:
1. The amount of reduction for Asset sold cannot exceed the sum of Opening WDV and asset acquired.
2. Consideration received in kind for asset sold cannot be deducted.

Explanation to Section 32 states that the provisions relating to Depreciation shall apply whether the assessee claims depreciation in computing the total income or not.

Depreciation allowance is limited to 50 per cent of normal depreciation:
Depreciation allowance is limited to 50 per cent of normal depreciation, if the following two conditions are satisfied -
(i) Where an asset is acquired during the PY and
(ii) It is put to use for less than 180 days during that year.

Depreciation for power generating undertakings Sec. 32(1) (i)

1. They have option to claim depreciation

   (a) SLM on each assets OR (b) WDVM on block assets

2. Put to use less than 180 days: same as block asset concept

3. Depreciation allowed shall not exceed actual cost of the asset

4. Open to such undertaking to opt the depreciation under WDV

If the above option is not exercised depreciation is allowed on the basis of SLM

Terminal Depreciation Sec. 32(2) (iii)

→ Depreciation claimed under sec. 32(1)(i) → sold, destroyed or discarded

→ Sale consideration < [Actual cost – depreciation allowed]

→ Difference of above shall allowed as terminal depreciation in PY in which asset sold, destroyed or discarded

Computation of terminal depreciation	₹
Written down value (WDV)	……
Less: Insurance received	……
Terminal Depreciation	……

Balancing charge sec. 41(2)

→ Depreciation claimed under sec. 32(1)(i) → sold, destroyed or discarded

→ Sale consideration < [Actual cost – Depreciation Allowed]

→ Minimum of following will be treated as balancing charge

(a) cost less WDV OR (b) Sales consideration less WDV

Capital gain on the transfer of above capital assets (Sec.50 A):

Sales consideration exceeds actual cost of such assets

Computation of capital gain on the transfer of capital asset on which SLM depreciation Charge	₹
Sales consideration	……
Less: Actual cost of Assets	……
Capital gain on the transfer of capital asset on which SLM depreciation. Charged	……

Additional Depreciation

Additional depreciation shall be available @ 20% of the actual cost of new plant and machinery. If, however, the asset is put to use for less than 180 days in the year in which it is acquired, the rate of additional depreciation will be 10%.

To claim additional depreciation, the following conditions should be satisfied -
1. The assessee must be engaged in manufacture/production of any article or thing
2. New plant and machinery should be acquired and installed during the PY.
3. It should be an eligible plant and machinery

Up to 31/3/12 any power unit not for captive consumption but engaged in the business of generation of power / electricity is not entitled for additional depreciation irrespective of method of depreciation i.e. SLM/WDV applied for normal depreciation. It is amended from AY 13-14 that these units will also be eligible to claim additional depreciation if normal depreciation is claimed on WDV basis. **(Inserted by Finance Act, 2012)**

- **New Plant and Machinery installed and acquired:**

Additional depreciation is available only in respect of new plant and machinery acquired and installed. Additional depreciation shall not be available if any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person.

- **Eligible Plant and Machinery:**

Any plant and machinery which has been acquired and installed during the previous year by an assessee is qualified for additional depreciation. However, the following assets are not eligible for additional depreciation:
(i) Ships and aircrafts; or
(ii) If installed in any office premises or any residential accommodation, or accommodation in the nature or a guest house; or
(iii) Road transport vehicles; or
(iv) Any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise)

- **Residential Quarters:**

When occupation of residential quarters by the assessee's employees is subservient to and necessary for the business, the property is considered as occupied by owner for the purpose of his business. Depreciation is, therefore, allowable on such buildings.

Similarly, fans, air-conditioners, refrigerators, furniture, etc., provided by the assessee-employer at the quarters of employees is considered to have been used wholly for the purpose of employer's business and depreciation is admissible.

No Depreciation shall be allowed in the following case:

- **If written down value of the block of assets is reduced to zero, though the block is not empty:** When sale proceed exceeds the sum of Opening WDV and Additions, the resulting amount is termed as short term capital gain.

- **If the block of assets is empty or ceases to exist on the last day of the PY (though the WDV is not zero):** When all the assets in the block are sold. Resulting amount is either short term capital gain or short term capital loss.

Depreciation in special cases:

In case of	Depreciation allowable to
Succession [under Sec.47(xiii) or sec. 47(xiiib) or sec. 47(xiv) or sec. 170]	Predecessor and the successor
Amalgamation	Amalgamating company and amalgamated company
Demerger	Demerged company and resulting company

When AOP/Firm/individual/business acquired by company or firm the depreciation will be calculated day wise not month wise. In case of amalgamation of companies, number of days of use of assets in ratio will be kept in mind.

Sec.47 (xiii)	Transfer of a capital asset by a firm to a company as result of succession of a firm by a company
Sec.47 (xiiib)	Transfer of a capital asset by a private company/unlisted public company to LLP (Limited liability partnership) as a result of conversion of private company/unlisted public company
Sec. 47 (xiv)	Transfer of a capital asset by a partnership concern to a company result of succession of partnership concern by a company
Sec.170	Succession of business/profession otherwise than on death: where a person succeeds business/profession of any other person: → Predecessor (Seller) shall be assessed in respect of the income of the PY in which the succession took place up to the date of succession & → Successor (purchaser) shall be assessed in respect of the income of PY after the date of succession

Slump Sale: In case of slump sale[1] WDV shall calculated as follows:

WDV of Block of assets as on 1st day of the previous year	xx
Add actual cost of assets falling within the block, acquired during the previous year	xx
Less: Asset sold, discarded, or demolished during the PY 2012-13	xx
WDV of the block of assets eligible for depreciation	xx
Less: Deduction on account of slump sale to the extent of amount above (*see note*)	xx

Note: Deduction on account of slump sale is computed as follows:-

Actual cost of the assets falling within the block, which is transferred by slump sale	xx
Less: Depreciation that would have been allowed if the asset was the only one in the block	xx
Deduction on account of slump sale	xx

Unabsorbed Depreciation

If the whole amount of current depreciation allowance is not deductible on account of the insufficiency of income (under various heads of income), the remaining unabsorbed amount is called 'Unabsorbed Depreciation'.

If depreciation allowance is not fully deductible under the head PGBP because of absence or inadequacy of profit, it is deductible from income chargeable under other heads of income (except income under the salary) of the current PY.

If depreciation allowance still remains unabsorbed, it can be carry forward to the subsequent AYs by the same assessee.
Unabsorbed depreciation can be carry forward and set off, even ROI (Return of Income OR Income Tax Return) is filed after due date of furnishing the return of Income.

No time limit is fixed for the purpose of carrying forward of unabsorbed depreciation, it can be carried forward for indefinite period, if necessary.

[1] Transfer of Undertaking(s) without assigning the values to individual assets and liabilities.

In the subsequent AYs, unabsorbed depreciation can be set off against any income whether chargeable under the head PGBP or under any other head (except income under the head salary) In the matter of set-off; the following order of priority is followed in subsequent AYs:

(a) Depreciation of current PY

(b) Brought forward business loss

(c) Brought forward unabsorbed depreciation.

If in the subsequent AYs, there is no brought forward loss, brought forward unabsorbed depreciation can be added to depreciation of current PY for the purpose of claiming deduction.

For claiming depreciation, the assessee should be beneficial owner of the asset. It is not necessary that he should be registered owner.

Revaluation of assets does not have any impact on Income tax Act, 1961. For the calculation of depreciation, revaluation should be ignored.

Assets partly used for business purposes [Section 38]:

Expenses u/s 30-32 (repairs, insurance, taxes, depreciation, etc.) on assets being building, plant & machinery and furniture, used partly for business purposes and partly for other purposes, shall be allowed proportionately.

Assets used partly for business & partly for agricultural purposes:

Where the income of an Assessee is derived both from agriculture and business of the Assessee chargeable to tax, then for computing the WDV of the assets, the depreciation will be computed and allowed as if the whole income is derived from the business chargeable to the income tax under the head “Profits and Gains” from Business and Profession.

Tea/Coffee/Rubber Development Account [Sec. 33AB]:

An assessee can claim deduction under section 33AB on satisfying the following conditions:

1. The assessee must be engaged in tea, coffee or rubber plantation.
2. It must make a deposit in:
    a. National Bank for Agriculture and Rural Development (NABARD) in accordance with, a scheme approved by the Tea Board or Coffee Board or Rubber Board; or
    b. Deposit Account opened by the assessee in accordance with, an approved scheme framed by the Tea Board or Coffee Board or Rubber Board with the previous approval of the Central Government.
3. The amount shall be deposited within 6 months from the end of the PY or before the due date of furnishing the return of income, whichever is earlier.
4. The accounts of the assessee should be audited.

Amount of Deduction - Amount of deduction is lower of the two:

(i) Amounts deposited.

(ii) 40% of the profit from the above said business before allowing the deduction under this section and before set off of brought forward business loss.

Withdrawal from deposits - Withdrawal from these deposits shall be allowed either for the purposes specified in the scheme or in circumstances specified below:

• Closure of business;
• Death of an assessee;
• Partition of a HUF;
• Dissolution of a firm;
• Liquidation of a company.

If withdrawal is made on account of closure of business or on account of dissolution of the firm, the whole of such amount shall be taxable as business profit of that previous year.

But if the withdrawal is made on account of the death of the assessee, or partition of the H.U.F. or the liquidation of a company, the amount withdrawn will not be taxable even if the amount is not utilized for any purposes specified in the scheme.

Prohibition of Utilization - Where any amount from the Account is utilized during any previous year for the purchase of the following:

(i) Any machinery or plant to be installed in any office premises or residential accommodation, including a guest-house;

(ii) Any office appliance (not being computers);

(iii) Any machinery or plant, the whole of the actual cost of which is allowed as a deduction.

(iv) Any new machinery or plant to be installed in an industry producing any article specified in the Eleventh Schedule,

The amount so utilized shall be deemed to be the profits of that previous year and chargeable to tax.

Consequence if the new Asset is transferred in 8 years - The new asset acquired out of the amount withdrawn should be held for at least a period of 8 years. The deduction allowed under this section shall be withdrawn if the asset acquired out of the money withdrawn from the special account is sold or otherwise transferred within 8 years from the end of the previous year in which the asset is acquired.

However, deduction-shall not be withdrawn if transferred:

• To the Central Government, a State Government, a local authority, a statutory corporation or a Government company

• In a scheme of succession of a firm by company

Site Restoration Fund [Sec. 33ABA]:

An, assessee can claim deduction under section 33ABA if the following conditions are satisfied:

1. Assessee must be engaged in production of petroleum/ natural gas in India
2. It must make a deposit:
    - With SBI in an account
    - In site restoration account in accordance with a scheme
3. Assessee has an agreement with Central Government
4. 'Deposit should be made within specified time-limit. I.e. before end of PY
5. Accounts of the assessee should be audited

Amount of Deduction:

(a) Amounts deposited

(b) 20% of the profit from the above said business before allowing the deduction under this section and before set off of brought forward business loss whichever is less,

Prohibition of Utilization - Where any amount from the Account is utilized during any previous year for the purchase of the following:

(i) Any machinery or plant to be installed in any office premises or residential accommodation, including a guest-house;

(ii) Any office appliance (not being computers);

(iii) Any machinery or plant, the whole of the actual cost of which is allowed as a deduction.

(iv) Any new machinery or plant to be installed in an industry producing any article specified in the Eleventh Schedule,

The amount so utilized shall be deemed to be the profits of that previous year and chargeable to tax.

Consequence if the new Asset is transferred in 8 years - The new asset acquired out of the amount withdrawn should be held for at least a period of 8 years. The deduction allowed under this section shall be withdrawn if the asset acquired out of the money withdrawn from the special account is sold or otherwise transferred within 8 years from the end of the previous year in which the asset is acquired.

However, deduction-shall not be withdrawn if transferred:

- To the Central Government, a State Government, a local authority, a statutory corporation or a Government company
- In a scheme of succession of a firm by company

Scientific Research Expenditure [Sec. 35]

Section	Nature of Expense	Purpose	Deduction	Exception
35(1) (i)	**Revenue** PY – All 3 years preceding date of commencement of business Salary to research staff (excluding perquisites) Materials used in research	Scientific Research carried on by assessee related to business of assessee whether incurred himself or paid to other person for research during PY	100% in the year in which business is commenced	
35(1) (ii)	**Contribution** to scientific research association, university, college, other institution	Scientific Research whether related or unrelated to business of assessee	175%	
35(1) (iia)	**Contribution** to Indian company		125%	
35(1) (iii)	**Contribution** to university, college, other institution or Indian company	Social / statistical research whether related or unrelated to business of assessee	125%	

35 (1) (iv)	**Capital** <u>PY</u> – All 3 years preceding date of commencement of business – All	Scientific research carried on by assessee related to business of assessee	100%	Land
35(2AA)	**Contribution** to IIT, National, Laboratory, university or specified person	Scientific research related to business of assessee	200%	
35(2AB)	**Capital + Revenue**	In house research by assessee engaged in business of manufacturing any article or thing, not being article specified in 11th schedule.	200% If research and development facility approved by the prescribed authority.	Land & Building however, expenditure on building will be allowable @ 100% u/s 35(1) (iv)

Where the scientific research asset is sold without having used for other purposes, then

- Sale proceed up to the Actual Cost of Asset → PGBP
- Sale proceed over and above Actual Cost of Asset → CG (STCG/LTCG)

↓

Indexed Cost

Where the scientific research asset is used in the business after it ceases it ceases to be used for scientific research, then asset shall be shown at nil value.

Note:

- The set off and carry forward of unabsorbed scientific research capital expenditure is in the same manner as that of depreciation.
- If land and building is purchased through a composite agreement, then the cost of land & building shall be bifurcated on the basis of their fair market value. Cost of land is not allowable as deduction and cost of building shall be allowed as deduction u/s 35(1)(iv)

Expenditure for obtaining license to Operate telecommunication services sec.35ABB
Actual payment made to obtain a license, shall be allowed as deduction in equal installments during the number of years for which the license is in force.

If license fee (amt.) paid before commencement of business	If license fee (amt.) paid after commencement of business
$\text{Amt. of deduction} = \dfrac{\text{Actual amt. (fee) paid}}{\text{Total no. of license period}}$	$\text{Amt. of deduction} = \dfrac{\text{Actual amt. (fee) paid}}{\text{Remaining no. of license perio}}$

Treatment after sale of license (for capital gain purpose)

Fully license right sold	SV > AV	Sale value less Org. Cost = Capital Gains Org. Cost Less WDV = Business income
	SV > WDV	Org. Cost Less WDV = Business income
Partly license right sold	SV>AV	Sale Value Less WDV = Business income
	SV>WDV	WDV less sale value = WDV

Expenditure (Donation) on eligible project or schemes sec.35AC
Eligible expenditure → Payment to public sector Company, local authority, approved association, direct expenditure incurred on eligible project (For Company only)

Amount deduction → Actual payment OR actual expenditure

Disallowance unless assessee furnishes along with the Return of Income Tax a certificate

- → In form No. 58A from entity in respect of contribution (Expenditure or donation) made
- → In case where the expenditure is directly incurred (only for companies), a certificate from the chartered Accountant

Deduction U/S 35AD:

Deduction for Capital Expenditure incurred by the assessing carrying on specified business is allowed as deduction under this section.

Capital expenditure eligible for deduction under this section does not include land, financial instrument and goodwill.

Summary of deduction:

Specified Business	Eligible assessee	Starting	Deduction
Cold chain facility	Any assessee	1/04/2009	150%
Warehouse facility for agricultural produce	Any assessee	1/04/2007	150%
Cross-country natural gas pipeline network	Indian company	1/04/2007	150%
Cross-country crude/petroleum oil pipeline network	Indian company	1/04/2009	100%
Hotel	Any assessee	1/04/2010	100%
Hospital	Any assessee	1/04/2010	150%
Housing project for redevelopment for rehabilitation	Any assessee	1/04/2010	100%
Housing project for affordable housing	Any assessee	1/04/2011	150%
Production of fertilizer in India	Any assessee	1/04/2012	100%
Inland container depot or container freight station	Any assessee	1/04/2012	100%
Bee-keeping and production of honey and beeswax	Any assessee	1/04/2012	100%
Warehousing facility for sugar	Any assessee	1/04/2012	100%

If the capital expenditure incurred before the commencement of specified business, the deduction will be available only if the said amount is capitalized in the books of accounts on the date of commencement of business.

Other Provisions:

• Business should be new business i.e. should not be formed by splitting/reconstruction of old business.

• Business should not be set up by transfer of old plant & machinery. Old plant & machinery should not be more than 20% of total plant & machinery used for the business.

• Deduction u/c VI-A shall not be allowed in respect of such business for any assessment year.

• Actual cost of asset for which deduction has been allowed under section 35AD shall be taken as nil.

NOTE: Any sum, whether received or receivable, on account of capital assets (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as deduction under sec. 35AD shall be treated as income of assessee chargeable to income under the head PGBP. **[Sec. 28 (vii)]**

<u>Expenditure on agriculture extension projects [35CCC] from AY 13-14</u>:

→ Any assessee who has incurred any expenditure on a notified agriculture extension project will be eligible for weighted deduction of 150% of such expenditure.

<u>Expenditure on skill development [35CCD] from AY 13-14:</u>

→ Any assessee who has incurred any expenditure (except land and building) on a notified skill development project will be eligible for weighted deduction of 150% of such expenditure.

Amortization of Preliminary Expenses [Sec. 35D]:

Deduction u/s 35D is available to all resident assessee except foreign company.

Non-resident assessee or a foreign company even if it is resident in India, cannot claim any deduction u/s 35D.

Preliminary expenses are incurred for:
1. For setting up any undertaking or business before commencement of business.
2. In connection with extension of an undertaking or in connection with setting up a new unit after commencement of business.

Qualifying Expenditure:

• Legal charges for drafting any agreement between the assessee and any other person relating to the setting up of the business of the assessee.
• Legal charges for drafting the memorandum and articles of association if the taxpayer is a company.
• Printing expenses of the memorandum and articles of association if the taxpayer is a company.
• Registration fee of a company under the provisions of the Companies Act.
• Expenses in connection with the public issue of shares or debentures of a company, underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus.
• Any other expenditure which is prescribed.

The following shall be qualifying expenditure only if the work is carried on by the assessee itself or by a concern approved by the Board:

• Preparation of feasibility report.

• Preparation of project report.

• Conducting market survey (or any other survey necessary for the business of the assessee).

• Engineering services relating to the business of the assessee.

Qualifying Expenditure:

Maximum Ceiling - The aggregate expenditure cannot exceed the following:

In the case of a corporate assessee	In the case of a non-corporate assessee
a. 5% of cost of project; or b. 5% of capital employed,	5% of cost of project

Cost of Project: It means the actual cost of fixed assets which are shown in the books of the assessee as on the last day of the PY in which the business of the assessee commences.

Capital Employed: It means the aggregate of:

• Issued share capital,

• Debentures, and

• Long-term borrowings (term $\geq$5 years, if borrowing from outside India term $\geq$7 years) as on the last day of the PY in which the business of the company commences.

Amount of Deduction:

1/5th of the qualifying expenditure is allowable as deduction in each of the five Successive years beginning with the year in which the business commences, or as the case may be, the previous year in which extension of the undertaking is completed or the new unit commences production or operation.

Note:

Different Expenses	**Incurred before commencement of business**	**Incurred after commencement of business**
Expenditure on issue of bonus shares	Sec.35D	Sec.37(1)
Expenditure on issue of shares (not being bonus shares)	Sec.35D	Sec.35D
Expenditure on issue of debentures	Sec.35D	Sec.37(1)
Expenditure on issue of long-term/short – term loan	Sec.35D	Sec.37(1)

Fee paid to ROC for enhancement of Authorized capital	Sec.35D	Sec.35D

Amortization of Expenditure in the case of Amalgamation/Demerger [Sec. 35DD]:
The Expenditure is allowed as deduction in 5 Successive years in five equal installments to an Indian company. The first installment is deductible in the PY in which amalgamation or demerger takes place.

Expenditure incurred under voluntary retirement scheme [Sec. 35DDA]:
• Expenditure on payment to employee at the time of his voluntary retirement
• Shall be allowed as deduction in 5 equal installments for 5 years
• Starting from the year of payment
• If payment is made by the employer in more than one year, then deduction shall be allowed in five installment for payment made in each previous year

Insurance premium [Sec. 36(1) (i)]:
The amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores, used for the purposes of business or profession, is allowable as deduction.

Insurance premium paid by a federal milk co-operative society [Sec. 36 (l) (ia)]:
Insurance premium paid by a federal milk co-operative society on the lives of cattle, owned by the members of a primary milk co-operative society affiliated to it, is allowable as deduction.
Premium for insurance on health of employees [Sec. 36(1) (ib)]:
An employer can claim deduction in respect of premium paid by him by any mode other than cash for insurance on the health of his employees.

Bonus or Commission to Employees [Sec. 36(1) (ii)]:
Bonus or commission paid to an employee is allowable as deduction subject to certain conditions:
• Admissible only if amount payable to employees as bonus or commission should not otherwise have been payable to them as profit or dividend.
• Deductible subject to Sec. 43B.

Interest on Borrowed Capital [Sec. 36(1) (iii)]:
Interest on capital borrowed is allowed as deduction if the following conditions are satisfied:
1. The assessee must have borrowed money.
2. The money so borrowed must have been used for the purpose of business.
3. Interest is paid or payable on such borrowing.

Discount on Zero Coupon Bonds [Sec, 36(1) (iiia)]:
Discount on notified zero Coupon bonds (being the difference between amount received and the amount payable on redemption/maturity by the issuing company) is allowed as deduction on pro rata basis. The pro rata deduction is available under section 36(1) (iiia) having regard to the period of life of such bond. "Period of life of the bond" means the period commencing from the date of issue of the bond and ending on the date of the maturity or redemption of such bond.

Employer's contribution to notified pension scheme (NPS) [Sec. 36(1) (iva)]:
Employer's contribution towards NPS is deductible (to the extent of 10 percent of "salary" of employees) with effect from the assessment year 2012-13. Meaning of "salary" for this purpose and for the purpose of calculating house rent allowance exemption is the same.

Contribution towards approved gratuity fund [Sec. 36(1) v]:
Employer's contribution towards an approved gratuity fund created by him exclusively for the benefit of his employees under an irrevocable trust is allowable as deduction.

Employer's contribution towards Statutory Fund [Sec. 36(1)(iv)] & [Sec. 36(1)(v)]:
Employer's contribution towards as recognized provident fund, an approved superannuation fund and approved gratuity fund is allowable as deduction subject to Sec. 43B.

Employee's contribution towards staff welfare schemes [Sec. 36(1)(va)]:
Any sum received by the taxpayer as contribution from his employees towards provident fund or any welfare fund of such employees shall be allowed as deduction only if such sum is credited by the taxpayer to the employee's account in the relevant fund on or before the due date (the date by which the assessee is required as an employer to credit such contribution to the employee's account in the relevant fund). If payment of employees contribution is delayed by employer i.e. not paid before due date of such act, it is disallowed forever.

Write off of allowance for animals [Sec. 36(1)(vi)]:
In respect of animals which are used for the purposes of business or profession (not as stock-in-trade) and have died or become useless, the difference between the actual cost of the animals to the assessee and the amount realized (if any) in respect of carcasses or sale of animals, is allowable as deduction.

Bad Debts [Section 36(1)(vii)]:
A Bad debt shall be allowed as deduction if the following conditions are satisfied:
(i) The bad debt should be written off as irrecoverable in the books of account of the assessee for the previous year in which deduction is claimed.

(ii) The debt should have been taken into account in computing the income of the previous year in which deduction is claimed or any earlier previous year; or the debt represent the money lend in the ordinary course of business or business of money lending or banking carried on by the assessee.

Bad Debt recovery [Sec. 41(4)]

Where a deduction has been allowed in respect of a bad debt and the bad debt is subsequently recovered, then the amount so recovered shall be deemed to be the income under the head PGBP of the previous year in which the amount is so recovered. This shall apply even if the business or profession is not in existence in the previous year in which recovery is made.

Provision for bad and doubtful debts relating to rural branches of scheduled commercial banks [Sec. 36(1) (viia)] –

A deduction is allowed while computing the taxable profits in respect of any provision for bad and doubtful debts made by a bank and financial institutions.

The amount of deduction is given below:

	Amount deductible in respect of provision for bad and doubtful debt		
	In the case of a schedule bank [other than a foreign bank], a non-scheduled bank and a co-operative bank	In case of public financial institution, State financial corporation, State industrial investment corporation	In the case of a foreign bank
➢ Total income (computed before this deduction and amount deductible under sections 80C to 80U)	7.5 per cent of such income	5 per cent of such income	5 per cent of such income
➢ Aggregate average advances made by rural branches	10 per cent of such advances	-	-

Transfer to special reserve [Sec. 36(1) (viii)] – A financial corporation, banking company, co-operative bank and a housing finance company can claim deduction under section 36(1) (viii) to the extent of least of the following:

a. the amount transferred during the previous year to the special reserve account created for the purpose of section 36(1) (viii) ; or
b. 20 percent of the profits derived from the business of providing long-term finance before claiming deduction under section 36(1) (viii); or
c. [2 x (Paid – up share capital + general reserves on last day of previous year)] – [Balance of Special Reserve A/c on 1st day of previous year]

Amount withdrawn from reserve account – If any amount is withdrawn from the aforesaid reserve account [in respect of which deduction was allowed under section 36(1) (viii)], it will be chargeable to tax in the year in which the amount is withdrawn, under section 41(4A), regardless of the fact whether the business is in existence in that year or not.

Family Planning Expenditure [Sec. 36(1)(ix)] Any bona fide expenditure incurred by a company for the purpose of promoting family planning among its employees, is allowable as deduction. If however, such expenditure is of capital nature, one-fifth of such expenditure is allowable as deduction for the previous year in which it was incurred and the balance is deductible in equal installment in the next four years.

Note:

1. No deduction is available under section 36(1)(ix) in the case of a non-corporate assessee.
2. Any family planning capital expenditure which is not allowed as deduction due to inadequacy of profit, shall be set off and carry forward as if it is unabsorbed depreciation.

Securities Transaction Tax [Sec. 36]

STT paid on sale or purchase of security held as stock-in-trade or intra-day transaction is allowed as deduction.

General Deduction [Sec. 37(1)]

Section 37(1) is a residuary section. In order to claim deduction under this section, the following conditions should be satisfied:

1. The expenditure should not be of the nature described under section 30 to 36.
2. It should not be in the nature of capital expenditure.
3. It should not be personal expenditure of the assessee.
4. It should have been incurred in the previous year.
5. It should be in respect of business carried on by the assessee.
6. It should not have been incurred for any purpose which is an offence or is prohibited by any law. Thus penalty paid under any law is not taxable.

Advertisement Expenses [Sec. 37(2B)]
Deduction is not available in respect of expenditure incurred by an assessee on advertisement in any Souvenir, brochure, tract, pamphlet or the like published by a political party. Expenditure on Neon Sign is Capital Expenditure and depreciation is claimed on it.

Specific disallowances under the Act

Amounts not deductible under, section 40(a): In the case of any assessee, the following expenses are expressly disallowed under section 40(a):

Interest, Royalty, Fees for Technical Services Payable outside India or Payable to a Non-Resident [Sec. 40(a)(i)]

If the following three conditions are satisfied the assessee (i.e., the payer) is supposed to deduct tax at source (TDS) under section 195:

1. The amount paid is interest, royalty, fees for technical services or any other Sum (other than Salary).
2. The aforesaid amount is chargeable to tax under the Act in the hands of the recipient.
3. The aforesaid amount is paid/ payable (a) outside India to any person; or (b) in India to a non-resident.

If the above three conditions are satisfied, the assessee (the payer) is supposed to deduct tax at source and deposit the same with the Government within the time-limit specified by section 200(1).

TDS defaults – TDS defaults may be broadly grouped in the following categories:

1. Tax is deductible at source but the assessee has not deducted it, on the date it was supposed to be deducted.

2. Tax is deducted during the current year. Under section 200(1) it should be deposited during the current year but the assessee (i.e., the payer) has not deposited it during the current year.

3. Tax is deducted during the current year. The last date of deposit, as per section 200(1), tails in the next financial year. Tax is actually deposited by the assessee (i.e., the payer) in the next financial year after the due date.

Consequences if tax is deposited subsequently

If the above expenditure is not allowed in the current year, deduction will be available while computing the business income of the subsequent previous year in which such tax will be paid (i.e., in the year in which tax deducted by the assets will be paid to the Government)

Compliance of TDS Provisions in case of A Resident [Sec. 40(a) (ia)] Section 40(a) (ia) is applicable if the following conditions are satisfied

1. It covers the following expenses

	TDS provision given in the following sections
Interest	193 or 194 A
Commission or brokerage	194H
Rent	194I
Fees for technical services	194J
Fees for professional services	194J
Royalty	194J
Payment to contractors/sub-contractors	194C

2. In the above cases recipient is resident in India.

Consequences if the above conditions are satisfied – if the aforesaid conditions are satisfied, the expenditure is not deductible in the following cases –

Cases	Is it deductible in the current previous year	Is such expenditure deductible in any subsequent previous year
Case 1 – Tax is deductible but not deducted before the end of PY.	No deduction in the current previous year	If tax is deducted in any subsequent year, the expenditure will be deducted in the year in which TDS will be deposited by the assessee with the Government.
Case 2 – Tax is deductible (and is so deducted) before the end of PY but it is not deposited on or before the due date of submission of return of income under section 139(1)	No deduction in the current previous year	If tax is deposited with the government after the due date of submission of return of income, the expenditure will be deductible in that year in which tax will be deposited.

Amendment w.e.f AY 2013-14

Disallowance will not be made if the payer has not deducted TDS at source in case the resident recipient has included such income in return submitted u/s 139 and recipient has paid tax on such income. The payer will have to submit a certificate from a CA as evidence. In such case, it will be deemed that the payer has deducted and paid TDS on the date of furnishing of return of income by the resident recipient.

The above relief is available only if the deductor has failed to deduct TDS wholly or partly. The relief is not available in case the deductor after deduction fails to deposit the same

Salary Payable outside India without Tax Deduction [Sec. 40(a)(iii)]

Section 40(a)(iii) is applicable if the following conditions are satisfied –

1. The payment is chargeable under the head "Salaries" in the hands of the recipient.
2. It is payable-

(a) Outside India (to any person resident or non-resident); or

(b) In India to a non-resident.

3. Tax has not been paid to the Government nor deducted at source before the due date of filing of return of income.

If the aforesaid conditions are satisfied, then the payment is not allowed as deduction.

Income-Tax [Sec. 40(a)(ii)]:

Any sum paid on account of income-tax is not deductible. Similarly, any interest/penalty/fine for non-payment or late payment of income-tax is not deductible. This rule is applicable whether income-tax is payable in India or outside India. Legal charges paid for filing of income tax return & income tax proceedings is allowed as deduction.

Maximum Permissible Remuneration to Partner in Firm [Sec. 40(b)]

To allow remuneration the following specific conditions, as prescribed by section 40(b), should be satisfied:

1. Remuneration should be paid only to a working partner.
2. Remuneration must be authorized by the partnership deed.
3. Remuneration should not pertain to period prior to partnership deed.
4. Remuneration should not exceed the permissible limit.

If the above conditions are satisfied remuneration to partners is allowable as deduction in the hands of the firm. However, the maximum amount of such payment to all the partners during the previous year should not exceed the limits given below-

Book profit	**Maximum amount deductible in respect of remuneration to partners under section 40(b)**
If book profit is negative	`₹ 1,50,000
In case book profit is positive	` ₹1,50,000 or 90% of book profit, whichever is more 60% of book profit

Computation of Book Profit for Remuneration u/s 40(b)

	`
NP as per P/L A/c (before Income Tax)	xx
Less: Income under all other head (except PGBP)	xx
Add: Remuneration to partner appearing in P/L	xx
Add: Excessive interest to partner on capital	xx
Less: B/F Depreciation (not b/f loss)	xx
Book profit	xx

Maximum Permissible Interest on Capital to Partner in Firm [Section 40(b)]
The following specific conditions should be fulfilled to obtain deduction of interest paid to the partners –

1. Payment of interest should be authorized by the partnership deed.
2. Payment of interest should pertain to the period after the partnership deed.
3. Rate of interest should not exceed 12 %.

Amounts not deductible in respect of excessive payment to relative (Sec. 40A (2)]
Where the assessee incurs any expenditure in respect of which payment has been or is to be made to certain specified persons, the Assessing Officer may disallow so much of the expenditure as he considers being excessive or unreasonable having regard to the fair market value of goods, services or facilities for which payment is made.

Specified Person Referred to in section 40A(2)

Tax Payer (who has incurred Expenditure)	Specified Person (to whom payment is made)
Individual	Relative (Spouse, Brother, Sister or any lineal ascendant or descendant)
HUF	Member of family or relative of such member
Company	Director, any relative of Director or person having substantial interest
Firm	Partner, any relative of partner
AOP	Member of AOP or relative of such member

Note: A Person shall be deemed to have substantial interest in a business or profession if:

(a) In a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares carrying not less than 20% of the voting power.

(b) In any other case, such person is, at any time during the previous year, beneficially entitled to not less than 20% of the profits of such business or profession.

Amendments w.e.f. AY 2013-14

At present, relatives include if payment is made by a taxpayer to a company which has substantial interest in the business of the assessee, any director of such company or a relative of such director. From AY 13-14, it will also include any other company carrying on business / profession in which first mentioned company has a substantial interest.

Disallowance under above section will not be made in respect of a specified domestic transaction referred in section 92BA if such transaction is at arm's length price (as defined u/s 92F(ii)).

Amounts not deductible in respect of expenditure exceeding `₹ 20,000 [Sec.40A(3)]

1. The assessee incurs any expenditure which is otherwise deductible under the other provisions of the Act for computing business/profession income. The amount of expenditure exceeds `₹ 20, 000.

2. A payment (or aggregate of payment made to a person in a day) in respect of the above expenditure exceeds `₹ 20, 000

3. The payment is made otherwise than by an account payee cheque or an account payee demand draft (it is made in cash or by a bearer cheque or by a crossed cheque or by a

crossed demand draft) Sec. 40A (3) applies to expenses which are otherwise deductible under head PGBP, hence not applicable for donation.

If all the above conditions are satisfied, then 100% of such payment will be disallowed, The monetary limit of ` ₹20, 000 raised to `₹ 35, 000 in case of payment made for plying, hiring or leasing goods carriage.

The payment so made shall be deemed to be PGBP chargeable to Income Tax as income of the subsequent year (i.e year of payment).

Exceptions - Rule 6DD. No disallowance u/s 40A(3) shall be made where any payment in a sum exceeding ₹20,000 is made otherwise than by an account payee cheque drawn on a bank or an account payee bank draft in the cases and circumstances specified hereunder, namely:

(a) Where the payment is made to Bank, LIC, IFCI, UTI & Financial Institutions.
(b) Where the payment is made to Government (i.e. taxes etc)
(c) Where the payment is made by-
  (i) Any letter of credit arrangements through a bank;
  (ii) A mail or telegraphic transfer through a bank;
  (iii) A book adjustment from any account in a bank to any other account in that or any other bank;
(d) Where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services, rendered by the assessee to such payee;
(e) Where the payment is made for purchase of
  (i) Agricultural or forest produce; or
  (ii) Produce of animal husbandry (including hides and skins) or dairy or poultry farming; or
  (iii) Fish or fish products; or
  (iv) The products of horticulture or apiculture,
To the cultivator, grower or producer of such articles, produce or products;

(f) Where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;

(g) Where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;

(h) Where any payment by way of gratuity, retrenchment compensation or similar terminal benefits, is made to an employee of the assessee or the heirs of any such employee on or in connection with the retrenchment, resignation, discharge or death of such employee, if the payment does not exceed `₹ 50,000;

(i) Where the payment is made by an assessee by way of salary to his employee after deducting the income tax from salary in accordance with the provisions of section 192 of the Income -Tax Act and when such employee :
(a) Is temporarily posted for a continuous period of 15 days or more in a place other than his normal place of duty or on a ship and
(b) Does not maintain any bank account in any bank at such place or ship.

(j) Where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike. Note: It has to be proved that the payment was required to be made on the day on which bank was closed and the payment could not have been made on a working day.

(k) Where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person.

(I) where payment is made by an authorized dealer or money changer against purchase of foreign currency or travelers cheques in the normal course of his business.

Amount not deductible in respect of provision for unapproved gratuity fund [Sec.40A (7)] –
Provision for gratuity fund (for meeting future liability) is deductible only if such gratuity fund is an approved gratuity fund. In other words, any provision for unapproved gratuity fund (for meeting future liability) is not deductible.

The following points should be noted –

1. An employee retires during the current year. Gratuity is paid to him during the current year. It is deductible during the current year if no deduction was claimed earlier.

2. An employee retires during the current year. Gratuity is payable to him. A part of the amount is paid during the current year and the balance will be paid in the next year. A provision is made towards gratuity in the books of account of the current year for making payment in the next year. The entire amount is deductible during the current year (if no deduction was claimed earlier). In this case, deduction is available during the current year even if provision is made for gratuity fund, which is unapproved.

3. A company has 50 employees. To meet future liability to pay them gratuity at the time of retirement, a gratuity fund is created and the employer makes contribution every year. Employers contribution to this fund is deductible only if the gratuity fund is an approved gratuity fund.

Amount not deductible in respect of contributions to non-statutory funds [Sec.40A (9), (10), (11)] – Provisions of section 40A(9) are given below –

WHAT IS DEDUCTIBLE - Any sum paid by the assessee as an employer by way of contribution or towards recognized provident fund, or approved superannuation fund or an approved gratuity fund is deductible to the extent it is required by any law.

WHAT IS NOT DEDUCTIBLE - If the following conditions are satisfied, then contribution payment is not deductible by section 40A(9) –

1. The contribution/payment is made by an assessee as an employer.
2. It is paid towards setting up (or formation of) any trust, company, association of persons, body of individuals, society or it is paid by way of contribution to any fund.
3. The contribution or payment is not required by any law.

Other points - The following points should be noted -

1. Contribution by an assessee (not being in capacity of an "employer") cannot be disallowed under section 40A(9).

2. All expenses incurred for the benefit of employees by an employer cannot be treated as contribution by the employer towards the various funds enumerated in section 40A. The expression used in section 40A(9) is not 'the expenses incurred by the employer for welfare activities of its employees in any form' but is confined to the amount paid for setting up or formation, or as contribution to any fund, trust, company, AOP, BOI, for any purpose. What is, therefore, disallowed under section 40A(9) is employer's contribution/payment towards a fund (for the benefit of employees) which is otherwise not required by any law (which is paid or contributed by an employer under contractual obligation or otherwise but not under legal requirement).

Expenses Deductible on Payment Basis [Sec. 43B]
The following expenses are deductible only if paid before due date of filing of return of income:

a. Any sum payable by way of tax, or duty, to Government;
b. Any sum payable by an employer by way of contribution to provident fund or superannuation fund or any other fund for the welfare of employees;
c. Any sum payable as bonus or commission to employees for service rendered;
d. Interest on any loan or advance taken from a scheduled bank including a co-operative bank or public financial institution;
e. Leave Encashment.

However if the above expenditure is paid after due date of submission of return of income, it shall be allowed in the year in which payment is made.

Provided further that no deduction shall be made, where such payment has been made otherwise than in cash, the sum has not been realized within 15 days from the due date of filing of return of income.

Full value of Consideration in respect of transfer of Immovable property held as Business Asset (Sec 43CA):

In case of transfer of immovable property other than capital asset, if the consideration is less than the value adopted, assessed or assessable for the purpose of payment of stamp duty, such stamp duty value will be taken as the full value consideration for the purpose of computing business income.

If there is a time gap between the date of agreement and the date of registration, the value for the purpose of the computation, the value assessable for stamp duty on the date of the agreement shall be considered provided some part of the consideration has been paid on or before the date of agreement in mode otherwise than in cash.

(**Inserted by Finance Act, 2013)**

Maintenance of accounts by person carrying on profession or business (Sec 44AA) Rule 6F:

Business Assessee (other than notified profession): Income from Business or Profession exceeds Rs. 1, 20,000 or Total Sales/gross receipts exceeds Rs. 10, 00,000/-
In any of 3 preceding PY or likely to exceeds in case of newly set up business or profession.

→ Assessee is required to maintain books and document for computation of income.

If above conditions are not met, not required to maintain books.

Specified Profession:
Legal, medical, engineering, accountancy, film artists, CA, CS, information technology or other notified profession.

Gross receipts exceeds ₹. 1,50,000/- in all three years immediately preceding the PY or likely to exceed in case of newly set up.

Assessee is required to maintain prescribed books.

Prescribed Books [Rule 6F] :

(i) Cash books	(ii) Journal (if accrual method adopted.)
(iii) ledger	(iv) Carbon copies of bills exceeding `₹ 25.

In case of medical profession additional book (i) Daily case register (ii) Stock register.

These books are required to be kept and maintained for 6 years from end of relevant A/Y.

Penalty: Failure to keep or maintain books of accounts, documents ₹. 25,000/-

Audit of Account is Compulsory [Sec. 44AB]:

The following persons are required to get their accounts compulsorily audited by a chartered accountant-

Different tax payers	When they are covered by the provision of compulsory audit under section 44AB
A person carrying business	If the total sales, turnover or gross receipt in business for the relevant year exceeds ` ₹100 lakhs
A person carrying on profession	If his gross receipts in profession for the relevant year exceeds `₹ 25 lakh. (Out of pocket Expense & Advance Receipt not included.)
A person covered under section 44AD, 44AE	If such person claims that the profits and gains from the business are lower than the profits and gains computed under these sections (irrespective of his turnover).

Due date for getting books audited and form no. of Audit Report

Different taxpayers	Audit From No.	Due date
In the case of a person who carries on business or profession and who is required by or under any law to get his accounts audited	3CA&3CD	30th September
In the case of a person who carries on business or profession but not being a person referred to above	3CB&3CD	30th September

Penalty: Failure to get accounts audited or to furnish audit report ₹. 1, 50,000/-.

Presumptive Taxation

Computation of income on estimated basis in the case of taxpayers engaged in any business except the business of plying, hiring or leasing goods carriage [Sec. 44AD]:

Conditions - The provisions of section 44AD will be applicable only if the following conditions are satisfied -

1. The assessee should be individual, HUF, a partnership firm (not being a limited liability firm) and who has not claimed deduction under Sec 10A,10AA, 10B, or 80HH to 80RRB.

2. The assessee should be engaged in any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE.

3. Total turnover/gross receipt in the previous year should not exceed ` ₹100 lakh.

Consequences if the Above Conditions are Satisfied - If the above conditions are satisfied, the income from the eligible business is estimated at 8% of the gross receipt or total turnover. The following points should be noted-

1. The assessee can voluntarily declare a higher income in his return.

2. All deductions under sections 30 to 38, including depreciation and unabsorbed depreciation, are deemed to have been already allowed and no further deduction is allowed under these sections. However, in the case of a firm, the normal deduction in respect of salary and interest to partners under section 40(b) shall be allowed.

3. The written down value is calculated, where necessary, as if depreciation as applicable has been allowed.

4. It will be assumed that disallowance, if any, under sections 40, 40A and 43B has been considered while calculating the estimated income @ 8%

5. An assessee opting for the above scheme shall be exempted from payment of advance tax related to such business.

6. An assessee opting for the above scheme shall be exempted from maintenance of books of account related to such business as required under section 44AA.

Declare Lower Income- A taxpayer can declare his income to be lower than the deemed profits and gains as stated above. The following consequences are applicable if the taxpayer declares his income which is lower than the deemed profits and gains as stated above-

1. The taxpayer will have to maintain the books of account as per section 44AA (irrespective of income or turnover) if his total income exceeds the exemption limit.

2. The taxpayer will have to get his books of account audited under section 44AB (irrespective of turnover) if his total income exceeds the exemption limit.

Computation of income on estimated basis in the case of taxpayers engaged in the business of plying, leasing or hiring goods carriage [Sec. 44AE]:

Section 44AE is applicable only if the following conditions are satisfied –
1. The taxpayer may be any assessee.
2. Taxpayer is engaged in the business of plying, hiring or leasing goods carriages.
3. The taxpayer owns not more than 10 goods carriage, whether taken on hire purchase or on installments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner or such goods carriage.

Consequence if section 44AE is Applicable – If the aforesaid conditions are satisfied then section 44AE is applicable. Income from the aforesaid business shall be calculated as follows:

Types of goods carriage	Estimated income
Heavy goods vehicle (Vehicle weight > 12000 kg.)	`₹ 5, 000 for every month (or part of a month) during which the goods carriage is owned by the taxpayer.
Other than heavy goods vehicle (Vehicle Weight ≤ 12000 kg.)	`₹ 4, 500 for every month (or part of a month) during which the goods carriage is owned by the taxpayer.

Recovery against any deduction [Sec. 41(1)]:
Section 41(1) is applicable if the following conditions are satisfied

Condition 1	In any of the earlier years a deduction was allowed to the taxpayer in respect of loss, expenditure (revenue or capital expenditure) or trading liability incurred the assessee.
Condition 2	During the current previous year, the taxpayer- a. has obtained a refund of such trading liability (it may be in cash or any other manner); or b. has obtained some benefit in respect of such trading liability by way of remission or cessation thereof ("remission or cessation" for this purpose includes unilateral act of the assessee by way of writing-off of such liability in his books of account).

CONSEQUENCES WHEN THE ABOVE CONDITION ARE SATISFIED:
If the above two conditions are satisfied, the amount obtained by such person (or the value of benefit accruing to the taxpayer) shall be deemed to be profits and gains of business or profession and, accordingly, chargeable to tax as the income of that previous year.

OTHER POINTS - The following points should be noted –

- For the purpose of condition 2(a)(supra) , there may (or may not) be any remission or cessation of trading liability.
- Where the assessee to whom any allowance or deduction has been allowed in respect of loss, expenditure or trading liability, is succeeded in his business either because of amalgamation or demerger of two companies or on account of the constitution of new firm or the business is continued by some other person when the assessee ceases to carry on the business, then the person succeeding will be chargeable to tax on any amount received in relation to which deduction or allowance has been made.
- The aforesaid rule is applicable even if the business is not in existence in the year of recovery.
- If a loan is taken by the assessee and later on it is waived by the lender, the amount so waived is not taxable under the aforesaid provisions. It is because of the fact that loan was not allowed as deduction when loan was taken.

Recovery after discontinuance of business or profession [Sec.176(3A), (4)]:

- Where any business or profession is discontinued by reason of the retirement or death of the person carrying on such business or profession, any sum received after the discontinuance of the business or profession is deemed to be the income of the recipient and charged to tax in the year of receipt.

Adjustment of loss [Sec. 41(5)] - Generally, loss of a business cannot be carried forward after 8 years. An exception is, however, provided by section 4 1(5). This exception is applicable if the following conditions are satisfied:

Condition 1	The business or profession is discontinued
Condition 2	Loss of such business or profession pertaining to the year in which it is discontinued could not be set-off against any other income of that year.
Condition 3	Such business is not a speculation business
Condition 4	After discontinuation of such business or profession, there is a receipt which is deemed as business income under section 41(1), (3), (4) or (4A).

- The unabsorbed loss pertaining to the year in which business/profession was discontinued is permitted to be set off against notional business income under section 41(1), (3), (4) or (4A) even after 8 years. It can be set off even if the return of loss is not submitted in time.

Section	Eligible Assessee	Presumptive Income	Option of Claiming lower Income
44B	Business of shipping	**7.5%** of amount {(paid in India or Outside India/received) for carriage of passengers, livestock, mail, goods shipped at any port in India **and amount received or deemed to be received on account of passengers, livestock, mail, goods shipped at any port in India.}. Demurrage and handling charges are included.**	NA
44BB	Exploration of Mineral Oils	**10%** of amount paid or payable in India or Outside India on account of provision of services, facilities, supplying of plant and machinery.	Available, if he maintains books, documents as mentioned in 44AAand gets books of accounts audited irrespective of turnover.
44BBA	Operation of Aircraft	**10% of** {(paid in India or Outside India/received) for carriage of passengers, livestock, mail, goods from any part of India **and amount received or deemed to be received on account of passengers, livestock, mail, goods from any place in India.}.**	NA
44BBB	Business of Civil Construction in case of Turnkey Power Projects	**10% of** amount paid or payable (in India or Outside India) on account of civil construction, erection, testing or commissioning.	Available, if he maintains books, documents as mentioned in 44AAand gets books of accounts audited irrespective of turnover.

Chapter 7
Capital Gains

Basis of charge sec. 45(1):
Profit or gain arising from the transfer of capital asset during PY is chargeable under the head a capital gain is following conditions are satisfied:

Condition 1	There should be a capital asset
Condition 2	There is transfer of capital asset
Condition 3	Transfer takes place during the PY
Condition 4	Any profit or gain arises as a result of transfer
Condition 5	Such profit or gain is not exempt from tax under sec. 54, 54B, 54D, 54EC, 54F, 54G 54GA and 54GB

Types of capital gains :

Short Term Capital Gain/Loss		**Long Term Capital Gain/Loss**	
Transfer of STCA sec.2(42A)		Transfer of STCA sec.2(29A)	
A list	B list	A list	B list
1. Shares 2. Listed securities 3. unit of UTI/unit of mutual funds specified under sec. 10(23D) 4. zero coupon bond ↓ Hold up to 12 months	(capital Assets other than A list) 1. urban agricultural land 2. unlisted securities 3. Jewellery, drawing, painting, any art work, archaeological collection, sculptures ↓ Hold up to 36 months	↓ Held for more than 12 months	↓ Held exceeding 36 months

Determination of holding period: The total period for which asset was held by assessee together with the period of ownership by previous holder under sec. 49(1) is called period of holding.
[Note: while calculating it date of acquisition is included and date of transfer is excluded.]

Capital Asset [Sec. 2(14)]:

Capital asset means property of any kind held by the assessee, whether or not connected with his business or profession, but does not include:

1. Any stock in trade, consumable stores or raw materials held for the purposes of his business or profession.

2. Personal effects, that is to say, movable property (including wearing apparel and furniture), held for personal use by the assessee or any member of his family dependent on him.
However, the following assets shall not treat as personal effects though these assets are moveable and may be held for personal use:
(a) Jewellery;
(b) Archaeological collections;
(c) Drawings;
(d) Paintings;
(e) Sculptures; or
(f) Any work of art.

Assets will include any right in or in relation to an Indian Company including rights of management or control or any other rights whatsoever.

Note:
(i) The house property, in which the assessee lives, is used by him for personal purposes, but it will not be a personal effect as it is an immovable property.
(ii) Jewellery includes-
(a) Ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel.

(b) Precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

3. Rural Agricultural land in India. In other words, it must not be an urban agricultural land.

4. Gold Deposit Bonds issued under the Gold Deposit Scheme 1999.

Note:

Rural agricultural land means an agricultural land in India provided it is not situated in—

(a) Any area which is comprised within the jurisdiction of a municipality having population of 10,000 or more

(b) Any area within the distance measured aerially:

Population	Limit
More than 10,000 but not exceeding 1,00,000	2 km from local limits of Municipality or Cantonment Board
More than 1,00,000 but not exceeding 10,00,000	6 km from local limits of Municipality or Cantonment Board
More than 10,00,000	8 km from local limits of Municipality or Cantonment Board

(Inserted by Finance Act, 2013)

Capital asset must have been transferred:

Transfer, in relation to capital assets, includes:

(i) Sale; or

(ii) Exchange; or

(iii) Relinquishment of the asset; or

(iv) The extinguishment of any rights therein; or

(v) The compulsory acquisition thereof under any law; or

(vi) In a case where the asset is converted by the owner thereof into, or is treated by him, as stock-in- trade of a business carried on by him, such conversion or treatment; or

(vii) The maturity or redemption of zero coupon bonds; or

(viii) Possession of any immovable property to be taken or retained in part performance of a contract; or

(ix) Any transaction (whether by way of becoming a member of, or acquiring shares in a co-operative society, company) which has the effect of transferring, or enabling the enjoyment of any immovable property; or

(x) Insurance Claim due to damage or destruction of property.

Transactions not regarded as transfer (Sec 47):

1. Any distribution of capital assets on the total or partial partition of HUF. (Sec47 (i))

2. Any transfer of capital assets under a gift or will or an irrevocable trust. (Sec 47(iii))

Exception -The aforesaid rule is not applicable, if the following conditions are satisfied
(a) Taxpayer is an employee;
(b) He has been allotted (directly or indirectly) shares/debentures/warrants by the employer company under Employees' Stock Option Plan; and
(c) The aforesaid shares/ Debentures/warrants are gifted by the concerned-employee to any person.

3. Any transfer of a capital asset by a company to its 100% subsidiary company provided the subsidiary company is an Indian company. (Sec 47(iv))

4. Any transfer of a capital asset by a 100% subsidiary company to its holding company, if the holding company is an Indian company.(Sec 47(v))

5. Any transfer in a scheme of amalgamation of a capital asset by the amalgamating company to the amalgamated company, if the amalgamated company is an Indian company.(Sec 47(vi))

6. Any transfer in a scheme of amalgamation of shares held in an Indian company by the amalgamating foreign company to the amalgamated foreign company if-

(a) At least 25% of the shareholders of the amalgamating foreign company continue to remain shareholder of the amalgamated foreign company, and

(b) Such at transfer does not attract capital gains tax in the country, in which the amalgamating company is incorporated. (Sec 47(via))

7. Any transfer, in a scheme of amalgamation of a banking company with a banking institution (sanctioned and brought into force by the Central Government) of a capital asset by the banking company to the banking institution. (Sec 47(viaa))

8. Any transfer, in a demerger, of capital assets by the demerged company to the resulting company, if the resulting company is an Indian company. (Sec 47(vib))

9. Any transfer in a demerger of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if-

(a) The shareholders holding not less then 75% in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and

(b) Such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated. (Sec 47(vic))

10. Any transfer of Global Depository Receipts purchased in foreign currency, made outside India by a non-resident to another non-resident. (Sec 47(viia))

11. Any transfer of a capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a university or the National Museum, National Art Gallery, National Archives or any such other public museum or institution, as may be notified by the Central Government in the Official Gazette to be of national importance.

12. Any transfer by way of conversion of bonds or debentures, into shares of that company, the When any debentures or part thereof of a company are converted into shares of that company, the transaction is not considered as a transfer and hence no capital gain is chargeable. However, when these shares are, thereafter, actually transferred, capital gain shall arise and be chargeable in the previous year in which the shares are transferred. The cost of acquisition of the shares shall be that part of the cost of debenture in relation to which shares were acquired by the assessee.

13. Allotment of shares in the resulting company to the shareholder’s of demerged company.

14. Allotment of shares in amalgamated company in lieu of shares held in amalgamating company. If the amalgamated company is a holding company then this restriction is not applicable to the extent of the shares held by it in the subsidiary. However, shares are to be issued to the remaining shareholders of the amalgamating company.

15. Conversion of bonds referred to in section 115AC (1)(a) in to shares or debentures of any company.

16. Transfer of land of Sick Industrial Company (being managed by worker's Co-operative) made under scheme prepared under section 18 of Sick Industrial Companies Act, 1985, if such transfer is made during the period starting from the year in which such company become sick and ending with the previous year during which its entire net worth becomes equal to or exceeds accumulated losses.

17. Transfer of a membership right held by a member of recognized stock exchange in India for acquisition of shares and trading or clearing rights acquired by such member in that stock exchange in accordance with demutualization or corporatisation scheme approved by the SEBI.

18. Any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm provided the following conditions are satisfied:
(a) All the assets and liabilities of the firm, 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;

(d) The aggregate of the shareholding in the company of the partners of the firm is not less than 50% of the total voting power in the company and their shareholding continues to be as such for a period of 5 years from the date of the succession.

19. Where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern transfers any capital asset or intangible asset to the company provided the following conditions are satisfied:

(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 50% of the total voting power in the company and his shareholding continues to remain as such for a period of 5 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.

20. Any transfer under the Security Lending Scheme, 1997 for lending of any securities under an agreement or arrangement, which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by the SEBI or RBI, in this regard.

21. Any transfer of a capital asset in a transaction under reverse mortgage scheme shall not be regarded as transfer and therefore shall not attract capital gain tax.

22. Any transfer, in amalgamation or demerger, of a capital asset by the predecessor co-operative bank to the successor co-operative bank;

23. Any transfer by shareholder, in an amalgamation or demerger of share(s) held by him in predecessor co-operative bank if the transfer is made in accordance of the allotment to him of any share(s) in the successor co-operative bank.

24**.** Conversion of small private companies and unlisted public companies into LLPs to be exempt from capital gains tax subject to fulfillment of certain conditions:

- Any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP; or

- Any transfer of a share or shares held in a company by a shareholder on conversion of a company into a LLP shall not be regarded as a transfer for the purposes of levy of capital gains tax under section 45, subject to fulfillment of certain conditions. This clause has been introduced to facilitate conversion of small private and unlisted public companies into LLPs. These conditions are as follows:

- The total sales, turnover or gross receipts in business of the company should not exceed 60 lakh in any of the three preceding previous years;

- The shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;

- No consideration other than share in profit and capital contribution in the LLP arises to the shareholders;
- The erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion;

- All assets and liabilities of the company become the assets and liabilities of the LLP; and
- No amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

WITHDRAWAL OF EXEMPTION GRANTED U/S 47 [SECTION 47A]:

Transfer of Capital Asset by a holding company to its 100% subsidiary company or vice versa, provided the transferee company is Indian Company:

Where at any time *with in 8 years from the date of the transfer of capital asset-*

(i) such capital asset is converted by the transferee company into stock in trade of its business or

(ii) The subsidiary company ceases to be 100% subsidiary company of the parent or holding company.

Then the capital gains not charged to tax by virtue of such exemption shall be charged to tax in the previous year in which such transfer took place.

The cost of such asset to Transferee Company shall be the cost for which the asset was acquired by it.

Transfer of Capital asset or intangible asset by the predecessor firm to the company or Transfer of capital asset or intangible asset by the proprietary concern to the company:

Where the conditions mentioned laid down for exemption in the above cases are not complied with, then, the ***capital gain not charged to tax by virtue of the said exemption,***

shall be charged to tax in the hand of the successor company in the previous year in which such requirements are not complied with.

(c) **Transfer of capital asset or intangible asset by the private limited company or unlisted company to a LLP:**

Where any of the conditions laid down are not complied with, capital gains arising from the transfer of such capital asset or intangible asset or share or shares not charged under section 45 by virtue of the said exemption shall be charged to tax in the hands of –

(i)The successor LLP or

(ii) The share holders of the predecessor company, as the case may be, in the previous year in which requirements are not complied with.

Period of Holding:

Transaction/Situation	Inclusion/Exclusion [What to include & what not to]
Asset transfer by the Assessee which was acquired by him by way of gift, will or inherent	The period of holding previous holder shall also include for determining whether assets is short Term (ST) Long Term (LT)
Transfer of shares/security of amalgamated company which was earlier held in amalgamating company	The period of holding of shares amalgamating company should be also including for determining whither assets is ST or LT
Transfer of ownership on in security which was acquired base on holding of original shares/security.	The period of holding shall be considered form the date of allotment security & not from the date of security allotment of original shares/security.
Considerations received from company on the liquidation base of share holding in the company	The capital gain is taxable in the year in which consideration is received but period of holding is considered only up to the date of liquidation.

Transfer of right renounces in favour of assessee base on existing shares holding.	The period of holding shall be considered from the date right renounces in favour of assessee from the date on which share & security base on which right allotted. (date on which right is given for purchase of shares)
Transfer of right which was acquiring right from the existing shares holder	The period of holding shall be considered from the date when the shares were allotted to assessee irrespective of date of purchase of right (date on which shares are purchase)
Transfer of share which was acquiring in IPO.	The period of holding shall be considered from date of allotment of share not from date of application.

In case of DEMAT account if assessee has purchase the shares of same script on different date FIFO method is follows determining which lot transfer.

Income under the head Capital Gains

Particulars	Amt. (`)	Amt.(`)
Sale consideration		……
Less: Cost of acquisition (COA)	……	
Cost of improvement (COI)	……	
Transfer Expenses	……	(……)
		……
Less: Exemption under sec. 54B, 54D, 54G & 54GA		(……)
SHORT-TERM CAPITAL GAIN		……

Particulars	Amt. (`)	Amt.(`)
Sale consideration		……
Less: Indexed Cost of acquisition (ICOA) ……		
Indexed Cost of improvement (ICOI)	……	(……)
Transfer Expenses	……	……
		(……)
Less: Exemption under sec. 54,54B, 54D, 54EC, 54F 54G & 54GA/54GB		
LONG-TERM CAPITAL GAIN		……

ICOA	→ Indexation benefit is available in case of LTCG only. $= \text{COA} \times \dfrac{\text{cost of the year in which asset is transferred}}{\text{CII of the first year in which asset was first held by assessee}}$ OR CII of the year beginning on 1/4/1981 which is later

ICOI	$\text{COA} \times \dfrac{\text{CII of the year in which asset is transferred}}{\text{CII of the year in which improvement took place}}$ =

<u>Cost of Acquisition being the Fair Market Value as on April 1, 1981:</u>

<u>In these following cases, the assessee may take at his option, either actual cost or the fair market value of the asset, as on April 1, 1981 as cost of acquisition:</u>

1. Where the capital asset became the property of the assessee before April 1, 1981

2. Where the capital asset became the property of the assessee by any mode referred to in section 49(1) and the capital asset became the property of the previous owner before April 1, 1981.

3. The option is not available in the case of depreciable assets.

4. When option is available, the cost of the asset or fair market value as on April 1, 1981, whichever is higher, is taken as the cost of acquisition.

5. The option is not available in respect of transfer of a capital asset being
    - goodwill of a business;
    - right to manufacture, produce or process any article or thing; right to carry on business;
    - trade mark/ brand name associated with a business;
    - tenancy right;
    - route permits; or
    - loom hours

Whether self generated or otherwise.

Certain cases where indexation is not allowed:

- → Transfer of bonds other than capital index bonds
- → Transfer of shares or debentures of an Indian company acquired by non-resident in foreign currency
- → Slump sale
- → Transfer of UTI funds purchased in foreign currency by non-resident
- → Transfer of GDR's purchased in foreign currency by non-residents or bonds of Indian company or public company
- → Transfer of GDR's purchased in foreign currency by resident or employee of Indian company
- → Transfer of securities of foreign institutional investors
- → Transfer of foreign exchange asset by Non-resident Indian

Cost of Acquisition and Improvement in some special cases:

Mode	Cost of acquisition or improvement
1. Shares held in a company in liquidation	Actual cost of acquisition of such shares.
2. Assets acquired under any of the modes specified in section 49(1)	Cost = Cost to previous owner + Cost of improvement) incurred by previous owner or assessee
3. Share(s) in Indian amalgamated company or amalgamated co-operative bank, which becomes the property of assessee in a scheme of amalgamation.	Cost of acquisition of shares in amalgamated company = Cost of acquisition of the shares in the amalgamating company. [Sec. 49(2)]
4. Conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company (i.e. exempt transfers referred u/s 47(x) & 47(xa))	Cost of acquisition of new shares or debentures Total cost of bonds, debenture, debenture-stock or deposit certificates x Part of such bonds, debenture, debenture-stock or deposit certificates so converted [Sec. 49(2A)]
5. Specified security/stock options or sweat equity shares alloted to an employee (as referred to in section 17(2)(vi))	Cost of acquisition of such security or shares = Fair market value which has been taken into account while computing the value of perquisite. [Sec. 49(2AA)]
6. Capital asset being rights of a partner referred to in section 42 of the Limited Liability Partnership Act, 2008 became the	Cost of acquisition of the capital asset being rights of a partner = Cost of acquisition of the share or shares in the

property of the assessee on conversion as referred to in section 47(xiiib)	company immediately before its conversion. [Sec. 49 (2AAA)]
7. Bonus shares or other securities.	If allotted before 1-4-1981, Cost = Fair market value as 1-4-1981, otherwise cost = NIL
8. Right shares or other securities	If purchased by original shareholder: cost = Purchase price. If purchased by person in whose favour right was renounced: cost = Purchase price paid to company + Amount paid for renouncement in his favour.
9. Rights entitlements renounced	Cost = NIL
10. Shares of resulting company or resulting co-operative bank acquired in the case of demerger.	Cost of shares in resulting Co. = Cost of shares in demerged co. x Net Book Value of assets transferred to resulting co. ÷ Net worth of the co. before demerger. Cost of shares in demerged co. = Total cost of shares — Cost of shares in resulting company computed above.
11. Equity Shares & trading/clearing rights in recognized stock exchange acquired on demutualization/corporatisation thereof	Cost of equity shares Cost of acquisition of membership card of stock exchange Cost of trading or clearing rights = NIL
12. Share/stock of company acquired on — (a) Consolidation & division of share capital into shares of larger or smaller amount, (b)conversion of share into stock or vice-versa, (c) conversion of one kind of shares in other	Cost of Acquisition of such share or stock Cost calculated with reference to the cost of acquisition of the shares or stock from which such share or stock is derived.
13. Where capital gain arises from transfer of a property, the value of which has been subject to tax u/s 6(2)(vii)/(viia) (i.e. taxable gifts of movable/immovable property)	Cost of acquisition of such property Value which has been taken into account for the purposes of computing taxable gifts u/s such section 56(2)(vii)/(viia) [S. 49(4)]

<u>Cost of Improvement in any other case:</u> Cost of improvement means all capital expenditure incurred in making any additions or alterations to capital asset by the assessee after it became his property, and, where capital asset became property of the assessee by any of modes specified u/s 49(1), by the previous owner.

<u>Exclusions from Cost of Improvement</u>: Cost of improvement does not include any expenditure, which is deductible in computing the income chargeable under the head "Income from house property", "Profits and gains of business or profession", or "Income from other sources".

Notes:

(A) Modes specified in section 49(1) : Where the capital asset became the property of the assessee

(a) On any distribution of assets on the total or partial partition of a Hindu undivided family;

(b) Under a gift or will; or by succession, inheritance or devolution, or

(c) On any distribution of assets on the liquidation of a company, or

(d) Under a transfer to a revocable or an irrevocable trust, or

(e) Under any transfer referred to in clause (iv)/(v)/(vi)/(via)/(viaa)/(vica)/(vicb)/(xiiib) of section 47

(f) In case of HUF-assessee, by conversion of member's individual property into HUF property.

(g) Transfer of capital assets transferred by a sole proprietor or partnership firm to a company on succession. (Effective from 01.04.1999)

(B) Previous owner: 'Previous owner' means the last previous owner of the asset who acquired it by a mode of acquisition other than that referred to under Section 49(1).

(C) When cost to previous owner not ascertainable (S.55(3)]: Where the cost for which previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

Note:

No charge, if computation not possible: If, on the facts of a particular case, computation u/s 48 is not possible, then capital gains shall not be charged to tax. Thus, if no cost can be envisaged in acquisition of an asset, capital gains cannot be charged.

Treatment of Advanced Money Received (forfeited) sec. 51:

If assessee has received any advance money for sale of asset but later on such sale could not completed and as a result some advance money was forfeited by assessee such advance money would be treated as follows:

- → It would be deducted from cost of asset
- → If such amount is received by previous owner, it would not be deducted
- → Such amount would be deducted before indexation
- → If advance money is more than COA, such advance money received would be a capital receipt and hence not taxable however capital gain on sale would be taxable.

Computation of Capital Gain in special cases:

Section	Transaction	Year of Taxability	Computation
45(1A)	Damage or destruction[1] of a capital asset	**Year of receipt of insurance claim**	Insurance claim minus COA and COI
45(2)	Conversion of Capital Asset into Stock in Trade	**Year in which the Stock is sold**	Fair Market Value of the Capital Asset on the date of conversion into stock trade **minus** COA and COI. **Note**: In case of LTCA the benefit of Indexation is available up to the year of conversion only.

[1] The damage or destruction is a result of four categories of circumstances, viz.,

(i) Flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or
(ii) Riot or civil disturbance; or

(iii) Accidental fire explosion; or

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

45(2A)	Sale of shares held in depository (FIFO)	**Year of transfer**	Full Value Consideration for transfer **minus** COA and COI
45(3)	Introduction of Capital Asset by the partner of a firm/member of AOP/BOI ***(Gain is taxable in the hands of partner / member)***	**Year of receipt in the books of accounts**	Amount recorded in the books of the Firm/AOP/BOI **minus** COA and COI
45(4)	Distribution of Capital Asset to partners / members at the time of dissolution of Firm/AOP/BOI[2] or otherwise ***(Gain is taxable in the hands of Firm / AOP/BOI)***	**Year of distribution**	Fair Market Value of Capital Asset on the date of distribution **minus** COA
45(5)	Compulsory Acquisition of Capital Asset by the Government (**Taxable on receipt basis)**	**<u>Initial Compensation</u>**: Whole of Compensation received or receivable **minus** COA and COI **<u>Enhanced Compensation:</u>** Enhanced Compensation **minus** expenses incurred.	
45(6)	Repurchase of 80CCB units	**Year of repurchase**	Repurchase price **minus** amount of investment
46	Receipt of Cash / Assets from a Company on liquidation	**Year of receipt**	FMV of assets received and cash received **minus** deemed dividend U/S 2(22)(c) and COA and COI
46A	Buyback of shares or specified securities	**Year of repurchase**	Consideration for transfer **minus** COA and COI

[2] Not being a Company or Co operative Society.

50B	Sale of Undertaking as going concern under Slump Sale	**Year of transfer**	Lump sum consideration **minus** Net worth of the Undertaking
50C	Transfer of Land or Building or both at less than Stamp Duty Authority Value	**Year of transfer**	Value determined by Stamp Duty Authority **minus** COA and COI

Cost of acquisition and improvement in case of Self Generated Assets [Sec. 55]

Asset	**Cost of Acquisition**		Cost of Improvement	Option of FMV of 1981 Value	Expenses on Transfer
	Self generated	**Purchased**			
Goodwill of Business	Nil	Actual	Nil	No	Actual
Right to manufacture, produce or Right to carry on business	Nil	Actual	Nil	No	Actual
Trade mark/Brand Name	Nil	Actual	Actual	No	Actual
Tenancy Right	Nil	Actual	Actual	No	Actual
Route Permit	Nil	Actual	Actual	No	Actual
Loom hours	Nil	Actual	Actual	No	Actual

Bonus Shares

	Shares	**Allotment date**	**Cost of Acquisition**
1.	Bonus shares	Before April 1, 1981	FMV as on April 1, 1981
2.	Bonus shares	On or after April 1, 1991.	Nil

Right Shares

	Shares	Particulars	Cost of Acquisition	Period of holding
1.	Original shares	On the basis of which the assessee entitled to right shares.	Amount actually paid for acquiring shares.	From the date of allotment.
2.	Right entitlement	Which is renounced by the assessee in favour of a third person.	Nil	From the date of offer from the company to the date of renouncement
3.	Right shares	By exercising his rights entitlements	Actual amount paid for the same	From the date of allotment of right shares.
4.	Right shares	Who purchase the right entitlement from the renouncer.	Price to renouncer + amount paid to company.	From the date of allotment of right shares.

Capital gains in the case of non-resident [First proviso to Sec. 48]

Conditions- The following conditions should be satisfied:

1. The assessee is a non-resident.
2. He acquires shares in (or debentures of) an Indian company by utilizing foreign currency.
3. The asset may be short-term or long-term.

Rule of Computation:

1. The benefit of indexation shall not be available.
2. Method of computing capital gain

Item	Conversion rate	Conversion rate of which date is applicable	Computation
Sale Consideration	Average exchange rate	Date of transfer	Sale Consideration (Indian)/Avg. exchange rate at date of transfer.
Less: COA	Average exchange rate	Date of acquisition	Cost of acquisition (Indian)/ Average exchange rate at date of acquisition
Less: Transfer Expenses	Average exchange rate	Date of transfer	Expenditure on sale (Indian)/ Avg. exchange rate at date of transfer.
Capital gain	Buying rate	Date of transfer	Capital Gain (Foreign Currency.) X Buying rate at Date of transfer

Capital in case of assets on which depreciation has been allowed in respect of Block of Assets (Section 50):

Full Value Consideration	Xxxx
Minus: Expenses on transfer	Xxxx
WDV as on the first day of the previous year	xxxx
Cost of assets acquired during the previous year	xxxx
Short Term Capital Gain / Loss	Xxxx

Transfer of capital assets of power sector units on which depreciation allowed u/s 32(1) (i) [Sec.50A]:

If WDV of the asset exceeds Moneys Payable on transfer of such assets :

Terminal Depreciation under section 32(1) (iii) = WDV of such asset – Moneys Payable

If Moneys Payable exceeds WDV of the asset: Then, if –

- Moneys payable doesn't exceed actual cost: Balancing Charge u/s 41(2) = Moneys Payable – WDV

- Moneys payable exceeds Actual Cost: Balancing Charge u/s 41(2) = Actual Cost – WDV; and Short-term /Long – term capital gains = Moneys Payable – Actual Cost

Capital gains in the case of slump sale [Sec. 50B]: The provisions of section 50B, applicable for computation of capital gains in the case of slump sale, are given below:

- Any profits or gains arising from the slump sale affected in the PY shall be chargeable as LTCG and shall be deemed to be the income of the PY in which the transfer took place. Where, however, an undertaking owned and held by the assessee for not more than 36 months is transferred under the slump sale, then capital gain shall be deemed to be STCG.

- In the case of slump sale of an undertaking, the "net worth" of the undertaking shall be taken as cost of acquisition and cost of improvement.
- "Net worth" for this purpose is the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in the books of account.

However, the following points should be noted-

1. Any change in the value of assets on account of revaluation of assets shall be ignored for the purpose of computing the net worth.
2. In the case of depreciable asset, the aggregate value of assets of such undertaking or division shall be the written down value of block of assets.
3. In the case of non-depreciable assets, book value shall be taken.
4. Net worth cannot be negative.

- The benefit of indexation will not be available.

- Every assessee, in the case of slump sale, shall furnish along with the return of income, a report of a chartered accountant in Form No. 3CEA indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at.

Computation of capital gains in the case of land and building [Sec. 50C]:
Sec. 50C is applicable if the following conditions are satisfied:

1. There is a transfer of land or building or both. The asset may be long-term capital asset or short-term capital asset. It may be depreciable or non-depreciable asset.
2. The sale consideration is less than value adopted by "Stamp duty authority".

Consequences if the above Conditions are satisfied:

Different situations	Full value of consideration for the purpose of capital gains
Where the assessee accepts the value adopted by stamp duty authority	Value adopted by Stamp duty authority is taken as full value of consideration.
Where the assessee has disputed value adopted by stamp duty authority under stamp Act (i.e., stamp duty proceedings)	The stamp duty valuation as finally accepted for stamp duty purpose is taken as full value of consideration.
Where the assessee claims that value adopted by stamp duty authority is more than the fair market value (but he has not disputed such valuation in stamp duty proceedings)	• Fair market value determined by the Valuation officer (if it is less than the stamp duty valuation) is taken as full value of consideration • Stamp duty valuation (if the fair market value determined by the Valuation officer is more than the stamp duty valuation) is taken as full value of consideration.

Section 50D: Fair Market value to be full value of consideration in certain cases

At present, it is held in many cases that if consideration is not determinable as per existing provisions, then gain arising from transfer of such assets is not taxable.

To avoid above situation: Section 50D is introduced from AY 13-14. Accordingly, if consideration for transfer of a capital asset is not determinable, then the Fair Market Value of assets transferred shall be treated as full value of consideration.

REFERENCE TO VALUATION OFFICER [S. 55A]

The assessing officer is empowered to refer valuation of capital assets to departmental valuation officer if following conditions are fulfilled:

(i) If A.O. thinks that value as declared by the assessee is less than even if it is already valued by an independent private valuer.

(ii) If AO thinks that FMV exceeds by ` ₹25000 or 15% of the value declared by assessee whichever is less.

(iii) If nature of assets is such that independent valuation is required.

At present, it is held in various cases that Sec. 55A is not applicable in case asset is acquired upto March 1981 and assessee has adopted FMV on 1/4/81 as cost. The AO can't refer these matters to valuation officer. However it is amended from 1/7/2012 that if the AO is of the opinion that value declared by assessee as on 1/4/81 is higher than the FMV as on 1/4/81, and then he can refer the matter to valuation officer for determining FMV of the asset. *(Inserted by Finance Act, 2012)*

Tax incidence on Long Term Capital Gain (Section 112): Long Term Capital Gain is taxable @ 20% (+ EC+SHEC).

Deduction U/S 80C to 80U is not available in respect of Long Term Capital Gain.

- **In case of Non- resident:** long term capital gain from transfer of a capital asset, being unlisted securities taxable @ 10% computed without giving the benefit of indexation. In case of other capital gain taxable @ 20%.

- **Listed Securities:** In case of long term capital gain on transfer of listed securities or units of UTI or Mutual Funds Covered under section 10(23D) and Zero Coupon Bonds shall be minimum of:

  Tax @ 20% on long term capital gain after indexation **Or**
  Tax @ 10% on long term capital gain computed without indexation of its cost.

In case of resident individual or Hindu Undivided Family if the total excluding long term capital gains is less than the basic exemption limit, the deficiency would be deducted from long term capital gain. The balance capital gain, if any, will be taxable @ 20% (+SC+EC+SHEC).

Tax on Short Term Capital Gain covered U/S 111A:
Short term capital gain arising out of transfer of listed equity shares or unit of equity oriented fund shall be taxable @ 15% if such transfer took place through a recognized stock exchange in India or units of equity oriented mutual fund are transferred to the mutual fund.

Provided such transfer takes place on or after 01/10/2004 and transaction is chargeable to securities transaction tax at the time of transfer.

In case of resident individual or Hindu Undivided Family if the total excluding long term capital gains is less than the basic exemption limit, the deficiency would be deducted from short term capital gain. The balance capital gain, if any, will be taxable @ 15% (+SC+EC+SHEC).

Exemption available only to individual and/or HUF Assessees

Provisions	**Capital gain on sale of residential property used for residential property**	**Capital gains on sale of urban agricultural land and used for another agricultural land**	**Capital gain on sale of LTCA not to be charged in case of investment in residential house**
	Sec.54	Sec.54B	Sec.54F
Assessee	Individual/HUF	Individual/HUF	Individual/HUF
Nature of assets	LTCA	LTCA/STCA	LTCA
Assets transferred	Residential house property being building or land apartment thereto.	Agricultural land used by individual or his parents for agricultural purposes during 2 years of transfer	Any capital assets not being residential house property. Exemption is not available if assessee owns more than 2 houses including new house.
New assets to be purchased or constructed	Residential house property i.e. building land apartment thereto.	Agricultural land (in rural or urban area)	Residential house property i.e. building, land appurtenant thereto.
Time limit of purchased or constructed	Purchase: Within 1 year before or 2 years after the date of transfer, and Construction: complete construction within 3 years from date of transfer	Purchase: within 2 years of the date of transfer	Purchase: within 1 year before or 2 years after the date of transfer, and Construction: complete construction within 3 years from date of transfer
Deposit scheme	Applicable	Applicable	Applicable
Amount of exemption	Min. of (1) capital gains (2) Investment	Min. of (1) capital gains (2) cost of new asset	$\text{Cost of new hose} \times \frac{\text{capital gains}}{\text{Net consideration}}$

Exemption available to All assessees

Provision	**Compulsory acquisition of land and building**	**Investment in certain bonds**	**Shifting of undertaking to rural area**	**Shifting of undertaking to SEZ**
	Sec.54D	**Sec.54EC**	**Sec.54G**	**Sec. 54GA**
Assessee	Any person	Any person	Any person	Any person
Nature of Asset	STCA/LTCA	LTCA	STCA/LTCA	STCA/LTCA
Assets transferred	Compulsory acquisition of land or building which was used in the business of industrial undertaking during 2 years prior to dare of transfer.	Any LTCA	Transfer of plant, machinery or land or building for shifting industrial undertaking form urban area to rural area	Transfer of plant, machinery or land or building for shifting industrial undertaking from urban area to special economic zone
New assets to be purchased or constructed	New land or buildings for the industrial undertaking	Bonds, redeemable after 3 years issued – (a) By national highway authority of India; or (b) By rural electrification corporation, Maximum exemption limit being 50 lakhs (Amended by FA, 2007 w.e.f. 1/4/08)	(a) Purchase/ construction of plant machinery, land or building in such rural area or, (b) shifting original assets to that area or, (c) incurring notified expenses	(a) Purchase/ construction of plant, machinery, land or building in such SEZ or, (b) shifting original assets to that area or, (c) Incurring notified expenses

Time limit of purchased or constructed	Within 3 years from date of receipt of initial compensation	Within 6 months from the date of transfer of original asset.	Within 1 year before or 3 years after the date of transfer.	Within 1 year before or 3 years after the date of transfer.
Deposit scheme	Applicable	Applicable	Applicable	Applicable
Amount of exemption	Min. of (1) capital gains (2) amt. invested			

Note:

1. **Capital gain Scheme**: If the new asset is not acquired under section 54, 54B, 54D, 54F, 54G and 54GA or the full amount could not be invested upto the due date of furnishing the return of income, the assessee can deposit the desired amount under the Capital Gain Scheme on or before the due date of return and thus can acquire the asset within the stipulated time out of money withdrawn from such scheme at a later date. In the case of section 54EC the Capital Gain Scheme is not applicable.

2. Consequences if the new asset acquired is transferred within 3 years of its acquisition

(i) **Under section 54, 54B, 54D, 54G and 54GA**: For computation of new Capital Gain (which will be short-term), the cost of acquisition of such new asset shall be reduced by the amount of Capital Gain exempt under section 54, 54B 54D, 54G and 54GA earlier.

(ii) **Under section 54F**: Besides the new capital gain (which will be short-term), the Capital Gain exempt earlier under section 54F, shall be long-term capital gain of the previous year in which new asset is transferred.

(iii) **Under section 54EC:** If such security acquired is converted into money or any loan is taken against such securities within 3 years, the Capital Gain exempt under sections 54EC for such securities earlier shall be long-term Capital Gain of the previous year in which such conversion takes place -or the loan is taken.

3. **Consequences if the amount deposited in Capital Gain Scheme Is not utilized within the stipulated time of 3 years (2 years in case of section 54B):** The unutilized amount shall be Capital Gain (short-term or long-term depending upon original transfer) of the previous year in which such period has expired. However, in case of section 54F, proportionate amount shall be taxable.

54GB Capital Gain on transfer of residential house property (applicable from assessment year 2013-14)

Exemption under this section is available to an individual or HUF. Exemption is available if the assessee transfers a long term capital asset, being a residential property (a house or a plot of land). The transfer should take place during 1st April 2012, and 31st March 2017.

The assessee will have to utilize the net consideration for subscription in equity shares in an eligible company and it should be done before the due date of furnishing return of income under section 139(1).

The eligible company should utilize this amount for purchase of new asset within one year from the date of subscription in equity shares.

If the company does not utilize this amount for purchase of new asset before the due date of furnishing return of income by the assessee (transferor of residential property), it shall be deposited by the company in the capital gain deposit account. In such a case, exemption would be available on the basis of deposit in the deposit account.

Amount of exemption = investment in new asset by the eligible company ÷ net sale consideration x capital gain

Net consideration = sale consideration – expenditure on transfer incurred by the transferor

Revocation of Exemption:

In the following circumstances, exemption will be taken back and the amount of exemption given earlier will become long term capital gain and is taxable in the year in which the assessee or eligible company commits any of the following defaults –

- The equity shares in the eligible company are sold or otherwise transferred by the assessee with in 5 years from the date of acquisition.
- The new asset is sold or otherwise transferred by the eligible company within 5 years form the date of acquisition.
- Amount deposited in the deposit account is not utilized fully or partly by the eligible company for purchasing the new asset within 1 year from the date of subscription in equity shares.

Note:

Eligible company:
It means a company which satisfies the following conditions –

- It is incorporated on or after 1st April of the previous year in which residential property is transferred but on or before the due date of submission of return of income under section 139(1) by the assessee (transferor other property).
- It is engaged in the business of manufacture of any article or thing.
- The assessee has more than 50% of share capital or voting rights after subscription in the shares by the assessee.
- The company qualifies to be SME[3]

New asset:
It means new plant and machinery but does not include the following –

- Any plant or machinery which is used in India or outside India by any person before its installation by the eligible company
- Any plant or machinery which is installed in office premises/residential accommodation / guest house.
- Any office appliance
- Computers
- Computer software
- Any vehicle
- Any plant or machinery which is allowed 100% deduction (by depreciation or otherwise) in any previous year.

PROVISION TO CURB TAX AVOIDANCE BY CERTAIN TRANSACTIONS IN SECURITIES OR PREVENTION OF DIVIDEND STRIPPING & BONUS-STRIPING TRANSACTIONS [Sec 94]:

Loss on sale of securities or units to be ignored in cases of dividend stripping [Sec.94(7)]:

If a person –

(a) Buys/acquires any securities or unit within a period of 3 months prior to record date,

[3] Small or medium enterprise under MSME act 2006 where investment in plant and machinery is more than ₹ 25 lakhs but not more than ₹ 10 crores.

(b) Sells/transfers the same within 3 months (9 months in case of unit) after the record date and

(c) The dividend/income on such securities or unit received or receivable by him is exempt,

Then, the loss, it any, arising to him on account of such purchase and sale, to the extent of dividend or income from securities/unit, shall be ignored while computing his income chargeable to tax.

Loss arising in case of bonus stripping of units to be ignored [Sec. 94(8)]:

(a) Buys/acquires any units (‘original units’) within a period of 3 months prior to record date;

(b) He is allotted bonus units on the basis of holding of such units on such date; and

(c) He sells or transfers all or any of the original units referred to in (a) within a period of 9 months after such date, while continuing to hold all or any of the bonus units referred to in (b).

Then, -

(a) The loss, if any, arising to him on account of purchase and sale of original units shall be ignored in computing his total income, and

(b) The loss so ignored shall be deemed to be the cost of purchase or acquisition of such bonus units referred to in (b) as per held by him on the sale or transfer.

Record Date: Record date means the date fixed by a company for entitlement of dividend, or by a mutual fund/administration/specified company for entitlement of dividend or bonus units.

Cost of Inflation Index

Financial year	Cost Inflation Index (CII)
1981-82	100
1982-83	109
1983-84	116
1984-85	125
1985-86	133
1986-87	140
1987-88	150
1988-89	161
1989-90	172
1990-91	182
1991-92	199
1992-93	223
1993-94	244
1994-95	259
1995-96	281
1996-97	305
1997-98	331
1998-99	351
1999-00	389
2000-01	406
2001-02	426
2002-03	447
2003-04	463
2004-05	480
2005-06	497
2006-07	519
2007-08	551
2008-09	582
2009-10	632
2010-11	711
2011-12	785
2012-13	852
2013-14	939

Chapter 8

Income from other sources

Basis of charge [Sec. 56]: Income from other sources is the last and residual head of income.

Sec. 56(1) covers income which does not fall under any other head of income.

Sec. 56(2) specifies nine incomes which are always taxable under the head "Income from other sources".

The following nine incomes are always taxable under the head "Income from other sources"-

1. Deemed dividend under section 2(22) (e) from an Indian company or any dividend from a foreign company.

2. Winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any from or nature whatsoever.

3. Sum received from employees as contribution to any staff welfare scheme (if it is not taxable as business income under sec. 28).

4. Interest on debentures, Government securities / bonds (if it is not taxed as business income under sec. 28).

5. Rental income from machinery, plant or furniture let on hire (if the same is not taxed as business income under sec. 28).

6. Rental income of letting out of plant, machinery or furniture along with letting out of building and the two letting are not separable (if the same is not taxed as business income under sec. 28).

7. Any sum received under a Keyman insurance policy including bonus (if the same is not taxable as salary income or business income).

8. Money or property received without consideration or for inadequate consideration.

9. Interest received on compensation or on enhanced compensation.

Other incomes which are normally included under the head 'Income from other Sources

Following are some other incomes which are normally chargeable to tax under this head because these are not covered under any other heads:

(i) Income from sub-letting of a house property by a tenant;
(ii) Casual income;

(iii) Insurance commission;

(iv) Family pension (payments received by the legal heirs of a deceased employees);

(v) Director's sitting fee for attending board meetings;

(vi) Interest on bank deposits/deposits with companies;

(vii) Interest on loans;

(viii) Interest received on delayed refund;

(ix) Income from royalty, if it is not income from business or profession;

(x) Director's commission for standing as a guarantor to bankers;

(xii) Remuneration received by Members of Parliament;

(xiii) Interest on securities of foreign governments;

(xiv) Director's commission for underwriting shares of a new company;

(xv) Examiner ship fees received by a teacher from an institution other than his employer;

(xvi) Rent from a vacant piece of plot of land;

(xvii) Agricultural income from agricultural land situated outside India;

(xviii) Income from granting of mining rights;

(xix) Interest paid by the Government on excess payment of advance tax, etc

Deemed Dividend [Sec. 2(22)]:

1. **Sec. 2(22) (a):**

Dividends include any distribution of assets by a company to its shareholders to the extent of accumulated profits of the company, whether capitalized or not.

Note: - When assets are distributed u/s 2(22) (a) the market value of the asset on the date of distribution has to be taken for computation of the dividend.

2. **Sec. 2 (22) (b):**

Any distribution to its shareholders by a company of debentures or deposit certificate in any form;

Any distribution to its preference shareholders of share by way of bonus; to the extent of accumulated of it's of the company, whether capitalized or not.

3. **Sec. 2(22) (c):**

Any distribution to the shareholders of a company on its liquidation to the extent of accumulated profits of the company immediately before its liquidation, whether capitalized or not.

4. **Sec. 2(22) (d):**

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

5. **Sec. 2(22) (e):**

Dividends include:

- ✓ Any payment by a company being a closely held Co.
- ✓ of any sum by way of loan or advance
    - ➢ To a shareholder being the beneficial owner of shares
    - ➢ Holding not less than 10% of voting power

Or

- ➢ To any concern
- ➢ in which such a shareholder
- ➢ is a member or a partner
- ➢ and in which he has a substantial interest

Or

- ➢ To any person
- ➢ on behalf of such shareholder

✓ To the extent of accumulated profits of the company.

Note: - Sec. 2(22) (e) is not applicable to any advance or loan given by a company during the normal course of its business and if the money lending is the major part of the business of the company.

Special rate of tax in case of winnings from lotteries, crossword puzzles, races, etc. Sec. 115BB:

Winnings from lotteries, etc. are taxable at a special rate of Income-tax, which at present is 30% + EC @ 2% + SHEC @ 1%. It may, however, be mentioned that according to section 58(4), no deduction in respect of any expenditure or allowance, in connection with such income, shall be allowed. In other words, the entire income of winnings, without any expenditure or allowance, will be taxable. In fact, deduction under sections 80C to 80U will also not be available from such income although such income is a part of the total income. As lottery income is taxed at flat rate, the basic exemption of income (say `₹ 2,00,000) is not available to the assessee.

Interest on Securities Sec. 56(2) (id):

Income by way of interest on securities is chargeable under the head "income from other sources", if such income is not chargeable to income-tax under the head, "Profits and Gains of Business or Profession".

Interest on securities may be taxed on receipt basis or on due basis, depending upon the system of accounting if any, adopted by the assessee. If the assessee follows the cash system of accounting, interest is taxable on receipt basis otherwise it shall be taxable on due basis. If no system of accounting is followed, it will always be taxable on 'due' basis.

Note:

Interest on securities accrues or becomes due on a specified date and not on a day-to-day basis. The date on which the interest shall become due is specified by the issuing company, which may be quarterly basis, half yearly basis or annual basis.

Deductions for expenses from Interest on Securities [Sec. 57]:

The following deductions will also be allowed from the gross interest on securities:

(a) **Collection charges Sec. 57 (i):** Any reasonable sum paid by way of commission or remuneration to a banker, or any other person for the purpose of realizing the interest.

(b) **Interest on loan Sec. 57 (ii):** Interest on money borrowed for investment in securities can be claimed as a deduction.

(c) Any other expenditure Sec. 57(iii): Any other expenditure, not being a expenditure of a capital nature, expended wholly and exclusively for the purpose of making or earning such income can be claimed as a deduction.

(d) Deduction from interest on compensation or enhanced compensation Sec. 57(iv): In the case of above interest which is taxable under the head income from other sources, a deduction of a sum equal to 50% of such income shall be allowed to the assessee and no deduction shall be allowed under any other clause of section 57.

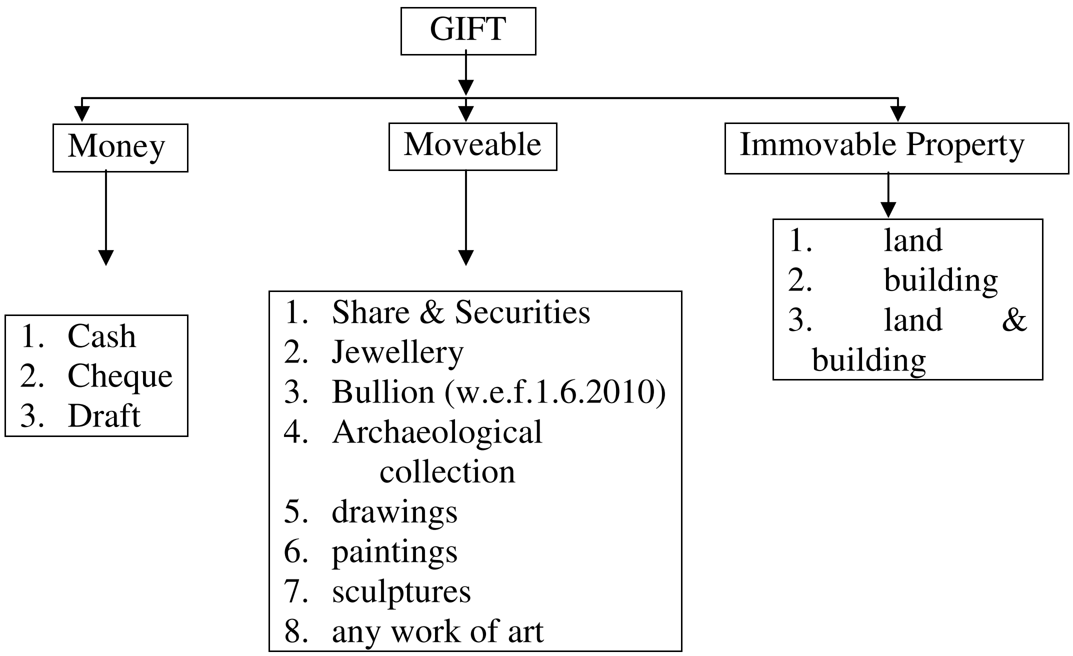
Interest exempt from tax [Sec. 10(15)]

- Railway Bond
- 7 % Capital Investment Bonds
- Notified Relief Bonds
- Interest on notified bonds/debentures of a public sector company
- Interest on securities held by the Welfare Commissioner, or interest on deposits for the benefit of the victims of the Bhopal gas leak disaster
- Notified bonds issued by local authority or by State Pooled Finance Entity
- Interest on Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central government
- Interest on Public Provident Fund
- Interest on Post Office Saving Bank Account. Interest beyond 3,500 & 7,000 (in Case of Joint Post office saving bank A/c) shall be taxable. [Notification Date 17.6.2011]
- Interest on deposit with Off Shore Banking Unit

Note: Interest on NSC is taxable. But accrued interest of initial 5 year is eligible for deduction u/s 80C.

Receipts without consideration to be treated as income Sec. 56(2) (vii):
Money or property received without consideration is income if it satisfies the following conditions:

1. It is received by an individual or a HUF.
2. It is received on or after October 1, 2009.
3. It does not fall in the exempted category.



"Bullion" means pure gold and silver e.g. silver coins, silver bars, gold coins and gold biscuits. Bullion is added in definition of property w.e.f. 1.6.2010.

Exempted Categories:
While calculating the above monetary limit of ` ₹50, 000 in any of the categories, any sum of money or property received from the following shall not be considered:

1. Money/property received from a relative.
2. Money/property received on the occasion of the marriage of the individual.
3. Money/property received by way of will/inheritance.
4. Money/property received in contemplation of death of the payer.
5. Money/property received from a local authority.
6. Money/property received from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in section 10(23C).
7. Money/property received from a charitable institute registered under section 12AA.
8. Any sum or property received without consideration or inadequate consideration by an HUF from its members will not be taxable (AY 2013-14)

Receipt of Money: Any sum of Money (in cash or by cheque or draft) received by an individual or HUF without consideration from ***one or more persons*** during the previous year exceeding ₹ 50,000, the whole of such aggregate value will be chargeable to tax.

Moveable Property: Moveable property received by an individual and HUF without consideration from one or more persons during the previous year and the fair market value of moveable properties received without consideration exceeds ₹ 50,000, then the whole of aggregate fair market value of moveable properties will be chargeable to tax.

If moveable property mentioned above received for consideration less than the fair market value of the property by an amount exceeding ` ₹50,000 then the difference between fair market value and the consideration is chargeable to tax

Immoveable property: If immoveable property received by individual and HUF without consideration from another person and the stamp duty value of such property exceeds ₹ 50,000, the stamp duty value will be chargeable to tax.

If immoveable property mentioned above received for consideration less than the stamp duty value of the property by an amount exceeding ` ₹50,000 then the difference between stamp duty value and the consideration is chargeable to tax.

(Inserted by Finance Act, 2013)

In case where the date of agreement and date of registration are different, the taxability will be determined with reference to the stamp duty value on the date of agreement and not on registration provided a part of consideration has been paid by any mode other than cash, on or before the date of such agreement. **(Inserted by Finance Act, 2013)**

[Note: For the purpose of this clause 'relative' means:

(1) Spouse of the individual

(2) Brother or sister of the individual

(3) Brother or sister of the spouse of the individual

(4) Brother or sister of either of the parents of the individual

(5) Any lineal ascendant or descendant of the individual

(6) Any lineal ascendant or descendant of spouse of the individual

(7) Spouse of person referred to in items (1) to (6) above

(8) Definition of relative has been extended to include member of HUF. Therefore, gift received by HUF from its members shall not be taxable].

Gift Taxability [Sec. 56(2) (viia)] (Applicable w.e.f 1.6.2010):

Where a firm or a closely held company, receives, any shares of a closely held company:

- Without consideration, the aggregate fair market value of such shares will be treated as income the assessee.
- for inadequate consideration when compared to fair market value, the difference would treated as income of the assessee

Conditions:

- The amount of such income exceeds ` ₹50,000
- The clause shall not apply where shares are received in scheme of amalgamation or demerger.

AOP's, BOI's, Trust is not covered i.e., if gift of share is received by AOP/ BOI/ Trust, then Sec. 56(2) is not available.

Consideration received in excess of FMV of shares issued by a closely held company to be treated as income of such company, where shares are issued at a premium [section 56(2)(viib)]:

Consideration received from a resident person by a company, other than a company in which public is substantially interested, which is in excess of the fair market value (FMV) of shares.

Such excess is to be treated as the income of a closely held company taxable under section 56(2) under the head "Income from Other sources", in cases where consideration received for issue of shares exceeds the face value of shares i.e. where shares are issued at a premium.

However, these provisions would not be attracted where consideration for issue of shares is received:

(1) by a Venture Capital Undertaking (VCU) from a Venture Capital Fund (VCF) or Venture Capital Company (VCC); or

(2) by a company from a class or classes of persons as notified by the Central Government for this purpose.

Fair market value of the shares shall be the higher of, the value as may be-

(a) determined in accordance with the prescribed method; or

(b) Substantiated by the company to the satisfaction of the Assessing Officer, based on the value of its assets on the date of issue of shares.

For the purpose of computation of FMV, the value of assets would include the value of intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

Family pension payments received by the legal heirs of a deceased employee:

After the death of the employee, if there is any family pension received by the legal heirs of the deceased, it will deemed to be the income of the legal heir and will be taxable under the head 'Income from other sources;. On such pension, as per section 57 a standard deduction shall be allowed to the legal heir @ 33 1/3 % of such pension, or `₹ 15, 000, whichever is less.

Note:

1. Ex-gratia payment made to the widow or other legal heirs of an employee, who dies while still in active service, will not be taxable, if it is paid by central government/State Government/ Local Authority.

2. 2. Lump sum payment made gratuitously or by way of compensation or otherwise to the widow or other legal heirs of an employee who dies while in active service is not taxable.

3. Family pension received by a widow of a member of the armed forces where the death of the member has occurred in the course of the operational duties is totally exempt under section 10(19).

Amounts not deductible in computing income under the head 'Income from Other Sources' [Sec. 58]:

The following payments shall not be deductible in computing the income chargeable under the head
'Income from Other Sources':

(a) Personal expenses of the assessee;

(b) Interest paid outside India on which tax has not been deducted at source;

(c) Salaries paid outside India on which tax is not deducted at source;

(d) Any expenditure referred to in section 40A like excessive or unreasonable payments to certain specified persons [Sec. 40A (2)] and payments exceeding `₹ 20, 000 otherwise than by way of account payee cheque [Sec. 40A (3)];

(e) income-tax / wealth-tax paid;

(f) Any expenditure or allowance in connection with winning of lottery, crossword puzzles, etc. However, expenditure incurred by the assessee for the activity of owning and maintaining race horses shall be allowed as a deduction while computing the income from this activity.

Valuation of Jewellery or artistic work (viz, archeological collections, drawings, paintings, sculptures -or any work of art): FMV = Estimated Selling price (Estimated SP) which such jewellery or artistic work would fetch if sold in the open market on valuation date. For this purpose, -

(i) in case Jewellery/artistic work is received by the way of purchase on valuation date from a registered dealer (i.e. a dealer registered under the CST Act or State-VAT laws), FMV = Invoice value thereof;

(ii) in case Jewellery/artistic work is received by any other mode and the value of the Jewellery or artistic work exceeds ` ₹50,000, then the assessee may obtain the report of registered valuer (valuer registered under the Wealth Tax Act) in respect of the said estimated selling price referred to above;

<u>Valuation of shares and securities: -</u>

(A) Quoted Shares & Securities (i.e. share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business):

(i) If received by way of transaction carried out through any recognized stock exchange, FMV = Transaction value as recorded in such stock exchange;

(ii) If received by way of transaction carried out other than through any recognized stock exchange:

(a) FMV = Lowest price quoted on any recognized stock exchange on the valuation date, and

(b) FMV = Lowest price on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, if on the valuation date there is no trading in such shares and securities on any recognized stock exchange.

(B) <u>Unquoted Equity Shares:</u>

FMV to be computed on the valuation date = $\frac{A-L}{PE} \text{ X } PV$

For the purposes of this formula –

A = Book value of the assets in balance-sheet - Advance tax - Debit Balance of P&L A/c - Any amount shown in the balance-sheet which does not represent the value of any asset.

L = Book value of liabilities shown in the balance-sheet but not including the following:

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

(ii) Proposed Dividends on preference/equity shares (i.e. not declared in AGM before the valuation date)

(iii) All reserves, by whatever name called, other than provision/reserve for depreciation;

(iv) Credit balance of the P&L A/c;

(v) Provision for taxation (other than amount paid as advance tax) to the extent of the excess over the tax payable with reference to book profits in accordance with law applicable thereto;

(vi) Any amount representing provisions made for meeting un-ascertained liabilities;

(vii) Any amount representing contingent liabilities other than arrears of dividends payable respect of cumulative preference shares.

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

PV = The paid-up value of such equity shares.

(C) Unquoted shares & securities (other than equity shares): FMV Estimated price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or a chartered accountant in respect of such valuation.

Deep discount bonds

Vide Circular No.2/2002-dated February 15, 2002; the Board has issued certain clarifications.

Positions after Issue of Circular No. 2/2002

Applicable only in respect of bonds issued after February 15, 2002

1. Every person holding a Deep Discount Bond will make a market valuation of the bond as on March 31 of each financial year. The difference between the market valuations as of two successive valuation dates will be taxable as interest income (where the bonds are held as investments) or business income (where the bonds are held as trading assets).

2. Where the bond is transferred at any time before the maturity date, the difference between the sale price and the cost of the bond (last market valuation of the bond) will be taxable as short-term capital gains (in the hands of an investor) or as business income (in the hands of a trader).

3. Where the bond is redeemed by the original subscriber, the difference between the redemption price and the value as on the last valuation date immediately preceding the maturity date will be taxed as interest income (in the case of investors), or business income (in the case of traders).

4. Investors holding Deep Discount Bonds up to an aggregate face value of ₹1,00,000 may, at their option, continue to offer income for tax in accordance with the earlier clarifications issued by the Board.

Interest on compensation or enhanced compensation [Sec. 56(2)(viii)]:

Any interest received by an assessee on compensation or enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received. Prior to 1-4-2009, (i.e. A.Y. 2010-11), such interest was taxable on due basis as per Supreme Court decision in the case **Rama Bai v CIT (1990) 181 ITR 400 (SC)].**

Further, as per section 56(2)(viii), income by way of interest received on compensation or on enhanced compensation referred to in section 145A (b) above shall be taxable under the head income from other sources.

In the case of above interest which is taxable under the head income from other sources, a deduction of a sum equal to 50% of such income shall be allowed to the assessee and no deduction shall be allowed under any other clause of section 57.

Chapter 9

Clubbing of Income

Transfer of income without transferring assets sec.60
Where there is a transfer of income by a person to another person, without the transfer of asset, such income shall be taxable in the hands of transferor.

Revocable transfer of assets sec.61
If there is revocable transfer of an asset by one person to another, then income from such assets shall be taxable in the hands of transferor.

No clubbing if transfer is irrevocable sec.62

- → If any person has transferred any asset through irrevocable transfer, in such cases, clubbing provisions shall not apply
- → If any person has transferred any asset for the lifetime of the transferee, it will be considered to be irrevocable and clubbing provisions shall not apply

Definition of Revocable Transfer
Transfer shall be deemed to be revocable if:
(1) If whole or any part of the income or assets can be re-transferred to transfer
(2) If transfer can re-assume power over the whole or any part of income or assets

Income of individual to include income of spouse, minor child etc. sec.64
Remuneration of spouse sec.64 (1)(ii)

If spouse of an individual is receiving salary, commissions, fees or any other remunerations from any concern in which the individual is having substantial interest then such salary etc. shall be included in the income of the individual.

Exceptions: There shall be no clubbing of income if the salary etc. paid to the spouse is due to his/her technical or professional qualifications of knowledge or experience.

Substantial interest:

Company: If individual along with his relatives (Spouse, brother, sister or any lineal ascendant or descendant of the individual) holds not less than 20% equity shares beneficially.

Others: If individual along with his relatives is entitled to at least 20% of profit.

However, if both husband and wife have substantial interest in the concern and both are receiving remuneration from the same concern, then the remuneration of both the person shall be clubbed in the hands of that spouse whose total income is greater, before clubbing such income

Income from Assets transferred to spouse sec. 64(1)(ii)
If individual transfers any asset other than house property to his/her spouse, income from such assets shall be clubbed in the hands of transferor.

Exceptions:

- → Transfer is for adequate consideration
- → Transfer is under an agreement to live apart
- → If the relationship of husband and wife does not exist either at the time of transfer or at the time of accrual of income

Cross transfer: if any person has transferred any asset to the spouse of some other person and such other person has transferred the asset to the spouse of the first person, in this case clubbing provisions shall apply.

Important points:

- → If any person has transferred the asset to the spouse, income from the asset shall be clubbed in the hands of the transferor. But if such income is further invested, any subsequent income shall not be clubbed.
- → If transferred asset is invested by the spouse in any business, then income from such business shall be clubbed in the hands of transferor.

$$\text{Income from business} = \frac{\text{Amt. invested out of asset transferred}}{\text{Total invt. of transfaree in the beginning of the year}}$$

Income from Assets transferred to son's wife sec.64 (1)(vi)
Income arising from an asset transferred by an individual to his son's wife, without adequate consideration, shall be clubbed in the hands of transferor.

Income from Assets transferred to any person for the benefit of the spouse or son's wife [sec 64(1)(vii), sec64(1)(viii)]
Income from assets transferred to any person for the immediate or deferred benefit of the spouse or son's wife, without adequate consideration, shall be taxable in the hands of the transferor.

Clubbing of income of Minor child sec. 64(1A)
All such income which accrues or arises to the minor child is to be clubbed in the hands of that parent whose total income (excluding the income of minor child) is greater. However, if the marriage of parents does not subsist, it shall be included in the income of that parent who maintains the child.

If the income of child is so included, the parent shall be entitled to an exemption of maximum 1500 in respect of each minor child Sec. 10(32)

Where any income is once included in the total income of either parent, it will continue be clubbed in the hand of that parent only, in all future years, unless the assessing officer is satisfied that income shall be clubbed in the hands of other parent.

However, income of minor child shall not be clubbed in following cases:

- → Child is suffering from any disability of the nature specified in sec. 80U, like physically disabled, totally blind etc.
- → Income accruing to child on account of manual work or activity involving application of his skills, talent or specialized knowledge and experience.

Income from self-acquired property converted into joint family property sec.64 (2)
If an individual, who is a member of HUF, converts his self-acquired property into HUF property then income derived by HUF from such property shall be included in the hands of transferor.

Implication in case of subsequent partition: After partition of HUF, income arising from any asset received by the spouse shall be clubbed in the hands of transferor.

Liability of person (transferor and transferee) sec.65
Even though the income arising from the transfer the assets is clubbed in the hands of transferor, tax on such income may also be demanded from the transferee.

Chapter 10

Set Off and Carry Forward of Losses

Set-off of loss from one source against income from other source under the same head of income (i.e. Intra-head adjustment) sec.70

Loss from one source in any head of income can be set off against income from any other source falling under the same head.

Exceptions:

→ Loss under head PGBP cannot be set off against income from salary

→ Loss of specified business under sec.35AD can be set off only against income of specified business.

→ Loss under head capital gains cannot be set off against income of any other head.

→ Loss from maintaining and owning horse races cannot be set off against any other type of income.

→ No loss can be adjusted against Income of winning from lottery etc.

Carry forward and set off of loss of House Property sec.71B

→ Unadjusted loss of House property shall be allowed to be carried forward to the subsequent assessment year for a maximum period of 8 years following the assessment year in which loss was computed.

→ Carry forward loss of House property can be adjusted only against income of house property in subsequent years.

Carry forward and set-off of loss from (non-speculative) business sec.72

→ Unadjusted loss under the 'Profits and Gains of Business or Profession' (Except loss in speculation business) shall be allowed to be carried forward to the subsequent assessment year for a maximum period of 8 years following the assessment year in which loss was computed.

→ Carry forward loss of PGBP (other than speculation loss) can be adjusted only against income of PGBP in subsequent year.

→ Unabsorbed depreciation under sec. 32(2) or scientific research expenditure under sec.35 can be carried forward for unlimited period and is allowed to be adjusted against any other income (except casual income like winning of lotteries etc.)

Expenditures, losses and depreciation shall be adjusted in the order given below:

(1) Current year business expenditure
(2) Current year depreciation, capital expenditure on family planning or scientific research
(3) Brought forward loss of PGBP
(4) Brought forward depreciation/unabsorbed expenditure on scientific research/family planning

Carry forward and set off of loss in case of amalgamation/demerger/conversion of proprietorship/partnership firm into company etc.

Amalgamation:
The unadjusted loss and unabsorbed deprecation of the amalgamating company shall be deemed to be the loss of the amalgamated company as if incurred in the year of amalgamation if:

→ The amalgamated company continues the business of amalgamating company for a period of at least 5 years
→ The amalgamated company continues to hold at least 75% of the book value of assets for a period of 5 years
→ Fulfill other conditions as prescribed.

Demerger:
Unadjusted losses and depreciation of the demerged company is allowed to be carried forward and set off by the resulting company for the remaining period.

Conversion of proprietorship or partnership firm into company:
Unadjusted losses and depreciation of the proprietorship/partnership firm shall be deemed to be the losses of company as if incurred in the year of conversion, if conditions laid down under sec.47 are complied with.

Conversion of private or unlisted company into LLP:
Unadjusted losses and deprecation of the private or unlisted company shall be deemed to be the losses of LLP as if incurred in the year of conversion, if conditions laid down under sec. 47 are complied with.

Losses in speculation business sec. 73

→ Loss from speculative business is allowed to be set off only against profits of speculative business.

→ Unadjusted loss of speculative business shall be allowed to be carried forward to the subsequent assessment year for a maximum period of 4 years following the assessment year in which loss was computed and is allowed to be set-off only against profits of speculative business in subsequent years.

Meaning of speculative business sec. 41(5)
Speculative business means such business transactions in which a contract for the purchase or sales of any commodity including stocks and shares is settled otherwise than by the actual delivery.

Carry forward and set off of losses by specified business under sec. 35AD (sec.73A):

→ Loss from specified business under sec. 35AD is allowed to be set off only against profits of any other specified business.

→ Unadjusted loss of specified business shall be allowed to be carried forward to the subsequent assessment year for unlimited period and is allowed to be set-off only against profits of specified business in subsequent years.

Losses under the head Capital Gains sec.74

→ Short term capital loss can be set off either from STCG or LTCG, but long term capital loss can be adjusted against LTCG only.

→ Losses under the head capital gain are not allowed to be set off against any other head of income.

→ Unadjusted loss of capital gains shall be allowed to be carried forward to the subsequent assessment year for a maximum period of 8 years following the assessment year in which loss was computed.

Carry forward loss under head capital gains can be adjusted only against income under the head capital gains in subsequent years. Short term capital loss can be adjusted from STCG or LTCG but long term capital loss can adjust against LTCG only.

Losses under the head Income from other sources sec. 74A

→ Losses from activities under the head sources (except maintaining and owing race horses) is allowed to be set-off within same head or any other head except casual income.

→ Carry forward of loss under other source is not allowed.

→ Losses from owing and maintaining race horses is allowed to be set off only against profit of owing and maintaining race horses and unadjusted losses is allowed to be carried forward for a maximum period of 4 years and it can be set-off only against the profit and owing and maintaining race horses in subsequent years.

Loss from the activity of owning and maintaining animal for races other than horse race can be set off and carry forward like any other business loss.

Carry forward of losses – change in constitution of firm or on succession sec.78

→ If there is change in the constitution of a firm, then the loss proportionate to the share of retired or deceased partner shall not be allowed to be carried forward by the firm. This provision does not apply to unabsorbed depreciation

→ 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 cannot carry forward and set off against his income, any loss incurred by the predecessor. However, in case of inheritance, legal heirs are entitled to carry forward and set off the loss of predecessor.

Carry forward set-off of losses in case of closely held companies sec.79

Losses of closely held companies shall be allowed to carried forward only if the shareholder holding at least 51% of voting power are the same as on the last day of the year in which the loss has been incurred and as on the last day of the year in which the loss is to be set off.

This provision does not apply in following cases:

→ Unabsorbed depreciation

→ Change in shareholding is due to death of shareholder

→ Change in shareholding is due to gift of share by shareholder to his relative.

<u>Submission of return of losses sec.80</u>

Losses (except losses under the head House Property) can be carried forward only if loss has been determined as per a return of loss filed on or before the date under sec. 139(1)

Nature of income		Set-off			Carry forward for AY	Set-off from
		Same source under same head	Inter-source under same head	Inter – head		
Salary		NA	NA	NA	NA	NA
PGBP	Non-speculative	✓	✓	✓ Except salary	8 years	Same head
	Speculative	✓	✓		4 years	Same head
Capital gains	Short term	✓	✓	X	8 years	Same head
	Long term	✓	✓	X	8 years	Same head
Other sources	Owing and maintenance of race horses	✓	✓	X	4 years	Same head
	Winning from lottery etc.	X	X	X		
	Interest etc	✓	✓	✓		

Chapter 11

Deductions from Gross Total Income

EXEMPTIONS v. DEDUCTIONS

Exemptions: Exemptions are also known as 'Incomes, which do not form part of total income'. Thus, the exempted incomes are those incomes, which are not even included in determination of income under the relevant concerned head.

For example, dividends received from Indian company are exempt from income-tax u/s 10(34). Therefore, while dividends fall under the head 'Income from Other Sources', however, since they are exempt, they will not even be included in determination of Income from other sources.

Further, any expenditure incurred for earning any exempt income is not allowable as per section 14A.

Deductions from gross total income: Deductions are allowed from gross total income under Chapter VI-A. Thus, if a deduction under Chapter VI-A is allowable in respect of a particular income, then, the said income will be computed after allowing all expenses and will be included under the appropriate head of income. The gross total income will include that income and deduction under the relevant section will be allowed from the amount of gross total income.

For example, section 80QQB provides deduction in respect of royalty received by authors. Thus, first of all royalty income will be computed as per the provisions of the Act, after allowing relevant expenses, and such income will be included under appropriate head (Profits and gains of business or profession or Income from other sources). Thereafter, the deduction u/s 80QQB will be allowed from the gross total income, which already includes royalty income.

Deductions to be made (Section 80A): The total income of an assessee is to be computed after making deductions permissible under sections 80C to 80U. However, the aggregate amount of deductions cannot exceed the Gross Total Income.

No deduction u/s 10A or 10AA or 80-IA to 80-RRB, if not claimed in the return of income: Where the assessee fails to make a claim in his return of income for any deduction u/s 10A or 10AA or under any provision of sections 80-IA to 80-RRB, no deduction shall be allowed to him there under.

Inter-unit Transfers to be valued at market value for computing deduction: Where –

(a) (i) any goods or services held for the purposes of the undertaking or unit or enterprise or eligible business are transferred to any other business carried on by the assessee, or,

(ii) Where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the undertaking or unit or enterprise or eligible business and,

(b) the consideration, if any, for such transfer as recorded in the accounts of the undertaking or unit or enterprise or eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then, for the purposes of any deduction u/s 10A, 10AA, or 80-IA to 80-RRB, the profits and gains of such undertaking or unit or enterprise or eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date.

No deduction u/s 35AD, if deduction claimed u/s 80-IA to 80-RRB: Where a deduction under any provision of this Chapter under the heading "C. - Deductions in respect of certain incomes" (i.e. sections 80-IA to 80-RRB) is claimed and allowed in respect of profits of any of the specified business referred to in section 35AD for any assessment year, no deduction shall be allowed under provisions of section 35AD in relation to such specified business for the same or any other assessment year.

(2) **No deduction from certain Incomes:** No deduction is allowed in respect of the following incomes: -

(a) Long Term Capital Gains referred u/s 112, and Short Term Capital gains referred u/s 111A.

(b) Winnings from lotteries, races, etc. as referred to in section 115BB.

(c) Incomes referred to in sections 115A (1)(a), 115AC, 115ACA, 115AD, 115BBA, 115BBD and 115D.

DEDUCTION FOR PAYMENT OF LIFE INSURANCE PREMIA, ETC., [Section 80C]:

General: Deduction under this section is allowed as follows –

- deduction is available only in respect of 'specified sums' actually paid or deposited during the previous year (sum not actually paid and outstanding is not allowed)
- specified sums must have been paid/deposited by an Individual or HUF; and
- The total amount of deduction under this section is select to a maximum limit of ₹1, 00,000.

'***Specified sums'****:* Specified sums means the following sums paid or deposited during the previous year –

- ***Life insurance premium:*** Life Insurance Premium -

(a) On life of individual, spouse and any child of such individual, and member of HUF; and

(b) Only upto 10% of the actual capital sum assured (excluding value of returnable premiums and bonus over and above assured sum)

(c) Only upto 10% of the capital sum assured in case policy issued on or after 1st April, 2012.

For this purpose capital sum assured shall mean the **minimum amount** assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account –

(1) The value of any premium agreed to be returned; or

(2) Any benefit by way of bonus or otherwise over and above the sum actually assured which is to be or may be received under the policy by any person. Shall qualify for deduction;

In case of insurance policy issued on or after 01/04/2013 deduction is available if the amount of the premium does not exceed 15% of sum assured if the policy issued in respect of persons referred to in section 80U or 80DDB. **(Inserted by Finance Act, 2013)**

- ***Deferred annuity plan:*** Contract for deferred annuity -
  - not being notified annuity plan of LIC or any other insurer,
  - on life of individual or his spouse and any child,
  - If there is no option under the contract to receive cash in lieu of annuity.

- ***Deferred annuity plan of Government:*** Deduction –
- from the salary of Government employees
- for securing to him a deferred annuity or making provision for his wife or children
- Subject to maximum of 20% of salary.

- ***SPF/RPF:*** Contribution to statutory/recognized provident fund or an approved superannuation fund;
  Note: Contribution to any fund shall not include any sums in repayment of loan.

- ***PPF:*** Contribution to Public Provident Fund to an account standing in name of the individual, his spouse and any child or any member of Hindu Undivided Family; (We.f. 13-5-2005, PPF Account cannot be opened in the name of HUF. The limit for deposit in PPF A/c is ` ₹1, 00,000 p.a.)

- Subscription to notified securities or notified deposit schemes of the Central Government;

- ***NSC:*** Subscription to National Savings Certificates (VIII issue) or other notified savings certificate;

- ***ULIP:*** Contribution for participation in notified unit-linked insurance plan of LIC or any Mutual Fund notified u/s 10(23D) in name of individual, his spouse and any child or any member of HUF;

- ***Annuity plan:*** Payment to notified annuity plan of LIC or any other notified insurer;

- ***Units of UTI or MF***: Subscription to units of UTI or mutual fund notified u/s 10(23D) in any plan under notified scheme;
  Contribution by an individual to notified pension fund of Mutual Fund notified u/s 10(23D) or UTI;

- Contribution to notified deposit scheme or pension fund of National Housing Bank;

- Subscription to notified deposit scheme of - (i) Any public sector housing finance company, or (ii) Any housing development authority or City/Town/Village development authority.

- **Tuition fees**: Tuition fees -
- excluding any development fees or donation or payment of similar nature,
- paid on admission or thereafter,
- to any university, college, school or other educational institution situated within India
- For the purpose of full-time education of any two children of an individual.

- **Repayment of housing loan:** Payment in respect of purchase or construction of residential house property by way of -
  (a) Installment or part payment -
  (i) Under self-financing or other scheme of development authority or housing board or housing development authority; or
  (ii) Towards cost of house/flat to any company or co-operative society of which assessee is a shareholder or member;

  (b) Repayment of loan borrowed from -
  (i) The Central or State Government, or
  (ii) LIC, or
  (iii) Any bank, including a co-operative bank, or
  (iv) National Housing Bank, or
  (v) Public company being a housing finance company eligible for deduction u/s 36(1) (viii), or
  (vi) public company/co operative society having business of financing construction of houses, or

- Stamp duty, registration fee and other expenses for purchase of house.

Payments not eligible for deduction: However, the following payments not eligible –

(a) Admission fee, cost of share and initial deposit which a shareholder/member of a company or co-operative society has to pay for becoming such shareholder or member;

(b) Cost of any addition/alteration/renovation/repair of house property after issue of completion certificate in its respect by a competent authority or after the house property or any part thereof has either been occupied by assessee or any other person on his behalf or been let out;

(c) Any expenditure which is deductible under section 24.

- **Equity shares, debentures, units, etc. of Infrastructure Undertakings: Subscription to approved –**

(i) equity shares or debentures forming part of, or

(ii) units of mutual fund notified u/s 10(23D) subscribed in, eligible issue of capital i.e. an issue made by a public company registered in India or a public financial institution, the entire proceeds of which are utilized wholly and exclusively for the purposes of any business referred to under section 80-IA(4).

- **5-year FDRs of Bank:** Term Deposit for a fixed period of five years or more with a scheduled bank, which is in accordance with a scheme framed and notified by the Central Government.

- **Notified bonds of NABARD:** Subscription to notified bonds issued by the National Bank for Agriculture and Rural Development.

- Deposit in an account under the Senior Citizens Savings Scheme Rules, 2004.

- **5-year FDRs of post-offices:** Deposit as five year time deposit in an account under the Post Office Time Deposit Rules, 1981.

Payments need not be out of income chargeable to tax: *For the purposes of deduction under this section, the payments or deposits need not be out of income chargeable to tax. If an assessee takes loan or makes any other arrangement for deposits or payments referred to in this section, he shall eligible for deduction*

Provisions relating to withdrawal of deduction: Where, in any previous year, an assessee –

(a) Terminates life insurance or such contract ceases to be in force due to failure to pay premium, within 2 years from start of insurance or before premiums are paid for 2 years; or

(b) Terminates his participation to unit-linked insurance plan or such plan ceases to be in force due to failure to pay contribution, before the contributions have been paid for 5 years; or

(c) Transfers (including transfer by way of lease totaling for more than 12 years) the house property before expiry of five years from the end of the financial year in which possession of such property is obtained by him, or receives back, whether by way of refund or otherwise, any sum specified in that point.

(d) Sells or otherwise transfers equity shares/debentures, with reference to the cost of which deduction has been allowed under section 80C, within three years from the date on which his name is entered in relation to those shares or debentures in register of members or of debenture-holders,

then, -

- the aggregate amount of deductions allowed in any preceding previous year(s) under such cases shall be deemed to be the income of the assessee of that previous year; and further,
- In cases falling under (a) to (c), no deduction shall be allowed in that previous year under those point heads.

Withdrawal from Senior Citizens Savings Account or Term deposit of Post Office within 5 years -

Taxable: If any amount, including interest accrued thereon, is withdrawn by the assessee from his account before the expiry of the period of five years from the date of its deposit, the amount so withdrawn shall be deemed to be the income of the assessee of the previous year in which the amount is withdrawn.

However, the following shall not be liable to be taxed

Interest already taxed in preceding previous year(s): Any amount of interest, relating to deposits which has been included in the total income of the assessee of the previous year or years preceding such previous year; and

Amount (excluding untaxed interest) received on death: Any amount received by the nominee or legal heir of the assessee, on the death of such assessee (other than interest accrued thereon, which was not included in the total income of the assessee for the previous year or years preceding such previous year).

CONTRIBUTION TO CERTAIN PENSION FUNDS [SECTION 8OCCC]:

Eligible Assessee: Individual;

Deduction in respect of: Amount paid or deposited in the previous year -

- out of his income chargeable to tax
- to effect or keep in force a contract-for any annuity plan of LIC or any other insurer
- For receiving pension from the fund referred to in section 10(23AAB).

(3) **Quantum of Deduction:** Deduction shall be allowed to the extent of lower of the following -

(a) Amount so paid or deposited (excluding interest/ bonus accrued or credited); or

(b) `₹ 1, 00,000.

Amount withdrawn or Pension - Taxable: In case assessee or his nominee receives any amount (including interest or bonus credited to his Account) –

(a) On surrender of annuity plan or

(b) As pension, for which deduction was allowed in this section, then, the sum so received shall be deemed to be the income of assessee/nominee and shall be taxable in the previous year in which such sum is received.

No double deduction: Sum allowed as deduction under this section will not be allowed u/s 80C.

CONTRIBUTION TO PENSION SCHEME OF CENTRAL GOVERNMENT [SECTION 80CCD]:

Eligible Assessee:

(a) Individual employed by Central Government or any other employer on or after 1-1-2004, or,

(b) Any other individual assessee;

Deduction in case of an employee: Deduction shall be allowed to the extent of sum of the following –

Employee's contribution [Sec. 8OCCD (1)]: Sum paid/deposited by assessee to the credit of his account in the notified pension scheme, or, 10% of salary, whichever is lower.	X
Employer's contribution [Sec. 8OCCD(2)]: Contribution, if any, made by the Central Government or any other employer in assessee's account, or, 10% of salary, whichever is lower.	X
Total amount of deduction	X

- "Salary" includes Dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

Deduction in the case of any other individual assessee [Sec. 8OCD (1)]: Deduction shall be allowed the extent of the lower of the following -

(a) Sum paid/deposited by assessee to the credit of his account in the notified pension scheme, or,

(b) 10% of his gross total income in the previous year.

Amount withdrawn or Pension - Taxable: In case assessee or his nominee receives any amount, respect of which deduction was allowed in this section, (including interest or bonus thereon) –

(a) On closure or his opting out of the pension scheme; or

(b) As pension,

then, such amounts will be taxable in hands of such assessee/ nominee in the previous year of receipt.

No taxability if sum received invested in annuity plan: The assessee shall be deemed not to be received any amount in the previous year if such amount is used for purchasing an annuity plan in the same previous year.

LIMIT ON DEDUCTIONS UNDER SECTIONS 80c, 8OCCC AND 8OCCD [SECTION 80CCE]:

The aggregate amount of deductions under section 80C, section 8OCCC and section 8OCCD(1) (i.e. employee's contribution or an individual assessee's contribution to pension scheme of Central Government shall not, in any case, exceed ₹1,00,000. (Amendment by the Finance Act, 2011 w.e.f. 1-4-2012)

[Effect of amendment: Section 8OCCE has been amended to provide that the contribution made by the Central Government or any other employer to a pension scheme under section 8OCCD (2) shall be excluded form the limit of one lakh rupees provided under section 80CCE].

DEDUCTION IN RESPECT OF SUBSCRIPTION TO LONG-TERM INFRASTRUCTURE BONDS [SECTION 8OCCF]:

Eligible Assessee: An Individual or a Hindu undivided family;

Deduction in respect of: Deduction is available in respect of sum paid or deposited, during the previous year, as subscription to long-term infrastructure bonds notified for the purposes of this section by the Central Government.

Quantum of Deduction: Deduction shall be to the extent of the lower of -
(a) Whole of the amount so paid or deposited; or

(b) `₹ 20,000.

Deduction in respect of investment made under any equity saving scheme [SECTION 80CCG]:

Eligible Assessee: A residential individual (may be ordinary resident or not ordinarily resident).

Conditions:

1. His gross total income does not exceed ` ₹10 lakhs.
2. He has acquired listed shares in accordance with a notified scheme.
3. The assessee is a new retail investor as specified in the above notified scheme.
4. The investment is locked in for a period of 3 years from the date of acquisition in accordance with the above scheme.
5. The assessee satisfies any other condition as may be prescribed.

Amount of Deduction: 50% of the amount invested in equity shares. However, the amount of deduction under this section cannot be more than ` ₹25,000/-.

If any deduction is claimed by a taxpayer under this section, he shall not be entitled for any deduction under this section for any subsequent year.

If the assessee, after claiming the aforesaid deduction, fails to satisfy the above conditions, the deduction originally allowed shall deemed to be the income of the assessee of the year in which default is committed.

DEDUCTION IN RESPECT OF HEALTH INSURANCE PREMIA [SECTION 80D]:

Eligible Assessee: An Individual or a Hindu undivided family;

Deduction in respect of: Deduction is available in respect of the amount paid to effect or to keep in force health insurance under a scheme –
(a) made by General Insurance Corporation of India (GIC) and approved by Central Government; or
(b) Made by any other insurer and approved by Insurance Regulatory and Development Authority.

Condition precedent: Deduction is allowed only if such health insurance premium is paid -

(a) By any mode, other than cash, in the previous year;

(b) Out of his (assessee's) income chargeable to tax.

Quantum of Deduction in case of HUF assessee: Deduction shall be to the extent of lower of -
(a) Health insurance premium paid in respect of health of any member of that HUF; or

(b) ₹15,000 (₹20,000 in case the insured is a senior citizen).

- "Senior citizen" means an individual resident in India who is of the age of 60 years or more at any time during the relevant previous year.

Quantum of Deduction in case of Individual assessee: Deduction shall be aggregate of the following –

(A) Health insurance premia paid on the health of the assessee or his/her spouse or his/her dependant children or any contribution made to the Central Government Health Scheme - (a) Total amount paid as above ; or (b) ` ₹15, 000 (`₹ 20,000 in case the insured is a senior citizen), whichever is lower.	X

(B) Health insurance premia paid on the health of the parent(s) of the assessee – (a) Total amount paid as above; or (b) ` ₹15000 (` ₹20,000 in case the insured is a senior citizen), whichever is lower.	X
Total amount of deduction (A+B)	X

- "Senior citizen" means an individual resident in India who is of the age of 60 years or more at any time during the relevant previous year.

From Assessment Year 2013-14 deduction can be claimed for preventive health check of self, spouse, dependent children and parents up to maximum of `₹ 5,000/- with in overall existing limits. It can be paid in cash also.

MAINTENANCE INCLUDING MEDICAL TREATMENT OF A DEPENDANT BEING PERSON WITH DISABILITY [SECTION 8ODD]:

Eligible Assessee: An Individual or a Hindu undivided family, resident in India.

Deduction in respect of: Deduction is available in respect of –
(a) Expenditure incurred for medical treatment/nursing/ Training/rehabilitation, or
(b) Amount paid under scheme of LIC/UTI/other insurer approved by CBDT for maintenance, of a "dependant", being a person with disability.

- "Dependant" means -

(i) Spouse, children, parents, brothers and sisters of individual, or
(ii) Any member of the HUF,

Who -

- is dependant wholly or mainly on such individual/HUF for his support and maintenance, and
- Has not claimed any deduction u/s 80U.

Quantum of Deduction: Deduction = ` ₹50,000 (` ₹1, 00,000 in case of dependant suffering with severe disability), irrespective of expenditure incurred or sum paid.

Nature of Scheme: The scheme must provide for payment of annuity or lump sum amount for benefit of such dependant in the event of death of individual/member of HUF in whose name subscription to the scheme has been made. Further, the assessee must nominate either such dependant or any other person or trust to receive the payment on his behalf, for the benefit of the dependant.

Furnishing of disability certificate: The assessee must furnish a copy of disability certificate issued medical authority in prescribed form, along with his return of income for assessment year for which the deduction is claimed. Where condition of disability requires reassessment, deduction will allowed only if a new disability certificate is so obtained and furnished.

Amount received on death of Dependant -Taxable: If the dependant predeceases such individual or member of Hindu Undivided Family, the amount paid or deposited under the scheme shall be deemed to be taxable income of assessee of the previous year in which it is received.

<u>DEDUCTION IN RESPECT OF MEDICAL TREATMENT, ETC. [SECTION 8ODDB]:</u>

Eligible Assessee**:** An individual or a Hindu undivided family, resident in India.

Deduction in respect of: Deduction is available in respect of sum actually paid during previous year for medical treatment of prescribed disease or ailment for the following -
(a) *in case of individual*: himself or his spouse, children, parents, brothers and sisters,

(b) *In case of HUF:* its member(s), dependant mainly on such individual or HUF for his support and maintenance.

- Some prescribed diseases are Neurological Diseases, Malignant Cancers, AIDS, Chronic Renal failure.

Quantum of Deduction: Deduction shall be available to the extent of lower of the following -
(a) sum actually paid; or

(b) ` ₹40,000 (`₹ 60,000 in case of a senior citizen).

- **"Senior citizen"** means an individual resident in India who is of the age of 60 years or more at any time during the relevant previous year.

- **Deduction to be reduced:** Deduction will be reduced by the amount received from insurer, or reimbursed by the employer of assessee for the medical treatment of the person(s) referred above.

Deduction allowable only if certificate furnished: No deduction shall be allowed unless the assessee furnishes with return of income a certificate in prescribed form from a prescribed specialist, working in a government hospital.

DEDUCTION IN RESPECT OF INTEREST ON LOAN TAKEN FOR HIGHER EDUCATION [SECTION 80E]:

Eligible Assessee: Individual;

Deduction in respect of: Deduction in available in respect of sum paid by the assessee in the previous year, out of his income chargeable to tax, by way of interest on loan taken:

(a) For his higher education, or

(b) For the higher education of his relative.

"Higher education" means any course of study pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognized by the Central Government or State Government or local authority or by any other authority authorized by the Central Government or State Government or local authority to do so.

"Relative", in relation to an individual, means the spouse and children of the individual or the student for whom the individual is the legal guardian

Quantum and period of deduction: Deduction 100% of the amount of interest on such loan. Deduction will be admissible –

(a) For 8 assessment years starting from assessment year in which interest was first repaid; or

(b) Until interest on such loan is fully repaid, whichever is earlier.

Nature of loan: The loan referred to above must be taken –

(a) From any bank or other financial institution approved by prescribed authority or any charitable institution notified by under section 10(23C) or section 80G (2)(a); and

(b) For pursuing higher education.

ADDITIONAL DEDUCTION OF INTEREST ON HOUSING LOANS(SECTION 80EE):

Additional deduction of ₹ 1,00,000/- for interest payable for AY 2014-15 on housing loan taken from any bank or housing finance company for acquiring a residential house provided;

(a) The loan is sanctioned between 01/04/2013 and 31/03/2014;
(b) The loan sanctioned does not exceed ₹ 25,00,000/-
(c) The value of the residential house does not exceed ₹ 40,00,000/-
(d) The individual does not own any residential house on the date of sanction of the loan.

Where the interest payable is less than ₹ 1, 00,000/- for AY 2014-15, the balance amount shall be allowed in AY 2015-16.

This deduction is in addition to deduction of ₹ 1, 50,000/- in respect of interest on loan for self occupied property as provided under section 24.

(Inserted by Finance Act, 2013)

DEDUCTION IN RESPECT OF DONATIONS TO CERTAIN FUNDS, CHARITABLE INSTITUTIONS, ETC. [Section 80G]:

Deduction is allowed under this section to all assessee in respect of donations of sum of money in the following manner –

(A) Donations eligible for deduction without any qualifying limit:

(1) 100% Deduction will be allowed if donations are given to

(a) Prime Minister's National Relief Fund;	(b) Armenia Earthquake Relief fund;
(c) Africa (Public Contribution-India) Fund;	(d) National Foundation for Communal Harmony;
(e) National illness Assistance Fund;	(f) National Cultural Fund set up by Government;
(g) Gujarat Govt.'s Earthquake Relief Fund;	(h) National Defence Fund set up by Government.
(i) National Sports Fund set up by Govt.;	(j) ZilaSaksharta Samiti
(k) An approved University or other educational institution of national eminence; (l) Maharashtra Chief Minister's Earthquake Relief Fund; (m) The National Blood Transfusion Council or any State Blood Transfusion Council; (n) Any fund set up by a State Government to provide medical relief to the poor; (o) Central Welfare Fund for Army or Air Force or Indian Naval Benevolent Fund; (p) Andhra Pradesh Chief ministers Cyclone Relief Fund; (q) Fund for Technology Development and Application set up by Govt.; (r) Chief Ministers Relief Fund or Lieutenant Governor's Relief Fund of any State or Union territory; (s) Welfare trust for persons with Autism, Cerebral Palsy and Multiple Disabilities	

(2) 50% deduction will be allowed if donations made to –

(a) Jawaharlal Nehru Memorial Fund
(b) Rajiv Gandhi Foundation
(c) Indira Gandhi Memorial Trust
(d) National Children's Fund
(e) Prime Minister's Drought Relief Fund

(B) Donations eligible for deduction subject to the qualifying amount:

100% deduction shall be allowed subject to the qualifying amount if donations are made -

(a) To Government or any approved local authority, institution or association to be utilized for promoting family planning;

(b) By company to Indian Olympic Association or other notified association/institution in India for development of infrastructure for sports and games, or sponsorship thereof in India.

50% deduction shall be allowed subject to the qualifying amount if donations are made –

(a) To Government or local authority, for charitable purpose except promoting family planning.

(b) To approved charitable institution, this satisfies the conditions of section 80G(5).

(c) For renovation or repair of any temple, mosque, gurudwara, church or other place notified to be of historic/archaeological/artistic importance or as a place of public worship of renown;

(d) To housing development authority or city/town/village development authority constituted in India by or under any law

(e) Corporation for promoting interests of minority community as given under section 10(26BB)

Qualifying Limit of (B): The amount of deduction in respect of (B) shall be lower of the following -

(a) Total of sums falling under (B) above; or

(b) 10% of Adjusted Gross Total Income.

Adjusted gross total Income means "Gross Total Income" as reduced by –

(i) Deduction permissible under section 80C to 80U except 80G;
(ii) Incomes on which no tax is payable;
(ii) Incomes referred under sections 111A, 112, 115BB, 115A(1)(a), 115AC, 115ACA, 115AD, 115BBA, 115BBD and 115D.

Note: Any payment in excess of `₹ 10,000/- will be allowed as deduction only if it is paid by any mode except cash.

DEDUCTIONS IN RESPECT OF RENTS PAID [SECTION 8OGG]:

Eligible Assessee: Individual, who is not in receipt of any House Rent Allowance (HRA).

Deduction in respect of: Rent actually paid for any furnished or unfurnished residential accommodation occupied by the assessee.

***Quantum of deduction**:* The deduction shall be allowed to the extent of least of the following:
(a) ` ₹2,000 per month;

(b) 25% of adjusted total income;

(c) Rent paid - 10% of adjusted Total Income.

Adjusted total income means total income computed before allowing the deduction under this section but excluding incomes from which deductions under this chapter is not allowed.

No deduction: No deduction shall be allowed if any residential accommodation is owned
(a) By the assessee or his spouse or minor child or, by the HUF of which he is the member, at the place where rented house is taken; or

(b) By the assessee, at any other place, if such house is claimed as self-occupied property.

DEDUCTION IN RESPECT OF CERTAIN DONATIONS FOR SCIENTIFIC RESEARCH OR RURAL DEVELOPMENT [SECTION 80GGA]:

Eligible Assessee: All persons whose Gross Total Income does not include chargeable under the head “Profits and Gains of Business or Profession”.

Deduction in respect of: Deduction is available in respect of sum paid during the previous year to -
(a) Any research association, university, college etc. approved under section 35(1)(ii), for use in scientific research;

(b) research association which has as its object the undertaking of research in social science or statistical research or a University, college/other institution, for use in social science research or statistical research, if such association, university, etc. is approved under section 35(1)(iii);

(c) National Rural development fund or National Urban Poverty Eradication Fund set up and notified under section 35CCA;

(d) Association/institution undertaking any rural development, if prescribed certificate is furnished under section 35CCA; or

(e) Public sector company or a local authority or an association or institution approved by National Committee, for carrying out any eligible project or scheme as notified u/s 35AC.

Quantum of Deduction: 100% of sums so paid.

No double deduction: if deduction is allowed under this section, any deduction is allowable respect of that sum under any other provision of this Act for the same or any other assessment year.

Deduction not deniable even if approval withdrawn subsequently: Deduction allowable under this section in respect of payment for carrying out any rural development programme or eligible project or scheme, shall not be denied merely because, subsequent to the payment of such sum by the assessee, -

- the approval granted to the association, University, college or other institution to whom payment is made, or, the approval granted to such rural development programme has been withdrawn; or

- The notification notifying eligible project/scheme referred u/s 35AC has been withdrawn.

Note: Any payment in excess of ` ₹10,000/- will be allowed as deduction only if it is paid by any mode except cash.

DEDUCTION IN RESPECT OF CONTRIBUTIONS GIVEN TO POLITICAL PARTIES [SECTION 8OGGB AND 8OGGC]:

80-GGB	Indian Company	Contributions to a political party registered under section 29A of Representation of the People Act, 1951, or, an electoral trust approved by the Board in this behalf.	100% of the amount so contributed
80-GGC	Any person	Contributions to a registered political party, or, an electoral trust approved by the Board in this behalf by any person other than - (a) local authority; (b) every artificial juridical person wholly or partly funded by the Government	100% of the amount so contributed

***Note**: In the case of Indian company, advertisement given in souvenir of a political party shall also be deemed to be contribution made to a political party and shall be eligible for deduction u/s 8OGGB.*

DEDUCTION AVAILABLE TO AN ASSESSEE ENGAGED IN BUSINESS OF COLLECTING AND PROCESSING OF BIODEGRADABLE WASTE [Section 80-JJA]:

In case of any assessee engaged in business of collecting and processing or treating of bio-degradable waste for generating power, or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure, the 100% of profits derived from such business shall be eligible for deduction for a period of 5 consecutive assessment years beginning with the assessment year relevant to previous year in which such business commences.

DEDUCTION IN RESPECT OF EMPLOYMENT OF NEW WORKMEN [Sec.80-JJAA]:

Eligible Assessee: An Indian company whose gross total income includes any profits and gains derived from any ***factory engaged in the manufacture*** or production of article or thing. **(Amended by Finance Act, 2013)**

Deduction: Deduction is allowed @ 30% of additional wages paid to new regular workmen employed by assessee in the previous year. The deduction is allowed for ***three*** assessment years including the assessment year relevant to previous year in which such employment is provided.

Additional Wages: Additional wages means wages paid to new regular workmen employed during the year over and above the first one hundred workmen employed in the undertaking.

Conditions: The deduction is allowed only if -

(a) The eligible assessee employs new regular workman;

Regular workman does not include — (a) casual workman or (b) contract labour or (c) any other workman employed for less than 300 days during the previous year.

(b) The total number of workmen employed in the undertaking (whether new undertaking or existing undertaking) should be more than 100;

(c) In case of an existing undertaking, the increase in the number of regular workmen employed during the year is 10% or more of the existing number of workmen employed in such undertaking as on the last day of the preceding year;

(d) The industrial undertaking is not formed by the splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking;

(e) The assessee furnishes, along with return of income, report of Chartered accountant in prescribed form giving prescribed particulars;

DEDUCTION IN RESPECT OF CERTAIN INCOMES OF OFFSHORE BANKING UNITS AND INTERNATIONAL FINANCIAL SERVICES CENTRE [Section 80-LA]:

Eligible Assessee: Eligible assessee means - (a) a scheduled bank, or, any foreign bank having an Offshore Banking Unit in a Special Economic Zone, or (b) a unit of an International Financial Services Centre, whose gross total income includes eligible income.

Eligible Income: Eligible income means the income –

(a) From an Offshore Banking Unit in a Special Economic Zone; or

(b) from the banking business with an undertaking located in Special Economic Zone or any other undertaking which develops, operates or maintains a Special Economic Zone; or
(c) From any Unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a Centre in a Special Economic Zone.

Deduction: The deduction shall be allowed under this section as follows: -

(a) 100% of eligible income for 5 consecutive assessment years starting with assessment year relevant to previous year in which permission to operate such unit was obtained under relevant law; and

(b) Thereafter, 50% of eligible income for next 5 consecutive assessment years.

Conditions: Deduction is only if the assessee furnishes along with the return of income:

(a) A report from an accountant in prescribed form, certifying correctness of deduction claimed; and

(b) A copy of the permission obtained under Banking Regulation Act, 1949.

DEDUCTION IN RESPECT OF INCOME OF CO-OPERATIVE SOCIETIES [Section 80P]:

Eligible Assessee: A co-operative society whose gross total income includes eligible income.

Eligible Income and Scheme for Deduction thereof: Following deductions are allowed:

(a) 100% of profits and gains attributable to any one or more of the following activities –

(A) Carrying on business of banking or providing credit facilities to its members; or

(B) A cottage industry, or

(C) Marketing of agricultural produce grown by its members, or

(D) Purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(F) Processing, without the aid of power, of the agricultural produce of its members, or

(F) Collective disposal of the labour of its members, or

(G) Fishing or allied activities i.e. catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members.

(b) 100% of profits and gains of a primary society from the business of supplying milk, oilseeds, fruits or vegetables raised or grown by its members to –

(A) A federal co-operative society, engaged in supplying milk, oilseeds, fruits, or vegetables; or

(B) The Government or a local authority; or

(C) A Government company or a statutory corporation (if it is engaged in supplying milk, oilseeds, fruits or vegetables, etc. to the public).

(c) In case of the activities of any co-operative society consist of activities other than those specified in (a) or (b) above, deduction is allowed to the extent of lower of –

(A) Profits attributable to such activities (whether carried on with members or not); or

(B) ₹` 50, 000 (` ₹1, 00,000 in case of a consumers co-operative society)

(d) 100% of interest or dividends derived from its investments with any other co-operative society.

(e) 100% of income from letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

(f) 100% income from interest on securities or from house property chargeable under section 22 if –

(A) Society is not a housing society or urban consumers society (i.e. a society for benefit of consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment) or society carrying on transport business or society engaged in performing any manufacturing operations with aid of power; and

(B) Its Gross Total Income does not exceed ` ₹ 20,000.

(3) No deduction to certain co-operative banks: The deduction provided for in this section shall not be applicable to any co-operative bank other than –

(i) A primary agricultural credit society or

(ii) A primary co-operative agricultural and rural development bank.

Thus, income arising to a co-operative bank (including income arising from banking business carried on with its members) shall not be eligible for deduction. However, such income arising to a primary agricultural credit society or primary co-operative agricultural and rural development bank shall be eligible for deduction u/s 80P.

DEDUCTION IN RESPECT OF ROYALTY INCOME, ETC., OF AUTHORS OF CERTAIN BOOKS OTHER THAN TEXTBOOKS [SECTION 8OQQB]:

Eligible Assessee: Resident Individual being an author (including a joint author) whose gross total income includes eligible income.

Eligible Income: Income, derived by him in the exercise of his profession, on account of

(a) lump sum consideration for assignment or grant of any of his interests in the copyright of any book being a work of literary, artistic or scientific nature, or

(b) Royalty or copyright fees (whether receivable in lump sum or otherwise) in respect of such book.

• "Books" shall not include brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, text-books for schools, tracts and other publications of similar nature.

• "Lump sum", in regard to royalties or copyright fees, includes a non-returnable advance payment.

Deduction: 100% of such eligible income or ` ₹3, 00,000, whichever is less.

Note: Where such eligible income Is not a lump sum consideration in lieu of all rights of the assessee in the book, then, for calculating the deduction under this section, the amount of so much of eligible income shall be considered as does not exceeds 15% of the value of the books sold during the previous year i.e. the income qualifying for deduction under this section shall be the lower of –

(a) Eligible income (before allowing any attributable expenses); or

(b) 15% of the value of books sold during the previous year.

The attributable expenses shall be deducted from the lower of the amounts referred to above.

In case of income earned from foreign sources: Deduction is allowed –
(a) to the extent the income is brought into India in convertible foreign exchange within six months from end of previous year or the extended period allowed by RBI/ competent authority; and

(b) Only if the assessee furnishes a certificate, in prescribed form from prescribed authority, along with the return of income in the prescribed manner.

Condition: The assessee must furnish, along with return of income, a certificate in prescribed form and manner, duly verified by the person responsible for making such payment to the assessee.

Note: Income for which deduction is allowed under this section shall not eligible for deduction under any other provision of this Act in any assessment year.

DEDUCTION IN RESPECT OF ROYALTY INCOME ON PATENTS [SECTION 8ORRB]:

Eligible Assessee: Resident Individual being a patentee (i.e. the true and first inventor of invention and whose name is entered in patent register in accordance with Patents Act and includes joint- patentee), whose gross total income includes eligible income.

Eligible Income: Royalty on patent (including a patent of addition) registered under Patents Act, 1970.

Royalty: Royalty means consideration (including any lump sum consideration but excluding any consideration chargeable as “Capital gains” or consideration for sale of product manufactured with use of patented process or of patented article for commercial use) for –

(a) Transfer of all or any rights (including granting of a license) in respect of a patent; or

(b) Imparting of any information concerning the working of, or the use of, a patent; or

(c) Use of any patent; or
(d) Rendering of any services in connection with activities referred to in (a) to (c).

Lump sum includes any non-returnable advance payment on account of such royalties.

Deduction Lower of - (a) 100% of such income; or (b) `₹ 3, 00,000

- In case compulsory license is granted in respect of any patent, the royalty income eligible for deduction shall not exceed the amount of royalty under the terms and conditions of a license settled by the Controller under the Patents Act.

In case of income earned from foreign sources: Deduction is allowed -
(a) to the extent the income is brought into India in convertible foreign exchange within six months from end of previous year or the extended period allowed by RBI/ competent authority; and

(b) Only if the assessee furnishes a certificate, in prescribed form from prescribed authority, along with the return of income in the prescribed manner.

Condition: The assessee must furnish, along with return of income, a certificate in prescribed form and manner, duly verified by the person responsible for making such payment to the assessee.

Note: Income for which deduction is allowed under this section shall not eligible for deduction under any other provision of this Act in any assessment year.

DEDUCTION IN RESPECT OF INTEREST ON DEPOSITS IN SAVINGS ACCOUNT [SEC 80TTA]:

Eligible Assessee: Individual and HUF.

Deduction: ` ₹10,000/- in aggregate in respect of any income by way of interest on deposits (not being time deposits) in a savings account with –

(i) A Banking Company (ii) A Co-Operative Society engaged in carrying on the business of banking (including a co-operative land mortgage bank or co-operative land development bank); (iii) A Post Office.

Where the aforesaid income is derived from any deposit in a savings account held by, or on behalf of a firm, an AOP or BOI, no deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of AOP or BOI.

DEDUCTION IN RESPECT OF PERSON WITH DISABILITY [Sec. 80U]:

Eligible Assessee: Individual resident in India, who, at any time during the previous year, is certified by the medical authority to be a person with disability

Deduction: `₹ 50, 000 (`₹ 1, 00,000 for severe disability). Severe disability means 80% or more of disability.

Conditions: The deduction is allowed only if the assessee furnishes the disability certificate issued by the prescribed medical authority along with the return of income of relevant assessment year. In case disability requires reassessment, the deduction is allowed only if new certificate is obtained from the said authority and is furnished along with return of income.

Note: Disability includes Autism, Cerebral Palsy and Multiple Disabilities as defined under relevant Act.

Section 80IA:

Eligible Assessee	Activities	Deduction
Indian Company	Developing, Operating, Maintaining an Infrastructure Facility: • Road, Toll Road, Bridge or Rail System • Highway Project including housing. • water supply project, solid waste management system	100% of the profits for 10 Assessment Years out of 20 Assessment Years
	Port, Airport, Inland Wateways, Inland port or Navigational Channel in the Sea	100% of the profits for 10 Assessment Years out of 15 Assessment years

Any Assessee	Providing Telecommunication Service on or before 31.03.2005	100% profits for 5 assessment years and 30% for 5 Assessment Years out of 15 Assessment years.
	Maintaining and Operating Industrial Park or SEZ before 31.03.2005	100% profits for 10 assessment years out of 15 assessment years
	An Undertaking Generation or Generation and Distribution of power during 01/04/1993 to 31/03/2014	100% of profits for 10 Assessment Years out of 15 Assessment Years.
	An Undertaking which transmits or distributes by laying Network of new transmission or distribution lines during 01/04/1999 to 31/03/2014	
	An Undertaking which undertakes substantial renovation and modernization of existing network of transmission or distribution lines during 01/04/2004 to 31/03/2014	

Procedural Compliances: The deduction is not available unless the accounts of the Undertaking for the financial year for which the deduction is claimed are audited by an accountant, and a report is obtained in Form 10CCB/10CCC duly signed and verified by the accountant.

Deduction is not allowed unless the assessee submits a return of income on or before the due date specified U/S 139(1) of the Act.

Deduction in respect of Profits and Gains by Undertaking or Enterprise engaged in Development of SEZ (80IAB):

Deduction is available under this Section for profits and gains derived by an Undertaking or enterprise from any business of development of a SEZ, notified on or after 01/04/2005 under SEZ Act, 2005.

Deduction can be claimed for 10 consecutive assessment years out of 15 assessment years beginning from the year in which the SEZ has been notified by the Central Government.

If the developer transfers the operation and maintenance of such SEZ to another developer, the deduction is allowed to such transferee developer for remaining period in the ten consecutive years.

Deduction is not allowed unless the assessee submits a return of income on or before the due date specified U/S 139(1) of the Act.

Chapter 12
Assessment Procedures

Submission of Return of Income (Section 139(1)):

Every person –

(i) Being a Company; (ii) Firm; (iii) Other person if his total income or total income of other person in respect of which he is assessable ***exceeds the before giving deductions U/S 10AA, Chapter VIA exceeds maximum amount not chargeable to tax.***

(ii) Any resident and ordinarily resident in India who is otherwise not required to furnish a return of income, will be required to furnish a return if he has any asset located outside India including any financial interest in any entity Or has signing authority in any account located outside India.

Shall furnish return of his income or income of other person.

Such should be furnished on or before the due date in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

Although it is mandatory to file a return of income only when total income exceeds *the maximum exemption limit but the law does not prohibit the assessee to file a return of income even if his total income does not exceed the maximum exemption limit.*

Return of Income Forms:

Form No.	Particulars
ITR 1 (Sahaj)	For an individual if his total income includes: • Salary and family pension; • Income from one house property (excluding losses) • Income from other sources but does not include: Winnings from Lottery, winnings from horse races and loss under this head.
ITR-2	For individuals and HUFs not having business/ professional income.

ITR-3	For individuals/ HUF being partners in firms and not carrying out business or profession under any proprietorship.
ITR-4	For individuals and HUF having income from a proprietary business or profession.
ITR 4S (Sugam)	Individual and HUF having income computed on presumptive basis U/S 44AD and 44AE
ITR-5	For Firms, AOP and BOIs
ITR-6	For Companies
ITR-7	For persons including companies required to furnish return U/S 139(4A)/139(4B)/139(4C)/139(4D)

Note:

- **ITR 1 cannot be filed by a person, who:**

(a) Is a resident person (other than not ordinarily resident in India) and has any asset including financial interest located outside India;

(b) Signing authority in any account located outside India;

(c) Has claimed any relief of tax under section 90,90A or 91;

(d) If assessee claims exemption in respect of any income exceeding ₹ 5000 under section 10/10A/10AA etc…

- **Return in ITR 4S cannot be filed by a person who:**

  (a) Is a resident individual or HUF (other than not ordinarily resident in India) deriving income as referred to in section 44AD/ 44AE and has any asset including financial interest located outside India;

  (b) Has claimed any relief of tax under section 90,90A or 91;

  (c) If assessee claims exemption in respect of any income exceeding ₹ 5000 under section 10/10A/10AA etc…

Manner of filing the return: The return of income referred to in sub-rule (1) may be furnished in any of the following manners, namely:-

(i) Furnishing the return in a paper form;

(ii)Furnishing the return electronically under digital signature;

(iii) Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V;

(iv) Furnishing a bar-coded return in a paper form.

- ITR-7 can be submitted only in paper format.
- ITR-4 and ITR 5 (in case of individual /HUF/Firm which is subject to audit under section 44AB) e filed with digital signature
- ITR-6 can be filed e filed with digital signature.
- Every person claiming tax relief under section 90,90A or 91 shall submit e-return.
- Individual/ HUF having taxable income exceeding ₹ 10 lakhs or having assets outside India shall submit e return with or without digital signature.

E- Filing of audit reports shall be mandatory in the following cases:

- **Audit report U/S 44AB;**
- **Audit report U/S 92E in respect of International Transaction;**
- **Audit report U/S 115JB in respect of MAT computation.**

Due dates:

Return of income	Due date
• Company or • A person other than the company whose accounts are required to be audited *under this Act or under any other law* for the time being in force or • A working partner of a firm whose accounts are required to be audited under this act or any other law for the time being in force.	30th September of the assessment year
• In case of assessee who is required to furnish a report referred to in section 92E (international transaction or specified domestic transaction)	30th November of the assessment year
• In case of any other assessee	31st July of the assessment year

Person Authorized to sign Return of Income (Section 140):

Assessee	Who should sign the return
Individual	By the individual himself or where the individual concerned is absent from India or is mentally incapacitated from attending to his affairs, and 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.
HUF	By the karta, or where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the family.
Company	By the managing director thereof, or where, for any unavoidable reason, such managing director is not able to sign, or where there is no managing director, by any director of the company.
Firm	By the managing partner thereof or where, for any unavoidable reason, such managing partner is not able to sign or where there is no managing partner, by any partner thereof, not being a minor.
Limited Liability Partnership	By the designated partner thereof, or where for any unavoidable reason such designated partner is not able to sign or where there is no designated partner, by any partner thereof.
Local Authority	By the principal officer thereof.
Political Party	By the chief executive officer of such party.
Any other Association	By any member of the association or the principal officer thereof.
Any other person	By that person or by some other person competent to act on his behalf.

Return signed by un authorized person is a invalid return and no assessment can be made on invalid return.

Return of loss [Section 139(3) read with section 80]

If a person has sustained a loss under the head "Profits and gains of business or profession" or under the head "Capital Gains" and claims that such loss or any part thereof should be carried forward under section 72 or section 73 or section 74 or section 74A then he may furnish a return of loss within the time prescribed under section 139(1) and *all the provisions of this Act shall apply as if it were a return under section 139(1).*

Belated return [Sec 139(4)]

If an assessee has not submitted his return of income:

(a) On or before the due date mentioned under section 139(1); or

(b) Within the time allowed under a notice issued by the Assessing Officer under section 142(1)[1].

He can still file the return of income. Such a return is called belated/late return. Belated return can be filed at any time:

(i) Before the expiry of one year from the end of the relevant assessment year **or**
(ii) before *the completion of the assessment*

Return of income of charitable trust or institution [Sec. 139(4A)]

If total income of charitable trust or institution, before claiming exemption u/s 11 and 12, exceeds the maximum amount which is not chargeable to income tax (i.e. ₹ 2,00,000), it will be obligatory to furnish the return of income within time allowed under section 139(1).

Due date - 30th September of the A Y.

[1] *If the return of income is not filed under section 139(1), the Assessing Office can issue a notice under section 142(1) requiring the assessee to file the return of income within the time specified by him. However, the return so filed shall be a belated return if the assessee the return if the assessee was required to file the return of income under section 139 (1) or proviso to section 139 (1).*

Return of income of political party [Sec. 139(4B)]

If the total income of a political party computed before claiming exemption U/S 13A exceeds the maximum amount not chargeable to tax (₹ 2,00,000) it will be obligatory to file return of income on or before date specified under section 139(1).

Due date - 30th September of the AY as audit is compulsory.

return of income of certain associations or institutions [Sec. 139(4C)]

Mandatory, in case of the following associations or institutions, if the total income before claiming exemption under relevant section 10 exceeds the maximum amount which is not chargeable to tax:

(i) Research association [Sec. 10(21)]

(ii) News agency [Sec. 10(22B)]

(iii) Association or institution established for control, supervision, regulation, etc. of the profession of law medicine, accountancy, engineering, etc. [Sec. 10(23A)]

(iv) Institution for the development of khadi or village industries or both [Sec. 10(23B)]

(v) Fund or institution covered U/S 10(23C)(iv) and (v) (notified religious and charitable institution)

(vi) University or other educational institutions covered u/s 10(23C)(iiiad) and (vi) (whether its gross receipts is more or less than one crore)

(vii) Hospital or other medical institution covered u/s 10(23C)(iiiae) and (via) (whether its gross receipts is more or less than one crore)

(viii) Trade union referred to in sub-clause (a) or association of trade unions referred to in sub-clause (b) of clause (24) of section 10

(ix) Body or authority or Board or Trust or Commission (by whatever name called) referred to in section 10(46)

(x) Infrastructure debt fund referred to in section 10(47).

Although the total income of the above associations or institutions or body or debt fund is exempt under section 10 but still these institutions and associations, etc. shall be required to furnish return of income to enable the Assessing Officer to check whether the Associations/Institutions, etc. are satisfying the conditions mentioned in the respective sections subject to which exemption has been granted.

ROI of university, college or other institution referred to in section 35(1)(ii) or (iii) receiving donation for scientific or social or statistical research [Section 139(4D)]

Every university, college or other institution referred to in section 35(1)(ii) or (iii) which is not required to furnish returns of income or loss shall furnish the return of income or loss in a manner given under section 139(1).

Revised return [Sec 139(5)]

If an assessee, after furnishing the return of income:

(a) Under section 139(1), or (b) in pursuance of to a notice under section 142(1), discovers any omission or any wrong statement in the return filed, he may furnish a revised return.

Such revised return can be filed at any time:

(i) Before the expiry of one year from the end of the relevant assessment year, or
(ii) Before the completion of the assessment,

whichever is earlier.

A belated return filed under section 139(4) cannot be revised as section 139(5) provides that only return filed under section 139(1) or in pursuance to a notice under section 142(1) can be revised. ***[Kumar Jagdish Chandra Sinha v CIT (1996) 220 ITR 67 (SC)]***

Return filed within the period extended u/s 119 i. e. extended by the CBDT beyond the due date mentioned u/s 139(1) is a return filed u/s 139(1). It can therefore be revised u/s 139(5). ***[Hargovind Damji v CIT (2003) 259lTR 617 (Guj)]***

<u>Defective Return (Section 139(9)):</u> All items in income tax return form must be filled in the manner indicated in the return form. No column or row should be left blank. Otherwise the return may be liable to be held as defective or even invalid.

In case of a defective return, the commissioner shall intimate this to the person through e-mail or by placing a suitable communication on the e-filling website. A person shall comply with the notice regarding defective return by uploading the rectified return within the period of time mentioned in the notice. The commissioner may, in order to avoid hardship to the person, condone the delay in uploading of rectified return. In case no response is received from the person in reply to the notice of defective return, the commissioner may declare a return as not having been uploaded at all or process the return on the basis of information available – **Notification No.3/2012, date January 4, 2012.**

The Assessing Officer may give the assessee an opportunity to rectify the defect within a period of 15 days from the date of such intimation. The time limit may be extended by the Assessing Officer on an application by the assessee.

If the defect is not rectified by the assessee within the period of 15 days or such further extended period, then the Assessing Officer shall treat the return as an invalid return and other provisions of the Income tax Act would apply as if the assessee had failed to furnish the return.

<u>Consequences of non-tiling or late filing of return</u>

- Interest U/S 234A @ 1% p.m, or part of the month on amount of tax on total income as determined U/S 143(1) or regular assessment as reduced by taxes paid/adjusted (other than self-assessment tax) from the date after the due date of filing the return or date of completion of the assessment U/S 144, if no return is filed.

- Penalty u/s 271F, which is ₹ 5,000 if return filed after the end of the relevant AV. However, for section 139(4A) and 139(4C), penalty u/s 272A (2) instead of 271F which is ₹ 100 for every day during which the failure continues.
- Prosecution U/S 276CC

Persons required to obtain PAN (Permanent Account Number) (Sec 139A):

Persons	Time Limit for application
Every person, if his income assessable during the previous year exceeds the maximum not chargeable to tax and has not been allotted PAN	31st May of the assessment year for which the income exceeds maximum exemption limit
Any person carrying on business or profession whose total sales, turnover or gross receipts are or is likely to exceed ₹ 5,00,000 in any previous year and who has not been allotted PAN	Before the end of the accounting year for which turnover/gross receipts exceeds ₹ 5,00,000/-
Charitable Institution	Before the end of the accounting year
In case of person who is entitled to receive any sum or income or amount, on which tax is deductible in any financial year	Before the end of the financial year.
Exporters and Importers	Before making any export or import
Assessee covered by Central Excise Rules	Before making any application for registration under the Central Excise
Assessee Covered by Finance Act, 1994	Before making an application for registration under the Service Tax Rules, 1994.

Self Assessment (Section 140A):

Every person, before submitting a return of income u/s 139 or section 142(1) or section 148 or section 153A is under an obligation to make a self-assessment of his income and after taking in account the amount of tax, if any, already paid, pay the self-assessment tax, if due.

The assesse shall be liable to pay such tax together with interest payable for any delay in furnishing the return or any default or delay in payment of advance tax.

Self-assessment of income returned: The procedure for making self-assessment and determination of the tax liability of return of income is explained in the following steps:

(i) Compute the total income;

(ii) Calculate the tax payable on the total income at the rates in force;

(iii) Add surcharge if applicable. Surcharge is applicable in case of a company assessee only, provided its total income exceeds ` ₹1 crore;

(iv) Add education cess @ 2% plus SHEC @ 1%;

(v) From the tax payable, calculated under step (IV), deduct the following:

(a) Any relief of tax or deduction of tax claimed u/s 89, section 90, section 90A or section 91;

(b) Any tax credit claimed to be set off in accordance with the provisions of section 115JAA (MAT credit); / 115JD (AMT credit)

(c) Any tax deducted or collected at source;

(d) The amount of tax, if any, already paid under any provision of this Act that is advance tax;

(vi) Add interest payable for the following to the Net-tax calculated:

(a) Interest for late filing of return u/s 234A computed on the amount of the tax on the total income as declared in the return as reduced by the amount specified in step (v)(a) to (d);

(b) Interest for default in payment of advance tax u/s 234B computed on amount equal to the assessed tax or the case may be, on the amount by which the advance tax paid falls short of assessed tax.

(c) Interest for deferment of advance tax (u/s 234C);

The above tax and interest payable should be paid as self-assessment tax before filing the return of income.

With effect from 1st June, 2013, nonpayment of Self assessment tax together with interest, if any, payable in accordance with the provisions of section 140A, by furnishing the return of income shall make the return of income a defective return.

(Inserted by Finance Act, 2013)

Where the amount paid by the assessee as self-assessment tax falls short of the aggregate of the tax and the interest, the amount so paid as self-assessment tax by the assessee shall first be adjusted towards the interest payable and the balance, if any, shall be adjusted towards the tax payable.

Service of notice to file return:

For the purpose of making an assessment under this Act, the AO may serve a notice to any person requiring him to file, his ROI or ROI of any person in respect of which he is assessable, on a date specified in the notice, if he has not made a return within the time allowed under section 139(1) or before the end of the relevant assessment year. **[Sec 142(1)(i)]**

Notice under section 142(1)(i) can be issued only after the expiry of the due date mentioned in section 139(1).further, notice under section 142(1)(i) can be issued even after the end of the relevant assessment year if the return is not filed till the end of the relevant assessment year.

If the notice under section 142(1)(i) is issued to the assessee, he shall have to file return of income whether he was obliged to file the return of income or not.

Sec[142(1)(ii)]: For the purpose of making an assessment under this act, the AO may serve on a person who has made a return under section 139 or in whose case the time allowed under section 139(1) has expired, a notice requiring him, on a date mentioned there in to *produce or cause to produce such accounts or documents as the AO may require.*

However, the AO shall not require the production of any accounts relating to period prior to a period more than 3 years prior to the previous year.

<u>Sec [142(1)(iii)]:</u> For the purpose of making assessment under the act, the AO may serve on a person who has made a return under section 139 or in whose case the time allowed under section 139(1) has expired, a notice requiring him to furnish in writing and verified in the prescribed manner information in such form and on such points or matters including the statement of all assets and liabilities of the assessee, whether included in the accounts or not as the assessing officer may require.

However, prior approval of the Joint Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts.

<u>Note</u>: Notice under section 142(1)(ii) or (iii) can be given whether return of income has been submitted or not but can be served only after the time allowed under section 139(1) has expired.

Notice under section 142(i) or (ii) or (iii) can be issued only for the purpose of making an assessment under the Income tax act.

However, by issuing notice under section 142(1)(ii) or 142(iii) the assessing officer cannot make assessment. Normally, such notice is issued along with the notice for scrutiny assessment or reassessment.

If the assessee has not furnished the return within the time allowed under section 139(1), it is not mandatory for the assessing officer to issue notice under section 142(1)(i) for filing the return of income in case he wishes to make best judgment assessment under section 144.

Make Inquiry [Section 142(2)]: For the purpose of obtaining full information in respect of income or loss of any person, the Assessing Officer may make such inquiry, as he considers necessary. While section 142(1) empowers the Assessing Officer to collect information from the assessee himself, section 142(2) on the other hand, empowers him to collect information from sources other than the assessee.

Audit of Accounts [Sections 142(2A) to (2D)]: The Assessing Officer may, at *any stage of the proceedings* before him, direct the assessee to get the accounts audited by a Chartered Accountant nominated by the Chief Commissioner/Commissioner of Income-tax. Such a decision may be taken by the Assessing Officer, if:

(a) Having regard to the nature and complexity of the accounts of the assessee, and
(b) The interest of the revenue

he is of the opinion that it is necessary so to do. The Assessing Officer can issue such directions only with prior approval of the Chief Commissioner/Commissioner of Income tax. [Section 142(2A)].

However, W.e.f. 1.6.2007, the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.

Direction of audit can be given even if the accounts are already audited under the Income-tax Act or under any other law [Section 142(2B)].

Form and time limit for submission of report [Section 142(2C) and Rule 14A]: The Chartered Accountant shall submit the audit report in Form No. 68 to the assessee who will in turn submit it to the Assessing Officer within such period as may be specified by the Assessing Officer. Such period may, however, be extended by the Assessing Officer suo motu or on the request of the assessee and for any good and sufficient reasons. The aggregate of the period originally fixed and the extended period(s) shall not, in any case, exceed 180 days from the date on which the directions for audit were received by the assessee.

The direction to get accounts audited can be issued only in the course of assessment proceeding which is pending and not after the completion of assessment. [Kumar Films Pvt. Ltd. v CIT (2002) 258 ITR 257 (Patna)]. Further the assessment also includes reassessment.

No appeal is possible against the orders under section 142(2A) for audit of accounts.

Consequences of non-compliance of section 142(1) and section 142(2A):
Failure to comply with notice under section 142(1) or to get accounts audited as per directions issued under section 142(2A) may result in:

(a) Best judgment assessment under section 144;

(b) Penalty under section 271(1)(b) which has been fixed at ` ₹10,000);

(c) Prosecution under section 276D with rigorous imprisonment which may extend to one year or with fine which will not be less than `₹ 4 or more than ` ₹10 for every day during which the default continues, or with both;

(d) Issue of a warrant of authorization under section 132 for conducting search.

Estimates by Valuation Officer in certain cases [Section 142A]:
Where an estimate of the value of any investment referred to in secti6n 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B or fair market value of any property referred to in section 56(2) is required for the purposes of making any assessment or re-assessment, the Assessing Officer may require the Valuation Officer to make an estimate of the same and report to the Assessing Officer.

The Valuation Officer to whom such a reference is made as above shall, for the purpose of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957.

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

Assessee cannot file appeal against the report of Valuation Officer. But assessee can file appeal against the order passed by the Assessing Officer on the basis of such Valuation. In such an appeal, valuation report can be challenged.

Processing of return [Section 143(1)]

Where a return has been made under section 139 or in response to a notice under section 142(1), such return shall be processed in the following manner, namely-

(a) The total income or loss shall be computed after making the following adjustments, namely:-

(i) Any arithmetical error in the return; or

(ii) An incorrect claim, if such incorrect claim is apparent from any information in the return;

(b) The tax and interest, if any, shall be computed on the basis of the total income computed under clause (a);

(c) The sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;

(d) An intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) The amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to, him:

No intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

Where, after making the above adjustments either no sum is payable by the assessee or no refund is due to him, the acknowledgment of the return shall be deemed to be intimation under section 143(1).

It may be noted that the above limitation period of one year is only for sending the intimation and not for issuing of cheque of refund which can be granted at any time.

All the returns of income submitted u/s 139 or under section 142(1) are initially processed u/s 143(1). However, some returns out of these are selected for scrutiny for which notice is required to be served u/s 143(2).

Processing of return under section 143(1) will not be necessary in case where notice under section 143(2) has already been issued for scrutiny of the return. [143(1D) w.e.f. 1.7.2012]

Regular/Scrutiny Assessment - On the basis of return of income and after hearing additional evidence (Section 143(3)]

Compulsory Service of Notice (Section 143(2)]: Where the return has been *made under section 139* or in response to notice *under section 142(1),* the Assessing Officer shall if he considers it necessary or expedient to ensure that-

(i) The assessee has not understated the income; or
(ii) Has not computed excessive loss; or
(iii) Has not underpaid the tax in any manner,

serve a notice on the assessee under section 143(2) requiring him to attend his office or produce or cause to be produced any evidence on which the assessee may rely in support of the return on a date to be specified in the notice.

However, no notice under section 143(2) shall be served on the assessee after the expiry of 6 months from the end of the financial year in which the return is furnished.

Notice under section 143(2) cannot be served if no return has been furnished by the assessee and as such no assessment can be made under section 143(3) in this case.

If notice under section 143(2) is not served, an assessment cannot be made under section 143(3).

No notice under section 143(2) can be served on the assessee after the expiry of 6 months from the end of the financial year in which the return/revised return is furnished

Besides serving a notice under section 143(2), the Assessing Officer normally also serves a notice under section 142 for producing books of account, statement of assets and liabilities, etc.

Benefit of tax exemption not allowed to charitable organization in case commercial receipts exceeds 25 lakhs under section 10(23C)(iv)/(v) even if the approval has not been withdrawn or rescinded.

A fresh notice under section 143(2) must be served on the assessee if he furnishes a revised return under section 139(5). [**Gopaldas Parshottamdas v CIT (1941**).

Notice deemed to be valid in certain circumstances [Section 292BB] Inserted by the Finance Act, 2008, w.e.f, 1.4.2008): *Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was*-

(a) Not served upon him; or
(b) Not served upon him in time; or
(c) Served upon him in an improper manner.

However, nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.

The Assessing Officer, on the day specified in the notice under section 143(2) or as Soon afterwards, as may be, shall, by order in writing, make an assessment of the Total Income or the loss of the assessee and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

The assessment order should determine not only the total income of the assessee but also the amount payable by him

During the course of proceedings under section 143(3), the assessee can make a claim for any exemption or deduction or relief which he could not claim in the return of income furnished by him. **[Chicago Pneumatic India Ltd. v DCIT (2007) 15 SOT 252 (Mum)].**

Consequences of failure to comply with notice under section 143(2): The consequence of a default in complying with the notice under section 143(2), may entail an ex parte, best judgment assessment under section 144. Such a default may also attract penalty under section 271(1)(b) which has been fixed at ₹ 10,000].

Protective Assessment

Protective assessment is permissible in law. It is occasioned where an income is offered by one person, while the Revenue considers that such income is assessable in the hands of another. In such a case, the Revenue has the right to assess the income offered protectively, so that in case its inference that such income is assessable in the hands of another person is not sustained in appeal, the protective assessment becomes final.

It may be noted that Income-tax Department in this case cannot recover the tax from both the assessee in respect of the same income.

There can be precautionary assessments but not protective recovery.

Under the law, a protective order of an assessment can be passed but not the protective order of penalty.

Best Judgment Assessment [Section 144]

The Assessing Officer, after taking into account all relevant material which he has gathered, is under an obligation to make an assessment of the total income or loss to the best of his judgment and determine the tax payable by the assessee in the following cases:

(i) Where any person fails to make the return under section 139(1) and has not made a return or a revised return under section 139(4) or section 139(5);

(ii) Where any person fails to comply with all the terms of a notice issued under section 142(1); or fails to comply with the directions issued under section 142(2A) for getting the account audited,

(iii) Where any person, having made a return, fails to comply with all the terms of a notice issued under section 143(2)

The best judgment assessment can only be made after giving the assessee an opportunity of being heard by giving notice to the assessee to show cause why the assessment should not be completed under section 144. However, it will not be necessary to give such notice where a notice under section 142(1) has already been issued prior to making assessment under this section.

The Assessing Officer cannot assess income under section 144 for an assessment below the returned income or cannot assess the loss higher than the returned loss.

No refund can be granted under section 144.

Assessment on rejection of accounts: Section 145(3) empowers the Assessing Officer to reject the account books which are unreliable, false or incorrect or incomplete. The Assessing Officer can reject the books of account on the following grounds and may make the assessment in the manner provided in section 144:

(a) He is not satisfied about the correctness or completeness of the accounts of the assessee.

(b) Although the accounts of the assessee are correct and complete to the satisfaction of the Assessing Officer but the method of accounting employed is such that, in the opinion of the Assessing Officer, profits cannot be correctly arrived there from.

(c) Where the method of accounting adopted by the assessee has not been regularly followed by him, or

(d) Where the Accounting Standards notified by the Central Government from time to time have not been regularly followed by the assessee.

In view of the above the Assessing Officer may reject the books even if the method of accounting is acceptable to him if the entries in the books are found to be false or fabricated. Conversely the account books may be accepted as true but the method of accounting may be rejected by the Assessing Officer as improper.

Power of Joint Commissioner to issue directions in certain cases [Section 144A]

A Joint Commissioner may:

(a) On his own motion; or

(b) On a reference being made to him by the Assessing Officer; or

(c) On the application of an assessee

call for and examine the record of any proceeding in which an assessment is pending.

Thereafter, if he considers that:

(a) Having regard to the nature of the case; or

(b) The amount involved; or

(c) For any other reason,

it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment.

The powers of the Joint Commissioner are wide and he can issue directions to the Assessing Officer for any reasons that he thinks are necessary. The directions to the Assessing Officer are binding in nature and the assessee has a recourse to agitate in appeal if the Assessing Officer does not follow the directions.

However, no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

Direction as to the lines on which an investigation connected with the assessment should be made, shall not be deemed to be a direction prejudicial to the assessee.

Section 144A is indeed an effective tool for seeking intervention of higher authorities on interpretation and resolution of vexed issues arising during the course of assessment.

Income Escaping Assessment (Section 147)

If the Assessing Officer has reason to believe that any income, chargeable to tax, has escaped assessment for any assessment year, he may subject to provisions of sections 148 to 153:

(a) Assess or reassess such income which has escaped assessment;
(b) Recompute the loss or depreciation allowance or any other allowance as the case may be, for the assessment year concerned i. e. the relevant assessment year.

During the course of proceedings under section 147, if any other income chargeable to tax has also escaped assessment for the relevant assessment year and it comes to the notice of the Assessment Officer, he can assess or reassess that income also.

In an assessment, reassessment or re-computation made under this section, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment. [Section 152(1)] i.e. tax shall be charged at the rate or rates of the relevant assessment year of which income has escaped assessment.

The Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Deemed cases of escapement: Explanation 2 of section 147 clarifies that the following shall also to be deemed to be cases where income chargeable to tax has escaped assessment namely:
(a) Where no return of income has been furnished by the assessee and no assessment has been made although:
(i) His total income; or
(ii) The total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) Where a return of income has been furnished by the assessee but no assessment (scrutiny/best judgment assessment) has been made and it is noticed by the
Assessing Officer that the assessee:
(i) Has understated the income; or
(ii) Has claimed excessive loss, deduction, allowance or relief in the return;

(ba) Where assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E.(w.e.f 1.7.2012)

(c) Where assessment under section 143(3) or 144 has been made whether return of income has or has not been furnished but:

(i) Income chargeable to tax has been under-assessed; or

(ii) Income chargeable to tax has been assessed at too lower rate; or

(iii) Income chargeable to tax has been made the subject of excessive relief under the Income-tax Act; or

(iv) Excessive loss or depreciation allowance or any other allowance under the Income-tax Act has been computed.

(d) Where a person is found to have asset (including financial interest in any entity) located outside India. (w.e.f. 1.7.2012)

Reassessment proceedings may be taken more than once under this section in respect of the same assessee for the same assessment year. **[R. Kakkar Glass and Crockery House v CIT (2002) 254 ITR 273 (P&H)]**.

But second assessment proceedings cannot be started while the first are pending. **[Comunidado ofChicalim v ITO (2001) 247ITR 271 (SC)]**.

Even if the assessment has not been made in terms of section 143(3) and only intimation has been sent to the assessee in pursuance of return filed by him, a reopening, by issue of notice under section 148 can be made in accordance with the provisions of section 147. ***[Ranchi Club Ltd. v CIT (1995) 214 ITR 643 (Pat)].***

<u>Issue of notice where income has escaped assessment [Section 148]</u>

Before making the assessment/reassessment or re-computation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish a return of his income or income of any person in respect of which he is assessable during the previous year corresponding to the relevant assessment year [even though it has already been furnished earlier under section 139 or 142(1)] within such period as may be specified in the notice.

The return filed in response to notice under section 148(1) shall be treated as if such return was a return required to be furnished under section 139 and therefore the Assessing Officer shall have to serve a notice under section 143(2) within a period of 12 months from the end of the month in which the return is furnished by the assessee to make the assessment under section 147 read with section 143(3).

As per section 148(2), before issuing notice under section 148, the Assessing Officer is required to record his reasons for doing so.

The assessee is required to file return in response to notice under section 148 even if he had duly filed the return of income in the normal course under section 139/142(1).

Reassessment of income can be done even for an issue for which reason not recorded [Explanation 3 to section 147] [Inserted by the Finance (No.2) Act, 2009, w.r.e.f, assessment year 1989-90]: For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under section 148(2).

For making assessment or reassessment under section 147 a separate notice under section 148 is required to be issued by the Assessing Officer for each assessment year for which the income has escaped assessment.

During the course of proceeding under section 147 for a particular assessment year, if any other income chargeable to tax has also escaped assessment for that particular assessment year and it comes to the notice of the Assessing Officer, he can assess or reassess that income also but he cannot do so for any other assessee year unless a separate notice under section 148 is issued.

If the assessee desires of knowing the reasons to believe for opening an assessment, first he has to file the return of income in response to the notice U/S 148 and then seek reasons from the assessing officer. (G.K.N Driveshafts (India Ltd) Vs ITO 259 ITR 19 (SC))

If the reasons asked for, the assessing officer is obliged to supply such reasons within the reasonable time.

On receipt of the same, the assessee can file his objections against the issuance of notice and if so done, assessing officer is bound to dispose of the same by passing a speaking order even before proceeding with the assessment.

Time limit and sanction for issue of notice [Section 149/151]

Section 149(1) provides that notice under section 148 can be issued only:-

(a) Within ***four years*** from the end of the relevant assessment year for any income escaping assessment, or

(b) Within ***six years*** from the end of the relevant assessment year in cases where the amount of income escaping assessment is likely to be ₹ 1, 00,000 or more for that year.

(c) Where income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment then time limit for issuing notice for reopening an assessment is ***16 years*** from the end of the relevant assessment year. (w.e.f 1.7.2012)

The time limits are applicable for issue of notice and not for service of notice. If the assessing officer issues notice within in the time limit it is valid notice even if service of notice takes place after the time limit **(R.K. Upadhaya Vs Shanabhai P. Patel)**

Sanction for issue of Notice (Section 151):

In case where an assessment U/S 143(3) or 147 has been made for the relevant assessment yea, notice U/S 148 can be issued by Assessing Officer not below the rank of Assistant Commissioner or Deputy Commissioner.

For issue of notice beyond 4 years, notice shall be issued only if Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice

There is not provision in the Act laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under section 147 must also be communicated to the assessee (S. Narayanappa Vs CIT).

Where assessment in pursuant of an order of appeal etc (Section 150):

Notwithstanding anything contained in section 149, the notice U/S 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give an effect to any finding or direction contained in an order passed by any authority in any proceedings under this Act by way of appeal, reference or revision or by a Court in proceedings under any law.

<u>Time limit for completion of assessment and reassessment (Section 153):</u>

Section	Time Limit
143	24 months from the end of the Assessment Year
143 and 92CA (Transfer Pricing)	36 months from the end of the Assessment Year
148	24 months from the end of the Financial year in which notice was issued
148 and 92CA	24 months from the end of the Financial year in which notice was issued
250, 254 or 263	12 months from the end of the financial year in which order was received
250,254,263 and 92CA	24 months from the end of the Financial Year in which order was received.

<u>Assessment in Search or requisition(Section 153A):</u>

Notwithstanding anything contained in Section 139,147,148, 149, 151 and 153 in case of a person where search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A the Assessing Officer shall:

(i) Issue notice to such person requiring him to furnish within such period, as may be specified in the notice to file the return of income in respect of each Assessment year falling within 6 assessment years in the prescribed form and verified in the prescribed manner. Such return is treated as if the return required being furnished U/S 139.

(ii) Assess or reassess the total income of Six Assessment years immediately preceding the assessment relevant to the previous year in which such search is conducted or requisition is made.

Any assessment or reassessment, if any, relating to the any assessment year falling within in the period of six assessment years pending on the date of initiation of search or making requisition of books of accounts etc.. shall abate.

In an assessment or reassessment made in respect of an Assessment year under this section, the tax shall be chargeable at the rate as applicable to the such Assessment year.

Obligation to furnish Annual Information Return [Sec. 285BA]:

The annual information return shall be furnished by every person specified in respect of all transactions of the nature and value specified:

S.No	Class of person	Nature and value of transaction
1.	A Banking company	Cash deposits aggregating to 10 Lakhs or more in a year in any savings account of a person maintained in that bank.
2.	A banking company or any other company or institution issuing credit card.	Payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to ₹ 2 lakh or more in the year.
3.	A trustee of a Mutual Fund.	Receipt from any person of an amount of ₹ 2 lakh or more for acquiring units of that fund.
4.	A company or institution issuing bonds or debentures.	Receipt from any person of an amount of ₹ 5 lakh or more for acquiring bonds or debentures issued by the company or institution.
5.	A company issuing shares through a public or rights issue.	Receipt from any person of an amount of ₹ 1 lakh or more for acquiring shares issued by the company.

6.	Register or sub-register appointed under Registration Act.	Purchase or sale by any person of immovable property valued at ₹ 30 lakh or more.
7.	A person being an officer of the RBI or a person authorized by RBI.	Receipt from any person of an amount Or amounts aggregating to ₹ 5 lakh or more in a year for bonds issued by the Reserve Bank of India.

Submission of Return through TRP:

Section 139B has been inserted with effect from June 1, 2006. It provides as follows:

- For the purpose of enabling any specified class or classes of persons to prepare a furnish returns of income through a Tax Return Preparer.
- The Scheme shall specify the manner in which the Tax Return Preparer shall assist the persons furnishing the return of income, and shall also affix his signature on such return.
- Persons furnishing the return of income, and shall also affix his signature on such return.
- A tax Return Preparer may be an individual other than an employee of the specified class or classes of persons.
- The above Scheme shall also provide the manner in which a TRP shall be authorized, the educational qualifications, the training and other conditions required to be fulfilled, the code of conduct for the Tax Return Preparer, the duties and obligations of the Tax Return Preparer, the manner in which the authorization may be withdrawn.

Practicing CA and Advocate cannot act as TRP.

Chapter 13

TDS & TCS

Important Points:

Tax Deducted at Source (TDS) is one of the means by which the income tax is recovered from the assessee in the previous year itself. TDS is a pre paid tax and is deductable from the tax liability of the assessee from whose income the tax is deducted.

In case of Tax Collection at Source (TCS) the recipient of the income collect tax from the payer of the income and pays such tax on behalf of such payer. Such tax collected at source is deducted from the tax liability of the person from whom the tax has been collected.

The regular assessment in respect of any income is to be made in a later assessment year. However, the tax on such income shall be payable by deduction or collection at source or by advance payment or by payment u/s 192(1A).

Direct Payment not barred: In case there is no provision for TDS in respect of any income under this Act and in a case where the income-tax has not been deducted in accordance with the provisions of the Act, the income-tax shall be payable by the assessee direct.

Failure to deduct or pay tax - 'Assessee Deemed to be in default' [Expl. to Sec. 191]: If -

(a) any person (including an employer) who is required to deduct any sum in accordance with the provisions of this Act does not deduct, or after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act, and

(b) Where the assessee has also failed to pay such tax directly, then, such person shall, in addition to other consequences, be deemed to be an assessee in default in respect of such tax.

The payer who fails to deduct the whole or any part of the tax on the payment made to a resident payee shall not be deemed to be an assessee in default in respect of such tax if such resident payee –

(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 payer furnishes a certificate to this effect from a chartered accountant in such form as may be prescribed.

w.e.f 01.04.2010 no order shall be made under deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a *person resident in India* at any time after the expiry of-

(i) two years from the end of financial year in which the statement is filed in case where the statement referred to in section 200 has been filed;

(ii) six years from the end of the financial year in which payment is made or credit is given, in any other case;

Section 198: For the purpose of computing the income of the assessee, TDS in accordance with provisions of this chapter (except tax paid by the employer on Non monetary perquisites referred to in U/S 192 (1A)) shall be deemed to be the income of the assessee.

As per section 202, TDS is one of the modes of recovery and other modes of recovery may also be adopted against the assessee.

However, as per section 205, if tax has been deducted at source, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

Procedures involved:

- The payer has to apply for TAN in form no. 49B.
- Deduct TDS on payments mentioned under section 192 to 196D
- The amount so deducted should be deposited in Challan No. 281 within the requisite time to the credit of the Central Government. Separate Challan should be used for tax deducted under each section.
- Tax is to be deducted at the base rates prescribed under various sections. No surcharge, education cess or secondary and higher education cess is to be added to the basic rates except in case of payment towards salary and payment to non residents. In case of foreign company surcharge need to be added if the payment exceeds ₹ 1crore.
- As per section 206AA, if PAN is not provided, the rate of TDS shall be the normal rate prescribed or 20% whichever is higher.
- The payer should prepare the statements and file the same with the prescribed income tax authorities or the person authorized by such authority in such form and verified in such manner as may be prescribed. (**Quarterly Statements).**
- The payee should be issued certificate of TDS on or before certain specified date. **(Form 16/16A)**

Point of time when TDS haste be deducted at source

At the time of payment:

- Salary [Sec. 192]
- Deemed dividend under section 2(22) (e) [Sec. 194]
- Winnings from lottery/crossword puzzle [Sec. 194B]
- Winnings from horse race [Sec. 194BB]

At the time of payment or at the time of giving credit to the recipient in the books of the payer, whichever is earlier

- Interest on securities [Sec. 193]
- Interest other than interest on securities [Sec. 194A]
- Payment to contractors [Sec. 194C]
- Insurance commission [Sec. 194DJ
- Commission or Brokerage (Sec. 194H]
- Rent [Sec. 194-1]
- Fees for professional / technical services / royalty [Sec. 194J]

Credit for TDS (Section 199): The Whole or part of the income on which tax has been deducted at source is assessable in the hands of other person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee.

TDS rates

Section	Nature of Payment	Threshold limit to deduct tax	In case recipient is an Individual/HUF	In case recipient is other than Individual/ HUF
192(1)	Salary	Basic exemption limit	Slab Rate	NA
193	Interest on securities (Listed)	`₹ 5,000 p.a.(01.07.2012)	10%	10%
	Zero coupon bond	--	--	--
	8% saving (Taxable) Bond 2003	` ₹10,000 p.a.	10%	10%
	Interest on securities (Unlisted)	--	10%	10%
194	Dividend u/s 2(22) (e)	`₹ 2,500	20%	20%
194A	Interest from Banking Company / Co-operative Society engaged, in banking/ deposit with Post office	`₹ 10,000 p.a.	10%	20%
	Interest other than from Banking company & Security (Unsecured Loan)	`₹ 5,000 p.a.	10%	20%
194B	Winning from lottery, Cross word puzzle or other game	`₹ 10,000	30%	30%
194BB	Winning from horse Race	`₹ 5,000	30%	30%
194C	Payment to contractor/ sub contractor in respect of work. **(Note)**	`₹ 30,000 per single contract or `₹ 75,000 in aggregate	1%	2%
	Payment to Transport contractor.	--	Nil	Nil

194 D	Insurance Commission	`₹ 20,000 p.a.	10%	10% (20% for Company)
194E	Non Resident sportsman/Association/No n Resident Entertainer from 01.07.2012		10% (20% 01.07.2012)	10% (20% 01.07.2012)
194 H	Payment of commission or Brokerage	` ₹5,000 p.a.	10%	10%
194 I	Payment or rent for land, building whether or not owned by payee.	`₹ 1,80,000 p.a.	10%	10%
	Payment of Rent for use of Plant, Machinery or equipment, furniture or fitting whether or not owned by payee.	`₹ 1,80,000 p.a.	2%	2%
194J	Payment of Professional/ Technical services/Non compete fee. W.E.F 01.07.12 Tax will be deducted u/s 194J on remuneration paid or payable to a director which is not in the nature of remuneration. No threshold limit of ` ₹30,000/- will be applicable.	` ₹30,000 p.a.	10%	10%
194LA	Compensation	`₹ 1 lac /( ` ₹2 lac from 01.07.12)	10%	10%
194LB	Infrastructure Debt Bond	Nil	5%	5%
194LC	Interest paid / payable to a NR/foreign co.	Nil	5%	5%
195	Payments made to Non Residents are to be paid after TDS as per NR rate of tax			
196				

Note: "work": shall include-

(a) advertising;

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

(c) carriage of goods or passengers by any mode of transport other than by railways;

(d) catering;

(e) manufacturing or supplying a product according to the requirement or specification of customer by *using material purchased from such customer.*

But it 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 customer.*

"Specified person"[Explanation to section 194C]: The following persons shall be required to deduct tax at source :-

(a) Central or State Government;

(b) Local authority;

(c) Corporation established by or under a central, state or provisional Act;

(d) Any company;

(e) Any co-operative society;

(f) Any authority constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the needs for housing accommodation or for the purpose of planning, development or improvement or cities, towns and villages or both;

(g) Any society registered under the Societies Registration Act, 1860 or under such corresponding law;

(h) Any trust;

(i) Any University or deemed university;

(j) Any government of foreign state or foreign enterprise or any association or body established outside India;

(k) Any firm;

(l) Individual or HUF or AOP or BOI, whether incorporated or not other than those falling under any of the previous clauses, who are subject to tax audit under section 44AB during financial year immediately preceding the financial year in which such sum is credited or paid.

No individual or HUF shall be liable to deduct income tax on the sum credited or paid to account of the contractor where it is related to personal purpose of such individual or member of HUF.

Section 194IA: Any person, being a transferee, responsible for paying to a resident transferor any sum by way of consideration for transfer of any immovable property (other than rural agricultural land) shall ---

- At the time of credit of such sum to the account of the transferor or
- At the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode,

Whichever is earlier, deduct @ 1% of such sum as income tax there on.

However, no deduction of tax shall be made if the total amount of consideration for the transfer of immovable property is less than ₹ 50, 00,000/-.

(Inserted by Finance Act, 2013)

Immovable property means any land or building or part of building.

NO TDS CASES:

No tax is deductable under any provisions of the Act in respect of amount payable to the following:

(a) Reserve Bank of India; Central Government or State Government;

(b) Statutory Corporation whose income exempt under income tax;

(c) A Mutual Fund

Application to assessing officer for obtaining a certificate for lower rate of tax [sec 197]:

Where any tax is required to be deducted at the time of credit or payment under sections **192,193,194,194A, 194C, 194D, 194G, 194H, 194I, 194J, 194LA and 195** assessee can make an application in **Form 13** to assessing officer requiring him to issue a certificate for deduction of tax at lower rate or nil rate as the case may be.

When such certificate is given, the person responsible for paying the income, until such certificate is cancelled by the assessing officer, deduct the tax at the rates specified in such certificate or deduct no tax, as the case may be.

No certificate under section 197 shall be granted unless the application made under this section contains the PAN of the applicant. [Sec 206AA]

Additional Points(Section 195):

w.e.f 01.07.2009 the person responsible for paying to nonresident shall furnish the information relating to payment of any sum in Form 15CA after obtaining a certificate from chartered accountant in Form 15CB. The undertaking in Form 15CA can be signed by the person authorized to sign the return of income of the remitter of a person so authorized by him in writing.

The duly signed Form 15CA and Form 15CB will be submitted in duplicate to the Reserve Bank of India or authorized dealer. The RBI or authorized dealer will in turn forward a copy of the certificate and undertaking to the Assessing officer concerned.

where the *person responsible for paying any sum mentioned in section 195 to a non resident considers that the* ***whole of the sum would not be income chargeable in case of payee in India,*** he may make an application to the Assessing Officer to determine by general or special order, the appropriate portion of such sum so chargeable and upon such determination, tax shall be deducted by him accordingly. [Sec 195(2)]

This benefit cannot be availed for the tax to be deducted for any income referred to in section 115A, 115AB, 115AC, 115AD, 115BBA, and 115E as income under these sections are *taxable at the special rates.*

Section 195(2) does not empower the assessing officer to pass an order stating the appropriate rate tax to be applied.

An application under section 195(2) can be made only to decide some portion as taxable, application for 100% exemption cannot be made under that section.

Self declaration:

Section	Eligible person	Form No.
194	Resident Individual	15G/15H (Senior Citizen)
194EE		
194A	Any person other than firm and company	15G/15H (Senior Citizen)
193		

However, as per section 197(1B) the assessee cannot furnish declaration under this clause if the aggregate amount of the following income credited or paid or likely to be credited or paid during the previous year in which such income to be included **exceeds the maximum amount which is not chargeable to tax** even though there is no tax liability on Total Income:
(1) Interest on securities [sec 193]
(2) Interest other than interest on securities [Sec 194A]
(3) Payment in respect of deposit under National Saving Scheme [sec 194EE].

Section 194LD: Any person who is responsible for paying to any person being a FII or QIB, any income by way of interest in respect of investment made by the payee in **a rupee denominated bond of an Indian Company (carrying interest rate notified); or Government Security** shall at the time of credit of such income to the account of the payee or at the time of payment of such interest by cash or cheque or by any other mode, whichever is earlier, deduct income tax @ 5%.

This section is applicable in respect of interest payable on or after 1/06/2013 but before 1/06/2015. **(Inserted by Finance Act, 2013)**

If the payer is Individual or HUF and he or it is not subject to tax audit U/S 44AB in the preceding financial year, he or it is not required to deduct tax U/S 194A, 194C, 194H, 194I, and 194J.

Bar against direct demand on the assessee (Sec 205): Where the tax is deductible at source U/S 192 to 196D, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted, whether or not the person deducting the tax has paid the same to the credit of the Central Government.

Time of Payment:

Deductor	Time limit for deposit of tax
Office of the Government: • Payment made without production of Challan • Tax paid by income tax Challan	Same day On or before 7 days from the end of the month in which deduction is made or income tax due under section 192(1A)
Other than office of the Government	On or before 7 days from the end of the month in which deduction is made or income tax due under section 192(1A)
With approval of assessing officer(who with prior approval of Joint Commissioner permits payment of quarterly payment of tax U/S 192, 194A 194D and 194H)	Quarter ending 30th June- 7th July Quarter ending 30th September- 7th Oct Quarter ending 31st December -7th Jan Quarter ending 31st March – 30th April

Mode of payment: The amount of tax deducted shall be deposited to the credit of the Central Government with the time specified above by remitting to a branch of RBI or SBI or any authorized bank.

However, the following persons shall pay the tax electronically (by way of internet banking or debit card):

(a) Company;

(b) Person (other than company) to whom the provisions of 44AB are applicable.

(c) Tax U/S 194IA(through Challan cum statement 26QB).

Every person responsible for deduction of tax under the chapter XVII-B, shall, in accordance with the provisions of section 200(3) deliver or cause to be delivered, the following quarterly statements to Director General of Income tax (systems) of the person authorized by Director General of Income tax (systems):

(i) Deduction of tax under section 192 — Form No. 24Q

(ii) Deduction of tax under section 193 to 196D (other than Non Resident) — Form No. 26Q

(iii) (Nonresident). — Form 27Q

Due date for filing quarterly statements:

Date of ending of the quarter of the financial year	Due date
30th JUNE	15th July of the financial year
30th SEPTEMBER	15th October of the financial year
31st DECEMBER	15th January of the financial year
31st MARCH	15th May of the financial year following the financial year in which deduction is made.

The deductor at the time of preparing the statement of tax deducted shall:-

(i) Quote deduction and collection account number(TAN);

(ii) PAN of the deductor except in case of government deductor;

(iii) PAN of all deductee;

(iv)Particulars of tax paid to the Central Government including book identification number or challan identification number;

(v) Particulars of amount paid or credited without deduction of tax in view of issue of certificate issued under section 197 by the assessing officer;

(vi) Particulars of the amount paid on which no tax was deducted in view of furnishing of PAN by the transporter.

<u>The quarterly statement may be furnished by:</u>

- ❖ Furnishing the statement in paper form;
- ❖ Furnishing the statement electronically along with the verification of the statement in Form 27A.

<u>E- filling of quarterly statement of TDS mandatory for the following dedcutors:</u>

(a) Office of Government;
(b) Principal officer of the a company;
(c) Person required to get his accounts audited under section 44AB
(d) Number of deductee records in a quarterly statement for any quarter of financial year are 20 or more.

Where the deductor is office of the government and payment of tax is made without tax Challan the deductor has to submit a statement in Form 24G within ten days from the end of the month in respect of tax deducted by the deductors and reported to him for that month.

<u>Issue of TDS certificates:</u> The person responsible for deducting the TDS is required to issue a certificate in the prescribed forms to the employee or payee on account of tax deducted at source.

Prescribed forms:

<u>For TDS on salary</u>: Form 16 and 12BA (statement of the value of perquisites and profit lieu of salary)
<u>For TDS other than salary</u>: Form no. 16A
<u>For TDS U/S 194IA:</u> Form No. 16B

<u>Time limit:</u>

- ❖ *<u>Form 16</u>*: By 31st May of the financial year immediately following the financial year in which the income was paid and tax deducted.
- ❖ *<u>Form 16A</u>*: Within 15 days from the due date for furnishing the statement of tax deducted at source.
- ❖ *<u>Form 16B</u>*: Within 15 days from the due date of deposit of tax.

All deductors (including government deductors who deposit TDS in the Central Government account through book entry) shall issue TDS certificate in Form 16A generated through TIN central system and which is downloaded from the TIN website with the unique TDS certificate number in respect of all sums deducted on or after 01/04/2012 under any provisions of Chapter XVII-B other than section 192.

The deductor may issue a duplicate certificate in Form No.16 or Form no.16A if the deductee has lost the original certificate so issued and makes a request for issuance of the duplicate certificate and such duplicate certificate certified as duplicate by the deductor.

Every branch of a banking company, which files a statement regarding the details of non deduction of tax by banks, co-operative societies, shall keep and maintain the particulars of such time deposit in Form 26QA on a computer readable media.

Consequences of failure to deduct or pay tax: Where any person does not deduct or does not pay or after deduction fails to pay, the whole or part of the tax, then, such person shall be liable to penalty U/S 221.

Besides the above penalty he or it shall be liable to pay simple interest @1% p.m or part of the month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid. Such interest should be paid before filing quarterly statements for each quarter.

If there is a delay in payment of TDS after deduction, interest shall be charged @ 1.5% p.m or part of the month from the date on which tax was deducted to the date on which such tax was actually paid.

A person shall be liable to pay penalty if he fails to deliver or cause to be delivered quarterly statements within the prescribed time or furnished incorrect information in the statement punishable with a penalty which shall not be less than ₹ 10,000 but which may be extended to ₹ 1,00,000/-. **(Inserted by Finance Act,2012)**

However, no such penalty will be levied if such statement delivered before the expiry of a period of one year from the time prescribed provided tax deducted along with the fee and interest paid to the credit of the Central Government before filing the statements.

Late fee (Section 234E): without prejudice to the provisions of the Act, where a person fails to deliver a statement within in the time he shall pay by way of fee a sum of ₹ 200 for every day during which such failure continues.

However, such fee shall not exceed the amount of tax deductible or collectible.
(Applicable to tax deducted or collected on or after 01/07/2012)

TCS (Tax Collected at Source)

Every person, being a seller, shall at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the buyer, whichever is earlier, collect from the buyer as income tax on the specified goods at the following rates:

<table>
<tr><th>Nature of Goods</th><th>Rate of Tax</th></tr>
<tr><td>Alcoholic liquor for human consumption</td><td>1%</td></tr>
<tr><td>Tendu Leaves</td><td>5%</td></tr>
<tr><td>Timber obtained under a Forest Lease</td><td>2.5%</td></tr>
<tr><td>Timber obtained by any mode other than forest lease</td><td>2.5%</td></tr>
<tr><td>Any other forest product</td><td>2.5%</td></tr>
<tr><td>Scrap</td><td>1%</td></tr>
<tr><td>Mineral, being coal or lignite or iron ore</td><td>1%</td></tr>
<tr><td>Parking Lot</td><td rowspan="3">2%</td></tr>
<tr><td>Toll Plaza</td></tr>
<tr><td>Mining and quarrying (not being mineral oil)</td></tr>
<tr><td>Sale of Bullion exceeding ₹ 2 lakhs in cash</td><td>1%</td></tr>
<tr><td>Sale of Jewellery exceeding ₹ 5 lakhs in cash</td><td>1%</td></tr>
</table>

Seller means: (i) Central Government; (ii) State Government; (iii) Local Authority; (iv) Corporation or authority established by or under Central, State or Provincial Act; (v) any Company; (vi) firm; (vii) Co-operative Society (viii) Individual / HUF subject to tax audit during the financial year immediately preceding financial year in which such goods are sold.

Buyer means: A person who obtains in any sale, by way of auction, tender or other mode, goods of nature mentioned above but does not include-
(i) Public Sector Company; (ii) Central Government; (iii) State Government; (iv) an embassy, a high commission, legation, commission, consulate and trade representative of foreign state and club; (v) buyer in retail sale purchased for his personal consumption (vi) a person who obtains in any sale, bullion or jewellery.

Note:

- Surcharge and Education Cess is not applicable for TCS.
- Every seller shall, at the time debiting of the amount to the account of the buyer, or at the time of receipt whichever is earlier collect from the buyer a sum equal to the following percentage of the purchase price as income tax.
- Surcharge, EC & SHEC applicable if the purchaser is a foreign company & the amount subject to TCS exceeds `₹ 1 Crore.

All procedural aspects are similar to TDS.