DIRECT TAXES

AMENDMENT MADE BY FINANCE ACT, 2015

CA MEHUL THAKKER

PREFACE

To meet the changing needs of the economy and to plug the loopholes, the Government updates the existing Tax Laws, by way of amendments introduced through the Union Budgets/Finance Acts.

The complex nature of the direct tax laws makes it difficult even for professionals, tax practioners to understand and interpret the law and apply the same to practical situations. Needless to say that student of CA/CS/ICWA wants some handholding to enable them to understand the law, amendments in a more simplified manner.

This book adopts 'Learn yourself style' with an emphasis to understand not just 'what' but also 'why' and 'when' of the amendments. This concise edition is the rare attempt of its kind that enables a reader to quickly grasp all the key amendments and has been written in a unique, simple and easy to understand language.

With a view to cover all the necessary amendments which could have an implication on the students appearing for the CA/ CS/ ICWA examinations during the year 2016, this book enfolds:

- Illustrative and theoretical discussions in respect of key amendments applicable to A.Y 2016-17

- Impact of critical circulars and notifications

I am sure that this book will come very handy for students to have overall understanding of all the amendments and be of immense help during their last minute revision.

With this, I dedicate this book to readers and wish them Happy Reading!!

Your valuable feedback would be highly appreciated at: **mt.dtedu@gmail.com**

CA MEHUL THAKKER

1. Section 2 of the Finance (No. 2) Act, 2015 read with Part I of the First Schedule to the Finance (No. 2) Act, 2015,

Rates of Tax

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

Level of total income	Rate of income-tax
Where the total income does not exceed Rs. 2,50,000	Nil
Where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000	10% of the amount by which the total income exceeds Rs. 2,50,000
Where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	Rs. 25,000 plus 20% of the amount by which the total income exceeds Rs. 5,00,000
Where the total income exceeds Rs. 10,00,000	Rs. 1,25,000 plus 30% of the amount by which the total income exceeds Rs. 10,00,000

(b) For resident individuals of the age of 60 years or more but less than 80 years at any time during the previous year (born during April 1, 1936 and March 31, 1956)

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

(c) For resident individuals of the age of 80 years or more at any time during the previous year (Born before April 1, 1936)

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

(ii) Co-operative society

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

(iii) Firm/Limited Liability Partnership (LLP)

The rate of tax for a firm (LLP) for A.Y.2016-17 is 30%.

(iv) Local authority

The rate of tax for a local authority for A.Y.2016-17 is 30%.

(v) Company

The rates of tax for A.Y.2016-17 are as under:-

(1)	In the case of a domestic company	30% of the total income
(2)	In the case of a company other than a domestic company (Foreign company)	40% on the total income

2. Surcharge and Marginal Relief

The rates of surcharge applicable for A.Y.2016-17 are as follows –

(A) Individual/HUF/AOP/BOI/Artificialjuridicalperson/Co-operativesocieties/Local Authorities/Firms/LLPs

Where the total income exceeds Rs.1 crore, surcharge is payable at the rate of 12% of income-tax.

Marginal relief is available in case of such persons having a total income exceeding Rs. 1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs. 1 crore should not be more than the amount of income exceeding Rs. 1 crore.

(B) Company

	If total income is up to *Rs. 1 crore*	**If total income is in the range of *Rs.1 crore to Rs.10 crore***	**If total income is *Above Rs. 10 crore***
Domestic company	Nil	7% of Income tax	12% of Income tax
Foreign company	Nil	2% of Income tax	5% of Income tax

Notes:

1. *The above surcharge is subject to a Marginal relief*
2. *Marginal relief would also be available to those companies which are subject to minimum alternate tax under section 115JB, in cases where the book profit (i.e. deemed total income) exceeds Rs. 1 crore and Rs. 10 crore, respectively.*

Why there is a need for marginal relief?

Consider Example (A) and (B)

Example : (A) Taxpayer : Mr. Active, 54 years having total income of Rs.1,00,00,000.

Particulars	Rs.
Tax on Rs.1,00,00,000	28,25,000
Add: Surcharge	Nil
Sub-total	28,25,000

Example : (B) Taxpayer: Mr. Passive, 55 years having total income of Rs.1,01,00,000.

Particulars	Rs.
Tax on Rs.1,01,00,000	28,55,000
Add: Surcharge	3,42,600
Sub-total	31,97,600

Now, as compared to Example (A), in Example (B), income is increased by Rs. 1,00,000, while tax is increased by Rs.3,72,600, therefore, there is a need for marginal relief.

Under marginal relief, **tax liability of Rs. 1,01,00,000 is restricted as under**:-

Tax on 1,01,00,000 = Tax on 1,00,00,000 + (Total Income – Rs.1,00,00,000)
= Tax on 1,00,00,000+ (1,01,00,000-Rs.1,00,00,000)
= 28,25,000 + 1,00,000
= 29,25,000
The above tax is increased by education cess 3%

☺ EASY STEPS to compute Final tax liability when total income of Individual ranges between 1,00,00,000 to 1,05,00,000.

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

Step 2: Find out tax on 1,00,00,000 + (Total Income-1,00,00,000)

Step 3: Step 1 or Step 2 whichever is lower

Step 4: Add Education Cess (@3%)

Take it one more practice sum solved with the help of above steps

Mr. Jayesh having total income of Rs. 1,02,00,000, find out tax payable.

Step 1:-	Tax on 1,02,00,000	=	Rs. 28,85,000
	Add: Surcharge (12%)	=	Rs. 3,46,200
		=	Rs. 32,31,200
Step 2:-	Tax on 1,00,00,000 + (1,02,00,000 – 1,00,00,000)		
	= Rs. 28,25,000 + Rs. 2,00,000	=	Rs. 30,25,000
Step 3:-	Step 1 or Step 2 whichever is lower i.e.	=	Rs. 30,25,000
Step 4:-	**Add:** Education cess (3% of 30,25,000)	=	Rs. 90,750
		=	Rs. 31,15,750

3. Education Cess / Secondary & Higher Education Cess on Income Tax

Education cess / Secondary and higher education cess on income-tax

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

Students shall consider following format for computation of Tax payable.

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

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

4. Applicability of surcharge and cess on distribution tax

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

Section	Particulars	Rate of Tax	Effective rate of tax
115-O	Tax on distributed income of domestic companies by way of dividend	15%	17.304%
115-QA	Tax on distributed income of domestic company for buyback of shares	20%	23.072%
115R	Tax on distributed income of mutual funds		
	— Distribution by debt funds to individuals and HUFs	25%	28.84%
	— Distribution by debt funds to other persons	30%	34.608%
	— Distribution by infrastructure debt funds to non-corporate non-residents and foreign companies	5%	5.768%
115TA	Tax on income distributed by securitization trusts		
	— Distribution to persons exempt from tax	Nil	Nil
	— Distribution to individuals and HUFs	25%	28.84%
	— Distribution to other persons	30%	34.608%

5. SECTION 2(24) -EFFECTIVE FROM A.Y.2016-17

Government grants, other than grants considered for determination of "actual cost", included in the definition of "Income"

PRACTICAL

The Gujarat Government awarded subsidy of Rs. 24 lakh to ABC Limited for setting up an industrial undertaking in a backward district. The subsidy is calculated @ 10 per cent of cost of the project of Rs. 240 lakh. The components of cost of project are:-

	Rs. in lakhs
Land	80
Construction	60
Plant and Machinery	100
Total	**240**

Find out "Actual cost" of depreciable assets.

Before we refer solution, let us comprehend the amendment first.

Clause (xviii) inserted in definition of income [Section 2(24)]

As per the amended provision, assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement, by whatever name called, by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee is included in the definition of income.

The only exclusion is the subsidy or grant or reimbursement which has been taken into account for determination of the actual cost of the asset in accordance with Explanation 10 to section 43(1).

Explanation 10 to Section 43(1)

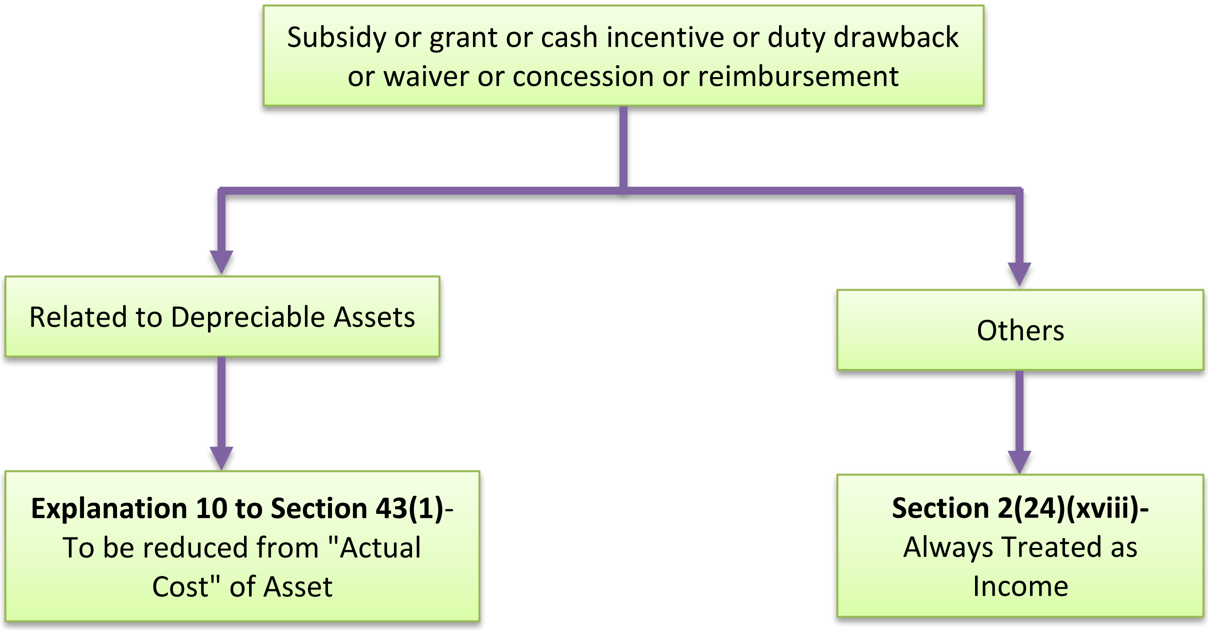
Situation	Notional cost under-section 43(1)
Asset acquired where portion of cost is met by Govt. or any other person in form of subsidy, grant or reimbursement etc.	Then, actual cost [less cost met by Government or any other person]. If such subsidy, etc., is not directly relatable to any particular asset, then the amount received shall be apportioned in an appropriate manner.

Thus, section 2(24) (xviii) nullified the effect of Supreme Court decision in case of CIT v Ponni Sugar Mills (2008) 306 ITR 392.

The Supreme Court in, CIT v Ponni Sugar Mills (2008) 306 ITR 392, observed that it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. If the object of the subsidy scheme was to enable the assessee to run the business more profitably, then, the receipt was on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand an existing unit, then, the receipt of the subsidy was on capital account.

Further, Income Computation and Disclosure Standard (ICDS) VII :- " Treatment of Government Grants" also get aligned with the amendment in section 2(24) (xviii).

Conclusion: Thus, except in case of government grant relating to an asset, which has to be reduced from actual cost, all other grants have to be recognized as upfront income or as income over the periods necessary to match them with the related costs which they are intended to compensate.



SOLUTION

	Cost (Rs. in lakhs)	Subsidy to be deducted	Actual cost (Rs. in lakhs)
Plant and Machinery	100	10 Lakh [Rs.24 lakh x Rs.100 lakh ÷ Rs.240 lakh]	90
Construction	60	6 Lakh [Rs.24 lakh x Rs.60 lakh ÷ Rs.240 lakh]	54

AND What is the tax treatment of subsidy (Rs. 8 Lakh) related to Land Portion???????????

6. SECTION 6(1) -EFFECTIVE FROM A.Y.2015-16

Computation of period of stay for an Indian citizen, being a member of the crew of a foreign bound ship leaving India

PRACTICAL

Mr. Navin , a citizen of India and a member of crew of a Foreign Bound Ship “ARJUN” provides following information for the previous year 2015-16:-

The number of days as per continuous discharge certificate for an “eligible voyage” :-195 days

Whether Navin is said to be resident for the previous year 2015-16?

Before we refer solution, let us comprehend the amendment first.

Newly Inserted Explanation 2 to Section 6(1)

In the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.

Notification No. 70/2015/ F.No.142 /12/2015-TPL Dated 17.08.2015

(1) For the purposes of clause (1) of section 6, in case of an individual, being a citizen of India and a member of the crew of a ship, **the period or periods of stay in India shall, in respect of an eligible voyage, not include the period computed in accordance with sub-rule (2)**.

(2) The period referred to in sub-rule (1) shall be the **period beginning on the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible Voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off** by that individual from the ship in respect of such voyage.

Explanation: For the purposes of this rule,-

(a) “Continuous Discharge Certificate” shall have the meaning assigned to it in the Merchant Shipping (Continuous Discharge Certificate - cum - Seafarer’s Identity Document) Rules, 2001 made under the Merchant Shipping Act, 1958 (44 of 1958);

(b) “eligible voyage” shall mean a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where-

  (i) for the voyage having originated from any port in India, has as its destination any port outside India; and

  (ii) for the voyage having originated from any port outside India, has as its destination any port in India.’.

SOLUTION

Considering the notification, total period of stay in India for Mr. Navin is computed as under:

Particulars	No. of Days
Total No. of days in previous year 2015-16	366
Less: No. of days as per continuous discharge certificate	(195)
Presence in India	171

Since presence of Mr. Navin in India is less than 182 days, he is said to be non-resident for the previous year 2015-16.

7. SECTION 6(3) -EFFECTIVE FROM A.Y.2016-17

Residential status of a company to be determined on the basis of "Place of Effective Management"

Provision Before Amendment

A company is said to be resident in India in any previous year, if—

(i) it is an Indian company ; or

(ii) during that year, the control and management of its affairs is situated wholly in India.

- The table given below highlights the rules for determining the residential status of company —

Place of control	**Resident or non-resident?**	
	An Indian Company	**A company other than an Indian company**
Control and management of the affairs of a company is -		
1. Wholly in India	Resident	Resident
2. Wholly outside India	Resident	Non- Resident
3. Partly in India and partly outside India	Resident	Non- Resident

Provision After Amendment

A company is said to be resident in India in any previous year, if—

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India.

- The table given below highlights the rules for determining the residential status of company —

Place of effective management	**Resident or non-resident?**	
	An Indian Company	**A company other than an Indian company**
Place of effective management is-		
1. in India	Resident	Resident
2. not in India	Resident	Non- Resident

Explanation.—For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made.

8. SECTION 9(1)(i)-EFFECTIVE FROM A.Y.2016-17

Value of Indian assets to determine whether the share or interest of a foreign company or entity is deemed to derive its value substantially from the assets located in India

Related amendment in sections: 285A, 271GA & 273B

PRACTICAL 1

Mepsi (I) Private Limited, an Indian company, is a wholly owned subsidiary of Mepsi Inc, USA, a foreign comapny. Mepsi Inc. is also a wholly owned subsidiary of HP Inc., another foreign company. On 01-07-2015, HP Inc. transferred 80% shares of Mepsi Inc. to Cocomo Inc., a foreign company. The last accounting period of Mepsi Inc. comprises of twelve months and ended on 31-12-2014. Discuss tax consequences of this transaction in the hands of HP Inc and Cocomo Inc. under following different situations:-

SITUATION 1	**Rs. in Crores**			
	As on 31-12-2014		**As on 01-07-2015**	
	Book Value	**Fair Market Value**	**Book Value**	**Fair Market Value**
Types of assets of Mepsi Inc.				
- Indian Assets	56	57	56	60
- Other Assets	44	45	54	65
Total Assets	100	102	110	125
Liabilities other than Share capital and Reserves	60		70	

SITUATION 2	**Rs. in Crores**			
	As on 31-12-2014		**As on 01-07-2015**	
	Book Value	**Fair Market Value**	**Book Value**	**Fair Market Value**
Types of assets of Mepsi Inc.				
- Indian Assets	56	57	60	60
- Other Assets	44	45	58	65
Total Assets	100	102	118	125
Liabilities other than Share capital and Reserves	60		70	

SITUATION 3	**Rs. in Crores**			
	As on 31-12-2014		**As on 01-07-2015**	
	Book Value	**Fair Market Value**	**Book Value**	**Fair Market Value**
Types of assets of Mepsi Inc.				
- Indian Assets	9	11	9	8
- Other Assets	11	12	16	6
Total Assets	20	23	25	14
Liabilities other than Share capital and Reserves	7		6	

PRACTICAL 2

Whether dividend declared and paid by Mepsi Inc. outside India is deemed to be income accruing or arising in India in view of explanation 5 to section 9(1) (i)?

Before we refer solution, let us comprehend the amended provision.

As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, **through the transfer of a capital asset situated in India** shall be deemed to accrue or arise in India.

The Finance Act, 2012 had inserted Explanation 5 in section 9(1)(i) w.r.e.f. 1.04.1962 to clarify that an asset or **capital asset, being any share** or interest **in a company** or entity **registered** or incorporated **outside India** shall be deemed to be and shall always be deemed to have been **situated in India**, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

Finance Act, 2015 inserted following explanation to make explanation 5 operational.

Explanation 6.—*For the purposes of this clause, it is hereby declared that—*

(a) ***'Substantial' -****The share or interest of a foreign company entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date the value of Indian assets,-*

  a) *exceeds the amount of Rs.10 crore rupees;* ***and***

  b) *represents at least 50 per cent of the value of all the assets owned by the company or entity*

(b) ***Value of asset -*** *The value of an asset shall be the fair market value of such an asset without reduction of liabilities, if any, in respect of the asset.*

(c) ***"Specified date"*** *—The specified date of valuation shall be the date on which the accounting period of the company or entity ends preceding the date of transfer.*

If, however, the book value of the assets of the company or entity on the date of transfer exceeds by at least 15 percent of the book value of the assets as on the last balance sheet date preceding the date of transfer, then instead of the date mentioned above, the date of transfer shall be the specified date of valuation.

(d) ***Mode of determination of fair market value-*** *The manner of determination of fair market value of the assets shall be prescribed in the rules.*

(e) ***Taxation on proportionate basis –*** *Where all the assets owned by the company or entity registered or incorporated outside India, are not located in India, then the capital gain arising on transfer of a share or interest will be on proportional basis. The method for determination of proportionality will be specified in the rules.*

(f) Exemption to the transferor:

A. Exemption covered by explanation 7

1. ***Exemption in case foreign company or entity (whose share or interest get transferred) directly owns Indian assets –*** *Exemption shall be available to the transferor of a share of, or interest in, a foreign entity if the transferor (along with its associated enterprises), at any time in the twelve months preceding the date of transfer,*
    - ***a.*** *Neither holds the right of control or management of such foreign company or entity;*
    - ***b.*** *Nor holds voting power or share capital or interest exceeding 5 per cent of the total voting power or total share capital of such foreign company or entity;*

2. ***Exemption in case foreign company or entity (whose share or interest get transferred) indirectly owns Indian assets –*** *In case the transfer is of shares or interest in a foreign entity which does not hold the Indian assets directly then the exemption shall be available to the transferor if the transferor (along with its associated enterprises), at any time in the twelve months preceding the date of transfer,-*
    - a. Neither holds the right of management or control in relation to such foreign company or the entity
    - b. Nor holds any rights in such company which would entitle it to either exercise control or management of the company or entity that directly owns the assets situated in India or
    - c. Nor entitle it to voting power exceeding 5 percent of total voting power of the company or entity that directly owns the assets situated in India.

B. Exemption covered by section 47 (viab) and (vicc)

Exemption in the case of amalgamation/demerger – The transfer of shares in a foreign company (deriving value of assets substantially from assets situated in India) on account of amalgamation / demerger of foreign companies will be exempt from tax subject to the satisfaction of the following conditions of section 47(viab) and (vicc)-

Sr. No.	In case of amalgamation [Section 47(viab)]	In case of demerger [Section 47(vicc)]
1.	At least 25 per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company	The shareholders, holding not less than 75 percent in value of shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company.
2.	Such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated.	Such transfer does not attract to tax on capital gains in the country in which the demerged foreign company is incorporated

Other Points for amalgamation / demerger mentioned above:

- The provisions of section 391 to 394 of the Companies Act, 1956 shall not apply in case of demerger for this clause.
- As per section **49(1) (iii) (e)**, in future, if amalgamated / resulting foreign company transfers the capital asset [which has been received from demerged company meeting conditions of section 47(viab) and 47(vicc)], then **the cost of acquisition in the hands of amalgamated /resulting company shall be the cost incurred by the previous owner. (i.e. cost for which amalgamating/demerged foreign company acquired the capital asset)**
- Further, to find out whether such transferred assets are long-term capital assets or not, the period of holding shall be determined from date of acquisition of such assets by the previous owner (i.e. amalgamating/demerged foreign company) – Explanation 1 to section 2(42A)

(g) **<u>Section 285A: Furnishing of information or documents by an Indian concern</u>**

There shall be a reporting obligation on the Indian concern through or in which the Indian assets are held by the foreign company or the entity.

For the purposes of determination of any income accruing or arising in India under section 9(1)(i), an Indian concern has to furnish, within the prescribed period to the prescribed income-tax authority, the information or documents, in prescribed manner, if -

a. any share of, or interest in, a company or an entity registered or incorporated outside India derives, directly or indirectly, its value substantially from the assets located in India, as referred to in Explanation 5 to section 9(1)(i), and
b. such company or, entity, holds, directly or indirectly, such assets in India through, or in, the Indian concern.

(h) **Section 271GA: Penalty for failure to furnish the information or document under section 285A**

In case of any failure on the part of Indian concern to furnish the information or document as required under section 285A, then penalty would be leviable under section 271GA as follows -

a. a sum equal to 2% of the value of the transaction in respect of which such failure has taken place, in a case where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern;
b. a sum of Rs. 5,00,000, in any other case.

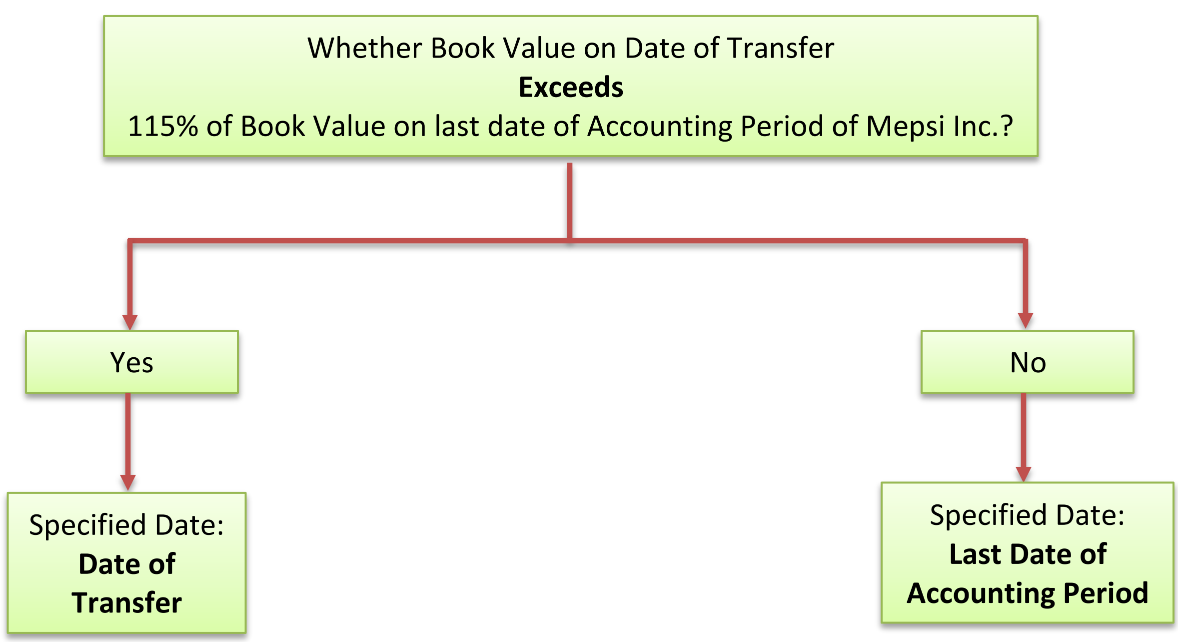
However, no penalty is imposable under section 271GA if it is proved that there is reasonable cause for such failure [Section 273B].

SOLUTION 1

As per explanation 5 to section 9(1) (i) read with definition of transfer under section 2(47), HP Inc. is liable for capital gain tax in India only when shares of Mepsi Inc. deemed to be situated in India.

In order to decide whether shares of Mepsi Inc. shall be deemed to be situated in India or not, we need to check whether such shares derives directly or indirectly its value substantially from assets located in India.

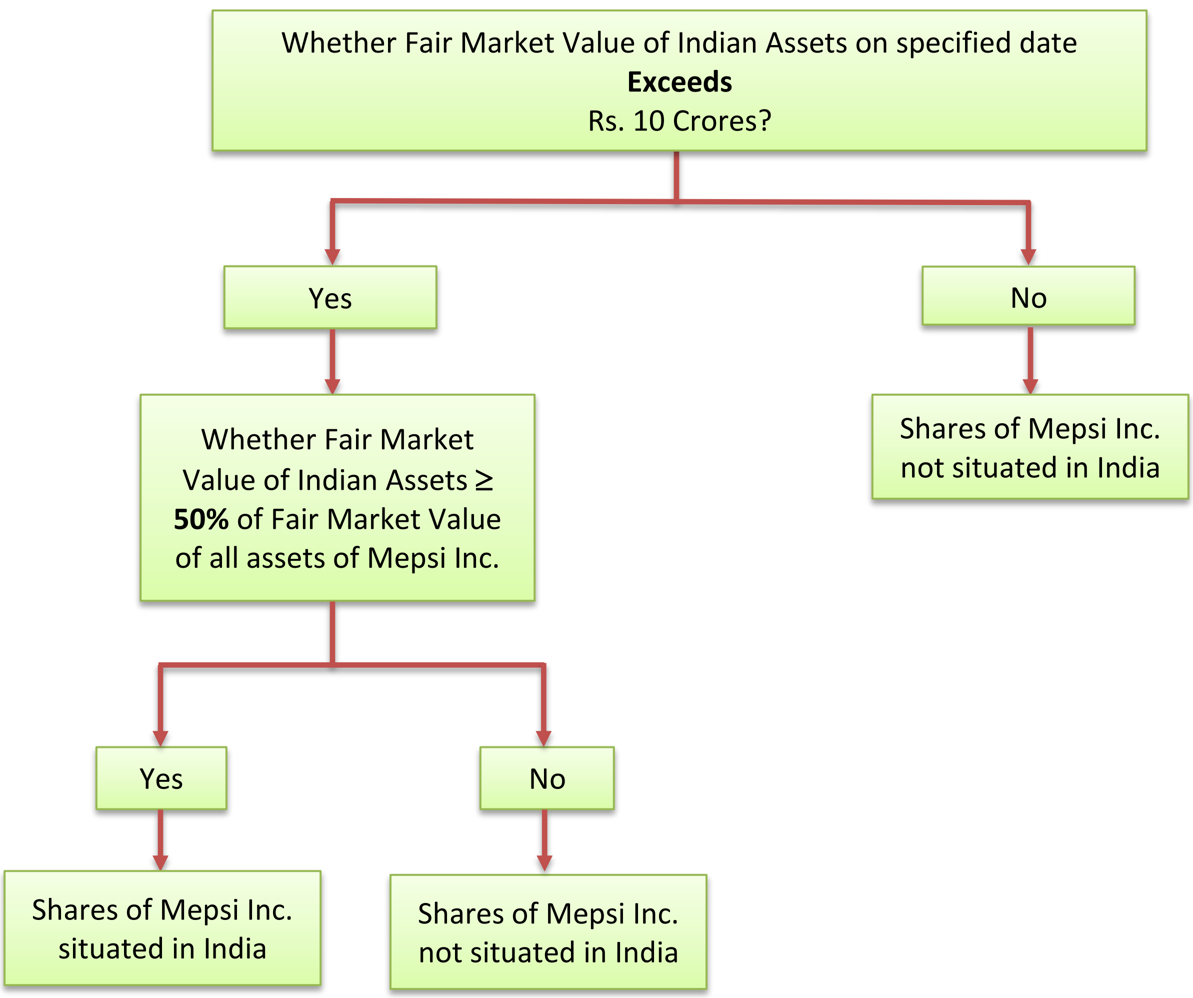
For that purpose, first we need to decide the specified date in view of Explanation 6 to section 9 (1) (i). Consider following chart :



Determination of Specified Date:

					(Rs. in crores)
(I)	**(II)**	**(III)**	**(IV)**	**(V)**	**(VI)**
Situations	**Book value of Assets on 31-12-2014**	**Book Value of Assets on 01-7-2015**	**% (III)/(II)**	**Whether % at (IV) exceeds 115%?**	**Specified Date**
1.	100	110	110%	No	31-12-2014
2.	100	118	118%	Yes	01-07-2015
3.	20	25	125%	Yes	01-07-2015

Now, follow next chart in view of word "substantial" under explanation 6 to section 9 (1) (i).



Determination of "Whether shares of Mepsi Inc. are deemed to be situated in India or not?"

							(Rs. in crores)
(I)	(II)	(III)	(IV)	(V)	(VI)	(VII)	(VIII)
Situations	Specified Date	FMV of Indian Assets on Specified Date	FMV of All Assets on Specified Date	Does FMV at (III) exceeds Rs. 10 Crores?	% of (III)/(IV)	Does % at (VI) ≥ 50%	Whether shares of Mepsi Inc. deemed to be situated in India?
1.	31-12-2014	57	102	Yes	55.88%	Yes	Yes
2.	01-07-2015	60	125	Yes	48.00%	No	No
3.	01-07-2015	8	14	No	NA	NA	No

Tax Consequences in the hands of HP Inc. (Transferor) and Cocomo Inc. (Transferee)

Situations	Whether shares of Mepsi situated in India?	Tax consequences in the hands of HP Inc.	Tax consequences in the hands of Cocomo Inc.
1.	Yes	Liable for Capital gain tax on proportionate basis.	Liable to deduct TDS in view of Explanation 2 to section 195(1)
2.	No	No Capital gain tax liability in India.	Not required to deduct TDS since capital gain is not to be taxed in India.
3.	No	No Capital gain tax liability in India.	Not required to deduct TDS since capital gain is not to be taxed in India.

SOLUTION 2

Clarification regarding applicability of Explanation 5 to section 9(1)(i) to dividend declared and paid by a foreign company outside India in respect of shares which derive its value substantially from the assets located in India [Circular No. 4/2015 dated 26-03-2015]

- **Explanation 5 would be applicable** in relation to deeming any income arising outside India from any **transaction in respect of any share** or interest in a foreign company or entity, **which has the effect of transferring, directly or indirectly, the underlying assets located in India**, as income accruing or arising in India.
- **Declaration of dividend by a foreign company outside India does not have the effect of transfer of any underlying assets located in India. This circular, therefore, clarifies that the dividends declared and paid by a foreign company outside India** in respect of shares which derive their value substantially from assets situated in India **would not be deemed to be income accruing or arising in India** by virtue of the provisions of Explanation 5 to section 9(1)(i).

9. SECTION 9(1)(v)-EFFECTIVE FROM A.Y.2016-17

Taxability of interest payment to a non-resident, being a person engaged in the business of banking, by its Permanent Establishment (PE) in India

PRACTICAL

Foreign Bank has opened branch in New Delhi with the permission of Reserve Bank of India. During previous year under 2015-16, New Delhi Branch paid interest to its Head Office. The New Delhi Branch had not deducted TDS on the ground that interest earned by Head Office is not taxable in India since payer and recipient are the same. Discuss the validity of contention raised by New Delhi Branch and other tax consequences if any.

Before we refer solution, let us comprehend the amendment first.

When interest is payable by an Indian branch of a foreign bank to its overseas head office, it is deductible while computing income of Indian Branch.

Moreover, in the hands of recipient head office, the same is not taxable in India as payer and recipient are the same. As per various judicial rulings, tax is not deductible by the payer Indian branch.

Therefore, in order to provide clarity and certainty on the issue of taxability of interest payable by the Permanent Establishment (PE) of a non-resident engaged in banking business to the head office, an Explanation has been inserted in section 9(1)(v).

As per this Explanation, in the case of a nonresident, being a person engaged in the business of banking, any interest payable by the PE in India of such non-resident to the head office or any PE or any other part of such non-resident outside India, shall be deemed to accrue or arise in India.

Such interest shall be chargeable to tax in addition to any income attributable to the PE in India.

Further, the PE in India shall be deemed to be a person separate and independent of the non-resident person of which it is a PE and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply accordingly.

Further, the PE in India has to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India.

Permanent establishment includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

SOLUTION

Considering the amendment made to section 9(1) (v), New Delhi Branch of Foreign Bank and its Head Office are treated as separate person. Further, interest earned by Head Office shall be deemed to accrue or arise in India and therefore, it is subject to tax in India. Considering the provisions of section 195 of the Act, New Delhi branch is liable to deduct TDS. Non-deduction would result in disallowance of interest claimed as expenditure by the New Delhi Branch (PE) and may also attract levy of interest and penalty in accordance with relevant provisions of the Income Tax Act, 1961.

10. SECTION 9A-EFFECTIVE FROM A.Y.2016-17

Presence of eligible fund manager in India not to constitute business connection in India of such eligible investment fund on behalf of which he undertakes fund management activity

Related amendments in sections: 271FAB & 273B

Scenario before Amendment

One of the conditions for the income of a non-resident to be deemed to accrue or arise in India is the existence of a business connection in India. Once a business connection is established, income attributable to such activities becomes taxable in India.

Further, under Double Taxation Avoidance Agreements (DTAAs) the source country assumes taxing rights on certain income if the non-resident has a Permanent Establishment (PE) in that country.

In the case of person other than an individual, the test of residence is dependent upon the location of its "control and management".

In the case of off-shore funds, the presence of a fund manager in India may create sufficient nexus of the off-shore fund with India and may constitute a business connection in India, even though the fund manager may be an independent person.

Similarly, if the fund manager located in India undertakes fund management activity in respect of investments outside India for an off-shore fund, the profits made by the fund from such investments may be liable to tax in India due to the location of fund manager in India and attribution of such profits to the activity undertaken in, and from, India constituting a business connection.

Further, presence of the fund manager under certain circumstances may lead to the off shore fund being held to be resident in India on the basis of its control and management being in India.

There are large number of fund managers who are of Indian origin and are managing the investment of offshore funds in various countries. These persons are not locating in India due to the above tax consequence in respect of income from the investments of offshore made in other jurisdictions.

Provisions after Amendment

In order to facilitate location of fund managers of off-share funds in India a specific provision **(Section 9A)** has been introduced in the Income Tax Act (with effect from the assessment year 2016-17):

As per this newly inserted provision,

a. the tax liability in respect of income arising to the Fund from investment in India would be neutral to the fact as to whether the investment is made directly by the fund or through engagement of fund manager located in India; and
b. that income of the fund from the investments outside India would not be taxable in India solely on the basis that the Fund management activity in respect of such investments have been undertaken through a fund manager located in India.

Business connection [Section 9A(1)]

In the case of an "eligible investment fund", the fund management activity carried out through an "eligible fund manager" acting on behalf of such fund shall not constitute business connection in India of the said fund.

Residential Status [Section 9A(2)]

An "eligible fund manager" shall not be said to be resident in India merely because the "eligible fund manager" undertaking fund management activities on its behalf is located in India.

The Eligible Investment Fund [Section 9A(3)]

The eligible investment fund means *a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils the following conditions, namely:—*

(a) *the fund is not a person resident in India;*

(b) *the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of [section 90]() or sub-section (1) of [section 90A]() has been entered into;*

(c) *the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund;*

(d) *the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;*

(e) *the fund has a minimum of twenty-five members who are, directly or indirectly, not connected persons;*

(f) *any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten per cent;*

(g) *the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty per cent;*

(h) *the fund shall not invest more than twenty per cent of its corpus in any entity;*

(i) *the fund shall not make any investment in its associate entity;*

(j) *the monthly average of the corpus of the fund shall not be less than one hundred crore rupees:*

Provided *that if the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than one hundred crore rupees at the end of such previous year;*

(k) *the fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;*

(l) *the fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf;*

(m) *the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity :*

Provided *that the conditions specified in clauses (*e*), (*f*) and (*g*) shall not apply in case of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund, or such other fund as the Central Government may subject to conditions if any, by notification in the Official Gazette, specify in this behalf.*

The Eligible Fund Manager [Section 9A(4)]

The eligible fund manager, *in respect of an eligible investment fund,* ***means*** *any person who is engaged in the activity of fund management and fulfils the following conditions, namely:—*

(a) *the person is not an employee of the eligible investment fund or a connected person of the fund;*

(b) *the person is registered as a fund manager or an investment advisor in accordance with the specified regulations;*

(c) *the person is acting in the ordinary course of his business as a fund manager;*

(d) *the person along with his connected persons shall not be entitled, directly or indirectly, to more than twenty per cent of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through the fund manager.*

Reporting [Section 9A(5) read with Section 271FAB, 273B]

Every eligible investment fund shall, in respect of its activities in a financial year, furnish within 90 days from the end of the financial year, a statement in the prescribed form to be prescribed income-tax authority containing information relating to the fulfilment of the relevant conditions or any information or document which may be prescribed.

In case of non-furnishing of the prescribed information or document or statement, a penalty of Rs.5 lakh shall be leviable on the fund. **[Section 271FAB]**

However, no penalty shall be imposable for such failure if it is proved that there was reasonable cause for such failure **[Section 273B].**

Clarification [Section 9A(6), (7) and (8)]

Nothing contained in this section shall apply to exclude any income from the total income of the eligible investment fund, which would have been so included irrespective of whether the activity of the eligible fund manager constituted the business connection in India of such fund or not.

Nothing contained in this section shall have any effect on the scope of total income or determination of total income in the case of the eligible fund manager.

The provisions of this section shall be applied in accordance with such guidelines and in such manner as the Board may prescribe in this behalf.

Interpretation [Section 9A(9)]

For the purposes of this section,—

(a) ***"associate"*** *means an entity in which a director or a trustee or a partner or a member or a fund manager of the investment fund or a director or a trustee or a partner or a member of the fund manager of such fund, holds, either individually or collectively, share or interest, being more than fifteen per cent of its share capital or interest, as the case may be;*

(b) ***"connected person"*** *shall have the meaning assigned to it in clause (4) of [section 102 which reads as under:-]*

"connected person" means any person who is connected directly or indirectly to another person and includes,—

(a) *any relative of the person, if such person is an individual;*

(b) *any director of the company or any relative of such director, if the person is a company;*

(c) *any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member, if the person is a firm or association of persons or body of individuals;*

(d) *any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;*

(e) *any individual who has a substantial interest in the business of the person or any relative of such individual;*

(f) *a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member;*

(g) *a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member has a substantial interest in the business of the person, or family or any relative of such director, partner or member;*

(h) *any other person who carries on a business, if—*

(i) *the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or*

(ii) *the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person;*

(c) ***"corpus"*** *means the total amount of funds raised for the purpose of investment by the eligible investment fund as on a particular date;*

(d) ***"entity"*** *means any entity in which an eligible investment fund makes an investment;*

(e) ***"specified regulations"*** *means the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 or the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, or such other regulations made under the Securities and Exchange Board of India Act, 1992 which may be notified by the Central Government under this clause.*

11. SECTION 10(23EE) -EFFECTIVE FROM A.Y.2016-17

Exemption of specified income of Core Settlement Guarantee Fund (SGF) set up by a recognized Clearing Corporation

PRACTICAL

From the following information, compute taxable income of Core Settlement Guarantee Fund set up by National Securities Clearing Corporation Limited (NSCCL).

Particulars	Rs. in crores
Contribution received from NSCCL	18.50
Contribution received from National Stock Exchange Limited being a shareholder of NSCCL	2.50
Contribution received from Clearing Members	0.50
Contribution received from Public	0.05
Income by way of penalties imposed on Clearing Members	1.25
Interest income from various investments	1.30
Amount Shared to NSCCL (which was not taxed earlier)	1.00

Before we refer solution, let us comprehend the amendment first.

Section 10(23EE)

Eligible Assessee	Nature of Income	Proviso
Core Settlement Guarantee Fund of the Clearing Corporation	(1) Income by way of contribution received from specified persons. (2) The income by way of penalties imposed by the recognised clearing corporation and credited to the Core Settlement Guarantee Fund; (3) The income from investment made by the Fund	Where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with the specified person, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall, accordingly, be chargeable to income-tax.

Explanation: For the purpose of this section,

Specified person means:

(a) any recognised clearing corporation which establishes and maintains the Core Settlement Guarantee Fund;
(b) any recognised stock exchange being a shareholder in such recognised clearing corporation or a contributor to the Core Settlement Guarantee Fund; and
(c) any clearing member contributing to the Core Settlement Guarantee Fund.

SOLUTION

Computation of Taxable Income of Core Settlement Guarantee Fund Set up by NSCCL

Particulars	**Rs. in crores**
Contribution received from NSCCL	Exempt
Contribution received from National Stock Exchange Limited being a shareholder of NSCCL	Exempt
Contribution received from Clearing Members	Exempt
Contribution received from Public	0.05
Income by way of penalties imposed on Clearing Members	Exempt
Interest income from various investments	Exempt
Amount Shared to NSCCL (which was not taxed earlier)	1.00
Total Income	**1.05**

12. SECTION 2(15) AND SECTION 13 -EFFECTIVE FROM A.Y.2016-17

Amendments in respect of Charitable Trust or Institutions

PRACTICAL

XYZ Charitable Institution having object of "Medical relief" as well as "advancement of general public utility" provides following information for the Assessment Year 2016-17.

Particulars	**Rs. in Lakhs**
Receipts including donations for the object "Medical Relief"	76
Receipts from Activity in nature of trade / commerce undertaken in the course of Advancement of General Public Utility	24

XYZ Charitable Institution claims that the object of advancement of general public utility is also considered as charitable since the receipts from activity in nature of trade / commerce does not exceed Rs. 25 Lakh. Comment.

Before we refer solution, let us comprehend the amendment first.

<table>
<tr><th>Sr. No.</th><th>Section</th><th>Before Amendment</th><th>After Amendment</th></tr>
<tr><td>1.</td><td>2(15)</td><td>"Charitable Purpose" to include relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest] and the advancement of any other object of general public utility.</td><td>"Charitable Purpose" to include relief of the poor, education, yoga, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest] and the advancement of any other object of general public utility.</td></tr>
<tr><td>2.</td><td>First Proviso to Section 2(15)</td><td>Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use or application or retention, of the income from such activity.</td><td rowspan="2">“Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—
(a) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
(b) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year”</td></tr>
<tr><td>3.</td><td>Second to Section 2(15)</td><td>Provided further that the first proviso shall not apply if the aggregate value of receipts from the activities referred to therein is twenty five lakh rupees or less in the previous year.</td></tr>
</table>

SOLUTION

Considering the proviso in amended definition, the criteria of Rs. 25 lakhs in has been dispenses with. The new criteria is that aggregate receipts from activity/ activities in the nature of trade/ commerce undertaken in the course of advancement of general public utility during the previous year, shall not exceed **twenty per cent** of the total receipts, of the trust or institution.

In the given issue, total receipts of the Institution is Rs. 100 Lakhs of which Rs. 24 Lakh is in relation to activity in the nature of trade/ commerce which comes to 24% of total receipts of the Institution (exceeding 20%). Therefore, the claim made by XYZ Charitable Institution that the object of advancement of general public utility is also considered as charitable is not tenable.

13. SECTION 11(2) -EFFECTIVE FROM A.Y.2016-17

Time limit for filing of Form 10 by a trust or institution for accumulation of income

PRACTICAL 1

A Charitable Public Trust derives income from voluntary contribution of Rs.25,00,000 (out of Rs.8,00,000 is for specific direction that is shall form part of corpus of the trust) for the year ending **31.3.2016**. It invests the entire corpus donations in Bank Deposits and does not spend at all. It accumulates Rs.10,00,000 out of Rs.25,00,000/- for construction of trust hospital and informs the Assessing Officer accordingly. Out of the balance, a sum of Rs.3,00,000 is spent for the objects of the Trust. Determine the taxable income of the Trust for the **A.Y. 2016-17.** What will be the tax implication if the trust could spend only Rs.7,50,000 of the amount of accumulated upto **31.3.2021** and Rs.1,00,000 during the previous year **2021-22.**

Before we refer solution, let us comprehend the amended provision.

Accumulation of Income - Section 11(2)

1) Where 85 per cent of income is not applied to charitable or religious purposes, the trust can accumulate or set apart its income for a specified purpose by informing the concerned Assessing Officer.
2) Such income so accumulated or set apart will not be included in the total income of the trust or institution in the year of receipt of income, provided such trust or institution furnishes a statement in the prescribe form [At present, Form no. 10] and in the prescribed manner to the Assessing Officer, the purposes and period for which the income is accumulated or set apart.
3) However the period for which the funds can be accumulated shall not exceed 5 years.
4) *In computing the period of five years, the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.*

5) Further, the money so set apart or accumulated should be invested/ deposited in any one or more of modes or forms specified in section 11(5).
6) **The prescribed form [At present, Form No. 10] shall be furnished before the expiry of time allowed under section 139(1).**
7) *Consequences in case of default*:
   a. If in any year the income which is accumulated for the specified purpose or purposes of the trust is applied to the purposes other than charitable or religious purposes or ceases to be accumulated or set apart for application to such purposes, it will become chargeable to tax as the income of that year.
   b. If in any year, the accumulations cease to remain invested in any of the forms or modes specified in section 11(5) then also the income so accumulated will become chargeable to tax as the income of that year.
   c. If the income accumulated is not utilised for the specified purpose during the specified period or in the immediately following year, it will be deemed to be the income of the trust for the previous year immediately following the expiry of the specified period.
   d. If in any year, the accumulated income is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or any university or educational institutions or any hospital or other medical institutions referred to in section 10(23C) then income so credited or paid will become chargeable to tax as the income of that year.
8) If the trust is unable to apply the accumulated funds for the purpose for which it was accumulated due to circumstances beyond control, the Assessing Officer may allow the application of such funds for other charitable or religious purpose requested for by the assessee in conformity with the objects of the trust.
9) However, in cases where the trust or institution is dissolved, the Assessing Officer may allow application of such accumulated income towards contribution to other trusts or institutions registered u/s. 12AA or to any fund or institution or any university or educational institution or any hospital or other medical institution referred u/s. 10(23C) in the year in which such dissolution takes place.

SOLUTION 1

Previous Year 2015-16
Assessment year 2016-17

	Particulars	Amount (Rs.)
	Voluntary Contribution (excluding corpus donations)	17,00,000
Less:	15% Set apart	(2,55,000)
	Balance	**14,45,000**
Less:	Applied for the objects of trust {section 11(1)}	(3,00,000)
	Balance	**11,45,000**
Less:	Accumulation of income for construction of hospital {Section 11(2)}	(10,00,000)
	Taxable Income	**1,45,000**

Previous Year 2021-22

Assessment Year: 2022-23

	Particulars	Amount (Rs.)
	Amount to be spent for construction of hospital	10,00,000
Less:	Amount actually spent during previous year 2020-21 {fifth year}	(7,50,000)
		2,50,000
Less:	Amount actually spend during previous year 2021-22 {sixth year}	(1,70,000)
	Taxable Income	**1,50,000**

PRACTICAL 2

Ramji Charitable Trust has filed return of income for the relevant Assessment Year within the stipulated time under section 139(1) and applied only 50% of its income to specified purposes. It intends to accumulate the balance 35% of income to be spent in future years. While completing the assessment, the Assessing Officer rejected the claim of accumulation and taxed the same on the ground that the trust has not furnished the prescribed statement as contemplated under Section 11(2) on or before due date of filing return under section 139(1). Discuss the validity of the action of the Assessing Officer in this case.

What would have been your answer if trust has furnished the prescribed statement as contemplated under section 11(2) on or before due date of filing return under section 139(1) but filed its income tax return under section 139(4).

Before we refer solution, let us comprehend the amendment first.

Sub section 9 has been inserted in section 13 with effect from A.Y. 2016-17 which reads as under:

Nothing contained in sub-section (2) of section 11 shall operate so as to exclude any income from the total income of the previous year of a person in receipt thereof, if—

(i) the statement referred to in clause (a) of the said sub-section in respect of such income is not furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year; or

(ii) the return of income for the previous year is not furnished by such person on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the said previous year.

That means, trust or institution shall not get benefit of accumulation under section 11(2) if

(a) The prescribed statement under section 11(2) [At present Form No.10] is not furnished on or before the due date of filing return under section 139(1) ***or***

(b) The return of income is not furnished on or before the due date prescribed under section 139(1).

SOLUTION 2

Considering the above [point no. (a)], action taken by the assessing officer rejecting the claim of accumulation and taxing the same, is correct, since trust failed to furnish prescribed statement under section 11(2) on or before the due of filing return under section 139(1).

As discussed above [point no.(b)], section 139(9) requires that return of income must be filed in time for claiming the benefit of accumulation under section 11(2) of the Act. Therefore, answer would remain same (i.e. A.O. is justified in rejecting the claim of accumulation) even though trust has furnished the prescribed statement as contemplated under section 11(2) on or before due date of filing return under section 139(1) but filed its income tax return under section 139(4).

14. SECTION 32(1) -EFFECTIVE FROM A.Y.2016-17

Balance 50% of additional depreciation to be allowed in the subsequent year, where the plant and machinery is put to use for less than 180 days during the previous year of acquisition and installation

PRACTICAL

Abudhabhi Refineries Limited provides following information:

(i) WDV of Block "Plant and Machinery" (Rate of Depreciation 15%) as on 01.4.2015- Rs. 200 crores

(ii) Purchased new Plant on 10.06.2015 for Rs. 10 Crores

(iii) Purchased another new Machinery on 10.11.2015 for Rs. 12 Crores

(iv) Sold out one very old Plant on 10.05.2016 for Rs. 2 Crores.

Compute depreciation and additional depreciation for the previous year 2015-16 and 2016-17.

Before we refer solution, let us comprehend the amended provision.

Additional Depreciation

1. **Conditions**

One	The assessee must be engaged in manufacture or production of any article or thing.
Two	The assessee shall acquire and install new plant and machinery after March 31, 2005.

2. Non-Eligible Plant & Machinery for additional depreciation

a. ships and aircrafts, or
b. any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; (Second hand plant and machinery) or
c. any machinery or plant which is installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house; or
d. any office appliances or road transport vehicles; or
e. any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year.

3. Rate of Additional Depreciation

- ✓ Additional depreciation shall be computed **@ 20 per cent of the actual cost of new Plant and Machinery** acquired and installed after March 31, 2005.
- ✓ 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 shall be fifty percent of 20 per cent. (i.e. 10 percent of the actual cost)
- ✓ ***As per third proviso to section 32(1)(ii) inserted by Finance Act, 2015, balance (10 percent of actual cost) shall be allowed in the immediately succeeding previous year.***

4. With effect from A.Y. 2013-14, the benefit of additional depreciation has been extended to the assessees engaged in the business of generation or generation and distribution of power subject to the condition that it claims normal depreciation on WDV method.

Summary

Assessee engaged in the	Whether option available to adopt SLM for normal depreciation?	Whether benefit of additional depreciation is available?
(a) Business of manufacture or production of any article or thing	No	Yes
(b) Business of generation or generation and distribution of power	Yes	Yes provided it claims normal depreciation on WDV method.

SOLUTION

- **Computation of Amount of Depreciation**

	Particulars	Rs. in crores
	WDV of Block "Plant and Machinery"	200.00
Add:	Actual Cost of New Plant purchase on 10.06.2015	10.00
Add:	Actual Cost of new Machinery purchased on 10.11.2015	12.00
Less:	Money received on sale Plant and Machinery	(Nil)
	Written down value of the block for the previous year 2015-16	222.00
Less:	Depreciation for the previous year 2015-16 (15% on Rs.222 crores)	(33.30)
Less:	Additional Depreciation for the previous year 2015-16 **(Refer Note)**	(3.20)
	Depreciated value of the block Plant and Machinery as on April 1, 2016	185.50
	Depreciated value of the block Plant and Machinery as on April 1, 2016	185.50
Add:	Actual Cost of new Machinery purchased during P.Y. 2016-17	Nil
Less:	Money received on sale Plant and Machinery during P.Y. 2016-17	(2.00)
	Written down value of the block for the previous year 2016-17	183.50
Less:	Depreciation for the previous year 2016-17 (15% on Rs.185.50 crores)	(27.525)
Less:	Additional Depreciation for the previous year 2016-17 (10% of 12 Cr)	(1.20)
	Depreciated value of the block Plant and Machinery as on April 1, 2017	154.775

- **Note: Computation of Additional Depreciation for previous year 2015-16**

Particulars	**Actual Cost of Asset (Rs. in crores)**	**Whether Put to use for < 180 days?**	**Rate for Additional Depreciation**	**Amount of Additional Depreciation (Rs. in crores)**
New Plant & Machinery purchased on 01.06.2015	10	No	20%	2.00
New Plant & Machinery purchased on 10.11.2015	12	Yes	10%	1.20
Additional Depreciation under section 32(1)(iia)				**3.20**

15. SECTION 32AD AND PROVISO TO SECTION 32(1) (iia)-EFFECTIVE FROM A.Y.2016-17

PRACTICAL

RAJAD Limited set up a manufacturing unit in notified backward area in the State of Bihar on 01.07.2015. It provides following information:

(i) Purchased new plant and machinery Rs. 40 crores on 01.07.2015 and put to use on 01.08.2015.

(ii) Purchased second hand plant and machinery Rs. 10 crores on 01.09.2015 and put to use on the same day.

(iii) Further purchased new plant and machinery Rs. 20 crores on 01.11.2015 but put to use on 10.12.2015.

You are required to compute the various tax advantages for RAJAD Limited.

Does your answer differ if the manufacturing unit is set up by RAJAD & Co., partnership firm?

Before we refer solution, let us comprehend the amendment first.

Section 32AD inserted with effect from A.Y. 2016-17

Manufacturing undertakings set up in the notified backward areas of Specified States to be eligible for a deduction @15% of actual cost of 'new asset' in the previous year in which 'new asset' is installed subject to the following conditions:

- The assessee is a company or any other person.
- Assessee sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 01.04.2015.
- Such undertaking or enterprise must be set in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh, Bihar, Telangana or West Bengal.
- Assesse **acquires and installs** a **'new asset'** for the purposes of the said undertaking.
- The new asset should be acquired and installed during the period beginning on ***1st April, 2015 and ending before April 1, 2020.***

Meaning of Terms "New Asset" used in above provision:-

"New asset" means any new plant or machinery (other than ship or aircraft) but does not include—

(i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

(ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(iii) any office appliances including computers or computer software;

(iv) any vehicle; or

(v) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

(1) Withdrawal of investment allowance –

- ✓ If the new asset is sold or transferred within 5 years from its installation, the amount of investment allowance allowed to the assessee shall be deemed to be the income of assessee of the previous year in which such asset is sold or otherwise transferred. Such deemed income will be taxable under the head “Profit and gains of business or profession”.
- ✓ Such deemed income shall be taxable in addition to taxability of capital gain arising on transfer of such new asset.

(2) Above restriction not to apply in case of amalgamation, demerger or re-organisation of business referred to in section 47 (xiii), section 47(xiiib) or section 47 (xiv).

- ✓ The above restriction will not apply in a case of amalgamation or demerger or conversion of partnership firm into company or conversion of sole proprietorship firm into company or conversion of unlisted company into LLP.
- ✓ However, the amalgamated company or the resulting company or successor shall not transfer the new asset within 5 years (from its installation by the amalgamating company or demerged company or predecessor). If it is sold or otherwise transferred within 5 years by the amalgamated company or resulting company or successor, the notional income (as discussed above) shall be taxed in the hands of amalgamated company or resulting company or successor.

Proviso to section 32(1)(iia) inserted with effect from A.Y. 2015-16

Additional depreciation @35% to be allowed to assessees’ setting up manufacturing units in notified backward areas of specified States and acquiring and installing new plant and machinery

Provided that where an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1st day of April, 2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the

State of West Bengal, and acquires and installs any new machinery or plant (other than ships and aircraft) for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020 in the said backward area, then, the provisions of clause (iia) shall have effect, as if for the words "twenty per cent", the words "thirty-five per cent" had been substituted.

That means, assessee meeting conditions of above proviso, will get additional depreciation under section 32(1) (iia) at 35% of actual cost instead of 20% of actual cost.

SOLUTION

RAJAD Ltd / RAJAD & Co.: Computation of Depreciation and Additional Depreciation for previous year 2015-16

Particulars	Actual Cost of Asset	Whether Put to use for < 180 days?	Rate of Depreciation	Amount of Depreciation	Rate for Additional Depreciation	Amount of Additional Depreciation
New Plant & Machinery put to use on 01.08.2015	40 Cr.	No	15%	6.00 Cr.	35%	14.00 Cr.
Second hand Plant & Machinery put to use on 01.09.2015	10 Cr.	No	15%	1.50 Cr.	Not Eligible because Second Hand	Nil
New Plant & Machinery put to use on 10.12.2015	20 Cr.	Yes	7.5%	1.50 Cr.	17.5%	3.50 Cr.
Total				**9.00 Cr.**		**17.50 Cr.**

RAJAD Ltd. :-Computation of Eligible Deduction under section 32AC and 32AD for the previous year 2015-16

Particulars	Actual cost of Asset	Deduction under section 32AC(1A): 15% of Actual Cost	Deduction under section 32AD: 15% of Actual Cost
New Plant & Machinery put to use on 01.08.2015	40 Cr.	6 Cr	6 Cr
Second hand Plant & Machinery put to use on 01.09.2015	Not Eligible because Second Hand	Nil	Nil
New Plant & Machinery put to use on 10.12.2015	20 Cr.	3 Cr.	3 Cr.
Total		**9 Cr.**	**9 Cr.**

RAJAD & Co, Partnership Firm.:- Computation of Eligible Deduction under section 32AC and 32AD for the previous year 2015-16

Particulars	Actual cost of Asset	Deduction under section 32AC(1A): 15% of Actual Cost	Deduction under section 32AD: 15% of Actual Cost
New Plant & Machinery put to use on 01.08.2015	40 Cr.	Section 32AC benefit is available to Corporate Taxpayer Only	6 Cr
Second hand Plant & Machinery put to use on 01.09.2015	Not Eligible because Second Hand		Nil
New Plant & Machinery put to use on 10.12.2015	20 Cr.		3 Cr.
Total		**Nil**	**9 Cr.**

16. SECTION 35 (2AB) -EFFECTIVE FROM A.Y.2016-17

Prescribed conditions relating to maintenance of accounts, audit, etc. to be fulfilled by the approved in-house R&D facility

Section 35(2AB):- Deduction for companies in special business

1. In case of a company engaged in the business of bio-technology or *any business of manufacture or production of any article or thing except those specified in the Eleventh Schedule*, an amount equal 200% of the expenditure incurred on scientific research shall be allowed as deduction.

2. The cost of any land or building shall not be allowed as a deduction.

3. No deduction shall be allowed in respect of expenditure incurred after 31.03.2017.

4. On application of the company in prescribed form, the research and development facility is approved by Secretary, Department of Scientific and Industrial Research.

5. The Secretary, Department of Scientific and Industrial Research shall submit its report in relation to the approval of the said facility to the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General in such form and within such time as may be prescribed.

6. The taxpayer has entered into an agreement with the prescribed authority for co-operation in such research and development facility and ~~for audit of the accounts maintained for that facility~~ fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed. ***(Substituted by Finance Act, 2015 effective from 01.04.16)***

17. SECTION 36(1)(iii) -EFFECTIVE FROM A.Y.2016-17

Interest paid in respect of capital borrowed for acquisition of an asset, for the period upto the date on which the asset is first put to use to be capitalized, even if the acquisition of the asset is not for extension of existing business or profession

PRACTICAL

MATA Motors Limited purchased new machine for Rs. 14,80,000 on 01.05.2015 under an extension of its existing manufacturing unit at Sanand. This machine was partly financed by State Bank of India amounting to Rs. 10,00,000 carrying 12 % p.a. simple interest. The said machine was put to use on 01.07.2015. Find out the amount of depreciation and additional depreciation in the hands of MATA Motors Limited.
Does you answer differ if MATA Motors Limited had set up new manufacturing unit?

Before we refer solution, let us comprehend the amended provision.

Section 36(1)(iii)

Under section 36(1)(iii), interest paid in respect of capital borrowed for the purposes of the business or profession is allowable as deduction.

However any amount of the interest paid, in respect of capital borrowed for acquisition of an asset ~~**[*for extension of existing business or profession*]**~~ (whether capitalised in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.

ICDS IX

ICDS IX on borrowing costs requires borrowing costs which are directly attributable to the acquisition, construction or production of a qualifying asset to be capitalized as part of the cost of that asset.

Explanation 8 to Section 43(1)

Situation	Notional cost under-section 43(1)
Asset is purchased with the help of borrowed fund.	Then, any amount paid or payable as interest in connection with the acquisition of an asset and relatable to a period after the asset is first put to use will not form part of actual cost.

SOLUTION

Considering the provisions of section 36(1)(iii), explanation 8 to section 43(1) and the requirements of ICDS IX, any interest paid during the period beginning from the date of borrowing till the date on which asset was put to use, shall not be allowed as deduction but the same shall be capitalized.

Computation of Actual Cost of Asset

Particulars	Rs.
Original Cost	14,80,000
Interest capitalization for a period of two months $\left(10{,}00{,}000 \times \frac{12}{100} \times \frac{2}{12}\right)$	20,000
Actual Cost for the purpose of Depreciation	15,00,000
Depreciation at the rate of 15%	2,25,000
Additional depreciation at the rate of 20%	3,00,000

The amendment made by Finance Act 2015 in proviso to section 36(1) (iii), removed the phrase " for extension of existing business or profession". Therefore, the answer will remain same if MATA Motors Limited had set up new unit.

18. SECTION 36(1)(vii)-EFFECTIVE FROM A.Y.2016-17

Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable

PRACTICAL

Mr. Mohak an authorized money lender against Jwellery, lent Rs. 5,00,000 to Mr. Raghav on 01.04.2015 @ 18 % p.a. Under the agreed terms, Mr. Raghav is supposed to serve interest quarterly. However, Mr. Raghav failed to pay interest for the fourth quarter. Not only that, Mr. Raghav was declared insolvent in the month of March, 2016. Mr. Mohak, therefore, sold the gold pledged by Mr. Raghav and realized Rs. 4,42,000. Further, Mr. Mohak recorded Rs. 67,500 interest income for the first, second and third quarter in the books of accounts.

From the above information, you are required to:

(a) Compute the interest income to be offered by Mr. Mohak for the financial year 2015-16 in view of ICDS IV.

(b) Further, compute the amount of bad debt which can be claimed by Mr. Mohak in the financial year 2015-16 under section 36(1)(vii).

Before we refer solution, let us comprehend the amendment first.

(a) ICDS IV requires revenue from sale of goods to be recognized when there is reasonable certainty of its ultimate collection. However, "reasonable certainty for ultimate collection" is not a criterion for recognition of revenue from rendering of services or use by others of person's resources yielding interest, royalties or dividends. By implication, revenue recognition cannot be postponed in case of significant uncertainty regarding collectability of consideration to be derived from rendering of services or use by others of person's resources yielding interest, dividend or royalty.

(b) Consequently, interest on sticky loans or interest on overdue payments as mentioned in invoice may have to be recognized even though there may be uncertainty regarding their collection. In case of non-realisation of such interest in future, it would not also be possible to claim bad debts since such interest, which would not have been recognized in the books of account as per AS 9, cannot be written off. Write off of bad debts in the books of account is an essential condition for claiming deduction under section 36(1)(vii).

(c) In order to overcome this difficulty arising out of the notified ICDSs, a second proviso has now been inserted in section 36(1)(vii) which reads as under:-

(d) **Provided further** ***that where the amount of debt*** *or part thereof* ***has been taken into account in computing the income*** *of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year* ***on the basis of income computation and disclosure standards*** *notified under sub- section 145(2)* ***without recording the same in the accounts, then, such debt*** *or part thereof* ***shall be allowed in the previous year in which such debt*** *or part thereof* ***becomes irrecoverable and it shall be deemed that such debt*** *or part thereof* ***has been written off*** *as irrecoverable in the accounts for the purposes of this clause.*

SOLUTION

(a) In view of requirements of ICDS IV, Mr. Mohak is required to offer interest income of Rs. 90,000 for the previous year 2015-16, even though he has not realized Rs. 22,500 pertaining to the fourth quarter.

(b) Considering the provisions of section 36(1)(vii), Mr. Mohak can claim deduction of bad debt of Rs. 58,000 pertaining to principal amount in the financial year 2015-16, provided he writes off the same in the books of accounts.

(c) Further, in view of the second proviso to section 36(1)(vii), Mr. Mohak can claim deduction of unrealized interest (Rs. 22,500) which has been recognized as income in view of ICDS IV without writing off the same in the books of accounts.

19. SECTION 36(1)(xvii)-EFFECTIVE FROM A.Y.2016-17

Amount of expenditure incurred by a co-operative society for purchase of sugarcane at price fixed by the Government allowable as deduction

PRACTICAL

Assessee co-operative society engaged in the business of manufacture of Sugar has purchased the sugarcane in different lots at following prices:

Lot No.	Price Paid by the Assessee	Price Fixed by the Government
1.	25,52,000	24,48,000
2.	31,32,000	31,35,000
3.	12,43,400	12,43,400
4.	16,18,350	16,18,200

Find out the deduction that co-operative society can claim towards purchase of sugarcane.

Before we refer solution, let us comprehend the amendment first.

As per clause (xvii) of Section 36(1) inserted by Finance Act, 2015, the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane shall be the price which is equal to or less than the price fixed or approved by the Government.

SOLUTION

Considering the above, the deduction that co-operative society can claim towards purchase of sugarcane is as under:

Lot No.	Price Paid by the Assessee	Price Fixed by the Government	Deduction under section 36(1)(xvii)
1.	25,52,000	24,48,000	24,48,000
2.	31,32,000	31,35,000	31,32,000
3.	12,43,400	12,43,400	12,43,400
4.	16,18,350	16,18,200	16,18,200
Total			84,41,600

20. SECTION 47(xviii)-EFFECTIVE FROM A.Y.2016-17

Transfer of units by unit holders in consolidation scheme of mutual funds not to be regarded as transfer

Related amendments in sections: Section 2(42A) & 49(2AD)

PRACTICAL 1

ABC Mutual Funds operates various schemes like ABC Flexi Debt Fund, ABC Strategic Bond Fund, ABC Debt Savings Fund. It has decided to consolidate all these funds into ABC Premier Debt Fund in accordance with guidelines of SEBI (Mutual Funds) Regulations, 1996 with effect from 10-07-15. Mr. Abhishek subscribed 10,000 units of ABC Flexi Debt Fund on 10-08-2012 for Rs. 10 per unit. As a result of consolidation, he was allotted 13,333.33 units of ABC Premier Debt Fund. The Income Tax Officer asked Mr. Abhishek to pay capital gain tax on such transaction because this transaction amounts to “exchange” and therefore covered under the definition of “transfer”. Whether contention of Income Tax Officer is valid?

PRACTICAL 2

Continuing above problem, Mr. Abhishek sold all the units of ABC Premier Debt Fund on 13-12-2015 for Rs. 10.50 per unit. Find out capital gain in the hands of Mr. Abhishek.

Before we refer solution, let us comprehend the amendment first.

By virtue of section 47(xviii)*, any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund is not treated as transfer if following conditions are satisfied:-*

(i) Such transfer is made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund and

(ii) Consolidation is of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.

For the purpose of this clause:

(a) "consolidated scheme" means *the scheme with which the consolidating scheme merges or which is formed as a result of such merger;*

(b) "consolidating scheme" *means the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992;*

SOLUTION 1

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

SOLUTION 2

Consider following points—

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

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

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

Computation of Long Term Capital Gain

Period of Holding: From 10-08-2012 to 13-12-2015
Type of Capital Asset : Long Term

Particulars	Rs.
Full value of consideration (12,800 × Rs.10.50)	52,500
Less: Indexed Cost of Acquisition (Working Note)	47,579
Taxable LTCG	**4,921**

Working Note:

Total Cost of 13,333.33 units of ABC Premier Debt Fund	= Cost of 10,000 units of ABC Flexi Debt Fund =10,000 × Rs. 10 = Rs. 1,00,000
Hence, cost per unit of ABC Premier Debt Fund	$= \frac{\text{Rs.}1,00,000}{13,333.33}$ = Rs. 7.50
Hence, cost of acquisition of 5000 units of ABC Premier Debt Fund	= 5000 × Rs.7.50=Rs.37,500
Therefore, Indexed Cost of Acquisition	$=\left(37,500 \times \frac{1081}{852}\right)$ =Rs. 47579

21. SECTION 49(1)(ii)(e)-EFFECTIVE FROM A.Y.2016-17

How to Find out Capital Gains when resulting company subsequently sells (Transfer) the assets acquired on demerger?

PRACTICAL

Ashmia Denim Private Limited is a manufacturing concern operates two units namely Unit I and Unit II. On 21.07.2012 the business of Unit II was demerged with Johnson Textile Private Limited, as a result, all the assets and liabilities of Unit II of Ashmia Denim Private Limited were transferred to Johnson Textile Private Limited.
The assets of Unit II included an urban land which was acquired by Ashima Denim Private Limited on 19.7.2009 for Rs. 12,22,920. The Johnson Textile Private Limited subsequently sold the same on 30.03.2013 for Rs. 25,75,000.
Discuss the tax implication of the above mentioned transaction.

Before we refer solution, let us comprehend the amendment first.

(a) As per section **49(1) (iii) (e)**, in future, if resulting company transfers the capital asset [which has been received from demerged company meeting conditions of section 47(vib)], then **the cost of acquisition in the hands of resulting company shall be the cost incurred by the previous owner. (i.e. cost for which demerged company acquired the capital asset)**
(b) Further, to find out whether such transferred assets are long-term capital assets or not, the period of holding shall be determined from date of acquisition of such assets by the previous owner (i.e. demerged company) – Explanation 1 to section 2(42A)
(c) Following the decision of Bombay High Court in CIT v. Manjula J. Shah 16 Taxman 42, resulting company can claim indexation benefit from the previous year in which the capital asset was acquired by the previous owner. (i.e. demerged company)

SOLUTION

- **Tax implication in the hands of Johnson Textile Private Limited.**

Computation of Capital Gain for the previous year 2014-15 in the hands of Johnson Textile Private Ltd.

Period Of Holding:- 19-07-2009 to 30.03.2013
Nature of Capital Asset: Long Term

Particulars		Rs.
Full value of consideration		25,75,000
Less: Expenses in connection with Transfer		-
Net Consideration		25,75,000
Less: Indexed Cost of acquisition	$12{,}22{,}920 \times \frac{852}{632}$	16,48,620
Long Term Capital Gain		**9,26,380**

22. SECTION 49(2ABB) & SECTION 2(42A) -EFFECTIVE FROM A.Y.2016-17

Cost of acquisition and period of holding of shares acquired on redemption of Global Depository Receipts (GDRs) by a non-resident assessee

QUESTION

How to find out capital gains when shares acquired on redemption of Global Depository Receipts (GDRs) are subsequently sold out?

ANSWER

Consider following points—

(a) As **per section 49(2ABB)**, the cost of shares acquired on redemption of GDRs referred to in Section 115AC shall be the *price of such share or shares prevailing on any recognised stock exchange on the date on which a request for such redemption was made.*

(b) *To find out whether shares of a company, which is acquired by the non-resident assessee on redemption of GDRs are long-term capital asset or not, the period of holding shall be determined from the date on which a request for such redemption was made.*

(c) The benefit of indexation will start from the date on which a request of such redemption was made.

23. SECTION 48-EFFECTIVE FROM A.Y.2016-17

Basis for declaring Index Number

Old basis of declaring Index Number	New basis of declaring Index Number
75% of average rise in the Consumer Price Index (CPI) for urban non-manual employees (UNME) for the immediately preceding previous year to such previous year.	75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

24. CHAPTER VI-A

Deductions under section 80C to 80U

A. SECTION 80C AND SECTION 10(11A) - EFFECTIVE FROM A.Y.2015-16

Deduction under section 80C to be available in respect of deposit in Sukanya Samriddhi Account Scheme for the welfare of girl child

- Deduction under section 80C is available in respect of sums paid or deposited in the previous year as a subscription to any such security of the Central Government or any deposit scheme notified by the Central Government.

- Accordingly, the ***Sukanya Samriddhi Account Scheme*** has been notified under clause (viii) of section 80C(2) vide Notification No. 9/2015, dated 21.01.2015

- Considering the provisions of section 80C(2)(vii) read with section 80 C(4), any sum paid or deposited during the previous year in the said Scheme, by an individual in the name of -
  (a) the individual himself or herself;
  (b) any girl child of the Individual; or
  (c) any girl child for whom such individual is the legal guardian
  is eligible for deduction under section 80C.

- Further, new clause (11A) has been inserted in section 10 to provide that any payment from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014 shall not be included in the total income of the assessee.

- Therefore, the interest accruing on deposits in, and withdrawals from any account under the said scheme shall be exempt.

B. *SECTION 80CCC, 80CCD(1B) & 80CCD(1) - EFFECTIVE FROM A.Y.2016-17*

Increase in the limit of deduction in respect of contribution to certain pension funds under section 80CCC
Additional deduction in respect of contribution to NPS of Central Government under section 80CCD(1B)
Enhancement of limit of deduction under section 80CCD(1)

SECTION	***MAXIMUM DEDUCTION***	
	For A.Y. 2015-16	***From A.Y. 2016-17***
80C	***Rs.1,50,000***	***Rs.1,50,000***
80CCC	***Rs.1,00,000***	***Rs.1,50,000***
80CCD(1) [i.e., employee's or assessee's contribution to NPS]	*[10% of Salary or 10% of GTI as the case may be]* ***or Rs.1,00,000 whichever is less***	***10% of Salary or 10% of GTI as the case may be.***
80CCE : **The aggregate deduction under sections 80C, 80CCC and 80CCD(1)**	***Rs.1,50,000***	***Rs.1,50,000***
80CCD(1B) [i.e., contribution to NPS by an individual]	***Not Applicable***	***Rs.50,000***
80CCD(2) [i.e., employer's contribution to NPS]	***10% of salary***	***10% of salary***

C. *SECTION 80D - EFFECTIVE FROM A.Y. 2016-17*

Enhancement of the limit of deduction under section 80D and allowability of deduction for incurring medical expenditure in respect of super senior citizen

Amended limits and other relevant provisions of 80D are given below:-

	Individual		HUF
	Family	**Parents**	
• **For whose benefits payment can be made**	For the benefit of the assessee, spouse of the assessee and dependent children of the assesse	For the benefit of the parents of the assessee whether dependent or not	For the benefit of any member of family
(A) Nature of payment			
a. Medi-claim insurance premium	Eligible for available	Eligible for available	Eligible for available
b. Contribution made to Central Government Health Scheme or such other scheme as may be notified by the Central Government in this behalf	Eligible for available	NA	NA
c. Payment made on account of preventive health check-up (See Note 1)	Eligible for available	Eligible for available	NA
Maximum amount of deduction			
- **General deduction** [applicable in respect of (a), (b) and (c) given above]	***Rs.25,000***	***Rs.25,000***	***Rs.25,000***
- **Additional deduction** (applicable only in the case of medi-claim insurance premium when policy is taken on the life of a senior citizen)	Rs.5,000	Rs.5,000	Rs.5,000
(B) *Medical Expenditure on the health of a person (See Note 2)*	*Deduction available*	*Deduction available*	*Deduction available*
- *Maximum deduction in respect of (B)*	***Rs.30,000***	***Rs.30,000***	***Rs.30,000***
(C) *Maximum deduction in respect of (A) and (B)*	***Rs.30,000***	***Rs.30,000***	***Rs.30,000***

NOTES:

(1) Payment on account of preventive health check-up of self, spouse, dependent children and parents shall not exceed Rs.5,000.

(2) *Medical expenditure on the health of eligible very senior citizen is eligible for deduction provided no amount has been paid to effect or to keep in force an insurance on the health of such person.*

(3) Senior citizen for the aforesaid purpose is a resident individual and whose age at any time during the relevant previous years should be at least *60 years.*

(4) *Very Senior citizen for the aforesaid purpose is a resident individual and whose age at any time during the relevant previous years should be at least 80 years.*

D. *SECTION 80DD and 80U- EFFECTIVE FROM A.Y. 2016-17*

Increase in the limit of deduction under section 80DD and 80 U

Revised Limit for deduction 80DD and 80 U is as under:

Person	Applicable limit for A.Y. 2015-16	Applicable limit for A.Y. 2016-17
- with disability	Rs.50,000	Rs.75,000
- with severe disability	Rs.1,00,000	Rs.1,25,000

E. *SECTION 80DDB - EFFECTIVE FROM A.Y. 2016-17*

Deduction in respect of medical treatment, etc.

(i) Conditions

(a) The taxpayer is resident in India.

(b) The taxpayer is an individual or a Hindu undivided family.

(c) The taxpayer has actually incurred any amount for the medical treatment of a specified disease or ailment as prescribed by the Board under rule 11DD.

(d) If the taxpayer is an Individual, the expenditure is incurred for the medical treatment of the assessee himself or wholly/ mainly dependent husband/wife, children, parents, brothers and sisters of the taxpayer.

(e) If the taxpayer is a Hindu undivided family, the expenditure is incurred for the medical treatment of any member of the family who is wholly/mainly dependent upon the family.

(f) ~~The assessee shall have to submit a certificate in the prescribed form [Form No. 10-I] from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist, as may be prescribed, working in a Government hospital.~~ ***From A.Y. 2016-17, the assessee is required to obtain a prescription form a specialist doctor for the purpose of availing this deduction.***

(ii) Amount of deduction

If all the aforesaid conditions are satisfied, the amount of deduction is Rs. 40,000 or the expenditure actually incurred, whichever is lower**.**

- Where the expenditure incurred is in respect of the assessee or his dependent or any member of a Hindu undivided family of the assessee and who is a senior citizen (i.e., an individual who is resident in India and who is at least *60 years of age* at any time during the previous year), then Rs. 60,000 or actual expenditure, whichever is lower**,** will be available.
- Where the expenditure incurred is in respect of the assessee or his dependent or any member of a Hindu undivided family of the assessee and who is a very senior citizen (i.e., an individual who is resident in India and who is at least *80 years of age* at any time during the previous year), **then Rs. 80,000** or actual expenditure, whichever is lower**,** will be available. ***[Substituted by Finance Act, 2015]***
- Deduction under this section shall be reduced by the amount received, if any, under an insurance from an insurer, or reimbursed by an employer**,** for the medical treatment of the person referred to above.

F. *SECTION 80G*

Scope of section 80G expanded to allow 100% deduction in respect of donation to Swachh Bharat Kosh, Clean Ganga Fund and National Fund for Control of Drug Abuse

Donee	Effective from	Maximum limit	Deduction (as a percentage of net qualifying amount)
a. Swachh Bharat Kosh **[Refer Note]**	A.Y. 2015-16	Not applicable	100 per cent
b. Clean Ganga Fund **[Deduction is available to resident taxpayer only] [Also Refer Note]**	A.Y. 2015-16	Not applicable	100 per cent
c. National Fund for Control of Drug abuse	A.Y. 2016-17	Not applicable	100 per cent

NOTE:- Donations to Swachh Bharat Kosh and Clean Ganga Fund will be eligible for deduction under section 80G only if the amount is not spent by the assessee in pursuance of Corporate Social Responsibility under section 135(5) of the Companies Act, 2013.

G. *SECTION 80JJA*

Conditions for claiming special deduction in respect of additional wages paid to new regular workman under section 80JJAA has been modified. Comparative Chart is given for academic understanding.

(a) Conditions - The following conditions should be satisfied to avail deduction under section 80JJAA—

Conditions	Earlier Provisions	Amended Provisions
Condition 1	The taxpayer is an Indian company.	**Any Taxpayer can avail benefit subject to conditions mentioned below.**
Condition 2	*Gross total Income of the taxpayer includes any profits and gains derived from the manufacture of goods in a factory.*	*Gross total Income of the taxpayer includes any profits and gains derived from the manufacture of goods in a factory.*
Condition 3	*No deduction shall be allowed if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company.*	*No deduction shall be allowed if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company.*
Condition 4	The assessee furnishes along with the return of income the report of a chartered accountant in Form No. 10DA.	The assessee furnishes along with the return of income the report of a chartered accountant in Form No. 10DA.

(b) Amount of deduction - The amount of deduction is equal to 30 per cent of "additional wages" paid to the new "regular workmen" employed by the assessee in the previous year. The deduction is available for three assessment years including the assessment year relevant for the previous year in which such employment is provided.

(c) Meaning of Additional Wages : Clause (i) of the explanation to section 80JJAA.

Earlier definition	Amended definition
Additional wages to mean the wages paid to the new regular workmen in excess of 100 workmen employed during the previous year.	Additional wages to mean the wages paid to the new regular workmen in excess of 50 workmen employed during the previous year.

25. SECTION 10(23FB) & 115U

Scheme of taxation of VCC/VCF registered before 21st day of May, 2012 under SEBI Regulations/ Ventures capital scheme of UTI AND their stakeholders

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PRACTICAL

A Venture Capital Fund registered before 21-05-2012 derived income of Rs.17 lakh comprising dividend of Rs.4 lakh from shares from a Venture Capital Undertaking and interest of Rs.13 lakh on loan granted to such undertaking. G receives income of Rs.2 lakh from such fund. Examine the taxability of the sum of Rs.2 lakh received by G.

Before we refer solution, let us comprehend the provisions of Section 10(23FB) and 115U.

Tax Treatment in the hands of
(a) Venture Capital Company / Venture Capital Fund registered before 21st day of May, 2012 under SEBI Regulations
(b) Venture Capital Scheme of UTI

- Tax treatment is governed by section 10(23FB).
- As per this section, any income derived by VCC/VCF (before 21st day of May, 2012) / Venture Capital Scheme of UTI from investment in a venture capital undertaking is exempt from tax.
- The provisions of Chapter XII-D or Chapter XII-E or Chapter XVII-B shall not apply to the income paid by a venture capital company or venture capital fund. (That means, VCC/VCF/ Venture Capital Scheme of UTI are not subject to dividend distribution tax or tax on distributed income as well as not required to deduct TDS while making payment to unitholders / shareholders)

Tax Treatment in the hands of Unitholders / Shareholders of VCC/VCF/Venture Scheme of UTI mentioned above

- Under section 115U, any income received by a person out of investments made in a VCC / VCF / Venture capital scheme of UTI shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly.
- The income paid by the VCC/ VCF / Venture capital scheme of UTI shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by, or had accrued to, the venture capital company or the venture capital fund, as the case may be, during the previous year.
- The income accruing or arising to the VCC / VCF/ Venture capital scheme of UTI during a previous year, if not paid or credited to the person, shall be deemed to have been credited to the account of the person on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year.

- However, where income has been so included on accrual basis in the total income of the person in the previous year, then it shall not be included again at the time such income is actually paid to him by the VCC / VCF/ UTI Scheme.

SOLUTION

Tax Treatment in the hands of G

Taxable portion pertaining to Dividend: Rs.47,059 (i.e., Rs. 2 lakh x Rs.4 lakh ÷ Rs. 17 lakh).

Taxable portion pertaining to Interest: Rs.1,52,941 (i.e., Rs. 2 lakh x Rs.13 lakh ÷ Rs. 17 lakh).

26. SECTION 10(23FBA), 10(23FBB), 115UB, 139 & 194LBB - EFFECTIVE FROM A.Y.2016-17

Scheme of taxation of Investment Funds AND its stakeholders

PRACTICAL 1

PQR Private Limited is an Investment Fund as per explanation to section 115UB. There are 50 shareholders each having equal share. For previous year 2015-16, PQR Private Limited reports following incomes.

Particulars	Company
Business Income	60,00,000
Capital Gains	1,00,00,000
Income from other sources	20,00,000
Total	**1,80,00,000**

Compute the total income and tax liability of the PQR Private Limited.
Also compute income of each shareholders from the said investment fund.

PRACTICAL 2

ABC Trust is an Investment Fund as per explanation to section 115UB. There are 20 unit holders each having equal share. For previous year 2015-16, ABC Trust reports following incomes.

Particulars	P.Y. 2015-16	P.Y. 2016-17
Business Income	(20,00,000)	8,00,000
Long Term Capital Gain	(25,00,000)	35,00,000
Income from other sources	60,00,000	30,00,000

Compute the total income of the ABC Trust. What is the applicable tax rate to ABC Trust?
Also compute income of each unit holders from the said investment fund.

Before, we go to the solution, let us comprehend the amended provision.

Tax Treatment in the hands of Investment Fund (in the form of trust or company or LLP) registered as a Category I or a Category II Alternative Investment Fund under the SEBI (AIF) regulations, 2012

[Effective from A.Y. 2016-17]

- As per section 10(23FBA) any income of Investment Fund other than PGBP income is exempt from tax.

- As per section 115UB(4), the total income of the investment fund is chargeable to tax as under:

Investment Fund	Tax Rate
A company or a firm	30%
Other than a company or a firm	33.60% (Maximum Marginal Rate)

- If in any year there is a loss at the fund level, either current loss or the loss which remained to be set off, such loss shall not be allowed to be passed through to the investors but has to be carried over at fund level to be set off against income of the next year in accordance with the provisions of Chapter VI [Section 115UB(2)].

- Income paid by an investment fund to its unit holders would not be subject to dividend distribution tax under Chapter XII-D or tax on distributed income under Chapter XII-E [Section 115UB(5)].

- With effect from 1st June, 2015, tax has to be deducted@10% on any income (other than the proportion of income which is of the same nature as income chargeable under the head "Profits and gains of business or profession" which is taxable at investment fund level) payable by the investment fund to a unit holder. Such tax has to be deducted at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier [Section 194LBB].

- The person responsible for crediting or making payment of the income on behalf of an investment fund and the investment fund are required to furnish, within the prescribed time, to the person who is liable to tax in respect of such income and to the prescribed income-tax authority a statement in the prescribed form and verified in the prescribed manner. Such statement should give details of the nature of the income paid or credited during the previous year and such other relevant details as may be prescribed [Section 115UB(7)].

- TDS provisions would not be attracted in respect of the income received by the investment fund. This would be provided by issue of appropriate notification under section 197A(1F) subsequently.

- Every investment fund has to compulsorily file its return of income or loss under section 139(4F), if it is not required to do so under any other provision of section 139. The provisions of the Act would apply as if such return of income or loss were a return required to be furnished under section 139(1).

Tax Treatment in the hands of Unitholders / Shareholders/Partners of Investment Fund mentioned above

- Any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments, made by the investment fund, been made directly by him.

- The income paid or credited by the investment fund shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as if it had been received by, or had accrued or arisen to, the investment fund [Section 115UB(3)].

- Income accruing or arising to, or received by, a unit holder of an investment fund, being that proportion of income which is of the same nature as income chargeable under the head "Profits and gains of business and profession" at investment fund level, shall be exempt under section 10(23FBB).

- If the income accruing or arising to, or received by, an investment fund, during a previous year is not paid or credited to the unit-holders, it shall be deemed to have been credited to the account of the unit-holder on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year [Section 115UB(6)].

SOLUTION 1

Computation of Total Income and Tax Liability in the hands of PQR Private Limited

Particulars	Company
Business Income	60,00,000
Capital Gains	Exempt u/s 10(23FBA)
Income from other sources	Exempt u/s 10(23FBA)
Total Income	**60,00,000**
Tax Liability (30.90%)	**18,54,000**

Computation of Income of each shareholder from PQR Private Limited

Particulars	Company
Business Income	Exempt u/s 10(23FBB)
Capital Gains [1,00,00,000 ÷ 50]	20,00,000
Income from other sources [20,00,000 ÷ 50]	40,000
Income	**20,40,000**

SOLUTION 2

Computation of Total Income of ABC Trust

Particulars	P.Y.2015-16	
	Rs.	Rs.
Business Income (Adjusted against Income from other sources)		Nil
Long Term Capital Loss (Rs. 25 lakhs carried forward)		Nil
Income from other sources	60,00,000	
Less: Business Loss to be set-off	(20,00,000)	
	40,00,000	Exempt u/s 23(FBA)
Total Income		Nil

Particulars	P.Y.2016-17	
	Rs.	Rs.
Business Income		8,00,000
Long Term Capital Gain	35,00,000	Nil
Less: Brought forward Long Term Capital Loss	(25,00,000)	
	10,00,000	Exempt u/s 23(FBA)
Income from other sources	30,00,000	Exempt u/s 23(FBA)
Total Income		8,00,000

Computation of Income of each Unit Holder from ABC Trust

Particulars	P.Y.2015-16	P.Y.2016-17
Business Income (If any)	Exempt u/s 10(23FBB)	Exempt u/s 10(23FBB)
Long Term Capital Gains	Nil	50,000
		[10,00,000 ÷ 20]
Income from other sources	2,00,000	1,50,000
	[40,00,000 ÷ 20]	[30,00,000 ÷ 20]
Income	**2,00,000**	**2,00,000**

27. SECTION - 115UA, 10(23FCA), 10(38), 111A, 194LBA(3) & 194-I - EFFECTIVE FROM A.Y. 2016-17

Special Taxation Regime for Business Trusts

Related amendment in sections: 2(42A), 10(23FC), 10(23FCA), 10(23FD), 10(38), 47(xvii), 49(2AC), 111A, 115A, 139(4E), 194A, 194LBA, 194LC & 194I

PRACTICAL 1

A REIT provides the following particulars of its income for the P.Y.2015-16:

Sr. No.	Particulars	Rs. in Lakhs
1.	Interest income from SPV	200
2.	Rental/Leasing income from real estate asset owned directly by REIT	300
3.	Dividend income from SPV	300
4.	Short-term capital gains on sale of listed shares of SPV	200
5.	Interest from Government Securities	15
6.	Interest received from investments in unlisted debentures of real estate companies	10
7.	Long Term Capital Gains on sale of property	200
8.	Long Term Capital Gains on sale of listed shares of SPV	270
9.	Short term gain on sale of unlisted debentures of real estate companies	5

(i) Discuss Tax treatment of each receipts in the hands of REIT.

(ii) Discuss the tax consequences in the hands of unit holders assuming that the REIT has distributed Rs. 1400 Lakhs to the unit holders in the P.Y.2015-16.

Before we refer solution, let us comprehend the amendment first.

TAX TREATMENT IN THE HANDS OF REIT

(a) Interest income from SPV is exempt in the hands of REIT under section 10(23FC).

(b) Any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt under section 10(23FCA).

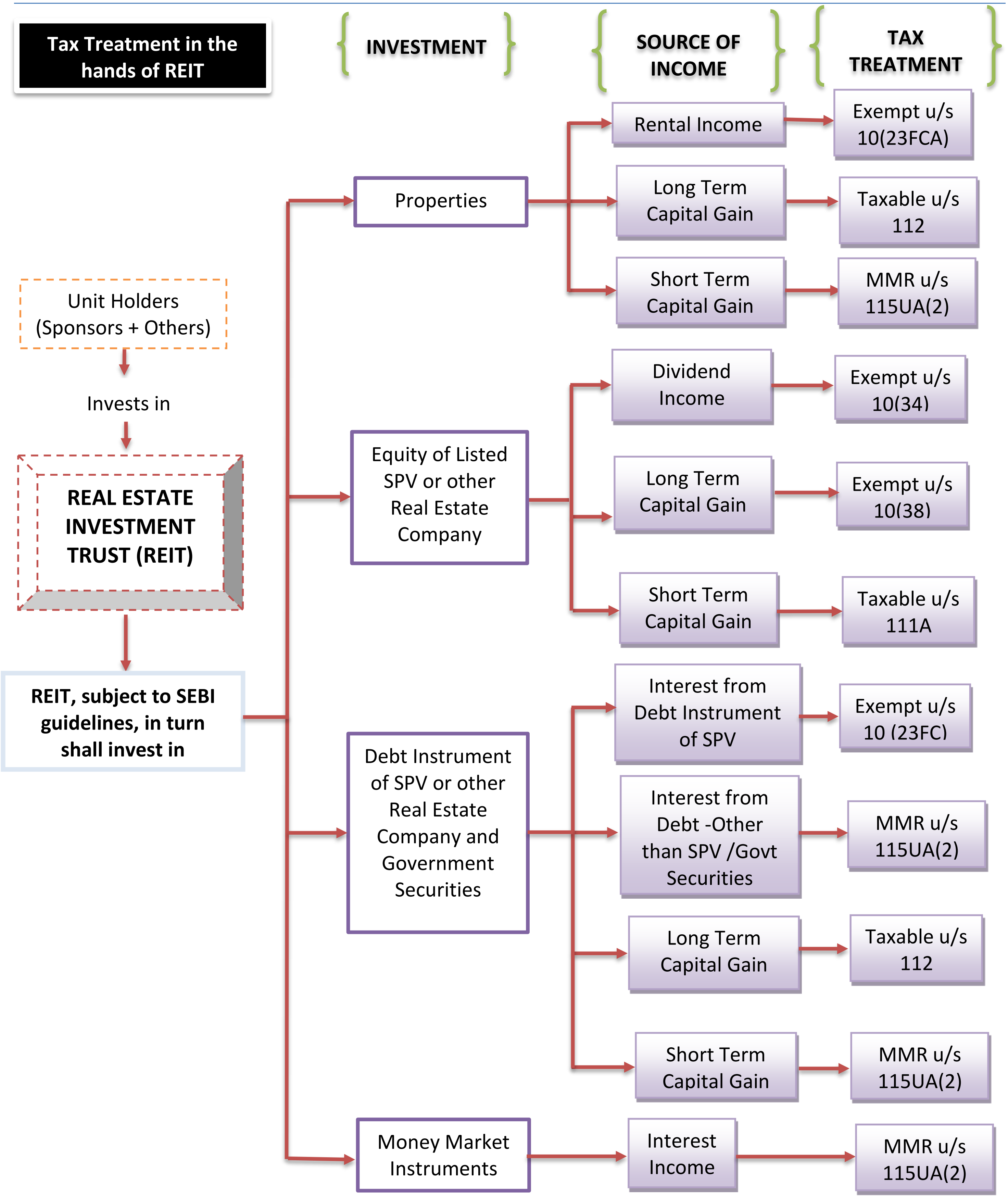
(c) As per section 115UA(2),

1. capital gain derived by REIT shall be taxed under section 111A or 112, as the case may be.
2. while other incomes of REIT shall be taxed at Maximum Marginal Rate

(d) As per section 115UA(4), any person responsible for making payment of the income distributed on behalf of a business trust to a unit holder shall furnish a statement to the unit holder [Form No. 64B – 30th June of every financial year] and the Principal Commissioner or Commissioner of Income Tax [Form No. 64A- 30th November of every financial year], giving the details of the nature of the income paid during the previous year and such other details as may be prescribed.

(e) Further, REIT is required to furnish its return of income under section 139(4D)**.**

Students are advised to go through following diagram covering possible sources of income in the hands of REIT and its tax treatment.


Tax Treatment in the hands of REIT
INVESTMENT
SOURCE OF INCOME
TAX TREATMENT
Unit Holders (Sponsors + Others)
Invests in
REAL ESTATE INVESTMENT TRUST (REIT)
REIT, subject to SEBI guidelines, in turn shall invest in
Properties
Rental Income
Exempt u/s 10(23FCA)
Long Term Capital Gain
Taxable u/s 112
Short Term Capital Gain
MMR u/s 115UA(2)
Equity of Listed SPV or other Real Estate Company
Dividend Income
Exempt u/s 10(34)
Long Term Capital Gain
Exempt u/s 10(38)
Short Term Capital Gain
Taxable u/s 111A
Debt Instrument of SPV or other Real Estate Company and Government Securities
Interest from Debt Instrument of SPV
Exempt u/s 10 (23FC)
Interest from Debt -Other than SPV /Govt Securities
MMR u/s 115UA(2)
Long Term Capital Gain
Taxable u/s 112
Short Term Capital Gain
MMR u/s 115UA(2)
Money Market Instruments
Interest Income
MMR u/s 115UA(2)

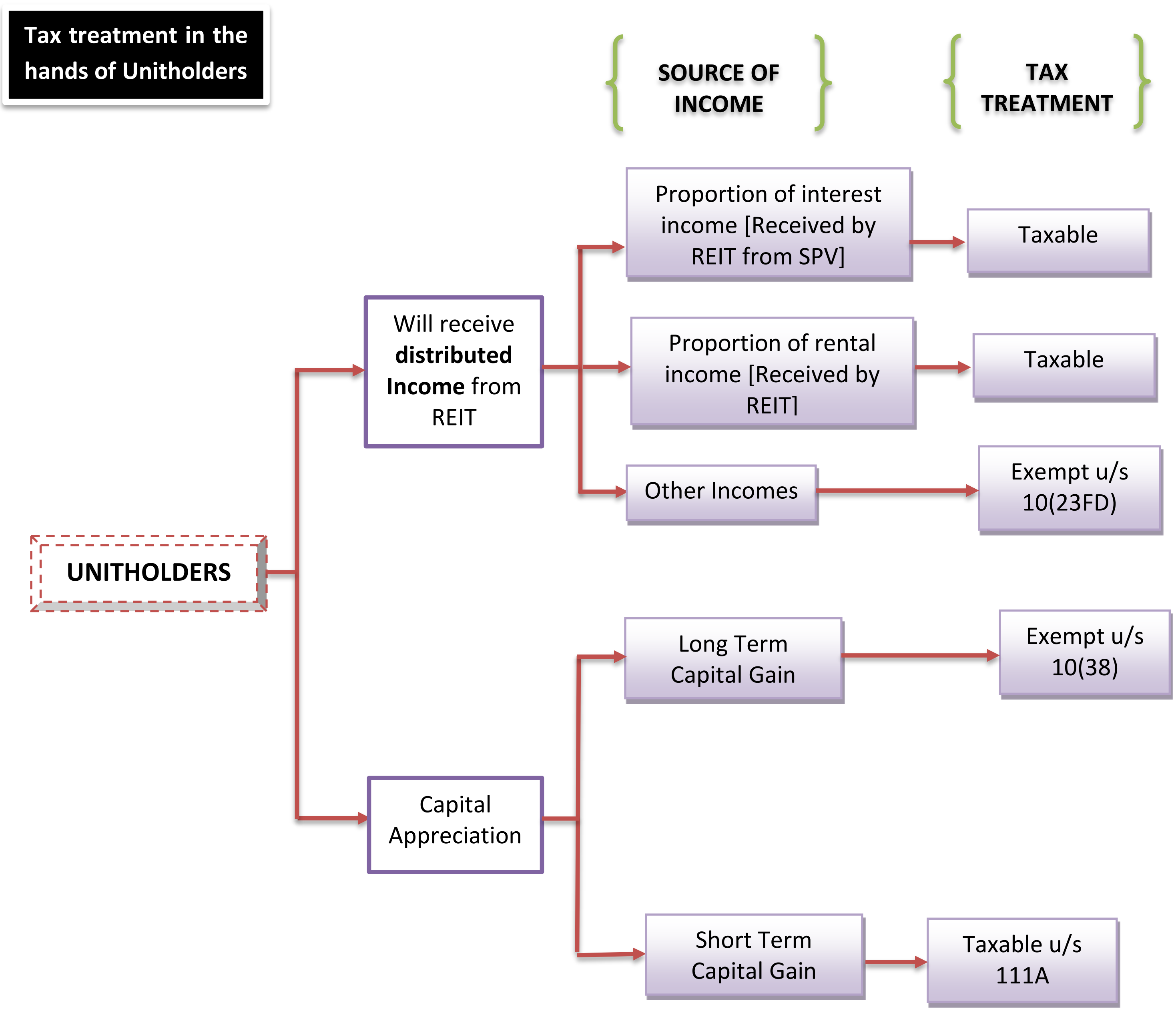
TAX TREATMENT IN THE HANDS OF UNIT HOLDERS

(i) As per section 115 UA (1), any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by, or accrued to, the business trust.

(ii) As per section 115 UA(3), the distributed income or any part thereof, received by a unit holder from the business trust being interest from SPV or income by way of renting or leasing or letting out any real estate asset owned directly by such REIT shall be charged to tax in the hands of unit holder.

(iii) As per section 10(23FD), other distributed income received by unit holder from business trust is exempt.

Students are advised to go through following diagram covering tax treatment in the hands of Unit Holders.



TDS Mechanism

When SPV → Makes Interest Payment to → REAL ESTATE INVESTMENT TRUST (REIT)

TDS Not Applicable

When Tenant → Makes Rent Payment to → REAL ESTATE INVESTMENT TRUST (REIT)

TDS Not Applicable

When (REIT) → Distributes Interest Portion from SPV

TDS Applicable

- If Unit holder is resident then rate of TDS is 10% u/s 194A
- If Unit holder is Non-Resident/Foreign Company then rate of TDS is 5% u/s 194LBA / 194LC

When (REIT) → Distributes Rent Portion

TDS Applicable

- If Unit holder is resident then rate of TDS is 10% u/s 194LBA(1)
- If Unit holder is
  - Non-Resident (Not being Foreign Company) then rate of TDS is 30% u/s 194LBA(3)
  - Foreign Company then rate of TDS is 40%

SOLUTION 1

(i) Tax Treatment in the hands of REIT

Sr. No.	Particulars	Amount Rs. in Lakhs	Section Applicable	Tax Rate applicable
1.	Interest income from SPV	200	10(23FC)	Exempt
2.	Rental/Leasing income from real estate asset owned directly by REIT	300	10(23FCA)	Exempt
3.	Dividend income from SPV	300	10(34)	Exempt
4.	Short-term capital gains on sale of listed shares of SPV	200	111A	15%
5.	Interest from Government Securities	15	115UA(2)	33.60%
6.	Interest received from investments in unlisted debentures of real estate companies	10	115UA(2)	33.60%
7.	Long Term Capital Gains on sale of property	200	112	20%
8.	Long Term Capital Gains on sale of listed shares of SPV	270	10(38)	Exempt
9.	Short term gain on sale of unlisted debentures of real estate companies	5	115UA(2)	33.60%

(ii) Tax treatment in the hands of unit holders.

(a) Distributed income representing Interest from SPV

Out of distributed income of Rs. 1400 Lakhs, interest portion from SPV and rental income from REIT shall be taxable in the hands of unit holders. Same shall be worked out as under:

Total income derived by REIT during the year : 1500 Lakhs

Interest from SPV included in above income : Rs.200 Lakhs

Rental Income from REIT included in above income : Rs. 300 lakhs

Distributed income to Unit Holders : Rs. 1400 Lakhs

Therefore, Interest portion from SPV, distributed to Unit Holders = Rs. 186.66 Lakhs $\left[200 \times \frac{1400}{1500}\right]$

Therefore, portion of Rental Income from REIT, distributed to Unit Holders = Rs. 280.00 Lakhs $\left[300 \times \frac{1400}{1500}\right]$

(b) Other distributed income

(Rs. 1400 lakhs –Rs. 186.66 Lakhs –Rs. 280.00lakhs) = Rs. 933.34 is exempt in the hands of unit holders under section 10(23FD).

PRACTICAL 2

Mr. Kulbharat is already holding 10,000 equity of DFF Ltd (SPV). These shares were purchased on 20-01-2015 for Rs. 3,50,000. He would like to become sponsor of REIT and therefore, he exchanged these shares for units in REIT on 10-08-2015 and he was allotted 1,00,000 units with a face value of Rs.10 per unit. Thereafter, he sold out 20,000 units on 12-01-16 for Rs. 12 per unit. Discuss tax consequences of this transaction.

PRACTICAL 3

Does you answer differ if Mr. Kulbharat had purchased shares of DFF Ltd. on 01-01-2015 instead of 20-01-2015?

Before we refer solution, let us comprehend the amendment first.

(i) *As per section 47(xvii) any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor is not treated as transfer.*

(ii) *As per section 2(42A), while determining nature of capital asset being units allotted under section 47(xiii), the period of holding of shares shall be included.*

(iii) *As per section 49(2AC), where the capital asset, being a unit of a business trust, became the property of the assessee in consideration of a transfer as referred to in clause (xvii) of section 47, the cost of acquisition of units shall be deemed to be the cost of acquisition of the shares to the sponsor.*

SOLUTION 2

As per provisions of section 47(xvii), exchange of shares in SPV by sponsor for units in REIT is not treated as transfer. Therefore, exchange will not attract capital gain in the hands of Mr. Kulbharat.
But, subsequent sale of REIT Units will attract capital gain tax in the hands of Mr. Kulbharat, computation of which is as under:-

Period of Holding: From 20-01-2015 to 12-01-2016, hence Long Term Capital Asset.

Particulars	Amount Rs
Sale Consideration (20,000 × 12)	2,40,000
Less: COA	70,000
STCG u/s 111A	**1,70,000**

Working Note:

As per section 49(2AC),

Cost of acquisition of 1,00,000 units of REIT = Cost of acquisition of 10,000 shares of DFF Ltd.
=Rs. 3,50,000

Hence, cost of acquisition per unit of REIT is =Rs. 3,50,000/1,00,000
= Rs. 3.5 per unit

Hence, cost of acquisition of 20,000 units = Rs. 3.5 × 20,000
= 70,000

SOLUTION 3

28. SECTION 115JB -EFFECTIVE FROM A.Y.2016-17

Insertion of new entries for computation of Book Profit under section 115JB

PRACTICAL

PQR Ltd. a closely-held Indian company is engaged in the business of manufacture of chemical goods. The following information for the relevant previous year is given. Compute book profit under section 115JB

Profit & Loss Account

Particulars	Rs.	Particulars	Rs.
Cost of Goods sold	2,52,000	Sales	36,19,350
Entertainment Expenses	19,500	Interest on Fixed Deposit	1,54,900
Traveling Expenses	31,500	Dividend (from Indian Companies)	1,00,000
Salary & Wages	1,75,000	Deferred Tax	25,000
Salary to Directors	4,50,000	Share from AOP (where AOP had paid tax at Maximum Marginal Rate)	41,100
Professional fees	29,000		
Depreciation	5,17,000		
Provision for Bad and doubtful Debts	16,000		
Penalty under Income-Tax Act	10,000		
Interest for late filing of return	2,000		
Wealth-Tax	15,000		
Outstanding custom duty	21,000		
Provision for unascertained liabilities	75,000		
Loss of subsidiary company	39,000		
Provision for Income-Tax	2,25,000		
Proposed Dividend and CDT	64,350		
Net Profit	19,99,000		
	3,940,350		**3,940,350**

Additional Information

(1) Depreciation of Rs.5,17,000 includes depreciation of Rs.17,000 on account of upward revaluation of fixed asset.

(2) Brought forward loss and unabsorbed depreciation as per books of accounts is Rs.2,10,000 and Rs.6,000 respectively.

Before we refer solution, let us comprehend the amendment first.

Twenty Five adjustments to net profit to convert it into book profit [Explanation to section 115JB (1) and (2)]

Net profit as shown in profit and loss account shall be adjusted as follows:-

FOURTEEN POSITIVE ADJUSTMENTS –

Net profit as shown in profit and loss account is to be increased by the following amounts if debited to the profit and loss account:

i. the amount of income-tax paid or payable, and the provisions therefore; or
ii. the amounts carried to any reserves, by whatever name called; or

iii. the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

iv. the amount by way of provision for losses of subsidiary companies; or

v. the amount or amounts of dividends paid or proposed; or

vi. the amount or amounts of expenditure relatable to any income to which section 10 *[not being provisions contained under section 10(38)]* or 11 or 12 apply.

vii. the *amount or amounts of expenditure relatable to, income, being share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86; or (Inserted by FA 2015, effective from A.Y. 2016-17)*

viii. *the amount or amounts of expenditure relatable to income accruing or arising to an assessee, being a foreign company, from,—*

(A) *the capital gains arising on transactions in securities; or*

(B) *the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,*

if the income-tax payable thereon in accordance with the provisions of this Act (other than the provisions governing MAT) is less than 18.5%; or (Inserted by FA 2015, effective from A.Y. 2016-17)

ix. *the amount representing,*

(A) *notional loss on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by the trust referred to in clause (xvii) of section 47 or*

(B) *the amount representing notional loss resulting from any change in carrying amount of said units or*

(C) *the amount of loss on transfer of units referred to in clause (xvii) of section 47*

(Inserted by FA 2015, effective from A.Y. 2016-17)

x. the amount of depreciation;

xi. The amount of deferred tax and the provisions therefore

xii. The amount or amounts set aside as provision for diminution in the value of any asset;

xiii. Amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset;

xiv. the amount of gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be; (Inserted by FA 2015, effective from A.Y. 2016-17)

Explanation: Amount of income tax shall include,

(i) any tax on distributed profits under section 115-O or on distributed income under section 115-R

(ii) any interest charged under this Act

(iii) Surcharge, if any has levied by the central Acts from time to time.

(iv) Education cess on income tax, if any has levied by the Central Acts from time to time

(v) Secondary and higher education cess on Income Tax, if any levied by the Central Acts from time to time.

ELEVEN NEGATIVE ADJUSTMENTS –

Net profit as shown in the profit and loss account is to be reduced by the following amounts:

i. the amount withdrawn from reserves or provisions, if any such amount is credited to the profit and loss account; or

ii. the amount of income to which any of the provisions of section 10 *[not being provisions contained under section 10(38)]* or 11 or 12 apply, if any such amount is credited to the profit and loss account; or

iii. the amount of depreciation debited to the profit and loss account(excluding the depreciation on account of revaluation of assets); or

iv. the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iii) above; or

v. the amount of income, being the share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86, if any, such amount is credited to the profit and loss account; or (Inserted by FA 2015, effective from A.Y. 2016-17)

vi. the amount of income accruing or arising to assessee, being a foreign company, from,—

(A) ***the capital gains arising on transactions in securities; or***

(B) ***the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,***

if the income-tax payable thereon in accordance with the provisions of this Act (other than the provisions governing MAT) is less than 18.5%; or (Inserted by FA 2015, effective from A.Y. 2016-17)

vii. ***the amount representing,—***

(A) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of **section 47*****; or***

(B) notional gain resulting from any change in carrying amount of said units; or

(C) gain on transfer of units referred to in clause **(xvii)** ***of section 47,***

if any, credited to the profit and loss account; or (Inserted by FA 2015, effective from A.Y. 2016-17)

viii. ***the amount of loss on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be; (Inserted by FA 2015, effective from A.Y. 2016-17)***

ix. the amount of loss brought forward or unabsorbed depreciation, whichever is less, as per books of account [“loss” for this purpose does not include depreciation] ; or

x. the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under section 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the assessment year during which the entire net worth (*i.e.,* paid-up capital *plus* free reserves) of such company becomes equal to or exceeds the accumulated losses;

xi. Amount of deferred tax, if any such amount is credited to P&L.

SOLUTION

Computation of Book Profit

		Rs.	Rs.
	Net Profit as per Profit & Loss Account		**19,99,000**
Add:	**Positive Adjustments**		
	Provision for Income Tax	2,25,000	
	Interest for late filing of income tax return	2,000	
	Provision for unascertained liabilities	75,000	
	Loss of subsidiary company	39,000	
	Proposed Dividend and CDT	64,350	
	Provision for Bad and doubtful Debts	16,000	
	Depreciation	5,17,000	**9,38,350**
Less:	**Negative Adjustments**		
	Dividend (from Indian Companies)	(1,00,000)	
	Depreciation (excluding depreciation on account of revaluation)	(5,00,000)	
	Income by way of share in income of AOP (which is not subject to tax)	(41,100)	
	Brought forward loss or unabsorbed depreciation whichever is lower [As per books of accounts]	(6,000)	
	Deferred Tax	(25,000)	(6,72,100)
	Book Profit		**22,65,250**

29. SECTION 115A-EFFECTIVE FROM A.Y.2016-17

Decrease in rate of tax on royalty income and fees for technical services in case of non-residents

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PRACTICAL

Raj Inc., USA, entered into an agreement to provide technical services to Bhambani Ltd, Indian company. This agreement was approved by Central Government.

During concerned previous year, Raj Inc. received Rs.50 Lakhs fees from Bhambani Ltd. and incurred expenditure of Rs.8 Lakhs in India. Compute tax liability under Chapter XII.

Before we refer solution, let us comprehend the amended provision.

Special provision for computing income by way of royalties, etc., in case of non-residents. [Section 115A(1)(b)]

(a) Royalties and fees for technical services under an agreement made on or after 1st April, 1976 are governed by this section.

(b) Up to 31-03-2003, this section was applicable to only foreign company.

(c) W.e.f. 01-04-03, this section is applicable to every non-resident including foreign company provided assessee is not covered by section 44DA. (that means there is no permanent establishment in India)

(d) This section is applicable if:-

i. *the agreement is with the Government of India; or*
ii. *the agreement is with Indian concern and approved by the Central Government; or*
iii. *the agreement relates to a matter included in the industrial policy; or*
iv. *the agreement relates to consideration for transfer of all or any rights in respect of copyright in any book on a subject referred to in the proviso to section 115 A(1A) to the Indian concern or in respect of computer software referred to in second proviso to section 115 A(1A) to a person resident in India.*

(e) Once income is covered by this section, the assessee is not entitled to claim any deduction under the head "PGBP" or "IFOS". However, assessee can claim deduction under section 80 C to 80 U.

(f) Rate of tax applicable :- 25 % ***[10% w.e.f. A.Y. 2016-17]***

SOLUTION

Computation of Total Income and Tax Liability of Raj Inc. under Chapter XII

(a) Section 115A (1) (b) applicable

(b) While determining total income deduction for expenses incurred is not available under the head PBGP

(c) Total Income = Rs. 50 lakh

(d) Tax Rate applicable=10% as per section 115A(1)(b)

(e) Tax Liability

=10% of Rs. 50 Lakhs + 3% Education Cess on Tax

=Rs. 5 Lakhs + Rs. 0.15 Lakhs

= Rs. 5.15 Lakhs

30. SECTION 115AC & 115ACA-EFFECTIVE FROM A.Y.2016-17

Definition of Global Depository Receipts (GDRs) amended to restrict the benefit under section 115ACA to only such GDRs as defined in the earlier depository scheme

SECTION 115AC

(a) Eligible Assessee: Non-Resident

(b) Nature of Income and Special Tax Rate:

	NATURE OF INCOME	TAX RATE
1.	Interest income from notified bonds of an Indian Company or bonds of any public sector company bought in foreign currency;	10%
2.	Dividend Income from notified GDRs, purchased in foreign currency. (This does not include dividend covered u/s.115-0); and	10%
3.	Long term capital gains arising from the transfer of such bonds or GDRs.	10%

(c) Other Points:

(i) Where the assessee acquired GDRs or bonds in an amalgamated or resulting company by virtue of his holding shares or bonds in the amalgamating or demerged company, the provisions of section 115AC shall apply to such GDRs or bonds.

(ii) For the purpose of section 115AC, **"Global Depository Receipts" (modified by Finance Act, 2015 effective from A.Y. 2016-17)** means any instrument in the form of a depository receipt or certificate (by whatever name called) created by the Overseas Depository Bank outside India and issued to investors against the issue of,—

(a) ordinary shares of issuing company, being a company listed on a recognised stock exchange in India; or

(b) foreign currency convertible bonds of issuing company"

(iii) In case of section 115AC, filing of return of income u/s. 139(1) shall not be necessary in case the following conditions are satisfied:

(a) The total income comprises only of the income referred in those respective sections; and

(b) Tax deductible in respect of such income has been deducted.

SECTION 115ACA

(a) Eligible Assessee: Resident employee of an Indian company or its subsidiary company engaged in specified knowledge based industry or service

(b) Nature of Income and Tax Rate:

	NATURE OF INCOME	TAX RATE
1.	Income by way of dividends from GDRs issued by the Indian Company in accordance with Employee's Stock Options Scheme notified by the Central Government purchased in foreign currency ;(This does not include dividend covered u/s. 115-0)	10%
2.	Income by way of long term capital gain arising from the transfer of such GDRs	10%

(c) Other Points:

(i) For the purpose of section 115ACA, ***"Global Depository Receipts" (modified by Finance Act, 2015 effective from A.Y. 2016-17)*** means any instrument in the form of a depository receipt or certificate (by whatever name called) created by the Overseas Depository Bank outside India and issued to investors against the issue of,—

(a) ordinary shares of issuing company, being a company listed on a recognised stock exchange in India; or

(b) foreign currency convertible bonds of issuing company"

(ii) For the purpose of section 115ACA "specified knowledge based industry or service" means -

(a) information technology software;

(b) information technology service;

(c) entertainment service;

(d) pharmaceutical industry;

(e) bio-technology industry; and

(f) any other industry or service, as may be notified by the Central Government.

31. SECTION 92BA-EFFECTIVE FROM A.Y.2016-17

Increase in threshold for specified domestic transaction

PRACTICAL

Ganga Ltd., a domestic company, has two units Chambal and Damodar. The Chambal unit, which commenced business two years back, is engaged in the business of developing an irrigation project. The Damodar unit is carrying on the business of trading in water pumps. During the previous year 2015-16, the Damodar unit transferred water pumps amounting to Rs. 7.5 crores to the Chambal unit.

Further, Ganga Ltd hires vehicles owned by Mr. Krishna's daughter and paid hiring charges of Rs. 1.5 crores during the previous year 2015-16. Mr. Krishna, a resident Indian, holds 30% equity share capital in Ganga Ltd. Discuss whether the above transactions fall within the meaning of "specified domestic transaction"?

Before we refer solution, let us comprehend the amended provision.

Section 92BA has been inserted with effect from the assessment year 2013-14. It provides the meaning of "specified domestic transaction" with reference to which the income is to be computed under section 92, having regard to arm's length price. The following transactions are covered within the meaning of "specified domestic transactions" if the aggregate of these transactions entered into by the assesse in a previous year exceeds Rs. 5 crore ***[Rs. 20 crore w.e.f A.Y. 2016-17 as amended by Finance Act, 2015]***.

(a) any expenditure in respect of which payment has been made or is to be made to a person referred to in section 40A(2)(b);
(b) any transaction referred to in section 80A;
(c) any transfer of goods or services referred to in section 80-IA(8);
(d) any business transacted between the assessee and other person as referred to in section 80-IA(10);
(e) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions section 80-IA(8)/(10) are applicable; or
(f) any other transaction as may be prescribed,

Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the above domestic transactions shall be computed having regard to the arm's length price. For this purpose, arm's length price shall be determined within the parameters of sections 92 to 92F.

SOLUTION

The Chambal Unit is eligible for deduction@100% of the profits derived from its eligible business (i.e., the business of developing an infrastructure facility, being an irrigation project) under section 80-IA. However, the Damodar Unit is not engaged in any "eligible business". Since the Damodar Unit has transferred water pumps to the Chambal Unit, it is an inter-Unit transfer of goods between eligible business and other business. Therefore, this transaction falls within the meaning of "specified domestic transaction" to attract transfer pricing provisions.

This transaction falls within the meaning of "specified domestic transaction" under section 92BA, since the payment of hiring charges has been made to a related person referred to in section 40A(2)(b) i.e., relative (i.e., daughter) of Mr. Krishna, who has substantial interest in the business of Ganga Ltd.

However, abovementioned transactions would be treated as a "specified domestic transaction" to attract transfer pricing provisions only if the aggregate of such transactions as specified in section 92BA during the year by Ganga Ltd. exceeds a sum of Rs. 20 crore.

Since aggregate of these transactions is Rs. 9 crore which is not exceeding Rs. 20 crore. Therefore, the said transactions are outside the purview of "specified domestic transaction".

32. SECTION 139(1) - EFFECTIVE FROM A.Y.2016-17

Beneficial owner / Beneficiary of any asset located outside India required to file return of income in the prescribed form and manner

QUESTION

Write a brief not on filing of return under section 139(1).

ANSWER

Section 139(1)

(i) Every company shall furnish return of income in respect of its income or loss for every previous year.

(ii) Every firm shall furnish return of income in respect of its income or loss for every previous year.

(iii) Every other person, whose total income or total income of any other person in respect of which he is assessable exceeds the maximum amount not chargeable to tax, shall furnish a return of income. (For this clause, total income = Total income without giving effect to the provisions of sections 10A and sections 80C to 80U)

(iv) Every resident person shall mandatorily furnish return of income or loss if he or it at any time during the previous year-

(a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or

(b) is a beneficiary of any asset (including any financial interest in any entity) located outside India.

Exceptions:

1. **This clause (iv) is not applicable to resident but not ordinary resident**
2. **This clause is also not applicable to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includible in the income of the person referred to in clause (a) above.**

(v) The return of income shall be filed in the prescribed form containing prescribed particulars within the prescribed time.

33. SECTION 151 - EFFECTIVE 1ST JUNE 2015

Approval regime for issue of notice for re-assessment simplified

PRACTICAL

XYZ Limited is in receipt of notice under section 148 dated 15-02-2016 requiring to file the return for the A.Y. 2012-13 on or before 31-03-2016. The said notice was issued by the Income Tax Officer, Ahmedabad, ward 3(5). XYZ Limited challenged the sanction of the notice under section 151 stating that the same has been issued without taking the approval of joint commissioner. The Assessing officer while disposing objection stated the approval of joint commissioner is not required since the return filed by the XYZ Limited was disposed of by summary assessment under section 143(1) and the time period for re-opening is less than 4 years.

Discuss the validity of the proposed action of the assessing officer.

Before we refer solution, let us comprehend the amendment first.

TIME LIMIT FOR ISSUE OF NOTICE [SECTION 149] COUPLED WITH SANCTION [SECTION 151] APPLICABLE UPTO 31-05-2015.

Situation 1:- **If income in relation to any asset (including financial interest in any entity) located outside India has escaped assessment**

Particulars	***Up to 4 years from the end of the relevant assessment year***	***Beyond 4 years but up to 16 years form the end of the relevant assessment year***
▫ In case subject to scrutiny by way of assessment u/s. 143(3) or 147	Assessment can be re-opened whatever is the amount of income escaped [1]	Assessment can be re-opened whatever is the amount of income escaped [2]
▫ In other cases (No return filed / Sec. 143(1) / 144)	Assessment can be re-opened whatever the amount of income escaped [3]	Assessment can be re-opened whatever the amount of income escaped [4]

Situation 2:- Cases other than situation 1

Particulars	***Up to 4 years from the end of the relevant assessment year***	***Beyond 4 years but up to 6 years form the end of the relevant assessment year***
▫ In case subject to scrutiny by way of assessment u/s. 143(3) or 147	Assessment can be re-opened whatever is the amount of income escaped [1]	If the escaped income is Rs. 1,00,000 or more for that year[2]
▫ In other cases (No return filed / Sec. 143(1) / 144)	Assessment can be re-opened whatever the amount of income escaped [3]	If the escaped income is Rs.1,00,000 or more for that year [4].

Notes [Section 151]:-

1. Any A. O. who is not below the rank of Asst. Commissioner or Deputy Commissioner can issue notice. An A.O. below the rank of Asst. Commissioner or Deputy Commissioner can issue notice only if the Jt. Commissioner is satisfied on the reasons recorded by such A.O.
2. Notice can be issued only if the Chief Commissioner / Commissioner is satisfied on the reasons recorded by the A. O. that it is a fit case for issue of notice.
3. Notice can be issued by the Assessing Officer.
4. No notice can be issued by an A.O. who is below the rank of Joint Commissioner unless he is satisfied that on the reason recorded by A.O. that it is a fit case for issue of such notice.

TIME LIMIT FOR ISSUE OF NOTICE [SECTION 149] COUPLED WITH SANCTION [SECTION 151] : EFFECTIVE FROM 1ST JUNE, 2015

Situation 1:- If income in relation to any asset (including financial interest in any entity) located outside India has escaped assessment

Up to 4 years from the end of the relevant assessment year	***Beyond 4 years but up to 16 years form the end of the relevant assessment year***
Assessment can be re-opened whatever is the amount of income escaped [1]	Assessment can be re-opened whatever is the amount of income escaped [2]

Situation 2:- Cases other than situation 1

Up to 4 years from the end of the relevant assessment year	***Beyond 4 years but up to 6 years form the end of the relevant assessment year***
Assessment can be re-opened whatever is the amount of income escaped [1]	If the escaped income is Rs. 1,00,000 or more for that year[2]

Notes [Section 151]:-

1. No notice can be issued by an A.O. who is below the rank of Joint Commissioner unless he is satisfied that on the reason recorded by A.O. that it is a fit case for issue of such notice.
2. Notice can be issued only if the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied on the reasons recorded by the A. O. that it is a fit case for issue of notice.

SOLUTION

Considering the amendment made by Finance Act, 2015, upto 4 years from the end of relevant assessment years, no notice can be issued by Assessing officer who is below the rank of Joint Commissioner unless Joint commissioner is satisfied on the reasons recorded by Assessing Officer that it is a fit case for issue of notice. Therefore, the notice issued by assessing officer is without sanction and improper. Hence, the proposed action by the assessing officer is bad in law.

34. SECTION 153C- EFFECTIVE 1ST JUNE 2015

Assessment of income of a person other than the person in whose case search has been initiated or books of account, other documents or assets have been requisitioned

PRACTICAL

Income tax department carried out search at the business premise of Mehul Thakker on 10-12-2013. During the course of assessment proceedings under section 153A, assessing officer (Rajesh Kumar) was satisfied that few documents pertains to and assets belong to Rahul. Therefore, he handed over the same to the assessing officer (Mahesh Kumar) having jurisdiction over Rahul's case on 05-03-2016. After verification, Mahesh Kumar came to the conclusion that income covered in documents and the assets very duly reported by Rahul in his income tax returns. But, considering the mandatory requirement of section 153C, Mahesh Kumar wants to issue notice to Rahul requiring him to file returns of six assessment years under section 153A. Advise Mahesh Kumar.

Before we refer solution, let us comprehend the amendment first.

Provision applicable upto 31.05.2015	***Provision effective from 01.06.2015***
"Where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned **belongs or belong** to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person"	*"Where the Assessing Officer is satisfied that,—* (a) *any money, bullion, jewellery or other valuable article or thing, seized or requisitioned,* ***belongs to****; or* (b) *any books of account or documents, seized or requisitioned,* ***pertains or pertain to,*** *or any* ***information*** *contained therein,* ***relates to,*** *a person other than the person referred to in* section 153A, then the seized or requisitioned records and assets shall be handed over to the assessing officer having jurisdiction over such other person."

Thereafter, such assessing officer shall proceed to issue notice to such other person and assess or reassess his income in accordance with the provisions of sec.153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A .

SOLUTION

Considering the provisions of section 153C of the Act Mahesh Kumar shall proceed against Rahul and issue notice and assess or reassess the income of Rahul in accordance with the provisions of section 153A, only if, he is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of Rahul for the relevant assessment year or years referred to in sub-section (1) of section 153A**.**

Considering the facts of case, documents and assets do not have bearing on the determination of total income of Rahul and therefore, Mahesh Kumar advised not to issue notice under section 153A.

35. SECTION 158AA-EFFECTIVE 1ST JUNE 2015

Procedure for appeal by revenue when an identical question of law is pending before Supreme Court

The Finance Act, 2015 has inserted section 158AA with effect from June 1, 2015.

Section 158AA is applicable when department is in appeal before the Supreme Court.

It provides that where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in the case for another assessment year which is pending before the Supreme Court (in an appeal or in a special leave petition) filed by the revenue, against the order of the High Court in favour of the assessee, the Commissioner or Principal Commissioner may (instead of directing the Assessing Officer to appeal to the Appellate Tribunal), direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within 60 days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case.

The Commissioner or Principal Commissioner shall proceed under above provisions only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case.

However, in case no such acceptance is received the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in section 253(2)/(2A) and, accordingly, may, if he objects to the order passed by the Commissioner (Appeals), direct the Assessing Officer to appeal to the Appellate Tribunal.

Where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case (if the Supreme Court decides the earlier case in favour of the Income Tax Department), the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order within 60 days from the date on which the order of the Supreme Court is communicated to the Commissioner or Principal Commissioner.

Kindly refer following case study for better understanding:

For Assessment Year 2001-02 A.O disallowed some expenditure under section 37(1) treating it as capital expenditure. Assessee (X Ltd.) approached appellate forum and obtained favour from Gujarat High Court.
Against this order of Gujarat High Court, the Income Tax Department preferred an appeal to Supreme Court which is pending.

For the Assessment Year 2009-10, X Ltd. incurred similar expenditure which was disallowed by A.O. under section 37(1). Thereafter, X Ltd. preferred an appeal to CIT(Appeals) for Assessment Year. The CIT(Appeals) allowed the appeal following Gujarat High Court decision of assessee's own case for Assessment Year 2001-02.

Ideally, department shall file appeal to Tribunal for Assessment Year 2009-10 within 60 days of communication of CIT (Appeals) order.

As per section 158AA, department shall not file appeal for Assessment Year 2009-10 to Tribunal but make an application to the Tribunal within 60 days of CIT(Appeals) order, stating that similar question of law is pending before Supreme Court [and in future, after Supreme Court decides for Assessment Year 2001-02, Income Tax Department will take decision whether appeal for Assessment Year 2009-10 needs to be preferred or not before Tribunal.]

As per provisions of section 158AA, Income Tax Department shall not file appeal for Assessment Year 2009-10, only if acceptance is received from the X Ltd. If no acceptance is received, department shall prefer an appeal to Tribunal.

If at a later stage, for Assessment Year 2001-02, Supreme Court holds that such expenditure is a capital expenditure (Decision of Supreme Court is in favour of Income Tax Department), then Income Tax Department may prefer an appeal to Tribunal for Assessment year 2009-10 within 60 days from the date on which the order of the Supreme Court is communicated to the Commissioner or Principal Commissioner.

Needless to say, if X Ltd. wins there is no meaning of department to file an appeal before ITAT for Assessment Year 2009-10 (because order of Supreme Court becomes the law of land)

36. EXPLANATION TO SECTION 245A – 1ST JUNE, 2015

Deemed date of commencement of settlement proceedings

PRACTICAL

Whether following proceedings shall be taken as “case” for the purpose of Settlement commission?

1. Proceedings initiated by issuing notice under section 143(2) of Income Tax Act
2. Proceedings initiated by issuing notice under section 271(1)(c) of Income Tax Act
3. Proceeding initiated by issuing notice under section 148 of Income Tax Act
4. Appellate proceedings pending before CIT(A) under section 246A of Income Tax Act

Before we refer solution, let us comprehend the amendment first.

(1) ***A pending proceeding is a "case" -*** A "case" means any proceeding for assessment under the Act of any person, in respect of any assessment year which may be pending before the Assessing Officer on the date on which an application under section 245C**(1)** is made

(2) ***When a proceeding is taken as "pending proceeding" -*** The provisions are given below—

Sr. No.	*Proceedings for*	*Date of commencement of proceedings*	*Date of conclusion of proceedings*
1	assessment or reassessment or re-computation under section 147	From the date on which a notice under section 148 is issued	No mention under the Act
2 (W.e.f. 01-06-2015)	**Any other assessment year or years for which a notice under section 148 has not been issued, but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished under section 139 or in response to a notice under section 142**	**From the date on which a notice under section 148 is issued in Case No. 1 above.**	**No mention under the Act**
3	Search Cases (i.e. Section 153A or 153C)	From the date of issue of notice requiring assessee to file returns for six assessment years	The date on which assessment is made.

4	Making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment	From the date on which order under section 254 or 263 or 264, setting aside or cancelling the assessment is passed	No mention under the Act
5	Other cases – if assessment is made	***from the date on which return of income is furnished under section 139 or in response to a notice under section 142 (substituted w.e.f. 01-06-2015)***	The date on which assessment is made.
	Other Cases – If assessment is not made	***from the date on which return of income is furnished under section 139 or in response to a notice under section 142 (substituted w.e.f. 01-06-2015)***	Two years from the end of relevant assessment year.

SOLUTION

Considering the definition of case discussed above,

Sr. No.	Nature of pending Proceeding	Solution	Reason
1.	Proceedings initiated by issuing notice under section 143(2) of Income Tax Act	It is a "Case"	It is an assessment proceeding.
2.	Proceedings initiated by issuing notice under section 271(1)(c) of Income Tax Act	Not a "Case"	Not an assessment proceeding, it is a penalty proceeding.
3.	Proceeding initiated by issuing notice under section 148 of Income Tax Act	It is a "Case"	It is a reassessment proceeding.
4.	Appellate proceedings pending before CIT(A) under section 246A of Income Tax Act	It is not a "Case"	Not an assessment proceeding, It is an appellate proceedings.

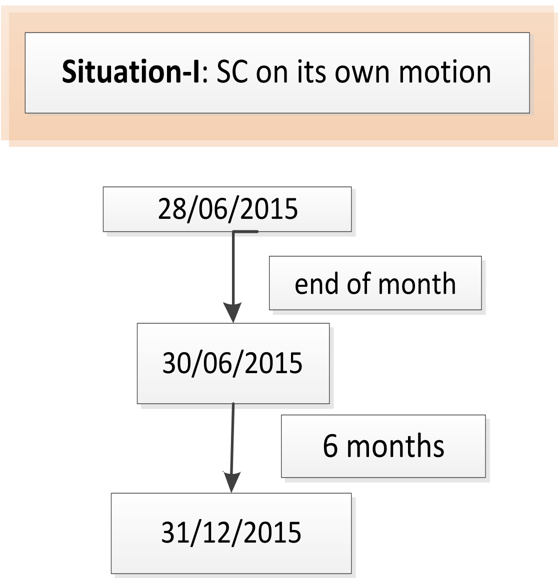
37. SECTION 245D(6B) -EFFECTIVE FROM A.Y.2016-17

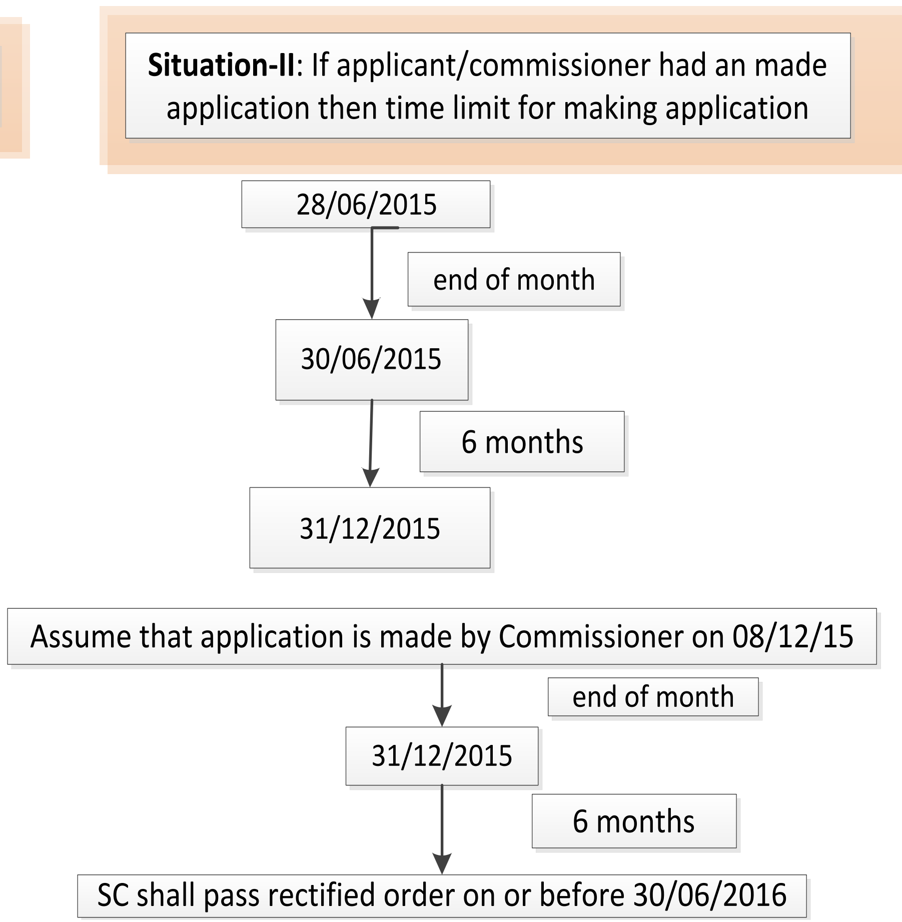
Rationalisation of provisions relating to rectification by Settlement Commission

Section 245 D (6B) applicable upto 31.05.2015	Section 245 D(6B) applicable w.e.f. 01-06-2015
The Settlement Commission may, at any time within a period of six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it.	*The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any final order passed by it—* (a) *at any time within a period of six months from the end of the month in which the final order was passed; or* (b) *at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be:*
Provided *that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard*.	**Provided** *that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which final order is passed by the Settlement Commission:* **Provided further** *that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.*

Consider following illustration for better understanding:-

If order of Settlement Commission(SC) is passed on ***28/06/15***,





38. SECTION 245H – EFFECTIVE FROM 1ST JUNE 2015

Immunity from prosecution possible only when reasons are recorded in writing.

QUESTION

Write a brief note on power of Settlement Commission to grant immunity to any person from prosecution and penalty.

ANSWER

Under section 245H of the Act, the Settlement Commission has been vested with the power to grant immunity to the applicant from prosecution and also from imposition of penalty (either wholly or partly).
The immunity from prosecution may relate to any offence under the Income-tax Act or Wealth-tax Act or Indian Penal Code or under any Central Act, for the time being in force.

While granting immunity, the Settlement Commission is competent to impose such conditions as it may think fit.

Further, such immunity is subject to:

1. Such an immunity can be granted if the Settlement Commission is satisfied that the applicant has extended full co-operation in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived.

2. **The Settlement Commission must record reasons in writing while granting such immunity. [effective from 01.06.2015]**

3. Further no immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C.

4. The Finance Act, 2007 has inserted a proviso to this section whereby the Settlement Commission cannot grant immunity from prosecution under the Indian Penal Code or under any Central Act other than the Income-tax Act and the Wealth tax Act.

5. An immunity granted to a person as stated above shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under section 245D(4) within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted. On withdrawal of the immunity the provisions to the Act shall apply as if such immunity had never been granted.

6. In case the Settlement Commission is satisfied that a person to whom an immunity from prosecution or penalty was granted had given false evidence or concealed material particulars, it will be competent for the Settlement Commission to withdraw the immunity. Upon withdrawal of the immunity, the applicant shall become liable to prosecution and also liable to the imposition of penalty in respect of any offence for which he would have been so liable had the immunity not been granted to him.

39. SECTION 245HA(1) – EFFECTIVE FROM 1ST JUNE 2015

Abatement of proceedings before Settlement Commission

QUESTION 1

Write a brief note on various circumstances in which proceedings before settlement commission may abate?

ANSWER 1

Proceedings for settlement shall abate from the date given below—

ABATEMENT OF PROCEEDING BEFORE SETTLEMENT COMMISSION [SEC. 245HA(1)]

Circumstances in which the proceeding abates	***Date of abatement***
Where the application is rejected within 14 days from the date of application under section 245D(1)	Date on which the application is rejected
An application made under section 245C declared as invalid with or without the report of the Commissioner under section 245D(2C)	The last day of the month in which the application is declared as invalid
An application made under section 245C and the order is not passed within the time prescribed in section 245D(4A)	Date on which the time period specified in section 245D(4A) expires.
An order is passed under section 245D(4) but not provided for the terms of settlement. **(Amendment by Finance Act, 2015-effective from 01.06.2015)**	Date on which such order is passed.

QUESTION 2

For the A.Y. 2014-15, the case of Good Better Best Private Ltd. (company) was selected under scrutiny. Pending scrutiny proceedings, company filed an application to settlement commission on 01-03-17. The settlement commission passed the order under section 245D(4) on 31-12-2017. However, such order did not contain the terms of settlement. Discuss the consequences of such order.

ANSWER 2

Following are the consequences:-

(1) As discussed earlier, if an order is passed under section 245D(4) not providing terms of settlement, then proceedings before settlement commission shall abate on the day on which such order is passed. (In the present case study, it will abate on 31-12-2017.)

(2) As per provisions of section 245HA (2), where the proceedings before the Settlement Commission abates, the Assessing Officer before whom the proceedings are pending at the time of making the application under section 245C shall reassume jurisdiction and shall dispose of the case in accordance with the provisions of the Act as if no application has been made to the Settlement Commission.

(3) Further, the Assessing officer shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of any enquiry held or evidence recorded by the Settlement Commission as if such material, information, enquiry and evidence was produced before him or held or recorded by him in the course of the proceedings before him.- Section 245HA(3).

(4) As per Section 245HA(4), in respect of time limit prescribed under section 153 for completing assessment or reassessment, the period commencing from the date of application and ending with the date of abatement shall be extended.

(5) As per proviso to section 153, if after extending the time under section 245H(4), the period available to the assessing officer for passing an order is less than one year, then such period shall be extended to 1 year.

(6) Computation of Revised Time Limit for passing order under section 143(3):

Step 1: **Regular Time Limit under section 153**
2 years from the end of Assessment Year
31.3.2015 + 2 years
31.3.2017

Step 2: **Revised Time Limit**
Original Time Limit + days lost (01.03.2017 to 31.12.2017)
31.03.2017 + 306 days
31.01.18

Step 3: **Minimum Time Limit**
Day on which authority can reassume jurisdiction + 1 year
01.01.2018 + 1 year
31.12.2018

Step 4: **Effective Time Limit**
Step 2 or Step 3 whichever is later
31.12.2018

40. SECTION 245K(2) -EFFECTIVE FROM A.Y.2016-17

Bar on subsequent application to Settlement Commission

QUESTION

As per section 245K(2), where a person has made an application under section 245C and if such application is allowed to be proceeded with under section 245D(1), such person or **related person (inserted w.e.f. 01.06.2015)** shall not be entitled to make another application under section 245C at any time later. In this context, explain the meaning of related person.

ANSWER

Related person for the purpose of section 245K means:

(i) *where such person is an individual, any company in which such person holds more than fifty per cent of the shares or voting rights at any time, or any firm or association of persons or body of individuals in which such person is entitled to more than fifty per cent of the profits at any time, or any Hindu undivided family in which such person is a* karta;

(ii) *where such person is a company, any individual who held more than fifty per cent of the shares or voting rights in such company at any time before the date of application before the Settlement Commission by such person;*

(iii) *where such person is a firm or association of persons or body of individuals, any individual who was entitled to more than fifty per cent of the profits in such firm, association of persons or body of individuals, at any time before the date of application before the Settlement Commission by such person;*

(iv) *where such person is a Hindu undivided family, the* karta *of that Hindu undivided family.*

41. SECTION 132B-EFFECTIVE FROM A.Y.2016-17

Application of seized assets towards tax payable on an application made before Settlement Commission

QUESTION

Discuss the manner of application of seized assets for recovery of tax?

ANSWER

Application of seized assets for recovery of advance tax payable not allowed

Section 132B has been substituted with a new section with effect from June 1, 2002. Under the substituted section, all assets which are seized under section 132 or requisitioned under section 132A shall be dealt with as follows against:

1. Existing Liability on the day of seizure or requisition under Income-tax Act, Wealth-tax Act, Expenditure-tax Act, Gift-tax Act and Interest-tax Act.
   For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable.

2. Liability determined on completion of assessment under section 153A (including assessment of the previous year in which search is initiated) if such person is in default or deemed to be in default for such liability.

3. **Liability arising on an application made before Settlement Commission under section 245 C (1) of the Act (Amendment by FA 2015, w.e.f. 1st June, 2015)**

42. SECTION 245-O - EFFECTIVE FROM A.Y.2015-16

Constitution of Authority of Advance Rulings

QUESTION

Write a brief note on "Constitution of Authority for Advance Rulings".

ANSWER

Section 245-O deals with the constitution of Authority for Advance Rulings.

1. The Central Government shall constitute an Authority for giving advance rulings, to be known as "Authority for Advance Rulings".

2. The Authority shall consist of a Chairman and such number of Vice-chairmen, Revenue Members and Law Members as the Central Government may by notifications appoint.

3. A person shall be qualified for appointment as –

Chairman	**Who has been a Judge of the Supreme Court**
Vice-Chairman	Who has been Judge of a High Court
Revenue Member	From the Indian Revenue Service, who is a Principal Chief Commissioner of Principal Director General or Chief Commissioner or Director General
Law Member	From the Indian Legal Service, who is, *or* ***is qualified to be***, an Additional Secretary to the Government of India. ***(Retrospective Amendment effective from A.Y. 2015-16)***

4. The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed.
5. The Central Government shall provide to the Authority with such officers and employees, as may be necessary, for the efficient discharge of the functions of the Authority under the Act.
6. The powers and functions of the Authority may be discharged by its Benches as may be constituted by the Chairman from amongst the Members thereof.
7. A Bench shall consist of the Chairman or the Vice-chairman and one revenue Member and one law Member.
8. The Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at such places as the Central Government may, by notification specify.

43. SECTION 253(1) - EFFECTIVE FROM 1ST JUNE 2015

Orders appealable before the Appellate Tribunal to include orders passed by the prescribed authority under section 10(23C)(vi) & (via)

QUESTION

Which orders are appealable by assessee before Appellate Tribunal?

SOLUTION

1) An order passed by a Commissioner (Appeals) u/s 154, section 250, section 271, section 271A or section 272A or
2) An order passed by a Commissioner under section 12AA or u/c (vi) of section 80G(5) or under section 263 [or section 271 (w.e.f. 1-6-2002)] or under sections 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A
3) An order passed by Assessing Officer under section 115VZC(1).

4) An order passed by an Assessing Officer under section 143(3) or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order.
5) ***An order passed by the prescribed authority refusing approval under Section 10(23C) (vi) or (via). [Amendment by Finance Act, 2015 w.e.f. 01-04-2016]***

44. SECTION 255(3) - EFFECTIVE FROM 1ST JUNE 2015

Raising the total income limit of the cases that may be decided by single member bench of Appellate Tribunal

PRACTICAL

Mahakuteshwar Oil Industries was a manufacturer of edible oil. For the A.Y. 1996-97, it had declared the total income of Rs.8,660 in the return of income. The Assessing Officer computed the total income at Rs.8,27,614. The Commissioner(Appeals) enhanced the income to Rs.33,89,795. In appeal before the Tribunal, the Single Member of the Tribunal decided the appeal and granted relief to the assessee. Whether the single member of the Tribunal is justified in assuming jurisdiction to decide this appeal?

Before we refer solution, let us comprehend the amendment first.

Normally, a Bench of the Appellate Tribunal shall consist of one Judicial Member and one Accountant Member. The President or a member of the Appellate Tribunal may be empowered by the Central Government, sitting singly, to dispose of any case where total income assessed does not exceed Rs. 5 lakhs. **(Rs. 15 lakh with effect from 01.06.2015).**

SOLUTION

The Karnataka High Court in case of CIT v. Mahakuteshwar Oil Industries 298 ITR 390 held as under :

"A single member of the Tribunal can exercise powers if the income computed by the Assessing Officer is less than Rs.5 lakhs (Amended limit is Rs. 15 Lakhs), even though the same has been enhanced by the Commissioner (Appeals) in excess of Rs.5 lakhs (Amended limit is Rs. 15 Lakhs).

Considering the amended provision and the judicial pronouncement of Karnataka High Court, single member of the Tribunal is justified in deciding this appeal.

45. SECTION 263(1) - EFFECTIVE FROM 1ST JUNE 2015

Circumstances when an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue

PRACTICAL 1

During the course of scrutiny proceedings, the assessee placed reliance on the decision of Rajsthan High Court for deductibility of certain expenditure under section 37(1). The Assessing Officer, Ahmedabad, while passing an assessment order under section 143(3) allowed the deduction under section 37(1) relying on the said decision.

On 10-08-2015, the Commissioner of Income Tax assumed revision jurisdiction under section 263 in respect of such order on the ground that on similar facts, there was a decision of Madras High Court denying deduction under section 37(1). The Commissioner of Income tax is of the opinion that the order of Assessing officer under section 143(3) is deemed to be erroneous and prejudicial to the interest of revenue.

Examine the validity of jurisdiction assumed by Commissioner of Income Tax under section 263.

PRACTICAL 2

Does your answer differ, if there was a decision of Gujarat High Court instead of Madras High Court, denying deduction under section 37(1)?

Before we refer solution, let us comprehend the amendment first.

Explanation 2 to Section 263 inserted with effect from 01.06.2015

For the purposes of section 263, it is hereby declared that an order passed by the Assessing Officer **shall be deemed to be erroneous** in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

SOLUTION 1

On minute reading of the explanation 2 to Section 263 - clause (d), the order of assessing officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if the same has not been passed in accordance with any decision which is prejudicial to the assessee rendered by the **jurisdictional High Court** in case of the assessee or any other person.

In present case study, the jurisdictional High Court shall be Gujarat High Court while the Commissioner of Income Tax relied on the decision of Madras High Court. Therefore, the opinion of the Commissioner that order passed by Assessing Officer, Ahmedabad is deemed to be erroneous and prejudicial to the interest of revenue is not tenable.

Further, Supreme Court in case of Malabar Industrial Co. Ltd. v. CIT held that recourse cannot be had to section 263(1) unless the Commissioner is satisfied with the twin conditions, namely,

- the order of the Assessing Officer sought to be revised is erroneous; and
- it is prejudicial to the interests of the revenue.

If one of the conditions is absent – if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue – then jurisdiction under section 263 fails.

Therefore, every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue.

Considering the above, action taken by Commissioner of Income tax is not tenable in the eyes of law.

SOLUTION 2

If there was a decision of Gujarat High Court instead of Madras High Court, denying deduction under section 37(1), then the order of Assessing Officer falls within the explanation 2 to section 263- clause (d) and therefore, such order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue. Hence, Commissioner of Income Tax is justified in assuming jurisdiction under section 263 of the Act.

46. SECTION 271(1)(iii)-EFFECTIVE FROM A.Y.2016-17

Manner of determination of "amount of tax sought to be evaded" for levy of penalty for concealment of income under section 271(1)(iii)

PRACTICAL 1

While passing order of X Ltd. under section 143(3) for Assessment Year 2016-17, the assessing officer made following additions:

Particulars	Computation of Total Income (Ignoring MAT provisions) (Rs.)	Computation of Book Profit (Rs.)
Total Income/Book profit as per the return of income	5,00,000	10,00,000
Add: Intangible Addition	1,50,000	Nil
Add: Concealed income (as per assessment order)	40,000	Nil
Assessed Income /Book Profit	**6,90,000**	**10,00,000**

Find out the tax sought to be evaded for the purpose of concealment penalty under section 271(1)(c)?

PRACTICAL 2

While passing order of Y Ltd. under section 143(3) for Assessment Year 2016-17, the assessing officer made following additions:

Particulars	Computation of Total Income (Ignoring MAT provisions) (Rs.)	Computation of Book Profit (Rs.)
Total Income/Book Profit as per return of income	6,00,000	15,00,000
Add: Intangible addition	1,00,000	Nil
Add: Concealed income affecting computation of Total Income as well as Book Profit	50,000	50,000
Add: Concealed income affecting computation of Total income only	60,000	Nil
Add: Concealed income affecting computation of Book Profit only	Nil	70,000
Assessed Income/Book Profit	**8,10,000**	**16,20,000**

Find out the tax sought to be evaded for the purpose of concealment penalty under section 271(1)(c)?

PRACTICAL 3

While passing order of Z Ltd. under section 143(3) for Assessment Year 2016-17, the assessing officer made following additions:

	Computation of Total Income (Ignoring MAT provisions) (Rs.)	Computation of Book Profit (Rs.)
Income/Book Profit as per return of income	(-)5,00,000	15,00,000
Add: Intangible addition	15,000	Nil
Add: Concealed income affecting computation of Total Income as well as Book Profit	40,000	40,000
Add: Concealed income affecting computation of Total income only	6,60,000	Nil
Add: Concealed income affecting computation of Book Profit only	Nil	60,000
Assessed Income/Book Profit	**2,15,000**	**16,00,000**

Find out the tax sought to be evaded for the purpose of concealment penalty under section 271(1)(c)?

Before we refer solution, let us comprehend the amendment first.

The minimum quantum of penalty imposable is equal to the tax sought to be evaded and maximum is three times of that amount [**Section 271(1)(iii)]**.

Explanation 4 has been substituted with effect from A.Y. 2016-17

New definition of "tax sought to be evaded" - To make the above calculations, "tax sought to be evaded" shall be determined in accordance with the following formula –

Tax sought to be evaded = (A - B) + (C - D)

A = Amount of tax on the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (hereinafter referred to as "general provisions")

B = Amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished

C = Amount of tax on the total income assessed as per the provisions contained in section 115JB or section I15JC

D = Amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished.

REMARKS

1. Where on any issue concealed income is considered both under MAT/AMT provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under Item D.

2. In a case where the provisions contained in section 115JB or section 115JC are not applicable, ltem (C-D) in the formula shall be ignored.

3. Where in any case the amount of concealed income has the effect of reducing the loss declared in the return or converting that loss into income, the amount of tax sought to be evaded shall be determined in accordance with the above formula with the modification that the amount to be determined for Item (A-B) in the formula shall be the amount of tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income.

4. Penalty under u/s 271(1)(c) is not leviable on intangible additions as well as additions made on account of question of law.

SOLUTION 1

Calculation of Tax sought to be evaded for X Ltd.

Particulars	**Rs.**
A = Regular tax on Rs.6,90,000	2,13,210
B = Regular tax on (Rs.6,90,000 – Rs.40,000)	2,00,850
C = MAT on Rs.10,00,000	1,90,550
D = MAT on (Rs.10,00,000 – Nil)	1,90,550
Tax sought to be evaded =(A-B)+(C-D)	12,360

SOLUTION 2

Calculation of Tax sought to be evaded for Y Ltd.

Particulars	**Rs.**
A = Regular Tax on Rs.8,10,000	2,50,290
B = Regular tax on (Rs.8,10,000 – Rs.50,000– Rs.60,000)	2,16,300
C = MAT on Rs.16,20,000	3,08,691
D = MAT on (Rs.16,20,000 – Rs.70,000)(Rs.50,000 will not be reduced as it is already considered for computing Regular Income Tax)	2,95,353
Tax sought to be evaded =(A-B)+(C-D)	47,328

SOLUTION 3

Calculation of Tax sought to be evaded for Y Ltd.
Tax sought to be evaded = (A – B) + (C – D)

But in this example, loss declared in the return of income is converted into income. Therefore, (A – B) shall be replaced by tax on concealed income:- Tax on Rs.7,00,000 = Rs.2,16,300.

Particulars	**Rs.**
A – B = As discussed and calculated above	2,16,300
C = MAT on Rs.16,00,000	3,04,880
D = MAT on (Rs.16,00,000 – Rs.60,000) (Rs.40,000 will not be reduced as it is already considered for computing Regular Tax normal income)	2,93,447
Tax sought to be evaded =(A – B) +(C – D)	2,27,733

47. SECTION 269SS & 269T - EFFECTIVE FROM 1ST JUNE, 2015

Acceptance of "Specified sum" and repayment of "Specified advance" in relation to immovable property transactions to be effected through specified modes

Related amendment in sections: 271D and 271E

SECTION 269SS: Mode of taking or accepting certain loans, deposits and specified sum

No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or **any specified sum,** otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,—

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and **specified sum;** or

(b) on the date of taking or accepting such loan or deposit or **specified sum,** any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:

Exceptions

(1) The provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by:-
   (a) Government;
   (b) Any banking company, Post office Savings Bank, or Co-operative bank;
   (c) Any statutory corporation;
   (d) Any Government company; and
   (e) Such other institutions which the Central Government may notify.

(2) The provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Explanation.—For the purposes of this section,—

(i) "banking company" means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

(ii) "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949) ;

(iii) "loan or deposit" means loan or deposit of money;

(iv) **"specified sum"** means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

Section 269T: Mode of repayment of certain loans or deposits

No branch of a banking company or a co-operative bank and no other company or cooperative society and no firm or other person shall repay any loan or deposit made with it ***or any specified advance received by it [w.e.f 01.06.2015]*** otherwise than by an account payee cheque, account payee bank draft drawn or *by use of Electronic Clearing System* in the name of the person who has made the loan or deposit *or paid the specified advance* ***[w.e.f 01.06.2015]****, or by use of Electronic Clearing System* if -

(a) The amount of the loan or deposit ***specified advance [w.e.f 01.06.2015]*** together with the interest, if any, payable thereon; or

(b) The aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm or other persons either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loan or deposits;

(c) *the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,* ***[w.e.f 01.06.2015]***

is twenty thousand rupees or more

Exceptions

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

(2) Nothing contained in this section shall apply to repayment of any loan or deposit *or specified advance* taken or accepted from—

(i) Government;

(ii) any banking company, post office savings bank or co-operative bank;

(iii) any corporation established by a Central, State or Provincial Act;

(iv) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

Explanation.—For the purposes of this section,—

(i) "banking company" shall have the meaning assigned to it in clause (*i*) of the *Explanation* to section 269SS;

(ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(iii) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature;

(iv) *"specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.*]

<u>Penalty under section 271D</u>

Consequently, if a person takes or accepts a specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of specified sum so taken or accepted under section 271D.

<u>Penalty under section 271E</u>

Likewise, if a person repays any specified advance referred to in section 269T, otherwise than in accordance with the provisions of that section, penalty under section 271E equivalent to the amount of specified advance so repaid would be attracted.

48. SECTION 295(2)- EFFECTIVE FROM 1ST JUNE, 2015

CBDT empowered to notify rules for giving foreign tax credit

Clause (ha) has been inserted in section 295(2) so as to provide that CBDT may make rules to provide the procedure for granting relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90, or under section 90A, or under section 91, against the income-tax payable under the Income-tax Act, 1961.

49. SECTION 288 - EFFECTIVE FROM 1ST JUNE, 2015

Definition of "accountant" amended to exclude specified related persons

(1) Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with any proceeding under the Income-tax Act otherwise than when required u/s.131 to attend personally for examination on oath or affirmation, may attend by an authorised representative.

(2) 'Authorised representative' means a person authorised by the assessee in writing to appear on his behalf, being -
- (i) a person related to the assessee in any manner, or a person regularly employed by the assessee; or
- (ii) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or
- (iii) any legal practitioner who is entitled to practice in any civil court in India; or
- (iv) an accountant; or
- (v) any person who has passed any accountancy examination recognised by the Board; or
- (vi) any person who has acquired such educational qualifications as the Board may prescribe;

Explanation

In this section, "accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—

(a) **In case of a corporate –assesse-** In case of an company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of Section 141(3) of the Companies Act, 2013 will not be eligible to furnish audit reports and different certificates under different provisions of Income Tax Act. Under section 141(3) of the Companies Act, the following persons are not eligible for appointment as an auditor of a company, namely-

1. a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
2. an officer or employee of the company;
3. a person who is a partner, or who is in the employment, of an officer or employee of the company;
4. a person who, or his relative or partner—
   (i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company (the relative may hold security or interest in the company of face value not exceeding Rs.1 lakh),
   (ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5 Lakhs
   (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for exceeding Rs. 1 lakh
5. a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed [i.e., any commercial purpose not being (a) professional services permitted to be rendered by an auditor under Chartered Accountants Act or under Companies Act, (b) commercial transactions under ordinary course of business at arm's length price like sale of products /services to the Chartered Accountants as customer].
6. a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
7. a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies;
8. a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
9. any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144 of the Companies Act, 2013.

(b) In the case of a non-corporate assesse –

1. The assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family;
2. In case of the assessee, being a trust or institution, any person referred to in section 13(3) (a)/ (b)/ (c) and (cc);
3. In case of any person other than persons referred to in sub-clauses (1) and (2), the person who is competent to verify the return under section 139 in accordance with the provisions of section 140;
4. Any relative of any of the persons referred to in sub-clauses (1), (2) and (3);
5. An officer or employee of the assessee;

6. An individual who is a partner, or who is in the employment, of an officer or employee of the assessee;
7. An individual who, or his relative or partner
   (i) is holding any security of, or interest in, the assesse (the relative may hold security or interest in the assessee of the face value not exceeding Rs.1,00,000);
   (ii) is indebted to the assesse in excess of Rs.1,00,000;
   (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assesse (the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding Rs.1,00,000.;
8. a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;
9. a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction.

Explanation.—For the purposes of section 288, "relative" in relation to an individual, means—
(a) spouse of the individual;
(b) brother or sister of the individual;
(c) brother or sister of the spouse of the individual;
(d) any lineal ascendant or descendant of the individual;
(e) any lineal ascendant or descendant of the spouse of the individual;
(f) spouse of a person referred to in clause (b), clause (c), clause (d) or clause (e);
(g) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

Convicted person not eligible to act as authorised representative- Any person convicted by a court of an offence involving fraud shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction.

50. SECTION 192(2D) - EFFECTIVE FROM 1ST JUNE, 2015

Person responsible for paying income chargeable under the head "Salaries" to obtain proof or evidence or particulars of prescribed deductions/ exemptions/setoff of losses claimed by the assessee

In CIT v. Larsen & Toubro [2009] 181 Taxman 71 and CIT v. ITI Ltd.[2009] 183 Taxman 219, the Supreme Court held that an employer is under no statutory obligation to collect the evidence to show that its employees have actually utilized the amounts paid towards leave travel concession/conveyance allowance for the purposes of TDS under section 192, as there is no Central Board of Direct Taxes requiring the employer to collect and examine the declaration submitted by an employee(s) for the purpose of TDS.

Taking clue from the above Supreme Court Decision, sub-section (2D) has been inserted by Finance Act, 2015 w.e.f. 1.06.2015.

As per section 192(2D), the person responsible for paying salary shall obtain from the assessee (employees) the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner.

51. SECTION 192A - EFFECTIVE FROM 1ST JUNE, 2015

Tax to be deducted@10% on premature taxable withdrawal from employees provident fund

Section 192A has been inserted with effect from June 1, 2015.

(a) **Who is deductor -** Tax is to be deducted by the trustees of Employees' Provident Fund Scheme, 1952 or any other person authorized under the scheme to make payment of accumulated sum to employees.

(b) **Which amount is subject to tax deduction**

a. Tax is deductible from accumulated lump sum payment when the employee has not rendered continuous service of 5 years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.).

b. Out of the lump sum payment, tax deduction shall be made on that portion of payment which is includible in the total income of the employee. Thus, tax deduction shall be made as under:

Component of lump sum payment	**Is this component taxable in the hands of employee not completing continuous 5 years of service?**	**Is it subject to TDS if other conditions of section 192A are satisfied?**
Employer's Contribution	Taxable under head "Salary"	Subject to TDS
Interest on Employer's Contribution	Taxable under head "Salary"	Subject to TDS
Employee's Contribution	Not Taxable	No TDS required
Interest on Employee's Contribution	Taxable under head "Other Sources"	Subject to TDS

(c) **Time of tax deduction –** Tax is deductible at the time of payment.

(d) **Threshold limit –** Tax is not deductible where aggregate amount of taxable component of lump sum payment is less than Rs.30,000.

(e) **Rate of TDS-** Tax is deductible at the rate of 10 per cent of taxable component of lump sum payment. If PAN of the recipient is not available, tax is deductible at the maximum marginal rate of tax (i.e., at 34.608 %).

52. SECTION 194A - EFFECTIVE FROM 1ST JUNE, 2015

Tax deduction from interest on compensation awarded by the Motor Accidents Claims Tribunal to be made at the time of payment, where the interest or aggregate interest paid exceeds ` 50,000

PRACTICAL 1

Mr. Intelligent has made following Fixed Deposits with different branches of Bank.

(a) Rs. 1,00,000 @ 8.5% with Naranpura Branch
(b) Rs. 1,00,000 @ 9% with Navrangpura Branch
(c) Rs. 1,00,000 @ 9.5% with Gulbai Tekra Branch

Advise Bank with regard to TDS obligation under following alternatives:-
Alternative I: Bank has not adopted core banking solutions.
Alternative II: Bank has adopted core banking solutions.

PRACTICAL 2

Mr. Ramesh opened recurring deposit account with State Bank of India. Manager, SBI wants to deduct tax at source under section 194A on interest component Rs. 12,000. Mr. Ramesh objected tax deduction on the ground that recurring deposit is not covered within the meaning of “Time deposit” for the purpose of section 194A. Discuss the validity of objection raised by Mr. Ramesh.

PRACTICAL 3

Examine the TDS obligation in respect of following payments:

(a) On 31st March, 2016, Jay Ambe credit co-operative society credited Rs. 12,000 interest on fixed deposit made by Ms. Gita, a member of such society.
(b) On 31st March, 2016, Jay Ambe credit Co-operative society credited Rs. 13,000 interest on fixed deposit made by Jay Madi Farmer’s Co-operative society, a member of former society.
(c) On 31st March, 2016, Kalupur Co-operative Bank credited Rs. 14,000 interest on fixed deposit made by Mr. Bablu, a member of such bank.

QUESTION

Mention the various provisions of the chapter "Deduction, collection and recovery of tax" where tax is required to be deducted only at the time of payment.

Before we refer solution 1, let us comprehend the amendment first.

By virtue of section 194A(3), tax is not deductible where the aggregate amount of interest credited or paid during the financial year does not exceed Rs.10,000 if payer is a banking company or co-operative society engaged in baking business or post office.

The aforesaid limit of Rs.10,000 shall be computed with reference to the income credited or paid by a branch of the baking company or the co – operative society, as the case may be.

With effect from 01.06.2015, the benefit of branch wise limit of Rs. 10,000 shall not be available where such banking company or the co-operative society, as the case may be has adopted core banking solutions. In short, the limit of Rs. 10,000 shall be observed by the banking company as a whole.

SOLUTION 1

Alternative I :- Bank has not adopted core banking solutions.

Bank is not required to deduct TDS since the interest amount with each branch does not exceed Rs. 10,000.

Alternative I :- Bank has adopted core banking solutions.

Since aggregate interest payable to Mr. Intelligent by the Bank exceeds Rs. 10,000, bank is under an obligation to deduct TDS in view of the amendment discussed above.

Before we refer solution 2, let us comprehend the amendment first.

Upto 31.05. 2005, the expression "time deposits" has been defined to mean deposits, excluding recurring deposits, repayable on the expiry of fixed period.

With effect from 01st June, 2015 the expression "time deposits" has been defined to mean deposits, **including recurring deposits**, repayable on the expiry of fixed period.

SOLUTION 2

Considering the amendment made by Finance Act, 2015, tax is required to be deducted on interest on recurring deposits by the Manager, SBI, if aggregate of interest payable exceeds Rs. 10,000. Therefore, the contention raised by Mr. Ramesh objecting tax deduction at source is not valid.

Before we refer solution 3, let us comprehend the amendment first.

By virtue of section 194A(3), tax is not deductible where interest is credited or paid by a co – operative society to its members or to any other co – operative society. **(Entry in force upto 31st May, 2015)**

With effect from 1st June, 2015 tax is not deductible "where interest is credited or paid by a co – operative society (Other than Co-operative Bank) to its members or where interest is credited or paid by co-operative society to any other co – operative society".

SOLUTION 3

Considering the above amendment,

(a) Jay Ambe Credit Co-operative Society is not required to deduct tax at source since it has been credited to the account of Ms. Gita, being member of such society.

(b) Jay Ambe Credit Co-operative Society is not required to deduct tax at source since it has been credited to the account of Jay Madi Farmers' Co-operative Society, being member of former society.

(c) In view of amendment made by Finance Act, 2015, Kalupur Co-operative Bank is required to deduct tax at source while crediting interest to the account of Mr. Bablu eventhough he is a member of this Bank.

ANSWER

Consider the following provisions where tax is required to be deducted only at the time of payment:-

Section No.	Narration
192	Deduction of tax from Salary Income
192A	Deduction of tax from lump sum payment of Provident Fund
194 A	Deduction of tax from interest on the compensation amount awarded by Motor Accidents Claims Tribunal if amount of interest or aggregate amount of such interest exceeds Rs. 50,000 during the financial year **(Modified by Finance Act, 2015 with effect from 1st June, 2015)**
194B	Deduction of tax from winnings from lotteries, crossword puzzles etc.
194BB	Deduction of tax from winnings from horse races

194DA	Deduction of tax from non-exempt payments made under Life Insurance Policy
194EE	Deduction of tax from payments in respect of National Savings Scheme
194F	Deduction of tax from payments on account of repurchase of units
194LA	Deduction of tax from payments of compensation under compulsory acquisition of immovable property

53. SECTION 194C(6) - EFFECTIVE FROM 1ST JUNE, 2015

Exemption from applicability of TDS provisions under section 194C to be available only in respect of payments to transport operators owning ten or less goods carriages at any time during the previous year, on furnishing of PAN

As per the provisions of section 194C(6) of the Act, tax is not required to be deducted from payments made on account of carriage of goods if recipient is engaged in the business of plying, hiring or leasing of goods carriages and he or it furnishes PAN to the deductor.

This provision has been amended **(with effect from June 1, 2015)** to expressly provide that the relaxation under section 194C(6) for non-deduction of tax shall apply if following conditions are satisfied:-

(a) Recipient is engaged in the business of plying, hiring or leasing of goods carriages.
(b) Recipient owns not more than 10 goods carriages at any time during the financial year.
(c) Recipient furnishes a declaration in the prescribed form to this effect along with PAN.

54. SECTION 194LD - EFFECTIVE FROM 1ST JUNE, 2015

Extension of eligible period of concessional tax rate@5% under section 194LD

(1) ***Section 194LD(1):-*** *Any person* who is responsible for paying *to a person being a Foreign Institutional Investor or a Qualified Foreign Investor*, any *income by way of interest* referred to in sub-section (2), shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of *five per cent* [+SC+EC+SHEC].

(2) ***Section 194LD(2):-*** The income by way of interest referred to in sub-section (1) shall be the interest payable on or after the 1st day of June, 2013 but before **the 1st day of June, 2017** in respect of investment made by the payee in—

(i) a rupee denominated bond of an Indian company ; or
(ii) a Government security:

Provided that the rate of interest in respect of bond referred to in clause (i) shall not exceed the rate as may be notified by the Central Government in this behalf.

Explanation.—For the purpose of this section,—

(a) "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) "Government security" shall have the meaning assigned to it in clause (b) of section 214b of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(c) "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).]

(3) ***Provisions of sections 195and 196D-*** If tax is deductible under section 194LD, TDS under sections 195 and 196D will not be applicable.

55. SECTION 195(6) - EFFECTIVE FROM 1ST JUNE, 2015

Person responsible for paying any sum, whether or not chargeable to tax, to a non-corporate non-resident or to a foreign company, to furnish the information relating to payment of such sum in the prescribed form and prescribed manner

Section 195(6) provides that the person responsible for making payment / credit to a non-resident/foreign company shall furnish the information relating to payment of any sum in such form and manner as may be prescribed by the Board.

Section 195(6) has been substituted to provide that the person responsible for paying any sum, whether or not chargeable to tax, to a non-corporate non-resident or to a foreign company, shall be required to furnish the information relating to payment of such sum in the prescribed form and prescribed manner.

56. SECTION 197A - EFFECTIVE FROM 1ST JUNE, 2015

Facilitating filing of Form 15G/15H for payments made under life insurance policy

PRACTICAL 1

Mr. Jagat, aged 55 years, provides following estimation for the previous year 2015-16

(a) F.D. interest from State Bank of India- Rs. 1,00,000
(b) Income from house property (net)- Rs. 2,22,000
(c) Contribution to P.P.F.- Rs.1,10,000

He wants to submit Form No. 15G to State Bank of India. Advise him.

PRACTICAL 2

Consider following changes in Practical 1 above.

- Instead of income from house property, interest on debentures from Reliance Industries Limited is given.

Can Jagat submit Form No. 15G to State Bank of India as well as Reliance Industries Limited?

PRACTICAL 3

Mr. Bhagat, resident, aged 66 years, provides following estimation for the previous year 2015-16

(a) F.D. interest from State Bank of India- Rs. 3,10,000

(b) Pension Income - Rs. 72,000

(c) Contribution to P.P.F. and LIC premium- Rs. 1,00,000

He wants to submit Form No. 15H to State Bank of India. Advise him.

Before we refer solution, let us comprehend the amendment first.

If a declaration is submitted under section 197A by the recipient to the payer, then no tax is deductible in a few cases.

Particulars	Section 192A **(w.e.f. 1st June, 2015)**	Interest on securities [Sec. 193]	Dividend [Sec. 194]	Interest other than interest on securities [Sec. 194A]	National Saving Scheme [Sec. 194EE]	Section 194DA **(w.e.f. 1st June, 2015)**
Condition 1 - Who is recipient?	Other than a company or firm	Other than a company or firm	Resident individual	Other than a company or firm	Resident individual	Other than a company or firm
Condition 2 - What is estimated tax on total income of the previous year	Nil	Nil	Nil	Nil	Nil	Nil
Condition 3 - How much is total of income covered by sections 192A,193, 194, 194A, 194EE and 194DA	Not to exceed the amount of exemption limit					

Condition 3 is not applicable from June 1,2003 if the recipient is a resident individual who is 60 years or more at any time during the financial year.

SOLUTION 1

Particulars	Rs.
Income from house property	2,22,000
FD interest with SBI	1,00,000
Gross Total Income (GTI)	3,22,000
Less: Deduction u/s 80C-Contribution to PPF	(1,10,000)
Total Income	2,12,000
Tax on estimated income	Nil

In this case FD interest Income (covered by Sec 194A) is Rs.1,00,000 which doesn't exceed exemption limit. Therefore, all the conditions of section 197A are satisfied. Hence, Mr. Jagat can submit form No. 15G to SBI in duplicate.

SOLUTION 2

Here, total of [FD interest (sec 194A) and interest from Reliance industries Ltd. (section 193)] is Rs.3,22,000 [1,00,000+2,22,000] which exceeds Rs. 2,50,000 [exemption limit]. Therefore, condition 3 is not satisfied. Hence, Mr. Jagat cannot submit form 15G to SBI as well as Reliance Industries Limited.

SOLUTION 3

Particulars	Rs.
Pension income	72,000
FD Interest	3,10,000
Gross Total Income (GTI)	3,82,000
Less: Deduction u/s 80C	1,00,000
Total Income	2,82,000
Tax on estimated income	Nil

Mr. Bhagat, being resident and senior citizen, therefore, **condition 3** is not applicable. Hence, Mr. Bhagat can submit Form 15H to SBI.

57. SECTION 203A - EFFECTIVE FROM 1ST JUNE, 2015

Notified deductors or collectors not required to obtain and quote TAN

Section 203A: Tax Deduction and Collection account number:

(1) Every person, deducting tax or collecting tax in accordance with the provisions of this Chapter, who has not been allotted a tax deduction account number or, as the case may be, a tax collection account number, shall, within such time as may be prescribed[21], apply to the Assessing Officer for the allotment of a "tax deduction and collection account number".

(2) Where a "tax deduction account number" or, as the case may be, a "tax collection account number" or a "tax deduction and collection account number" has been allotted to a person, such person shall quote such number—

(a) in all challans for the payment of any sum in accordance with the provisions of section 200 or sub-section (3) of section 206C;

(b) in all certificates furnished under section 203 or sub-section (5) of section 206C;

(*ba*) in all the statements prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 200 or sub-section (3) of section 206C;

(c) in all the returns, delivered in accordance with the provisions of section 206 or sub-section (5A) or sub-section (5B) of section 206C to any income-tax authority; and

(d) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue.

(3) ***The provisions of this section shall not apply to such person, as may be notified by the Central Government in this behalf.***

58. SECTION 200A - EFFECTIVE FROM 1ST JUNE, 2015

Enabling provision for computation of fee payable under section 234E at the time of processing TDS statements

Section 200A providing for processing of TDS statements for determining the amount payable or refundable to the deductor was inserted by the Finance (No.2) Act, 2009. Thereafter, section 243E (fee for late furnishing of TDS/TCS statement) was inserted by the Finance Act, 2012. Section 234E, therefore, came into the statute book three years after section 200A. Hence, section 200A did not provide for determination of fee payable under section 234E at the time of processing of TDS statements.

Section 200A has now been amended to enable computation of fee payable under section 234E at the time of processing of TDS statement under section 200A.

59. SECTION 206C(3B) -EFFECTIVE FROM A.Y.2016-17

Enabling provision for filing of TCS correction statement

Section 206C(3B) provides that the person collecting tax at source who is required to prepare statements to be delivered to Director General of Income-tax(Systems)/ NSDL after paying the tax collected to the credit of the Central Government, may also deliver to the said authority, a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement so delivered in the specified form and verified in the specified manner.

60. SECTION 206CB - EFFECTIVE FROM 1ST JUNE, 2015

Processing of statements of tax collected at source

Related Amendment in section 154, 156, 246A & 220

PRACTICAL

ABC Pvt. Ltd. submitted TCS return for the quarter ending on 30-06-2015. It was in receipt of intimation under section 206CB(1) demanding Rs. 24,200. Answer the following questions:

1. Is it necessary for the income tax department to issue separate notice of demand under section 156 for the same amount of Rs. 24,200?
2. ABC Pvt. Ltd. found mistake apparent from record in the intimation issued under section 206CB(1), then what are the remedies available under the Act?
3. ABC Pvt. Ltd. failed to meet demand within the time allowed under section 156. Explain the manner in which interest under section 220(2) shall be levied.

Before we refer solution, let us comprehend the amendment first.

Section 206C: Processing of Statements of tax collected at source:

(1) Where a statement of tax collection at source or a correction statement has been made by a person collecting any sum (herein referred to as collector) under section 206C, such statement shall be processed in the following manner, namely:—
- (a) the sums collectible under this Chapter shall be computed after making the following adjustments, namely:—
  - (i) any arithmetical error in the statement;
  - (ii) an incorrect claim, apparent from any information in the statement;
- (b) the interest, if any, shall be computed on the basis of the sums collectible as computed in the statement;

(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;

(d) the sum payable by, or the amount of refund due to, the collector, shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 206C or section 234E and any amount paid otherwise by way of tax or interest or fee;

(e) an intimation shall be prepared or generated and sent to the collector specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) the amount of refund due to the collector in pursuance of the determination under clause (d) shall be granted to the collector

Provided that no intimation under this sub-section shall be sent after the expiry of the period of one year from the end of the financial year in which the statement is filed

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of collection of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) The Board may make a scheme for centralised processing of statements of tax collected at source to expeditiously determine the tax payable by, or the refund due to, the collector, as required under sub-section (1).

SOLUTION

1. As per the provisions of section 156 **(As amended by Finance Act, 2015)**, intimation issued under section 206CB(1) shall be deemed to be the notice of demand. Therefore, it is not necessary on the part of income tax department to issue separate notice of demand under section 156 of the Act.
2. If there is mistake apparent from record in the intimation issued under section 206CB (1), same shall be rectified under section 154 of the Act **(As amended by Finace Act, 2015)**. Further, ABC Pvt Ltd. can prefer an appeal to CIT (A) under section 246A against the intimation issued under section 206CB(1).
3. In order to remove possibility of charging interest on the same amount for the same period of default both under section 206C(7) and section 220(2), section 220(2C) has been inserted to specifically provide that ***where interest is charged for any period under section 206C(7) on the amount of tax specified in the intimation issued under 206CB(1), no interest shall be charged under section 220(2)*** on the same amount for the same period.

61. SECTION 200(2A), 206C(3A) & 272A - EFFECTIVE FROM 1ST JUNE, 2015

Pay and Accounts Officer/Treasury Officer/Cheque Drawing and Disbursing Officer to furnish statement in prescribed form to the prescribed authority, where tax deducted/collected has been paid without production of challan

For the purpose of improving the reporting of payment of TDS/TCS made through book entry and to make existing mechanism enforceable, sub-section (2A) has been inserted in section 200 and sub-section (3A) has been inserted in section 206C.

Accordingly, where the tax deducted [including paid under section 192(1A)] or tax collected has been paid without the production of a challan, the PAO/TO/CDDO or any other person, by whatever name called, who is responsible for crediting such sum to the credit of the Central Government, shall furnish within the prescribed time a statement in the prescribed form for the prescribed period to the prescribed income-tax authority or the person authorised by such authority by verifying the same in the prescribed manner and setting forth prescribed particulars.

For the purpose of ensuring due compliance of delivering the prescribed statement within the time prescribed under section 200(2A) or section 206C(3A), section 272A has been amended to provide for a penalty of Rs. 100 for each day of continuing default, subject to the limit of the amount of tax deductible or collectible in respect of which the statement is to be furnished.

62. SECTION 234B AND SECTION 147 - EFFECTIVE FROM 1ST JUNE, 2015

Interest under section 234B payable from 1st April next following the financial year, in a case where the total income is increased on reassessment under section 147 or section 153A

PRACTICAL

The assessing Officer, while assessing income of Mr. Rahgav under section 143(3), for A.Y. 2012-13, assessed the income on 15-9-2014 and determined the tax on the total income to be Rs.1,00,000.
On 28-1-2017, the Assessing Officer finds that the income of Mr. Ragav, for assessment year 2012-13 had escaped assessment and therefore issued notice u/s 148 requiring Mr. Raghav to furnish the return by 31-3-2017.
Mr. Raghav furnished the return on 18-6-2017. On reassessment, the Assessing Officer determined the tax at Rs.1,80,000. The reassessment under section 147 was completed on 2th December 2017. You are required to find out interest payable under 234B at the time of reassessment.

Before we refer solution, let us comprehend the amendment first.

Computation of interest under section 234B at time of Re-Assessment

i) Period for which interest is payable:

Upto 31-05-15

It will start from 1st day immediately falling after the month in which assessment 143(1)/143(3)/144/147 had been completed & it will end on the last day of month in which assessment got completed u/s 147.

With effect from 01.06.2015

It will start from 1st day of assessment year and it will end on the last day of month in which assessment got completed u/s. 147.

ii) Amount on which interest is payable;

Tax on assessed income u/s 147	xxxx
Less: Tax on income assessed under section 143(1)/143(3)/144/147	(xxx)
	(xxx)

SOLUTION

Calculation of Interest Payable at the time of Re-assessment under section 234B

- **Period of Interest: 69 months** [i.e., from 01.04.2012 to 31.12.2017]
- **Amount on which Interest is payable**

Particulars	**Rs.**
Tax on Assessed income u/s 147 **Less:** Tax determined u/s 143(3)	1,80,000 (1,00,000)
Amount on which Interest is payable	**80,000**

- **Interest under section 234B [Rs.80,000 x 69 months x 1%)= Rs. 55,200**

63. SECTION 234B AND SECTION 245C(1) - EFFECTIVE FROM 1ST JUNE, 2015

Period for which interest under section 234B is to be charged where an application is filed under section 245C(1)

PRACTICAL 1

X Ltd. filed its return for the A.Y. 2013-14 declaring income of Rs. 10,00,000. On 10-10-2015, the assessee was in receipt of notice under section 148 for the A.Y. 2013-14, whereby X Ltd. was required to file return on or before 15-11-2015. X Ltd. filed an application to settlement commission on 31-10-2015 declaring additional income of Rs. 60,00,000. Whether the application filed by X Ltd. to settlement commission is maintainable? Assume tax rate 30% for the A.Y. 2013-14 and ignore education cess and surcharge for sake of simplicity.
Also find out interest under section 234B which shall be payable at the time of application.

PRACTICAL 2

Continuing above problem, the Settlement Commission passed the order on 17-08-2016 and made an addition of Rs. 5,00,000 over and above the income disclosed in application thereby determined total income at Rs. 75,00,000. Find out further interest payable under section 234B by X Ltd.

Before we refer solution, let us comprehend the amendment first.

(A) **Computation of interest under section 234B at time of application made to Settlement Commission (Effective from 01.06.2015)**

i) Period for which interest is payable:
It will start from 1st day of assessment year and it will end on the last day of month in which application is made to the settlement commission.

ii) Amount on which interest is payable: Additional Tax calculated as per the provisions of Chapter " Settlement Commission ".

(B) **Computation of interest under section 234B at time of final order passed by Settlement Commission (Effective from 01.06.2015)**

i) Period for which interest is payable:
It will start from 1st day of assessment year and it will end on the last day of month in which order is passed by the settlement commission.

ii) Amount on which interest is payable:

Tax on total income determined by the Settlement Commission	xxxx
Less: Tax on total income disclosed in the application	(xxx)
	xxxx

SOLUTION 1

In order to file an application before settlement commission following conditions must be satisfied:-

(a) There should be a case:- It means proceeding of assessment or reassessment is pending before the assessing officer on date of application and
(b) The additional tax exceeds Rs. 10 lakh (Rs. 50 lakh in search case)

Since proceeding under section 147 is pending before A.O., the condition at point (a) above is satisfied.

For condition (b), the Computation of additional tax is given as under:

Additional Tax = Tax on {Income returned + Income disclosed in Application} less Tax on income returned

= Tax on {Rs. 10,00,000 + Rs. 60,00,000} less Tax on Rs. 10,00,000

= Tax on Rs. 70,00,000 less tax on Rs. 10,00,000

= Rs. 21,00,000 less Rs. 3,00,000

= Rs. 18,00,0000

Since condition (b) is also satisfied, the application made by X Ltd before settlement commission is primarily maintainable.

Calculation of Interest Payable under section 234B at the time of application

- **Period of Interest: 69 months** [i.e., from 01.04.2013 to 31.10.2015]

- **Amount on which Interest is payable**

Particulars	**Rs.**
Additional tax payable to Settlement commission	18,00,000
Amount on which Interest is payable	**18,00,000**

- **Interest under section 234B [Rs.18,00,000 x 31 months x 1%)= Rs. 5,58,000**

SOLUTION 2

Calculation of Interest Payable under section 234B at the time of final order passed by Settlement Commission

- **Period of Interest: 41 months** [i.e., from 01.04.2013 to 31.08.2016]
- **Amount on which Interest is payable**

Particulars	**Rs.**
Tax on total income determined by Settlement commission	22,50,000
Less: Tax on total income disclosed in the application	(21,00,000)
Amount on which Interest is payable	**1,50,000**

- **Interest under section 234B [Rs.1,50,000 x 41 months x 1%)= Rs. 61,500.**

ABOUT THE AUHTOR

Mr. Mehul Thakker is a Fellow Member of the Institute of Chartered Accountants of India He is a rank holder in the examinations conducted by ICAI.

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- Practical aspects of Finance Act, 2010."
- "Practical aspects of Finance Act, 2011."
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