Special Business Issues

Relevant for November 2016 Examination

1.1 Section 115-UB: Investment fund {Fin. Act, 2015 AY 2016-17}

- **Investment fund:** Any fund established or incorporated **in India** in the form of **a trust or a company or a limited liability partnership or a body corporate** which has been granted a certificate of registration as a Category I or a Category II under the SEBI (Alternative Investment Fund) Regulations, 2012.
- SEBI (Alternative Investment Fund) Regulations, 2012 regulates **all privately pooled** investment vehicles which collect funds from investors for investments in accordance with a predefined investment policy for the **benefit of its investors**. AIF categorize funds into three broad categories:-

  Category I AIF:
  - ➔ Invest in **start-up or early stage** of any one category, namely, **(i)** venture capital funds; **(ii)** small and medium enterprise funds; **(iii)** social venture funds and **(iv)** infrastructure funds.
  - ➔ Investment allocates substantial majority of its capital to the target focus of above fund.
  - ➔ This fund have **positive spill over effects on economy** and for which the SEBI/ Government/ other regulators might provide incentives or concessions.

  Category II AIF:
  - ➔ This fund will cover **private equity funds and debt funds**. Such funds **do not undertake** leverage or borrowing other than to meet day-to-day operational requirements.
  - ➔ **No specific incentives** or concessions are given by the Government/other regulators.

  Category III AIF:
  - ➔ This fund employs **complex trading strategies** and may employ leverage including through investment in listed or unlisted derivatives. This will cover **hedge funds** or funds which trade with a view to make short term returns or such other funds which are open ended.
  - ➔ **No specific incentives** or concessions are given by the Government/other regulators.
- **Venture capital company** means such **company** which has been granted **a certificate** of registration under SEBI Act, 1992 and regulations made there under **(and) approval** of Central Government in this behalf.
- **Venture capital fund** means such **fund operating** under a trust deed registered under the Registration Act, 1908 **(and)** granted **a certificate** of registration under SEBI Act, 1992 and regulations made there under **(and) approval** of Central Government in this behalf.
- Any income **other than** profits and gains of business or profession **accruing or arising to, or received by a unit holder** of an investment fund shall be taxable in the **hands of unit holder** instead of investment fund.
- Where in any previous year, total income of the investment fund, **without giving effect** to sec. 10(*23FBA*), **is a loss under any head of income** and such loss **is not** wholly set-off during the previous year, then, such loss shall be allowed to be carried forward and set-off in the subsequent years (and) such loss **shall not be allowed** be passed through to the investor.
- Income of the unit holder from investment fund shall be of a **same nature and shall be proportionate** to his investment.
- If the income of 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**.
- Income paid by an investment fund **to its unit holders** **would not be subject** to dividend distribution tax.
- The total income of the investment fund shall be of the **nature of** profits and gains of business or profession and shall be **charged to tax at 30%** where such fund is **a company or a firm; (and) maximum marginal rate** in any other case.
- **Section 194LBB:** Any income **(other than that proportion of income which is of the same nature**

as income chargeable under the head "Profits and gains of business or profession") payable by the investment fund to a unit holder, the person responsible for paying shall at the time of **credit** or at the time of **payment**, **whichever is earlier**, deduct tax at the rate of 10%.
Statement in prescribed form giving details of the nature of the income paid or credited during the previous year to be furnished to the unit-holder and the prescribed income-tax authority.
TDS provisions **would not be applicable** in respect of the **income received by** the investment fund.

Business Trust

1.2 Section 115UA: Special provision to business trust (Amended – Fin. Act, 2015 - AY 2016-17)

- Subject to the provisions of section 111A and section 112, this section **overrides** the entire other provision of income-tax Act.
- The SEBI has notified the regulations relating to two new categories of investment vehicles, they are (i) The SEBI (Real Estate Investment Trusts) Regulations, 2014; and
  (ii) The SEBI (Infrastructure Investment Trusts) Regulations, 2014.
- **Section 2(13A): "Business trust"** means a trust registered as an **Infrastructure Investment Trust** under the SEBI (Infrastructure Investment Trusts) Regulations, 2014; **or a Real Estate Investment Trust** under The SEBI (Real Estate Investment Trusts) Regulations, 2014**,** the **units of which** are required to be **listed on a recognised** stock exchange, in accordance with the aforesaid regulations.
- **Special purpose vehicle means** an Indian company in which the business trust holds controlling interest **(and)** **<u>not less than 50%</u>** of the equity share capital or interest as required by regulations to grant registration.
- 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 unit holder as it had been received by, or accrued to, the business trust.
- The **listed units of a business trust**, when traded on a recognised stock exchange, are liable to securities transaction tax, and consequently, the **long term capital gains** is exempt u/s. 10(38) **and** the **short term capital gains** is taxable at the rate of 15% u/s. 111A. **Any other income** of the trust shall be taxable at the **maximum marginal rate.**
- **<u>Section 10(23FC):</u>** Any income of a business trust by way of **<u>interest</u>** received or receivable from a special purpose vehicle is exempt from tax. The business trust enjoys a special pass-through status in respect of interest received or receivable from SPV. **(Interest income)**
- Where a unit holder **in receipt of income** referred in section 10(23FC), then, such distributed income shall be deemed to be income of such unit holder and shall be charged to tax as **income** of the previous year.
- **<u>Section 10(23FCA):</u>** **<u>(Fin. Act, 2015 AY 2016-17)</u>**
  In the case of REITs, the income is mainly in the nature of rental income. This rental income arises **(i)** from the assets held directly by REIT; or **(ii)** from the assets held by it through an SPV.
  The rental income arises from the assets held directly by REIT, exempt in the hands of REIT.
  <u>Section 115UA(3):</u>
  When the said income is distributed to unit holders, and then deemed as income of the unit holder. REIT gets the pass through status for this distribution to unit holders.
  <u>Section 194LBA:</u>
  Any distributed income referred in u/s 115UA, is **<u>payable by</u>** a business trust **to** its unit holders **<u>being a resident</u>** at the time of credit or payment, whichever is **<u>earlier</u>** deduct tax at **10%.**
  Any distributed income referred in u/s 115UA, is **<u>payable by</u>** a business trust **to** its unit holders **<u>being a non-resident</u>** at the time of credit or payment, whichever is **<u>earlier</u>** deduct tax at **5%**.
  <u>Section 194-I:</u>
  Where the income by way of rent is credited or paid to a REIT, in respect of any real estate asset **held directly by such REIT**, no tax is deductible at source u/s. 194-I.

- **Section 10(23FD):** There would be no tax liability in the hands of the business trust since dividend is subject to dividend distribution tax u/s 115-O in the hands of Indian company (SPV). Hence, the dividend income is exempt under section 10(34) in the hands of the business trust. So, Any **distributed income** received **by a unit holder** from the business trust, **is exempt from tax** in the hands of unit holder. **(dividend income)**
- **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 the asset shall be deemed to be the cost of acquisition to him of the share referred to in the said clause.
- The person responsible for making payment shall furnish **a statement in Form 64B** giving the details of the nature of the income paid during the previous year and such other details as may be prescribed **to the unit holder** with in **30th June of the financial Year** following the previous year in which income is distributed **(and) a statement in Form 64A** with digital signature duly verified by an Accountant within 30th November of the financial year following the previous year during which such income is distributed **to the Principal Commissioner** or Commissioner of income-tax.
- **Clause xvii of section 47:** Any transfer of a capital asset, being share of **a special purpose vehicle** as defined u/s 10(23FC) to a business trust in exchange of units allotted by that trust to the transferor.

Presumptive Taxation
Provision relating to Resident: Section 44AD, 44AE, 115V

1.3 Section 44AD: Computation of income of specified business

- Applicable to (i) an Individual**; (ii)** HUF**; (iii)** Firm (Not for limited liability partnership); **(iv)** who **has not claimed** deduction u/s 10AA or income based deduction under chapter VI-A in head-C.
- All small businesses with total turnover or gross receipts of **up to ` 100 lakhs.**
- Rate of tax would be **8%** of total turnover or gross receipts.
- Following persons are specifically **excluded** from applicability of this presumptive provision.
  - ➔ A person carrying on profession as specified u/s 44AA(1) namely legal, medical, architectural, accountancy, technical consultancy, interior decorator and any professions as notified by Board; **(or)**
  - ➔ A person earning income in the nature of commission or brokerage; **(or)**
  - ➔ A person carrying on any agency business.
- **No deduction** u/s 30 to 38 available. In case of firm Sec 40(b) is applicable.
- **Section 44AA & Sec 44AB:** maintenance of books of accounts and tax audit.
  - (i) **Mandatory** if income **exceeds** specified limit. (` 100 lakhs)
  - (ii) Mandatory if income **does not exceed** specified limit but he **intends to claim** his income lower than income prescribed u/s 44AD (8% of total turnover or gross receipts) **and** his income exceeds the maximum amount not chargeable to tax.
- Exemption u/s 10AA and deduction under Chapter VI-A **is not** available.
- Requirement of advance tax payments **is not** applicable.
- The **written down value** of any asset of such business **shall be deemed** to have been calculated.

1.4 Section 44AE: Computation of income of business of plying, hiring or leasing goods carriages

- Applicable to **all assessees** including non-resident who carries on business of plying, hiring or leasing goods carriage **and** owns **not more than 10 goods** carriages **at any time** during the previous year.
- 🕮 *The presumed income will be* ***`7500 p.m. or part of month*** *during which the goods carriage* ***is owned by assessee*** *in the PY or an amount actually earned by vehicle,* ***whichever is higher.(w.e.f. 01.4.2015)***
- 🕮 The date of **put to use of vehicle is relevant** if assessee intend to declare **higher income** than presumptive income.
- No deduction u/s 30 to 38 available. In case of firm Sec 40(b) is applicable.
- **Section 44AA & Sec 44AB:** maintenance of books of accounts and tax audit are mandatory if income does not exceed specified limit but **he intends to claim** his income lower than income prescribed u/s 44AE.
- Chapter VI-A deduction **is available**
- The written down value of any asset of such business shall be deemed to have been calculated.

1.5 Section 115V:Tonnage tax – Shipping business of domestic shipping company (Do not confuse with Sec. 44B)

- **Presumptive taxation** of a shipping company and application of **normal corporate tax**
- Application made to **Joint Commissioner**
- Tax is payable even loss in a year
- Once company opted the scheme **then locked for** 10 years
- Company owing **at least one** qualifying ship. Qualifying ship refers to having at least 15 tons capacity
- MAT credit can be carried forward to 10 assessment years
- Daily tonnage income **multiplied with** number of days operated in a year. **Rounded off** to nearest multiple of 100 tons.

Capacity	Applicable rate – per day
Up to 1000 tons	` 70 for each 100 tons
1001 to 10,000 tons	` 53 for each 100 tons exceeding 1000 tons
10,001 to 25,000 tons	` 42 for each 100 tons exceeding 10,000 tons
Exceeding 25,000 tons	` 29 for each 100 tons exceeding 25,000 tons

- At least **20%** of book profit derived from **its core and incidental activity** transferred to a special reserve account and utilised before expiry of 8 years for acquisition of new ship
- Until the acquisition of new ship, such above said amount must be used for working capital requirement, but **not used** for **(i)** distribution of dividend; or **(ii)** remittance of profit outside India; or **(iii)** remittance for creation of asset outside India.

Presumptive Taxation
Provision relating to Resident: Section 44B, 44BB, 44BBA, 44BBB

1.6 Shipping business of any Non-resident

- A non-resident (NR) has **an option to offer** the income as per the Indian income-tax Act or DTAA entered into between India and other countries, **whichever is beneficial**. Under Indian income-tax Act, section 44B and section 172 deals with computation of shipping business of non-resident.

Section 172(1) – Default Provision	Section 44B – Mandatory by Application
❖ Business of operation of ships **occasionally** and income is earned on account of passengers, livestock, mail or goods at a port in India in respect of **export** transaction.	❖ Business of operation of ships **regularly** and income is earned on account of passengers, livestock, mail or goods at a port in India or outside India in respect of **export and import** transaction.
❖ Amount payable to NR **x 7.50% is taxable income**	❖ Amount payable to NR **x 7.50% is business income**
❖ **Set off and C/fwd** of loss **is not available**	❖ Set off and C/fwd of loss **is available**
❖ **Chapter VI-A** deduction **is not available**	❖ **Chapter VI-A** deduction **is available**
Additional Points in respective sections	
❖ This section **overrides** entire IT Act	❖ Section 44AB - Tax audit provision **is not** applicable
❖ Import transaction taxable on receipt basis (Sec. 5)	❖ **Lower income cannot** be claimed
❖ Return is to be filed **within 30 days** of departure of ship	❖ **No deduction** u/s 28 to 43A available.
❖ No order of assessment by AO after expiry of 12 months from end of FY in which return furnished	❖ Assessment by assessing officer within 36 months from end of FY in which shipping income derived
❖ Amount paid or payable **in or out of India** covered	

1.7 Section 44BBA: Non-resident engaged in business of operation of aircraft

- Non-resident is in operation of aircraft
- Section 44AB tax audit provision **is not applicable.** Hence, lower income **cannot be claimed**
- **Deduction** u/s 28 to 43A **is not available**
- Chapter VI-A deduction **is available**
- Set off and carry forward of loss **is available**
- A sum equal to 5% of the **aggregate of the amounts** specified deemed to be the profit.
  (a) Paid or payable **(in India or out of India)** **to** the assessee or to any person for the carriage of passengers, livestock, mail or goods **from** any place in India **(and)**

(b) Received or deemed to be received **(in India)** by or on behalf of the assessee for carriage of passengers, livestock, mail or goods **from** any place outside India.

1.8 Section 44BB: Non-resident engaged in prospecting for (or) extraction or production of mineral oils

- **Mineral oil** includes petroleum and natural gas
- **Section 44AB** tax audit provision **is optional. Hence,** lower income can **be claimed**
- **Deduction** u/s 28 to 41 and 43 and 43A **is not available**
- **Chapter VI-A** deduction **is available**
- **Set off** and carry forward of loss **is available**
- A sum equal to 10% of the **aggregate of the amounts** specified deemed to be the profit
  - (a) Paid or payable **(in India or out of India)** to the assessee or to any person in connection with prospecting for or extraction or production of mineral oil **in India**
  - (b) Received or deemed to be received **(in India)** by or on behalf of the assessee or to any person in connection with prospecting for or extraction or production of mineral oil **outside India**
- *Seismic data acquisition and interpretation used to create highly accurate images of the earth's sub-surface which in turn are used by the exploration and production companies for locating potential oil and gas reserves based upon the geology observed. The income derived was to be computed under the provisions of section 44BB.* ***{(In re Global Geophysical Services Ltd.)(2011)(AAR)}***
- *The "pith and substance" of each of the agreements is inextricably connected with prospecting, extraction or production of mineral oil. The dominant purpose of each of such agreement is for prospecting, extraction or production of mineral oils though there may be certain ancillary works contemplated there under. If that be so, we will have no hesitation in holding that the payments made by ONGC and received by the non-resident assessees or foreign companies under the said contracts is more appropriately assessable u/s. 44BB and not Section 44D of the Act. If the dominant purpose is mining, the income is assessable only u/s 44BB and not as "fees for technical services" u/s 9(1)(vii) & 44D* ***{In re Oil & Natural Gas Corporation Limited(2015)(SC)}***

1.9 Section 44BBB: Foreign company engaged in certain turnkey power projects

- Turnkey power project **approved** by Central Government
- **Section 44AB** tax audit provision **is optional. Hence,** lower income can **be claimed**
- **Deduction** u/s 28 to 44AA **is not available**
- **Chapter VI-A** deduction **is available**
- **Set off** and carry forward of loss **is available**
- A sum **equal to 10% of the profit** Paid or payable **(in India or out of India)** to the assessee or to any person on account of such civil construction, erection, testing or commissioning **shall be deemed** to be income.

1.10 Section 44DA: Special provision for royalty income of non-resident { Ref. section 115-A}

- This section **overrides** provisions specified u/s 44BB.
- The income by way of **(i)** royalty or **(ii)** fees for technical services **received from** government or an Indian concern **by a** non-resident (not being a company) or a foreign company carries on business in India through **a permanent establishment** or fixed place of business. **Such income shall be computed under the head "PGBP" in accordance with the provisions of this Act.**
- The agreement entered after the 31.03.2003.
- **No deduction shall be allowed** in respect of **(i)** any expenditure or allowance **which is not wholly** and exclusively incurred in India; or **(ii)** any amounts **paid by** permanent establishment **to its** head office or any other offices.
- Every non-resident shall keep and maintain books of accounts and other documents **u/s 44AA** and get his accounts audited **u/s 44AB** and **furnish report** along with return of income.

Best Wishes from Chakravarthi Murali