

DIRECT TAXES



POWER PACK REVISION MATERIAL
RELEVANT FOR CA FINAL-DIRECT TAX MAY 2017 EXAMS

CA MEHUL THAKKER

POWER PACK – REVISION MATERIAL

RELEVANT FOR CA FINAL - DIRECT TAX MAY 2017 EXAMS

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ASSESSMENT YEAR 2017-18

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Special Thanks to CA Chetan V Chaudhary

Law stated in this book is as amended by the Finance Act, 2016

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UNIT A – BASIC CONCEPTS

1. REBATE**Section:- 87A – Effective from A.Y. 2017-18**

- (a) Section 87A has been inserted to provide a rebate from the tax payable (before education cess) by an individual who is resident in India, provided his total income **does not exceed Rs.5,00,000.**
- (b) Such rebate shall be the amount of **income-tax payable** on the total income for any assessment year **or** an amount of Rs. 2,000 **[Rs. 5,000 W.e.f. A.Y. 2017-18]** **whichever is less.**

Practical 1

Mr. Mohan provides the following information for the previous year 2016-17.

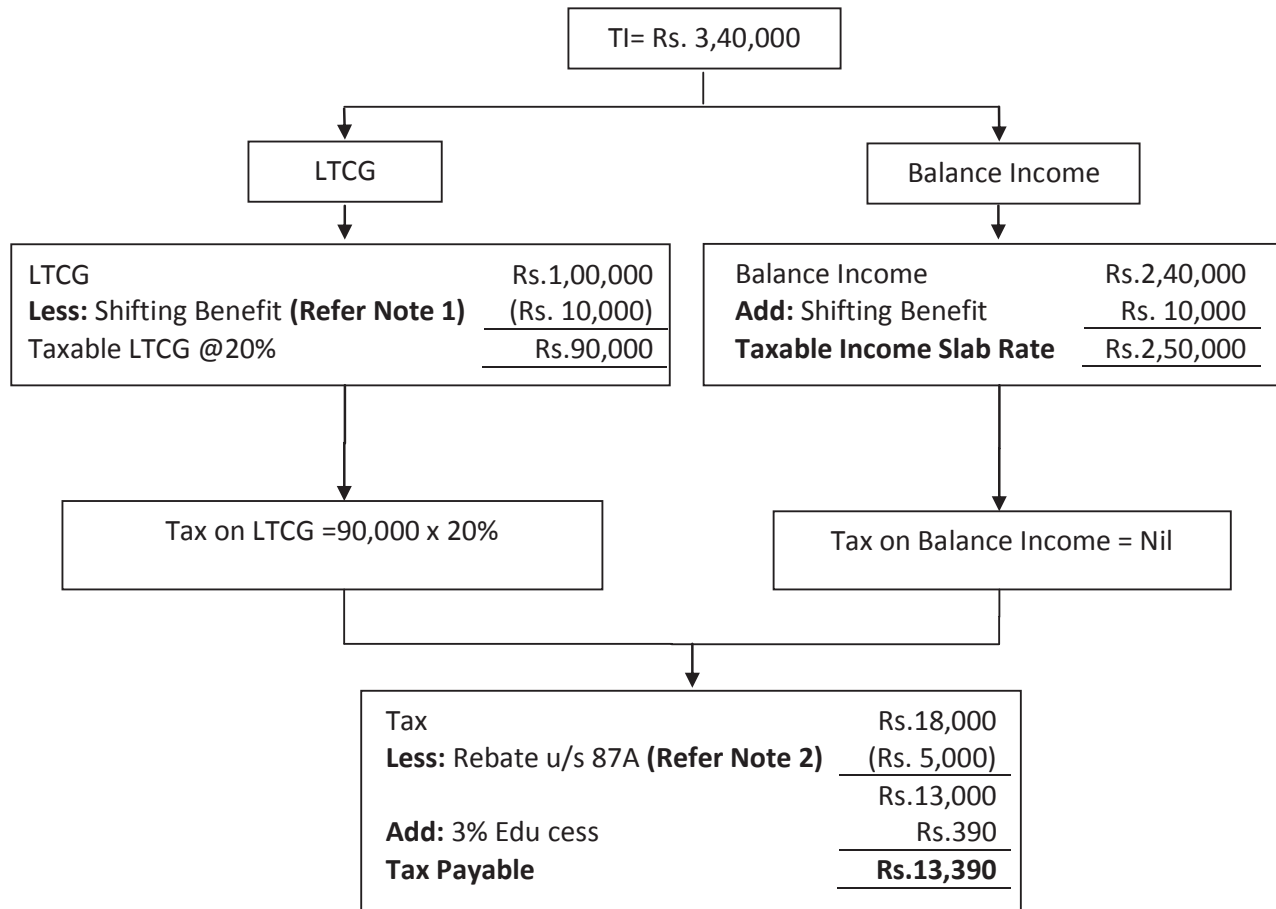
Particulars	Amount Rs.
(i) Income under the head house property	2,70,000
(ii) Long term capital gain	1,00,000
(iii) Contribution to Public Provident Fund	30,000

Calculate tax liability of Mr. Mohan under following alternatives

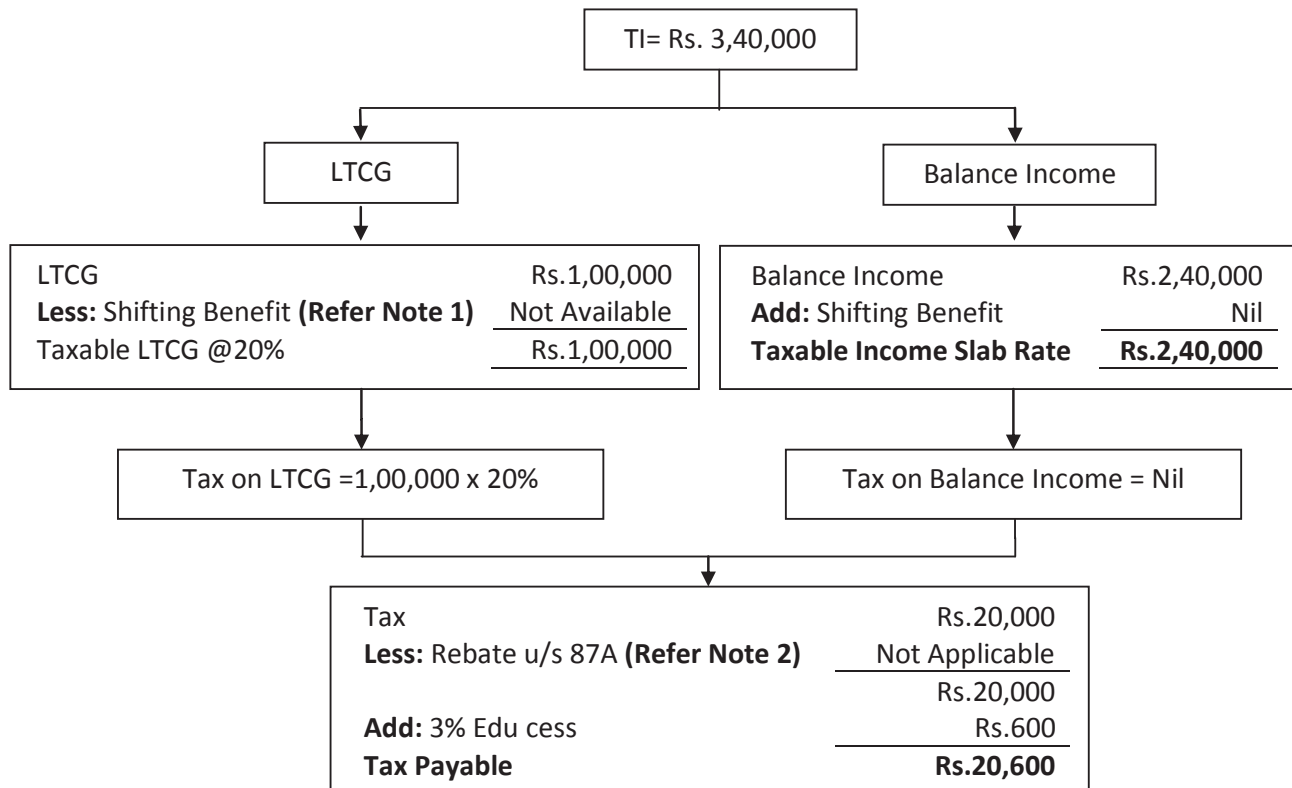
- (1) If he is resident.
 (2) If he is non-resident.

Solution**Computation of Total Income of Mr. Mohan**

Particulars	Amount (Rs).
(1) Income under the head house property	2,70,000
(2) Long term capital gain	1,00,000
Gross Total Income	3,70,000
Less : Deduction u/s 80C: Contribution to PPF	(30,000)
TOTAL INCOME	3,40,000

Computation of Tax LiabilityAlternative (1):- If Mr. Mohan is residentNOTES:

1. Generally Long Term Capital Gain should be taxed at 20% under section 112. However, if other incomes are less than exemption limit, then to that extent long term capital gain shall be shifted to other income and balance long term capital gain shall be taxed at 20%.
2. Here total income doesn't exceed Rs.5,00,000 and Mr. Mohan being resident individual, therefore he can avail rebate under section 87A which shall be Rs. 18,000 or Rs.5,000 whichever is less.

Alternative (2):- If Mr. Mohan is non-resident**NOTES:**

1. Non-resident cannot avail shifting benefit.
2. Non-resident cannot avail rebate under section 87A.

Readers Note:

2.	GOVERNMENT GRANT OR SUBSIDY, FOR THE PURPOSE OF THE CORPUS OF A TRUST OR INSTITUTION ESTABLISHED BY THE CENTRAL GOVERNMENT OR STATE GOVERNMENT NOT TO BE INCLUDED IN THE DEFINITION OF INCOME
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Section:- 2(24) – Effective From A.Y. 2017-18

Amendment made by Finance Act, 2015

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.

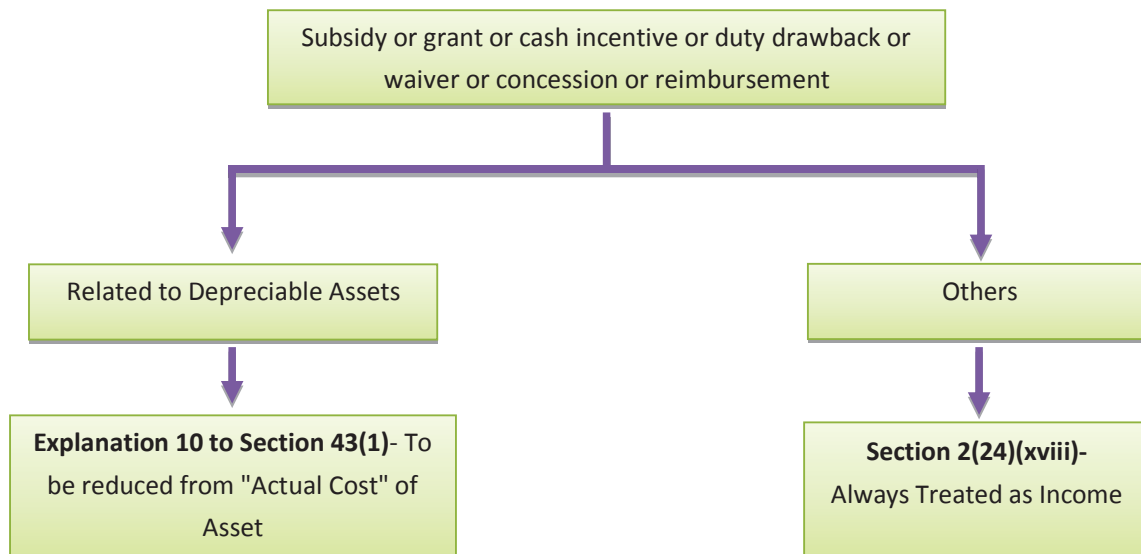
The only exclusion is the subsidy or grant or reimbursement which has been taken into account for determination of the actual cost of the asset in accordance with Explanation 10 to section 43(1).

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.

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.



Amendment made by Finance Act, 2016

One more exclusion from the definition of income has been inserted by Finance Act, 2016 w.e.f. A.Y. 2017-18 which reads as under:

“the subsidy or grant by the Central Government for the purpose of corpus of a trust or institution established by the Central Government or State Government, as the case may be.”

On minute reading of the amendment, only subsidy or grant given by the Central Government are excluded from the definition of income (Be careful, subsidy or grant given by the State Government are not excluded).

Further, above exclusion will work only if grant or subsidy given by the Central Government for the purpose of the corpus of the trust or institution (This trust or institution may be established by the Central Government or State Government).

Practical 2

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:-

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

Find out "Actual cost" of depreciable assets.

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???????????

Readers Note:

Practical 3

Discuss taxability of following grants in the hands of Gujarat State Science and Technology Research Association (GSSTRA) set up by the Government of Gujarat.

Grant given by	Purpose of the Grant	Rs. In Crores
Central Government	Corpus of the GSSTRA	10
Government of Gujarat	Corpus of the GSSTRA	20
Central Government	Meeting routine expenditure of GSSTRA	1
Government of Gujarat	Meeting routine expenditure of GSSTRA	2

Solution

Considering the above, taxability of various grants in the hands of GSSTRA is as under:

Grant given by	Purpose of the Grant	Rs. In Crores	Is Grant taxable?
Central Government	Corpus of the GSSTRA	10	No
Government of Gujarat	Corpus of the GSSTRA	20	Yes
Central Government	Meeting routine expenditure of GSSTRA	1	Yes
Government of Gujarat	Meeting routine expenditure of GSSTRA	2	Yes

Readers Note:

3. SET-OFF OF LOSSES NOT PERMISSIBLE AGAINST UNEXPLAINED INCOME, INVESTMENTS, MONEY ETC. CHARGEABLE UNDER SECTIONS 68 / 69 / 69A / 69B / 69C / 69D

Section:- 115BBE – Effective from A.Y. 2017-18

Provisions of Section 115BBE(2)

Before Amendment	After Amendment
No deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in section 68,69,69A,69B,69C and 69D.	No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in section 68,69,69A,69B,69C and 69D.

Further, tax rate applicable in respect of income referred to in above mentioned sections is 30%.

Practical 4

Mr. X, resident, filed return for the A.Y. 2017-18 declaring non-speculative business loss of Rs.55,50,000. However, the assessing officer made an addition of Rs. 5,00,000 on account of unexplained cash credit under section 68 of the Act. Mr. X denies tax liability on the ground that he is entitled for set-off of loss against the addition made by assessing officer. Whether claim made by Mr. X is correct? Also find out tax payable by Mr. X, if any.

Solution

Considering the above amendment, the claim made by Mr. X regarding set-off of loss against addition made by the assessing officer under section 68 is not tenable.

Computation of Tax Liability of Mr. X

Particulars	Rs.
Unexplained cash credit u/s 68	5,00,000
Total Income	5,00,000
Tax @ 30%	1,50,000
Less Rebate u/s 87A	(5,000)
Sub-Total	1,45,000
Add: Education Cess @ 3%	4350
Tax Liability	1,49,350

Readers Note:

IMPORTANT CASE LAW

1. CIT v. Henkel Spic India Ltd (2015) 379 ITR 322 (SC) **[DECISION NO. 2 OF ICAI CASE STUDY BOOK - PAGE NO. 19]**

UNIT B – RESIDENTIAL STATUS AND SCOPE OF TOTAL INCOME

4. NO INCOME DEEMED TO ACCRUE OR ARISE IN INDIA TO A FOREIGN MINING COMPANY THROUGH OR FROM THE ACTIVITIES WHICH ARE CONFINED TO DISPLAY OF UNCUT AND UNASSORTED DIAMONDS IN A SPECIAL NOTIFIED ZONE

Section:- 9(1)(i) – Effective from A.Y. 2016-17

Question 5

As per the provisions of section 9(1)(i), any income accruing or arising whether directly or indirectly, through or from business connection in India, shall be deemed to accrue or arise in India. However, in this context, there are certain exceptions. List out those exceptions

Solution

Explanation 1 to section 9(1)(i) deals with the exceptions. Here is the list:-

- (a) in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export ;
- (b) in the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India ;
- (c) in the case of a non-resident, being—
 - (1) an individual who is not a citizen of India ; or
 - (2) a firm which does not have any partner who is a citizen of India or who is resident in India ; or
 - (3) a company which does not have any shareholder who is a citizen of India or who is resident in India,
 no income shall be deemed to accrue or arise in India to such individual, firm or company through or from operations which are confined to the shooting of any cinematograph film in India;
- (d) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India ;
- (e) ***in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to the display of uncut and unassorted diamond in any special zone notified by the Central Government in the Official Gazette in this behalf. [Inserted by Finance Act, 2016 w.r.e.f. A.Y. 2016-17]***

Readers Note:

5. DEFERRAL OF APPLICABILITY OF POEM BASED RESIDENCE TEST AND INCORPORATION OF TRANSITION MECHANISM FOR A COMPANY INCORPORATED OUTSIDE INDIA AND WHICH HAS NOT EARLIER BEEN ASSESSED TO TAX IN INDIA

Section:- 6(3) and 115JH– Effective from A.Y. 2017-18

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.

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.

- 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

Practical 6

ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in April, 2016 in compliance with RBI guidelines. It just spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day to day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine the residential status of ABC Inc. for A.Y.2017-18.

Whether ABC Inc. is required to file any statement under Income Tax Act, 1961?

Solution

ABC Inc. has only a liaison office in India through which it looks after its routine day to day business operations in India. The place where decisions relating to day to day routine operations are taken and support functions that are preparatory or auxiliary in nature are performed are not relevant in determining the place of effective management.

Considering the amendment in section 6(3) of the Act, ABC Inc., being a foreign company is a non-resident for A.Y.2017-18, since its place of effective management is outside India in the P.Y.2016-17.

As per section 285 of the Act, Every person, being a **non-resident having a liaison office in India** set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999 (42 of 1999), **shall**, in respect of its activities in a financial year, **prepare and deliver or cause to be delivered to the Assessing Officer** having jurisdiction, **within sixty days from the end of such financial year, a statement in such form and** containing **such particulars as** may be prescribed.

Readers shall also consider following **Notification No. 5/2012 dated 6-2-2012**

- (a) Consequently, the CBDT has, vide this notification, prescribed the form and particulars of the Annual Statement to be furnished by the non-resident having Liaison Office in India. The statement shall be given in **Form 49C** and **shall be submitted in the electronic form along with the digital signature.**
- (b) The statement is to be **verified by a Chartered Accountant or by the Authorized Signatory** i.e., the person authorized by the non-resident in this behalf.

Readers Note:

Transition provision for foreign company said to be resident in India - Section 115JH.

- Where a foreign company becomes resident for the first time in India due to POEM criteria, then, the Central Government is empowered to notify that the provisions of this Act relating to the computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply with such exceptions, modifications and adaptations as may be specified in that notification for the said previous year.
- However, the above modifications or adaptations shall be subject to such conditions as Central Government may notify in this behalf.
- These transition provisions would also cover any subsequent previous year upto the date of determination of POEM in an assessment proceedings. However, once the transition is complete, then normal provision of the Act would apply.
- Where, in a previous year, any benefit, exemption or relief has been claimed and granted to the foreign company in accordance with the notification issued under this section, and, subsequently, there is failure to comply with any of the conditions specified in the notification, then,—
 - (i) such benefit, exemption or relief shall be deemed to have been wrongly allowed;
 - (ii) the Assessing Officer may re-compute the total income of the assessee for the said previous year and make the necessary amendment as if the exceptions, modifications and adaptations did not apply; and
 - (iii) The above re-computation shall be made under section 154 within four years from the end of the previous year in which the failure to comply with the condition takes place.
- Every notification issued under this section shall be laid before each House of Parliament.

UNIT C - INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME**6. EXEMPTION UNDER SECTION 10(34) NOT TO APPLY TO DIVIDEND CHARGEABLE TO TAX IN ACCORDANCE WITH SECTION 115BBDA****Section:- 115BBDA and 10(34) - Effective from A.Y. 2017-18**

- Section 115BBDA has been inserted to provide that any income by way of aggregate dividend in excess of Rs. 10 lakh shall be chargeable to tax in the case of an individual, Hindu undivided family (HUF) or a firm who is resident in India, at the flat rate of 10%. Further, basic exemption limit of Rs.2,50,000 /Rs.3,00,000 / Rs.5,00,000 shall not be available for such dividend income.
- Further, no deduction in respect of any expenditure or allowance or set-off of loss shall be allowed to the assessee in computing the income by way of such dividends.
- Dividend for the purpose of this section means every dividend as covered by section 2(22) except section 2(22)(e).
- Further, a proviso has been inserted to section 10(34) to provide that dividend income which is subject to section 115BBDA shall not be exempt in the hands of shareholder.

Practical 7Find out tax liability of Mr. X and Mr. Y for the **assessment year 2017-18**.

Particulars	Mr. X (Rs.)	Mr. Y (Rs.)
Income under head PGBP	(15,00,000)	(9,00,000)
Dividend from Indian Companies on which CDT has been paid	18,00,000	7,30,000
Dividend under section 2(22)(e)	3,00,000	3,00,000

Solution**Points to be considered while computing total income and tax liability of Mr. X**

Considering the provisions of section 115BBDA, Mr. X is subject to this section since dividend from Indian companies on which CDT has been paid exceeded Rs. 10,00,000. (Readers must remember that for the purpose of section 115BBDA, dividend under section 2(22)(e) shall not be taken into consideration). As a result, taxable dividend under section 115BBDA shall be Rs. 8,00,000. Such dividend shall be taxed at the flat rate of 10% without being set off of any loss.

However, dividend under section 2(22)(e) shall be charged to tax under section 56 of the Act in the hands of shareholder. Since, such dividend is not subject to section 115BBDA, therefore, set off is available against such dividend income.

Considering the above remarks, **Total Income of Mr. X** is computed as under:

Particulars	Rs. In lakhs
Income under head PGBP	(15,00,000)
Dividend from Indian Companies on which CDT has been paid	8,00,000
Dividend under section 2(22)(e)	3,00,000
Total Income	8,00,000

Computation of Tax liability of Mr. X

Tax on Rs.8,00,000 @ 10.30% (including education cess) = Rs. 82,400

Points to be considered while computing total income and tax liability of Mr. Y

Mr. Y is not subject to section 115BBDA since dividend from Indian companies on which CDT has been paid (Rs.7,30,000 in present case) did not exceed Rs. 10,00,000. (Readers must remember that for the purpose of section 115BBDA, dividend under section 2(22)(e) shall not be taken into consideration). Hence entire dividend income of Rs. 7,30,000 is exempt under section 10(34) in the hands of Mr. Y.

However, dividend under section 2(22)(e) shall be charged to tax under section 56 of the Act in the hands of shareholder. Since, such dividend is not subject to section 115BBDA, therefore, set off is available against such dividend income.

Considering the above remarks, **Total Income of Mr. Y** is computed as under:

Particulars	Rs.
Income under head PGBP	(9,00,000)
Dividend from Indian Companies on which CDT has been paid	Exempt under section 10(34)
Dividend under section 2(22)(e)	3,00,000
Total Income	(6,00,000)

Note: Loss under the head "PGBP" Rs. 6,00,000 (Rs.9,00,000 – Rs. 3,00,000) shall be carried forward for next 8 assessment years.

Computation of Tax liability of Mr. Y

Since total income is negative, tax payable is NIL.

Readers Note:

7. CIT v. Society for the Promotion of Education (2016) 382 ITR 6 (SC)

In a case where the charitable trust is deemed to be registered under section 12A due to non- disposal of application within the period of 6 months, as stipulated under section 12AA(2), from when would such deemed registration take effect?

Facts of the case: In the present case, the Allahabad High Court held that once an application for registration of the trust is made under section 12A and in case the same is not responded to within six months, the trust would be deemed to be registered under section 12AA. The High Court opined that non-consideration of the application for registration within the time fixed by the legal provision would lead to deemed grant of registration and there is no reason to make the assessee suffer merely because the Income Tax Department is not able to keep its officers under check and control so as to take timely decisions on the matter.

The Revenue appealed against this decision and raised an apprehension that since the date of application was February 24, 2003, the deemed registration would operate only after six months from the date of application.

Supreme Court's Decision: The Apex Court clarified that deemed registration would commence only after 6 months from the date of application. Therefore, the registration of the application under section 12AA of the Income-tax Act, in the case of the assessee trust shall take effect from August 24, 2003.

8. CIT v. St. Peter's Educational Society (2016) 385 ITR 66 (SC)

Word imparting education/training in specialized field like communication, advertising etc. and awarding diplomas/certificates constitute an "educational purpose" for grant of exemption under section 10(23C)(vi)?

Facts of the case: The assessee-society registered under the Societies Registration Act, 1860 as well as under the provisions of the Bombay Public Trust Act, 1950 was engaged in imparting higher and specialized education. It imparted education in the field of communication including advertising and its related subjects. It was granted registration under section 12A of the Act originally.

The assessee later submitted an application for exemption under section 10(23C)(vi) and for which after calling for details, the CIT refused to grant exemption under section 10(23C)(vi).

The reasons for refusal were (i) the society was not having education as the sole purpose; (ii) it is engaged in conducting coaching / training courses for and on behalf of industry, trade and commercial organizations; (iii) it is engaged in various social activities of general public utility; and (iv) it was not conducting educational courses as charitable activity but for the purpose of making profit.

Supreme Court's Observations: The Apex Court took note of the observations of the High Court and made reference to its own precedent in the case of Queen's Educational Society v. CIT (2015) 372 ITR 699 (SC) where it had summarized the legal position as under: "The law common to sections 10(23C)(iiiad) and (vi) may be summed up as follows:

- (i) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit;
- (ii) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive;
- (iii) A distinction must be drawn between making of a surplus and the institution being carried on 'for profit'. No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit;
- (iv) If after meeting the expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes;
- (v) The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons".

It further observed that the Thirteenth proviso to section 10(23C) is of great importance to the assessing authorities who must continuously monitor from assessment year to assessment year to know whether such institutions continues to apply their income and invest or deposit their funds in accordance with the law laid down. The activities of such institutions must be looked at carefully. If they are not genuine or are not being carried out in accordance with all or any of the conditions subject to which approval was given earlier, such approval and exemption must forthwith be withdrawn.

Supreme Court's Decision: Applying the rationale of the Supreme Court ruling in Queen's Educational Society's case, the Apex Court, in this case, held that the institution is established for the sole purpose of imparting education in a specialized field. The Supreme Court, thus, allowed the petition and set aside the order of the Chief Commissioner of Income-tax refusing exemption under section 10(23C)(vi).

IMPORTANT CASE LAW

1. | Queen's Educational Society v. CIT (2015) 372 ITR 699 (SC) **DECISION NO. 5 OF ICAI CASE STUDY BOOK-PAGE NO. 5]**

UNIT D - INCOME FROM HOUSE PROPERTY

9. EXTENSION OF PERIOD FOR COMPLETION OF CONSTRUCTION FROM 3 YEARS TO 5 YEARS, FOR CLAIMING HIGHER DEDUCTION OF UPTO Rs. 2 LAKH IN RESPECT OF INTEREST ON CAPITAL BORROWED FOR CONSTRUCTION OF SELF-OCCUPIED HOUSE PROPERTY

Section:- 24(b)

- Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital shall be allowed as deduction. However, in case of self-occupied property, the amount of such deduction shall not exceed Rs. 30,000.
- However, above limit of Rs. 30,000 shall be increased to Rs. 2,00,000 in case of self-occupied property subject to following conditions:
 - The property is acquired or constructed with capital borrowed on or after the 01.04.1999 and
 - such acquisition or construction is completed within ~~three~~ five years from the end of the financial year in which capital was borrowed.

Practical 8

Mr. Gajanan provides following information:

- He inherits plot of land since 1990.
- For construction of residential house, he borrowed from State Bank of India on 14-2-2011.
- He started construction of house property on 15-5-2011.
- The construction of house property was completed on 10-5-2016.
- This house property was self-occupied during previous year 2016-17.
- Interest payable to SBI for the financial year 2016-17 was Rs.2,30,000.
- Municipal tax for the financial year 2016-17 was Rs. 1200

Find out income under the head house property in the hands of Mr. Gajanan.

Solution

Considering the above, the computation of income under the head house property in case of Mr. Gajanan for the financial year 2016-17 is as under:

Particulars	Rs.
Gross Annual Value	Nil
Less: Municipal Taxes paid during the previous year	Nil
Net Annual Value	Nil
Less: 30% of Net Annual Value	Nil
Less: Interest on borrowed capital –section 24(b)	(30,000)
Income under the head house property	(30,000)

Remark:

Apparently, it seems that Mr. Gajanan has completed construction within 5 years. However, for the

purpose of section 24(b), one of the conditions to claim higher limit of Rs.2,00,000 is that construction shall be completed **within 5 years from the end of financial in which capital was borrowed.**(Readers must note that it is not from the date of commencement of construction) In the given case, the amount was borrowed on 14-2-2011 therefore construction should have been completed on or before 31-3-2016.

Readers Note:

10. TAXABILITY OF UNREALISED RENT AND ARREARS OF RENT

Section:- 25A-Effective From A.Y.2017-18

At present, section 25AA deals with taxability of unrealised rent when realised subsequently and section 25B deals with the tax treatment of arrears of rent received.

These two provisions are now merged in new section 25A. The summary of new section 25A is as under:

	Taxability of Arrears of Rent or Unrealised Rent
(i)	Taxable in the year of receipt or
(ii)	Deduction@30% of rent received
(iii)	Taxable even if assessee is not the owner of the property in the financial year of receipt

Practical 9

Mr. Parmanand provides following information:

- In July, 2016, he recovered unrealized rent of Rs. 50,000 (which was reduced from Gross Annual Value earlier) from Mr. Saif (tenant).
- In October, 2016, he received arrears of rent (which was not taxed earlier) of Rs. 70,000 from State Bank of India (tenant).

Discuss taxability of above receipts in the hands of Mr. Parmanand under following alternatives:

- Mr. Parmanand has already sold out the captioned house property on 10-2-2016.
- Mr. Parmanand continued to own the house property in previous year 2016-17.

Solution

Computation of income from house property of Mr. Parmanand for A.Y.2017-18

Particulars	Rs.
(i) Unrealised rent recovered from Mr. Saif	50,000
(ii) Arrears of rent received from SBI	70,000
	1,20,000
Less: Deduction@30%	(36,000)
Income from house property	84,000

Readers Note:

IMPORTANT CASE LAWS

- CIT v. Hariprasad Bhojnagarwala (2012) 342 ITR 69 (Guj.) (Full Bench) **DECISION**
NO. 4 OF ICAI CASE STUDY BOOK- PAGE 16]

UNIT E – PROFITS AND GAINS FROM BUSINESS OR PROFESSION

11.	NON-COMPETE FEE RECEIVED/RECEIVABLE FOR NOT CARRYING ON A PROFESSION CHARGEABLE UNDER THE HEAD “PROFITS AND GAINS OF BUSINESS OR PROFESSION”
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Section:- 28(va) – Effective from A.Y.2017-18

Section	Chargeable Income
28(va)	Sum received or receivable, in cash or kind, under an agreement for- (a) not carrying out any activity in relation to business or profession or (b) not to share any known-how, patent copyright, trademark, license, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services. However, following shall not be charged under this head: (1) any sum received on account of transfer of the right to manufacture, produce or process any article or thing which is chargeable as capital gains; (2) any sum received on account of transfer of a right to carry on any business or profession, which is chargeable as capital gains; (3) any sum received as compensation from the multilateral fund of the Montreal Protocol under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India.

Practical 10

ABC & Co., Chartered Accountants has paid Rs. 1,00,000 to PQR & Co. Chartered Accountants for not participating in a particular Government tender. Discuss taxability of Rs. 1,00,000 in the hands of PQR & Co. Also discuss tax obligations in the hands of ABC & Co., if any.

Solution

As per section 28(va), any sum received or receivable, in cash or kind, under an agreement for not carrying out any activity in relation to business or **profession** shall be treated as income and the same shall be charged to tax under the head “PGBP”.

Therefore, amount of Rs.1,00,000 received by PQR & Co., for not participating in a particular Government tender is an income and the same shall be charged to tax in its hands under the head “PGBP”.

As per the provisions of Section 194J, ABC & Co., is required to deduct TDS thereon.

Readers Note:

12. ASSESSEES ENGAGED IN THE BUSINESS OF TRANSMISSION OF POWER ELIGIBLE FOR ADDITIONAL DEPRECIATION

Section:- 32(ia) – Effective from A.Y.2017-18

Conditions for claiming additional depreciation

- | | |
|-----|---|
| (1) | The assessee must be engaged in manufacture or production of any article or thing. W.e.f. A.Y. 2013-14, this benefit has been extended to the assessee engaged in the business of generation or generation and distribution of power. <i>W.e.f. A.Y. 2017-18, it has been extended for “transmission of power” also.</i> |
| (2) | The assessee shall acquire and install new plant and machinery after March 31, 2005. |

13. DEDUCTION UNDER SECTION 32AC TO BE AVAILABLE IN THE YEAR OF INSTALLATION IN RESPECT OF ACTUAL COST OF NEW PLANT AND MACHINERY ACQUIRED IN THE P.Y.2015-16 AND P.Y.2016-17, IF THE ACTUAL COST OF SUCH NEW PLANT AND MACHINERY ACQUIRED IN THE RELEVANT PREVIOUS YEAR EXCEEDS RS. 25 CRORES, EVEN IF THE NEW PLANT AND MACHINERY HAS NOT BEEN INSTALLED IN THE RELEVANT PREVIOUS YEAR BUT HAS BEEN INSTALLED ON OR BEFORE 31.3.2017

Section:- 32AC (1A) – Effective from A.Y.2016-17

13.1 Previous years eligible for allowance under section 32AC(1A)

Deduction under section 32 AC(1A) is available for the following years:

- (a) Previous year 2014-15
- (b) Previous year 2015-16
- (c) Previous Year 2016-17

13.2 Amount of deduction under section 32AC(1A)

= 15% of Actual Cost subject to following conditions

13.3 Conditions

- (a) The assessee is a company.
- (b) It is engaged in the business of manufacture or production of any article or thing.
- (c) It has acquired and installed a “new asset”.
- (d) The amount of actual cost of new assets **acquired during any previous year exceeds Rs. 25 crore and such assets are installed on or before 31st March, 2017.**

13.4 Year in which deduction can be claimed.

- Deduction under this section shall be available in the year of acquisition of new plant and machinery.
- But, where the installation of the new assets are in a year other than the year of acquisition, then deduction under section 32 AC(1A) shall be allowed in the year in which the new assets are installed.

13.5 Other Points**(1) Meaning of “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.

(2) Withdrawal of investment allowance if new asset is subsequently sold or otherwise transferred—

- The new asset shall not be sold or otherwise transferred within a period of 5 years from the date of its installation.
- If the new asset is sold or otherwise transferred within 5 years from its installation, then the amount of deduction claimed under section 32AC(1A) 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 in addition to taxability of capital gain, if any.

(3) Above restriction shall not apply in case of amalgamation or demerger

- The above restriction shall not apply in a case of amalgamation or demerger.
- However, the amalgamated company or the resulting company shall not transfer the new asset within 5 years from its installation by the amalgamating company or demerged company.
- If it is sold or otherwise transferred within 5 years by the amalgamated company or resulting company, then the amount of deduction claimed under section 32AC(1A) shall be deemed to be the income of amalgamated company or resulting company.
- Such deemed income will be taxable under the head “Profit and gains of business or profession”.
- Such deemed income shall be in addition to taxability of capital gain, if any.

Practical 11

Akik Tiles Private Ltd. (ATPL), engaged in manufacture of tiles, provides following information for the purchase of “new assets” during previous year 2015-16 and 2016-17.

Sr. No.	Particulars	Rs. in crores	Date of Installation
(i)	Purchase of Plant P on 01-07-2015	20	10-07-2015
(ii)	Purchase of Plant Q on 10-11-2015	7	11-07-2016
(iii)	Purchase of Plant R on 01-12-2016	30	14-02-2017

You are required to calculate:-

Investment Allowance under section 32 AC(1A) and

The previous year in which such Investment Allowance can be claimed.

Solution

There are twin conditions for claiming benefit under section 32 AC(1A).

(a) The amount of actual cost of new assets acquired during any previous year exceeds Rs. 25 crore **and**

(b) such assets are installed on or before 31st March, 2017.

Whether deduction under section 32 AC(1A) for the previous year 2015-16 is available?

Condition (a) has been satisfied –i.e. the actual cost of “new assets” acquired during the previous year **2015-16** exceeds Rs.25 crore (the aggregate actual cost of Plant P and Plant Q is Rs. 27 crore).

Further, condition (b) has also been satisfied. – i.e. **such assets** (Plant P and Plant Q which makes actual cost exceeding Rs.25 crore) have been installed on or before 31st March, 2017.

Therefore, ATPL can avail deduction under section 32 AC(1A) for the previous year 2015-16.

Whether deduction under section 32 AC(1A) for the previous year 2016-17?

Condition (a) has been satisfied -the actual cost of “new assets” acquired during the previous year **2016-17** exceeds Rs. 25 crore (actual cost Plant C is Rs. 30 crore)

Further, condition (b) has also been satisfied- i.e. **such assets** (means Plant R which makes actual cost exceeding Rs.25 crore) have been installed on or before the 31st March, 2017.

Therefore, ATPL can avail deduction under section 32 AC(1A) for this year as well.

Now, let’s calculate the amount of deduction under section 32AC (1A) keeping in mind the following amended rule:

Year in which deduction can be claimed.

- Deduction under this section shall be available in the year of acquisition of new plant and machinery.
- But, where the installation of the new assets are in a year other than the year of acquisition, then deduction under section 32 AC(1A) shall be allowed in the year in which the new assets are installed.

Considering the above, the amount deduction under section 32AC(1A) and the year of deductibility is as under:

Name of New Asset	Date of acquisition	Date of installation	Actual cost of New Asset (Rs. in Cr.)	Amount of deduction under section 32AC(1A) = 15% of Actual Cost (Rs. in Cr.)	Previous Year in which such deduction can be claimed
Plant P	01-07-2015	10-07-2015	20	3	2015-16
Plant Q	10-11-2015	11-07-2016	7	1.05	2016-17
Plant R	01-12-2016	14-02-2017	30	4.5	2016-17

Readers Note:**Practical 12**

Balaji Tiles Private Ltd. (BTPL), engaged in manufacture of tiles, provides following information for the purchase of “new assets” during previous year 2015-16 and 2016-17.

Sr. No.	Particulars	Rs. in crores	Date of Installation
(i)	Purchase of Plant A on 1 st July, 2015	10	10 th July, 2015
(ii)	Purchase of Plant B on 10 th November, 2015	12	11 th January, 2016
(iii)	Purchase of Plant Con 1 st December, 2016	22	14 th February, 2017
(iv)	Purchase of Plant D on 1 st February, 2017	8	20 th May, 2017

You are required to calculate:-

(a) Investment Allowance under section 32 AC(1A) and

(b) The previous year in which such Investment Allowance can be claimed.

Solution

There are twin conditions for claiming benefit under section 32 AC(1A).

- (a) The amount of actual cost of new assets acquired during any previous year exceeds Rs. 25 crore **and**
- (b) **such assets** are installed on or before 31st March, 2017.

Whether deduction under section 32 AC(1A) for the previous year 2015-16?

Since condition (a) is not satisfied –i.e. the actual cost of “new assets” acquired during the previous year **2015-16** does not exceed Rs.25 crore (the aggregate actual cost of Plant A and Plant B is Rs. 22 crore only), BTPL cannot claim deduction under section 32 AC(1A).

Whether deduction under section 32 AC(1A) for the previous year 2016-17?

For this previous year, condition (a) is satisfied -the actual cost of “new assets” acquired during the previous year **2016-17** exceeds Rs. 25 crore (the aggregate actual cost Plant C and Plant D is Rs. 30 crore) but condition (b) is not satisfied- i.e. **such assets** (means Plant C and Plant D which makes actual cost exceeding Rs.25 crore) are not installed on or before the 31st March, 2017(in this case, Plant D not installed). Therefore, BTPL can not avail deduction under section 32 AC(1A) for this year as well.

Readers Note:

14.	DEDUCTION IN RESPECT OF EXPENDITURE ON SPECIFIED BUSINESS
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Section:- 35AD – Effective from A.Y.2017-18
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14.1 Conditions

- (1) Assessee must be carrying on "specified business".
- (2) The specified business should not be set up by splitting up, or the reconstruction, of a business already in existence.
 Not only that, it should not be set up by the transfer of old plant and machinery. However, in following two cases old machinery is permitted:
Case 1:- If the value of the old assets does not exceed 20 per cent of the total value of the plant and machinery, this condition is deemed to have been satisfied.
Case 2:- Second-hand imported machinery is treated as new subject to satisfaction of few conditions in this regard.
- (3) Books of account of the assessee must be audited.

14.2 Quantum of Deduction

Sr. No.	Specified business	Quantum of deduction (Percentage of capital expenditure)
(1)	Setting up and operating a cold chain facility (Refer Note 1)	150% (see Note 5)
(2)	Setting up and operating a warehousing facility for Storage of agricultural produce	150%(see Note 5)
(3) *	Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network. (Refer Note 2)	100%
(4)	Building and operating anywhere in India a new hotel of 2 star or above category (Refer Note 3)	100%
(5)	Building and operating anywhere in India, new hospital with at least 100 beds for patients	150%(see Note 5)
(6)	Developing and building a housing project under a scheme for slum redevelopment or rehabilitation	100%
(7)	Developing and building a housing project under a scheme for affordable housing	150%(see Note 5)
(8)	Production of fertilizer in India	150%(see Note 5)
(9)	setting up and operating an inland container depot or a container freight station	100%
(10)	Bee-keeping and production of honey and beeswax	100%
(11)	setting up and operating a warehousing facility for storage of sugar	100%
(12)	Laying and operating a slurry pipeline for the transportation of iron ore	100%
(13)	Setting up and operating a semiconductor wafer fabrication manufacturing unit.	100%
(14) *	Developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility (Amendment by Finance Act, 2016 but effective from A.Y. 2018-19) (Refer Note 4)	100%

* The benefit of deduction under this section is available to a company formed under Companies Act, 1956 or a consortium of such companies or an authority or a board or a corporation established under Central or State Act.

Notes

- (1)** "Cold chain facility" means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.
- (2)** This business shall make not less than one-third (for a natural gas pipeline network) or one-fourth (for petroleum product pipeline network) of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person. Associated person is a person who participates in the management of the assessee; holds at least 26 per cent voting power in the assessee; appoints more than half of the board of directors or who guarantees not less than 10 per cent of the total borrowing of the assessee.
- (3)** Where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business.
- (4) infrastructure facility" means—**
- (i) a road including toll road, a bridge or a rail system;**
 - (ii) a highway project including housing or other activities being an integral part of the highway project;**
 - (iii) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;**
 - (iv) a port, airport, inland waterway, inland port or navigational channel in the sea.**
- (5) However, weighted deduction will not be available from the assessment year 2018-19 onwards.**

14.3 YEAR OF DEDUCTIBILITY

Above mentioned deduction under section 35AD in respect of any capital expenditure (whether old or new) shall be allowed in the previous year in which such capital expenditure is incurred.

In case of expenditure incurred prior to the commencement of specified business, the same shall be allowed as deduction during the previous year in which the assessee commences the operation specified business, if the amount is capitalized in the books of account on the date of commencement of specified business.

14.4 RESTRICTIONS

Capital expenditure incurred on the following is not eligible for deduction under section 35AD acquisition of

- (i) land**
- (ii) goodwill**
- (iii) financial instrument**

Practical 13

Priyanka warehouse LLP set up the operation of warehousing facility in Gujarat for storage of agricultural produce. It commenced operation with effect from April 1, 2016.

The following information is available from the records of LLP.

Particulars	Rs.
<u>Expenses incurred prior to April 1, 2016 and capitalized in the books</u>	
Purchase of land for warehouse	80,00,000
Construction cost of warehouse	12,00,000
<u>Expenses incurred during 2016-17</u>	
Further construction cost of warehouse	50,00,000
Purchase of old plant and machinery (from India)	2,50,000
Purchase of old plant and machinery (from Denmark)	3,50,000
Purchase of new plant and machinery	9,00,000

Compute amount of deduction under section 35AD assuming that the books of accounts of Priyanka warehouse LLP have been audited.

Solution

Statement showing computation of deduction u/s 35AD in the hands of Priyanka warehouse LLP:

Particulars	Rs.
<u>Expenses incurred prior to April 1, 2016 and capitalized in the books</u>	
Purchase of land for warehouse	Not Eligible for 35AD benefit
Construction cost of warehouse	12,00,000
<u>Expenses incurred during 2016-17</u>	
Further construction cost of warehouse	50,00,000
Purchase of old plant and machinery (from India)	2,50,000
Purchase of old plant and machinery (from Denmark)	3,50,000
Purchase of new plant and machinery	9,00,000
Total	77,00,000
Deduction under section 35AD (150% of Rs. 77,00,000)	1,15,50,000

Reader's Note:

14.5 CONSEQUENCES OF CLAIMING DEDUCTION UNDER SECTION 35AD**A. Basic Consequences**

- (1) Once deduction has been claimed in respect of capital expenditure under section 35AD, the same cannot be claimed under any other provisions of the Income-tax Act. (e.g., depreciation under section 32, Investment allowance under section 32AC, 32 AD cannot be claimed for the same capital expenditure.)
- (2) Once deduction is claimed under this section, the assessee shall not be allowed any deduction in respect of the specified business under section 10AA and sections 80HH to

80RRB for the same or any other assessment year. Readers must note that all other deductions under 80C to 80U can be claimed except deductions starting from Section 80HH to 80RRB. (For example, deduction under 80G, 80GGA, 80GGB etc., can be claimed)

- (3) Further, loss from specified business shall not be set off except against profits and gains of any other specified business. Any unabsorbed loss from specified business shall be carried forward for indefinite period. After carry forward, the same shall be adjusted against profit of specified business only.
- (4) For the purpose of set off of losses only, in respect of the business of hotels and hospitals, the word “new” has been removed from the definition of “specified business”.

As a result, any (old) hotel of two star above or any (old) hospital having atleast 100 beds for patients will qualify as specified business for the purpose of set off of losses.

Practical 14

XYZ Ltd. commenced operations of the business of a new three-star hotel in Madurai, Tamil Nadu on **1.4.2016**. The company incurred capital expenditure of Rs. 50 lakh during the period **January, 2016 to March, 2016** exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2016. Further, during the **P.Y.2016-17**, it incurred capital expenditure of Rs. 2 crore (out of which Rs. 1.50 crore was for acquisition of land) exclusively for the above business.

Compute the income under the head “Profits and gains of business or profession” for the **A.Y.2017-18**, assuming that XYZ Ltd. has fulfilled all the conditions specified for claim of deduction under section 35AD. The profits from the business of running this hotel (before claiming deduction under section 35AD) for the **A.Y.2017-18** is Rs. 25 lakhs. Assume that the company also has another existing business of running a four-star hotel in Coimbatore, which commenced operations few years back (time when section 35AD was not there in Income Tax Act, 1961), the profits from which are Rs. 120 lakhs for the **A.Y.2017-18**.

Solution

Particulars	Rs. In Lakhs	Rs. In Lakhs
Profits from the specified business of new hotel in Madurai (before providing deduction under section 35AD)		25
Less: Deduction under section 35AD		
Capital expenditure incurred during the P.Y.2016-17 (excluding the Expenditure incurred on acquisition of land)	50	
Capital expenditure incurred prior to 1.4.2016 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2016	50	
Total deduction under section 35AD for A.Y.2017-18		100
Loss from the specified business of new hotel in Madurai		(75)
Profit from the existing business of running a hotel in Coimbatore		120
Net profit from business after set-off of loss of specified business		45

Note:- In respect of the business of hotels and hospitals, the word “new” has been removed from the definition of “specified business”. Therefore, four star hotel at Coimbatore also fall within the definition of “specified business”.

Consequently, the loss of hotel at Madurai can be set-off against the profit of another specified business under section 73A.

Reader’s Note:

B. Other Consequences of Claiming Deduction under section 35AD

- (1) An asset (in respect of which a deduction has been claimed and allowed under section 35AD) shall be used only for the specified business for a period of 8 years beginning with the previous year in which such asset is acquired or constructed.
- (2) If such asset is used for any purpose other than the specified business during the abovementioned 8 years, then following shall be deemed to be income of the assessee of the previous year in which the asset is so used. [Section 35AD(7B)]

Particulars	Rs. in lakhs
Total amount of deduction claimed under section 35AD	XXXXX
Less: Amount of depreciation allowable in accordance with the provisions of section 32, as if no deduction had been allowed under section 35AD	(XXX)
Deemed income under section 35AD (7B)	XXXXX

- (3) However, this provision will not apply to a company which has become a sick industrial company, under section 17(1) of the Sick Industrial Companies (Special Provisions) Act within the time period of abovementioned 8 years.
- (4) If any sum received or receivable on account of any capital asset, in respect of which deduction has been claimed under section 35AD, being demolished, destroyed, discarded or transferred then same shall be treated as income and chargeable to tax under the head "Profits and gains of business or profession". [Section 28(vii)]

Practical 15

ABC Ltd. set up warehousing unit for storage of agricultural produce on **10.06.2014**. The construction cost of warehouse was Rs. 75 lacs on which deduction was claimed under section 35AD. However, it started using this warehouse for storage of edible oils with effect from **01.04.2016**. Discuss tax consequences for the assessment year **2017-18** in the hands of ABC Ltd.

Solution

Since the warehouse of specified business has been used for non-specified business (for storage of edible oils) in the **P.Y.2016-17**, the deeming provision under section 35AD(7B) shall be applicable.

Particulars	Rs.
Total amount of deduction claimed under section 35AD [150% of Rs. 75 Lacs]	1,12,50,000
Less: Depreciation allowable u/s 32 (Refer working note)	14,25,000
Deemed income under section 35AD(7B)	98,25,000

Working Note: Computation of depreciation allowable under section 32 for earlier years had deduction under 35AD not claimed.

Particulars	Rs.
Cost of Building	75,00,000
Less: Depreciation for the previous year 2014-15 [10%]	7,50,000
	67,50,000
Less: Depreciation for the previous year 2015-16 [10%]	6,75,000
	60,75,000
Total Depreciation [Rs.7,50,000 + Rs.6,75,000]	14,25,000

Reader's Note:

Practical 16

What would have been your answer in the above practical if ABC Ltd had sold out this warehouse building for Rs. 82 lacs on 01.04.**2016**?

Solution

As per section 28(vii), entire amount received Rs. 82 lac on sale of building is deemed to be the business income for the **A.Y.2017-18**.

Reader's Note:

15. TAX TREATMENT OF SPECTRUM FEE

Section:- 35ABA – Effective from A.Y.2017-18

- The provisions of section 35ABB shall apply as if for the word "licence", the word "spectrum" had been substituted.
- Further, any deduction has been claimed and granted to the assessee under this section, and subsequently, there is failure to comply with any of the provisions of this section, then-
 - The deduction shall be deemed to have been wrongly allowed
 - The assessing officer may, re-compute total income of the assessee for the said previous year and make necessary rectification invoking section 154 of the Act.

16. DEDUCTION FOR PROVISION FOR BAD AND DOUBTFUL DEBTS IN CASE OF CERTAIN ASSESSEE

Section:- 36(1)(viia) – Effective from A.Y.2017-18

Assessee	Amount of Deduction	Additional Deduction in case of Rural Branches	Additional Optional deduction
Any Scheduled, Non-Scheduled or co-operative bank but other than a primary agriculture credit society or a primary co-operative agricultural and rural development bank (Except Foreign Bank)	Not exceeding 7.5% of its total income*	10% of aggregate average advances made by rural branches of Bank.	Further deduction of an amount not exceeding the income derived from redemption of securities in accordance with scheme framed by Government. However, this additional deduction can be claimed only if income from such securities has been offered for taxation under the head "Profits and Gains of Business or Profession".
Any Foreign Bank Public Financial Institution or State Financial Corporation or State Industrial Investment Corporation or NBFC (Inserted by Finance Act, 2016 w.e.f A.Y. 2017-18)	5% of its total income*	Not available	Not available

*Total Income means total income before claiming deduction under this clause and Chapter VIA

Notes:

In the case of an assessee to which section 36(1)(viia) applies, the amount of the deduction relating to any bad debt or part thereof under section 36(1)(vii) shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1) (viia) **without making any distinction between rural advances and other advances.**

That means, there should be only **one account in respect of provision for bad and doubtful debts** without making any distinction between rural advances and other advances.

Practical 17

The following are the particulars in respect of Indian Bank

Sr. No.	Particulars	Rs. in lakhs
(i)	Provision for bad and doubtful debts under section 36(1)(viia) as on 1st April 2016	200
(ii)	Gross Total Income of A.Y.2017-18 [before deduction under section 36(1)(viia)]	1000
(iii)	Aggregate average advances made by rural branches of the bank (assume that bank opened first time rural branches in previous year 2016-17).	400
(iv)	Bad debts written off (for the first time) in the books of account (in respect of urban advances only) during the previous year 2016-17	350

Compute deduction:

(a) in respect of provision for bad and doubtful debt under section 36(1) (viia)

(b) in respect of bad debts under section 36(1)(vii)

Solution

(a) Deduction in respect of provision for bad and doubtful debt under section 36(1) (viia) = Rs. 75 lacs + Rs. 40 Lacs = Rs. 115 Lacs

(b) Deduction in respect of bad debts under section 36(1) (vii) = Rs. 35 Lacs

Working Note:

Provision for Bad-Doubtful Debts A/c
[ONE/SINGLE ACCOUNT]

Dr.		Cr.	
Particulars	Rs. in lakhs	Particulars	Rs. in lakhs
To Debtors A/c		By Balance b/f	200
		By Profit & Loss A/c [1000 x 7.5%]	75
	315	By Profit & Loss A/c [400 x 10%]	40
	315		315

Bad-Debts A/c

Dr.		Cr.	
Particulars	Rs. in lakhs	Particulars	Rs. in lakhs
To Debtors A/c [350-315]	35	By Profit & Loss A/c	35
	35		35

Reader's Note:

17. CERTAIN DEDUCTIONS TO BE ONLY ON ACTUAL PAYMENT**Section:- 43B – Effective from A.Y.2017-18**

- Followings are deductible on payment basis:-
 - (a) Any sum payable by way of tax, duty, cess or fees by whatever name called under any law for the time being in force e.g. Municipal tax, Excise Duty, VAT, Service Tax, Custom Duty
 - (b) Any sum payable by an employer by way of contribution to provident fund or superannuation fund or any other fund for the welfare of employees. **(Employers' Contribution)**
 - (c) Any sum payable as bonus or commission to employees.
 - (d) Any sum payable as interest on any loan or borrowing from a public financial institution or a state financial corporation or a state industrial investment corporation.
 - (e) Interest on any loan or advances taken from a scheduled bank.
 - (f) Any sum payable by an employer in lieu of leave at the credit of his employee
 - (g) any sum payable by the assessee to the Indian Railways for the use of railway assets.
- Above expenditures are deductible in the previous year in which they have been incurred provided actual payment has been made on or before the due date for furnishing return of income u/s 139(1).
- If payment is not made within the time mentioned above, then relevant expenditure is first disallowed and thereafter it shall be allowed as deduction in the previous year in which actual payment is made.

18. PROVISIONS IN RELATION TO MAINTENANCE OF BOOKS OF ACCOUNTS UNDER INCOME TAX ACT**Section:- 44AA**

The requirement of this section regarding maintenance of books of account by certain persons are based on two criteria:

- (a) Financial criteria;
- (b) Persons specified under Section 44AA (1).

Accordingly, the requirement of keeping books of account shall be as under:

Types of profession / Business	Financial criteria	Books of account / documents to be maintained
Specified professions u/s 44AA(1)	• Total gross receipts exceed Rs.1,50,000 in any of the three years immediately preceding the previous year or • where the profession is newly set up in the previous year, total gross receipts are	Books and documents as prescribed under Rule 6F (2).

	likely to exceed Rs.1,50,000.	
Specified professions u/s 44AA (1)	- Total gross receipt Rs.1,50,000 or below in any of the three years immediately preceding the previous year or - total gross receipts not likely to exceed Rs.1,50,000 in the previous year, if the profession is newly set up.	Such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of the Act.
Other persons	- Income from business or profession exceeds Rs.1,20,000 or total sales, turnover or gross receipts exceed Rs.10 lakhs in any of the three years preceding the previous year or - Where the business or profession newly set up in the previous year, if his income from business or profession likely to exceed Rs. 1,20,000 or total sales, turnover or gross receipts likely to exceed Rs.10 lakhs, or - where profits and gains from the business are claimed to be lower than profits computed under Section 44AE or 44BB or 44BBB or ~~where the profits and gains from the business are claimed to be lower than the profits under section 44AD and his total income exceeds maximum amount which is not chargeable to tax during such previous year~~ Where the provisions of section 44AD(4) are applicable in his case and his income exceeds maximum amount not chargeable to tax in any previous year	Such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of the Act.
Other persons	Not covered by above	Not required to maintain any books of account.

(1) Persons specified u/s 44AA (1): Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorized representative or film artist.

- (2) Books and documents specified under Rule 6F:** The books of account and other documents prescribed under Rule 6F(2) are:
- (i) a cash book;
In cases where the cash book maintained by the assessee contains adequate particulars in respect of the expenditure incurred by him, it would not be necessary to prepare and sign the payment voucher.
 - (ii) a journal, if the accounts are maintained under mercantile system of accounting
 - (iii) a ledger;
 - (iv) for an amount exceeding Rs.25, carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the assessee and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him;
 - (v) original bills wherever issued to the assessee and receipts in respect of expenditure incurred by the assessee or, where such bills and receipts are not issued and the expenditure incurred does not exceed Rs.50, payment vouchers prepared and signed by the assessee.
- (3)** In addition to the above books of account and other documents, under Rules 6F(3) a person carrying on medical profession shall also maintain the following:
- (i) a daily case register in Form No.3C;
 - (ii) an inventory under broad heads, as on the first and the last day of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.
- (4)** The books of account and other documents specified above under rule 6F(2) and 6F(3) shall be kept and maintained for a period of 6 years from the end of the relevant assessment year.

19. PRESUMPTIVE TAXATION FOR ELIGIBLE ASSESSEE CARRYING ON ELIGIBLE BUSINESS

Section:- 44AD

19.1 Eligible Assessee

– would mean an assessee who:

- (i) is a resident, individual, Hindu undivided family or a partnership firm (limited liability partnership firm specifically excluded) and
- (ii) has not claimed deduction under any of the sections 10AA and 80H to 80RRB.

19.2 Eligible business means—

- (i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and
- (ii) whose total turnover or gross receipts in the previous year does not exceed an amount of **two crore rupees** (Amendment by Finance Act, 2016).

19.3 Provisions of this section shall not apply to-

- (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
- (ii) a person earning income in the nature of commission or brokerage; or
- (iii) a person carrying on any agency business

19.4 Presumptive Income

8% of the total turnover/ gross receipts or amount earned by the eligible assessee from such business whichever is higher.

19.5 Other salient features of this presumptive scheme

- **Section 44 AD(2):-** All the deductions under section 30 to 38 shall be deemed to have been allowed. Due to deletion of proviso to this section, if eligible assessee is a firm then it cannot claim deduction in respect of interest and salary paid to partners. **(Amendment made by Finance Act, 2016).**
- **Section 44 AD(3) :-** The WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years.
- **Section 44 AD(4):-** Where an eligible assessee declares profit for any assessment year in accordance with the provisions of this section and he declares profit for any of the five consecutive subsequent assessment years at lower than the required 8 percent, then he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared up to 8 percent.
- **Section 44 AD(5):-** Consequently, such assessee, if total income exceeds maximum amount not chargeable to tax, shall be required to keep and maintain books of accounts and other documents as per section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Practical 18

M/s. Patel & Co., a partnership firm has opened medical store on **10-5-2016**. The firm purchased small furnished shop on **15-04-2016** for Rs. 45,00,000 (which includes Rs. 5,00,000 for furniture) Since it was the first year of operations, firm would like to opt for section 44AD of the Act. Following are the details of first year of operations:

Particulars	Rs.
Sales of Medicines	1,12,00,000
Less :	
Cost of goods sold	(1,03,00,000)
Depreciation as per section 32- shop	(4,00,000)
Depreciation as per section 32- furniture	(50,000)
Salary and interest to partners (as permitted by section 40(b))	(3,65,000)
Other shop expenses	(55,000)
Net profit	30,000
Income from other sources	10,000

You are required to compute total income of the firm for the assessment year **2017-18**.

Solution

Computation of Total income of Patel & Co. for the A.Y. 2017-18

Particulars	Rs.
Business income	8,96,000
Income from other Sources	10,000
Total Income	9,06,000

Working Note: Calculation of presumptive income as per section 44AD

Particulars	Rs.
Turnover	1,12,00,000
Presumptive Income as per section 44AD (8% of Turnover)	8,96,000
Less: Salary and interest to partners	Not deductible
Net presumptive income under section 44AD	8,96,000

Other Notes:

1. Patel & Co. runs medical store and its turnover is less than Rs. 2 Crore, therefore, it is an eligible assessee under section 44AD of the Act.
2. As per the provisions of section 44AD of the Act, assessee has to declare minimum 8% of gross receipts as income under the head "PGBP", if firm would not like to maintain books of accounts.
3. Once firm opts for the section 44AD, all deductions under section 30 to 38 shall be deemed to have been allowed.
4. Further under section 44AD, firm cannot claim interest and remuneration paid to partners as well.

Reader's Note:

Practical 19

Continuing above problem, M/s. Patel & Co. offered its income under section 44AD for the **assessment year 2018-19** and **2019-20** also. However, for **assessment year 2020-21**, M/s. Patel & Co. decided to declare profit from the medical store lower than the 8% of turnover. Discuss the tax consequences of this decision and also find out the depreciation for the **assessment year 2020-21**.

Solution

As per section **44AD(4)** of the Act, where an eligible assessee declares profit for any assessment year in accordance with the provisions of this section and he declares profit for any of the five consecutive subsequent assessment years at lower than the required 8 percent, then he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared up to 8 percent.

Considering the above provision and the facts of present case, since Patel & Co. has declared profit under section 44AD for the **assessment year 2017-18**, ideally, it shall declare the profits under section 44AD of the Act for the following five assessment years:

Sr. No.	Assessment years
1	2018-19
2	2019-20
3	2020-21
4	2021-22
5	2022-23

However, Patel & Co. would like to declare profit from the medical store lower than 8% of turnover in **assessment year 2020-21**, then it shall not be eligible to claim benefit of section 44AD for the following five assessment years:

Sr. No.	Assessment years
1	2021-22
2	2022-23
3	2023-24
4	2024-25
5	2025-26

Consequently, Patel & Co. shall be required to keep and maintain books of accounts and other documents as per section 44AA and get them audited under section 44AB(e) for all the above years provided its total income exceeds exemption limit- **Section 44AD(5)**

As per the provisions of **section 44AD(3)**, the WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years. Considering the requirement of this provision, Patel & Co. can claim depreciation on Shop and furniture for the assessment year **2020-21** as under:

Particulars	Building (Rs.)	Furniture (Rs.)
WDV as on 01-4-2016	Nil	Nil
Add: Purchased during previous year 2016-17	40,00,000	5,00,000
Less: Sold out during previous year 2016-17	Nil	Nil
WDV for the previous year 2016-17	40,00,000	5,00,000
Less: depreciation for the previous year 2016-17	(4,00,000)	(50,000)
WDV as on 01-04-17	36,00,000	4,50,000
Less: Depreciation for the previous year 2017-18	3,60,000	45,000
WDV as on 01-04-18	32,40,000	4,05,000
Less: Depreciation for the previous year 2018-19	3,24,000	40,500
WDV as on 01-04-2019	29,16,000	3,64,500
Less: Depreciation for the previous year 2019-20 (A.Y. 2020-21)	2,91,600	36,450

Reader's Note:

Practical 20

Mr. Sanjay is engaged in the business of Civil Construction undertakes small government projects. He received the following amounts by way of contract receipts:

Particulars	Rs.
Towards contract work for supply of labour	70,00,000
Value of materials supplied by Government	10,00,000
Gross receipts	80,00,000

Mr. Sanjay paid Rs. 50,00,000 to labourers in cash. He has brought forward loss and unabsorbed depreciation of the discontinued business Rs.45,000 and Rs. 30,000 respectively. Compute income under the head "PGBP" assuming that he opts for section 44AD.

Solution

Particulars	Rs.
Presumptive income under section 44AD [Rs. 70,00,000 x 8%]	5,60,000
Less: unabsorbed depreciation	Nil
	5,60,000
Less: Business loss brought forward u/s 72	(45,000)
Business Income	5,15,000

Notes:

- (1) As per para **31.1** of the **circular no. 684 of CBDT dated 10-06-1994**, gross receipts are the amount received from the clients for contract and will not include the value of material supplied by the client.
- (2) Once assessee opts for section 44AD, deduction under section 30 to 38 shall be deemed to have been allowed. Therefore, question of disallowance in respect of labour payment of Rs. 50,00,000 in cash under section 40 A(3) does not arise.

- (3) Once assessee opts for section 44AD, deduction under section 30 to 38 shall be deemed to have been allowed. Since depreciation is governed by section 32(2), it cannot be adjusted while computing income under section 44AD of the Act. But brought forward business loss is governed by section 72, same shall be adjusted against presumptive income computed under section 44AD.

Reader's Note:**20. PRESUMPTIVE TAXATION FOR ASSESSEE ENGAGED IN BUSINESS OF PLYING, HIRING AND LEASING GOODS CARRIAGES****Section:- 44AE****20.1 Eligible assessee:**

Eligible assessee would mean an assessee engaged in business of plying, hiring and leasing goods carriages and not owning more than 10 goods carriages at any time during the previous year

20.2 Presumptive Income

The profits and gains from each goods carriage shall be Rs.7,500 for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or an amount actually earned from the vehicle, whichever is higher

20.3 Other salient features of this presumptive scheme

- All the deductions under section 30 to 38 shall be deemed to have been allowed.
- If eligible assessee is a firm then it can claim deduction in respect of interest and salary paid to partners subject to the conditions and limits specified under section 40(b)..
- The WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years.
- An assessee opting for the above scheme shall be exempted from maintenance of books of accounts related to such business as required under section 44AA of the Income-tax Act.
- Where an eligible assessee declares lower profits than the profits required under this section, then he shall be required to keep and maintain books of accounts and other documents as per section 44AA and get them audited and furnish a report of such audit as required under section 44AB.
- An assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.

Practical 21

Mr. Jambaz owns 12 heavy trucks throughout the previous year **2016-17**. All the trucks were purchased under "Hire Purchase" system. Out of 12 trucks, installments of 9 trucks were fully paid up and while for remaining 3 trucks installments are still due. Since, Mr. Jambaz became the owner of only 9 trucks during the previous year 2016-17, he wants to opt for the presumptive taxation u/s 44AE. Advise Mr. Jambaz.

Solution

As discussed above, an assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.

Therefore, Mr. Jambaz owns 12 trucks during the previous **2016-17**. Therefore, he is not eligible to opt for the presumptive taxation under section 44AE.

Reader's Note:**Practical 22**

M/s. Chhabada & Co., a partnership firm is engaged in the business of plying goods carriages. On **1st April, 2016**, it owns 10 trucks. On **2nd May, 2016**, firm sold one of the trucks and purchased another truck on **6th May, 2016**. This new truck could however be put to use only on **15th June, 2016**.

Compute the total income of M/s. Chhabada & Co. for the assessment year **2017-18**, taking note of the following data:

Particulars	Rs.
Freight charges collected	13,70,000
Less :	
Operational expenses	(6,25,000)
Depreciation as per section 32	(1,85,000)
Salary and interest to partners [as permitted by section 40(b)]	(5,00,000)
Other office expenses	(15,000)
Net profit	45,000
Income from other sources	70,000

Solution**Computation of Total income of Chhabada & Co. for the A.Y. 2017-18**

Particulars	Total Income, if books are not maintained	Total Income, if books are maintained and audited
Income from business of plying goods carriages	4,07,500 [Refer Notes]	45,000
Income from other sources	70,000	70,000
Total Income	9,77,500	1,15,000

Working Note: Calculation of presumptive income as per section 44AE

Particulars	No. of months	Rate per month	Amount (Rs.)
9 trucks – held throughout the year	12	7,500	8,10,000
1 truck – held up to 2 nd May	2	7,500	15,000
1 truck– held from 6th May	11	7,500	82,500
Presumptive Income as per section 44AE			9,07,500
Less: Salary and interest to partners (as permitted by section 40(b))			(5,00,000)
Net presumptive income under section 44AE			4,07,500

Other Notes:

1. M/s. Chhabada & Co., does not own more than 10 trucks at any time during the previous year
Therefore, it is an eligible assessee under section 44AE of the Act.
2. As per the provisions of section 44AE of the Act, assessee has to declare minimum monthly income of Rs. 7,500 per truck per month or part of a month.
3. Once firm opts for the section 44AE, all deductions under section 30 to 38 shall be deemed to have been allowed.
4. Further under section 44AE, it can claim interest and remuneration paid to partners.

Reader's Note:

21. PRESUMPTIVE TAXATION FOR ASSESSEE ENGAGED IN SPECIFIED PROFESSION

Section:- 44ADA

21.1 Eligible Assessee

Eligible assessee – would mean a resident assessee who is engaged in specified profession [under section 44AA(1)] and whose total gross receipts do not exceed Rs. 50 lakh in a previous year

21.2 Presumptive Income

50% of the total gross receipts or amount earned by the eligible assessee from such profession whichever is higher.

21.3 Other salient features of this presumptive scheme

1. All the deductions under section 30 to 38 shall deemed to have been allowed.
2. If eligible assessee is a firm then it cannot claim deduction in respect of interest and salary paid to partners.
3. The WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years.

4. Where an eligible assessee declares lower profits than the profits required under this section and whose total income exceeds maximum amount not chargeable to tax, then he shall be required to keep and maintain books of accounts and other documents as per section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Practical 23

Thakker & Co., a firm of chartered accountants following information:

Particulars	Rs.
Gross Receipts	48,00,000
Salary and interest to partners [as permitted by section 40(b)]	(12,00,000)
Salary to employees	(8,00,000)
Depreciation	(6,00,000)
Other expenses	(5,00,000)
Net profit of the firm	17,00,000

Determine the total income of Thakker & Co. for the assessment year **2017-18** assuming that income from other sources is Rs. 40,000 and the firm is eligible for a deduction of Rs. 5,000 under section 80G.

Solution**Computation of Total income of Thakker & Co. for the A.Y. 2017-18**

Particulars	Total Income, if books are not maintained	Total Income, if books are maintained and audited
Income from profession	24,00,000 [Refer Notes]	17,00,000
Income from other Sources	40,000	40,000
Gross Total Income	24,40,000	17,40,000
Less: Deduction under section 80 G	(5,000)	(5,000)
Total Income	23,35,000	17,35,000

Working Note: Calculation of presumptive income as per section 44ADA

Particulars	Amount in Rs.
Gross Receipts	48,00,000
Presumptive Income as per section 44ADA (50% of Gross Receipts)	24,00,000
Less: Salary and interest to partners	Not deductible
Net presumptive income under section 44ADA	24,00,000

Other Notes:

- Thakker & Co., is a firm of chartered accountants and gross receipts for the relevant previous year does not exceed Rs. 50 Lacs. Therefore, it is an eligible assessee under section 44ADA of the Act.
- As per the provisions of section 44ADA of the Act, assessee has to declare minimum 50% of gross receipts as income under the head "PGBP", if firm would not like to maintain books of accounts.

3. Once firm opts for the section 44ADA, all deductions under section 30 to 38 shall be deemed to have been allowed.
4. Further under section 44ADA, firm cannot claim interest and remuneration paid to partners as well.

Reader's Note:

22. TAX AUDIT

Section:- 44AB

22.1 Applicability of this provision:

Section 44AB prescribes accounts to be audited in following five situations:-

Clause No.	Situation giving rise to tax audit
(a)	Every person carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year;
(b)	Every person carrying on profession shall, if his gross receipts in profession exceed twenty-five (fifty – Amendment by Finance Act, 2016) lakh rupees in any previous year; or
(c)	Every person carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under <u>section 44AE</u> or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year;
(d)	Every person carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under <u>section 44ADA</u> and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his total income exceeds the maximum amount which is not chargeable to income-tax in any previous year; (modified by Finance Act, 2016)
(e)	Every person carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his total income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

Practical 24

Mr. Ramesh runs grocery shop. Total turnover of this grocery shop for the previous year **2016-17** is Rs. 1 Cr and 45 Lacs. He would not like to opt for the provisions of section 44AD. He regularly maintains books of accounts. Due to loss under head house property and the deductions under section 80C to 80 U, total income of Mr. Ramesh for the previous year **2016-17** is Rs. 2,30,000. Whether he is required to get his accounts audited? If yes, then under which clause?

Solution

Consider following press release issued by the CBDT dated 20th June, 2016 giving clarification on “Threshold Limit of tax audit under section 44AB and section 44AD”:

- Section 44AB of the Income-tax Act ('the Act') makes it obligatory for every person carrying on business to get his accounts of any previous year audited if his total sales, turnover or gross receipts exceed one crore rupees.
- However, if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees.
- The higher threshold for non-audit of accounts has been given only to assessee's opting for presumptive taxation scheme under section 44AD.

Considering the above press release and the fact that Mr. Ramesh would not like to opt for section 44AD, he is advised to get his accounts audited under **clause (a) section 44AB** of the Act since turnover of grocery shop exceeded Rs. 1 Cr irrespective of his total income.

Reader's Note:

Practical 25

Mr. Kishore owns 5 heavy trucks throughout the previous year **2016-17**. He wants to declare business income of Rs. 2,45,000 from truck operations. Income from other sources is Rs.5,000. He wants to claim deduction of Rs. 30,000 u/s 80C. Advice Mr. Kishore for maintaining books of accounts and getting them audited.

Solution

In this case, Mr. Kishore wants to declare income from truck operation Rs.2,45,000 which is less than the income required to be disclosed under section 44AE (i.e., $5 \times \text{Rs.}7500 \times 12 = \text{Rs. } 4,50,000$). Therefore, he must maintain books of accounts and get the same audited under section 44AB(c) irrespective of his total income.

Reader's Note:

Practical 26

Mr. Utsav is a chartered accountant. He practices in individual name. For the previous year **2016-7**, his gross receipts from the profession was Rs. 9,00,000. He wants to declare Rs. 2,55,000 net income from this profession. Further, he earned interest on fixed deposit Rs. 5,000. He wants to claim deduction Rs. 30,000 u/s 80C. Advise him about getting his accounts audited in view of requirements of Section 44AB (d) of the Act.

Solution

In this case, Mr. Utsav wants to declare Rs.2,55,000 from his profession which is less than 50% of gross receipts (Rs.9,00,000 in this case).

Computation of Total Income of Mr. Utsav

Particulars	Rs.
Income from profession	2,55,000
Add: Income from other Sources	5,000
Gross Total Income	2,60,000
Less: Deduction under section 80C	(30,000)
Total Income	2,30,000

Since total income of Mr. Utsav does not exceed exemption limit, therefore, he is not required to get his accounts audited in view of the requirements of section 44AB(d) of the Act even though he would like to declare income from profession lower than 50% of gross receipts.

Reader's Note:**Practical 27**

Does your answer differ in above problem, if income from other sources was Rs.40,000 instead of Rs.5,000.

Solution**Computation of Total Income**

Particulars	Amount in Rs.
Business Income	2,55,000
Add: Income from other Sources	40,000
Gross Total Income	2,95,000
Less: Deduction under section 80C	30,000
Total Income	2,65,000

Since total income of Mr. Utsav exceeded exemption limit, therefore, he is required to get his accounts audited under section 44AD(d).

Reader's Note:

22.2 Audit

The audit shall be conducted by an accountant as explained u/s. 288 of the Income Tax Act

22.3 Specified date for furnishing report

On or before due date of filing return under section 139 (1) of the Act.

22.4 Forms of report

Nature of Person	Audit Report	Statement of Particulars
In case of a person who carries on business or profession and who is required to get his accounts audited under any law	Form 3CA	Form 3CD
In case of person who carries on business or profession but not being a person referred to above.	Form 3CB	Form 3CD

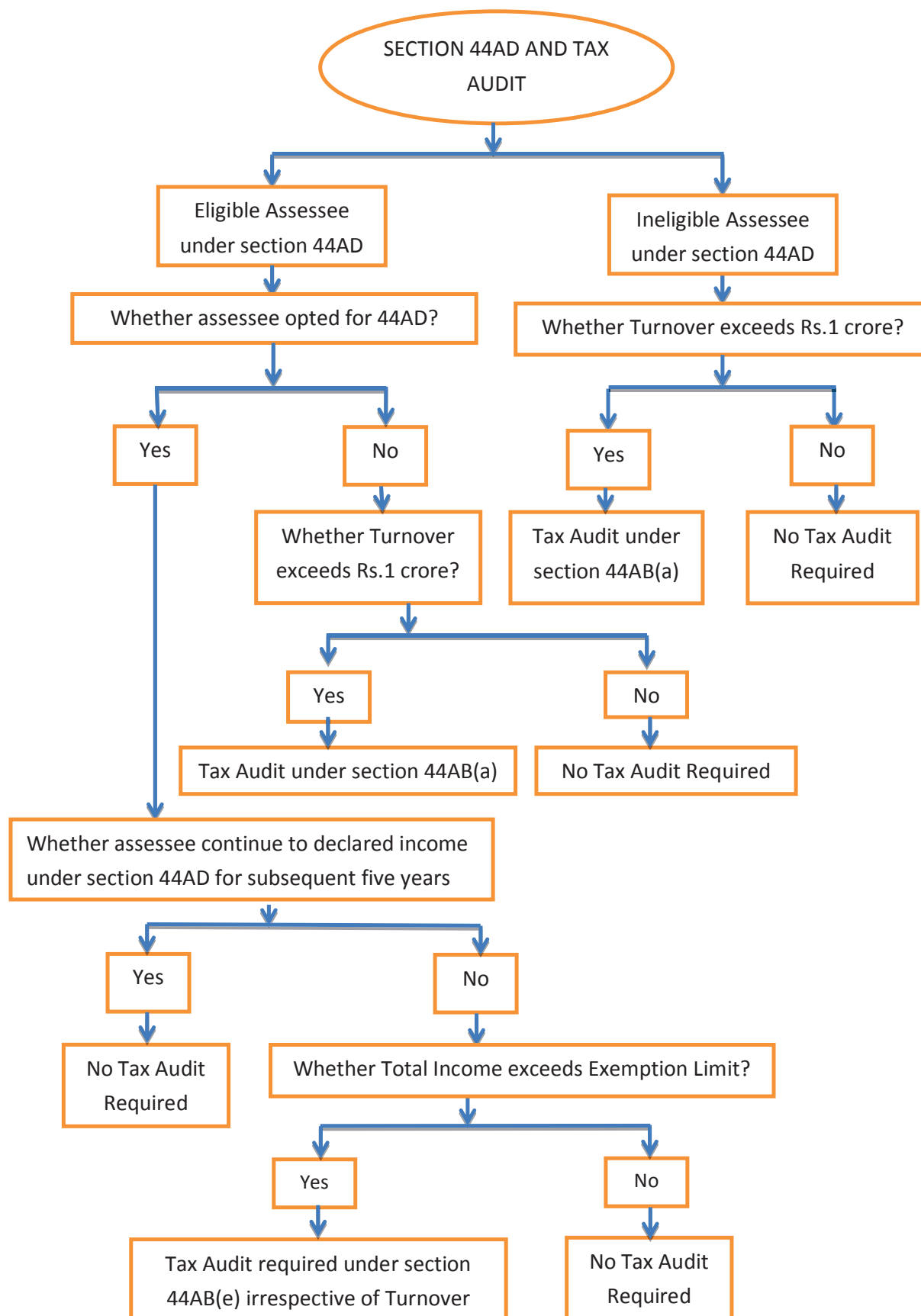
22.5 Consequence of non – compliance

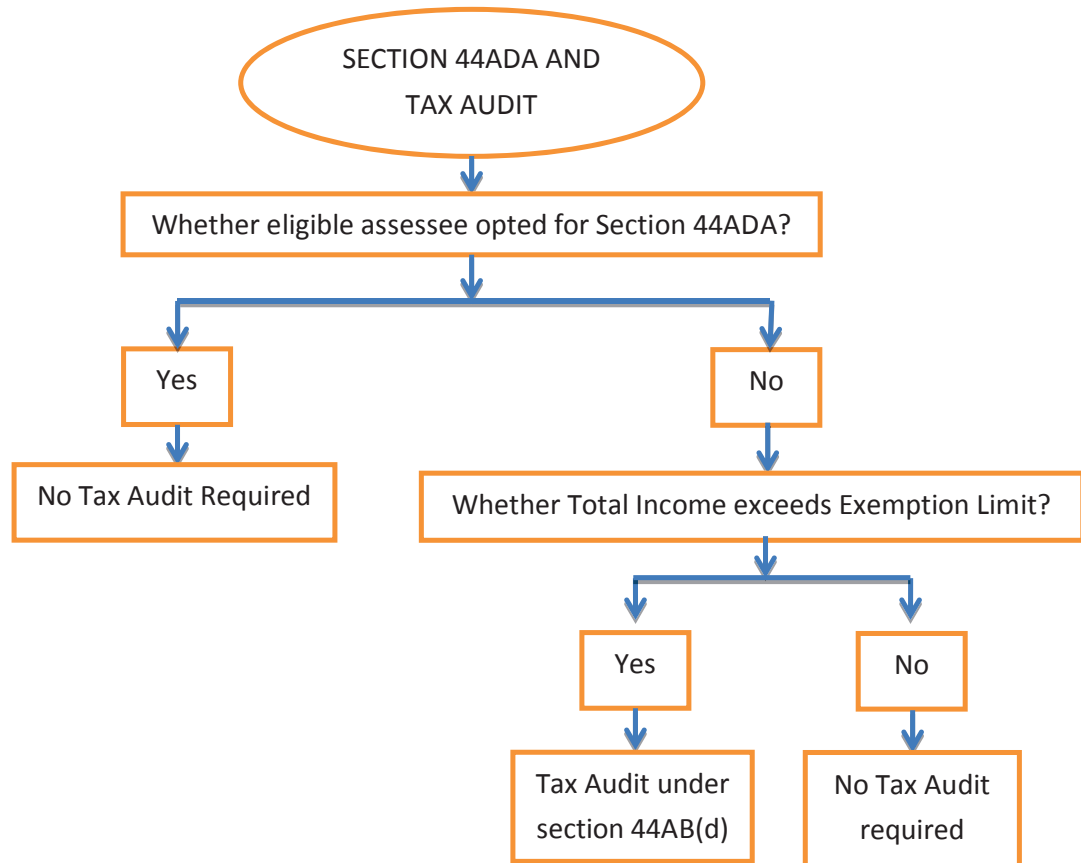
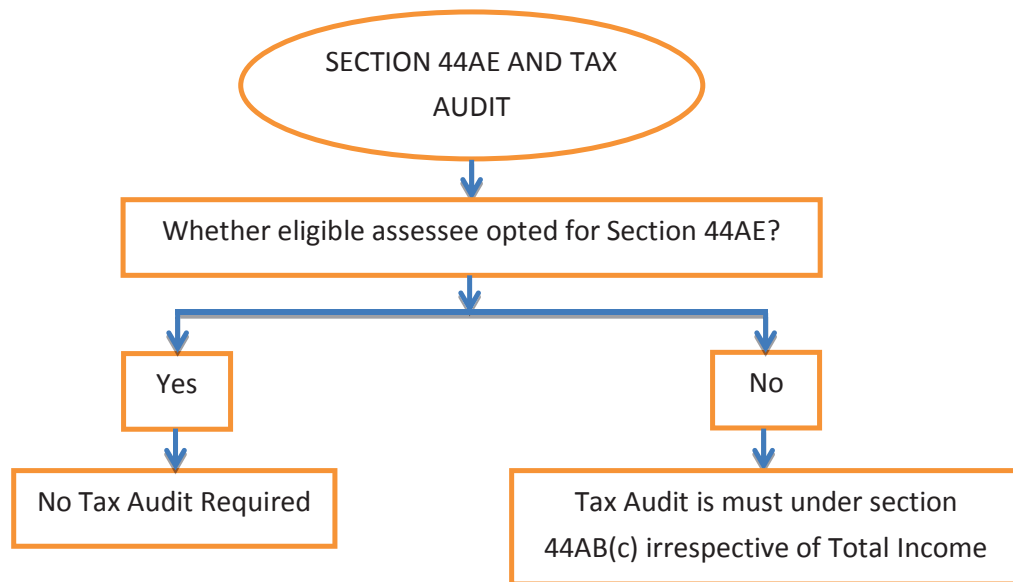
Failure to

- 1) get accounts audited;
- 2) obtain a audit report as required u/s. 44AB;
- 3) furnish the said report before the due date;

then, the assessee is liable to pay a penalty @ 0.5% of the gross turnover / receipts or Rs.1,50,000/- whichever is less **[Section 271B]**.

To sum up presumptive taxation and tax audit, consider following:





Whether deduction of interest and remuneration to partner shall be allowed out of presumptive income?

Section 44AD	Section 44AE	Section 44ADA
No	Yes	No

23. EQUALISATION LEVY

Section:- Chapter VIII of Finance Act, 2016, 10(50), 40(a)(ib)

To tackle taxation issues in transaction conducted in cyber space, equalization levy has been imposed. Salient features of levy are given below-

(1) Date on which levy come into force:- This levy shall come into force on such date as Central Government may, by notification in the Official Gazette, appoint. Vide Notification No.38/2016 dated 27.5.2016, Equalisation Levy Rules, 2016 were notified, which come into force on **1st June, 2016**.

(2) Charging provision:- Equalisation levy shall be charged at the rate of 6 percent of the amount of consideration for specified services received or receivable by a non-resident from

- a person resident in India and carrying on business or profession or
- from a non-resident having a permanent establishment in India.

"Specified service" for this purpose, means online advertisement, any provision for digital advertising space or any other facility service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf.

(3) Relaxation from equalization levy:- In the following cases equalization levy is not applicable-

- (a)** If the non-resident service provider has a permanent establishment in India and income from such specified services is effectively connected to this permanent establishment;
- (b)** Where the payment for specified service by the person resident in India (or the permanent establishment in India) is not for the purpose of carrying out business or profession.
- (c)** If the aggregate amount of consideration for specified services received or receivable by a non-resident from a person resident in India (or from a non-resident having a permanent establishment in India) does not exceed Rs.1 lakh in any previous year.

(4) Time limit for deposit of equalization levy:- Every person, being a resident and carrying on business or profession or a non-resident having a permanent establishment in India (here for the purpose of equalization levy referred to as "assessee") shall deduct equalization levy from the amount paid or payable to the non-resident in respect of specified services. The amount of equalization levy so deducted by the payer has to be paid to the credit of the Government by 7th day of the month following the month in which the equalization levy is collected. Even if equalization levy is not deducted, the payer is liable to pay the levy to the credit of Central Government.

(5) Interest for late payment:- Simple interest at the rate of 1 per cent for every month (or part of a month) shall be payable where the equalization levy collected is not credited to the account of the Central Government within the due date of payment.

(6) Penalty:- An assessee will liable for penalty as follows-

Situations	Penalty (in addition to paying equalization levy and interest)
Failure to deduct equalization levy (wholly or partly)	A penalty equal to amount of equalization levy
Failure to deposit equalization levy with Government	Rs.1,000 for each day of default (not to exceed amount of equalization levy)
Failure to furnish statement (Return)	Rs.100 for each day of default

Penalty is not impossible if the assessee proves to the satisfaction of the Assessing Officer that there was reasonable cause for the failure given above.

(7) Consequential amendments in the Income Tax Act:

- **Section 10(50):** Any income arising from any specified service provided on or after 1st June, 2016 and chargeable to equalization levy shall be exempt from tax.
- **Section 40(a)(ib):** Any consideration paid or payable to a non-resident for a specified service on which equalisation levy is deductible, shall be disallowed, if such levy has not been deducted or after deduction, has not been paid on or before the due date under section 139(1) . However such sum shall be allowed as a deduction in the previous year in which such levy has been paid.

24. RAYALA CORPORATION (P) LTD. V. ASSTT. CIT (2016) 386 ITR 500 (SC)

Would rental income from the business of leasing out properties be taxable under the head “Income from house property” or “Profits and gains from business or profession”?

Facts of the case: The assessee company was in the business of renting its properties and received rent which it claims as its business income chargeable under the head “Profits and Gains from business or profession”. The Assessing Officer, however, brought to tax the rental income under the head “Income from house property”.

Supreme Court’s Observations: The Apex Court took note of the specific finding by the authorities that the assessee had stopped its other business activities and continued only the business of leasing out its properties and earning rent therefrom. Thus, it noted that the assessee was engaged only in the business of renting its properties and earning rental income. It made reference to law laid down by it in Chennai Properties & Investments Ltd v. CIT (2015) 373 ITR 673 (SC) that if an assessee is engaged in the business of letting out house property on rent, then, the income from such property, even though in the nature of rent, should be treated as business income. The Court held that the judgment in Chennai Properties & Investment Ltd.’s case would squarely apply in this case also, since the company is engaged in the business of letting out properties and earning rental income therefrom.

Supreme Court's decision: The Apex Court, thus, held that since the business of the company is to lease out its property and earn rent therefrom, the rental income earned by the company is chargeable to tax as its business income and not income from house property.

25. SHASUN CHEMICALS & DRUGS LTD V. CIT (2016) 388 ITR 1 (SC)

In a case where payment of bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, would the same be allowable under section 36(1)(ii) while computing business income?

Facts of the case: The assessee-company and its employees union had a dispute as regard the quantum of bonus which led to labour unrest. Due to this reason, the workers refused to accept the bonus offered to them. However, in order to comply with the requirement of section 43B (i.e., deduction in respect of bonus would be allowable only if actual payment is made) the assessee made payment to a trust. The dispute with the workers was settled well in time and the bonus was paid to the workers on the very next day of deposit of the said amount in the trust that too, before the 'due date' by which such payment is supposed to be made in order to claim deduction under section 36.

The Assessing Officer, however, took a view that since the payment was made from the trust and not made by the assessee directly to the employees, it is not allowable in view of the provisions of section 40A(9) of the Act.

Supreme Court's decision: The Apex Court held that section 36(1) contains various kinds of expenses which are allowable as deduction while computing the business income. The amount paid by way of bonus is one such expenditure which is allowable as deduction under section 36(1)(ii).

It also held that the embargo contained in section 43B(b) or section 40A(9) does not come in the way of the assessee's claim, since the bonus was ultimately paid to the employees before the due date as per the statutory requirement. Therefore, the payment in respect of bonus is allowable as deduction, as there is no dispute that the amount was paid by the assessee to its employees before the due date by which such payment is supposed to be made in order to claim deduction under section 36(1)(ii).

IMPORTANT CASE LAWS

1. CIT v. K and Co. (2014) 364 ITR 93 (Del) **[DECISION NO. 3 OF ICAI CASE STUDY BOOK-PAGE NO. 20]**
2. CIT v. TVS Motors Ltd (2014) 364 ITR 1 (Mad) **[DECISION NO. 4 OF ICAI CASE STUDY BOOK-PAGE NO. 21]**
3. CIT v. IBM Global Services India P Ltd (2014) 366 ITR 293 (Karn) **[DECISION NO. 15 OF ICAI CASE STUDY BOOK-PAGE NO. 31]**

UNIT F – CAPITAL GAINS

26. PERIOD OF HOLDING OF UNLISTED SHARES TO QUALIFY AS A LONG-TERM CAPITAL ASSET TO BE REDUCED FROM “MORE THAN 36 MONTHS” TO “MORE THAN 24 MONTHS”**Section:- 2(42A) – Effective from A.Y.2017-18**

As per section 2(42A), a short-term capital asset means capital asset held by an assessee for not more than 36 months immediately prior to its date of transfer. However, in the following cases an asset, held for not more than 12 months, is treated as short-term capital asset-

- (a) Equity or preference shares in a company (Listed in a recognized stock exchange)
- (b) Securities listed in a recognized stock exchange in India.
- (c) Units of UTI (whether listed or not)
- (d) Units of an equity oriented fund (whether listed or not)
- (e) Zero Coupon Bonds (whether listed or not)

Remark:

In case of unlisted shares (equity or preference), if transfer takes place on or after 1st April, 2016, the period of holding not exceeding 24 months, shall be taken into consideration instead of 36 months.

Practical 28

Mr. Mohan purchased 1000 shares of Tata Motors Limited (Listed) on 10th August, 2015. Thereafter, he sold out these shares on 15th February, 2017.

- (a) Determine the nature of asset.
- (b) What would have been your answer, if instead of shares of TATA Motor Limited, shares of Bye Bye Private Limited is given?

Solution

- (a) Period of holding in respect of shares of Tata Motors Limited is exceeding 12 months. Hence, shares of Tata Motors Limited are long term capital assets.
- (b) Period of holding of share of Bye Bye Private Limited is not exceeding 24 months. Hence, shares of Bye Bye Private Limited are short term capital assets.

Readers Note:

27. TOTAL VALUE OF ASSETS OF A PRIVATE COMPANY OR UNLISTED COMPANY NOT TO EXCEED Rs.5 CRORE IN ANY OF THE THREE PRECEDING PREVIOUS YEARS FOR EXEMPTION OF TRANSFER OF CAPITAL ASSET OR INTANGIBLE ASSET ON CONVERSION OF SUCH COMPANY INTO LLP

Section:- 47(xiiib)– Effective from A.Y.2017-18

Transactions not regarded as transfer

- (i) transfer of a capital asset or intangible asset by a private company or unlisted public company (ULC) to a limited liability partnership
- (ii) transfer of a share or shares held in the company by a shareholder
as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 is not treated as transfer if following conditions are satisfied:-
 - (a) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;
 - (b) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;
 - (c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;
 - (d) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;
 - (e) the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and
 - (f) **the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed five crore rupees; and (inserted by Finance Act, 2016 effective from A.Y. 2017-18)**
 - (g) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

28. RUPEE APPRECIATION GAINS ON REDEMPTION OF RDBS NOT TO BE INCLUDED IN FULL VALUE OF CONSIDERATION

Section:- Fourth Proviso to section 48-Effective From A.Y.2017-18

As per the fourth proviso to section 48, in case of assessee being non-resident, any gains arising on account of rupee appreciation against foreign currency at the time of redemption of rupee denominated bond of an Indian company subscribed by him shall not be included in computation of full value of consideration.

Practical 29

Mr. Raghav, non-resident has subscribed rupee denominated bonds (RDBs) of Indian company. Discuss tax treatment of following components on redemption of above bonds.

- (a) Interest earned on such RDBs.
- (b) Gain arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company subscribed by him.

Solution

- (a) Interest earned on such RDBs shall be taxed in the hands of Mr. Raghav @ 5% under section 115A of the Act.
- (b) As per the amendment made by Finance Act, 2016 under section 48, gain arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company subscribed by him, shall be ignored while computing full value of consideration. That means, such gain is not taxable.

Readers Note:

29. COST OF ACQUISITION OF ASSET, WHOSE FAIR MARKET VALUE HAS BEEN TAKEN INTO ACCOUNT FOR THE INCOME DECLARATION SCHEME, 2016

Section:- 49(5) - Effective From A.Y.2017-18

Where the capital gain arises from the transfer of an asset declared under the Income Declaration Scheme, 2016 (IDS), and the tax, surcharge and penalty have been paid in accordance with the provisions of the Scheme on the fair market value of the asset as on the date of commencement of the Scheme (i.e. 1st June, 2016), the cost of acquisition of the asset shall be deemed to be the fair market value of the asset which has been taken into account for the purposes of IDS.

Practical 30

Mr. Black provides following information:

- (a) He purchased gold worth Rs. 1,00,000 in the financial year 1987-88 out of unaccounted money.
- (b) He disclosed this gold under IDS and paid tax, surcharge and penalty at the rate of 45 per cent of fair market value of gold on June 1, 2016.
- (c) The fair market value of gold on June 1, 2016 was Rs. 12,00,000.
- (d) He then sold out gold on 11th January, 2017 for Rs. 12,65,000.

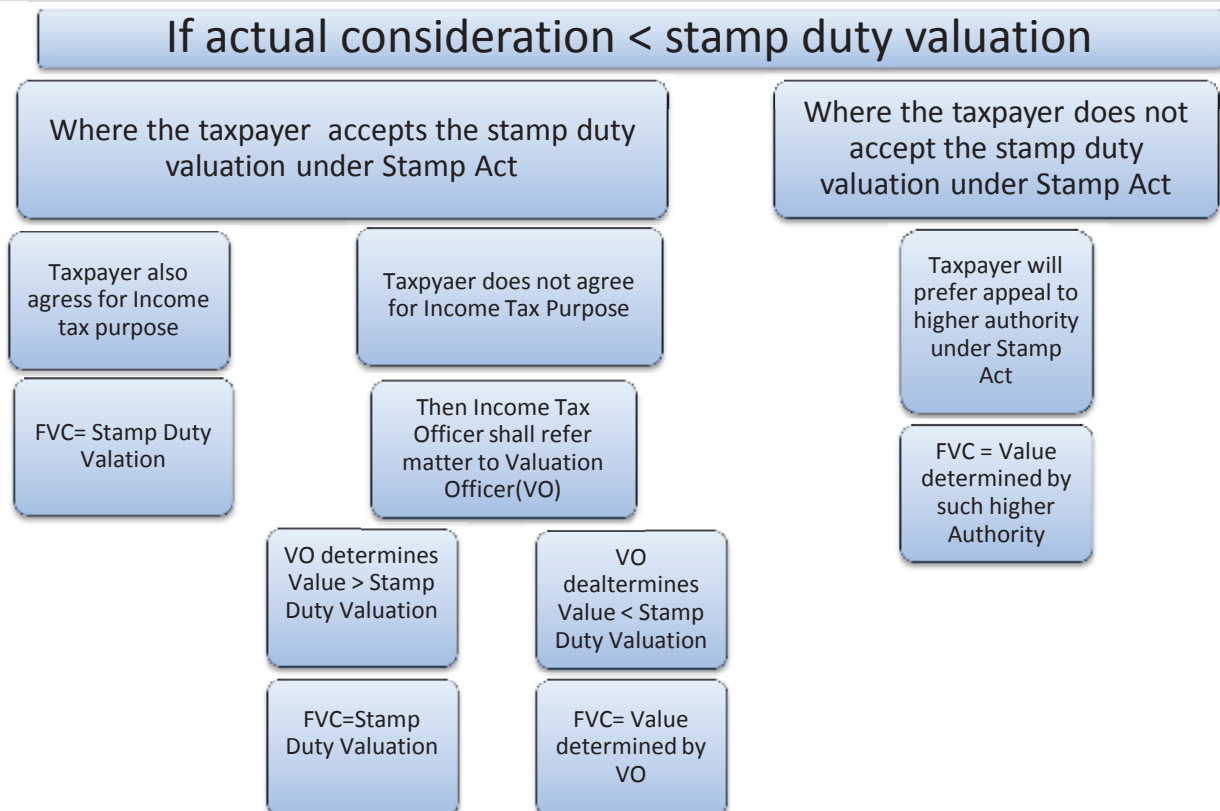
Find out capital gain chargeable to tax in the hands of Mr. Black

Solution**Computation of Capital Gain for the Previous Year 2016-17 in the hands of Mr. Black**

Period of Holding: 87-88 to 11.01.2017	
Nature of Capital Asset: Long Term	
Particulars	Rs.
Full value of consideration	12,65,000
Less: Expenses in connection with Transfer	-
Net Consideration	12,65,000
Less: Indexed Cost of acquisition $(12,00,000 \times \frac{1125}{150})$	(90,00,000)
Long Term Capital Gain	(77,35,000)

Readers Note:

- 30. STAMP DUTY VALUE ON THE DATE OF AGREEMENT MAY BE ADOPTED AS FULL VALUE OF CONSIDERATION OF IMMOVABLE PROPERTY, BEING LAND OR BUILDING OR BOTH, IF WHOLE OR PART OF THE CONSIDERATION HAS BEEN PAID BY AN ACCOUNT PAYEE CHEQUE OR ACCOUNT PAYEE BANK DRAFT OR USE OF ELECTRONIC CLEARING SYSTEM THROUGH A BANK ACCOUNT, ON OR BEFORE THE DATE OF THE AGREEMENT FOR THE TRANSFER OF SUCH IMMOVABLE PROPERTY**

Section:- 43CA and 50C

NOTE RELVENAT FOR SECTION 43CA:

As per sub-section (3) and (4) of Section 43CA, if there is a time gap between date of agreement and date of registration, **the stamp duty value may be taken as on the date of agreement** instead of the date of registration.

However, for the same, at least a part of the consideration has been received by any mode other than cash on or before the date of agreement.

NOTE RELVENAT FOR SECTION 50C (AS AMENDED BY FINANCE ACT, 2016):

As per first and second proviso to section 50 C(1) as inserted by Finance Act, 2016, if there is a time gap between the date of the agreement and the date of registration, the stamp duty value may be taken as on the date of agreement instead of the date of registration.

However, for the same, at least a part of the consideration has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement.

Now let's compare section 43CA and 50C

Particulars	Land and/or Building held as Business Asset (stock-in-trade)	Land and/or Building held as Capital Asset.
Taxability governed by?	Section 43CA [See Chart above]	Section 50C [See Chart above]
Whether option to adopt stamp duty value on date of agreement is available?	YES [See Note above]	YES (Amendment by Finance Act, 2016) [See Note above]

Practical 31

Rahul sold a building to Shweta, details of which are as under:

1. Date of entering into agreement: **1.8.2016**.
2. Agreed consideration : Rs. 100 lakhs
3. Down payment of Rs. 5 lakhs was received by bearer cheque on the date of agreement.
4. Stamp duty value of the building on the date of agreement was Rs. 135 lakhs.
5. On receipt of balance payment, registration of sale deed took place on **1.1.2017**.
6. Stamp Duty value on the date of registration of sale deed was Rs. 145 lakhs.
7. Rahul has purchased this building for Rs. 65 Lakh on **12.07.2015**.

Discuss tax implication in the hands of Rahul, if

Alternative 1: He is a property dealer.

Alternative 2: He is a Chartered Accountant.

Solution

Alternative 1: Rahul is a property dealer.

(1) Provision Applicable

- ✓ Section 43CA is applicable since building represents his stock-in-trade and
- ✓ Consideration charged is less than the stamp duty value on the date of registration.

(2) Computation of taxable business income

Particulars	Rs. in lakhs	Remarks
Sale Consideration	135	As per Section 43CA(3)& (4), if there is a time gap between date of agreement and date of registration, the stamp duty value may be taken as on the date of agreement instead of the date of registration. However, for the same, at least a part of the consideration has been paid by any mode other than cash on or before the date of agreement.
Less: Purchase Price	<u>65</u>	-
Business Income	<u>70</u>	-

Alternative 2: Rahul is a Chartered Accountant.

(1) Provision Applicable

- ✓ Section 50C is applicable since building represents his capital asset and
- ✓ Consideration charged is less than the stamp duty value on the date of registration.

(2) Period of holding:

- ✓ Period of holding is from **12.07.2015 to 01.01.2017** (i.e., not exceeding 36 months)
- ✓ So the gain would be considered as short term capital gain.

(3) Computation of taxable capital gain

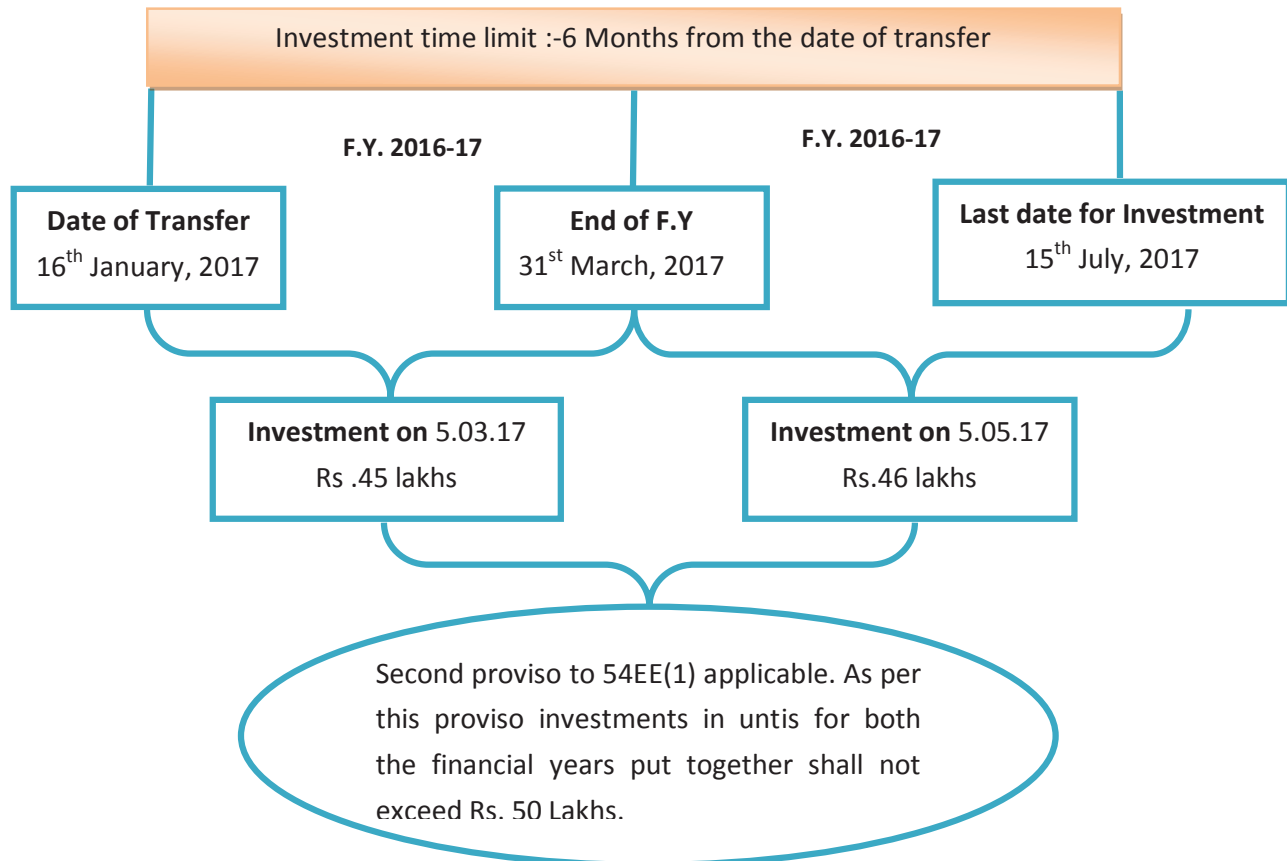
Particulars	Rs. in lakhs	Remarks
Sale Consideration	145	The amendment made by Finance Act, 2016 under section 50C gives an option to adopt stamp duty value on the date of registration provided some consideration has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement Readers shall pay attention to the fact that Rahul received bearer cheque. Therefore, he cannot take advantage of above amendment.
Less: Cost of Acquisition	<u>65</u>	-
Short Term Capital Gain	<u>80</u>	-

Readers Note:

31. EXEMPTION OF LONG-TERM CAPITAL GAINS ON INVESTMENT IN NOTIFIED UNITS OF SPECIFIED FUND (FUND TO BE ESTABLISHED FOR “START UP INDIA ACTION PLAN”)**Section:- 54EE - Effective From A.Y.2017-18****Q 1.** Who can claim exemption?**Ans.** Any person**Q2.** What is the nature of capital asset which has been transferred?**Ans.** Long Term Capital Asset**Q3.** Which specific asset is eligible for exemption (that means which asset has been transferred?)**Ans.** Any Capital Asset**Q4.** Which asset the tax-payer shall acquire to avail exemption under this section?**Ans.** Units issued before 1st day of April 2019, of such fund as Central Government may notify (Fund to be established for “Start up India Action plan”)**Q5.** What is time-limit for acquiring the new capital asset?**Ans.** Six months from the date of transfer**Q6.** What is the quantum of exemption?**Ans.** Exemption under section 54EE = Amount invested in units of notified fund or capital gain whichever is lower.**Upper Limit for exemption: Under no circumstances, exemption under 54EE shall exceed Rs. 50 Lac in a financial year.****Q7.** Is it possible to revoke the exemption in a subsequent year? (Can exemption be taken back?)**Ans.** If such units of notified funds are transferred or loan is taken on the security of new asset within 3 years **from the date of its acquisition.****Q7.1.** What is the nature of capital gain if exemption is taken back in subsequent year?**Ans.** Long term**Q8.** Is scheme of Deposit available?**Ans.** No.

Practical 32

Mrs. X, resident woman, transfers (Date of transfer:-January 16, 2017) a house property resulting into long term capital gain of Rs. 1,01,50,000. She invests a sum of Rs. 45,00,000 in notified units of specified fund for the purpose of section 54EE. She further invests a sum of Rs. 46,00,000 in the same units on May 5, 2017. Accordingly, she wants to claim exemption of Rs. 91,00,000 under 54EE. Advise her suitably.

Solution

Therefore, considering the above, Mrs. X is entitled to claim exemption of Rs. 50,00,000 under section 54EE instead of Rs. 91,00,000.

Readers Note:

32. EXEMPTION OF LONG-TERM CAPITAL GAINS ON TRANSFER OF RESIDENTIAL PROPERTY IF THE SALE CONSIDERATION IS USED FOR SUBSCRIPTION IN EQUITY OF A NEW START-UP MANUFACTURING SME COMPANY / ELIGIBLE START UP TO BE USED FOR PURCHASE OF NEW PLANT AND MACHINERY

Section:- 54 GB

Q 1. Who can claim exemption?

Ans. Individual or HUF

Q2. What is the nature of capital asset which has been transferred?

Ans. Long Term Capital Asset

Q3. Which specific asset is eligible for exemption?

Ans. Residential House Property or plot of land provided transfer takes place on or before 31-03-2017.
However, for an eligible start up last date of transfer shall be 31-03-2019 instead of 31-03-2017.

Q4. Which asset the tax-payer shall acquire to avail exemption under this section?

Ans. Equity shares of eligible company.

"eligible company" means a company which fulfils the following conditions, namely:—

- i. *it is a company incorporated in India on or after 1st April of the previous year (during which the capital gain arises) but on or before due date of furnishing of return of income under sub-section (1) of [section 139](#);*
- ii. *it is engaged in the business of manufacture of an article or a thing or **in an eligible business (Amendment by Finance Act, 2016 w.e.f. A.Y. 2017-18)**;*
- iii. *it is a company in which the assessee has more than fifty per cent share capital or more than fifty per cent voting rights after the subscription in shares by the assessee; and*
- iv. *it is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006 (Where the investment in plant and machinery is more than Rs. 25 Lakh but not more than Rs. 10 crore) or **is an eligible start-up. (Amendment by Finance Act, 2016 w.e.f. A.Y. 2017-18)***

Q4.1. What is time-limit for acquiring the new capital asset?

Ans. Equity shares of eligible company shall be acquired on or before the due date of furnishing return of income.

Further, Eligible company shall utilize this amount for purchase of a "new asset" within 1 year from date of subscription of equity shares

"new asset" means new plant and machinery but does not include—

- (i) *any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;*
- (ii) *any machinery or plant 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; **(However, for eligible start up new asset shall include computers or computer software – Amendment by Finance Act, 2016)***
- (iv) *any vehicle; or*

- (v) *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 previous year.*

Q5. What is the quantum of exemption?

Ans. Exemption under section 54 GB = Investment in new Asset * Capital gain / Net consideration

Q6. Is it possible to revoke the exemption in a subsequent year?

Ans. In following cases, exemption is taken back

- a. If equity shares of eligible company are sold or otherwise transferred within 5 years from the date of its acquisition
- b. If new asset is sold or otherwise transferred within 5 years from the date of its acquisition

Q6.1. What is the nature of capital gain if exemption is taken back in subsequent year?

Ans. Long term

Q7. Is scheme of Deposit available?

Ans. The eligible company shall utilize this amount for purchase of a “new asset” within 1 year from date of subscription of equity shares. If however, company does not utilize this amount for the purchase of a “new asset” before due date of furnishing of return under section 139 (1), it shall be deposited by the company in capital gain deposit account. In such a case, exemption shall be granted based on amount deposited in the deposit account.

If the deposit account is not utilized fully or partly for purchasing “new asset” within 1 year from the subscription of equity shares then exemption will be taken back and charged to tax as long term capital gain in the previous year in which this period of 1 year expires.

Practical 33

Mr. Akash sold his residential property on 2nd February, 2017 for Rs. 90 lakh and paid brokerage@1% of sale price. Indexed Cost of acquisition of the said house property was Rs. 51,12,000. In June, 2017, he invested Rs. 75 lakh in equity of A (P) Ltd., an eligible start up, which constituted 63% of share capital of the said company. A (P) Ltd. utilized the said sum for the following purposes –

- (a) Purchase of new plant and machinery during July 2017 – Rs. 59 lakh
- (b) Included in (a) above are Rs. 6 lakh for purchase of computers and Rs. 8 lakh for purchase of cars.
- (c) Air-conditioners purchased for Rs. 1 lakh, included in the (a) above, were installed at the residence of Mr. Akash.
- (d) Amount deposited in specified bank on 28.9.2017 – Rs. 10 lakh

Compute the chargeable capital gain for the A.Y.2017-18. Assume that Mr. Akash is liable to file his return of income on or before 30th September, 2017.

Solution**Computation of taxable capital gains for A.Y.2017-18**

Particulars	Rs.
Full value of consideration	90,00,000
Less: Expenses on transfer (1% of the FVC)	(90,000)
Net consideration	89,10,000
Less: Indexed cost of acquisition	(51,12,000)
Long Term Capital Gain before exemption	37,98,000
Less: Exemption under section 54GB (Rs. 37,98,000 × Rs. 60,00,000 / Rs. 89,10,000)	25,57,576
Taxable capital gains	12,40,424

Deemed cost of new plant and machinery for exemption under section 54GB

Particulars	Rs.	Rs.
(1) Purchase cost of new plant and machinery acquired in July, 2017		59,00,000
Less:		
Cost of vehicles, i.e., cars	8,00,000	
Cost of air-conditioners installed at the residence of Mr. Akash	1,00,000	(9,00,000)
		50,00,000
(2) Amount deposited in the specified bank before the due date of filing of return		10,00,000
Deemed cost of new plant and machinery for exemption under section 54GB		60,00,000

Readers Note:**33. COST OF ACQUISITION IN CASE OF TRANSFER OF RIGHT TO CARRY ON PROFESSION SHALL BE TAKEN AS NIL****Section:- 55 – Effective from A.Y. 2017-18**

By virtue of the provisions of section 55, while calculating capital gain on transfer of the following self-generated assets, cost of acquisition and cost of improvement shall be taken as under:

Self-generated assets	What shall be the cost of acquisition?	What shall be cost of improvement?
1. Goodwill of a business or	<i>Nil</i>	<i>Nil</i>
2. Tenancy rights, route permits and loom hours	<i>Nil</i>	Actual
3. Right to manufacture, produce or process any article or right to carry on any business or profession (w.e.f. AY 17-18)	<i>Nil</i>	<i>Nil</i>
4. Trade mark or brand name associated with a business	<i>Nil</i>	Actual

- (a) The rule mentioned in above table is applicable only in the case of “self-generated assets”. If an asset is purchased and later on sold, then the actual purchase price shall be taken as cost of acquisition.
- (b) If above assets were acquired before April 1, 1981, the option of adopting the fair market value on the said date is not available.

34. LONG-TERM CAPITAL GAINS ON SHARES OF PRIVATE COMPANIES TO BE SUBJECT TO CONCESSIONAL RATE OF TAX@10% IN THE HANDS OF NON-CORPORATE NON-RESIDENTS AND FOREIGN COMPANIES

Section:- 112(1)(c) – Effective from A.Y. 2017-18

Section 112, long-term capital gain arising on transfer of unlisted securities, shall be taxed at the rate of 10 per cent, if the following conditions are satisfied-

1. Taxpayer is a non-resident or a foreign company.
2. Long-term capital gain arises on transfer of unlisted securities or **shares of a closely held company**.
3. Long-term capital gain is calculated without being giving effect to the first proviso (means conversion rule has not been applied)
4. Capital gain is calculated without taking advantage of indexation.

Practical 34

TOM, a non-resident foreign citizen, remits US \$ 60,000 to India on August 10, 1989. The amount is partly utilized on August 17, 1989 for purchasing 50,000 shares in Lotus Pvt. Ltd., an Indian company, at the rate of Rs.6 per share. These shares are sold for Rs. 36 per share on April 10, 2016. Brokerage expenses Rs.1 per share which was paid on April 15, 2016.

Find out the capital gains chargeable to tax on the assumption that telegraphic transfer, buying and selling rates of US dollars adopted by the State Bank of India are as follows:

	Buying (1 US \$) Rs.	Selling (1 US \$) Rs.
August 10, 1989	20.30	20.10
August 17, 1989	20.40	20.30
April 10, 2016	65.90	66.40
April 15, 2016	65.95	66.28

Solution

Particulars	Indian Currency (Rs.)	Conversion Rule	Foreign Currency (\$)
Sale Consideration	18,00,000	Average Rate on Date of Transfer 1\$ = Rs. 66.15	27,210.88
Less: Expenses	(50,000)	Average Rate on Date of Transfer 1\$ = Rs. 66.15	(755.86)
Less: Cost of Acquisition	(3,00,000)	Average Rate on Date of Acquisition 1\$ = Rs. 20.35	(14,742.01)
Long Term Capital Gain			11,713.01

Long Term Capital Gain in Indian Currency

= \$ 10,539.91 x Buying Rate on the date of transfer

= \$ 13,337.33 x Rs.65.90

= Rs.7,71,887

Tax under section 112 (No shifting benefit) @ 20%

Rs.1,54,377

Add: 3% Education Cess

Rs. 4,631

Total Tax Liability

Rs.1,59,008

As per amendment of Finance Act, 2016, special tax rate (10%) on long term capital gain arising on transfer of unlisted securities available provided-

- Non resident shall not avail
 - (a) Benefit of conversion rule **as well as**
 - (b) Benefit of Indexation
- That means for this section, gain shall be worked out directly in Indian currency.

Gain = Rs.18,00,000 - Rs.50,000- Rs.3,00,000
= Rs.14,50,000

Tax = 10.30% of Rs.10,50,000
= Rs.1,49,350

Hence, this option is better for TOM

Readers Note:

35. SLUMP SALE**Section:-** 2(42C), 50B and 43(6)(c)(i)**35.1 Definition [Section 2(42C)]**

“Slump sale means *the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.*”

35.2 Tax consequences under the head "Capital Gains" [Section 50B]

The provisions of section 50B, applicable for computation of capital gains in the case of slump sale, are given below—

- (a) Any profits or gains arising from the slump sale affected in the previous year shall be chargeable as long-term capital gains and shall be deemed to be the income of the previous year in which the transfer took place.

Where, however, any capital asset being one or more undertakings owned and held by the assessee for not more than 36 months is transferred under the slump sale, then capital gain shall be deemed to be short-term capital gain.

- (b) In the case of slump sale of the capital asset being one or more undertaking, the "net worth" of the undertaking shall be taken as cost of acquisition and cost of improvement. "Net worth" for this purpose is the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in the books of account.

Computation of net worth shall be as under—

Particulars	Base of Valuation
Depreciable Assets	sub-item (C) of Section 43(6)(c)(i)
Capital Assets u/s 35AD	Nil
Other Assets	Book Value
Sub Total	XXXXXXXXXX
Less: Liabilities	Book Value
Net worth	YYYYYYYYYY

Any change in the value of assets on account of revaluation of assets shall be ignored for the purpose of computing the net worth.

- (c) The benefit of indexation will not be available.
- (d) Every assessee, in the case of slump sale, shall furnish along with the return of income, a report of a chartered accountant in Form No. 3CEA indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at.

35.3 Steps to find out written down value in the hands of transferor after slump sale [Section 43(6)(c)(i)]

Step 1	Find out the depreciated value of the block at the beginning of the previous year.
Step 2	Add "actual cost" of the asset acquired during the previous year.
Step 3	Balance
Step 4	Deduct money received/receivable (together with scrap value) in respect of that asset (falling within the block of assets) which is sold, discarded, demolished or destroyed during the previous year. (Step 4 amount shall not exceed Step 3 amount)
Step 5	Find out Balance
Step 6- is called Sub item (C) of Section 43(6)(c)(i)	Deduct WDV of assets transferred under slump sale as if it is the only asset in a block (Step 6 amount shall not exceed Step 5 amount)
Step 7	WDV in the hands of transferor after slump Sale

Practical 35

PQR Limited has two units - one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for ` 385 lacs to a new company called S Limited, in which it holds 74% equity shares.

The balance sheet of PQR limited as on 31st March 2017, being the date on which software unit has been transferred, is given hereunder –

Balance Sheet as on 31.3.2017

Liabilities	Rs. In lakhs	Assets	Rs. In lakhs
Paid up Share Capital	300	Fixed Assets	
General Reserve	150	Hardware unit	170
Share Premium	50	Software unit	200
Revaluation Reserve	120	Debtors	
Current Liabilities		Hardware unit	140
Hardware unit	40	Software unit	110
Software unit	90	Inventories	
		Hardware unit	95
		Software unit	35
	750		750

Following additional information are furnished by the management:

- (i) The Software unit is in existence since May, 2013.
- (ii) Fixed assets of software unit includes land which was purchased at ` 40 lacs in the year 2007 and revalued at ` 60 lacs as on March 31, 2017.
- (iii) Fixed assets of software unit mirrored at ` 140 lacs (` 200 lacs minus land value ` 60 lacs) is written down value of depreciable assets as per books of account. However, the written down value of these assets under section 43(6) of the Income-tax Act, 1961 is ` 90 lacs.
 - (a) Ascertain the tax liability, which would arise from slump sale to PQR Limited
 - (b) What would be your advice as a tax-consultant to make the restructuring plan of the company more tax-savvy, without changing the amount of sale consideration?

Solution

- (a)** As per section 50B, any profits and gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before slump sale, the capital gain shall be deemed to be long-term capital gain. Indexation benefit is not available in case of slump sale as per section 50B(2).

Ascertainment of tax liability of PQR Limited from slump sale of software unit

Particular	Rs. In lakhs
Sale consideration for slump sale of Software Unit	385
Less: Cost of acquisition being the net worth of Software Unit	185
Long term capital gains arising on slump sale	200
(The capital gains is long-term as the Software Unit is held for more than 36 months)	
Tax liability on LTCG	
Under section 112 @ 20% on ` 200 lacs	40.00
Add: Surcharge@ 7%	2.80
	42.80
Add: Education cess@2% and SHEC@1%	1.28
	44.08

Working Note:- Computation of net worth of Software Unit

Particular	Rs. In lakhs
(1) Book value of non-depreciable assets	
(i) Land (Revaluation not to be considered)	40
(ii) Debtors	110
(iii) Inventories	35
(2) Written down value of depreciable assets under section 43(6) (See Note below)	90
Aggregate value of total assets	275
Less: Current liabilities of software unit	90
Net worth of software unit	185

Note : For computing net worth, the aggregate value of total assets in the case of depreciable assets shall be the written down value of the block of assets as per section 43(6).

(b) Tax advice

- (i) Transfer of any capital asset by a holding company to its 100% Indian subsidiary company is exempt from capital gains under section 47(iv). Hence, PQR Limited should try to acquire the remaining 26% equity shares in S Limited then make the slump sale in the above said manner, in which case the slump sale shall be exempt from tax. For this exemption, PQR Limited will have to keep such 100% holding in S Limited for a period of 8 years from the date of slump sale, otherwise the amount exempt would be deemed to be income chargeable under the head “Capital Gains” of the previous year in which such transfer took place.
- (ii) Alternatively, if acquisition of 26% share is not feasible, PQR Limited may think about demerger plan of Software Unit to get benefit of section 47(vib) of the Income-tax Act, 1961.

Readers Note:**36. CIT V. V.S. DEMPO COMPANY LTD (2016) 387 ITR 354 (SC)**

In a case where a depreciable asset held for more than 36 months is transferred, can benefit of exemption under section 54EC be claimed, if the capital gains on sale of such asset are reinvested in long-term specified assets within the specified time?

Facts of the case: The assessee sold its loading platform (a depreciable asset, held for 17 years) for Rs.137.25 lakhs and re-invested the resultant capital gain in long-term specified assets under section 54EC and claimed exemption thereunder. The Assessing Officer, however, rejected the claim for exemption under section 54EC on the ground that assessee had claimed depreciation on such asset and therefore, the provisions of section 50 were applicable.

High Court's Observations: The High Court observed that section 50 is a special provision for computation of capital gains in the case of depreciable asset, and has limited application in the context of computation of capital gains to the extent that the provisions of sections 48 and 49 would apply with the modifications stated thereunder. It does not deal with exemption which is provided in a totally different provision i.e. section 54EC.

The High Court referred the decision of the Bombay High Court in the case of CIT v. ACE Builders (P) Ltd (2006) 281 ITR 210 (Bom), wherein it was analysed that the assessee cannot be denied exemption under section 54EC, because firstly, there is nothing in section 50 to suggest that the fiction created therein is not restricted to only sections 48 and 49. Secondly, fiction created by the legislature has to be confined for the purpose for which is created. Thirdly, section 54EC does not make any distinction between depreciable and non-depreciable asset for the purpose of re-investment of capital gains in long term specified assets for availing the exemption thereunder. Further, section 54EC specifically provides that when the capital gain arising on the transfer a long-term capital asset is invested or deposited in long-term specified assets, the assessee shall not be subject to capital gains to that extent. Therefore, the exemption under section 54EC cannot be denied to the assessee on account of the fiction created in section 50.

Supreme Court's Decision: The Apex Court, concurred with the view of the High Court holding that since the depreciable asset is held for more than 36 months and the capital gains are re-invested in long-term specified assets within the specified period, exemption under section 54EC cannot be denied.

IMPORTANT CASE LAWS

1. CIT v. Ravinder Kumar Arora (2012) 342 ITR 38 (Delhi) **[DECISION NO. 10 OF ICAI CASE STUDY BOOK - PAGE NO. 49]**
2. Gouli Mahadevappa v. ITO (2013) 356 ITR 90 (Kar.) **[DECISION NO. 13 OF ICAI CASE STUDY BOOK - PAGE NO. 52]**
3. CIT v. Sambandam Udaykumar (2012) 345 ITR 389 (Kar.) **[DECISION NO. 11 OF ICAI CASE STUDY BOOK - PAGE NO. 51]**
4. Fibre Boards (P) Ltd v. CIT (2015) 376 ITR 596 (SC) **[DECISION NO. 15 OF ICAI CASE STUDY BOOK - PAGE NO. 53]**
5. CIT v. S.R.Jeyashankar (2015) 373 ITR 120 (Mad) **[DECISION NO. 1 OF ICAI CASE STUDY BOOK - PAGE NO. 41]**

UNIT G – INCOME FROM OTHER SOURCES

37. SHARES RECEIVED BY AN INDIVIDUAL OR HUF AS A CONSEQUENCE OF DEMERGER OR AMALGAMATION OF A COMPANY OR A BUSINESS REORGANISATION OF A CO-OPERATIVE BANK NOT TO BE SUBJECT TO TAX BY VIRTUE OF SECTION 56(2)(VII)
Section:- 56(2)(vii) – Effective from A.Y. 2017-18

Under section 56(2)(vii), any money, immovable property or other property received without consideration is chargeable to tax, if aggregate sum received by an assessee, being an individual or an Hindu undivided family (HUF), is in excess of Rs. 50,000. Likewise, if immovable or other property is received by an individual or HUF for inadequate consideration, and the difference between the stamp duty value (in case of immovable property) or the fair market value (in case of other property) exceeds Rs. 50,000, such difference is chargeable to tax under section 56(2)(vii).

Exceptions [Proviso to Section 56(2)(vii)]

While calculating the above monetary limit of Rs. 50,000, any sum of money/properties received from the following shall not be considered.

1. Any sum of Money/properties which is received from any relative
2. Any sum of Money/properties which is received on the occasion of the marriage of the individual.
3. Any sum of Money/properties which is received under a will or by way of inheritance.
4. Any sum of Money/properties which is received in contemplation of death of the payer.
5. Money/properties received from a local authority
6. Money/properties received from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in section 10(23C).
7. Money/properties received from a charitable institute registered under section 12AA.
8. **Money/properties received by way of transaction not regarded as transfer under clause (vicb) or clause (vid) or clause (vii) of section 47. [i.e., receipt of money/ properties in a scheme of amalgamation, demerger, etc.] – Amendment by Finance Act, 2016.**

UNIT H – DEDUCTIONS FROM GROSS TOTAL INCOME

38. ADDITIONAL DEDUCTION FOR INTEREST ON LOAN BORROWED FOR ACQUISITION OF SELF-OCCUPIED HOUSE PROPERTY BY AN INDIVIDUAL

Section:- 80EE – Effective From A.Y.2017-18

- (i) In computing the total income of an individual, there shall be deducted, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property. The maximum deduction allowable is Rs. 50,000.
- (ii) The conditions to be satisfied for availing deduction under section 80EE are as follows –
 - (a) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, 2016 and ending on the 31st day of March, 2017;
 - (b) the amount of loan sanctioned for acquisition of the residential house property does not exceed thirty-five lakh rupees;
 - (c) the value of residential house property does not exceed fifty lakh rupees;
 - (d) the assessee does not own any residential house property on the date of sanction of loan.
- (iii) The deduction under this section is over and above the deduction available under section 24 of the Act.
- (iv) Meaning of certain terms:

(1) Financial institution

- (a) A banking company to which the Banking Regulation Act, 1949 applies ; or
- (b) Any bank or banking institution referred to in section 51 of the Banking Regulation Act, 1949; or
- (c) A housing finance company.

(2) Housing finance company

A public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

Practical 36

Mr. Rajababu entered into an agreement to purchase a residential house property for self-occupation at a cost of Rs. 40 lakh on 01.02.2016. For this purpose, he took a housing loan of Rs. 32 lakh from State Bank of India @10% p.a. The Loan was sanctioned on 10.4.2016 and was disbursed on 31.05.2016. Compute the eligible deduction in respect of interest on housing loan for A.Y.2017-18 under the provisions of the Income-tax Act, 1961, assuming that the entire loan was outstanding as on 31.3.2017 and he does not own any other house property.

Does your answer differ if loan was sanctioned on 01.02.2016?

Solution

Computation of Interest Deduction for A.Y. 2017-18	
Particulars	Rs.
Interest Deduction	
(1) Under the head "House Property" (section 24)	
Interest on Loan $\left(32,00,000 \times 10\% \times \frac{10}{12}\right) = \text{Rs.} 2,66,667$	
Deduction = Rs.2,66,667 or Rs.2,00,000 whichever is lower	2,00,000
(2) From Gross Total Income u/s 80EE	
Balance Interest on loan = Rs.2,66,667 – Rs.2,00,000	
= Rs.66,667	
Deduction = Rs.66,667 or Rs.50,000 whichever is lower	50,000
Total Benefit of deduction to Mr.Rajababu	2,50,000

Readers Note:**39. TAX INCENTIVES FOR NEW START-UPS****Section:- 80-IAC – Effective From A.Y.2017-18****39.1 Eligible Business**

Business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property

39.2 Conditions to be fulfilled for an eligible start-up

1. The assessee is a company or a limited liability partnership (LLP) and engaged in an eligible business.
2. The above company or LLP is incorporated after March 31, 2016 but before April 1, 2019.
3. The total turnover of the company or LLP does not exceed Rs.25 crore in any of the five previous years beginning April 1, 2016.
4. It holds a certificate of eligible business from the Inter-Ministerial Board of certification as notified in the Official Gazette by the Central Government.
5. The above company or LLP is not formed by splitting up or reconstruction of a business already in existence.

Exception: This condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

6. Further, undertaking should not be set up by the transfer of old plant and machinery. However, following two cases old machinery is permitted:

Case 1:- If the value of the old assets does not exceed 20 per cent of the total value of the plant and machinery, this condition is deemed to have been satisfied.

Case2:- *Second-hand imported machinery is treated as new subject to satisfaction of few conditions in this regard.*

7. The other provisions with reference to furnishing of audit report, determination of quantum of deduction, power of assessing officer to re-compute profit in case of inter-unit transfer, restriction on double deduction, transactions between close connection activities of 80 IA are equally applicable to this section.

39.3 Quantum of deduction

If the above conditions are satisfied, 100 per cent of the profits and gains derived from eligible business is deductible for 3 consecutive assessment years. However, this deduction may, at the option of the assessee, be claimed by it for any 3 consecutive assessment years out of 5 years beginning from the year in which the eligible start-up is incorporated.

40. DEDUCTIONS IN RESPECT OF PROFITS AND GAINS FROM HOUSING PROJECTS

Section:- 80-IBA – Effective From A.Y.2017-18

40.1 Eligible Business

Any assessee engaged in business of developing and building a housing project.

Housing project means a project consisting predominantly of residential units with such other facilities and amenities as the competent authority may specify.

40.2 Conditions

- (i) The project is approved by the competent authority (*authority empowered to approve the building plan by or under any law for the time being in force*) after June 1, 2016, but on or before March 31, 2019.
- (ii) The project is completed within a period of 3 years from the date of first approval by the competent authority. The project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority.
- (iii) The built up area of the shops and other commercial establishments included in the housing projects does not exceed 3 per cent of the aggregate built up area.
- (iv) Size of the plot, area of residential units and minimum utilization of FAR (floor area ratio) should satisfy the criteria given below-

Location of project	Areas of plot of land on which project is situated	Areas of residential units comprised in the housing project	Utilization of permissible FAR
Project is located within the cities of Chennai, Delhi, Kolkata or Mumbai (or within the distance, measured aerially, of 25 kilometers from the municipal limits of these cities)	Not less than 1,000 square meters	Not to exceed 30 square meters	Not less than 90%
Project is located in any other place	Not less than 2,000 square meters	Not to exceed 60 square meters	Not less than 80

- (v) The project is the only housing project on such plot of land as specified in column 2 of the above table.
- (vi) Where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual.
- (vii) The assessee maintains separate books of account in respect of the housing project.

40.3 Quantum & Period of deduction

If the above conditions are satisfied, 100 percent of the profit derived from the aforesaid business is deductible under section 80-IBA.

However, deduction is not available to any assessee who executes the housing project as a works contract awarded by any person (including the Central/State Government). Once deduction is claimed and allowed under this section, deduction to the extent of such profit is not available under any provision of the Act.

40.4 Reversal of deduction if project not completed within stipulated time

Where the housing project is not completed within 3 years from the date of first approval by the competent authority and in respect of which a deduction has been claimed and allowed under this section, the total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be income of the assessee chargeable under the head "PGBP" of the previous year in which the period for completion so expires.

41. DEDUCTION IN RESPECT OF EMPLOYMENT OF NEW EMPLOYEES**Section:- 80JJAA – Effective From A.Y.2017-18****Sub – Section (1)**

Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, there shall, be allowed a deduction of an amount equal to thirty per cent of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

Sub – Section (2) : Conditions

- (a) The business is not formed by splitting up, or the reconstruction, of an existing business:
However, this condition is not applicable in respect of a business which is formed as a result of re-establishment, reconstruction or revival by the assessee of the business in the circumstances and within the period specified in section 33B;
- (b) The business is not acquired by the assessee by way of transfer from any other person or as a result of any business reorganisation;
- (c) The assessee furnishes alongwith the return of income the report of the accountant, as defined in the Explanation to section 288 giving such particulars in the report as may be prescribed.

Explanation.—For the purposes of this section,—

- (i) "additional employee cost" means total emoluments paid or payable to additional employees employed during the previous year.
 - However, in the case of an existing business, the additional employee cost shall be nil, if—
 - (a) there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;
 - (b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account:
 - For the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;
- (ii) "additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year.
 - However, additional employee does not include,—
 - (a) an employee whose total emoluments are more than twenty-five thousand rupees per month; or
 - (b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; or
 - (c) an employee employed for a period of less than 240 days during the previous year; or (150 days if assessee is engaged in the business of manufacturing of apparel)
 - (d) an employee who does not participate in the recognised provident fund;

- (iii) "emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include—
- (a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and
 - (b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

Practical 37

Arjun Ltd. runs chain of medical stores commenced the business operations on 1.4.2016. It employed 200 employees during the P.Y.2016-17, the details of whom are as follows:

	No. of employees	Date of employment	Whether they participate in RPF?	Total monthly emoluments per employee (Rs.)
(i)	25	1.4.2016	Yes	20,000
(ii)	75	1.5.2016	Yes	30,000
(iii)	50	1.8.2016	No	17,000
(iv)	50	1.9.2016	Yes	22,000

Compute the deduction available to Arjun Ltd. under section 80JJAA for A.Y.2017-18, assuming that its total turnover is 20.21 crores and all the salary payments were made by an account payee cheques.

What would have been your answer if Arjun Limited has made salary payments in cash?

Solution

Arjun Ltd. is eligible for deduction under section 80JJAA since it is subject to tax audit under section 44AB for A.Y.2017-18, as its total turnover from business exceeded Rs.1 crore and it has employed "additional employees" during the P.Y.2016-17.

Additional employee cost = Rs. 20,000 × 12 × 25 [Refer Working Note] = Rs. 60,00,000

Deduction under section 80JJAA = 30% of Rs.60,00,000 = Rs. 18,00,000.

Working Note:**Number of additional employees**

Particulars	No. of employees	
Total number of employees employed during the year		200
Less: Employees who do not participate in recognized provident fund	50	
Less: Employees whose total monthly emoluments exceed Rs.25,000	75	
Less: Employees employed less than 240 days in the P.Y.2016-17	50	(175)
Number of "additional employees"		25

Answer will not differ even if salary payments were made in cash since the requirement of payment by account payee cheque or draft is applicable for the existing business only and not for the newly set up business.

Readers Note:

42. CIT V. MEGHALAYA STEELS LTD (2016) 383 ITR 217 (SC)**Practical 38**

PQR Ltd. is engaged in commercial production of mineral oil. It claimed deduction under section 80-IB in respect of profits and gains derived by it from such business, including transport subsidy, interest subsidy and power subsidy received from the Government.

The Assessing Officer disallowed the deduction in respect of these three subsidies contending that such subsidies were not “derived” from the business of commercial production of mineral oil but belonged to the category of ancillary profits and hence do not qualify for deduction under section 80-IB. Discuss the correctness of the action of the Assessing Officer.

Solution

As per section 80-IB(1) read with section 80-IB(9), where the gross total income of an assessee includes any profits and gains derived from, inter alia, the business of commercial production of mineral oil, deduction will be allowed at 100% of such profits for a period of seven consecutive assessment years.

The issue under consideration in this case is whether transport subsidy, interest subsidy and power subsidy received from the Government can be treated as profits derived from business or undertaking to qualify for deduction under section 80-IB.

This issue came up before the Supreme Court in CIT v. Meghalaya Steels Ltd. (2016) 383 ITR 217, wherein it was observed that an important test to determine whether the profits and gains are derived from business or an undertaking is that there should be a direct nexus between such profits and gains and the undertaking or business. Such nexus should not be only incidental. The profits and gains referred to in section 80-IB has reference to net profit, which can be calculated by deducting from the sale price of an article, all elements of cost which go into manufacturing or selling it. Thus, the profits arrived at after deducting manufacturing costs and selling costs reimbursed to the assessee by the Government, is the profits and gains derived from the business of the assessee.

The Supreme Court observed that section 28(iib) specifically states that income from cash assistance, by whatever name called, received or receivable by any person against exports under any scheme of the Government of India, will be income chargeable to income-tax under the head “Profits and gains of business or profession”. The Apex Court further observed that if cash assistance received or receivable against exports schemes are being included as income under the head “Profits and gains of business or

profession”, subsidies which go to reimbursement of cost in the production of goods of a particular business would also have to be included under the head “Profits and gains of business or profession”, and not under the head “Income from other sources”.

Accordingly, the Supreme Court held that transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products. Therefore, there is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies. The subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products.

Applying the rationale of the Supreme Court ruling in the above case, the action of the Assessing Officer in not allowing deduction under section 80-IB in respect of transport subsidy, interest subsidy and power subsidy received by PQR Ltd. from the Government, is not correct

Readers Note:

UNIT I – ASSESSMENT OF VARIOUS ENTITIES

43. CONCESSIONAL TAXATION REGIME FOR ROYALTY INCOME IN RESPECT OF PATENT DEVELOPED AND REGISTERED IN INDIA**Section:- 115BBF – Effective From A.Y.2017-18**

- Section 115BBF provides that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of 10%
- No deduction for any expenditure or allowance in respect of such royalty income shall be allowed under the Act.
- For this purpose, developed means atleast 75% of the expenditure should be incurred in India by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970.
- This section is optional.
- The eligible assessee is required to exercise the option for taxation of income by way of royalty in respect of a patent developed and registered in India in accordance with the provisions of section 115BBF in the prescribed manner, on or before the due date of furnishing return of income under section 139(1).
- Where an eligible assessee opts for taxation of income by way of royalty in respect of a patent developed and registered in India for any previous year in accordance with section 115BBF, and the assessee offers the income for taxation for any of the five assessment years relevant to the previous year succeeding the previous year not in accordance with section 115BBF(1), then the assessee shall not be eligible to claim the benefit of section 115BBF for five assessment years subsequent to the assessment year relevant to the previous year in which such income has not been offered to tax in accordance with section 115BBF(1).
- **For the purpose of this section,**
 - (1) Eligible assessee means:**
 - A person resident in India,
 - who is the true and first inventor of the invention and
 - whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970.

(2) Meaning of royalty:

“Royalty”, in respect of a patent, means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head

“Capital gains” or consideration for sale of product manufactured with the use of patented process or the patented article for commercial use) for the—

- (a) transfer of all or any rights (including the granting of a licence) in respect of a patent; or
- (b) imparting of any information concerning the working of, or the use of, a patent; or
- (c) use of any patent; or
- (d) rendering of any services in connection with the activities referred to in (1) to (3) above.

(3) Meaning of Patent:

"Patent" shall have the meaning assigned to it in section 2(1)(m) of the Patents Act

● **Amendment under section 115JB:**

Further, the amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF would not be subject to MAT under section 115JB. Therefore, following adjustments are required to be performed while computing book profit under section 115JB:

Positive Adjustment:

The amount or amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF.

Negative Adjustment

The amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF;
(Inserted by FA 2016, effective from A.Y. 2017-18)

44. NON-APPLICABILITY OF MAT IN RESPECT OF CERTAIN FOREIGN COMPANIES

Section:- 115JB – Effective From A.Y.2001-02

Question 39

Whether the provisions of MAT are applicable to foreign companies or not?

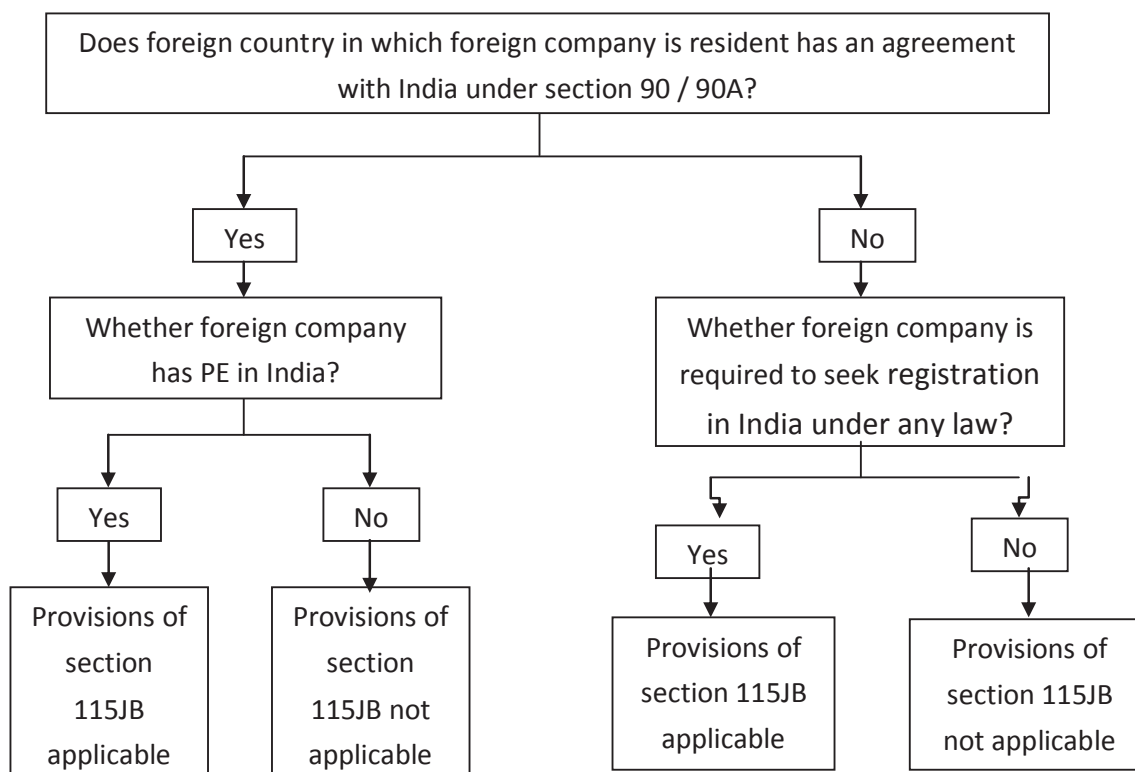
Answer

Amendment by Finance Act, 2016: with retrospective effect from A.Y. 2001-02

Provisions of section 115JB shall not be applicable to a foreign company if-

- (a) The assessee is a resident of a foreign country or specified territory with which India has an agreement under section 90/90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such agreement or
- (b) The assessee is a resident of a foreign country or specified territory with which India does not have an agreement under section 90/90A and the assessee is not required to seek registration in India under any law for the time being in force relating to companies.

To sum up,



Readers Note:

45. TAX INCENTIVES TO INTERNATIONAL FINANCIAL SERVICES CENTRES

Section:- 10(38), 111A, 115JB & 115-O – Effective From A.Y.2001-02

- In order to encourage the growth of International Financial Services Centres (IFSCs), the following amendments were carried out by Finance Act, 2016.
- W.e.f. 1st June, 2016, STT, shall not be levied on taxable securities transactions entered into by any person on a recognised stock exchange located in IFSC where the consideration for such transaction is paid or payable in foreign currency.
- long-term capital gains from transaction undertaken in foreign currency on a recognised stock exchange located in an International Financial Services Centre shall be exempt under section 10(38) even when securities transaction tax is not paid in respect of such transaction.- Second proviso has been inserted in section 10(38).
- Short term capital gains from transaction undertaken in foreign currency on a recognised stock exchange located in an International Financial Services Centre shall be taxed at 15% under section 111A even when securities transaction tax is not paid in respect of such transaction.- Second proviso has been inserted in section 111A.

- No tax on distributed profits shall be chargeable in respect of the total income of a company being a unit located in International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after 1st April, 2017 out of its current income, either in the hands of the company or the person receiving such dividend. – Section 115-O (8)

46. TAX RATES APPLICABLE FOR COMPANIES

Section:- Annual Finance Act and section 115BA

46.1 Income Tax Rates

	Domestic companies		Foreign companies
	If Total Turnover or Gross Receipts in P.Y.2014-15 <u>does not exceed</u> Rs.5 Crore	If Total Turnover or Gross Receipts in P.Y.2014-15 <u>exceeds</u> Rs.5 Crore	
	Tax rates	Tax rates	Tax rates
Short Term Capital Gain u/s.111A	15% + SC+EC	15% + SC+EC	15%+ SC+EC
Long-term capital gain	20% +SC+EC	20% +SC+EC	20%+ SC+EC
Winnings from lotteries	30% + SC+EC	30% + SC+EC	30%+ SC+EC
Other income	29%+ SC+EC	30%+ SC+EC	40%+ SC+EC

46.2 Tax on income of certain domestic companies.[Section 115BA]

- (1) Notwithstanding anything contained in this Act but subject to the provisions of section 111A and section 112, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent, if the conditions contained in sub-section (2) are satisfied.
- (2) For the purposes of sub-section (1), the following conditions shall apply, namely:—
 - (a) the company has been set-up and registered on or after the 1st day of March, 2016;
 - (b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and
 - (c) the total income of the company has been computed,—
 - (i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AC or section 32AD or section 33AB or section 33ABA or

sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AC or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.— Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and

(iii) depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed.

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

46.3 Surcharge

Surcharge is applicable if total income (or Book Profit) exceeds Rs. 1 crore. The rates of surcharge are as under:-

Type of Company	If Total Income / Book Profit exceeds Rs. 1 crore but does not exceed Rs. 10 crore	If Total Income or Book Profit exceeds Rs. 10 crore
Domestic company	7%	12%
Foreign company	2%	5%

46.4 Education Cess

Education Cess: It is 2% of (income-tax and surcharge).

Secondary and higher education cess: It is 1% of (income-tax and surcharge).

47. SCHEME OF TAXATION OF INVESTMENT FUNDS AND ITS STAKEHOLDERS**Section:- SECTION 10(23FBA), 10(23FBB), 115UB, 139 & 194LBB****47.1 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	34.50% (Maximum Marginal Rate) plus E.C. = 35.535%

- 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].

With effect from 1st June, 2016, following changes have been made in rates of TDS:

Payee	Rate of TDS
Resident	10%
Non-resident, not being foreign company	30% Plus SC and EC
Foreign Company	40% Plus SC and EC

This section has been further amended w.e.f. 1st June, 2016 to provide that where payee is a non-resident or foreign company, then no tds shall be made under this section if such income is not chargeable to tax in their hands in India.

- 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).

47.2 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)].

Practical 40

PQR Private Limited is an Investment Fund as per explanation to section 115UB. There are 50 shareholders each having equal share. For previous year **2016-17**, PQR Private Limited reports following incomes.

Particulars	Company (Rs.)
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.

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

Particulars	Company (Rs.)
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 (Rs.)
Business Income	Exempt u/s 10(23FBB)
Capital Gains [1,00,00,000 ÷ 50]	2,00,000
Income from other sources [20,00,000 ÷ 50]	40,000
Income	2,40,000

Readers Note:**Practical 41**

ABC Trust is an Investment Fund as per explanation to section 115UB. There are 20 unit holders each having equal share. ABC Trust reports following incomes.

Particulars	P.Y. 2016-17	P.Y. 2017-18
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.

Solution**Computation of Total Income of ABC Trust**

Particulars	P.Y.2016-17	
	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.2017-18	
	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.2016-17	P.Y.2017-18
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

Readers Note:

48. RESTRICTION ON CLAIMING BENEFIT OF EXEMPTION UNDER VARIOUS CLAUSES OF SECTION 10 OF THE ACT – CHARITABLE TRUST OR INSTITUTIONS

Section:- 11(7)

This section provides that where a trust or an institution has been granted registration for purposes of availing of exemption under section 11, then such trust or institution cannot claim any exemption under any provision of section 10 except exemption relating to agricultural income and exemption under section 10(23C).

That means, as per this amendment, trust or institution registered under section 12AA can claim only following exemptions under section 10.

(i) Section 10(1) : Exemption in relation to agricultural income

(ii) Section 10(23C): Exemption to certain national funds, educational institutions and hospitals.

Therefore, reader shall strictly note that *trust or institution cannot straightaway exclude following incomes while computing total income* because such incomes are not covered by section 10(1) or 10(23C):-

- Section 10(34) : Dividend Income
- Section 10(38) : Long Term Capital Gain
- Section 10(33) : Capital gain on transfer of unit of US 64
- Section 10(34A) : Capital gain on Buy Back of unlisted shares
- And many more : As covered by section 10 of the Income Tax Act, 1961

Practical 42

During previous year, a public charitable trust registered under section 12AA of I.T. Act, for the concerned previous year, derived gross income of Rs. 26 lakhs, which consists of the following:

Sr. No.	Particulars	Amount (Rs.)
1.	Income from properties held under trust	9,00,000
2.	Voluntary contributions from public	7,00,000
3.	Corpus donations	4,00,000
4.	Dividend income from shares of Indian Companies	1,00,000
5.	LTCG on sale of shares (subject to security transaction tax)	3,00,000
6.	Income from agriculture operations	2,00,000

During the previous year, the trust had spent Rs. 11,60,000 towards charitable purposes. Further, Trust has purchased small office on **01-04-2016** for Rs. 5,00,000. (*Rate of depreciation is 10%*). Determine the taxable income of the trust.

Solution

In this practical aspect, trust has purchased small office. Therefore, trust has two options:

Option 1: To claim investment in office as application of income and therefore, cannot claim depreciation in view of section 11(6)

Option 2: Not to claim investment in office as application of income and to avail depreciation in respect of such office.

Considering above two options, answer is as under:

Option 1

Particulars	Rs.
Income from property held under trust	9,00,000
Add: Voluntary Contribution received from public	7,00,000
Add: Corpus Donations are not an income	Nil
Add: Dividend income from shares (Exemption u/s 10(34) not available in view of amendment discussed above)	1,00,000
Add: LTCG on sale of shares (Exemption u/s 10(38) not available in view of amendment discussed above)	3,00,000
Add: Income from Agricultural Operations (Exemption u/s 10(1) is available to trust)	Nil
	20,00,000
Less: 15% Set apart	(3,00,000)
Balance	17,00,000
Less: Applied for the objects of Trust	(11,60,000)
Less: Applied for purchase of Office	(5,00,000)
Total Income	40,000

Option 2

Particulars	Rs.
Income from property held under trust	9,00,000
Add: Voluntary Contribution received from public	7,00,000
Add: Corpus Donations are not an income	Nil
Add: Dividend income from shares (Exemption u/s 10(34) not available in view of amendment discussed above)	1,00,000
Add: LTCG on sale of shares (Exemption u/s 10(38) not available in view of amendment discussed above)	3,00,000
Add: Income from Agricultural Operations (Exemption u/s 10(1) is available to trust)	Nil
	20,00,000
Less: Depreciation in respect of Office [10% of Rs.5,00,000]	(50,000)
	19,50,000
Less: 15% Set apart	(2,92,500)
Balance	16,57,500
Less: Applied for the objects of Trust	(11,60,000)
Total Income	4,97,500

Reader's Note:

Practical 43

Gangaram Public Charitable Trust runs a hospital. The gross receipts from its operational activities is Rs. 250 Lacs and expenses incurred are Rs. 55 Lacs. Depreciation on various assets used in the hospital is Rs. 15 Lacs. Out of income of Rs. 250 Lacs, the amount accrued but not received during the previous year is Rs. 20 Lacs. The institution earmarked and set apart Rs. 30 Lacs in the month of March to give as advance for a building intended to be taken on lease for expansion of the hospital, but the amount was paid on 7th April of next year, as the lease agreement could not be signed by 31st March of the previous year. The trust has got an ERP package developed and installed by an IT company during the year. The total cost to the trust on account of the ERP package was Rs. 85 Lacs. Advice the trust on its total income, if the trust has incurred Rs. 12 Lacs for purchase of a number of desktop and laptop computers for use in the hospital.

Solution**Computation of total income of trust**

Particulars	Rs. in lakhs
Income derived from property held under trust	250
Less: Expenses incurred in earning income	(55)
Less: Depreciation on used assets	(15)
Business Income	180

Less: 15% to be set apart (15% of Rs.180)	(27)
Balance	153
Less: Income not received during the year [Note 3]	(20)
	133
Less: Non-application of income resulting from non-signing lease agreement [Note 1]	(30)
Available amount	103
Less: Development and installation expenses of ERP package [Note 2]	(85)
Less: Purchase of desktop and laptop computers [Note 2]	(12)
Taxable income	6

Notes:

1. In **CIT v. Trustees of H.E.H The Nizam's Charitable Trust [1981] 131 ITR 497 (AP)**, it was held that in order to secure exemption under section 11, it is sufficient if the assessee provides or sets apart the funds for a charitable purpose and it is not necessary that the assessee must have spent the amount during the relevant assessment year.
2. In **S.R.M.M.CT.M. Tirupaani Trust v. CIT [1998] 230 ITR 636 (SC)**, it was held that for the purpose of claiming exemption under section 11, a trust can apply its income either on capital expenditure or on revenue expenditure.
3. Income not received during the current year may be spent in the year of receipt or in the immediately following year. For this purpose, the option has to be exercised in writing before the expiry of due date of submission of return of income.

Reader's Note:
49. CIT V. TRANS ASIAN SHIPPING SERVICES (P) LTD (2016) 385 ITR 637 (SC)

Can income derived by an Indian shipping company from slot charter arrangement in other ships be computed applying the special provisions under Chapter XII-G of the Income-tax Act, 1961, relating to Tonnage Tax Scheme, inspite of nonfulfillment of the condition of holding a valid certificate in respect of such ships indicating its net tonnage in force?

Facts of the case: The assessee-company owned a qualifying ship and fulfilled all the requisite conditions for availing tonnage tax scheme contained in Chapter XII-G of the Income-tax Act, 1961. Thus, the income generated from the qualifying ship is exigible to tax as per the said scheme, since it has exercised the requisite option in this behalf and submitted valid certificate in respect of such qualifying ship. In addition to the income from qualifying ship, it has also earned income from "slot charter" arrangement in other ships in the previous years relevant to the assessment years 2005-06 and 2008-09. In the return of income

filed for the relevant previous years, the assessee company also included the income earned from such slot charter for the purpose of computation of income as per the tonnage tax scheme.

Revenue's contentions vis-à-vis Assessee's contention: The Assessing Officer opined that the income earned from slot charter arrangement did not qualify for the purpose of computation of tonnage income under the tonnage tax scheme, since the said income was not generated from the ship owned by it nor was such income earned from the entire ship chartered by it. He was also of the opinion that in order to avail the benefit of Tonnage Tax Scheme, the assessee had to show that it operated a qualifying ship and it is incumbent to produce a valid certificate in respect of such ship indicating its net tonnage as provided in section 115VX(1)(b). Thus, production of valid certificate is an essential requirement contained in section 115VD which cannot be done away with because of the formula that is contained in section 115VG for the computation of tonnage income. The Revenue further contended that computation of tonnage income under the tonnage tax scheme has to be as per the provisions of section 115VG(4) which defines "Tonnage" to mean tonnage of a ship indicated in the certificate referred to in section 115VX.

The assessee company, however, contended that the requirement of producing valid certificate would apply in respect of own ships and ships hired fully. It also contended that as per method of computation provided under section 115VG, the income for the full ship is to be computed on the basis of "net tonnage" shown in the valid certificate, whereas deemed tonnage in respect of slot charter arrangement in other ships has to be computed as per Rule 11Q(1) of the Income-tax Rules, 1962.

However, the Assessing Officer rejected the contention of the assessee and held that the income from slot charter arrangement could not be included for computation of tonnage income under the tonnage tax scheme.

Supreme Court's Observations: The Apex Court noted that a company would be regarded as operating a ship "if it operates any ship whether owned or chartered by it in an arrangement such as slot charter, space charter or joint charter". Thus, even an arrangement such as slot charter would be regarded as operating a ship.

A perusal of the provisions of section 115VD, containing the conditions for a ship to qualify as a "qualifying ship" would indicate that all the conditions laid down therein are fulfilled by the assessee, except the condition stipulated in clause (c) which imposes an obligation on the assessee to produce a valid certificate in respect of such a ship indicating its net tonnage in force.

The Supreme Court, noted that provisions of section 115VG(4) are in two parts in so far as computation of tonnage is concerned. When it comes to tonnage of a ship, a valid certificate is to be produced. The second part of this provision talks about "deemed tonnage" in contradistinction to the "actual tonnage" mentioned in the certificate.

Explanation to sub-section 115VG(4), inter alia, mentions that in so far as slot charter arrangements are concerned, purchase of such slot charter shall be treated as deemed tonnage.

The requirement of producing a certificate would not apply when entire ship is not chartered and the arrangement pertains only to purchase of slots, slot charter and an arrangement of sharing of break-bulk

vessel. This position becomes abundantly clear by reading Rule 11Q(1) which specifies the basis/formula of computing deemed tonnage in respect of arrangement of slot charter.

Supreme Court's Decision: The Apex Court, accordingly, held that the requirement of producing a certificate would not apply when entire ship is not chartered and the arrangement pertains only to purchase of slots, slot charter etc. It held that the contention of the assessee is valid and the legal fiction created by section 115VG(4) is to be given proper meaning.

Accordingly, income from slot charter arrangement in other ships can be computed applying the special provisions under Chapter XII-G.

Note: As per section 115VG(4), for the purposes of Chapter XII-G, the tonnage shall mean the tonnage of a ship indicated in the certificate referred to in section 115VX and includes the deemed tonnage computed in the prescribed manner. The manner has been prescribed in Rule 11Q of the Income-tax Rules, 1962.

Further, the Explanation to section 115VG(4) provides that for the purposes of this subsection, 'deemed tonnage' shall be the tonnage in respect of an arrangement of purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel.

Rules 11Q(1) provides that for the purpose of Explanation to section 115VG(4), deemed tonnage in respect of an arrangement of purchase of slots and slot charter shall be computed on the following basis:

2.5 TEU = 1 Net Tonnage (1NT)

Where TEU is Twenty foot Equivalent Unit (Container of this size)

IMPORTANT CASE LAWS

1. N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) 321 ITR 132 (Ker.) **[DECISION NO. 9 OF ICAI CASE STUDY BOOK - PAGE NO. 75]**
2. Commissioner of Income-tax v. D. L. Nandagopala Reddy (Individual) (2014) 360 ITR 0377 (Kar) **[DECISION NO. 2 OF ICAI CASE STUDY BOOK - PAGE NO. 70]**
3. Madras Gymkhana Club v. DCIT (2010) 328 ITR 348 (Mad.) **[DECISION NO. 4 OF ICAI CASE STUDY BOOK - PAGE NO. 72]**
4. Indcom v. Commissioner of Income-tax (TDS) (2011) 335 ITR 485 (Cal.) **[DECISION NO. 6 OF ICAI CASE STUDY BOOK - PAGE NO. 73]**

UNIT J - FILING OF RETURN AND PAYMENT OF SELF-ASSESSMENT TAX**50. RETURN OF INCOME****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 proviso, total income = Total income without giving effect to the provisions of sections 10A, 10(38) 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 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.

Practical 44

State whether the following persons have to mandatorily furnish their return of income for the relevant assessment year.

- (a) Mr. Ashok, an individual, aged 50 years, whose gross total income before deduction under section 80C is Rs. 2,60,000 and total income after deduction under section 80C is Rs.1,05,000.
- (b) Mr. Jayesh earned long term capital gain of Rs.3,80,000 [Eligible for exemption u/s 10(38)]. He does not have any other income.
- (c) M/s. N.R.K & Co., a firm, which has incurred a loss.

Solution

(a) As per fourth proviso to section 139(1), every person (other than company and firm) 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 proviso, total income means total income without giving effect to the provisions of sections 10A, 10(38) and sections 80C to 80U.

The total income before giving effect to the 80C of Mr. Ashok exceeds basic exemption limit of Rs.2,50,000. Therefore, Mr. Ashok is required to furnish return of income.

(b) The total income before giving effect to the 10(38) of Mr. Jayesh exceeds basic exemption limit of Rs.2,50,000. Therefore, Mr. Jayesh is required to furnish return of income.

(c) It is compulsory for firms to furnish return of income or loss on or before the due date. Therefore, M/s N.R.K & Co., is required to furnish return of loss.

Readers Note:**Practical 45**

Mr. Mohan is engaged in growing & manufacturing Tea. His composite income from this activity under the head "PGBP" for the concerned previous year is Rs.6,25,000. Advice him regarding filing return u/s 139(1) assuming that he does not have any other income.

Solution

As per circular No. 10, 2003, CBDT clarified that when the assessee is engaged in growing and manufacturing tea, coffee or rubber then only taxable income out of composite income shall be taken into consideration while deciding whether such Individual/HUF should submit return or not.

In this case taxable income is 40% of Rs. 6,25,000 = Rs. 2,50,000 and therefore Mr. Mohan is not required to submit return since taxable income does not exceed exemption limit of Rs.2,50,000.

Readers Note:**Due Dates for filing Income Tax Return under section 139(1)**

Different situations	Due date of submission of return
1. Where the assessee is required to furnish a report in Form No. 3CEB under section 92E	November 30 of assessment year
2. Where the assessee is a company [not required to furnish report under section 92E]	September 30 of assessment year
3. Where the assessee is a person other than a company [not required to furnish report under section 92E]	
3.1 where accounts of the assessee are required to be audited under this Act or under any other law	September 30 of assessment year
3.2 where the assessee is a "working partner" in a firm whose accounts are required to be audited under this Act or under any other law	September 30 of assessment year
3.3 In any other case	July 31 of assessment year

51. RETURN OF LOSS**Section:- 139(3)**

- A loss sustained by the assessee in any previous year under the
 - (a) Section 72(1) - Profits and Gains of business or profession
 - (b) Section 73(2) - Speculation business
 - (c) Section 73A(2)-Specified business
 - (d) Section 74A(3) - Owning and maintaining of horse races
 - (e) Section 74(3) - Capital Gains
 can be carried forward only if the return is furnished within the time allowed u/s. 139(1).
- Section 139 (3) read with section 80 is not applicable to the followings:
 - (a) Unabsorbed depreciation u/s 32(2)
 - (b) Loss under the head “Income from house property” u/s. 71B

That means above mentioned unabsorbed allowance / losses can be carried forward even if return is not furnished within the time allowed under section 139(1).

**SECTION 119-POWERS OF CBDT**

The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorize any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

Circular No.8 / 2001 dated 16th May 2001

Claim for carry forward of losses can be enjoyed by the assessee even if return is not filed on or before due date u/s 139(1), if delay is due to genuine hardship. The Assessing Officer with the prior approval of CIT can condone delay u/s. 119(2)(b) in respect of a loss up to Rs.10,00,000. When loss exceeds Rs. 10,00,000 but does not exceed Rs. 50,00,000 then A.O. should obtain the prior approval of CCIT. Where loss exceeds Rs. 50,00,000 then prior approval of Board is required.

Practical 46

Rajesh regularly files his return of income electronically. While he was trying to upload his return of income for assessment year **2017-18** on **31st July, 2017**, last date for filing the same, he found it extremely difficult to do the same due to network problems and ultimately he became successful in

making e-filing of his return only at 1 A.M. on **1st August, 2017**. The return contained a claim for carry forward of business loss of Rs.1 lakh. This circumstance was recorded in a letter delivered to the office of the Deputy Commissioner of Income Tax on **1st August, 2017** during normal office hours. Rajesh made a request to the CBDT for condonation of delay in filing the return of income.

Discuss whether the CBDT has the power to condone the delay in filing the return of income and permit carry forward of loss in the given circumstance.

Solution

Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases.

The claim for carry forward of loss in case of late filing of a return is relatable to a claim arising under the category of “any other relief available under the Act”. Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

Further, considering the circular No. 8 /2001, the CBDT has the power to condone the delay in filing the return of income of Mr. Rajesh and permit carry forward of business loss of Rs. 1 lakh, since the delay of one hour was due to a genuine and justifiable reason i.e., network problem while e-filing the return.

Readers Note:

52. BELATED RETURN

Section:- 139(4)

Any person who has not furnished his return of income within the time allowed u/s. 139(1), then, the belated return under this section may be furnished at any time before the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

53. RETURN BY CHARITABLE TRUST

Section:- 139(4A)

The charitable or religious trust whose income exceeds the maximum amount that is not chargeable to income tax before giving exemption u/s. 11 and 12 shall furnish its return within the prescribed period.

54. RETURN BY POLITICAL PARTIES

Section:- 139(4B)

The chief executive of every political party shall furnish the return of income in the prescribed form within the prescribed due date if its total income exceeds the maximum amount not chargeable to tax before giving effect to the provision u/s. 13A.

55. RETURN BY CERTAIN ASSOCIATIONS/INSTITUTIONS**Section:- 139(4C)**

The following entities shall furnish their return of income if the total income, before giving effect to the exemption under section 10, exceeds exemption limit

- i) Research association –Section 10(21)
- ii) News agency – Section 10 (22B)
- iii) association or institution referred to in Section 10(23A) / (23B)
- iv) Fund or Institution, University or other educational institution or hospital or other medical Institution referred to under section 10(23C) (iiiab)/ (iiiac)/ (iiiad)/(iiiae)/(iv)/(v)/(vi)/(via)
- v) *Mutual Fund referred to in [section 10](#)(23D)*
- vi) *Securitisation trust referred to in [section 10](#)(23DA)*
- vii) *Venture capital company or venture capital fund referred to in [section 10](#)(23FB)*
- viii) Trade Union or association covered under section 10(24).
- ix) Any body or authority or board or trust referred to in section 10 (46)
- x) Infrastructure debt fund referred to in section 10(47)

Practical 47

Discuss obligation of followings to file income tax return

Sr. No.	Name of the entity	Total income before giving effect to the provisions of section 10 (Rs.)
1.	Competition Commission of India	50.25 Crores
2.	Prasar Bharati	10.22 Crores
3.	Reliance Mutual Fund	22.78 Crores
4.	Trade Union	2.08 lacs
5.	Insurance Regulatory Development Authority (IRDA)	8.05 Crores

Solution

Sr. No.	Name of the entity	Total income before giving effect to the provisions of section 10 (in Rs.)	Section under which entity is eligible for exemption	Whether entity falls in the list of section 139(4C)?	Whether return is required to be filed?
1	Competition Commission of India	50.25 Crores	Section 10(46)	Yes	Yes

2	Prasar Bharati	10.22 Crores	Section 10(23BBH)	No	No
3	Reliance Mutual Fund	22.78 Crores	Section 10(23D)	Yes	Yes
4	Trade Union	2.08 lacs	Section 10(24)	Yes	No because income does not exceed exemption limit
5.	Insurance Regulatory and Development Authority (IRDA)	8.05 Crores	Section 10(23BBE)	No	No

Readers Note:

56. RETURN BY CERTAIN SCIENTIFIC RESEARCH INSTITUTES, UNIVERSITIES OR COLLEGES

Section:- 139(4D)

Whether there is income or loss, every university, college or other institution referred to in clause (ii) and clause (iii) of Section 35(1), shall furnish return of income and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under section 139(1).

57. RETURN BY BUSINESS TRUST

Section:- 139(4E)

Whether there is income or loss, every business trust shall furnish return of income and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under section 139(1).

58. RETURN BY INVESTMENT FUND

Section:- 139(4F)

Whether there is income or loss, every investment fund referred to in section 115UB shall furnish return of income and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under section 139(1).

59. | REVISED RETURN**Section:- 139(5)****Conditions for filing revised return**

- (i) The original return must have been furnished under section 139(1) or section 139(4) and
- (ii) The assessee discovers an omission or wrong statement therein.

then, the revised return under this section may be furnished before the expiry of one year from the end of the relevant assessment year; or completion of assessment whichever is earlier.

Important consequence once revised return is filed: As per various judicial pronouncements, once a return is furnished under this sub-section, all the provisions of the Income-tax Act, 1961 shall apply as if such return has been furnished u/s. 139(1)/(4).

Fill in the blanks:

- (a) Belated return _____ be revised (can/cannot)
- (b) Revised return replaces _____ return. [**Dhampur sugar mills Ltd. V CIT (1973) 90 ITR 236 (All)**].
- (c) Filing of a revised return after discovery of the omission or wrong statement is not by itself sufficient to bring the revised return within the ambit of section 139(5) .A further requirement is that this omission or wrong statement in the original return must be due to a _____ (bonafide / Malafide) inadvertence or mistake on the part of the assessee. [**Sunanda Ram Deka v. CIT (1994) 210 ITR 988 (Gau)**].
- (d) Second revised return _____ be submitted (Can/Cannot)
- (e) Original return filed under section 139(1) declaring loss of Rs. 8,00,000. However, assessee failed to include Loss from Business D amounting to Rs. 3,50,000 and therefore submitted revised return declaring total loss of Rs. 11,50,000. Assessee is entitled to carry forward loss of Rs. _____. [**CIT Vs. Periyar District Co-operative Milk Producers Union Ltd. [2004] 266 ITR 705 (Mad.)**]

Practical 48

Ram, an individual, filed his return of income for the concerned assessment year. He later discovered that he had not claimed deduction under section 80C in the said return.

He claimed the said deduction through a letter addressed to the Assessing Officer. The Assessing Officer completed the assessment without allowing the deduction claimed by Ram. Is the Assessing Officer justified in doing so?

Solution

A return of income filed may be revised by filing a revised return under section 139(5) where the assessee finds any omission or wrong statement in the original return or belated return subject to few conditions. There is no provision in the Income-tax Act to make changes or modification in the return of income by addressing a letter to the assessing officer.

In a case where a return of income has been filed, the only option available to the assessee to make an amendment to such return is by way of filing a revised return under section 139(5).

The **Supreme Court in Goetze (India) Ltd. vs. CIT (2006) 284 ITR 323** has held that there was no provision in the Income-tax Act to allow an amendment in the return of income filed except by way of filing a revised return. Therefore, a fresh claim can be made before the Assessing Officer only by filing a revised return and not otherwise.

In view of the decision of the Supreme Court cited above, the Assessing Officer was justified in completing the assessment without allowing the deduction under section 80C.

Readers Note:

60. DEFECTIVE RETURN**Section:- 139(9)**

This section has an overriding effect over all the provisions of Income Tax Act

Rectification of Defect:-

The Assessing Officer may at his discretion intimate to the assessee the defect in the return.

Time Limit for rectification: - The time limit for rectification shall be **15 days from the date of such intimation** or such extended period allowed by the Assessing Officer.

<i>The assessee <u>fails to rectify</u> the defect <u>within 15 days</u> or such extended time limit</i>		<i>Assessee <u>rectifies</u> the defect <u>after</u> the expiry of <u>15 days</u> or such extended time <u>but before the assessment is made</u></i>	
(i)	The return shall be treated as an <u>invalid return</u>	The Assessing Officer <u>may condone the delay</u> and treat return as a valid return.	
(ii)	The <u>provisions</u> of this Act shall <u>apply as if the assessee had failed to furnish the return</u>		

As per explanation to section 139(9), a return of income shall be regarded as defective in the following cases:

- (a) The annexure, statements and columns in the return of income has not been duly filled in.
- ~~(b) The tax together with interest, if any, payable in accordance with the provisions of [section 140A](#), has not been paid on or before the date of furnishing of the return. – **deleted by Finance Act, 2016.**~~
- (c) The return is not accompanied by the following:
 - (i) Statement showing the computation of tax.
 - (ii) Audit report u/s. 44AB or
 - (iii) Proof of TDS/TCS, advance tax or self – assessment tax paid.
 - (iv) Proof the compulsory deposit made under Compulsory Deposit Scheme.
 - (v) Audited Profit and Loss account, Balance Sheet and Auditor's Report (including Cost Audit Report under section 233B of the Companies Act) if the accounts of the assessee have been audited under any other law.
 - (vi) **Where regular books of account are maintained by the assessee:-**
 - i. Manufacturing Account, Trading Account, Profit and Loss account, or Income and Expenditure account or similar account and Balance Sheet
 - ii. In case of the proprietary business, personal account of the proprietor; in case of firm, AOP/BOI, the accounts of the partners/members and in case of a partner / member his personal account in the firm, AOP/BOI.
 - (vii) **Where regular books are not maintained by the assessee:-**
 - i. statement indicating the turnover, gross receipts, gross profit, expenses and net profit and the basis of such computation
 - ii. Statement of sundry debtors, creditors, stock in trade and cash balance at the end of the previous year

NOTE:

(1) Due to provisions of section 139C/139D and the present ITR forms, it is not possible to attach any certificates, audit reports, computation of total income, financial statements, and proof of various pre-paid taxes. Therefore, practically, return of income may not be regarded as defective because of non-fulfillment of requirements mentioned at point no. (c) above.

(2) Relevant portion from Notification No. 3/2012, dated 04-01-2012

- (i) In case of a defective return, the Commissioner shall intimate this to the person through e-mail or by placing a suitable communication on the e-filing website.
- (ii) A person shall comply with the notice regarding defective return by uploading the rectified return within the period of time mentioned in the notice.

- (iii) The Commissioner may, in order to avoid hardship to the person, condone the delay in uploading of rectified return.
- (iv) In case no response is received from the person in reply to the notice of defective return, the Commissioner may declare a return as not having been uploaded at all or process the return on the basis of information available



SECTION 292B: Return, Notice etc. not to be invalid on certain grounds.

In this connection, a reference may be made to section 292B of the Income-tax Act which provides that no return of income, assessment, notice, summons or other proceedings furnished, made, issued or taken shall be invalid merely by reason of mistake, defect or omission in such return of income, order, notice, summons etc.

The provision in section 139(9), however, overrides other provisions of the income-tax Act (including section 292B) in this regard and in a case where any of the specified defect is not removed within the time allowed, the return shall be treated as an invalid return and the provisions of the Income-tax Act apply as if the assessee had failed to furnish the return. – **Circular No. 281, dated 22-9-1980.**

Fill in the blanks:

- (a) The defects mentioned in the section 139(9) are _____ (illustrative / exhaustive) [**Rai Bahadur Bissesswarlal Motilal Malwasie Trust 195 ITR 825 [1992](Cal.)**]
- (b) The assessee submitted e-return. But it is not verified at all. Hence, the return was an absolutely _____ (Invalid/Defective) as it had a glaring inherent defect which could not be cured inspite of the deeming effect of section 292B. [**CIT V. Harjinder Kaur 310 ITR 71 (P & H)**]

61. RETURN UNDER SECTION 139 BY WHOM TO BE VERIFIED

Section:- 140

ASSESSEE	VERIFICATION TO BE DONE BY
Individual When he is absent from India or mentally incapacitated or for any other reason he is not able to verify	Individual himself His guardian or any other person competent to act on his behalf duly authorized by him
H. U. F Karta is absent from India or he is mentally incapacitated	Karta Any other adult member of the family

Company	Managing Director
Managing Director is unable to verify or there is no M.D.	Any other director
Company is not resident in India	Holder of a valid Power of Attorney
Company is in Liquidation	The Liquidator
Company's management is taken over by the government	The Principal Officer
Partnership Firm	Managing Partner or any other partner not being a minor
Limited liability partnership firm	Designated partner
Where for any unavoidable reason such designated partner is not able to verify	Any Partner
Where there is no designated partner	Any partner
Local authority	Principal Officer
Political Party	Chief executive officer
Association of Persons	Any member or principal officer
Any other person	That person or some other person who is competent to verified on his behalf.

62. SELF – ASSESSMENT TAX

Section:- 140A

- An assessee is required to submit his return of income under section 139 or 142 or 148 or 153A.
- Self-Assessment tax payable by the assessee shall be worked out in the following manner:-

Particulars	Rs.
Compute Total Income under Income Tax Act	XXX
Compute tax on total income as per rates in force together with SC and EC	XXX
Less: TDS / TCS /Advance tax/relief under section 90,91, 90A/Tax credit under sec.115JAA / Tax credit under section 115JD (AMT)	XXX
Add: Interest u/s 234A/ 234B/ 234C	XXX
Self-Assessment tax payable (Amount Refundable)	XXX

- The return of income is to be accompanied by proof of payment of both tax and interest.
- Where the amount paid by the assessee falls short of the aggregate of tax and interest, the amount so paid shall first be adjusted towards interest and the balance, if any, shall be adjusted towards tax.

- After a regular assessment under section 143 or 144 or an assessment under section 153A has been made, any amount paid under section 140A shall be deemed to have been paid towards such regular assessment.
- If any assessee fails to pay whole or any part of such tax or interest or both in accordance with this section, he shall be deemed to be an assessee in default and all the provision of the Act shall apply accordingly.

**SECTION 221: Penalty payable when tax in default**

When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub – section (2) of section 220, be liable, by way of penalty, to pay such amount as the Assessing Officer may direct, and in the case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct, so however, that the total amount of penalty does not exceed the amount of tax in arrears.

However, before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard.

Further, where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section.

**SECTION 222: Certificate to be drawn by TRO**

When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in Form No. 57 specifying the amount of arrears due from the assessee (such statement being hereafter referred to as “certificate”) and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule.

- (a) attachment and sale of the assessee’s movable property;
- (b) attachment and sale of the assessee’s immovable property;
- (c) arrest of the assessee and his detention in prison;
- (d) appointing a receiver for the management of the assessee’s movable and immovable properties.

UNIT K – INQUIRY, AUDIT AND REFERENCE TO VALUATION OFFICER

63. INQUIRY BEFORE ASSESSMENT**Section:- 142(1)****Notice for filing return of income**

Notice shall be issued to any person requiring him to furnish return of income if the said person has not filed the return of income within the time allowed u/s. 139(1) or before the end of relevant assessment year.

Considering the effect of proviso to section 142 (1) (i), such notice can be issued even after the expiry of assessment year.

The Assessing Officer may serve notice on any person, **whether he has filed return or not** requiring him to:

Requirement	Restrictions
Produce or cause to be produced, such accounts or documents as he may require	Accounts shall not relate to a period more than three years prior to the previous year.
Furnish such information in writing as he may require including a statement of all assets and liabilities whether included in the accounts or not.	Previous approval of the Joint Commissioner shall be obtained before requiring the assessee to furnish a statement of assets and liabilities not included in the accounts.

64. INQUIRIES**Section:- 142(2)**

The Assessing Officer can make such inquiries necessary for obtaining full information regarding income or loss of any person.

65. SPECIAL AUDIT**Section:- 142(2A)**

The direction for special audit can be issued at any stage of proceedings if

- (i) the Assessing Officer having regard to
 - the nature and complexity of the accounts,
 - volume of the accounts,
 - doubts about the correctness of the accounts,

- multiplicity of transactions in the accounts or
- specialised nature of business activity of the assessee,
- and in the interest of revenue, is of the opinion that the accounts shall be audited. (**Amendment by FA 2013, wef 1st June, 2013**)

- (ii) Prior approval of the Chief Commissioner or Commissioner shall be obtained.
- (iii) However, the Assessing Officer shall not direct the assessee to get the accounts audited unless the assessee has been given a reasonable opportunity of being heard.

Nomination of Auditor and expenses of audit

- (i) The Chief Commissioner / Commissioner shall nominate the auditor and his decision in this regard is final.
- (ii) On or after the 1st day of June, 2007, the expenses of, and incidental to, such audit (including the remuneration of the Accountant) shall be determined by the Chief Commissioner or Commissioner and the expenses so determined shall be paid by the Central Government.

Time limit for submission of audit report and law relating to re-audit.

- (i) The audit report shall be furnished within the period specified by the A. O. or extended time. Such extension can be done either by the A.O. *on his own motion (Amendment Finance Act, 2008)* or on application made by assessee.
- (ii) The total time limit (including such extended time) shall not exceed 180 days.
- (iii) Assessing Officer can direct the assessee to get his accounts audited under this section even if the accounts are already audited under this Act or under any other law. - ***Super Cassettes Industries Ltd. V CIT (1999) 102 Taxman 202 (Delhi).***

66. OPPORTUNITY OF BEING HEARD

Section:- 142(3)

The assessee shall be given a reasonable opportunity of being heard in respect of any material gathered on inquiry u/s. 142 / 142(2A) and proposed to be used in the assessment except assessment to be completed u/s. 144.

Practical 49

Mr. X had not filed return for A.Y. **2017-18** though due date was **30/9/2017**. He was in receipt of notice u/s 142(1) requiring him to file return on or before **15/12/2017**. Mr. X didn't respond. A.O. issued another notice u/s 142(1) requiring him to file return on or before **31/12/2017**. He filed return on **15/2/18**. On **19/2/18** he received an assessment order u/s 144 and order was signed by A.O. on **13/2/18**. Mr. X challenged assessment order on following grounds:

- (i) Assessment had been framed without giving opportunity of being heard.
- (ii) A.O. had not acted upon the return which was very well in time as per section 139(4).

Discuss validity of contentions raised by Mr. X.

Solution

(i) If notice u/s 142(1) is received and it is not complied with then as per sec 142(3) (opportunity of being heard), no opportunity of being heard is to be given to the assessee particularly when assessment is completed u/s 144.

(ii) As per provision of sec 139(4) belated return can be submitted –

before the end of relevant A.Y. **(31/3/2018)**.

Or

before completion of assessment. **(13/2/2018)**.{*whichever is earlier*}

However, Mr. X submitted return on **15/2/2018**. Therefore, return submitted by Mr. X is not valid.

Hence, both the contentions raised by Mr. X are not tenable.

Readers Note:

67. ESTIMATES BY VALUATION OFFICER IN CERTAIN CASES

Section:- 142A

- (1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.
- (2) The Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.
- (3) The Valuation Officer, on a reference made, shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section 38A of the Wealth-tax Act, 1957.
- (4) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.
- (5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.
- (6) The Valuation Officer shall send a copy of the report of the estimate made, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made.
- (7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Practical 50

During the course of scrutiny proceedings, MNO Limited submitted all the details called for including books of accounts of the company. During the year under scrutiny, MNO Limited had made investment in immovable property. The Assessing Officer was satisfied with the books of accounts and therefore accepted book results but he would like to refer matter to the valuation officer for ascertaining fair market value of captioned immovable property. MNO Limited objected such reference on the ground that Assessing Officer cannot refer matter to the valuation officer without the books being first rejected. Discuss the validity of objections raised by MNO Limited.

Solution

As per provisions of section 142A(2), the Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee. Considering this, the objection raised by MNO Limited is not sustainable.

Readers Note:

UNIT L – INTIMATION AND REGULAR ASSESSMENT

68. INTIMATION / POPULARLY KNOWN AS SUMMARY ASSESSMENT

Section:- 143(1)

(1) Where a return has been made under section 139, or in response to a notice under section 142(1), such return shall be processed in the following manner, namely:-

- (a) the total income or loss shall be computed after making the following adjustments, namely;
- i. any arithmetical error in the return or
 - ii. any incorrect claim, if such incorrect claim is apparent from any information in the return;
 - iii. disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
 - iv. disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
 - v. disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or
 - vi. addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made.

- (b) the intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable, or the amount of refund due to, the assessee after aforesaid corrections;
- (c) the amount of refund due to the assessee shall be granted to him.

Provided that intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to him.

Time limit

No intimation shall be sent under this section after the expiry of one year from the end of the financial year in which the return is made. The acknowledgment of return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to the assessee, and where no adjustment has been made.

Meaning of incorrect claim

It means such claim on the basis of an entry, in the return-

- (a) of an item, which is inconsistent with another entry of the same or some other item in such return;
- (b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished;
- (c) in respect of a deduction, where such deduction exceeds specified statutory limits which may have been expressed as monetary amount or percentage or ratio or fraction.

- (1A) For the purpose of processing the returns as mentioned above, the Board may make a scheme for centralized processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee.
- (1B) For the purpose of giving effect to the scheme, the Central Government may, by notification, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. Further, such notification may be issued at any time but not after 31st March, 2012.
- (1C) Every such notification shall be laid before each house of Parliament.
- (1D) The processing of a return shall not be necessary before the expiry of one year from the end of the financial year in which return is submitted, where a notice has been issued to the assessee under section 143 (2).

However, return shall be processed under section 143(1) before the issuance of order under section 143(3).

69. NOTICE FOR SCRUTINY/ REGULAR ASSESSMENT

Section:- 143(2)

To ensure that the assessee has not

- (a) understated the income or (b) computed excessive loss or (c) underpaid the tax in any manner;
- The Assessing Officer or the prescribed income-tax authority may **serve a notice** on the assessee requiring him on a date to be specified in this notice, either:

- (i) to attend the office of Assessing Officer; or (ii) to **produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.**

Time limit:- No notice shall be served after the expiry of 6 months from the end of the financial year in which the return is furnished.

70. | SCRUTINY/REGULAR ASSESSMENT**Section:- 143(3)**

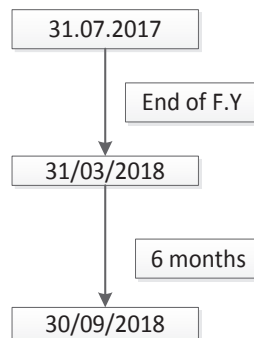
- (i) The Assessing Officer shall take into account all relevant material gathered by him and also the evidence produced by the assessee.
- (ii) On this basis, he shall make an assessment of the total income or loss of the assessee.
- (iii) On the basis of such assessment, he shall determine the sum payable by the assessee or refund due to him.

Practical 51

Mr. Joy filed return for the **A.Y. 2017-18** on **31.07.2017**, A.O. thereafter served notice u/s 143(2) requiring him to produce evidence. Notice was dated **30/09/2018**. However, it was served to Mr. Joy on **10/10/2018**. During the course of hearing, Mr. Joy challenged the jurisdiction of assessing officer on the ground that the assessing officer failed to serve notice under section 143(2) in time. Whether contention raised by Mr. Joy is valid?

Solution

Whenever assessment is sought to be made, assessing officer must assume proper jurisdiction over the case of taxpayer, by issuing and serving valid notice as per the provisions of the Income Tax Act, 1961. Section 143(2) requires service of notice within six months from the end of financial year in which return is furnished.



Considering the above time limit, notice for scrutiny must be served to Mr. Joy on or before **30/9/2018**, while in present case, it has been served on **10/10/2018**. Therefore, contention raised by Mr. Joy for challenging jurisdiction of the assessing officer is valid.

As a result, any order passed by the assessing officer under section 143(3) of the Act, in case of Mr. Joy, for the **A.Y. 2017-18** shall be considered as null and void.

Readers Note:

Practical 52 **Section 143(1) – section 143(2)**

Mr. X filed return for A.Y. 2017-18 on 15/7/2017 declaring income by Rs.3,51,000. A.O. issued intimation u/s 143(1) and determined income at Rs. 3,61,000. A.O. therefore raised notice of demand of Rs.1,200. Intimation was served to assessee on 10/12/2017. Assessee met demand in full on 12/12/2017. A.O. thereafter served notice u/s 143(2) on 15/9/2018 requiring him to produce the evidence on which Mr. X relied in support of the return furnished. Mr. X challenged validity of notice on the ground that once summary assessment is done, notice for scrutiny assessment cannot be served. Whether contention raised by Mr. X is valid?

Solution

Intimation u/s 143(1) in fact is not an assessment, it is merely intimation. It is a mechanical process adopted by Income Tax department to make certain adjustments based on information contained in the return like disallowance of excess depreciation, reducing claim of 80C, wrong calculation of tax etc. In this entire process, neither taxpayer nor the evidences are called upon to verify the correctness of return filed. Therefore, the contention raised by Mr. X challenging the scrutiny notice is not valid.

Readers Note:**Practical 53** **SECTION 143(1)–Section 143(1D)-Section 143(3)-GEB's Case**

Mr. X, filed return for A.Y. 2017-18 on 31/8/17. He received notice for scrutiny on 31/12/17 requiring him to produce books of a on 15/1/18. He responded and during the course of hearing, A.O. found error in rate of depreciation charged on plant and machinery. Therefore, assessing officer would like to issue intimation of demand u/s 143(1). Advice assessing officer.

Solution**Position before amendment made by Finance Act, 2016**

As discussed in earlier Practical, 143(1) is merely intimation while 143(3) is an assessment. Therefore income assessed u/s 143(3) prevails over income determined/ processed u/s 143(1).

Further, **Supreme Court in case of CIT v. Gujarat Electricity Board 260 ITR 84 (2003)** held that Once a regular assessment proceeding has been commenced under section 143(2), there is no need for a summary proceeding under section 143(1).

Considering the above, the assessing officer is advised not to issue intimation under section 143(1) but to make addition in relation to depreciation while passing order under section 143(3).

Position after amendment made by Finance Act, 2016

Section 143(1D), however has been amended and it states that the return shall be processed under section 143(1) before the issuance of order under section 143(3).

Considering the amendment, the assessing officer is advised to issue intimation under section 143(1) before passing issuance of order section 143(3) of the Act.

Readers Note:

71. SPECIAL PROCEDURE FOR ASSESSMENT IN CASE OF**Section:- 143(3)****71.1 Assessment in the case of research association or fund or trust, news agency, notified trust etc.**

- (i) The Assessing Officer may intimate the Central Government or the prescribed authority about the contravention of the relevant provisions of section 10.
- (ii) If any such intimation has been sent, no order shall be passed under section 143(3) without giving effect to the provisions of section 10 unless the approval granted to the entity has been withdrawn or rescinded.
- (iii) In all such cases, the period commencing from the date of intimation by the Assessing Officer and ending with the date of withdrawal or rescinding shall be excluded in computing the time limit of completion of assessment under section 143(3).

71.2 For withdrawal approval in the case of university, college or other institutions referred to in clause (ii) and clause(iii) of section 35(1)

- (i) The Assessing Officer is satisfied that activities are carried out in contravention of the conditions subject to which such university, college or other institutions referred to in clause (ii) and clause (iii) of section 35(1) was approved.
- (ii) Then, A.O. may, after giving reasonable opportunity of being heard against the proposed withdrawal to the concerned university, college, or other institution, recommend to the Central Government to withdraw approval.
- (iii) And that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college, or other institution and the Assessing Officer.

71.3 Special Proviso has been inserted by Finance Act, 2012 w.r.e.f A.Y. 2009-10 for trust or institutions claiming benefit of section 10 (23C)

As per this proviso benefit of exemption under Section 10 (23 C) shall not be given by the assessing officer if trust or institution falls under first proviso to section 2 (15) irrespective of the fact whether Government had rescind approval or not.

72. BEST JUDGMENT ASSESSMENT**Section:- 144*****When Best Judgment assessment can be made?***

Under Section 144	Under Section 145(2)
<i>Where a person <u>fails to</u></i> (i) <u>Furnish</u> a return u/s. 139 or (ii) Comply with all the terms of <u>notice</u> issued u/s. 142(1) or (iii) Comply with a <u>direction</u> issued u/s. 142(2A) i.e. <u>Audit</u> of accounts (iv) Comply with all the terms of a <u>notice</u> issued u/s. 143(2)	(a) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee (b) No method of accounting has been regularly followed by the assessee (c) Where the "income computation and disclosure standards" notified by the Central Government have not been regularly followed by the assessee.

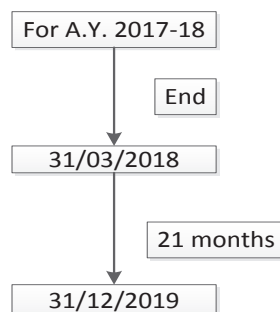
Opportunity of being heard:-

- (i) The assessee will be given an opportunity by a show cause notice as to why assessment shall not be completed to the best judgement of the Assessing Officer.
- (ii) **Opportunity need not be given where notice u/s. 142(1) has already been issued.**

73. TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND CERTAIN PERIODS ARE EXCLUDED FROM THE TIME LIMIT FOR PASSING ASSESSMENT ORDERS**Section:- 153(1), 153(4) and Explanation 1 to Section 153*****Time limit for completion of assessment under section 143(3)/ 144***

- Within 21 months **from** the end of relevant assessment year.
- Within **33 months** from the end of relevant assessment year in case reference is made to TPO under section u/s 92CA (1).

Considering this time limit, for the assessment year **2017-18**, the assessing officer shall complete the assessment under section 143(3) or 144 on or before



However, the following time periods are excluded from the time limit for passing assessment orders.

- (i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or
- (ii) the period during which the assessment proceeding is stayed by an order or injunction of any court; or
- (iii) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of section 10(21), section 10(22B), section 10(23A), section 10(23B) or section 10(23C) and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, under those clauses is received by the Assessing Officer; or
- (iv) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 142(2A) and—
 - (a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or
 - (b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or
- (v) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under section 142A(1) and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or
- (vi) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him; or
- (vii) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or
- (viii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under section 245Q(1) and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under section 245R(3); or
- (ix) the period commencing from the date on which an application is made before the Authority for Advance Rulings under section 245Q(1) and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under section 245R(7); or
- (x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or

section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or

- (xi) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer.

After extending, if the period available to the Assessing Officer for making an order is less than sixty days, then same shall be extended to sixty days.

Similarly, if the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order is less than sixty days, then same shall be extended to sixty days.

Similarly where a proceeding before the Settlement Commission abates under section 245HA, if the period available to the Assessing Officer for making an is less than one year, then the same shall be extended to one year. Further, for the purposes of determining the period of limitation under sections 149, 153B, 154, 155 and for the purposes of payment of interest under section 244A, this provision shall also apply accordingly.

Practical 54

For the **A.Y. 2017-18**, the case of Good Better Best Private Ltd. was selected under scrutiny. During scrutiny proceedings, the Assessing Officer, on **15-12-19**, had made a reference to Valuation Officer under section 142A for determining fair market value under section 69 of Income Tax Act. Thereafter, valuation officer determined fair market value and sent valuation report to Assessing Officer on **30-01-2020**. Find out the revised time limit available with assessing officer for completion of assessment under section 143(3).

Solution

Step 1: Regular Time Limit under section 153

21 months from the end of Assessment Year

End of the Assessment year + 21 months

31.3.2018 + 21 months

31.12.2019

Step 2: Revised Time Limit

Original Time Limit + days lost (the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of [section 142A](#) and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer.)

31.12.2019 + 46 days

15.02.2020

Step 3: Minimum Time Limit

Day on which authority can reassume jurisdiction + 60 days

30.01.2020 + 60 days

31.03.2020

Step 4: Effective Time Limit

Step 2 or Step 3 whichever is later

31.03.2020

Readers Note:**74. NOTICE OF DEMAND****Section:- 156**

When any tax, interest, penalty or any other sum is payable in consequence of any order passed, the Assessing Officer shall serve upon the assessee, a notice of demand in the prescribed form specifying the sum so payable.

Where any sum is determined to be payable by the assessee or by the deductor or by the collector under section 143(1) or section 200A (1) or 206CB(1), then intimation issued under those sections shall be deemed to be a notice of demand for the purpose of section 156.

**SECTION 220(1): Time limit for payment of tax mentioned in demand notice**

Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid *within thirty days of the service of the notice* at the place and to the person mentioned in the notice.

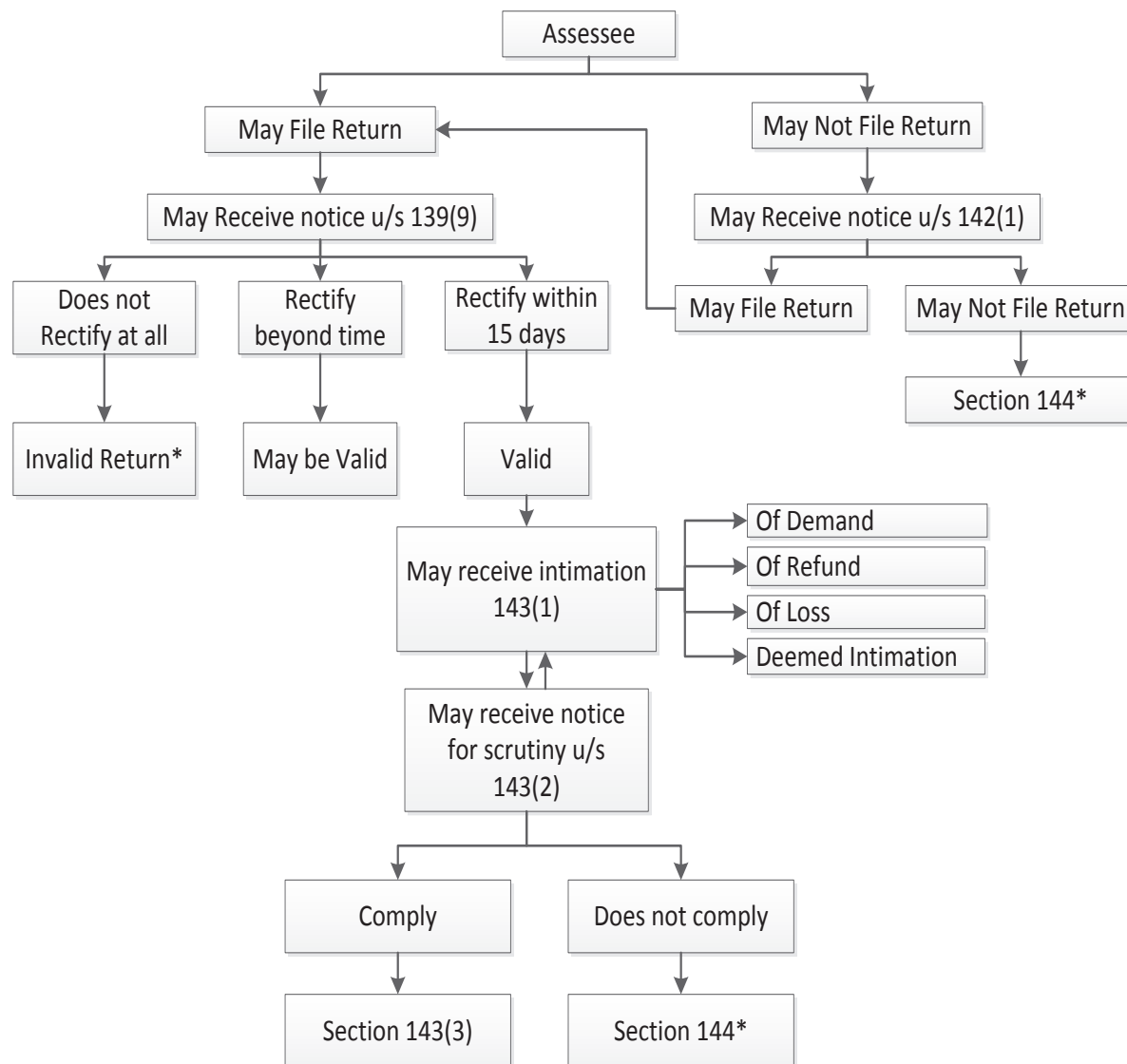
However, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.



SECTION 246A: Appeal to Commissioner (Appeals)

Refer Topic Appeal to Commissioner of Income Tax (A)- **Section 246A**

Summary Chart of Assessment Procedure



Section 144*

Not complied with 143(2)	Not complied with 142(1)	Method of accounting-145
Failed to file return 139	Direction of Audit- 142(2A)	

IMPORTANT CASE LAWS

1. CIT v. PP Engineering Work (2014) 369 ITR 433 (Del) **[DECISION 10 OF ICAI CASE STUDY –PAGE NO. 91]**
2. CIT v. Haryana State Handloom and Handicrafts Corporation Ltd. (2011) 336 ITR 699 (P&H) **[DECISION 14 OF ICAI CASE STUDY –PAGE NO. 94]**
3. CIT v. Tony Electronics Limited (2010) 320 ITR 378 (Del.) **[DECISION 15 OF ICAI CASE STUDY –PAGE NO. 95]**
4. N. Govindaraju v. ITO (2015) 377 ITR 243 **[DECISION 8 (III) OF ICAI CASE STUDY – PAGE NO. 88]**
5. Vipin Walia v. ITO (2016) 382 ITR 19 (Del) **[DECISION 9 OF ICAI CASE STUDY –PAGE NO. 90]**

UNIT M - RE-ASSESSMENT AND RECTIFICATION

75. INCOME ESCAPING ASSESSMENT**Section:- 147 - With effect from 1st June, 2016*****Cases of Deeming escapement:-***

1.	<u>No return</u> is <u>filed</u> by the assessee	Although Income was exceeding the maximum amount not chargeable to tax
2.	The assessee has <u>filed</u> a <u>return</u> of income but <u>no assessment</u> has been made [Sec. 143 (1)]	It is noticed by the A.O. that the assessee has understated income, excessive loss, deduction, allowance or relief claimed
3.	<u>Assessment</u> has been <u>made</u> [Sec. 143(3)/ 144/147]	But – (i) Income chargeable to tax under assessed or (ii) Such income has been assessed at lower rate, (iii) Such income has been subject to excessive relief or (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.
4.	Where assessee undertaken international transaction (or specified domestic transaction)	But failed to furnish a report in respect of these transactions which he was so required under section 92E
5.	where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, section 133C (2)	It is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return. (Amendment by Finance Act, 2016)
6.	Where a person is	Found to have any asset (including financial interest in any entity) located outside India.

76. TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND CERTAIN PERIODS ARE EXCLUDED FROM THE TIME LIMIT FOR PASSING ASSESSMENT ORDERS

Section:- 153(2), 153(4) and Explanation 1 to Section 153- With effect from 1st June, 2016

Time limit for completion of assessment u/s 147

1. Within 9 months *from* the end of financial year in which the notice under section 148 was served.
2. Within **21 months** from the end of financial year in which the notice under section 148 was served in case reference is made to TPO under section u/s 92CA (1).

Explanation 1 to section 153 has already been discussed in para no. 31 of Unit C

Practical 55

A.O. issued notice u/s 148 requiring assessee to file return for **A.Y. 2010-11**. Notice was dated **31/3/17** and sent to Post Office on the same day. But it was served to assessee on **3/4/17**. Discuss validity of notice issued u/s 148.

Solution

Supreme Court in case of R.K.Upadhyaya v. Shanabhai P. Patel [1987] 166 ITR 163 held that the time-limits prescribed under section 149 are relevant for "issue of notice" and not for "service of notice".

Therefore, if the Assessing Officer issues notice within the time-limit prescribed under section 149 of the Act, it is a valid notice even if "service of notice" takes place after such time-limit.

Considering the above, notice issued by A.O. is valid, subject to fulfillment of other conditions.

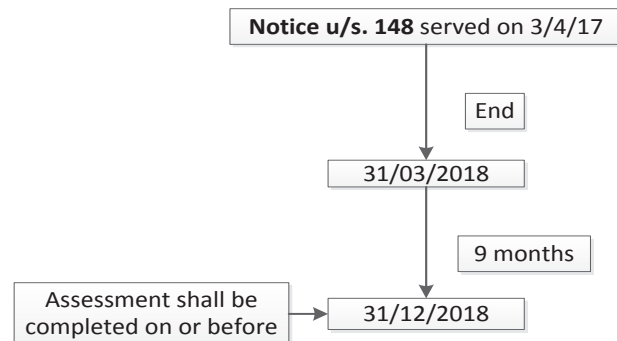
Readers Note:

Practical 56

Suppose in the above practical, assessee submitted return on **15/4/17**. (i) Determine time limit for service of notice u/s 143(2), if A.O. would like to scrutinize the case. (ii) What is the maximum time limit by which assessment u/s 147 shall be completed?

Solution

- (i) Maximum time limit by which notice u/s 143(2) shall be served is **30/9/18**.
- (ii) Time limit for completing assessment under section 147 is 9 months from the end of financial year in which notice u/s 148 is served.



Readers Note:

UNIT N – APPEALS

77. | APPEALS TO COMMISSIONER (APPEALS)-APPEALABLE ORDERS**Section:- 246A**

Any assessee or any deductor or collector aggrieved by any of the following orders may appeal to the Commissioner (Appeals):-

- Order passed by a Joint Commissioner under section 115VP(3)(ii): Order refusing to register under Tonnage Taxation Scheme.
- An order against assessee where assessee denies liability to be assessed or order under section 143(3) ***[except an order passed in pursuance of directions of the Dispute Resolution Panel]*** or section 144.
- An intimation under section 143(1) / 143(1B)/ 200A(1) / 206CB (1)
- An order of assessment, reassessment or recomputation under section 147 ***[except an order passed in pursuance of directions of the Dispute Resolution Panel]***.
- An order of assessment / reassessment under section 153A. *[except an order passed in pursuance of directions of the Dispute Resolution Panel]*
- *an order of assessment or reassessment under sub-section (3) of [section 92CD](#)*
- An order of rectification of mistake under section 154 or section 155
- An order under section 163 treating assessee as an agent of non-resident.
- An order under section 170(2) or 170(3) relating to succession of business otherwise on death.
- An order under section 171 regarding assessment after partition of a HUF.
- An order under section 201.
- An order made under sub-section (6A) of section 206C
- An order under section 237, relating to refund.
- An order imposing penalty under section 221, 271, 271A, **271AAA, 271AAB** 271F, 271FB, 272AA or 272BB.
- An order imposing penalty under section 271B or section 271BB.
- An order made by a Deputy Commissioner imposing a penalty under section 271C, ***section 271CA***, section 271D or section 271E.
- An order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A.
- An order made by a Deputy Commissioner imposing a penalty under section 272AA.
- *An order of imposing or enhancing penalty under sub-section (1A) of Section 275[Inserted by the Taxation Laws(Amendment) Act,2006]*
- An order imposing penalty under Chapter XXI (i.e., under sections 270 to 275)
- An order made by an Assessing Officer (other than a Joint Commissioner) under the provision of the Act in the case of such person or classes of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.

78. FORM OF APPEAL, SIGNING OF FORM, DOCUMENTS TO BE SUBMITTED AND FILING FEES

Section:- 249(1)

- The appeal shall be presented in Form No. 35.
- It shall be signed and verified by the person authorized to sign the return of income under section 140.
- Documents to be submitted:
 - (a) Form No. 35 (including statement of facts and grounds of appeal) – in duplicate.
 - (b) One copy of order appealed against
 - (c) Notice of demand in original
- Above documents shall be accompanied by a prescribed fee as follows:

Particulars	Rs.
(1) Assessed total income of Rs.1 lakh or less	250
(2) Assessed total income of more than Rs. 1 lakh but less than Rs.2 lakh	500
(3) Assessed total income of more than Rs.2 lakh	1000
(4) Any other subject-matter	250

79. TIME LIMIT FOR PRESENTING APPEAL

Section:- 249(2), 248

Section 249(2)

Appeals shall be presented within 30 days of the following date:-

- (a) where the appeal is u/s 248, the date of payment of the tax, or
- (b) where the appeal relates to any assessment or penalty, the date of service of notice of demand relating to the assessment or penalty, or
- (c) in any other case, the date on which intimation of the order sought to be appealed against is served.

But, when the assessee makes an application under section 270AA, then period from the date on which such application is made to the date on which order rejecting the application is served on assessee, shall be excluded for calculation of 30 days.

Section 248

Appeal by person denying liability to deduct tax

Where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, who denies his liability to make such deduction,, may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

80. | CONDONATION OF DELAY IN FILING APPEAL**Section:- 249(3)**

The Commissioner (Appeals) may admit an appeal after the expiration of the prescribed period, if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

Points to remember:

1. The statutory right of appeal must be construed in furtherance of justice and therefore liberal meaning shall be given to the expression “sufficient cause”.
2. A distinction must be made between a case where delay is inordinate and a case where delay is of a few days. Where assessee requests for condonation of delay of few days on genuine ground, then such type of delay must be condoned.

81. | AMOUNT OF TAX PAYABLE BEFORE FILING APPEAL**Section:- 249(4)**

No appeal shall be admitted unless at the time of filing of appeal:-

- (a) Where return has been filed by the assessee, the assessee has **paid the tax** due on the income returned by him.
- (b) Where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him.

Provided that an application made by the Appellant in a case falling under clause (b) above, the Appellate Authority may, for any good and sufficient reason to be recorded in writing, exempt him from the payment of whole or part of such tax.

82. | PROCEDURE IN APPEAL**Section:- 250**

- The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.
- The following shall have the right to be heard at the hearing of the appeal
 - (A) the appellant, either in person or by an authorised representative ;
 - (B) the Assessing Officer, either in person or by a representative.
- The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.

- The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).
- The Commissioner (Appeals) may, at the time of hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable. **[This is called additional ground of appeal]**
- The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision. [That means, the order passed by Commissioner (Appeals) must be **speaking order**.]
- On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Chief Commissioner or Commissioner.
- The appeal, where it is possible, shall be disposed within a period of one year from end of financial year in which appeal is filed.

83. POWERS OF COMMISSIONER (APPEALS)

Section:- 251

The Commissioner (Appeals) enjoys the following powers:

- In an appeal against an order of assessment, he may confirm, reduce, enhance, or annul the assessment.
- In an appeal against an order imposing a penalty, he may confirm or cancel such order to make a variation to reduce or enhance the amount of penalty.
- In any other case, he can pass such orders as he thinks fit.
- According to *Explanation* to section 251, in disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.
- Thus, in the absence of any statutory restriction, the appellate authority is vested with all the **plenary powers** which the subordinate authority may have in the matter—***Jute Corporation of India v. CIT 187 ITR 688 [1991] (SC)***.
- He can do what the Assessing Officer can do and also what Assessing officer has failed to do.
- That means, the **scope of Commissioner (Appeal)'s power is coterminous with that of the Assessing Officer**.
- **Example:** Commissioner (Appeals) has power to reject assessee's books of account which have been accepted by Assessing Officer.

84. WHETHER PRODUCTION OF ADDITIONAL EVIDENCE BEFORE COMMISSIONER (A) IS PERMISSIBLE?

Rule:- 46A

- The appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer.
- However, in the following cases additional evidence shall be admitted by the Commissioner (Appeals) :
 - a. where the Assessing Officer has refused to admit evidence which ought to have been admitted ; or
 - b. where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer ; or
 - c. where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal ; or
 - d. where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- No additional evidence shall be admitted unless the Commissioner (Appeals) records in writing the reasons for its admission.
- The Commissioner (Appeals) shall not take into account any additional evidence produced unless the Assessing Officer has been allowed a reasonable opportunity —
 - a. to examine the evidence or document or to cross-examine the witness produced by the appellant ; or
 - b. to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.
- Without prejudice to above, the Commissioner (Appeals) may direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal.

85. WHEN ASSESSEE SHALL BE DEEMED TO BE IN DEFAULT?

Section:- 220(4)

If the demand is not paid within the time limit under section 220 (1) [generally thirty days or lesser than 30 days], at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

- 86. ASSESSEE MAY NOT BE DEEMED TO BE IN DEFAULT IN CERTAIN CASES
ALTERNATIVELY, IT IS CALLED APPLICATION FOR STAY OF DEMAND
ALTERNATIVELY, IT IS CALLED APPLICATION FOR KEEPING DEMAND IN ABEYANCE**

Section:- 220(6)

Section 220(6) provides that where an assessee has presented an appeal under section 246A, then, the Assessing Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount of dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

Consider following case study:

Gajanan Agencies made an application for stay of demand under section 220(6) to the Assessing Officer. Assessing officer directed assessee to pay the demand in 10 equal monthly instalments. Gajanan Agencies challenged this order by a way of writ petition before Madras High Court. Following are the major observations of the Kerala High Court – **Gajanan Agencies v. ITO 210 ITR 865 (1994)**

- (a) It was difficult to read this order as an order contemplated under section 220(6). This order was another mode of enforcing the recovery of tax.
- (b) It was apparent that the proceedings for collection of tax had not been kept in abeyance at all.
- (c) By virtue of this order, the assessee was compelled to pay the entire amount in 10 equal instalments.
- (d) It appeared that the order was intended to gather tax and not to stay the collection of tax as contemplated under section 220(6).
- (e) **The Assessing Officer while acting under section 220(6) should not act as a mere tax-gatherer but as a quasi-judicial authority.**

- 87. WHAT SHALL BE THE NEXT COURSE OF ACTION IF ASSESSING OFFICER REFUSES TO GRANT THE STAY?**

Section:-

Assessee, in the event of refusal to grant the stay by assessing officer, can very well approach Commissioner (Appeals) to grant the stay. Because, the Commissioner (Appeals) has inherent power to stay recovery proceedings—**Paulsons Litho Works v. ITO 1994 2008 ITR 676 (Mad.) (SMC).**

Further, assessee can straight away approach Commissioner (Appeals) for staying collection of tax, even though, he has not filed an application under section 220(6) to the assessing officer—**Kesav Cashew Company v. Deputy CIT (1994) 201 ITR 1014 (Ker.)**

88. FUNCTIONING OF TRIBUNAL**Section:- 255****Section 255(2)**

Normally, a Bench of the Appellate Tribunal shall consist of one Judicial Member and one Accountant Member.

Section 255(3)

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.15 lakhs. (Rs. 50 lakh with effect from 01.06.2016). The President may constitute a Special Bench consisting of three or more members, one of whom shall be a judicial member and one on accountant member.

Section 255(4)

If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority. If the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing by one or more of the other members of the Appellate Tribunal. Such point shall thereafter be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

Practical 57

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.48,27,614. The Commissioner(Appeals) enhanced the income to Rs.63,89,795. 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?

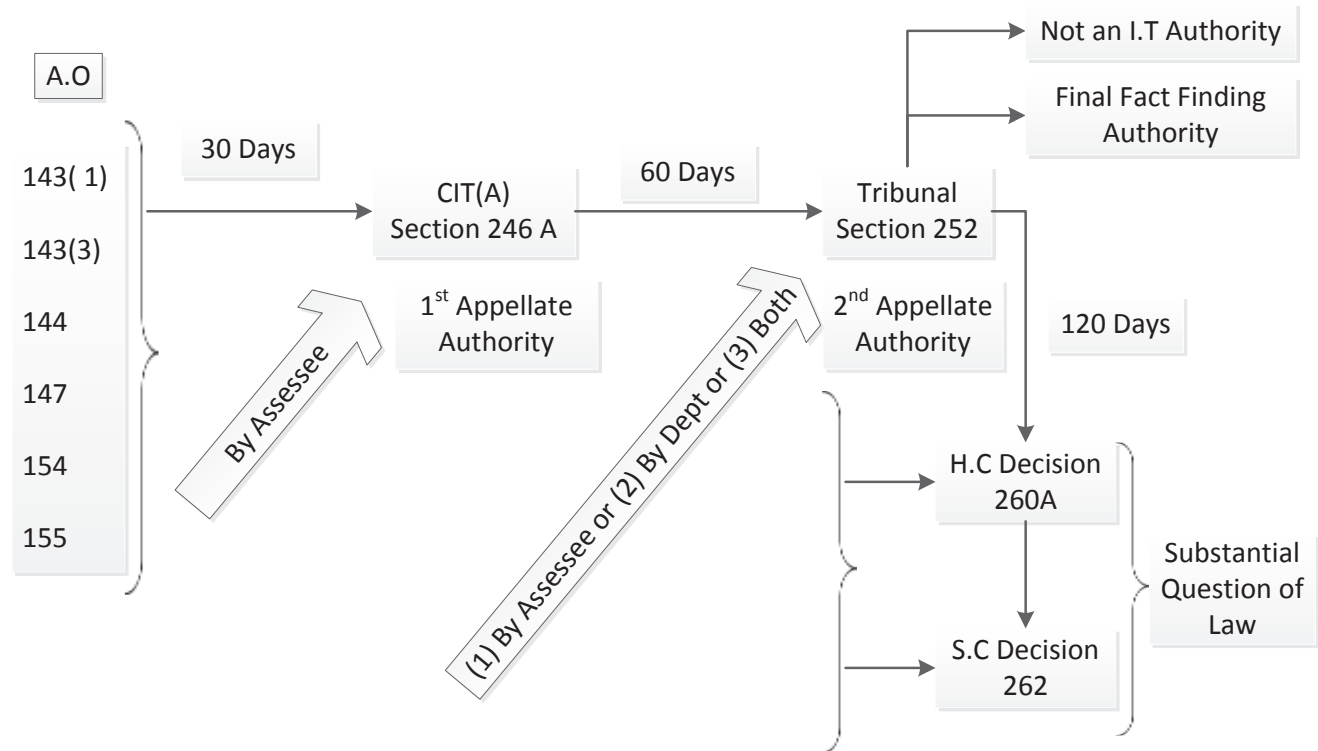
Solution

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. 50 Lakhs), even though the same has been enhanced by the Commissioner (Appeals) in excess of Rs.5 lakhs (Amended limit is Rs. 50 Lakhs)".

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

Readers Note:

Summary Chart of provisions relating to Appeals**89. CIT V. SUBRATA ROY (2016) 385 ITR 570 (SC)**

Can High Court exercise its inherent power to recall its order by exercising jurisdiction under section 260A(7) read with the relevant Rule of the Code of Civil Procedure, 1908 even if that order is not an ex-parte order?

Facts of the case: In the present case, the High Court of Allahabad has recalled its final order dated August 27, 2013 by exercising jurisdiction under section 260A(7) read with the relevant rule of the Code of Civil Procedure, 1908. The High Court, while recalling its order, took note that section 260A(7) inserted by the Finance Act, 1999 provides that the provisions of the Code of Civil Procedure, 1908 relating to appeals to the High Court shall apply in the case of appeal under section 260A of the Income-tax Act, 1961. The relevant rule of the Code of Civil Procedure, 1908 provides that where an appeal is heard ex-parte and the judgment is pronounced against the respondent, he may apply to the court to re-hear the appeal.

Also, where the notice is not served or the defendant was prevented by the sufficient cause from appearing, the court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

The High Court contended that it is empowered to exercise this inherent power. Therefore, vide order dated 21.2.2014, the High Court had recalled its order dated August 27, 2013, on the ground that it had passed its order rejecting the request of the assessee for a day's adjournment since the senior advocate on behalf of the assessee, was to come from Mumbai next day and thus, the applicant could not advance any argument.

Supreme Court's Observations and Decision: The Apex Court noted that the assessee had participated in the hearing of the appeals before High Court which is apparent from the various parts of the order dated 27.08.2013.

The Apex Court held that the order passed by the High Court is not an ex-parte order for invoking the provisions of the Code of Civil Procedure, 1908, since the order of the High Court contains the submissions of the counsel of the assessee (though not that of the senior counsel for whose presence a short adjournment was prayed). Therefore, the High Court did not have the jurisdiction to recall the order passed by it previously. The inherent power under the Code of Civil Procedure, 1908 is hedged by certain pre-conditions and unless the pre-conditions are satisfied the power thereunder cannot be exercised. Accordingly, the Supreme Court set aside the order dated 21.2.2014 of the High Court.

90. CIT V. AMITABH BACHCHAN (2016) 384 ITR 200 (SC)

Can revision under section 263 be made on the ground that the order is passed without making inquiries or verification which should have been made?

Facts of the case: The assessee filed his return of income and subsequently, filed a revised return in which he claimed 30% of gross professional receipts amounting to Rs.3.17 crore as expenditure towards his personal security. When the Assessing Officer asked for the details of expenditure, the assessee replied that the expenses were for security for the personal safety of the assessee and the payments were made out of cash balances. Thereafter, by way of a letter, the assessee informed the Assessing Officer that the claim was made on a belief that it was allowable but as it is not feasible to substantiate the claim, the revised return may be taken to be withdrawn. The Assessing Officer had proposed to treat the expenditure claim as unexplained expenditure under section 69C but after considering the assessee's reply, did not pursue the matter.

After the assessment was finalized, the Commissioner issued show cause notice under section 263 containing the grounds on which the assessment order was proposed to be revised. On getting the replies to the show cause notice, the Commissioner set aside the order of assessment and directed a fresh assessment on the principal ground that requisite and due enquiries were not made by the Assessing Officer prior to finalization of the assessment. On this basis, the Commissioner came to the conclusion that the assessment order in question was erroneous and prejudicial to the interests of the Revenue warranting exercise of power under section 263. In his order, the Commissioner of Income-tax did not record any finding on the several issues mentioned in the show cause notice whereas he recorded conclusions adverse to the assessee in respect of issues which were not specifically mentioned in the show cause notice. However, few of the issues, including the claim of additional expenses in the revised return were common to the show cause notice as well as the revisionary order.

Appellate Authorities' view: The Tribunal opined that in respect of the issues not mentioned in the show-cause notice, the findings as recorded in the revisionary order under section 263 would be considered as breach of principles of natural justice, since the Commissioner of Income-tax cannot go beyond the issues mentioned in the showcause notice. Accordingly, the Tribunal reversed the order of the suo motu revision of order under section 263.

The High Court also dismissed the appeal of the Revenue holding that as the Commissioner had gone beyond the scope of the show cause notice and had dealt with issues not covered or mentioned in the notice the revisionary order which was in violation of the principles of natural justice. The Court also observed that the question whether the Assessing Officer had made sufficient enquiries about the assessee's claim made in the revised return was a pure question of fact and cannot be examined under section 260A.

Supreme Court's Observations: The Apex Court noted that to exercise jurisdiction under section 263 the requirement is that the order passed by the assessing authority is erroneous and prejudicial to the interests of the revenue. Section 263 does not require any specific show cause notice to be served on the assessee. What is required is granting of opportunity to the assessee of being heard before making the revision order. Failure to give such an opportunity would render the revisionary order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice.

The Supreme Court observed that the Tribunal had not recorded any finding that in course of the suo moto revisionary proceedings, the opportunity of hearing was not afforded to the assessee and that the assessee was denied an opportunity to contest the facts on the basis of which the Commissioner had come to the conclusions as recorded in the order under section 263.

In the course of revision, the documents and books of accounts overlooked in the assessment proceedings were considered and at every stage of revisionary proceeding, the authorized representative of the assessee had appeared and had full opportunity to contest the basis on which the revisionary authority was proceeding in the matter.

Where the Commissioner had come its conclusions on the basis of the record of the assessment proceedings which was open for scrutiny by the assessee and available to his authorized representative at all times, there is no breach of the requirement to give a reasonable opportunity of being heard as required under section 263.

Further, it also observed that when the Assessing Officer has dropped the investigation of the claim of expenses, it does not preclude the Commissioner of Income-tax from looking in to the same. Making a claim which would prima facie disclose that the expenses in respect of which deduction had been claimed had been incurred and thereafter, withdrawing the claim gave rise to the necessity of further enquiry in the interests of the Revenue. The notice issued under section 69C of the Act could not have been simply dropped on the ground that the claim had been withdrawn.

Supreme Court's Decision: The Apex Court, accordingly, held that the order of the Tribunal setting aside the revisionary order on the ground that it went beyond the show cause notice was not sustainable. It further held that the High Court having failed to fully deal with the matter, its order was not tenable.

IMPORTANT CASE LAWS

1. Sanchit Software and Solutions Pvt. Ltd. v. CIT (2012) 349 ITR 404 (Bom.) **[DECISION NO. 6 OF ICAI CASE STUDY-PAGE NO. 104]**
2. CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112 (SC) **[DECISION NO. 10 OF ICAI CASE STUDY -PAGE NO. 108]**
3. CIT v. New Mangalore Port Trust (2016) 382 ITR 434 (Karn) **[DECISION NO. 5 OF ICAI CASE STUDY - PAGE NO. 103]**

UNIT O – ASSESSMENT ON REMAND

91. TIME LIMIT FOR COMPLETION OF FRESH ASSESSMENT**Section:- 153(3)**

If fresh assessment is made in pursuance of an order under sections 254, 263 or 264 setting aside or canceling an assessment, then, the below mentioned time limit under section 153(3) of the Act is applicable:

Nature of order	Time-limit for completion of “Fresh Assessment”
If assessment is set aside or cancelled by virtue of an order under section 254	Fresh assessment shall be completed within 9 months from the end of the financial year in which order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be.
If assessment is set aside or cancelled by virtue of an order under section 263 or 264	Fresh assessment shall be made within 9 months from the end of the financial year in which order under section 263 or 264 is passed by the Principal Commissioner or Commissioner.
During the course of the proceedings for the fresh assessment of total income if a reference under sub-section (1) of section 92CA is made	Then above time limits shall be extended by 12 months i.e. 21 months instead of 9 months.

Practical 58

The assessments of Samip Chemicals Ltd. for the assessment year **2014-15** was completed under section 143(3). The Principal Commissioner found the order of assessing officer erroneous and prejudicial to the interest of revenue since it was passed without conducting any inquiry. The Principal Commissioner, therefore, while acting under section 263 of the Act, set aside the whole assessment order and directed the assessing officer to pass the order afresh. This order of Principal Commissioner was dated **10-07-2017**.

Based on the above facts, answer following questions:

- What is the scope of assessment proceedings at the time of fresh assessment after the order of Principal Commissioner?
- What is the time limit for completion of above assessment?

Solution

- (a) Considering the ratio laid down in **Kundanlal Maru v. CIT (1982) 135 ITR 84 (MP)** and the **Rambilas Chandran v. CIT (1985) 156 ITR 344**, where the Principal Commissioner sets aside the whole assessment and directs the assessing officer to pass the order afresh without imposing any restrictions or limitations as to how the fresh proceedings to be conducted by the Assessing Officer, then the Assessing Officer has the same powers in making such fresh assessment as he had originally when making an assessment under section 143(3) / 144 of the Act.
- (b) Time limit for completion of “fresh assessment” is now governed by section 153(3). Considering the provisions of this section, the assessing officer shall complete the “fresh assessment” within 9 months from the end of financial year in which order under section 263 was passed by the Principal Commissioner.

Readers Note:
92. ASSESSMENT/REASSESSMENT IS MADE IN CONSEQUENCE OF OR TO GIVE EFFECT TO A FINDING OR DIRECTION
Section:- 153(6)

Nature of order	Time limit available with the assessing officer to pass the order giving effect to finding/ direction
<i>Finding or direction is contained in an order passed under:</i> section 250, section 254, section 260, section 262, section 263 or section 264 or an order of any Court in a proceedings otherwise than by way of appeal or reference under the Act	Twelve months from the end of month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be.
The assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147 of the Act	Twelve months from the end of month in which the assessment order in the case of firm is passed under section 147.

Explanations 2 relevant for section 153(6)

(a)	(b)
1. A finding or direction is given in an order under sections 250, 254, 260A, 262, 263, 264 or any order of any court.	1. A finding or direction is given in an order under sections 250, 254, 260A, 262, 263, 264 or any order of any Court
2. Under such order an income is excluded from the total income of the assessee for an assessment year	2. Under such order any income is excluded from total income of one person and held to be income of another person

3. An assessment of such income for another assessment year may be made within twelve months from the end of month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be.	3. An assessment of such income on such other person may be made within twelve months from the end of month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be.
	4. Such other person should be given an opportunity of being heard before passing on such other person.

Practical 59

For the A.Ys. 1979-80 to 1983-84 the Commissioner of Income-tax issued notice u/s.263 to the film producer Mr. D.N. Dosani as regards the following two items:

- (a) Total investment in films not properly considered.
- (b) Write off cost of films wrongly allowed.

After hearing the assessee the Commissioner passed the following order:

"The assessments under review are, therefore, set aside with a direction to the Income-tax Officer to look into the above mentioned aspects and redo the assessments as per law and keeping in view the directions given here the Income-tax Officer will also take the necessary consequential actions as the case may be."

While giving effect to the said order, the Assessing Officer made additions and disallowances beyond the said two issues. Assessee challenged those additions and disallowances. Whether the challenge made by the assessee is correct?

Solution

While dealing with the above issue, ITAT- Ahmedabad allowed the appeal and held that the assessments were not set aside in entirety and that Assessing Officer traveled beyond his jurisdiction as he had acquired jurisdiction to look into only those two aspects and nothing else.

Further, on reference at the instance of the revenue, the Gujarat High Court in case of **CIT v. D. N. Dosani, 280 ITR 275 (Guj.)** upheld the decision of the Tribunal and held as under:

"In the instant case the assessee was called upon by the Commissioner to tender an explanation qua two items mentioned in the show cause notice. On a plane reading of S. 263(1), it was apparent that the Commissioner could not have treated any further item or part of the assessment order as being erroneous and prejudicial to the interest of the revenue without giving the assessee an opportunity of being heard. **Therefore, what the Commissioner himself could not have done, could not be permitted to be done by the Assessing Officer while giving effect to the order u/s.263.** The Tribunal was right in law in holding that, in the fresh assessment orders the Assessing Officer was entitled to consider only those two items which had been considered by the Commissioner and was not entitled to consider any other item afresh for making additions."

Readers Note:

93. ORDER GIVING EFFECT TO AN ORDER UNDER SECTION 250, 254, 260, 262, 263 AND 264

Section:- 153(5)

<i>Order to be given effect to</i>	<i>Time-limit available with assessing officer to give the said effect</i>
If effect to an order under section 250, 254, 260 or 262 is given wholly or partly by the assessing officer	Such order (effect) shall be given within a period of 3 months from the end of the month in which order under section 250, 254, 260 or 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be.
If effect to an order under section 263 or 264 is given wholly or partly by the assessing officer	Such order (effect) shall be given within a period of 3 months from the end of the month in which order under section 263 or 264 is passed by the Principal Commissioner or Commissioner.

However, if it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, **may allow an additional period of six months** to give effect to the order.

Practical 60

The assessment of Smt. Daxaben Thakker (55 years) for the assessment year **2014-15** was completed under section 143(3) of Act. The assessing officer determined the assessed income as under:

Particulars	Rs.
Returned Income	3,00,000
Add: G.P. addition	7,00,000
Add: Unexplained cash credit	2,00,000
Total income assessed	12,00,000

As a result, the assessing officer served the notice of demand under section 156 of the Act amounting to Rs. 2,12,300.

Being aggrieved, Smt. Daxaben Thakker preferred an appeal to Commissioner Income Tax (Appeals). The Ld. CIT (A) passed the order under section 250 of the Act dated **10-03-2017** granting relief in G.P. addition to the tune of Rs. 1,50,000 and Rs. 50,000 in relation to unexplained cash credit. Such order was received by the Principal Commissioner on **04-04-2017**.

Based on the above facts, answer the following questions:

- Find out the total income of Smt. Daxaben Thakker after giving effect to the order of CIT (Appeals) under section 250 of the Act.
- What is the time limit available with assessing officer to pass the order giving effect to CIT (A)'s order?

Solution

- (a) Computation of total income of Smt. Daxaben Thakker after giving effect to the order of CIT (Appeals) under section 250 of the Act is as under:

Particulars	Rs.
Total Income assessed under section 143(3) of the Act	12,00,000
Less: Relief given by CIT (A) in G.P. addition	(1,50,000)
Less: Relief given by CIT (A) in unexplained cash credit	(50,000)
Total income assessed after giving effect to CIT(A)'s order	10,00,000

- (b) Time limit for passing above order giving effect to the order of CIT (A) under section 250 of the Act is now governed by section 153(5). Considering the provisions of this section, the assessing officer shall pass the order within **3 months** from the end of the month in which order under section 250 is received by the Principal Commissioner.

However, if it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, **may allow an additional period of six months** to give effect to the order.

Readers Note:

94. SPECIAL TIME LIMIT FOR THE PENDING MATTERS BEFORE 1ST JUNE, 2016 RELEVANT TO SECTION 153(5) / 153(6)

Section:- 153(7)

Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to be given by the Assessing Officer, within the time specified in the said sub-sections, and such order has been received or passed, as the case may be, by the income-tax authority specified therein before the 1st day of June, 2016, the Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, on or before the 31st day of March, 2017.

UNIT P - ASSESSMENT IN CASE OF SEARCH OR REQUISITION**95. | TIME LIMIT FOR COMPLETION OF ASSESSMENT U/S 153A****Section:- 153B: Effective From A.Y.2017-18**

1. The time available for completion of assessment or reassessment in respect of each assessment year falling within six assessment years shall be **21 months** from the end of the financial year in which the last of the authorizations for **search** u/s 132 or for **requisition** u/s 132A **was executed**.
2. In respect of the assessment year relevant to the previous year in which search is conducted u/s 132 or requisition is made u/s 132A, a period of **21 months** from the end of the financial year in which the last of the authorizations for **search** u/s 132 or for **requisition** u/s 132A was **executed** shall be allowed.
3. A proviso to sub-section (1) of section 153B provides that in case of such other person, the time limit for making assessment or reassessment shall be the either:
 - (a) **21 months** from the end of the financial year in which the last of authorisations for search under section 132 or for requisition under section 132A was executed; or
 - (b) **9 months** from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person,**whichever is later.**

UNIT Q – INCOME TAX AUTHORITIES AND ITS POWER

96. JURISDICTION OF ASSESSING OFFICER**Section:- 124:** With effect from 1st June, 2016

- (1) If an Assessing Officer has been vested with jurisdiction over any area then he shall have jurisdiction within the limit of such area :-
- (a) In case of any person carrying on a business or profession within that area or where the business/profession is carried on by any person in more places than one, if the principal place of business or profession is situated within that area.
- (b) In respect of any other person residing within the area.
- (2) Any dispute relating to jurisdiction of an Assessing Officer to assess any person shall be determined by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax.
- (3) If the question of jurisdiction is relating to areas within the jurisdiction of different higher authorities mentioned above, then the concerned authorities shall determine the issue.
- (4) If they are not in agreement then it shall be decided by the Board or by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax as the Board may by notification in the Official Gazette authorize in this behalf.
- (5) The assessee can object to the jurisdiction of Assessing Officer within the time limit specified below:

Return of income filed	No return of income filed
Within one month from the date of service of notice issued u/s 142(1)/143(2) Or Before completion of assessment, whichever is earlier	Within the time allowed in notice u/s 142(1) or u/s 148 for filing the ROI Or Time allowed to show cause as to why best judgment assessment u/s 144 should not be made, whichever is earlier

- (6) In case of search under section 132 or requisition under section 132A, the assessee can object jurisdiction of the assessing officer within one month from the date of service of notice under section 153A(1) or section 153C(2)

Or

Completion of the assessment whichever is earlier.

- (7) Where the assessee calls on question the jurisdiction of an Assessing Officer and the Assessing Officer is not satisfied with such claim, he shall refer the matter for determination by Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax before completing the assessment.

97. | INQUIRY BY PRESCRIBED INCOME-TAX AUTHORITY**Section:- 133C: With effect from 1st June, 2016**

This section provides that the prescribed income-tax authority, may for the purposes of verification of information in its possession relating to any person, issue a notice to such person requiring him, on or before a date to be specified therein, to furnish information or documents (verified in the manner specified therein), which may be useful for, or relevant to, any inquiry or proceeding under the Act.

The information or document received in response to a notice issued under this section by the prescribed income-tax authority may be processed and outcome of such processing may be made available to the Assessing Officer.

**EXPLANATION 2 TO SECTION 147 : ONE OF THE CASES OF DEEMING ESCAPEMENT**

Where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under section 133C (2) , it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return, then it shall be deemed to be the case where income chargeable to tax has escaped assessment.

IMPORTANT CASE LAWS

1. Sahara Hospitality Ltd. v. CIT (2013) 352 ITR 38 (Bom.) **[DECISION NO. 3 OF ICAI CASE STUDY-PAGE NO. 78]**

UNIT R - COLLECTION & RECOVERY OF TAX

98.	POWER OF PRINCIPAL CHIEF COMMISSIONER OR CHIEF COMMISSIONER OR PRINCIPAL COMMISSIONER OR COMMISSIONER TO WAIVE OR REDUCE INTEREST PAYABLE UNDER SECTION 220(2)
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Section:- 220(2A) : With effect from 1st June, 2016

(A) Conditions

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under section 220(2) if he is satisfied that –

- (i) payment of such amount has caused or would cause genuine hardship to the assessee;
- (ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and
- (iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The above conditions for waiver must be satisfied cumulatively- *Mani v. CIT* (2010) 190 Taxman 417 (Mad). However, contrary view has been expressed by Karnataka High Court in case *M.V. Amar Shetty* wherein court held that first condition is independent of second and third condition.

(B) Time limit for passing order and opportunity of being heard

- The order accepting or rejecting the application, either in full or part, shall be passed within a period of twelve months from the end of the month in which the application is received.
- However, in respect of any application pending as on the 1st day of June, 2016, the order shall be passed on or before the 31st day of May, 2017.
- The order rejecting the application, either in full or in part, shall not be passed unless the assessee has been given an opportunity of being heard.

UNIT 5 – TRANSFER PRICING**99. CONDITIONS FOR APPLICABILITY OF ARM'S LENGTH PRICE IN THE INTERNATIONAL TRANSACTION****Section:-****CONDITION 1 – TWO OR MORE ENTERPRISES**

International transaction is subjected to the arm's length price only in case of transaction between two entities called associate enterprises.

ENTERPRISES – MEANING OF – Enterprise means a person who engages or has been engaged or proposed to engage in the following activities:

- a. Any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods:
- b. Know-how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights:
- c. Any activity relating to the provision of services of any kind:
- d. Carrying out any work in pursuance of a contract (e.g. construction contract).
- e. Investment activity:
- f. Activity relating to provision of loan
- g. Business of acquiring, holding, underwriting or dealing with shares, debenture or other securities of any body corporate.

A person would be an enterprise if it carries on the specified activity / business directly or through one or more of its units or divisions or subsidiaries.

CONDITION 2 – ENTERPRISES SHOULD BE REGARDED AS ASSOCIATED ENTERPRISES

The provisions regarding taxation of international transactions apply in case the two enterprises are associated enterprises.

An enterprise would be regarded as an associated enterprise of another enterprise, if---

- a. it participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise: or
- b. in respect of it one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate,

directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Clause (a) of section 92A (1) is about participation by one enterprise into other enterprise. While clause (b) of the said section is about participation by a third enterprise into both the enterprises.

DEEMED ASSOCIATED ENTERPRISES

Section 92A(2) provides that two enterprises shall be deemed to be associated enterprises if for the purpose of section 92A(1), the two enterprises satisfy, at **any time during the previous year**, any of the following conditions:

Thirteen categories - Two enterprises shall be deemed to be associated enterprises for the purpose of section 92A(1), if, at any time during the previous year ---

- I. one enterprise holds (directly or indirectly) shares carrying not less than twenty-six per cent of the voting power in the other enterprise or
- II. any person or enterprise holds (directly or indirectly) shares carrying not less than twenty-six percent of the voting power in each of such enterprises or
- III. a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one percent of the book value of the total assets of the other enterprise or
- IV. one enterprise guarantees not less than ten percent of the total borrowings of the other enterprise or
- V. more than half of the board of directors or members of the governing board, or one or more of the executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise or
- VI. more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons or
- VII. the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights or

- VIII. ninety percent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise or
- IX. the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise and the prices and other conditions relating thereto are influenced by such other enterprise or
- X. where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual or
- XI. where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family, or by a relative of a member of such Hindu undivided family, or jointly by such member and his relative or
- XII. where one enterprise is a firm, association of persons or body of individuals the other enterprise holds not less than ten percent interest in such firm, association of persons or body of individuals or
- XIII. there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

CONDITION 3 – INTERNATIONAL TRANSACTION SHOULD BE CARRIED OUT BY THE ASSOCIATED ENTERPRISES [Section 92B]

An international transaction should be carried out by the associated enterprises (either or both are non-residents). To constitute an international transaction, it should be:-

1. A transaction between two or more associated enterprises in nature of (a) purchase, sale or lease of intangible property or (b) provision of services or (c) lending or borrowing money.
2. A transaction between two or more associated enterprises having a bearing on the profits, income, losses or assets of such associated enterprises.
3. Mutual agreement or arrangement between two or more associated enterprises for (a) allocation or appointment of, or (b) contributing to, any cost or expense incurred (or to be incurred) regarding a benefit, service or facility provided (or to be provided) to any one or more of such associated enterprise.

DEEMED TRANSACTION

Practical 61

On 10/06/2015, A Ltd., a resident entity has entered into an agreement for sale of goods with PQR Ltd., another resident entity but unrelated to A Ltd.

PQR Ltd. had already entered into an agreement (prior agreement) for the sale of same goods to C Inc. (unrelated to PQR Ltd.), a non-resident entity.

For the purpose of chapter “Transfer Pricing”, C Inc. and A Ltd. are associated enterprises.

A Ltd. claims that provisions of “transfer pricing” shall not be applicable to it because of following grounds:

(i) A Ltd. and PQR Ltd. are not associated enterprises

(ii) Since A Ltd. and PQR Ltd. both are residents therefore transaction entered into by them is not an international transaction.

Verify the contention of A Ltd.

Solution

On close reading of section 92B(2), a transaction (**i.e. sale of goods**) entered into by an enterprise (**i.e. by A Ltd.**) with a person other than an associated enterprise (**i.e. with PQR Ltd.**) shall be *deemed to be a transaction* entered into between two associated enterprises (**i.e. such transaction shall be deemed to be a transaction entered into between A Ltd. and C Inc.**), if there exists a prior agreement in relation to the relevant transaction between such other person (**i.e. there is a prior agreement of PQR Ltd.**) and the associated enterprise (**i.e. with C Inc.**) , *whether such other person is a non-resident or not (i.e. whether PQR Ltd. is a non-resident or not).*

Therefore, considering the provisions of section 92B(2), A Ltd. is deemed to have entered into an international transaction with C Inc. and therefore, it is subject to transfer pricing regulations.

Readers Note:

Explanation to Section 92B

Section 92B has been amended with retrospective effect from the assessment year 2002-03, to clarify that “international transaction” shall include—

- (a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
- (b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;
- (c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
- (d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
- (e) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

100. | ARM'S LENGTH PRICE – Computation of (Sec. 92C)**Section:-**

Arm's length price – Meaning of – Arm's length price as per section 92F is the price applied (or proposed to be applied) when two unrelated persons enter into a transaction in uncontrolled conditions.

Therefore to constitute arm's length price:

- a. The price should be applied or proposed to be applied in a transaction.
- b. The transaction is between unrelated persons and
- c. The transaction is taking place in uncontrolled conditions.

However, if certain Government Policies hinder the free market play by restricting, then the arm's length price shall be computed by taking into account such restrictions of Government policies.

The arm's length price shall be determined by any of the method specified in this section being the most appropriate method.

Method of computing arm's length price - Arm's length price can be computed by the following methods:

- (a) Comparable uncontrolled price method.
- (b) Resale price method.
- (c) Cost *plus* method
- (d) Profit split method
- (e) Transactional net margin method
- (f) Such other method as may be prescribed by the Board.

101. | RESALE PRICE METHOD (RPM)**Section:-**

Under this method

- a. The price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise is identified;
- b. Such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services in a comparable uncontrolled transaction or a number of such transactions;
- c. The price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;

- d. The price so arrived at is adjusted to take into account the functional and other differences including differences in accounting practices, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions which could materially affect the amount of gross profit margin in the open market;
- e. The adjusted price arrived at under (d) (supra) is taken to be an arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise.

Practical 62

Swinhoe LLP of France and Rani Ltd of India are associated enterprises. Rani Ltd. imports 3,000 compressors for Air Conditioners from Swinhoe at Rs. 7,500 per unit and these are sold to Paharpur Cooling Solutions Ltd at a price of Rs. 11,000 per unit. Rani had also imported similar products from Cold Ltd and sold outside at a Gross Profit of 20% on Sales.

Swinhoe offered a quantity discount of Rs. 1,500 per unit. Cold could offer only Rs. 500 per unit as Quantity Discount. The freight and customs duty paid for imports from Poland had cost Rani Rs. 1,200 apiece. In respect of purchase from Cold Ltd, Rani had to pay Rs. 200 only as freight charges.

Determine the Arm's Length Price and the amount of increase in Total Income of Rani Ltd.

Solution**A. Computation of Arm's Length Price of Products bought from Swinhoe, France by Rani Ltd.**

Particulars	Amount Rs.
Resale Price of Goods Purchased from Swinhoe	11,000
Less: Adjustment for differences	
(a) Normal gross profit margin @ 20% of sale price [20% × Rs. 11,000]	2,200
(b) Incremental Quantity Discount by Swinhoe [Rs. 1,500 – Rs. 500]	1,000
(c) Difference in Purchase related Expenses [Rs. 1,200 – Rs. 200]	1,000
Arms Length Price	6,800

B. Computation of Increase in Total Income of Rani Ltd

Particulars	Amount Rs.
Price at which actually bought from Swinhoe LLP of France	7,500
Less : Arm's Length Price per unit under Resale Price Method	(6,800)
Decrease in Purchase Price per Unit	700
No. of Units purchased from Swinhoe	1,000
Increase in Total Income of Rani Ltd [3,000 Units × Rs. 700]	Rs.21,00,000

Reader's Note:

102. PROFIT SPLIT METHOD**Section:-**

This method is applicable mainly in international transactions involving transfer of unique intangibles or in multiple international transactions which are so interrelated that they cannot be evaluated separately for the purpose of determining the arm's length price of any one transaction. As per profit split method which-

- The combined net profit of the associated enterprises arising from the international transaction in which they are engaged is determined
- The relative contribution made by each of the associated enterprises to the earning of such combined net profit is then evaluated on the basis of the functions performed assets employed or to be employed and risks assumed by each enterprise and on the basis of reliable external market data which indicates how such contribution would be evaluated by unrelated enterprises performing comparable functions in similar circumstances
- The combined net profit is then split amongst the enterprises in proportion to their relative contributions as evaluated under (b) (supra)
- The profit thus apportioned to the assessee is taken into account to arrive at an arm's length price in relation to the international transaction:

Practical 63

NBR Medical Equipments Inc. (NBR) of Canada has received an order from a leading UK based Hospital for development of a hi-tech medical equipment which will integrate the best of software and latest medical examination tool to meet varied requirements. The order was for 3, 00,000 Euros. To execute the order, NBR joined hands with its subsidiary Precision Components Inc. (PCI) of USA and Bioinformatics India Ltd (BIL), an Indian Company. PCI holds 30% of BIL. NBR paid to PCI and BIL Euro 90,000 and Euro 1,00,000 respectively and kept the balance for itself. In the entire transaction, a profit of Euro 1,00,000 is earned. Bioinformatics India Ltd incurred a Total Cost of Euro 80,000 in execution of its work in the above contract. The relative contribution of NBR, PCI and BIL may be taken at 30%, 30% and 40% respectively. Compute the Arm's Length Price and the incremental Total Income of Bioinformatics India Ltd, if any due to adopting Arms Length Price determined here under:-

Solution

Particulars	Euros [€]
A. Share of each of the Associates in the Value of the Order	
value of the order:	
Share of BIL (given)	<u>3,00,000</u>
Share of PCI (given)	1,00,000
Share of NBR [Amount retained = 3,00,000 – 1,00,000 – 90,000]	90,000
	1,10,000

B. Share of each of the Associates in the profit of the order	
Combined Total Profits	1,00,000
Share of BIL [Contribution of 40% × Total Profit € 1,00,000]	
Share of PCI [Contribution of 30% × Total Profit € 1,00,000]	40,000
Share of NBR [Contribution of 30% × Total Profit € 1,00,000]	30,000
	30,000

C. Computation of Incremental Total Income of BIL

Total Cost to Bioinformatics India Ltd	80,000
Add: Share in the Profit to BIL (from B above)	40,000
Revenue of BIL on the basis of Arm's Length Price	1,20,000
Less: Revenue Actually received by BIL	(1,00,000)
Increase in Total Income of BIL	20,000

Reader's Note:**103. SAFE HARBOUR****Rule:- 10TD**

- (1) Where an eligible assessee has entered into an eligible international transaction and the option exercised by the said assessee is not held to be invalid under rule 10TE, the transfer price declared by the assessee in respect of such transaction shall be accepted by the income-tax authorities, if it is in accordance with the circumstances as specified in sub-rule (2).
- (2) The circumstances referred to in sub-rule (1) in respect of the eligible international transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:-

SNO	Eligible International Transaction	Circumstances
(1)	(2)	(3)
1.	Provision of software development services referred to in item (i) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is – (i) not less than 20 per cent., where the aggregate

		value of such transactions entered into during the previous year does not exceed a sum of five hundred crore rupees; or (ii) not less than 22 per cent., where the aggregate value of such transactions entered into during the previous year exceeds a sum of five hundred crore rupees.
2.	Provision of information technology enabled services referred to in item (ii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is – (i) not less than 20 per cent., where the aggregate value of such transactions entered into during the previous year does not exceed a sum of five hundred crore rupees; or (ii) not less than 22 per cent., where the aggregate value of such transactions entered into during the previous year exceeds a sum of five hundred crore rupees.
3.	Provision of knowledge process outsourcing services referred to in item (iii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 25 per cent..
4.	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan does not exceed fifty crore rupees.	The Interest rate declared in relation to the eligible international transaction is not less than the base rate of State Bank of India as on 30th June of the relevant previous year plus 150 basis points.
5.	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan exceeds fifty crore rupees.	The Interest rate declared in relation to the eligible international transaction is not less than the base rate of State Bank of India as on 30th June of the relevant previous year plus 300 basis points.
6.	Providing corporate guarantee referred to in sub-item (a) of item (v) of rule 10TC.	The commission or fee declared in relation to the eligible international transaction is at the rate not less than 2 per cent. Per annum on the amount guaranteed.
7.	Providing corporate guarantee referred to in sub-item (b) of item (v) of rule 10TC	The commission or fee declared in relation to the eligible international transaction is at the rate not less than 1.75 per cent. Per annum on the amount guaranteed.
8.	Provision of contract research and development services wholly or	The operating profit margin declared by the eligible assessee from the eligible international transaction in

	partly relating to software development referred to in item (vi) of rule 10TC.	relation to operating expense incurred is not less than 30 per cent.
9.	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs referred to in item (vii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 29 per cent..
10.	Manufacture and export of core auto components referred to in item (viii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 12 per cent..
11.	Manufacture and export of noncore auto components referred to in item (ix) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 8.5 per cent.

- (3) The provisions of sub-rules (1) and (2) shall apply for the assessment year 2013-14 and four assessment years immediately following that assessment year.
- (4) No comparability adjustment and allowance under the second proviso to sub-section (2) of section 92C shall be made to the transfer price declared by the eligible assessee and accepted under sub-rules (1) and (2) above.
- (5) The provisions of sections 92D and 92E in respect of an international transaction shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.

Practical 64

Examine the following transactions and discuss whether the transfer price declared by the following assessee, who have exercised a valid option for application of safe harbour rules, can be accepted by the Income-tax Authorities –

	Assessee	International Transaction	Aggregate value of transactions entered into in the P.Y.2013-14	Declared Operating Margin	Operating Expense
(1)	A Ltd., an Indian company	Provision of system support services to X Inc., which is a “specified foreign company” in relation to A Ltd.	Rs. 600 crore	Rs. 90 crore	Rs.450 crore
(2)	B Ltd., an Indian company	Provision of data processing services with the use of information technology to Y Inc., its foreign subsidiary	Rs. 400 crore	Rs. 62 crore	Rs.300 crore

(3)	C & Co., a partnership firm registered under the Partnership Act, 1932	Provision of contract R & D services relating to development of internet technology, to XYZ & Co., a foreign firm, which holds 12% interest in C & Co.	Rs. 100 crore	Rs. 20 crore	Rs. 70 crore
(4)	D Ltd., an Indian company	Provision of contract R & D services relating to generic pharmaceutical drug, to ABC Inc., a foreign company which guarantees 15% of the total borrowings of D Ltd.	Rs. 50 crore	Rs. 9 crore	Rs. 30 crore
(5)	Sole proprietary concern of Mr.E, solely engaged in the original manufacture and export of automobile transmission and steering parts.	100% export of automobile transmission and steering parts to LMN LLP, a foreign LLP, controlled by Mr.E jointly with his relatives.	Rs. 12 crore	Rs. 1 crore	Rs. 10 crore
(6)	F Ltd. an Indian company, solely engaged in the original manufacture and export of noncore auto components.	100% export of non-core auto components to GKG Inc., a foreign company. F Ltd. appoints two-thirds of the Board of Directors of GKG Inc.	Rs. 12 crore	Rs. 1 crore	Rs. 10 crore

In all the above cases, it may be assumed that the Indian entity which provides the services assumes insignificant risk. It may also be assumed that the foreign entities referred to above are non-resident in India.

Would your answer change, if in any of the cases mentioned above, the foreign entity is located in a notified jurisdictional area?

Solution

Section 92CB(1) provides that the determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules. Safe harbour means circumstances in which the income tax authorities shall accept the transfer price declared by the assessee. Section 92CB(2) empowers the CBDT

to prescribe such safe harbor rules or circumstances under which the transfer price declared by the assessee shall be accepted by the Income-tax Authorities.

Accordingly, in exercise of the powers conferred by section 92CB read with section 295 of the Income-tax Act, 1961, the CBDT has, vide Notification No.73/2013 dated 18.9.2013, prescribed safe harbour rules. Rule 10TD provides that where an eligible assessee has entered into an eligible international transaction and the option exercised by the said assessee is not held to be invalid under Rule 10TE, the transfer price declared by the assessee in respect of such transaction shall be accepted by the incometax authorities, if it is in accordance with the circumstances set out thereunder.

An eligible assessee is a person who has exercised a valid option for application of safe harbour rules and is engaged in, inter alia, providing the following services, with insignificant risk, to a non-resident associated enterprise –

- (i) software development services; or
- (ii) information technology enabled services; or
- (iii) knowledge process outsourcing services; or
- (iv) contract R & D services wholly or partly relating to software development; or
- (v) contract R & D services wholly or partly relating to generic pharmaceutical drugs.

A person who is engaged in the manufacture and export of core or non-core auto components and where 90% or more of total turnover during the relevant previous year is in the nature of original equipment manufacturer sales also falls within the definition of eligible assessee if he has exercised a valid option for application of safe harbour rules.

(1) X Inc. is a specified foreign company in relation to A Ltd. Therefore, the condition of A Ltd. holding shares carrying not less than 26% of the voting power in X Inc is satisfied. Hence, X Inc. and A Ltd. are deemed to be associated enterprises. Therefore, provision of systems support services by A Ltd., an Indian company, to X Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case. Systems support services falls within the definition of “software development services”, and hence, is an eligible international transaction. Since A Ltd. is providing software development services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee. Since the aggregate value of transactions entered into in the P.Y.2013-14 exceed Rs. 500 crore, A Ltd. should have declared an operating profit margin of not less than 22% in relation to operating expense, to be covered within the safe harbour rules.

However, since A Ltd. has declared an operating profit margin of only 20% (i.e., $\frac{90}{450} \times 100$), the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by A Ltd.

(2) Y Inc., a foreign company, is a subsidiary of B Ltd., an Indian company. Hence, Y Inc. and B Ltd. are associated enterprises. Therefore, provision of data processing services by B Ltd., an Indian company, to Y Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Data processing services with the use of information technology falls within the definition of “information technology enabled services”, and is hence, an eligible international transaction. Since B Ltd. is providing data processing services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Since the aggregate value of transactions entered into in the P.Y.2013-14 does not exceed Rs. 500 crore, B Ltd. should have declared an operating profit margin of not less than 20% in relation to operating expense, to be covered within the scope of safe harbour rules. In this case, since B Ltd. has declared an operating profit margin of 20.67% (i.e., $\frac{62}{300} \times 100$), the same is in accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by B Ltd in respect of such international transaction.

- (3) XYZ & Co., a foreign firm holds 12% interest in C & Co., an Indian firm. Therefore, the condition of one enterprise, being a foreign firm, holding not less than 10% interest in another enterprise, being an Indian firm, is satisfied. Hence, XYZ & Co. and C & Co. are deemed to be associated enterprises. Therefore, provision of contract R & D services relating to software development by C & Co., an Indian firm, to XYZ & Co., a foreign firm, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Development of internet technology falls within the meaning of “contract R&D services wholly or partly relating to software development”, and hence, is an eligible international transaction. Since C & Co., an Indian firm, is providing contract R & D services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, C & Co. should have declared an operating profit margin of not less than 30% in relation to operating expense, to be covered within the safe harbour rules.

However, since C & Co. has declared an operating profit margin of only 28.57% (i.e., $\frac{20}{70} \times 100$), the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by C & Co.

- (4) ABC Inc., a foreign company, guarantees 15% of the total borrowings of D Ltd., an Indian company. Since ABC Inc. guarantees not less than 10% of the total borrowings of D Ltd., ABC Inc. and D Ltd. are deemed to be associated enterprises.

Therefore, provision of contract R & D services relating to generic pharmaceutical drug by D Ltd., an Indian company, to ABC Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Provision of contract R& D services in relation to generic pharmaceutical drug is an eligible international transaction. Since D Ltd. is providing such services to a nonresident associated enterprise and has exercised a valid option for safe harbor rules, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, D Ltd. should have declared an operating profit margin of not less than 29% in relation to operating expense, to be covered within the scope of safe harbour rules.

In this case, since D Ltd. has declared an operating profit margin of 30% (i.e., $\frac{9}{30} \times 100$), the same is in accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by D Ltd in respect of such international transaction.

- (5) LMN LLP, a foreign LLP, is controlled by Mr.E jointly with his relatives. Mr. E also has control over his own sole proprietorship concern. Therefore, the sole proprietorship concern of Mr.E in India and LMN LLP are deemed to be associated enterprises.

Automobile transmission and steering parts fall within the meaning of “core auto components”, and hence, 100% export of all such parts originally manufactured by the sole proprietorship concern of Mr.E is an eligible international transaction.

Since the sole proprietorship concern of Mr.E is solely engaged in the original manufacture and 100% export of such parts and has exercised a valid option for safe harbour rules, it is an eligible assessee. Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, the sole proprietorship concern of Mr.E should have declared an operating profit margin of not less than 12% in relation to operating expense, to be covered within the safe harbour rules. However, since A Ltd. has declared an operating profit margin of only 10% (i.e., $\frac{1}{10} \times 100$), the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by Mr.E.

- (6) F Ltd. and GKG Inc. are deemed to be associated enterprises since F Ltd. appoints more than half of the Board of Directors of GKG Inc. Manufacture and export of non-core auto components is an eligible international transaction. Since F Ltd. is engaged in original manufacture of non-core auto components and 100% export of the same, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, F Ltd. should have declared an operating profit margin of not less than 8.5% in relation to operating expense, to be covered within the scope of safe harbour rules.

In this case, since F Ltd. has declared an operating profit margin of 10% (i.e., $\frac{1}{10} \times 100$), the same is in accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by F Ltd in respect of such international transaction.

The safe harbour rules shall not apply in respect of eligible international transactions entered into with an associated enterprise located in a notified jurisdictional area. Therefore, if in any of the cases mentioned above, the foreign entity is located in a NJA, the safe harbour rules shall not be applicable, irrespective of the operating profit margin declared by the assessee.

Reader's Note:

UNIT T- ADVANCE TAX AND INTEREST

104. | INSTALMENTS OF ADVANCE TAX AND DUE DATES**Section:- 211:** With effect from 1st June, 2016

Due date of instalment	Amount payable in case of all assessee (except an eligible assessee referred to in section 44AD of the Act)	Amount payable in case of an eligible assessee in respect of an eligible business referred to in section 44AD of the Act
On or before June 15 of the previous year	Upto 15 percent of advance tax payable	NA
On or before September 15 of the previous year	Upto 45 percent of advance tax payable	NA
On or before December 15 of the previous year	Upto 75 percent of advance tax payable	NA
On or before March 15 of the previous year	Upto 100 percent of advance tax payable	Upto 100 percent of advance tax payable

- Any payment of advance tax made on or before 31st day of March shall also be treated as advance tax paid during the financial year.

105. | INTEREST FOR DEFERMENT OF ADVANCE TAX.**Section:- 234C :** With effect from 1st June, 2016**(I) Period for which and amount on which interest is payable****(A) Eligible assessee under section 44AD**

<i>Dates of Installment</i>	<i>Advance Tax Paid Till Date</i>	<i>Advance Tax Payable</i>	<i>Amount on which interest is payable [(3)-(2)]</i>	<i>Period for which interest is payable</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
15.03.17		100%		1 month

(B) Other assessee

<i>Dates of Installment</i>	<i>Advance Tax Paid Till Date</i>	<i>% of "tax due on returned income"</i>	<i>Amount on which interest is payable [(3)-(2)]</i>	<i>Period for which interest is payable</i>
(1)	(2)	(3)	(4)	(5)
15.06.16		15%		3 months
15.09.16		45%		3 months
15.12.16		75%		3 months
15.03.17		100%		1 month

However, no interest under section 234 C shall be levied for the first and second instalment, if advance tax paid by the assessee is not less than 12% or 36% of tax due on returned income.

(II) Points to remember**(a) Meaning of "Tax due on returned income"**

Particulars	Rs.
Tax on returned income	xxx
Less: TDS or TCS/ Relief u/s 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Tax due on returned income	<u>xxxx</u>

(b) Calculation of interest under section 234C is always with reference to "tax due on returned Income". Therefore interest under section 234C will not undergo change even if assessing officer may complete the assessment at higher figure under section 143(1) / 143(3) / 144 / 147 / 153A, as the case may be.

(III) Short payment of advance tax in case of capital gains/lottery income etc.

No interest will be levied in respect of any shortfall in the payment of advance tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate-

- (a)** the amount of capital gains; or
- (b)** income of the nature referred to in section 2(24)(ix) (i.e., winning from lottery, crossword puzzle income, races including horse race etc.); or
- (c) income under the head "PGBP" in cases where the income accrues or arises under that head for the first time,**

and the assessee has paid the whole of the amount of tax payable in respect of such income, as part of the remaining instalments of advance tax which are due or if no such instalments are due, then such tax is paid by the 31st day of March of the financial year.

Practical 65

Surana & Co, a partnership firm provides following information:

(a) The returned income for the previous year **2016-17** is Rs.5,00,000.

(b) The advance tax has been deposited as under-

15-06-2016	Rs. 12,000
14-09-2016	Rs. 38,000
17-12-2016	Rs. 20,000
15-03-2017	Rs. 30,000

(c) TDS was actually deducted Rs. 41,900.

You are required to compute interest payable under section 234C.

Solution**Calculation of “Tax due on returned income”**

Particulars	Rs.
Tax on Rs.5,00,000 @ 30.90%	1,54,500
Less: TDS	(41,900)
Advance Tax Payable	1,12,600

<i>Dates of Installment</i>	<i>Advance Tax Paid Till Date</i>	<i>Check Provision</i>	<i>Whether 234C is attracted?</i>	<i>% of “tax due on returned income”</i>	<i>Difference (Short fall) (5)-(2) [Refer NOTE]</i>	<i>Period (in Months)</i>	<i>Interest under Section 234C</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
15.06.16	12,000	[12%] =13,512	Yes	[15%] =16890	4,800	3 M	144
15.09.16	50,000	[36%] =40,536	No	[45%] =NA	NA	3 M	NA
17.12.16	50,000	[75%] =84,450	Yes	[75%] =84450	34,400	3 M	1,032
15.03.17	1,00,000	[100%] =1,12,600	Yes	[100%] =112600	12,600	1 M	126
TOTAL INTEREST PAYABLE UNDER SECTION 234C							<u>1,302</u>

NOTE: Amount in column 6 is rounded off to lower side of 100's.

Readers Note:

UNIT U - PENALTIES

106. PENALTY ON THE BASIS OF MISREPORTING /UNDER REPORTED OF INCOME**Section:- 270A**

Section 270A has been inserted from the assessment year 2017-18. Under this section, the Assessing Officer, CIT (Appeals) or the Principal CIT or CIT may, during the course of any proceedings under this Act, levy penalty if a person has under – reported his income

Cases of under-reported income

- (a) the income assessed is greater than the income determined in the return processed under section 143(1)(a);
- (b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;
- (c) the income **reassessed** is greater than the income assessed or reassessed immediately before such reassessment;
- (d) the amount of deemed total income assessed or reassessed under section 115JB or section 115JC is greater than the deemed total income determined in the return processed under section 143(1)(a);
- (e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;
- (f) the amount of deemed total income **reassessed** as per the provisions of section 115JB or section 115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment;
- (g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

Quantum of under-reported income

The amount of under-reported income shall be determined as follows-

Sr. No.	Different situations	Quantum of under-reported income
1.	In a case where income has been assessed for the first time, and	
	(a) Return has been furnished	The difference between the income assessed and the income determined under section 143(1)(a).
	(b) Return has not been furnished	- In the case of a company, firm or local authority; The amount of income assessed,
		- In any other case:- The difference between the income assessed and the maximum amount not chargeable to tax.

2.	Where income is not assessed for the first time	The difference between the income assessed/reassessed/recomputed and the amount of income assessed/reassessed/recomputed in a preceding order
3.	Where an assessment /reassessment has the effect of reducing the loss declared in the return or converting that loss into income	The difference between the loss claimed and the income (or loss) as assessed / reassessed
4.	Where under-reported income arises out of determination of deemed income in accordance with the provisions of section 115JB/115JC	$(A-B) + (C-D)$

Calculation of under-reported income in case of applicability of provision of sections 115JB/JC- It shall be determined on the basis of the following formula-

Under-report income = $(A-B) + (C-D)$

- A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);
- B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;
- C = the total income assessed as per the provisions contained in section 115JB or section 115JC
- D = the total income 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 under-reported income:

Note: where the amount of under-reported income on any issue is considered both under the 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.

Under-reported income shall not include the following-

- Where the assessee offers an explanation and the income-tax authority is satisfied that the explanation is bonafide and all the material facts have been disclosed;
- Where such under-reported income is determined on the basis of an estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deducted therefrom;
- Where the assessee has, on his own, estimated a lower amount of addition or disallowance on the issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance;

- d. Where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction and disclosed all the material facts relating to the transaction;
- e. Where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB.

Rate of penalty: the rate of penalty shall be 50 percent of the tax payable on under-reported income. However, in cases of under-reported income falling under misreporting of income, penalty shall be 200 percent of the tax payable on such misreporting of income

Misreporting of income [section 270A(9)]- cases of misreporting of income shall be the following-

- (a) misrepresentation or suppression of facts;
- (b) failure to record investments in the books of account;
- (c) claim of expenditure not substantiated by any evidence;
- (d) recording of any false entry in the books of account;
- (e) failure to record any receipt in books of account having a bearing on total income; and
- (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

How to calculate tax on under-reported income. The tax payable on under-reported income shall be calculated as follows-

Different situations	Mode of computation of tax on under-reported income
Case 1- where no return has been furnished and the income has been assessed for the first time	Amount of tax computed on (under-reported income + exemption limit)
Case 2- where total income determined under section 143(1)(a) or assessed/reassessed/re-computed in a preceding order is a loss	Amount of tax computed on under-reported income, as if it were total income
Case 3-In any other case	Tax on under-reported income is (x-y)
	x=amount of tax computed on [under-reported income + total income determined under section 143(1)(a) or total income assessed/reassessed/recomputed in a preceding order]
	y=amount of tax computed on total income determined under section 143(1)(a) or total income assessed/reassessed/recomputed in a preceding order]

Penalty to be levied by whom?

The penalty under this section shall be imposed, by an order in writing, by the Assessing Officer, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be.

107. IMMUNITY FROM IMPOSITION OF PENALTY**Section:- 270AA**

- An assessee may make an application under section 270AA to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or 276CC.
- The assessee can make an application subject to following conditions:
 - (a) The assessee pays tax and interest payable as per the order of assessment/reassessment order under section 143(3)/147 within the period specified in such notice of demand and does not prefer an appeal against such assessment order and
 - (b) The assessee makes such application in a prescribed form within 1 month from the end of the month in which the order of assessment or reassessment is received.
- The Assessing Officer shall, on fulfilment of the above conditions and after the expiry of the period of filing the appeal as specified in section 249(2), grant immunity from penalty proceedings under section 270A and initiation of proceedings under [276C](#).
- However, immunity shall not be granted for penalty under section 270A(9) of the Act.
- The Assessing Officer is required to pass an order accepting (or rejecting) such application, within a period of 1 month from the end of the month in which such application is received. However, the Assessing Officer shall give an opportunity of being heard before rejecting the application.
- The order passed under this section shall be final.
- No appeal under section 246A or an application for revision under section 264 shall be admissible against the order of the assessment or reassessment in a case where the order granting immunity is passed.

Practical 66

M/s. XYZ., partnership firm provides following details for the A.Y.2017-18:

Sr. No.	Particulars of Income	Rs.
1.	As per the return of income furnished u/s 139(1)	50,00,000
2.	Determined under section 143(1)(a)	60,00,000
3.	Assessed under section 143(3)	75,00,000
4.	Reassessed under section 147	95,00,000

Can penalty be levied u/s 270A on M/s. XYZ? If the answer is in the affirmative, compute the penalty leviable u/s 270A.

Solution

M/s. XYZ is deemed to have under-reported its income since:

- 1) its income assessed u/s 143(3) exceeds its income determined in a return processed u/s 143(1)(a); and
- 2) the income reassessed under section 147 exceeds the income assessed u/s 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	Rs.	Rs.
<u>Assessment under section 143(3)</u>		
<u>Under-reported income:</u>		
Total income assessed under section 143(3)	75,00,000	
(-) Total income determined u/s 143(1)(a)	60,00,000	
	15,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of Rs. 15 lakhs plus tax on total income of Rs. 60 lakhs determined u/s 143(1)(a) [30% of Rs. 75 lakh + EC & SHEC@3%]	23,17,500	
Less: Tax on total income determined u/s 143(1)(a) [30% of Rs. 60 lakh + EC & SHEC@3%]	18,54,000	
	4,63,500	
Penalty leviable@50% of tax payable		2,31,750
<u>Reassessment under section 147</u>		
<u>Under-reported income:</u>		
Total income reassessed under section 147	95,00,000	
(-) Total income assessed under section 143(3)	75,00,000	
	20,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of Rs. 20 lakhs plus tax on total income of Rs. 75 lakhs assessed u/s 143(3) [30% of Rs. 95 lakh + EC & SHEC@3%]	29,35,500	
Less: Tax on total income assessed u/s 143(3) [30% of Rs. 75 lakh + EC & SHEC@3%]	23,17,500	
	6,18,000	
Penalty leviable@50% of tax payable		3,09,000

Note – The following assumptions have been made -

- 1) None of the additions or disallowances made in assessment or reassessment qualifies under section 270A(6); and
- 2) The under-reported income is not on account of misreporting.

Readers Note:**Practical 67**

Mr. Ram, a resident individual of the age of 55 years, has not furnished his return of income for A.Y.2017-18. However, the total income assessed in respect of such year under section 144 is Rs. 12 lakh. Is penalty under section 270A attracted in this case, and if so, what is the quantum of penalty leviable?

Solution

Mr. Ram is deemed to have under-reported his income since he has not filed his return of income and his assessed income exceeds the basic exemption limit of Rs. 2,50,000. Hence, penalty under section 270A is leviable in his case

Computation of penalty leviable under section 270A

Particulars	Rs.	Rs.
<u>Assessment under section 143(3)</u>		
<u>Under-reported income:</u>		
Total income assessed under section 144	12,00,000	
(-) Basic exemption limit	2,50,000	
	9,50,000	
Tax payable on under-reported income as increased by the basic exemption limit [30% of Rs. 2 lakhs + Rs. 1,25,000]	1,85,000	
Add: EC & SHEC@3%	5,550	
	1,90,550	
Penalty leviable@50% of tax payable		95,275

Note – It is assumed that the under-reported income is not on account of misreporting.

Readers Note:**Practical 68**

ABC Ltd. is a domestic company liable to tax@30%. The following are the particulars furnished by the company for A.Y.2017-18:

Sr. No.	Particulars of Income	Rs.
1.	As per the return of income furnished u/s 139(1)	(15,00,000)
2.	Determined under section 143(1)(a)	(8,00,000)
3.	Assessed under section 143(3)	(5,00,000)
4.	Reassessed under section 147	4,00,000

Is penalty leviable under section 270A on ABC Ltd., and if so, what is the quantum of penalty?

Solution

ABC Ltd. is deemed to have under-reported its income since:

- 1) the assessment under 143(3) has the effect of reducing the loss determined in a return processed under section 143(1)(a); and
- 2) the reassessment under section 147 has the effect of converting the loss assessed under section 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	Rs.	Rs.
<u>Assessment under section 143(3)</u>		
<u>Under-reported income:</u>		
Loss assessed u/s 143(3)	(5,00,000)	
(-) Loss determined under section 143(1)(a)	(8,00,000)	
	3,00,000	
Tax payable on under-reported income@30%	90,000	
Add: EC & SHEC@3%	2,700	
	92,700	
Penalty leviable@50% of tax payable		46,350
<u>Reassessment under section 147</u>		
<u>Under-reported income:</u>		
Total income reassessed under section 147	4,00,000	
(-) Loss assessed under section 143(3)	(5,00,000)	
	9,00,000	
Tax payable on under-reported income@30%	2,70,000	
Add: EC & SHEC@3%	8,100	
	2,78,100	
Penalty leviable@50% of tax payable		1,39,050

Note – The following assumptions have been made –

- 1) None of the additions or disallowances made in assessment or reassessment qualifies under section 270A(6); and
- 2) The under-reported income is not on account of misreporting.

Readers Note:

108. | PENALTY UNDER SECTION 272A**Section:- 272A****Question 69**

Penalty of Rs. 10,000 per default may be levied under section 272A of the Act. List out such defaults.

Answer

If any person,—

- (a) refuses to answer any question put to him by an income-tax authority in the exercise of its powers under this Act; or
- (b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an income-tax authority may legally require him to sign; or
- (c) to whom a summons is issued under section 131(1) either to attend to give evidence or produce books of account or other documents at a certain place and time omits to attend or produce books of account or documents at the place or time,
- (d) **fails to comply with a notice under section 142(1) or section 143(2) or fails to comply with a direction issued under section 142(2A),**

he shall pay, by way of penalty, a sum of ten thousand rupees for each such default or failure.

Readers Note:**109. | PENALTY UNDER SECTION 273A/273AA****Section:- 273A/273AA****Practical 70**

Subject to fulfilment of certain conditions prescribed under section 273A/273AA, the Commissioner or Principal Commissioner are vested with the powers to grant waiver or reduction from penalty. Is there any time for passing such orders granting waiver or reduction from penalty.

Solution

The order under section 273A/273AA, either accepting or rejecting the application in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received by the Principal Commissioner or the Commissioner.

However, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

Any application which is pending as on the 01.06.2016, the order shall be passed on or before the 31.05.2017

Readers Note:**IMPORTANT CASE LAWS**

1. | CIT v. Muthoot Financiers (2015) 371 ITR 408 (Del) **[DECISION NO. 1 OF ICAI CASE STUDY-PAGE NO. 110]**

UNIT V – TAX DEDUCTION AND COLLECTION AT SOURCE

110. TAX DEDUCTION AT SOURCE

Section:- Section 192A, 194BB, 194C, 194D, 194DA, 194EE, 194G, 194H, 194LA

Amendment in Threshold Limits and rate of TDS

Section	Nature of Payment	Threshold Limit / Rate of TDS	
		Before 31 st May 2016	From 1 st June, 2016
192A	Payment of accumulated balance due to an employee	Rs. 30,000	Rs. 50,000
194BB	Winnings from horse race	Rs. 5,000	Rs. 10,000
194C	Payments to contractors		
	- Single Payment	Rs. 30,000	Rs. 30,000
	- Aggregate Payment	Rs. 75,000	Rs. 1,00,000
194D	Insurance Commission		
	- Threshold limit	Rs. 20,000	Rs. 15,000
	- Rate of TDS when recipient is a person other than Domestic Company	10%	5%
	- If recipient is a Domestic Company	10%	10%
		[Upto 31.03.2016]	[W.e.f. 01.04.2016]
		[No Change]	[No Change]
194DA	Payment in respect of life insurance policy	2%	1%
194EE	Payments in respect of deposits under National Savings Scheme, etc.	20%	10%
194G	Commission, etc., on the sale of lottery tickets	Rs. 1,000	Rs. 15,000
		10%	5%
194H	Commission or brokerage.	Rs. 5,000	Rs. 15,000
		10%	5%
194LA	Payment of compensation on acquisition of certain immovable property	Rs. 2,00,000	Rs. 2,50,000

111. TAX COLLECTION AT SOURCE**Section:- 206C**

- How to compute tax deducted at source:- Under section 206C, tax has to be collected at source in the following cases-

Nature of goods	Percentage of rate of TCS
CATEGORY A	
1. Alcoholic liquor for human consumption (other than Indian made foreign liquor)	1
2. Indian made foreign liquor	1
3. Tendu leaves	5
4. Timber obtained under a forest lease	2.50
5. Timber obtained by any mode other than under a forest lease	2.50
6. Any other forest produce (not being timber or tendu leaves)	2.50
7. Scrap	1
8. Minerals, being coal or lignite or iron ore (applicable from July 1, 2012)	1
CATEGORY B	
1. Parking lot, toll plaza, mining and quarrying (other than mining and quarrying of mineral oil, petroleum and natural gas)	2
CATEGORY C (Sale of the following where any amount of consideration is received in cash)	
1. Bullion exceeding Rs. 2,00,000 2. Jewellery exceeding Rs. 5,00,000 3. Any other goods or services exceeding Rs. 2,00,000 (applicable from June, 1, 2016)	1
CATEGORY D (Sale of following whether payment is received by cheque or any other mode)	1
- Motor Vehicle of the value exceeding Rs. 10 Lakh (applicable from June 1, 2016)	

- Who is responsible to collect tax at source:- In category A, every person, being a seller, shall collect tax from the buyer of goods specified in section 206C(1)
 - (1) “Seller” – Meaning of:- “Seller” means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co – operative society. The expression “Seller” shall also include from June 1, 2003 an individual or a HUF whose books of account are required to be audited under section 44AB (a)/ (b) during the financial year immediately preceding the financial year in which goods are sold.
 - (2) “Buyer” – Meaning of:- “Buyer” means a person who obtains in any sales by way of auction, tender or any other mode, goods of the nature specified in the Table in section 206C(1) or the right to receive any such goods. It however, does not include the following:
 - ✓ a public sector company, the Central Government, a State Government, and an Embassy, a High Commission, Legation, Commission, Consulate and the trade representation, of a foreign State and a club; or
 - ✓ a buyer in the retail sale of such goods purchased by him for personal consumption; or
 - ✓ goods utilized for manufacturing / processing or producing any article or thing and not for the purpose of trading subject to Form No. 27C
 - (3) When tax has to be collected at source in Category A:- Tax has to be collected by the seller at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time or receipt of such amount from the buyer in cash or by issue of cheque / draft, or by any other mode, whichever is earlier.
- Tax collected in Category B:- In Category B, every person, who grants a lease or a license or enters into a contract or otherwise, transfers any right or interest in any parking lot or toll plaza or mine or quarry, to another person (hereafter referred to as “licensee or lease”) for the use of such parking lot or toll plaza or mine or quarry, for the purpose of business, shall collect tax at source.
 - (1) Public sector company: if the licensee or lessee is a public sector company tax is not collectible.
- Tax collection in Category C:- In Category C, tax is collected in the case of sale of jewellery/bullion with effect from July 1, 2012. In this case, tax will be collected if the following conditions are satisfied-
 1. Sale consideration of
 - (a) bullion exceeds Rs.2,00,000
 - (b) jewellery exceeds Rs.5,00,000
 - (c) any other goods or services exceeding Rs. 2,00,000 (**applicable from June, 1, 2016**)

2. Out of sale consideration any amount is received in cash

If the above conditions are satisfied, the seller will collect tax at the rate of 1 per cent of sale consideration. Tax will be collected at the time of receipt of any amount in cash. This rule will be applicable irrespective of the fact whether the buyer is a manufacturer, trader or the purchase is for personal use.

Attention is invited to the circular no. 23 /2016 regarding how to collect TCS?

Q.1. Whether tax collection at source under section 206C(1D) at the rate of 1% will apply in cases where the sale consideration received is partly in cash and partly in cheque and the cash receipt is less than Rs.2,00,000.

Ans: No. Tax collection at source will not be levied if the cash receipt does not exceed Rs.2,00,000 even if the sale consideration exceeds Rs.2,00,000.

Illustration: Goods worth Rs.5,00,000 is sold for which the consideration amounting to Rs.4,00,000 has been received in cheque and Rs.1,00,000 has been received in cash. As the cash receipt does not exceed Rs.2,00,000, no tax is required to be collected at source as per section 206C(1D).

Q.2. Whether tax collection at source under section 206C(1D) will apply only to cash component or in respect of whole of sales consideration.

Ans: Under section 206C(1D), the tax is required to be collected at source on cash component of the sales consideration and not on the whole of sales consideration.

Illustration: Goods worth Rs.5,00,000 is sold for which the consideration amounting to Rs.2,00,000 has been received in cheque and Rs.3,00,000 has been received in cash. Tax is required to be collected under section 206(1D) only on cash receipt of Rs.3,00,000 and not on the whole of sales consideration of Rs.5,00,000.

112. MANDATORY REQUIREMENT OF FURNISHING PAN

Section:- 206AA

Non-quoting of PAN by deductees in many cases have led to delay in issue of refund on account of problems in the processing of returns of income and in granting credit for tax deducted at source.

With a view to strengthening the PAN mechanism, new section 206AA has been inserted to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at **higher of the following rates –**

(1) applicable rate of TDS or

(2) at the rate of 20%.

The other salient features of the section are:

- No certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.
- Tax would be deductible at the rates mentioned above also in cases where the taxpayer files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.
- If the PAN provided to the deductor is invalid or it does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the highest of the three rates specified above.
- These provisions will also **apply to non-residents** where tax is deductible on payments or credits made to them.
- Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.
- Banks and financial institutions cannot ask for Permanent Account Number (PAN) from persons whose income is below taxable limit-**A. Kowsalya Bai v. Union of India [2012] 208 Taxman 208 (Kar.)**.
- **Amendment made by Finance Act, 2016 [w.e.f 01.06.2016]**

The provisions of this section shall not apply to a non-resident, not being a company, or to a foreign company, in respect of—

(i) payment of interest on long-term bonds as referred to in section 194LC; and

(ii) any other payment subject to such conditions as may be prescribed.

113. ITC LTD V. CIT (2016) 384 ITR 14 (SC)

Whether “tips” received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of “Salaries” to attract tax deduction at source under section 192?

Facts of the case: The assessee company, engaged in the business of owning, operating and managing hotels, allowed its employees to receive tips from customers. In case of credit card payments by the customers, the employer company collected the tips which were later on disbursed to its employees. The

Assessing Officer treated the receipt of tips as income under the head “Salaries” in the hands of the employees and contended that the assessee was liable to deduct tax at source from such payments under section 192. As the assessee company had not deducted tax at source on the tips disbursed to the employees, the Assessing Officer treated the assessee as assessee in default under section 201(1).

However, the Commissioner (Appeals) held that the assessee could not be treated as assessee in default under section 201(1) for non-deduction of tax on tips collected by them and disbursed to their employees. Thereafter, the Tribunal also dismissed the appeal of the revenue.

High Court’s Decision: The High Court held that the tips would amount to “profit in addition to salary or wages” and hence would fall under section 15 read with section 17(1) and section 17(3). It also held that while the tips received by the employees directly from customers would be outside the purview of section 192 but the moment a tip is paid by the customer by way of credit card along with the bill amount to the employer, it would assume the character of salary since it goes into the account of the employer after which it is distributed to the employees.

Supreme Court’s Observations: The Apex Court analysed the provisions of section 192 and noted that “any person responsible” for paying any income chargeable under the head “salaries” is alone brought into the dragnet of deduction of tax at source. The person responsible for paying an employee an amount which is to be regarded as the employee’s income is only the employer. However, in the present case, the person who is responsible for paying the employee is not the employer at all, but a third party, namely, the customer. Thus, income from tips would be chargeable in the hands of employees as “Income from Other Sources”. Since such tips are being received from customers and not from the employer, section 192 would not get attracted.

The Supreme Court observed that section 15 applies when an employee has a vested right to claim any salary from an employer or former employer. However, in the case on hand, there is no vested right on the part of the employee to claim any amount of tips from the employer, since tips are purely voluntary amounts that may or may not be paid by customers for services rendered. The Supreme Court observed that the amount of tips paid by the employer to the employees had no reference to the contract of employment at all. Tips were received by the employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to the customer.

There was, therefore, no reference to the contract of employment when these amounts were paid by the employer to the employee.

Therefore, the tips received by the employees could not be regarded as “profits in lieu of salary” in terms of section 17(3). The payment by the employer of tips collected from the customers to the employees would not be a payment made “by or on behalf of” an employer. Such payments would be outside the purview of section 15(b) of the Act.

The Apex Court observed that the person who paid the tip was the customer and not the employer. Even though the amounts were with the employer he had no title to the money and it was held in a fiduciary capacity as trustee for and on behalf of the employees.

Supreme Court's Decision: The Supreme Court observed that contract of employment is not the proximate cause for the receipt of tips by the employee from a customer hence, it would be outside the dragnet of sections 15 and 17 of the Act. Therefore, it held that, in such a case, no liability to deduct tax at source under section 192 arises, and hence, the assessee company cannot be treated as an assessee in default for non-deduction of tax at source from the amount of tips collected and distributed to its employees.

IMPORTANT CASE LAWS

1. UCO Bank v. Dy. CIT (2014) 369 ITR 335 (Del)) **[DECISION NO. 2 OF ICAI CASE STUDY - PAGE NO. 117]**
2. Ajmer Vidyut Vitran Nigam Ltd., In re (2013) 353 ITR 640 (AAR) **[DECISION NO. 5 OF ICAI CASE STUDY - PAGE NO. 122]**
3. Indus Towers Ltd v. CIT (2014) 364 ITR 114 (Del) **[DECISION NO. 11 OF ICAI CASE STUDY - PAGE NO. 130]**
4. CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.) **[DECISION NO. 12 OF ICAI CASE STUDY - PAGE NO. 131]**
5. DIT (International Taxation) v. Wizcraft International Entertainment (P) Ltd (2014) 364 ITR 227 (Bom) **[DECISION NO. 17 OF ICAI CASE STUDY - PAGE NO. 136]**
6. CIT v. Avenue Super Chits (P) Ltd (2015) 375 ITR 76 (Kar) **[DECISION NO. 3 OF ICAI CASE STUDY - PAGE NO. 118]**
7. CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC) **[DECISION NO. 15 OF ICAI CASE STUDY - PAGE NO. 134]**
8. CIT v. V.S. Dempo & Co P Ltd (2016) 381 ITR 303 (Bom) (FB) **[DECISION NO. 16 OF ICAI CASE STUDY - PAGE NO. 135]**

UNIT W – MISCELLANEOUS TOPIC

114. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES.**Section:- 281B****Question 71**

Discuss the provisions of provisional attachment to protect revenue in certain cases

Answer

1. Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.
2. Every such provisional attachment shall remain in force for a period of six months from the date of the such order.

However, above period can be extended by such further period or periods as the concerned authority thinks fit but the total period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later.

3. Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached, the Assessing Officer shall, by an order in writing, revoke such attachment:

However, if the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, then he may accept such guarantee and revoke the attachment.

4. The Assessing Officer may, for the purposes of determining the value of the property provisionally attached, make a reference to the Valuation Officer referred to in [section 142A](#), who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the Assessing Officer within a period of thirty days from the date of receipt of such reference.
5. An order revoking the provisional attachment shall be made—
 - (i) within forty-five days from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made; or
 - (ii) within fifteen days from the date of receipt of guarantee in any other case.
6. Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the Assessing Officer may

invoke the guarantee furnished, wholly or in part, to recover the amount.

7. The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee, or fails to furnish a new guarantee from a scheduled bank for an equal amount, fifteen days before the expiry of such guarantee.
8. The amount realised by invoking the guarantee shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent at the place where the office of the Principal Commissioner or Commissioner is situate.
9. Where the Assessing Officer is satisfied that the guarantee is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

Readers Note:

IMPORTANT CASE LAWS

1. || Dr. Manoj Kabra v. ITO (2014) 364 ITR 541 (All) **[DECISION NO. 1 OF ICAI CASE STUDY – PAGE NO.115]**