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UPDATE

On

Direct Taxes

For

CA (Final) Examination to be held in May, 2017

INDEX

PART : (A-1) – Amendments made through Finance Act, 2016

The amendments as applicable to AY 2017-18 are given below. These amendments have been incorporated at all relevant places in our book.

COMPUTATION OF TOTAL INCOME

The income-tax law requires computation of total income of every person. The total income can be computed as under:

Taxable income from salary	Section 15 to 17	XXX
Taxable income from House-Property	Section 22 to 27	XXX
Taxable income from B/P/V	Section 28 to 44DB	XXX
Taxable income from Capital Gain	Section 45 to 55A	XXX
Taxable income from Other Sources	Section 56 to 59	XXX
Gross Total Income		XXX
Less: Deductions under Chapter VI-A	Section 80C to 80U	XXX
Total Income		XXX
Rounded off (in the nearest multiple of Rs. 10/-)	Section 288A	XXX

Note: While computing total income, (i) Only those incomes which fall within the "scope of total income" u/s 5 to 9 shall be included. (ii) Incomes which are exempted under Chapter III (i.e. section 10 to 13B) shall not be included, (iii) the clubbable incomes shall be included under the respective heads as per section 60 to 65, (iii) the undisclosed incomes shall be included under the respective heads as per section 68 to 69D and (iv) the losses shall be set off / carried forward as per section 70 to 80.

COMPUTATION OF TAX

The tax liability of a **company** shall be ***HIGHER*** of –

(i) Regular tax,

or

(ii) Minimum Alternate Tax (MAT)

The tax liability of a **non-company** shall be ***HIGHER*** of –

(i) Regular tax,

or

(ii) Alternate Minimum Tax (AMT)

HOW TO COMPUTE REGULAR TAX

The Regular Tax shall be computed on total income as under --

Basic tax on income chargeable at special rates	XXX
Basic tax on income chargeable at normal rates ***(If the assessee is an individual, HUF, artificial juridical person, AOP or BOI, agricultural income shall be considered for rate purpose).***	XXX
Total Basic Tax	XXX
Less: Rebate u/s 87A	XXX
Add : Surcharge	XXX
Less: Marginal relief of surcharge (MRS)	XXX
Basic tax + Surcharge	XXX
Add: Education Cess @ 2% of (Basic tax + Surcharge)	XXX
Add: Secondary and Higher Education Cess @ 1% of (Basic tax + Surcharge)	XXX
Tax before Relief	XXX
Less: Relief u/s 86 / 89 / 90 / 90A / 91	XXX

Regular Tax	XXX

BASIC TAX ON INCOMES CHARGEABLE AT SPECIAL RATES:

Certain incomes are chargeable at the special rates. A brief discussion of these incomes is given below:

Chapter	Section	Nature of income	Tax Rate
XII	111A	Short-term capital gain on transfer of equity shares or equity oriented mutual funds which has suffered STT	15%
	112	Tax on long-term capital gain	10% / 20%
	115A	Tax on dividend, royalty, FTS and interest income in some cases	5% / 10% / 20% / 25%
	115AB	Tax on income of OFO	10%
	115AC	Tax on income of NR from FCCB and GDR	10%
	115ACA	Tax on income of Residents from GDR	10%
	115AD	Tax on income of FII	10% / 15% / 20% / 30%
	115B	Tax on income from life insurance business	12.50%
	115BA	**Tax on eligible start-up domestic companies**	**25%**
	115BB	Tax on Seven Special Incomes (i.e. casual incomes)	30%
	115BBA	Tax on income of non-resident sportsman / sports associations / entertainers	20%
	115BBC	Tax on anonymous donations	30%
	115BBD	Tax on certain dividend income of an Indian Company	15%
	115BBDA	**Tax on dividend income**	**10%**
	115BBE	Tax on deemed income of section 68, 69,69A, 69B, 69C and 69D	30%
	115BBF	**Tax on royalty income from patent**	**10%**
XII-A	115C to 115-I	Tax on investment income and long-term capital gain of NRIs	10% / 20%
XII-FA	115UA	Income of a Business Trust (i.e. REIT or IIT)	MMR
XII-FB	115UB	Income of an Investment Fund chargeable under BPV head	30% / 40% / MMR
Finance Act, 2016	Finance Act, 2016	Royalty received from Govt. or an Indian concern in pursuance of an agreement made during 01.04.1961 to 31.03.1976, **or** fee for technical service received from Govt. or an Indian concern in pursuance of an agreement made during 01.03.1964 to 31.03.1976 provided the relevant agreement in both cases is approved by the Central Govt.	50%

BASIC TAX ON INCOMES CHARGEABLE AT NORMAL RATES:

Incomes, other than those which are chargeable at special rates, shall be taxable at the normal rates. Such normal rates of tax are given below. Please note that there is no change in normal rates of tax from AY 2016-17 to 2017-18 ***except in the case of a domestic company***.

Assesses	Amount of income	Tax rate
Normal individual – (i.e. other than those individuals who are covered under special categories discussed below)	**First 2,50,000**	**Nil**
	2,50,001 to 5,00,000	10%
	5,00,001 to 10,00,000	20%
	Balance	30%
Senior resident individual (male or female) (a resident male or female aged 60 years or more but less than 80 years at any time during the previous year)	**First 3,00,000**	**Nil**
	3,00,001 to 5,00,000	10%
	5,00,001 to 10,00,000	20%
	Balance	30%
Very senior resident individual (male or female) (a resident male or female aged 80 years or more at any time during the previous year)	**First 5,00,000**	**Nil**
	5,00,001 to 10,00,000	20%
	Balance	30%

HUF		**First 2,50,000**	**Nil**
		2,50,001 to 5,00,000	10%
		5,00,001 to 10,00,000	20%
		Balance	30%
Artificial Juridical Person (AJP)		**First 2,50,000**	**Nil**
		2,50,001 to 5,00,000	10%
		5,00,001 to 10,00,000	20%
		Balance	30%
AOP / BOI	If the situation is covered u/s 167B	MMR or Higher Rate	
	If the situation is not covered u/s 167B	**First 2,50,000**	**Nil**
		2,50,001 to 5,00,000	10%
		5,00,001 to 10,00,000	20%
		Balance	30%
Co-operative Society		**First 10,000**	**10%**
		10,001 to 20,000	20%
		Balance	30%
Partnership firm (including a Limited Liability Partnership)		Any amount	30%
Local authority		Any amount	30%
Domestic company	A domestic company covered u/s 115BA [i.e. an eligible start-up company]	Any amount	25%
	A domestic company not covered u/s 115BA, but the *total turnover or gross receipts of company in the Previous Year 2014-15 does not exceed Rs. 5 crore)*	Any amount	29%
	Any other domestic company	Any amount	30%
Foreign company	Foreign company	Any amount	40%
Representative assessees (including Trustees of Public trust / Private trust / Public-cum-Private Trust / Oral trust)		Refer section 161(1), 161(1A), 164(1), 164(2), 164(3), 164A	

REBATE U/S 87A:

- ✓ This rebate is allowed only to a **resident individual** whose **total income does not exceed Rs. 5,00,000/-**.
- ✓ The amount of rebate shall be Rs. 5,000/- or income-tax on total income, *whichever is less*. In other words, the maximum amount of rebate shall be Rs. 5,000/-.
- ✓ The rebate shall be allowed in all cases. To clarify further, the rebate shall be allowed even if the total income includes special incomes such as long-term capital gain, short-term capital gain u/s 111A etc. However, there is a view that this rebate shall not be allowed against casual income.

SURCHARGE:

The rates of surcharge have been changed. The new rates are as under:

Assesses	**Total income upto Rs. 1 Crore**	**Total income exceeding Rs. 1 Crore but not exceeding Rs. 10 Crore**	**Total income exceeding Rs. 10 Crore**
Individual, HUF, AJP, AOP, BOI	0%	15%	15%
Co-operative society, firm (including LLP), local authority	0%	12%	12%
Domestic company	0%	7%	12%
Foreign company	0%	2%	5%

MARGINAL RELIEF OF SURCHARGE (MRS):
Marginal relief of surcharge is allowed in appropriate situations. The marginal relief is based on the concept that the '**incremental tax**' should not exceed '**incremental income**'.

EDUCATION CESS:
All assessee are liable to pay Education Cess @ 2%.

SECONDARY & HIGHER EDUCATION CESS:
All assessee are liable to pay Secondary & Higher Education Cess @1%.

HOW TO COMPUTE MAT / AMT

Section	*Provision*	*Basic Rate*	*Surcharge*			*E.C.*	*S&H E.C.*
			Book-Profit or Adjusted Total Income upto Rs. 1 Crore	*Book-Profit or Adjusted Total Income exceeds 1 Crore but upto 10 Crore*	*Book-Profit or Adjusted Total Income exceeds Rs. 10 Crore*		
115JB	MAT payable by a domestic company	18.50% of Book-Profit	Nil	7%	12%	2%	1%
	MAT payable by a foreign company	18.50% of Book-Profit	Nil	2%	5%	2%	1%
115JC	AMT payable by an individual, HUF, AJP, AOP, BOI	18.50% of Adjusted Total Income	Nil	15%	15%	2%	1%
	AMT payable by a Co-operative society, firm, LLP, local authority	18.50% of Adjusted Total Income	Nil	12%	12%	2%	1%

Note: Marginal relief of surcharge (MRS) shall be allowed in appropriate situations.

RATES OF INCOME DISTRIBUTION TAX (i.e. Reverse charge mechanism)

Section	Nature of payment	Payment made by?	Payment made to?	Basic Rate	Surcharge	E.C.	S&H E.C.	Effective rate
115-O	Dividend covered u/s 2(22)(a)/(b)/(c)/(d)	Domestic company	Shareholder	15%	12%	2%	1%	17.304%
115-QA	Income paid on buy-back of unlisted shares	Domestic company	Shareholder	20%	12%	2%	1%	23.072%
115R	Income distributed by an equity-oriented mutual fund (EOMF)	EOMF	Any	Nil	Nil	Nil	Nil	Nil
	Income distributed by a debt fund (DF) / Unit Trust of India (UTI)	DF / UTI	Individual / HUF	25%	12%	2%	1%	28.84%
		DF / UTI	Other than individual / HUF	30%	12%	2%	1%	34.608%
	Income distributed by infrastructure debt fund (IDF)	IDF	Foreign company / NRNC	5%	12%	2%	1%	5.768%
115TD	Tax on accreted income of certain trusts and institutions	Certain trusts and institutions	Any person	30%	12%	2%	1%	34.608%

~~115TA~~	~~Income distributed by a Securitization Trust (ST)~~ **~~[Applicable upto 31.05.2016 only]~~**	~~ST~~	~~Persons exempt from tax~~	~~Nil~~	~~Nil~~	~~Nil~~	~~Nil~~	~~Nil~~
		~~ST~~	~~Individual / HUF~~	~~25%~~	~~12%~~	~~2%~~	~~1%~~	~~28.84%~~
		~~ST~~	~~Any other person~~	~~30%~~	~~12%~~	~~2%~~	~~1%~~	~~34.608%~~

Note: In section 115-O and 115R, the dividend / distributed income shall be first grossed up by applying the "Basic Rate". Thereafter, the distribution tax shall be computed on such gross amount by applying "Effective rate".

RATES OF TDS

The rates of TDS are not given here. Please refer the chapter titled "TDS" in our book. However, the amendments in TDS Rates and TDS Sections are given below in this update.

RATES OF TCS

The rates of TCS are not given here. Please refer the chapter titled "TCS". However, please note that there is no amendment in the basic rates of TCS. However, the effective rates of "TCS" shall change in certain cases due to increase / decrease in surcharge.

DEFINITIONS

Section 2(14) amended:

- This section defines the term **"Capital asset"**.
- The amendment seeks to exclude **"Deposit certificates issued under the Gold Monetisation Scheme, 2015"** from the definition of "Capital asset".
- Thus, the capital gain arising from transfer / maturity of **"Deposit certificates issued under the Gold Monetisation Scheme, 2015"** shall not be taxable.

Note: The amendments in section 2(14) and 10(15) should be read together.

Section 2(23C) inserted:

- The amendment seeks to insert definition of **"hearing"**.
- Accordingly, **"hearing"** includes **communication of data and documents** through **electronic mode.**
- This definition has been introduced in order to enable E-hearing and paperless proceedings in income-tax.
- Please note that the definition is inclusive. Hence physical hearing is also included in the definition of **"hearing"**.

Section 2(24) amended:

- This section prescribes the definition of **"income".**
- Under the existing law, "income" includes *"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 Govt. or a State Govt. or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimburshment which is taken into account for determination of the actual cost of asset under Explanation 10 to section 43(1)".*

- Thus, under the existing law of section 2(24):
  - (i) if the *subsidy / grant / cash incentive / duty drawback / waiver / concession / reimbursement* is relatable to the acquisition of a **depreciable asset**, it shall be deducted in computing cost of asset under Explanation 10 to section 43(1). Hence it will not be treated as income u/s 2(24).
  - (ii) any other *subsidy / grant / cash incentive / duty drawback / waiver / concession / reimbursement* shall be taxable as income of assessee.

- The above law of section 2(24) is also supported by **ICDS-VII**.

- Due to above provisions of section 2(24) read with ICDS-VII, the trusts and institutions which receive subsidy / grant from Govt. are facing problem of taxation because such subsidy / grant becomes taxable as "income".

- Now, the amendment seeks to grant relaxation to some extent. The amendment provides that the **subsidy or grant given by the Central Govt.** for the purpose of the **corpus of a trust or institution established by the Central Govt. or a State Govt.** shall not be treated as "income".

- Please read the language carefully. If the subsidy or grant is given by the State Govt., the benefit of amendment shall not be available.

Section 2(42A) amended:

- This section prescribes holding period for the purpose of ascertaining long-term or short-term nature of a capital asset / capital gain.

- The existing law prescribes either 12 months or 36 months criterion in this regard.
- The amendment seeks to prescribe a new criterion of **24 months** for the purpose of **shares of a company which are not listed in any recognised stock exchange in India (i.e. unlisted shares)**.

- Thus, if the **unlisted shares** of a company are held **upto 24 months**, the capital asset/capital gain shall be treated as **short-term** and if such unlisted shares are held for **more than 24 months**, the capital asset/capital gain shall be **long-term**.

RESIDENTIAL STATUS

Section 9(1)(i) amended:

- Under this section, any income accruing or arising through or from any **business connection in India**, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situated in India, is deemed to accrue or arise in India.

- The amendment seeks to provide that 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 unasserted diamond in any special zone notified by the Central Govt.**

Section 9A amended:
- The amendments are not so important for students.

EXEMPTIONS

Section 10(12A) inserted and 80CCD amended:
- Under the existing law, any payment received from **NPS** on closure or opting out is fully taxable in the hands of recipient (i.e. the assessee or his nominee, as the case may be).

- Section 10(12A) has been inserted to provide that any amount received by an **employee** from NPS on account of closure or opting out shall be exempted to the extent of **40%** of the total amount receivable from NPS at the time of opting out or closure.

- Simultaneously, section 80CCD has also been amended to provide that the amount received by nominee of assessee on death of the assessee (the assessee may be an employee or self-employed person) shall be fully exempt.

- Thus, we can summarise the treatment of **amount standing in NPS** together with interest thereon, in different situations, as under:

Sl.	Situation	If the assessee is an employee	If the assessee is a self-employed person
1	If lump sum amount is received by assessee from NPS (on closure of NPS or opting out of NPS)	***40% Exempt:*** Exempt to the extent of 40% of the total amount receivable from NPS at the time of opting out or closure u/s 10(12A). ***60% taxable:*** Hence 60% portion shall be taxable.	Fully taxable.
2	If lump sum amount is received by a nominee (on death of assessee) from NPS	Fully exempt.	Fully exempt.
3	If pension is received from NPS	Fully taxable	Fully taxable
4	If the amount standing in NPS is used for purchasing any annuity plan in the same previous year.	Exempt	Exempt
5	If pension is received from annuity plan	Taxable	Taxable

Note: The amendments in section 10(12A), 10(13), 80CCD and Schedule IV should be read together.

Section 10(13) amended:

- Under the existing law, any payment received by an employee from superannuation fund is taxable except in some situations as prescribed in section 10(13).

- The amendment seeks to provide that if the superannuation amount is transferred to NPS, it shall be fully exempt.

Note: The amendments in section 10(12A), 10(13), 80CCD and Schedule IV should be read together.

Section 10(15) amended:

- The amendment seeks to provide that the **interest on "Deposit certificates issued under Gold Monetisation Scheme, 2015"** shall be exempt.

Note: The amendments in section 2(14) and 10(15) should be read together.

Section 10(23DA) amended:

- ❖ This section grants 100% exemption to the income of a Securitisation Trust from the activity of securitisation.

- ❖ Under the existing law, "Securitisation Trust" has the same meaning as assigned in section 115TC. The amendment seeks to provide that "Securitisation Trust" shall have the same meaning as in section 115TCA.

- ❖ The amendment was necessary due to closure of sections 115TA to115TC and introduction of new section 115TCA.

Note: The amendments in section 10(23DA), 10(35A), 115TA to 115TC, 115TCA and 194LBC should be read together.

Section 10(23FC) amended:

- ❖ Under the existing law of section 10(23FC), income of a Business Trust by way of interest from SPV is exempted.

- ❖ The amendment seeks to split section 10(23FC) in two parts, viz. 10(23FC)(a) and 10(23FC)(b). Now, the amended language provides as under:

  - ✓ Section 10(23FC)(a) – Income of a Business Trust by way of interest from SPV shall be exempted.

  - ✓ Section 10(23FC)(b) – Income of a Business Trust by way of dividend from SPV covered u/s 115-O(7), shall be exempt.

- ❖ Logic of amendment – It may be noted that section 115-O has been amended by way of insertion of 115-O(7), under which a "SPV" paying dividend to BT has been exempted from levy of CDT (if certain conditions are satisfied). Now, due to removal of CDT on SPV, the dividend received by BT from SPV, does not remain eligible for exemption u/s 10(34). In other words, the dividend covered u/s 115-O(7) becomes taxable in the hands of BT. But the Parliament wants to exempt dividend in the hands of BT, as an incentive measure, despite non-payment of CDT by SPV. Hence, the Parliament has exempted such dividend covered u/s 115-O(7) in the hands of BT through section 10(23FC)(b).

Note: The amendments in section 10(23FC), 10(23FD), 115-O, 115UA and 194LBA(1)/(2) should be read together.

Section 10(23FD) amended:

- ❖ Under the existing law, any income received by a unit holder from the business trust is exempted except the proportion of the income which is of the nature covered u/s **10(23FC) or 10(23FCA)**.

- ❖ With the split of section 10(23FC) in two parts, viz. 10(23FC)(a) and 10(23FC)(b), the section 10(23FD) has also been amended.

- ❖ The amendment seeks to provide that the income received by a unit holder from the business trust shall be exempt except the proportion of the income which is of the nature covered u/s **10(23FC)(a) or 10(23FCA)**.

- ❖ The effect of amendment is that the portion of income which is of the nature covered u/s **10(23FC)(b)** shall remain exempted in the hands of unit holders.

Note: The amendments in section 10(23FC), 10(23FD), 115-O, 115UA and 194LBA(1)/(2) should be read together.

Section 10(34) amended:

- This section grants exemption to dividend earned by an assessee from a domestic company which has suffered CDT u/s 115-O i.e. the dividend covered u/s 2(22)(a),(b)(c),(d).
- The amendment seeks to provide that any **dividend covered u/s 115BBDA** shall not be exempt.
- Thus, we can summarise the treatment of dividend income, in different situations, as under:

Situation		Treatment for shareholder
Dividend received from a domestic company covered u/s 115-O [i.e. the dividend of the nature covered u/s 2(22(a)/(b)/(c)/(d)]	Section 115BBDA is applicable [i.e. total dividend in excess of Rs. Rs. 10 lakh received by an individual/ HUF/firm (resident in India) from one or more domestic companies during a previous year]	• Dividend in excess of Rs. 10 lakh shall be taxable. • No deduction of any expenditure or any allowance shall be allowed under any provisions of this Act against this dividend. • No loss can be set off against this dividend. • Taxable @ 10%. • MANCT is not allowed.
	Section 115BBDA is not applicable	Exempt u/s 10(34)
Dividend received from a domestic company not covered u/s 115-O [i.e. Dividend of the nature covered u/s 2(22)(e)]		Taxable
Dividend received from a foreign company		Taxable
Dividend received from a co-operative society		Taxable

Note: The amendments in section 10(34) and 115BBDA should be read together.

Section 10(35A) amended:

- This section has been closed from 01.06.2016.
- The amendment was necessary due to closure of section 115TA to 115TC.

Note: The amendments in section 10(23DA), 10(35A), 115TA to 115TC, 115TCA and 194LBC should be read together.

Section 10(38) amended:

- This section grants exemption to long-term capital gain arising from transfer of (i) equity shares in a company, or (ii) units of an equity oriented mutual fund, or (iii) units of a business trust (i.e. REIT or ITT), if the transaction of sale of equity shares or equity oriented mutual fund or units of a business trust **(i.e. REIT or ITT)** has suffered **Securities Transaction Tax (STT)**.
- In order to encourage growth of International Financial Service Centres (IFSC), it is now provided that

the condition of STT payment shall not be applicable if the transaction of sale has been undertaken in a recognized stock exchange located in any International Financial Service Centre (IFSC) and the consideration for transaction is paid or payable in foreign currency.

- Hence, the effect is that the long-term capital gain arising from transfer of (i) equity shares in a company, or (ii) units of an equity oriented mutual fund, or (iii) units of a business trust (i.e. REIT or ITT) undertaken in a recognized stock exchange located in any International Financial Service Centre (IFSC) and the consideration for transaction is paid or payable in foreign currency, shall be exempt even if it has not suffered **Securities Transaction Tax (STT)**.

Note: The amendments in section 10(38) and 111A should be read together.

Section 10(48A) inserted:

- This section has been inserted to grant 100% exemption to any income accruing or arising to a **foreign company** on account of **storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India**.

- The exemption shall be allowed if two conditions are satisfied, viz. (i) the storage and sale is pursuant to an agreement or arrangement entered into by the Central Govt. or approved by the Central Govt., and (ii) the foreign company and the agreement / arrangement are notified by the Central Govt. for the purpose of this section.

Section 10(50) inserted:

- This section has been inserted to grant 100% exemption to any income arising to any person from any **"specified service"** which has suffered **Equalisation Levy** *(Popularly called **"Google Tax"**)* under **Chapter VIII of the Finance Act, 2016**. This amendment has been made to avoid double taxation.

Note: The amendments in section 10(50) and 40(a) should be read together.

Section 10AA amended:

- This section grants exemption to SEZ units.

- The Govt. wants to close this section. Hence it is provided that the exemption u/s 10AA shall be allowable upto AY 2020-21 only.

INCOME FROM SALARY

Section 17(2) amended:

- This section prescribes definition of "perquisite".

- Under the existing law, any contribution made by employer to the **Approved Superannuation Fund** of employee is exempted upto Rs. 1,00,000 in a year. Excess contribution is taxable as perquisite.

- The amendment seeks to enhance exemption-limit from Rs. 1,00,000 to Rs. 1,50,000/-.

INCOME FROM HOUSE PROPERTY

Section 24(b) amended:

- ❖ This section grants deduction of interest on borrowed capital for house property.

- ❖ Under the existing law, if the property or part of the property is covered u/s 23(2) [i.e. Self-occupied property for residence by assessee], the deduction of interest is restricted to Rs. 30,000/-. But there is a provision of extended limit of Rs. 2,00,000/- if certain conditions are satisfied, viz. (i) the capital is borrowed on or after 01.04.1999, (ii) the borrowal is for acquisition or construction of property, (iii) the acquisition or construction is completed within 3 years from end of the financial year in which the capital has been borrowed, and (iv) the assessee submits a certificate of money lender with the Return of Income.

- ❖ The amendment seeks to extend the present limit of 3 years to 5 years for completion of acquisition or construction.

Section 25A substituted:

- ❖ Presently, section 25AA contains provision for taxation of “recovery of unrealized rent” and section 25B contains provision for taxation of “recovery of arrears of rent”. Further, section 25AA does not allow any kind of deduction but section 25B allows standard deduction @ 30%.

- ❖ In order to simplify law, the present section 25AA and 25B have been merged into a new section 25A.

- ❖ The features of new section 25A are as under:
  - ✓ This single section would apply to both types of recoveries, viz. (i) recovery of unrealized rent and (ii) recovery of arrears of rent.
  - ✓ The recovery shall be taxable under the head “Income from House-Property”.
  - ✓ The “Income from House-Property” head shall apply irrespective of whether or not the assessee is owner of concerned property in the previous year in which recovery is made.
  - ✓ A standard deduction of 30% is allowed shall be allowed in both cases, viz. (i) recovery of unrealized rent, as well as (ii) recovery of arrears of rent. **Please note this is a very important point.**
  - ✓ Any expenditure incurred by assessee for the purpose of recovery shall not be allowed as deduction.

INCOME FROM BUSINESS OR PROFESSION

Section 28(va) amended:

- Under the existing law, any sum, received or receivable, by an assessee under an agreement for—
  (a) not carrying out any activity in relation to any "**business"**; or
  (b) not sharing any know-how, patent etc.
  is taxable under the head "Income from Business or Profession".

- Thus, under Point No. (a), the non-compete fee received for not carrying out any "business" is taxable but the non-compete fee received for not carrying out any "profession" is not taxable.

- The amendment seeks to amend the language of (a) so as to make it **"business or profession"**.

- The effect of amendment is that the non-compete fee received or receivable in relation to business as well as profession shall be taxable as **"Income from Business or Profession".**

Note: The amendments in section 28(va) and 55 should be read together.

Section 32(1)(iia) amended:

- This section allows deduction of additional depreciation.

- Under the existing law, the deduction of additional depreciation is allowed to any assessee engaged in (i) the business of manufacture or production of any article or thing, or (ii) the business of **generation or generation and distribution** of power.

- After amendment, the deduction of additional depreciation shall be allowable to any assessee engaged in (i) the business of manufacture or production of any article or thing, or (ii) the business of **generation or transmission or distribution** of power.

Section 32AC amended:

- This section grants deduction @ 15% of investment made in eligible plant and machinery during the period 01.04.2014 to 31.03.2017.

- Under the existing law, the deduction is allowable only if the investment in eligible plant and machinery **acquired and installed in one previous year** exceeds Rs. 25 Crore.

- Thus, the existing law requires not only acquisition but also installation of eligible plant and machinery in the one previous year. Otherwise deduction is not allowed. This has caused problems to many assessees who have acquired eligible plant and machinery exceeding Rs. 25 crore in a previous year, but are not able to install such plant and machinery in the same previous year.

- Now, the amendment seeks to provide that for the purpose of claiming deduction, the acquisition during a particular previous year must exceed Rs. 25 crore but the installation can be made at any time upto 31.03.2017.

- It is further provided that if an eligible plant and machinery is acquired in a previous year but installation is not done in that previous year, the deduction shall be allowable in the previous year in which installation is done.

- ❖ Please note that there is amendment in section 32AC only. There is no similar amendment in section 32AD. ***In fact, there is no need of amendment in section 32AD because the problem was in the language of section 32AC only and not in section 32AD***.

Section 35, 35AC, 35AD, 35CCC, 35CCD amended:

- ❖ The amendments shall be applicable from AY 2018-19 or later assessment year. Hence they are not relevant to examination.

Section 35ABA inserted:

- ❖ The Govt. has introduced spectrum fee for auction of airwaves.
- ❖ Hence this new section has been introduced to grant deduction of spectrum fee.
- ❖ It may be noted that the provisions of section 35ABA are exactly similar to the provision of section 35ABB. We have already discussed section 35ABB in our regular classes. Hence we shall not be discussing section 35ABA in detail.

Section 36(1)(viia) amended:

- ❖ This section grants deduction in respect of provision for bad and doubtful debts.
- ❖ The existing provision allows deduction only to banks, public financial institutions, SFCs and SIICOs.
- ❖ The amendment seeks to extend the benefit of section to **Non-Banking Financial Companies (NBFCs).**
- ❖ Hence NBFCs shall be eligible to claim deduction in respect of provision made by them for bad and doubtful debts. However, the deduction shall be allowable maximum upto 5% of Gross Total Income [before making any deduction u/s 36(1)(viia)].
- ❖ For this purpose **"NBFC"** shall have the same meaning as defined in **section 45-I of the RBI Act, 1934.**

Section 40(a) amended – 40(a)(ib) inserted:

- ❖ This section has been amended to disallow the deduction of any sum paid or payable to a non-resident for a **"specified service"** on which the **Equalisation Levy *(popularly called "Google Tax")*** is deductible under **Chapter VIII of the Finance Act, 2016**, but the assessee (i) has not deducted such levy, or (ii) has deducted but not paid such levy to Govt. A/c upto the due date u/s 139(1).
- ❖ It is further provided that if the Equalisation Levy has been deducted in any subsequent year or has been deducted in the same previous year but paid in subsequent previous year, the relevant sum shall be re-allowed as deduction in the previous year in which such levy is paid.

Note: The amendments in section 10(50) and 40(a) should be read together.

Section 43B amended:

- ❖ The amendment seeks to extend the applicability of section 43B to any sum payable by an assessee to the **Indian Railways for the use of railway assets**.

Section 44AA amended:

- The amendment shall be discussed under the heading **“Section 44AD amended”**.

Section 44AB amended:

- This section prescribes for compulsory audit of accounts in certain cases.
- Following amendments have been made:
  - ✓ **(1) -** Under the existing law, a person carrying on profession is required to get his accounts audited if his gross receipts of the previous year has exceeded Rs. 25 lakh. The amendment seeks to enhance this limit to Rs. 50 lakh.
    Note: A person carrying on business is required to get his accounts audited if the sale, gross receipts or turnover of the previous year has exceeded Rs. 1 crore. Please note that there is no amendment in this limit of Rs. 1 crore applicable to business.
  - ✓ **(2) -** If the assessee is covered under newly inserted section 44ADA and declares income from profession lower than the presumptive income (as specified in section 44ADA) and his total income of the previous year exceeds the maximum amount not chargeable to tax (MANCT), he shall be required to get his accounts of such previous year audited.

Section 44AD amended:

- This section prescribes presumptive taxation scheme for an eligible business.
- Following amendments have been made:
  - ✓ **(1) -** Under the existing law, this section applies to a business whose total turnover / gross receipts in the previous year does not exceed Rs. 1 crore. The amendment seeks to enhance this limit to Rs. 2 crore. Thus, the section shall be applicable to a business having turnover / gross receipts upto Rs. 2 crore.

    Note: After this amendment, an apparent conflict is created between section 44AB(a) and 44AD. If we read section 44AB(a), there is a compulsion of audit if the turnover of business has exceeded Rs. 1 crore. But if we read section 44AD, there would be no requirement of audit in the case of an assesee opting for presumptive taxation, even if his turnover has exceeded Rs. 1 crore (but it is upto Rs. 2 crore). In this regard, attention is invited to the Press Release dated 20.06.2016, wherein the CBDT has clarified that the limit of Rs. 2 crore for non-audit of accounts shall be applicable only to the assessee opting for presumptive taxation scheme u/s 44AD.
  - ✓ **(2) -** Under the existing law, if the assessee is a partnership firm / LLP, the interest and remuneration paid to partners is allowable as deduction in computing presumptive income. The amendment seeks to provide that such interest or remuneration shall not be allowable as deduction. **This amendment is very harsh and partnership firms / LLPs shall be badly affected.**

    Note: Please note that in section 44AD and 44ADA, the interest and remuneration paid to partners shall not be allowed as deduction. But in section 44AE, the interest and remuneration paid to partners shall be allowed as deduction in computing presumptive income.
  - ✓ **(3) -** Under the existing law, an assessee covered u/s 44AD is exempted from payment of advance-tax in relation to the income of eligible business. The amendment seeks to withdraw this exemption. **[Please also read the amendment in section 211]**.
  - ✓ **(4) -** New sub-section (4) has been created in section 44AD. According to this, if an eligible

assessee declares profit for any previous year according to the provisions of section 44AD [i.e. 8% or higher income] but he declares profit for **any of the succeeding 5 previous years** lower than 8%, he shall not be eligible to claim the benefit of section 44AD for **next 5 previous years** (i.e. for 5 previous years subsequent to the previous year in which lower income has been declared). ***In short, a compulsory exit route has been prescribed in section 44AD(4) and once exited, there would be a ban period of 5 previous years during which the assessee cannot re-enter into the scheme of section 44AD.***

- ✓ **(5) -** Under the existing law, if an assessee is covered u/s 44AD but wants to declare lower income than presumptive income [8% of sales] and his total income of the previous year exceeds the maximum amount not chargeable to tax (MANCT), he is compulsorily required to maintain books of account u/s 44AA and get such accounts audited u/s 44AB of such previous year. This provision has been amended due to introduction of compulsory exit route through section 44AD(4).

  Now it is prescribed that if an assessee is covered u/s 44AD(4) and his total income of the previous year exceeds the maximum amount not chargeable to tax (MANCT), he shall be compulsorily required to maintain books of account of such previous year u/s 44AA and also get such accounts audited u/s 44AB.

Section 44ADA amended:

- ❖ This section prescribes presumptive taxation scheme for the persons engaged in **"specified professions".**

- ❖ The provisions of section are as under:

  - ✓ The section is applicable to a person (i) who is **resident** in India, (ii) engaged in any **"specified profession"** covered u/s 44AA, and (iii) whose gross receipts do not exceed Rs. 50 lakh during the previous year.

  - ✓ Once the section is applicable, 50% of the gross receipts or the profit claimed to have been earned by the assessee, **whichever is higher**, shall be deemed to be taxable income from the profession.

  - ✓ It is presumed that all deductions as allowable u/s 30 to 37(1) have already been allowed to the assessee and hence no further deduction shall be allowed.

  - ✓ It is further presumed that the depreciation on assets, as allowable u/s 32, has actually been allowed. Hence WDV of assets shall be reduced.

  - ✓ If the assessee claims that his income from profession is lower than the presumptive income and his total income exceeds MANCT, he shall be required to keep and maintain books of accounts u/s 44AA and also get his accounts audited u/s 44AB.

  - ✓ Please note that section 44ADA is applicable only to **"specified professions"**. It does not apply to professions other than "specified professions". The meaning of **"specified professions"** shall be same as prescribed in section 44AA. We have discussed meaning of "specified professions" in our regular classes. Still for your immediate reference, "Specified Profession" means the following professions –
    (1) Legal (means advocates)
    (2) Accountancy
    (3) Medical
    (4) Technical consultancy
    (5) Engineering
    (6) Interior decoration
    (7) Architectural
    (8) Company secretary
    (9) Information technology.
    (10) Authorised representative
    (11) Film artists

- ✓ Once again it is brought to your attention that in section 44AD and 44ADA, the interest and remuneration paid to partners shall not be allowed as deduction.

INCOME FROM CAPITAL GAIN

Section 47, 49 and 2(42A) amended:

- ❖ Section 47 prescribes the transactions which are excluded from transfer. Section 49 prescribes the provisions for determination of COA of an asset. Section 2(42A) prescribes the provisions for determination of DOA of an asset.

- ❖ Following amendments have been prescribed in these sections:

  - ✓ ***(1)* –** Section 47(viic) has been inserted to provide that the **redemption of Sovereign Gold Bonds (SGBs)** issued by the RBI under the Sovereign Gold Bond Scheme, 2015, shall be excluded from transfer. Hence the capital gain shall not be taxable in case of redemption. However, it may be noted that the benefit of section 47(viic) is available only in case of redemption of **SGBs** by RBI. Therefore, if the assessee transfers **SGBs** in any other manner (For example – sale of **SGBs**), the capital gain shall be taxable.

  - ✓ ***(2)* –** The existing section 47(xiiib) prescribes that the conversion of a private company or unlisted public company into a LLP shall be excluded from "transfer" and hence the capital gain shall not be taxable, if certain conditions are satisfied. The amendment seeks to introduce one more condition i.e. the total value of assets 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 Rs. 5 crore.

  - ✓ ***(3)* –** Section 47(xix) has been inserted to provide that any transfer of unit(s) in the **"consolidating plan"** of a mutual fund, made in consideration of the allotment of unit(s) in the **"consolidated plan"** of that scheme of the mutual fund, shall be excluded from "transfer". Hence the capital gain shall not be taxable.

    Here **"consolidating plan"** means the plan within a scheme of a mutual fund which merges under the process of consolidation of the plans within a scheme of mutual fund in accordance with SEBI Regulations and **"consolidated plan"** means the plan with which the consolidating plan merges or which is formed as a result of such merger.

    Note: Now a question would further arise as to what shall be the COA and DOA at the time of subsequent sale of units of consolidated plan. No amendment has been made in section 49 or 2(42A) to permit "Old COA" or "Old DOA". Perhaps, this is a lapse on the part of law makers.

Section 48 amended:

- ❖ This section prescribes method for computation of taxable capital gain.

- ❖ Following amendments have been prescribed in this section:

  - ✓ **(1) –** Under the existing law, the benefit of indexation is not allowed in case of bonds or debentures except the capital indexed bonds issued by the Govt. The amendment seeks to allow the benefit of indexation in the case of **Sovereign Gold Bonds (SGBs)** issued by the RBI under the Sovereign Gold Bonds Scheme, 2015.

  - ✓ **(2) –** The amendment seeks to provide that in the case of a non-resident assessee, any gain arising on account of **appreciation of rupee against a foreign currency** at the time of **redemption of rupee denominated bonds (RDBs) of an Indian company subscribed by him**, shall be ignored for the purpose of computation of **full value of consideration** (i.e. sale proceed). The effect of amendment is that the portion of capital gain relatable to appreciation of rupee shall not be taxable.

Section 49 amended:

- This section prescribes "notional cost of acquisition" in certain cases.
- Sub-section (5) has been inserted in section 49 which provides that if the capital gain arises on transfer of any capital asset declared under the **Income Declaration Scheme, 2016,** and the tax, surcharge and penalty have been paid in accordance with the provisions of that scheme on the fair market value of the asset [as on the date of commencement of the scheme], the cost of acquisition **(COA)** of the asset shall be deemed to be the **fair market value of the asset which has been taken into account for the purpose of that scheme.**

Section 50C amended:

- Under the existing law –
  - ✓ Section 50C prescribes that in the case of transfer of a land or building *(being a capital asset)*, the actual consideration declared by the assessee or the value adopted by the Stamps Authority (SAV), whichever is higher, shall be taken as full value of consideration (i.e. sale proceed) for the purpose of computation of "Income under CG head".
  - ✓ Similarly, section 43CA prescribes that in the case of transfer of a land or building *(held as stock-in-trade)*, the actual consideration declared by the assessee or the value adopted by the Stamps Authority (SAV), whichever is higher, shall be taken as full value of consideration (i.e. sale proceed) for the purpose of computation of "Income under BP head".
  - ✓ Moreover, section 56(2)(vii) prescribes that if an individual or HUF acquires any immovable property (i.e. land / building) for inadequate consideration, the value of immovable property adopted by Stamps Authority (SAV) ***minus*** the consideration paid by assessee, shall be as taxable as "Income from Other Sources".
  - ✓ We are further aware that both in section 43CA and 56(2)(vii), if the **Date of Agreement** fixing the value of consideration of the land / building and the **Date of Registration** of such transfer is not same ***(in other words, if there is a time-gap in-between the Date of Agreement and Date of Registration)***, the assessee has option to adopt SAV as on the **Date of Agreement**. But this **relaxation** is allowed only if the amount of consideration or a part thereof has been received / paid by **any mode other than cash** on or before the **Date of Agreement**.
  - ✓ It may be noted that the above discussed **relaxation** is available only in section 43CA and 56(2)(vii) but not in section 50C.
- Now section 50C is amended to bring this section at par with section 43CA and 56(2)(vii).
- Accordingly, it is now provided in section 50C that if the date of agreement fixing the value of consideration of land / building and the date of registration of transfer is not same (in other words, if there is a time-gap in-between the date of agreement and date of registration), the Stamp Authority Valuation (SAV) as on the date of agreement may be taken as full value of consideration (i.e. sale proceed) for the purpose of calculation of "Income under CG head". But this relaxation is allowed only if the amount of consideration or a part thereof has been received **by way of an account payee cheque or account payee bank draft or by use of electronic clearing system (ECS) through a bank account**, on or before the date of agreement.
- It may please be noted that even after amendment, there is a difference in language i.e. section 43CA and 56(2)(vii) uses "**any mode other than cash"** but section 50C uses "**account payee cheque or account payee bank draft or by use of electronic clearing system (ECS) through a bank account".**

Section 54EE inserted:

- Under the existing law, an assessee can re-invest capital gain in a specified asset and claim exemption u/s 54, 54B, 54D, 54EC, 54F, 54G, 5GA, or 54GB, as the case may be.

- The amendment seeks to insert a new exemption section 54EE.

- Please note that the existing section 54EC and the newly inserted section 54EE are **exactly similar except one difference**, viz. in existing section 54EC, the new investment must be made in the bonds of REC or NHAI, but in new section 54EE the investment must be made in the **Units notified by the Govt.**

- Since all other contents of section 54EC and 54EE are same, we do not narrate all provisions of section 54EE in detail. Please read the whole section 54EE from your book.

- ***You are aware that the maximum limit of exemption in section 54EC is Rs. 50 lakh. Similarly, in section 54EE too, there is a maximum limit of Rs. 50 lakh. Your attention is particularly invited towards this limit of Rs. 50 lakh both in section 54EC and 54EE, since it is very much relevant from examination point of view.***

Section 54GB amended:

- Under this section, any capital gain arising to an assessee (i.e. individual or HUF) from transfer of a long-term residential house or residential plot is exempted, if the assessee makes investment by way of subscription to the equity shares of an **"eligible company"** and thereafter the **"eligible company"** makes investment in **"new asset"**.

- The existing law contains following restrictions:

  (a) The exemption u/s 54GB is allowable only in respect of residential house or residential transferred upto 31.03.2017. The effect is that the section is applicable upto AY 2017-18 only.

  (b) The meaning of **"eligible company"** is restricted to a company which qualifies to be a Small or Medium Enterprise **(SME)** under the Micro, Small and Medium Enterprises Act, 2006. Hence if the assessee makes investment in shares of a company other than SME, the exemption of section 54GB is not allowed.

  (c) The meaning of **"new asset"** excludes **"computers or computer softwares"**. Hence if the **"eligible company"** makes investment in **"computers or computer softwares"**, it is not permissible.

- In order to encourage setting up of start-up companies and to enable such start-up companies to receive equity capital from investors, section 54GB has been relaxed on following pattern, for "**eligible start-up companies":**

  (1) If the assessee (individual or HUF) transfers residential house or residential plot upto 31.03.2019 and makes investment by way of subscription to the equity shares of **"eligible start-up company",** the benefit of section 54GB shall be allowable. In short, the applicability of section 54GB has been extended by 2 years for the limited purpose of **"eligible start-up companies"**.

  (2) **Meaning of "eligible start-up company"** – It means a company which fulfills following conditions –
  (a) It is incorporated during 01.04.2016 to 31.03.2019.
  (b) It is engaged in an **"eligible business".** Here **"eligible business"** means a business which involves innovation, development, deployment or commercialization of new products, processes or services **(PPS)** driven by technology or intellectual property.
  (c) It holds a certificate of eligible business from the Inter-Ministerial Board of Certification **(IBMC)** notified by the Central Govt.
  (d) The total turnover of its business does not exceed Rs. 25 crore in any of the previous years beginning on or after 01.04.2016 and ending on 31.03.2021 (i.e. PY 2016-17 to 2020-21) ***[Please read this condition carefully].***
  (e) It is a company in which the assessee has more than 50% share capital or more than 50%

voting right after subscription in shares by the assessee.

(3) The meaning of **“new asset”** has been amended so as to include **“computers or computer softwares”**. Hence, investment in **“computers or computer softwares”** is also permissible. This has been done because these “eligible start-up companies” are technology driven and they may need high investment in **“computers or computer softwares”.**

(4) All other provisions of section 54GB shall apply.

Section 55 amended:

- We are aware that the Hon'ble Supreme Court has held in the case of **CIT Vs. B.C. Srinivasa Setty (SC) [1981] 5 Taxman 1** that the profit on transfer of a “self-generated capital asset” is not taxable because the COA is absent. Subsequently, the Govt. has amended Income-tax Act from time to time and provided that in the cases of following self-generated assets, the COA shall be deemed to be **Nil:**
  - (i) Goodwill of a business
  - (ii) Tenancy right
  - (iii) Loom hours
  - (iv) Route permit
  - (v) License to manufacture or process any goods
  - (vi) Right to carry on business
  - (vii) Trade mark associated with a business
  - (viii) Brand name associated with a business

- Thus, the capital gain arising on transfer of self-generated assets of above 8 types is taxable. But the capital gain of any other self-generated asset is not taxable because COA is absent.

- Now, the amendment seeks to add one more item to the list of above 8 items i.e. **“right to carry on any profession”.**

- The effect is the capital gain arising on transfer of **self-generated “right to carry on any profession”**, shall be taxable and for computation purpose, the COA shall be taken to be Nil.

Note: The amendments in section 28(va) and 55 should be read together.

INCOME FROM OTHER SOURCES

Section 56(2)(vii) amended:

- Under this section, taxability is attracted if an individual or HUF receives (i) money without consideration, or (ii) immovable property without consideration, or (iii) immovable property for inadequate consideration, or (iv) movable property without consideration, or (v) movable property for inadequate consideration.
- Existing law prescribes certain exemptions (for example – Receipt from a relative etc.) in which there would be no taxability.
- The amendment seeks to introduce one more exemption i.e. any receipt by way of a transaction excluded from transfer u/s 47(vicb) [i.e. receipt of shares in case of business re-organisaiton of a co-operative bank], 47 (vicd) [i.e. receipt of shares in case of a demerger of a company], or 47(vii) [i.e. receipt of shares in case of amalgamation of a company].

SET OFF OF LOSSES

Section 80 amended:

- This section prescribes that if a Return of loss is not filed u/s 139(3) by the due date prescribed in section 139(1), carry forward of losses u/s 72,73,74 and 74A is not allowed.

- The amendment seeks to bring section 73A within the scope of section 80.
- The effect is that if the Return of loss is not filed upto due date, the carry forward of loss u/s 73A shall not be allowed.
- Consequential amendment has also been made in section 139(3) to include a reference of section 73A.

Note: The amendments in section 80 and 139(3) should be read together.

DEDUCTIONS

Section 80CCD amended:

- The existing section 80CCD is applicable to **"New Pension System (NPS)".** Now, **"Atal Pension Yojna"** has also been notified for the purpose of section 80CCD.
- Please note that not only section 80CCD, but also all other provisions of Income-tax Act, 1961 as applicable to "NPS" shall apply to "APY" *mutatis mutandis*.
- Section 80CCD has also been amended to provide that the amount received by nominee of assessee on death of the assessee (the assessee may be an employee or self-employed person) shall be fully exempt. This amendment has already been discussed under the heading **"Section 10(12A) inserted"**.

Note: The amendments in section 10(12A), 10(13), 80CCD and Schedule IV should be read together.

Section 80EE substituted:

- This section has been re-introduced to grant additional deduction upto Rs. 50,000/- in respect of interest payable by an assessee on loan taken for acquisition of a residential house property, provided following conditions are satisfied:
  - ✓ The assessee is an individual.
  - ✓ The loan must be taken for **acquisition of a residential house property**.
  - ✓ The loan must be taken from a **"financial institution"**. Here **"financial institution"** means a bank or a housing finance company.
  - ✓ The loan must be **sanctioned** by the financial institution during **01.04.2016 to 31.03.2017 (i.e. PY 2016-17).**
  - ✓ The amount of loan sanctioned **should not exceed Rs. 35 lakh**.
  - ✓ The value of residential house property **should not exceed Rs. 50 lakh**.
  - ✓ The assessee should **not own any residential house property on the date of sanction of loan**.
- The benefit of this section shall be allowed till repayment of loan.
- ***Question –*** Interest on house loan is deductible u/s 24(b) itself. Hence what is extra-utility of section 80EE?

  Answer: It is true that section 80EE is not useful in the case of a property covered u/s 23(1) because the assessee can get full deduction u/s 24(b) itself. But the 80EE shall be useful if the property is covered u/s 23(2), because in the case of a property covered u/s 23(2), the maximum allowable deduction u/s 24(b) is Rs. 2,00,000/- and the deduction upto Rs. 50,000/- u/s 80EE shall be over and above the deduction upto Rs. 2,00,000/- u/s 24(b). Hence the assessee should first claim deduction u/s 24(b) upto Rs. 2,00,000/- and thereafter the remaining interest, if any, should be claimed u/s 80EE [upto a maximum of Rs. 50,000/-]. In short, in the case of a property covered u/s 23(2), the assessee can claim deduction upto Rs. 2,50,000 [Maximum upto Rs. 2,00,000 u/s 24(b) + Maximum upto Rs. 50,000 u/s 80EE], ***provided all conditions of section 80EE are satisfied.***

- Care must be taken that the same amount is not doubly claimed, once u/s 24(b) and again u/s 80EE because it is specifically restricted in section 80EE.

- Section 80EE prescribes that the loan must be taken for **“acquisition”** of a residential property. There is no definition of **“acquisition”**. Thus, although it is very much clear that the section is not applicable if the loan is taken for repair or renovation of property, yet a doubt arises as to whether the section 80EE shall apply to purchase of house only or construction of house also. In **Explanatory Memorandum to Finance Act, 2016**, the Parliament has clearly stated that the section is for **“first-home buyers”.** Hence it appears that the intention of Govt. is to apply section 80EE only in case of purchase of a residential house property and not in case of construction of a residential house property.

- A further question would arise – Whether the deduction u/s 80EE is allowed on payment basis or payable basis?

  Answer: Normally, in the case of payment-related deductions u/s 80C to 80GGC, the deduction is allowed in the previous year in which payment is made. However, the language of section 80EE uses the word “payable” and not “paid”. Hence there is a view that the deduction of interest shall be allowed on “payable” basis and actual payment is not necessary.

Section 80GG amended:

- This section grants deduction in respect of rent paid by an individual for residential accommodation.

- Under the existing law, the maximum limit of deduction is Rs. 2,000/- per month.

- The amendment seeks to extend this maximum limit to Rs. 5,000/- per month.

Section 80-IA, 80-IAB, 80-IB amended:

- The Govt. wants to phase out these sections in near future. Hence **sunset provisions** have been inserted. These are not relevant for examination.

Section 80-IAC inserted:

- This section has been inserted to grant deduction to start-ups.

- Under this new section, an **“eligible start-up”** deriving profit from **“eligible business”** shall be entitled to 100% deduction of such profit for **3 consecutive assessment years,** provided following conditions are satisfied –

  (1) The assessee must be an **“eligible start-up”**. Here “e**ligible start-up”** means a **Company or LLP** which fulfills the following conditions:
  (i) It is incorporated during 01.04.2016 to 31.03.2019.
  (ii) It is engaged in **“eligible business”. Here “eligible business”** means a business which involves innovation, development, deployment or commercialisation of new products, processes or services **(PPS)** driven by technology or intellectual property.
  (iii) It holds a certificate of “eligible business” from the Inter-Ministerial Board of Certification **(IMBC)** notified by the Central Govt.
  (iv) The total turnover of its business does not exceed Rs. 25 crore in any of the PY 2016-17 to 2020-21. ***[Please read this condition carefully].***

  (2) **Formation –** It should not be formed by splitting up or reconstruction of an existing business.

  Exception: This condition is not applicable in respect of a start-up formed as a result of re-establishment, reconstruction or revival by the assessee of the business in the circumstances and within the period prescribed in section 33B.

(3) **New plant & machinery –** It should not be formed by the to a new business of machinery or plant previously used for any purpose.

Exception: Following relaxations have been given in this condition:

(a) The old plant and machinery is allowed to the extent of 20% of total value of plant and machinery.

(b) Imported plant and machinery shall be deemed to be new plant and machinery provided such plant and machinery was not used in India at any time before the date of installation by the assessee and no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable in computing the total income of any person for any period prior to the date of installation by the assessee.

❖ Following points should also be noted:

(a) The assessee has option to claim deduction in any 3 consecutive years out of 5 years beginning from the year in which the eligible start-up is incorporated.

(b) The provisions of section 80-IA(5) and 80-IA(7) to (11) shall apply *mutatis mutandis*.

Section 80-IBA inserted:

❖ This section has been inserted to grant deduction to housing sector.

❖ Under this new section, an assessee deriving profit from the business of developing and building housing project, shall be entitled to 100% deduction of such profit, provided following conditions are satisfied –

(1) The housing project must be approved during 01.06.2016 to 31.03.2019 by the competent authority.

(2) The construction must be completed within 3 years from the date of approval by the competent authority.

Following points should be noted in this regard:

- If the approval of a housing project is obtained more than once, the project shall be deemed to have been approved on the date on which the building plan of such project was first approved 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.

(3) The "**minimum size of plot"** (over which the project is located) must be:

(i) 1,000 square metres, if the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai, or within the distance of 25 kilometres from the municipal limits of these cities (aerially measured),

Or

(ii) 2,000 square metres, if the project is located in any other place.

(4) The relevant project is the only housing project on the plot of land specified above.

(5) The **maximum "built-up area"** of **each residential unit** should be as follows --

(i) 30 square metres -- If the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai, or within the distance of 25 kilometres from the municipal limits of these cities (aerially measured),

or

(ii) 60 square metres -- if the project is located in any other place

(6) Some assessees can develop techniques to by-pass the above rule of **maximum built-up area**. Hence the Govt. has imposed a restriction that where a residential unit in the project is

allotted to an individual, no other residential unit in the project shall be allotted to (i) such individual, or (ii) spouse of such individual, or (iii) minor child of such individual.

(7) The project must utilise **minimum:**
   (i) 90% of the permissible FAR (Floor Area Ratio), if the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai, or within the distance of 25 kilometres from the municipal limits of these cities (aerially measured),
   or
   (ii) 80% of the permissible FAR (Floor Area Ratio), if the project is located in any other place.

(8) The **"build-up area"** of the shops and other commercial establishments included in the housing project should not exceed **3%** of the **aggregate "built-up area"**.

(9) The assessee must maintain separate books of account of project.

❖ Following definitions have also been prescribed:

(i) **"Housing project"** means a project consisting predominantly of residential units with such other facilities and amenities as the competent authority may approve.

(ii) **"Built-up area"** means the inner measurements of the residential unit at the floor level (practically it is called 'carpet area'), including the projections and balconies, as increased by the thickness of the walls but does not include the common areas and open terrace shared with other residential units.

(iii) **"Residential unit"** means an independent housing unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a share hallway and not by walking through the living space of another household.

❖ Following further restrictions have also been prescribed:

(a) If an assessee is merely executing the housing project as a work contract awarded by any person, he shall not be entitled to deduction.

(b) If the housing project is not completed within the prescribed period of 3 years but the assessee has already claimed deduction u/s 80-IBA [in relation to the income derived from completed and sold units or portions], the deduction claimed by him shall be re-taxable under the head "Income from BPV" of the previous year in which the period for completion expires.

Section 80JJAA substituted:

❖ This section grants deduction in respect of employment of new employees. The existing section has been substituted by a new section.

❖ The deduction shall be allowed only if following conditions are satisfied –
(1) The assessee should be a person to whom section 44AB applies **(i.e. turnover exceeds Rs. 1 crore)**.
(2) The assessee must be engaged in any business (not profession).
(3) The business should not be formed by splitting up, or the reconstruction, of an existing business. [However, this condition is not applicable in respect of a business formed as a result of re-establishment, reconstruction or revival by assessee of the business in the circumstances and within the period prescribed in section 33B].
(4) The business should not be acquired by the assessee by way of transfer from any other person or as a result of any business reorganization.
(5) Report of CA in a prescribed form must be filed with the return of income.

❖ **<u>How much deduction</u>?**
30% of "**additional employee cost"** incurred during the previous year.

❖ **<u>Deduction for how many years</u>?**

The deduction shall be allowed for **3 assessment years** including the assessment year in which the employment is provided.

❖ **<u>Meaning of "additional employee cost":</u>**

"Additional employee cost" means the total emoluments paid or payable to **"additional employee"** employed during the previous year.

But in the case of an existing business, the **"additional employee cost"** shall be deemed to be **Nil,** if –

(a) there is no increase in the 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 draft or by use of electronic clearing system through a bank account.

However, in the case of first year of a new business, emoluments paid or payable to the employees employed during that previous year shall be deemed to be additional employee cost.

❖ **<u>Meaning of "Additional employee":</u>**

"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 Rs. 25,000 per month, or

(b) an employee employed for a period of less than 240 days during the previous year, or

(c) an employee who does not participate in the recognized provident fund, or

(d) an employee for whom the entire contribution to Employees' Pension Scheme [under Employees' Provident Funds and Misc. Provisions Act, 1952] is paid by the Govt.

❖ **<u>Meaning of "Emoluments":</u>**

"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 given by employer to any pension fund or provident fund or other fund for the benefit of the employee under any law; and

(b) any lump-sum payment paid or payable to an employee at the time of retirement by way 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.

❖ **<u>Please note the following points:</u>**

(a) The deduction under this section is in addition to deduction allowable to the assessee in computing "Income from BP" head.

(b) The section is applicable to all assessees, whether individual, HUF, firm, company etc.

(c) The section is applicable to all assessees, whether engaged in trading, manufacturing, banking, insurance or any kind of business. However, it is not applicable to the persons engaged in profession.

(d) There is no condition regarding the minimum number of employees.

(e) The requirement of payment by account payee cheque or account payee draft or by use of electronic clearing system (ECS) through a bank account is only in case of an existing business and not in case of **first year** of a new business.

❖ **The language of section is very badly drafted. It leads to many interpretations and confusions.**

<u>REBATE</u>

Section 87A amended:

❖ The maximum limit of rebate has been enhanced from Rs. 2,000 to Rs. 5,000.

TRANSFER PRICING RULES

Section 92CA amended:

- This section empowers the AO to refer matter to TPO.
- Under the existing provision, the TPO must pass order at any time **before 60 days prior to the date** on which the time-limitation for completion of assessment u/s 153 / 153B expires.
- Sometimes the assessment proceeding is stayed by a court. Further, sometimes it becomes necessary to obtain information from foreign jurisdictions for the purpose of determination of ALP. Hence the amendment seeks to provide that in the circumstances covered under clause (ii) [i.e. where the assessment proceeding is stayed by an order or injunction of any court] or clause (x) [i.e. where a reference for exchange of information is made by a competent authority under an agreement referred to in section 90 / 90A] of Explanation 1 to section 153, if the period of limitation available to the TPO for making his order is less than 60 days, such remaining period shall be extended to 60 days.

Section 92D amended:

- This section prescribes for maintenance of information and documents by the persons entering into an international transaction or specified domestic transaction.
- The amendment seeks to provide that if the person entering into an international transaction or specified domestic transaction is a "**constituent entity"** of an **"international group",** it shall also keep and maintain such information and document in respect of international group, as may be prescribed and also furnish such information and documents to the prescribed authority in such manner and upto such date, as may be prescribed.
- Here **"Constituent entity"** and **"International group"** shall have same meaning as in section 286.

Note: The amendments in section 92D, 271AA(2), 271GB, 273B, 286 should be read together.

CHAPTER XII – TAXATION OF SPECIAL INCOMES

Section 111A amended:

- This section prescribes concessional tax rate of 15% in respect of short-term capital gain arising from transfer of (i) equity shares in a company, or (ii) units of an equity oriented mutual fund, or (iii) units of a business trust (i.e. REIT or ITT), if the transaction of sale of equity shares or equity oriented mutual fund or units of a business trust **(i.e. REIT or ITT) had** suffered **Securities Transaction Tax (STT)**.
- In order to encourage growth of International Financial Service Centres (IFSC), it is now provided that the condition of STT payment shall not be applicable if the transaction of sale has been undertaken in a recognized stock exchange located in any International Financial Service Centre (IFSC) and the consideration for transaction is paid or payable in foreign currency.
- Hence, the effect is that the short-term capital gain arising from transfer of (i) equity shares in a company, or (ii) units of an equity oriented mutual fund, or (iii) units of a business trust (i.e. REIT or ITT) undertaken in a recognized stock exchange located in any International Financial Service Centre (IFSC) and the consideration for transaction is paid or payable in foreign currency, shall be covered u/s 111A even if it has not suffered **Securities Transaction Tax (STT)**.

Note: The amendments in section 10(38) and 111A should be read together.

Section 112 amended:

- ❖ This section prescribes concessional tax rate of 10% or 20%, in the case of long-term capital gain.
- ❖ Under the existing law, the long-term capital gain derived by a **Foreign company (FC) or a Non-resident non-corporate (NRNC)** from transfer of **unlisted securities** is taxable @ 10% without giving benefit of the First proviso to section 48 [i.e. conversion benefit] and Second proviso to section 48 [i.e. indexation benefit].
- ❖ The amendment seeks to provide that the long-term capital gain derived by a **Foreign company (FC) or a Non-resident non-corporate (NRNC)** from transfer of **shares of a closely-held company** shall also be taxable @ 10% without giving benefit of the First proviso to section 48 [i.e. conversion benefit] and Second proviso to section 48 [i.e. indexation benefit].

Section 115BA inserted:

- ❖ This section prescribes concessional tax regime for **start-up companies**.
- ❖ It prescribes that the income-tax payable by a domestic company [for AY 2017-18 and thereafter] shall be calculated @ 25% *[in place of 29% or 30%]*, if all of the following conditions are satisfied:

  (a) The company is start-up i.e. it has been set up and registered on or after 01.03.2016.

  (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 producted by it, and

  (c) The total income of company has been computed:

    (i) **without claiming** any deduction u/s 10AA, 32(1)(iia) [i.e. additional depreciation], 32AC, 32AD, 33AB, 33ABA, 35, 35AC, 35AD, 35CCC, 35CCD or deduction under Part "C" of Chapter VI-A [except 80JJAA].

    (ii) **without claiming** set off of any brought forward loss from earlier assessment year relatable to the sections mentioned in (i) above [It is also prescribed that such loss shall be deemed to have been already given effect to and no set off of such loss shall be allowed for any subsequent year], and

    (iii) **after claiming** depreciation u/s 32 [other than additional depreciation u/s 32(1)(iia)] in a prescribed manner.

- ❖ Please note that section 115BA is **optional**. If the company wants to apply section 115BA, it must exercise option in a prescribed manner upto the due date u/s 139(1) of filing of first of the Returns of income. Further, the option once exercised for any previous year, cannot be subsequently withdrawn for the same or any other previous year.

Section 115BBDA inserted:

- ❖ The provisions of this new section are as under:
  - ✓ The section shall apply to an assessee who is an individual, HUF or firm **(resident in India).**
  - ✓ If the total dividend covered u/s 2(22)(a)/(b)/(c)/(d) received by assessee during a previous year from one or more domestic companies exceeds Rs. 10 lakh, such excess dividend shall be taxable @ 10%.
  - ✓ No deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act against such dividend income.
  - ✓ No loss can be set off against such dividend.

- ✓ The benefit of Basic Exemption Limit (MANCT) shall not be allowed.

❖ Simultaneously section 10(34) has also been amended to deny the benefit of exemption.

Note: The amendments in section 10(34) and 115BBDA should be read together.

Section 115BBE amended:

❖ The amendment seeks to provide that no loss can be set off against undisclosed income taxable u/s 68, 68, 69A, 69B, 69C and 69D.

Section 115BBF inserted:

❖ This new section has been inserted to provide a concessional taxation regime for income by way of royalty in respect of a patent developed and registered in India. The purpose of the section is to encourage indigenous research.

❖ The provisions of section are as under:
- ✓ The section is applicable to an "eligible assessee".
- ✓ The income by way of royalty in respect of a patent developed and registered in India, shall be taxable @ 10%.
- ✓ No deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act against such royalty income.
- ✓ The section is optional. The section shall be applicable only if the assessee exercise option to apply section, in a prescribed manner upto due date u/s 139(1).
- ✓ If the assessee opts to apply this section for any previous year but does not offer the income for taxation according to the provisions of this section for **any of the succeeding 5 previous years,** he shall not be eligible to claim the benefit of this section for **next 5 previous years** (i.e. for 5 previous years subsequent to the previous year in which income is not offered according to this section). ***In short, a compulsory exit route has been prescribed in section 115BBF and once exited, there would be a ban period of 5 previous years during which the assessee cannot re-enter into the scheme of section 115BBF.***
- ✓ Following definitions have also been prescribed:
  - **"developed"** means at least 75% of the expenditure is incurred in India by the assessee for any invention in respect of which the patent is granted under the Patents Act, 1970.
  - **"eligible assessee"** means a person resident in India, being the true and first inventor of the invention, whose name is registered on the patent register as patentee, in accordance with the Patents Act, and includes a joint patentee, who is also a true and first inventor and whose name is registered on the patent register.
  - **"royalty"** means consideration (including any lump sum consideration or non-returnable advance but excluding the consideration which would be chargeable as "Income under the head "Capital Gain" or consideration for sale of the product manufactured with the use of patented process or the patented article for commercial use) for the –
    (i) transfer of all or any rights (including the granting of a licence) in respect of a patent; or
    (ii) imparting of any information concerning the working of, or the use of, a patent; or
    (iii) use of any patent; or
    (iv) rendering of any services in connection with (i) to (iii).

MAT

Section 115JB amended:

- This section prescribes MAT provisions applicable to companies.

- Following amendments have been prescribed:
  - ✓ While computing book profit, the amount of income by way of royalty chargeable u/s 115BBF shall be deducted and the amount of expenditure relatable to the income by way of royalty chargeable u/s 115BBF debited to P&L A/c, shall be added.

  - ✓ Section 115JB shall not apply to the following types of foreign companies:
    (a) a foreign company which is a resident of a country or a specified territory with which India is having DTA treaty u/s 90 / 90A and which does not have a permanent establishment in India, or
    (b) a foreign company which is a resident of a country with which India does not have DTA treaty and the foreign company is not required to seek registration under any law for the time being in force relating to companies.

  - ✓ If the company is a unit located in an International Financial Services Centre (IFSC) and derives its income solely in convertible foreign exchange, the MAT rate shall be 9% instead of 18.50%. Thus, the MAT rate has been reduced.

TRANSITIONAL PROVISIONS FOR FOREIGN COMPANIES

Section 115JH inserted:

- This new section has been introduced to provide a **transitional mechanism** for a foreign company which is said to be resident in India for the first time.

- Accordingly, this section prescribes as under:

  - ✓ Where a foreign company is said to be resident in India in any previous year and such company has not been resident in India in any of the previous years preceding such previous year ***[in short – the foreign company is treated as resident in India for the first time]***, then the provisions of this Act relating to the computation of total income, treatment of unabsorbed depreciation, set off or carry forward 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 a notification issued by the Central Govt.

  - ✓ If the determination regarding foreign company to be resident in India has been made in the assessment proceedings relevant to any previous year, then the provisions of section 115JH shall also apply to any subsequent previous year provided the foreign company is resident in India in that subsequent previous year and the subsequent previous year ends on or before the date on which the assessment proceeding is completed.

  - ✓ Where, in any previous year, any benefit, exemption or relief has been claimed and granted to the foreign company according to the notification issued by Central Govt., but subsequently there is a default in complying with any of the conditions specified in the notification:
    (a) such benefit, exemption or relief shall be deemed to have been wrongly allowed;
    (b) the AO may re-compute the total income of foreign company and make necessary amendment as if the **exceptions, modifications and adaptations** allowed earlier have been wrongly allowed, and
    (c) the AO shall rectify assessment u/s 154 and the time-limitation of 4 years as prescribed in section 154 shall be reckoned from the end of the previous year in which the default is committed.

- Please note that once the transition is complete, section 115JH shall not apply. Therefore, the normal provisions of Income-tax Act shall apply.

CDT PROVISIONS

Section 115-O amended:

- This section provides for levy of CDT.
- Following amendments have been prescribed:
  - ✓ ***(1) –*** No CDT shall be payable on any dividend declared, distributed or paid by a **"Specified domestic company"** to a **"Business trust"** out of its current income after the **"Specified date"**.

    Here **"Specified domestic company"** means a domestic company in which a **"Business Trust"** has become the holder of **100% of the equity share capital of the company** [excluding (i) the equity share capital required to be held mandatorily by any other person in accordance with any law or directions of Govt. or any regulatory authority; or (ii) the equity share capital held by any Govt. or Govt. body]. ***In short, "Specified domestic company" is a Special Purpose Vehicle (SPV) in which the Business Trust holds 100% equity capital.***

    Further **"Specified date"** means the date of acquisition by the Business Trust of the aforesaid 100% holding in **"Specified domestic company".**

    Please note that the dividend declared, distributed or paid by a "Specified domestic company" to a "Business trust" out of its current or accumulated income upto the "specified date" shall not be exempted from levy of CDT.

  - ✓ ***(2)*** – No CDT shall be payable in respect of total income of a company, being a unit established in an International Financial Services Centre **(IFSC)** on or after 01.04.2016, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividend on or after 01.04.2017, out of its current income, either in the hands of the company or the person receiving such dividend.

Note: The amendments in section 10(23FC), 10(23FD), 115-O, 115UA and 194LBA(1)/(2) should be read together.

Section 115QA amended:

- This section provides for levy of tax @20% on "distributed income" by a domestic company on account of buy back of unlisted shares.
- Under the existing law, "distributed income" means the consideration paid by the company on buy-back of shares (**-**) the amount which was received by the company at the time of issue of shares.
- In practical life, difficulties / doubts arise on interpretation of **"the amount which was received by the company at the time of issue of shares"** because the law does not prescribe any guidance.
- Now. the amendment seeks to substitute **"the amount which was received by the company at the time of issue of shares"** by **"the amount which was received by the company at the time of issue of shares, determined in the manner as may be prescribed".**

Section 115TA to 115TC closed:

- These sections provide for levy of distribution tax on income distributed by a Securitisation Trust to its investors.
- .Now, the Govt. has closed these sections. Hence sections shall not apply.

Note: The amendments in section 10(23DA), 10(35A), 115TA to 115TC, 115TCA and 194LBC should be read together.

PASS THROUGH PROVISIONS

Section 115TCA inserted:

- This new section is introduced in order to prescribe full pass through system for taxation of Securitisation Trusts.

- In order to understand the whole regime of Securitisation Trusts, the provisions of section 10(23DA), 115TCA and 194LBC are being discussed at one place in detail:

  - **<u>What is "Securitisation" concept?</u>:**
    "Securitisation" is the process of conversion of non-marketable assets (may be existing assets or future cash flows) into marketable securities. For further details of this concept, please consult the faculty of Financial Management subject.

    In "Securitisation" there are three parties, viz. (i) Investors, (ii) Securitisation Trust, and (iii) Securitisation Company / Reconstruction Company. The Investors invest money in Securitisation Trust and the Securitisation Trust invests money in Securitisation Company / Reconstruction Company. Thus, Securitisation Trust acts as a **bridge** between the Investors and Securitisation Company / Reconstruction Company.

    Investors ➔ Securitisation Trust ➔ Securitisation Company / Reconstruction Company

  - **<u>Meaning of "Securitisation Trust"</u>:**
    "Securitisation Trust" means a trust, being a –
    (i) "Special purpose distinct entity" as defined and regulated under the SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008, or
    (ii) "Special purpose vehicle" as defined and regulated under the guidelines on securitization issued by RBI, or
    (iii) Trust set up by a Securitization Company or a Reconstruction Company for the purposes of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 **[SARFAESI Act, 2002]** or
    which fulfills the conditions, as may be prescribed.

  - **<u>Meaning of "Investor"</u>:**
    "Investor" means a person who is holder of any (i) securitized debt instrument, or (ii) securities, or (iii) security receipt issued by the "Securitisation Trust".

  - **<u>Taxation of "Securitisation Trust"</u>:**
    Section 10(23DA) grants 100% exemption to the income of a "Securitisation Trust" from the activity of securitization. Hence the income of a "Securitisation Trust" from the activity of securitization shall be fully exempt.

  - **<u>Taxation of "Investors"</u>:**
    Any income accruing or arising to, or received by an Investor from the Securitisation Trust, out of investments made in the Securitisation Trust, shall be taxable in the hands of Investors in the same manner and to the same extent as if the Investor had made investment directly in the underlying assets and not through the Securitisation Trust.

  - **<u>Nature of income in the hands of "Investors"</u>:**
    Any income distributed by a Securitisation Trust to its investors shall be deemed to be of the same nature and in the same proportion in the hands of investors as it had been received by, or accrued to, or arisen to, the Securitisation Trust.

  - **<u>Deemed distribution to "Investors"</u>:**
    If the income received by, or accruing to, or arising to, a Securitisation Trust, during a previous year, is not paid or distributed to the Investors, it shall be deemed to have been credited to the investors on the last day of the previous year in the same proportion in which the Investors would have been entitled to receive the same. It is further prescribed that any income which has been taxed in the hands of Investors on such deemed credit basis, shall not be taxed

again in the previous year in which such income is actually distributed by the Securitisation Trust to the Investors.

✓ **Furnishing of Statement by "Securitisation Trust":**
The Securitisation Trust shall provide break-up of the nature and proportion of its income and other relevant details to its Investors and also to the prescribed income-tax authority within such time and in such form and manner as may be prescribed.

✓ **Treatment of capital gain arising on transfer of "securities" or "securitized debt instruments" or "security receipt" by investors:**
There is no special provision. The normal provisions of Income-tax Act, 1961 shall apply.

✓ **Taxation of Securitisation Company / Reconstruction Company:**
There is no special provision for taxation of Securitisation Company / Reconstruction Company. Hence the Securitisation Company / Resconstruction Company shall be taxable as per the normal provisions of the Income-tax Act.

✓ **TDS Provisions:**
(a) Notification No. 46/2016, dated 17.06.2016:
Under the authority of section 197A(1F), the Central Government has notified that no tax shall be deducted out of payment of the nature specified in section 10(23DA) [i.e. any income of Securitisation Trsut from the activity of securitization]. Hence, any person making payment of income to a Securitisation Trust shall not deduct TDS.

(b) The Securitisation Trust shall deduct TDS u/s 194LBC, out of payments made by it to Investors.

Note: The amendments in section 10(23DA), 10(35A), 115TA to 115TC, 115TCA and 194LBC should be read together.

Section 115UA amended:

- This section prescribes pass through system for taxation of business trusts **(i.e. REIT and IIT)**.
- Under the existing provision, any income distributed by a "Business Trust" to its unit holders, which is of the nature covered u/s 10(23FC) or 10(23FCA), shall be taxable in the hands of unit holders.
- The amendment seeks to replace "10(23FC)" by 10(23FC)(a).
- Thus, after amendment, any income distributed by a "Business Trust" to its unit holders, which is of the nature covered u/s 10(23FC)(a) or 10(23FCA), shall be taxable in the hands of unit holders.

Note: The amendments in section 10(23FC), 10(23FD), 115-O, 115UA and 194LBA(1)/(2) should be read together.

SPECIAL PROVISION OF ACCRETED TAX

Section 115TD amended:

- We are aware that the trusts / institutions registered u/s 12AA get benefit of exemption u/s 11 / 12, due to which, the corpus donations are fully exempted, income other than corpus donation is entitled to 15% standard exemption and further exemption is allowed to the extent of application to charitable / religious purpose and accumulation for charitable / religious purposes. We are also aware about section 13 which prescribes for forfeiture of exemption in certain circumstances.
- Many a time those trusts / institutions are (i) converted into any form which is not eligible for grant of registration u/s 12AA, or (ii) merged with entities which are not eligible for registration u/s 12AA, or (iii) dissolved. But there is no specific provision which ensures that the corpus and wealth of the trust / institution accreted over a period of time, with the pious aim of charitable / religious purposes,

continue to be utilized for charitable / religious purpose. Hence the trusts / institutions can easily transfer their wealth to non-charitable institutions etc.

- In order to address the above concerns, a new Chapter XII-EB consisting of section 115TD, 115TE and 115F has been prescribed.

- Basically, Chapter XII-EB prescribes a new in the form of Exit-tax. This tax is called **"Accreted Tax"** and it shall be imposed on **"Accreted Income"**. We shall discuss section 115TD, 115E and 115F in much detail.

- **Section 115TD:**

(1) Situations for levy of "Accreted Tax (AT)":

The **AT** shall be levied if a trust / institution registered u/s 12AA has, in any previous year,:

(a) converted into any form which is not eligible for grant of registration u/s 12AA, or

(b) merged with any entity **other than** an entity which is a trust / institution having objects similar to it and registered u/s 12AA, or

(c) failed to transfer upon dissolution all its assets to any other trust / institution registered u/s 12AA or to any fund / institution / trust / university / other educational institution / hospital / medical institution covered u/s 10(23C)(iv)/(v)/(vi)/(via), within a period of 12 months from the end of the month in which the dissolution takes place.

For the purpose of point No. (a), the trust / institution shall be deemed to have been converted into any form not eligible for registration u/s 12AA in a previous year if –

(i) the registration granted to it u/s 12AA has been cancelled, or

(ii) it has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it, --

 (a) has not applied for fresh registration u/s 12AA in that previous year, or

 (b) has filed application for fresh registration u/s 12AA but the application has been rejected.

Thus, we can conclude that the AT shall be levied in following 5 situations:

(1) If the registration granted to trust / institution u/s 12AA has been cancelled, or

(2) If the trust / institution has adopted or undertaken modification of its objects which do not conform to the conditions of registration in any previous year and it has not applied for fresh registration u/s 12AA in that previous year, or

(3) If the trust / institution has adopted or undertaken modification of its objects which do not conform to the conditions of registration in any previous year and it has filed application for fresh registration u/s 12AA but the application has been rejected.

(4) If the trust / institution has merged with any entity other than an entity which is a trust / institution having objects similar to it and registered u/s 12AA, or

(5) If the trust / institution has failed to transfer upon dissolution all its assets to any other trust / institution registered u/s 12AA or to any fund / institution / trust / university / other educational institution / hospital / medical institution covered u/s 10(23C)(iv)/(v)/(vi)/(via), within a period of 12 months from the end of the month in which the dissolution takes place.

(2) How much AT:

The AT shall levied @ MMR on **"Accreted Income (AI)" as on "specified date"**.

(3) Computation of "Accreted income (AI)":

The **"Accreted income (AI)"** shall be –

"Aggregate FMV of the total assets of trust / institution as on the **specified date** (-) The total liability of the trust / institution computed in accordance with the method of valuation as may be prescribed.

Please note that the following amounts shall be ignored in computation of **AI**:

(i) Assets established to have been directly acquired by the trust / institution out of its agricultural income exempted u/s 10(1) and the liabilities in relation to those assets.

(ii) Assets acquired by the trust / institution during the period from the date of its creation and the date from which the registration u/s 12AA became effective (if the trust / institution has not been allowed any benefit of section 11 / 12 during that period) and the liabilities in relation to those assets.

(iii) Assets and liabilities of the trust / institution which have been transferred on dissolution to any other trust / institution registered u/s 12AA or to any fund / institution / trust / university / other educational institution / hospital / medical institution covered u/s 10(23C)(iv)/(v)/(vi)/(via), within a period of 12 months from the end of the month in which the dissolution takes place.

The AI shall be computed as on **"specified date"**.

(4) Meaning of "specified date":

<table>
<tr><th colspan="2">Situation</th><th>Meaning of "specified date"</th></tr>
<tr><td rowspan="3">If the trust / institution has converted into any form which is not eligible for grant of registration u/s 12AA</td><td>If the registration granted to trust / institution u/s 12AA has been cancelled.</td><td>The date of order cancelling the registration.</td></tr>
<tr><td>If the trust / institution has adopted or undertaken modification of its objects which do not conform to the conditions of registration in any previous year and it has not applied for fresh registration u/s 12AA in that previous year.</td><td>The date of adoption or modification of object</td></tr>
<tr><td>If the trust / institution has adopted or undertaken modification of its objects which do not conform to the conditions of registration in any previous year and it has filed application for fresh registration u/s 12AA but the application has been rejected.</td><td>The date of adoption or modification of object</td></tr>
<tr><td colspan="2">If the trust / institution has merged with any entity other than an entity which is a trust / institution having objects similar to it and registered u/s 12AA.</td><td>The date of merger</td></tr>
<tr><td colspan="2">If the trust / institution has not transferred assets to any other trust or institution registered u/s 12AA or to any fund / institution / trust / university / other educational institution / hospital / medical institution covered u/s 10(23C)(iv)/(v)/(vi)/(via), within a period of 12 months from the end of the month in which the dissolution takes place.</td><td>The date of dissolution</td></tr>
</table>

(5) Special features of AT:

- The AT is an independent additional tax. Hence it shall be payable even if no income-tax is payable by the trust / institution on its total income.
- The AT shall be final tax for which no credit shall be given to the trust / institution or any other person.
- No deduction of AT shall be allowed to the trust / institution or any other person under any provision of the Act, in respect of the "Accreted income" or "Accreted tax".

(6) Period for payment of AT:

The AT shall be paid within 14 days from the "Relevant date" as discussed under:

<table>
<tr><th colspan="2">Situation</th><th>Relevant date</th></tr>
<tr><td>If the trust / institution has converted into any form which is not eligible for grant of registration u/s 12AA</td><td>If the registration granted u/s 12AA is cancelled</td><td>The date on which –
(a) the period for filing appeal u/s 253 to ITAT against the order cancelling the registration expires and no appeal has been filed by the trust or institution, or</td></tr>
</table>

		(b) the order in any appeal, confirming the cancellation of the application, is received by the trust / institution.
	If the trust / institution has adopted or undertaken modification of its objects which do not conform to the conditions of registration and has not applied for fresh registration u/s 12AA in that previous year	End of the previous year
	If the trust / institution has adopted or undertaken modification of its objects which do not conform to the conditions of registration and has filed application for fresh registration u/s 12AA, but the same is rejected.	The date on which – (a) the period for filing appeal u/s 253 to ITAT against the order rejecting the application expires and no appeal has been filed by the trust / institution; or (b) the order in any appeal, confirming the cancellation of rejection of application, is received by the trust / institution.
If the trust / institution has merged with an entity not having similar objects and registered u/s 12AA		The date of merger
If the trust / institution fails to transfer upon dissolution all its assets to any other trust or institution registered u/s 12AA or to any fund / institution / trust / university / other educational institution / hospital / medical institution covered u/s 10(23C)(iv)/(v)/(vi)/(via), within a period of 12 months from the end of the month in which the dissolution takes place.		The date on which the period of 12 months expires.

- ❖ **Section 115TE:**
  If the AT is not paid in time, interest shall be levied @ 1% per month for the period of delay (i.e. the period beginning from the date immediately after the last date on which the AT was payable to the date on which AT is actually paid).

- ❖ **Section 115TF:**
  The trust / institution and the trustee / principal officer of the trust / institution shall be deemed to be assessee-in-default for non-payment of AT and all provisions of the Act shall apply. It is further prescribed that in the case of transfer of assets upon dissolution of the trust / institution to an entity which is not a charitable organization, the receipt of assets shall be treated as assessee-in-default, but the liability shall be limited to the extent to which the assets received by the him are capable to meet the liability.

INCOME-TAX AUTHORITIES

Section 119 amended:

- ❖ This section empowers the CBDT to issue a general or special order to relax certain provisions of the Act, for proper and efficient administraton.

- ❖ The amendment seeks to empower CBDT to relax the provisions of newly inserted section 270A.

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

Section 124 amended:

- ❖ This section prescribes provisions relating to the jurisdiction of AO. Sub-section (3) of section 124 prescribes the time-limit for filing of objection against the jurisdiction of AO.

- ❖ The amendment seeks to provide that where an action has been taken u/s 132 or 132A, the objection can be filed within one month from the date on which the assessee has been served with a notice u/s 153A(1) / 153C(2) or before completion of assessment, whichever is earlier.

Section 133C amended:

- ❖ Under the existing provisions of this section, the prescribed income-tax authority **[Principal DGIT / DGIT / Principal DIT / DIT authorized by CBDT to act under this section]**, may for the purposes of verification of information ***[Please note that such information may be received from any source. For example – Bank]*** in its possession relating to any person, issue a notice to **such person** requiring him, on or before a date to be specified in the notice, to furnish information or documents verified in the manner specified in such notice, which may be useful for, or relevant to, any inquiry or proceeding under this Act.

- ❖ Now the amendment provides that where any information or document has been received in response to a notice issued under this section, the prescribed income-tax authority may process such information or document and make available the outcome of such processing to the AO.

  Example:
  This section is being used by Income-tax Department after Demonetisation (Notebandi) for taking action against the persons who have made large cash deposits in currency notes of Rs. 500 and Rs. 1000 in bank accounts.

Note: The amendments in section 133C and 147 should be read together.

SUBMISSION OF RETURN

Section 139(1) amended:

- ❖ This section requires compulsory filing of Return of Income by due date by certain persons.

- ❖ Under the existing law, following persons are required to submit Return compulsorily:
  - (a) Every company
  - (b) Every firm
  - (c) Ordinary resident having asset/financial interest/signing authority in a foreign country
  - (d) An individual, HUF, AOP, BOI or AJP, whose total income before deductions under Chapter VI-A exceeds MANCT.

- ❖ Now, the amendment seeks to provide that in the case of last category [i.e. Point No. (d) *supra*], the concerned person shall have to file Return if his total income before **deductions under Chapter VI-A and exemption u/s 10(38),** exceeds MANCT.

Section 139(3) amended:

- ❖ Already discussed in Section 80.

Note: The amendments in section 80 and 139(3) should be read together.

Section 139(4) amended:

- ❖ This section allows belated filing of Return.

- ❖ The existing law prescribes that if a person has not furnished a return within the time allowed u/s 139(1) or within the time allowed in a notice issued u/s 142(1), he may furnish a belated return within **one year from end of the relevant assessment year or before completion of assessment, whichever is earlier.**

- ❖ After amendment, the law prescribes that if a person has not furnished a return within the time allowed u/s 139(1), he may furnish a belated return **before end of the relevant assessment year or before completion of assessment, whichever is earlier.**

- ❖ Thus, there are two types of amendments:
  (1) Now, filing of belated return is not allowed in a case covered u/s 142(1).
  (2) The time-limit for filing of belated return has been reduced by one year. For Example - The belated return for AY 2017-18 can be filed upto 31.03.2018 only.

- ❖ In Explanatory Memorandum to Finance Bill, 2016, the Govt. has stated that the above amendments shall be applicable from AY 2017-18 and shall not apply to earlier assessment years.

Section 139(5) amended:

- ❖ This section allows revision of return.

- ❖ The existing law prescribes that if a person, having furnished a return u/s 139(1) or in pursuance of a notice issued u/s 142(1), discovers any omission or wrong statement, he may furnish a revised return within **one year from end of the relevant assessment year or before completion of assessment, whichever is earlier.**

- ❖ After amendment, the law prescribes that if a person, having furnished a return within the time allowed u/s 139(1) or 139(4), discovers any omission or wrong statement, he may furnish a revised return within **one year from end of the relevant assessment year or before completion of assessment, whichever is earlier.**

- ❖ Thus, there are two types of amendments:
  (1) Earlier, a return required u/s 142(1) could be revised. Now, revision of a return shall not be allowed in a case covered u/s 142(1).
  (2) Earlier a belated return filed u/s 139(4) could not be revised. Now, a belated return can also be revised.

- ❖ In Explanatory Memorandum to Finance Bill, 2016, the Govt. has stated that the above amendments shall be applicable from AY 2017-18 and shall not apply to earlier assessment years.

- ❖ Please note that there is no change in time-limit for revision of return [The existing time limit of ***one year from end of the relevant assessment year or before completion of assessment, whichever is earlier,*** *remains unchanged].*

Section 139(9) amended:

- ❖ This section prescribes provisions for defective return.

- ❖ Under the existing law, a return is treated as defective if any of the following defects is found by department:
  (a) The space provided in the Return for filling Headwise taxable income, Gross Total Income and Total Income are not duly filled in.

(b) Certain documents are not filed with the Return.
(c) The assessee has not paid tax and interest on the basis of self-assessment before filing Return.

❖ The amendment seeks to remove third situation [i.e. Point No. (c) *supra*]. The effect is that the Return shall not be treated as defective even if the assessee has not paid tax and interest before filing Return.

Section 139A – Rule 114B amended:

❖ The CBDT has prescribed a new list of transactions where the quoting of PAN shall be mandatory.

❖ The list is very lengthy and cannot be reproduced here. The latest list is already included in our book and discussed in regular classes.

ASSESSMENT PROCEDURE

ICDS amended:

❖ Under section 145(2), the Central Govt. has power to notify **"Income computation and disclosure standards (ICDS)".**

❖ Originally, the Central Govt. notified 10 ICDSs (serially numbered from **ICDS-I** to **ICDS-X**) through Notification dated 31.03.2015. Subsequently, vide Notification dated 29.09.2016 the Govt. rescinded those original ICDSs and notified new ICDSs. The new ICDSs are effective from AY 2017-18 and hence applicable to CA Exam. to be held in May, 2017 onwards.

❖ It may be noted that there are certain differences in Original ICDSs and New ICDSs. We have included the new ICDSs in our book for AY 2017-18. Please refer our book of AY 2017-18.

❖ It may also be noted that the ICAI has compiled the differences in Original ICDSs and New ICDSs and given at one place in RTP for May, 2017. Please refer that RTP.

Section 143(1) amended:

❖ This section provides for summary assessment (i.e. processing of return).

❖ Under the existing law, the department can make only 2 types of adjustments, during the course of summary assessment:
(i) any arithmetical error in the return, or
(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return.
Here "an incorrect claim apparent from any information in the return" means a claim, on the basis of an entry, in the return, -
(i) of an item, which is inconsistent with another entry of the same or some other item in such return;
(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or
(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;
Thus, we can conclude that the department cannot make any other kind of adjustment.

❖ Following amendments have been prescribed:
(1) In addition to above 2 types of adjustments, the department is further empowered to make following 4 types of adjustments:
(i) 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 in section 139(1). **[Please refer section 80 of Income-tax Act, 1961].**
(ii) disallowance of deduction u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if the return is furnished beyond the due date u/s 139(1) **[Please refer section 80AC of**

Income-tax Act, 1961].

(iii) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return.

(iv) 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.

Thus, after amendment, the department is empowered to make 6 types of adjustments [2 existing + 4 new].

(2) It is further prescribed that any of the above adjustments [i.e. 6 adjustments] shall not be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode.

(3) It is further prescribed that the response received from the assessee shall be considered before making any adjustment and in a case where no response is received within 30 days of the issue of intimation, the adjustment shall be made.

Section 143(1D) amended:

- ❖ Under the existing law, it is prescribed that the summary assessment (i.e. processing of return) u/s 143(1) shall not be necessary, where a scrutiny notice has been issued u/s 143(2).

- ❖ The amendment seeks to provide for **mandatory processing** of return u/s 143(1) even in case of scrutiny assessment. Hence it is now prescribed that where a notice u/s 143(2) has been issued, the processing of return shall not be necessary before expiry of 1 year from end of the financial year in which the return is furnished. But mandatory processing shall be done before passing order of scrutiny assessment u/s 143(3).

Section 143(2) amended:

- ❖ Under the existing law, the scrutiny notice u/s 143(2) is issued by AO. Further, the order of assessment u/s 143(3) is also passed by AO.
- ❖ The amendment seeks to provide that the notice of scrutiny u/s 143(2) can be issued by AO or **a prescribed income-tax authority.**

- ❖ Please note that there is no amendment in section 143(3). Hence, even after amendment, the order of assessment shall be passed only by AO.

Section 147 amended:

- ❖ We are aware that the Explanation 2 to section 147 prescribes **5 (five)** situations in which the income is deemed to have escaped assessment.

- ❖ The amendment seeks to add one more situation. Hence, it is now prescribed that the income shall be deemed to have escaped assessment in a case 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 u/s 133C(2), it is noticed by the AO that the income of assessee exceeds the MANCT or the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.

Note: The amendments in section 133C and 147 should be read together.

Section 153 substituted:

- ❖ This section prescribes time-limits for completion assessment / reassessment / re-computation in various situations.
- ❖ The amendment has substituted the entire scheme of section 153. Hence it would be better to discuss the latest provision of section 153.

- Now, section 153 prescribes following time-limits for completion of assessment / reassessment / re-computation:

Section	Proceeding	Time-limit
153(1)	***Regular Assessment:*** Passing of order of assessment u/s 143(3)/144.	21 months from end of the Relevant Assessment Year.
153(2)	Passing of order of assessment, reassessment or recomputation u/s 147	9 months from end of the Financial Year in which the notice u/s 148 is served upon the assessee.
153(3)	***Fresh assessment / Reframed assessment***: Passing of order of fresh assessment in a case where the Original Assessment is **set aside** or cancelled and referred back to the AO by an order u/s 254, 263 or 264.	9 months from end of the Financial Year in which order u/s 254 is *received* by the PCCIT/CCIT/PCIT/CIT or the order u/s 263 / 264 is *passed* by the PCIT/CIT.
153(4)	***Reference to TPO:*** Where, during the course of proceeding for assessment / re-assessment covered u/s 153(1)/(2)/(3), a reference is made to TPO u/s 92CA	Additional period of 12 months shall be allowed in addition to the time-limit of 21 months / 9 months as discussed above in section 153(1)/(2)(3).
153(5)	**Modification in assessment to give effect to the order of Appeal / Revision:** Effect to an order u/s 250/254/260/262/263/264 to be given by the AO (wholly or partly), ***otherwise than by making a fresh assessment or reassessment.***	3 months from the end of the month in which the order u/s 250/254/260/262 is *received* by the PCCIT/CCIT/PCIT/CIT or the order u/s 263/264 is *passed* by the PCIT/CIT. *Note: Additional period of 6 months can be allowed to the AO if the PCIT/CIT is satisfied, on an application in writing from the AO, that the effect could not be given within 3 months due to reasons beyond the control of AO.*
153(6)(i)	***Assessment/recomputation/reassessment in consequence of finding / direction:*** Where the assessment or reassessment or re-computation is made on the assessee or any other person in consequence of or to give effect to any finding / direction contained in an order u/s 250/254/260/262/263/264 under this Act or in an order of any court in a proceeding otherwise than by way of appeal under this Act [For example – in writ proceeding under Constitution of India].	12 months from the end of the month in which the order u/s 250/254/260/262 is *received* by the PCCIT/CCIT/PCIT/CIT or the order u/s 263/264 is *passed* by the PCIT/CIT.
153(6)(ii)	Where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm u/s 147	12 months from end of the month in which the assessment order of firm is *passed.*
153(7)	This is a transitional provision in relation to the cases covered u/s 153(5)/153(6)(i)/153(6)(ii).	It does not seem to be important for students. Hence not discussed.
153(8)	The order of assessment or reassessment realting to any Assessment Year which stands revived u/s 153A(2) *[**For a better understanding, please read this provision only after reading section 153A].***	1 year from the end of the month of revival or within the period specified in section 153, or within the period prescribed in section 153B, ***whichever is later*.**

Explanation 1 – "Exclusion of certain periods"

In computing the period of limitation for the purpose of section 153, the following periods shall be excluded–

Clause No.	Situation	How much period shall be excluded?
(i)	Section 129	The time consumed in reopening the whole or any part of the proceeding or in giving an opportunity of re-hearing to the assessee u/s 129.
(ii)	Court stay	The period during which assessment proceeding is stayed by an order / injunction of court
(iii)	Proviso to section 143(3)	The period commencing from the date on which the AO intimates to the Central Govt. / prescribed authority about the contravention of the provisions of section 10(21)/(22B)/(23A)/(23B)/(23C)(iv)/(v)/(vi)/(via) under proviso to section 143(3) and ending with the date on which the copy of the order withdrawing the approval is received by the AO.
(iv)	Audit direction u/s 142(2A)	The period commencing from the date on which the AO directs the assessee to get his accounts audited u/s 142(2A) and – (a) ending with the last date on which the assessee is required to furnish such audit report, or (ii) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the PCIT/CIT.
(v)	Reference to Valuation Officer u/s 142A	The period commencing from the date on which the AO makes a reference to the Valuation Officer u/s 142A and ending with the date on which the report of the Valuation Officer is received by the AO.
(vi)	Section 158A effect	The period commencing from the date on which the AO receives declaration u/s 158A(1) and ending with the date on which he makes order u/s 158A(3).But this period cannot exceed 60 days.
(vii)	Settlement proceedings	Where an application made before the Income-tax Settlement Commission u/s 245C is rejected or not allowed to be proceeded with, the period commencing from the date on which the application was made to Settlement Commission and ending with the date on which the order rejecting the application is received by the PCIT / CIT.
(viii)	AAR proceedings	The period commencing from the date on which an application is made before Authority for Advance Ruling u/s 245Q and ending with the date on which the order rejecting the application is received by the PCIT / CIT u/s 245R.
(ix)	AAR proceeding	The period commencing from the date on which an application is made before Authority for Advance Rulings u/s 245Q and ending with the date on which the advance ruling pronounced by the AAR is received by the PCIT / CIT u/s 245R.
(x)	Exchange of information u/s 90 / 90A	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 / 90A and ending with the date on which the requested information is last received by the PCIT / CIT or 1 year, whichever is less.

Rule of 'Grace Period of 60 days': *Where immediately after exclusion of aforesaid time-periods, the period of limitation available to the AO for completion of assessment / reassessment / recomputaiton* *in section 153(1)/(2)/(3)/(8) is less than 60 days, sufficient extension shall be made in such a manner that the AO gets minimum 60 days for completion of assessment / reassessment / recomputation.*

Rule of 'Grace Period of 60 days': *Where the period available to the TPO is extended to 60 days under Proviso to section 92CA(3) and the period of limitation available to AO for making an order of assessment / reassessment / recomputation is less than 60 days, sufficient extension shall be made in such a manner that the AO gets minimum 60 days for completion of assessment / reassessment / recomputation.*

Rule of 'Grace Period of One year': *Where the proceeding before the Settlement Commission abates u/s 245HA, the period of limitation available to the AO for making an order of assessment / reassessment / recomputation, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year. This special provision shall also apply for determining the period of limitation u/s 149, 153B, 154 and 155 and payment of interest u/s 244A.*

Explanation 2

This Explanation is clarificatory in nature. It provides that for the purpose of section 150(1) and 153(6)(i):

(a) if the order u/s 250/254/260/262/263/264 under this Act or the order of any court in a proceeding otherwise than by way of appeal under this Act, contains a direction to exclude income from the total income of the assessee for an assessment year, then the inclusion of such income in another assessment year shall be deemed to be made in consequence of or to give effect to a finding or direction contained in that order,

(b) if the order u/s 250/254/260/262/263/264 under this Act or the order of any court in a proceeding otherwise than by way of appeal under this Act, contains a direction to exclude income from assessment of one person, then the inclusion of such income in the assessment of another person shall be deemed to be made in in consequence of or to give effect to a finding or direction contained in that order, provided before passing the order of 250/254/260/262/263/264 under this Act or the order of any court in a proceeding otherwise than by way of appeal under this Act, an opportunity of hearing had been given to another person.

ASSESSMENT in SEARCH / REQUISITION CASES

Section 153B substituted:

- This section prescribes time-limit for completion of assessment / reassessment in case of a search u/s 132 or 132A.
- Although the amendment seeks to substitute entire section 153B, the crux of amendment is such that the time-limits prescribed for completion of assessment / re-assessment of the searched person as well as other person has been reduced by 3 months.

TDS

Amendments in threshold limits and rates of TDS:

- In following sections, the threshold limits and rates of TDS have been amended:

Section	Threshold limit		TDS Rate	
	Old	New	Old	New
192A	30,000	50,000	--	--
194BB	5,000	10,000	--	--
194C -- Aggregate in one year	75,000	1,00,000	--	--
194D	20,000	15,000	10%	5%
194DA	--	--	2%	1%
194G	1,000	15,000	10%	5%
194H	5,000	15,000	10%	5%
194LA	2,00,000	2,50,000	--	--
194LBB – Payment to NRNC	--	--	10%	30%
194LBB – Payment to Foreign Company	--	--	10%	40%

- The latest position regarding inclusion of **surcharge in TDS** is as under:
  (i) In the case of TDS u/s 192 – Surcharge shall always be included.
  (ii) In the case of any other TDS –
    (a) **If the payee (i.e. deductee) is a foreign company –** (i) Surcharge @ 2% if the amount / aggregate of amounts paid / credited or likely to be paid / credited during the previous year exceeds Rs. 1 Crore but does not exceed Rs. 10 Crore, and (ii) Surcharge @ 5% if the amount / aggregate of amounts paid / credited or likely to be paid / credited during the previous year exceeds Rs. 10 Crore.
    (b) **If the payee (i.e. deductee) is a non-resident co-operative society or firm –** Surcharge @ 12% if the amount / aggregate of amounts paid / credited or likely to be paid / credited during the previous year exceeds Rs. 1 Crore.
    (c) **If the payee (i.e. deductee) is any other non-resident –** Surcharge @ 15% if the amount / aggregate of amounts paid / credited or likely to be paid / credited during the previous year exceeds Rs. 1 Crore.
    (d) **In other cases –** Surcharge shall not be included.

- The latest position regarding inclusion of **EC @ 2% and S&H EC @1% in TDS** is as under:
  (i) In the case of TDS u/s 192 – EC and S&H EC shall always be included.
  (ii) In the case of any other TDS –
    (a) **If the payee (i.e. deductee) is a foreign company or a non-resident non-corporate –** EC and S&H EC shall be included.
    (b) **In other cases -** EC and S&H EC shall not be included.

Section 194LBA(1)/(2) amended:

- Section 194LBA(1) requires TDS out of payment of the income covered u/s 10(23FC) or 10(23FCA) made by a **Business Trust (i.e. REIT)** to its unit holders who are resident in India. Further, section 194LBA(2) requires TDS out of payment of the income covered u/s 10(23FC) made by a **Business Trust (i.e. REIT)** to its unit holder who is a Foreign Company or a Non-Resident Non-Corporate.

- The amendment seeks to substitute 10(23FC) by 10(23FC)(a).

- The amendment is consequential upon the amendment in section 10(23FC).

- The effect of amendment is such that the Business Trust shall be liable to deduct TDS u/s 194LBA(1)/(2) out payment of the nature covered u/s 10(23FC)(a) only and not out of the payment of the nature covered u/s 10(23FC)(b).

Note: The amendments in section 10(23FC), 10(23FD), 115-O, 115UA and 194LBA(1)/(2) should be read together.

Section 194LBC inserted:

- This section prescribes that the **Securitisation Trust** covered u/s 115TCA shall, at the time of credit of income to the account of its investors or at the time of payment thereof, whichever is earlier, deduct tax at source as under:
  - ✓ If the payee is a resident individual or HUF - @ 25%
  - ✓ If the payee is any resident other than individual or HUF - @ 30%
  - ✓ If the payee is a non-resident non-corporate - @ 30%
  - ✓ If the payee is a foreign company - @ 40%

Note: The amendments in section 10(23DA), 10(35A), 115TA to 115TC, 115TCA and 194LBC should be read together.

Section 197 amended:

- Under this section, the payee can obtain a certificate from AO for non-deduction of TDS or deduction at a lower rate.

- The amendment seeks to extend the benefit of this section to TDS u/s 194LBB and 194LC.

Section 197A amended:

- Under this section, the payee can submit a declaration in Form No. 15G or 15H to the payer for non-deduction of TDS.

- The amendment seeks to extend the benefit of this section to the TDS u/s 194-I.

Section 200(1) – Rule 30(2A) amended:

- Earlier the time-limit for payment of TDS u/s 194-IA was 7 days from the end of the month in which deduction was made. This time-limit has been extended to 30 days from the end of the month in which deduction is made.

Section 200(3) – Rule 31A amended:

- The due dates for submission of **Quarterly Returns of TDS** have been changed. Now, the due dates are:

Quarter ending	**Due Date**
30^{th} June	31^{st} July
30^{th} September	31^{st} October
31^{st} December	31^{st} January
31^{st} March	**31st May**

- Please note that the due dates for **issuance of certificates of TDS** are linked with the due dates for submission of **Quarterly Returns of TDS**. Hence there is automatic change in the dates for issuance of TDS certificates. The new dates are:

Quarter ending	**Due Dates**
30^{th} June	15^{th} August
30^{th} September	15^{th} November
31^{st} December	15^{th} February
31^{st} March	15^{th} June

Please note that there is no change in the due date for issuance of Certificate of TDS u/s 192. In that case, there is ***Annual TDS certificate****, to be issued* ***upto 31^{st} May****.*

Section 206AA amended:

- This section requires that the Payee shall furnish his correct PAN to the PRP.

- The amendment seeks to provide that the provision of this section shall not apply to section 194LC.

TCS

Section 206C amended:

- This section prescribes the provisions for tax collection at source.

- The existing section 206C(1D) has been amended. Further, section 206C(1E) and 206C(1F) are newly introduced. It would be better to understand the latest position of these sections.

- Now, section 206C(1D) prescribes as under:

  "Every person, being a seller, who receives any amount in cash as consideration for sale of bullion or jewellery or any other goods (other than bullion or jewellery) or providing any service, shall, at the time of receipt of such amount in cash, collect from the buyer, a sum equal to 1% of sale consideration as income-tax, if such consideration –
  (i) for bullion, exceeds Rs. 2,00,000/-; or
  (ii) for jewellery, exceeds Rs. 5,00,000/-; or
  (iii) for any goods, other than those referred to in clauses (i) and (ii), or any service, exceeds Rs. 2,00,000/-:
  Provided that no tax shall be collected at source under this sub-section on any amount on which tax has been deducted by the payer under Chapter XVII-B."

- Section 206(1E) prescribes as under:
  "Nothing contained in section 206C(1D) in relation to sale of any goods (other than bullion or jewellery) or providing any service shall apply to such class of buyers who fulfill such conditions, as may be prescribed."

- Section 206C(1F) prescribes as under:
  "Every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding Rs. 10,00,000, shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 1% of the sale consideration as income-tax."

- Please note that the definition of "Seller" has been amended to include a reference of the person providing service. Further, the definition of "Buyer" has been amended to include a reference of the person who buys motor vehicle.

- In Circular No. 22/2016 dated 08.06.2016 and No. 23/2016 dated 24.06.2016, the CBDT has given certain clarifications in Question-Answer format, with respect to section 206(1D) and 206C(1F). Some useful clarifications are as under:

  ✓ *Question - Whether the TCS u/s 206C(1D) shall apply in cases where the sale consideration is received partly in cash and partly by cheque and the cash receipt is less than Rs. 2 lakh?*

    Answer – No. TCS shall not be levied if the cash receipt does not exceed Rs. 2 lakh even if the sale consideration exceeds Rs. 2 lakh.

  ✓ *Question -- Whether the TCS u/s 206C(1D) shall apply only to cash component or in respect of whole of the sale consideration?*

    Answer – TCS shall be required on cash component only and not on the whole of sale consideration.

  ✓ *Question – Section 206C(1D) requires TCS @1% if the sale consideration received in cash exceeds Rs. 2 lakh. Further section 206C(1F) requires TCS @1% if the sale consideration of a* *vehicle exceeds Rs. 10 lakh. Whether TCS shall be applicable under both section 206C(1D) and 206C(1F), where a part of the payment exceeds Rs. 2 lakh in cash?*

Answer – Section 206C(1F) requires TCS @1% on sale of motor vehicle of value exceeding Rs. 10 lakh irrespective of the mode of payment. Hence if the value of motor vehicle is Rs. 20 lakh, out of which Rs. 5 lakh has been paid in cash and balance Rs. 15 lakh by way of cheque, the TCS @1% on the total sale consideration of Rs. 20 lakhs shall be only u/s 206C(1F). However, if a vehicle is sold for Rs. 8 lakh and the sale consideration is paid in cash, the TCS shall be @1% of Rs. 8 lakh u/s 206C(1D).

- ✓ *Question – Whether the TCS u/s 206C(1F) shall apply on sale of motor vehicle at retail level only or also on sale of motor vehicle by manufacturers to dealers / distributors?*

  Answer – The TCS shall apply only on the retail sale. It will not apply on sale of motor vehicle by manufacturers to dealers / distributors.

- ✓ *Question – Whether the TCS u/s 206C(1D) / 206C(1F) shall apply where the sale is made or service is provided to* Central Govt., State Govt., United Nations Institution, an embassy / high commission / legation / consulate / trade representation of a foreign state?

  Answer – No.

ADVANCE-TAX

Section 211 amended:

- ❖ This section prescribes the installments of advance-tax and the due dates for payment of those installments.
- ❖ Under the existing law, companies are required to pay advance-tax in four installments and non-companies were required to pay in three installments.
- ❖ The amendment seeks to provide that in all cases **(whether companies or non-companies)**, the advance tax shall be payable in **four** installments as under:

Due Date	How much advance tax to be paid
15th June of Previous Year	At least 15%
15th September of Previous Year	At least 45%
15th December of Previous Year	At least 75%
15th March of Previous Year	At least 100%

- ❖ It is further provided that an **"eligible assessee opting for presumptive income u/s 44AD"** [i.e. declaring 8% or higher income] shall be liable to pay 100% advance tax in one installment upto 15th March only. Therefore, he is not required to pay first 3 installments.

Note: The amendments in section 211 and 234C should be read together.

INTEREST

Section 220(2A) amended:

- ❖ Under this section, the PCCIT/CCIT/PCIT/CIT has power to reduce or waive the amount of interest paid or payable by an assessee u/s 220(2).

- ❖ The amendment seeks to provide that the order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within 12 months from the end of the month in which the application is received.

- ❖ It is further prescribed that 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.

Section 234C amended:

- ❖ This section prescribes for levy of interest for deferment of installments of advance-tax or non-payment of installments of advance-tax.

- ❖ Following amendments have been in this section:
  - ✓ Earlier the calculation of interest was based on (i) corporate assessee, and (ii) non-corporate assessee. Now the calculation of interest shall be based on (i) any assessee other than an eligible assessee in respect of eligible business referred to in section 44AD, and (ii) an eligible assessee in respect of eligible business referred to in section 44AD. Hence, after amendment, the calculation of interest shall be in following manner:

(A) <u>Any assessee *other than an eligible assessee in respect of the eligible business referred to in section 44AD:*</u>

Due Date	Installment payable	Amount actually paid	Shortfall	Interest amount
1	**2**	**3**	**4 = (2-3)**	**5**
15th June	15% *	Actual	Compute	For 3 months on shortfall
15th September	45% **	Actual	Compute	For 3 months on shortfall
15th December	75%	Actual	Compute	For 3 months on shortfall
15th March	100%	Actual	Compute	For 1 month on shortfall
Total interest payable				XXXXXX
* No interest is payable, if the assessee has paid 12%.				
** No interest is payable, if the assessee has paid 36%.				

(B) <u>An eligible assessee in respect of the eligible business referred to in section 44AD:</u>

Due Date	Amount Payable	Amount Paid	Shortfall	Interest Amount
15th March	100%	Actual	Compute	For 1 month on shortfall
Total interest				XXXXXX

  - ✓ Under the existing law, if the total income of assessee includes (i) capital gain, or (ii) seven special incomes (i.e. casual income) referred to in section 2(24)(ix), the tax payable in respect of such incomes is required to be paid as a part of the installments falling due **after earning** of such incomes. If the assessee, pays installments of advance-tax in relation to those incomes, after earning of incomes, interest is not payable for earlier installments. This benefit has been extended to Income under BPV head where such income accrues or arises for the first time.

Note: The amendments in section 211 and 234C should be read together.

Section 244A amended:

- ❖ This section provides for grant of interest on refund.

- ❖ Sub-section (1) has been amended, (1A) has been newly inserted and (2) has been amended.

❖ After amendment of sub-section (1), the interest on refund shall be computed as under:

Sl.	Situation	Interest
1	If the refund is out of TDS, TCS or advance-tax.	Interest @ 0.50% per month for the period -- (i) FROM 1st April of assessment year TO the date on which refund is granted, if the return of income has been submitted upto due date u/s 139(1), or (ii) FROM the date of furnishing of return of income TO the date on which refund is granted, if the return of income is not submitted upto due date u/s 139(1).
2	If the refund is out self-assessment payment u/s 140A	Interest @ 0.50% per month for the period FROM the date of furnishing of return of income or payment of tax, ***whichever is later***, TO the date on which the refund is granted
3	In any other case	Interest @ 0.50% per month for the period FROM the date of payment of tax or penalty TO the date on which the refund is granted.

Please note that in Situation No. 1 and 2, no interest shall be allowed if the refund is less than 10% of tax assessed u/s 143(1) or regular assessment.

❖ The newly inserted sub-section (1A) prescribes that where a refund arises as a result of giving effect to an order u/s 250/254/260/262/263/264, wholly or partly, otherwise than by making a fresh assessment or re-assessment, an additional interest shall be granted @ **3% per annum**, for the period beginning FROM the date following the expiry of the time allowed u/s 153(5) TO the date on which refund is granted.

❖ After amendment of sub-section (2), it is provided that if the proceeding resulting in refund are delayed for the reasons attributable to the assessee, no interest shall be allowed under sub-section (1) or (1A) for such delay.

APPEALS

Section 249 amended:

- This section prescribes procedural provisions for filing of appeal to CIT(A).
- We are aware that the appeal is to be filed within 30 days.
- The amendment seeks to prescribe that where an application has been filed u/s 270AA, the period beginning FROM the date on which the application is made, TO the date on which the order rejecting the application is served upon the assessee, shall be excluded in computing limitation period of 30 days.

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

Section 253 amended:

- This section prescribes provisions for filing of appeal to ITAT.
- Following amendments have been prescribed:
  - ✓ The order passed by CIT(A)/PCIT/CIT u/s 270A shall be appealable to ITAT.
  - ✓ Under the existing law, the department can file appeal to ITAT against the direction issued by DRP u/s 144C. In order to minimize litigation, this provision has been deleted.

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

Section 254(2) amended:

- This section prescribes provisions for rectification by ITAT.
- Under the existing law, the ITAT may rectify any mistake apparent from record within a period of 4 years from the date of its order.
- The amendment seeks to reduce this time-limit to 6 months from the end of the month in which the order was passed by ITAT.

Section 255(3) amended:

- Under the existing law, the SMC (Single Member Constituted Bench) of ITAT can hear and decide appeal relating to an assessee whose total income (computed by the AO) does not exceed Rs. 15 lakh.
- The amendment seeks to increase this limit to Rs. 50 lakh.

PENALTIES

Section 270A inserted:

- We are aware that section 271(1)(c) prescribes penalty for concealment of income or furnishing of inaccurate particulars of income. Over the years, this section has been most litigated section. Further the section is very subjective in nature.

- In order to bring objectivity, certainty and clarity, new section 270A has been introduced and the existing section 271(1)(c) has been closed.

- We shall discuss the provisions of new section 270A at length.

- **Section 270A(1) –** The AO / CIT(A) / PCIT / CIT may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on such under-reported income.

- **Section 270A(2) –** A person shall be considered to have under-reported his income in following situations:

(a)	If the return has been filed and the assessed income is greater than the income determined in summary assessment u/s 143(1).	(1)
(b)	If no return of income has been filed and the assessed income is greater than MANCT.	(2)
(c)	In case of re-assessment, if the re-assessed income is greater than the income assessed or reassessed immediately before such reassessment.	(3)
(d)	If the amount of Book-Profit / Adjusted Total Income assessed or reassessed u/s 115JB or 115JC is greater than the amount of Book-Profit / Adjusted Total Income determined in summary assessment.	(4)
(e)	If no return of income has been filed and the amount of Book-Profit / Adjusted Total Income assessed u/s 115JB or 115JC is greater than the MANCT.	(4)
(f)	If the amount of Book-Profit / Adjusted Total Income reassessed u/s 115JB or 115JC is greater than the amount of Book-Profit / Adjusted Total Income assessed or reassessed immediately before such reassessment.	(4)
(g)	If the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.	(5)

- **Section 270A(3) –** The amount of under-reported income **(URI)** shall be computed as under:

<table>
<tr><th></th><th>Situation</th><th colspan="2">Computation of URI</th></tr>
<tr><td>(1)</td><td>Where return is furnished and assessment is made for the first time</td><td colspan="2">Assessed income
(-)
Income determined u/s 143(1)</td></tr>
<tr><td rowspan="3">(2)</td><td rowspan="3">Where no return has been filed and the assessment is made for the first time</td><td>Person</td><td>URI</td></tr>
<tr><td>Company, firm, local authority</td><td>Assessed income</td></tr>
<tr><td>Other person</td><td>Assessed income
(-)
MANCT</td></tr>
<tr><td>(3)</td><td>Reassessment</td><td colspan="2">Income assessed / reassessed
(-)
Income assessed / reassessed in the order immediately preceeding the order during the course of which the penalty u/s 270A has been initiated.</td></tr>
<tr><td rowspan="5">(4)</td><td rowspan="5">Where URI arises out of determination of Book-Profit / Adjusted Total Income u/s 115JB / 115JC</td><td colspan="2">(A-B) + (C-D)
Here:</td></tr>
<tr><td>A</td><td>Total income assessed as per general provisions (i.e. provisions other than 115JB / 115JC)</td></tr>
<tr><td>B</td><td>Total income that would have been chargeable had the total income assessed as per general provisions been reduced by the amount of URI.</td></tr>
<tr><td>C</td><td>Total income assessed as per the provisions contained in section 115JB / 115JC.</td></tr>
<tr><td>D</td><td>Total income that would have been chargeable had the total income assessed as per provisions contained in section 115JB or 115JC been reduced by the amount of URI.</td></tr>
</table>

		***Please note that If the amount of* URI *is considered both under the general provisions and the provisions contained in section 115JB / 115JC, such amount shall not be reduced from total income assessed while determining the amount under item D. Obviously, "C" would be equal to "D". The effect of this provision shall be that if an amount of* URI *is considered both under the general provisions and section 115JB / 115JC, then such amount shall affect the calculation of (A)-(B) but not (C)-(D). The purpose of this provision is to avoid double penalty for the same* URI.**
(5)	Where an assessment or reassessment has the effect of reducing the loss declared in the return or converting such loss into income.	Difference between the Loss claimed and the income / loss assessed or reassessed.

- **Section 270A(4)/(5) –** Sometimes department makes additions and recovers tax but does not impose penalty [Generally it happens where the AO makes additions due to pure technical reasons such as application of G/P rate, N/P rate or yield etc. In practical life, such additions are known as **"intangible additions"]**. In subsequent year, when the department discovers any unexplained receipt, deposit or investment of assessee, the assessee claims that the unexplained deposit, investment etc. had been made out of the intangible additions made in earlier years. The Supreme Court in **Anantharam Veerasighaiah and Co. Vs. CIT (1980) 123 ITR 457** has held that the intangible additions made by department may represent the secret profits earned by an assessee in earlier years and those secret profits can be subsequently used for making any deposit, investment etc. Hence the claim of assessee is acceptable. Thus, in such cases, the assessee plays a game with the department. In earlier year, he has paid only tax and not penalty. In subsequent year, the department cannot make addition [because the relevant income has already been added in earlier year] and therefore penalty cannot be imposed. This way, the assessee escapes penalty.

  To address such situations, section 270A(4)/(5) prescribes that where the source of any receipt, deposit or investment appearing in the current assessment year is claimed to be an amount added to income [or deducted while computing loss] in the assessment of assessee in any earlier assessment year and no penalty was levied in that earlier assessment year, such amount shall be deemed to be URI for the earlier assessment year in the following order and penalty shall be imposed u/s 270A:

The preceding year immediately before the year in which the receipt, deposit or investment appears *[we may call it "first preceding year"].*
Where the amount of intangible addition made in the *first preceding year* is not sufficient to cover the amount of receipt, deposit or investment, the year immediately preceding the *first preceding year* and so on.

- **Section 270A(6) – Exclusions from URI** – The UTI shall not include following amounts:

	Situation	Condition
(a)	Bonafide explanation	The amount of income in respect of which the assessee offers an explanation and the AO / CIT(A) / PCIT / CIT is satisfied that the explanation is bonafide and the assessee has disclosed all the material facts to substantiate the explanation offered.
(b)	Estimations	The amount of income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the AO / CIT(A) / PCIT / CIT but the method employed is such that the income cannot be properly deduced therefrom. *Example – Estimation of G/P, N/P, yield even if books of account and correct and complete.*
(c)	Estimations	The amount of income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance. *Example – Estimation personal use of car by assessee, estimated*

		disallowance u/s 40A(2), addition / disallowance of deduction u/s 40A(2) or Chapter VI-A in case of Specified Domestic Transaction.
(d)	Transfer pricing	The amount of income represented by any addition made in conformity with the ALP determined by TPO, where the assessee had maintained information and documents u/s 92D, declared the International Transaction under Chapter X, and disclosed all the material facts relating to the transaction.
(e)	271AAB	The amount of undisclosed income covered u/s 271AAB.

❖ **Section 270A(9) – Mis-reporting of income** – In following situations, it shall be deemed that there had been a mis-reporting of income:

(1)	Misrepresentation or suppression of facts
(2)	Failure to record investments in the books of account
(3)	Claim of expenditure not substantiated by any evidence
(4)	Recording of any false entry in the books of account
(5)	Failure to record any receipt in books of account having a bearing on total income
(6)	Failure to report any international transaction or any specified domestic transaction under Chapter X.

❖ **Section 270A(7)/(8) – Quantum of penalty –** The penalty shall be levied as under:

Section 270A(7)	Under reporting of income	50% of "tax payable" on URI
Section 270A(8)	Under-reporting of income due to misreporting of income	200% of "tax payable" on URI relatable to mis-reporting

❖ **Section 270A(10) – Computation of "tax payable"–** The "tax payable" shall be computed as under:

<table>
<tr><td>(1)</td><td>Where no return of income has been furnished and the income has been assessed for the first time</td><td colspan="2">The amount of tax computed on the URI + MANCT, as if it were the total income of assessee.
This is a very smart provision. Please read section 270A(3) for computation of URI and thereafter co-relate with this provision.</td></tr>
<tr><td>(2)</td><td>Where the total income determined u/s 143(1) or assessed / reassessed / recomputed in a preceding order of assessment is a loss</td><td colspan="2">The amount of tax computed on the URI, as if such URI were the total income.</td></tr>
<tr><td rowspan="3">(3)</td><td rowspan="3">Any other case</td><td colspan="2">(X-Y)
Here:</td></tr>
<tr><td>X</td><td>The amount of tax computed on the URI (+) the total income determined u/s 143(1) or the total income assessed / reassessed / recomputed in a preceding order of assessment, as if it were the total income.</td></tr>
<tr><td>Y</td><td>The amount of tax computed on the total income determined u/s 143(1) or the total income assessed / reassessed / recomputed in a preceding order of assessment.</td></tr>
</table>

❖ **Section 270A(11) – Protection from Dual Penalty –** No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

❖ **Section 270A(12) – Order in writing –** The order of penalty shall be in writing.

- ***Please note some points:***

  - ✓ A careful reading of section 270A demonstrates that no penalty shall be imposable on the difference in income declared by the assessee in a return of income and income determined in summary assessment u/s 143(1).

  - ✓ It is also noteworthy that the provisions of section 143(1) have been amended and now 6 types of adjustments can be made during the course of summary assessment. Hence widening of scope of summary assessment u/s 143(1) favours the assessee in the matter of penalty u/s 270A. Cheers!!!

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

Section 270AA inserted:

- This section has been inserted to grant immunity from penalty u/s 270A and prosecution u/s 276C / 276CC.

- **Conditions –** The assessee can make an application to the AO for grant of immunity from imposition of penalty u/s 270A and prosecution u/s 276C / 276CC, if two **(2)** conditions are satisfied:
  (i) The tax and interest payable as per order of assessment u/s 143(3) or reassessment u/s 147, has been paid within the period specified in the notice of demand; and
  (ii) No appeal is filed against the order of assessment / reassessment.

- **Procedure –** The assessee must file application in a prescribed form within 1 month from the end of the month in which the order of assessment / reassessment is received.

- The AO shall grant immunity on fulfillment of two (2) conditions discussed above, and after expiry of the period for filing of appeal prescribed in section 249.

- Immunity shall not be granted in cases covered u/s 270A(9) i.e. in case of mis-reporting of income.

- The AO shall pass order accepting or rejecting the application for immunity within a period of 1 month from the end of the month in which such application is received. However, no order rejecting the application shall be passed unless the assessee has been given an opportunity of hearing.

- The order passed by AO accepting or rejecting the application, shall be final.

- No appeal u/s 246A or revision u/s 264 shall be admissible against the order of assessment / reassessment referred to in section 270A, in a case where an order u/s 270AA has been made accepting the application.

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

Section 271(1)(b) closed:

- This section prescribes penalty for non-compliance of a notice u/s 142(1), 142(2A) or 143(2).

- The amendment seeks to close the application of this section from AY 2017-18.

- ❖ Simultaneously section 272A has been amended to provide penalty for non-compliance of a notice u/s 142(1), 142(2A) or 143(2).

Note: The amendments in section 271(1)(b) and 272A should be read together.

Section 271(1)(c) closed:

- ❖ This section prescribes penalty for concealment of income or furnishing inaccurate particulars of income.
- ❖ The amendment seeks to close the application of section 271(1)(c) from AY 2017-18.
- ❖ Simultaneously a new section 270A has been introduced to impose the penalty for Under-reporting of Income and Mis-Reporting of Income, which would also cover the cases of concealment of income or furnishing of inaccurate particulars of income.

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

Section 271A and 271AA(1) amended:

- ❖ Section 271A prescribes a penalty of Rs. 25,000 for failure to keep, maintain and preserve books of account as required u/s 44AA. Further, section 271AA(1) prescribes a penalty of 2% of the value of international transaction / specified domestic transaction where a person (i) fails to keep and maintain any information and document as required u/s 92D(1)/(2), or (ii) fails to report such transaction, or (iii) maintains or furnishes an incorrect information or document.
- ❖ The amendment seeks to provide that the penalty u/s 271A / 271AA(1) shall be without prejudice to the penalty u/s 270A.

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

Section 271AA(2) inserted:

- ❖ This section prescribes that if any person fails to furnish the information and document as required u/s 92D(4), the prescribed income-tax authority referred to in section 92D(4) may impose a penalty of Rs. 5,00,000.
- ❖ Please note that the defense of reasonable cause u/s 273B shall be available in respect of this penalty.

Note: The amendments in section 92D, 271AA(2), 271GB, 273B, 286 should be read together.

Section 271AAB amended:

- ❖ This section prescribes penalty in case of a search u/s 132.
- ❖ Following amendments have been prescribed:
  - ✓ (1) -- No penalty shall be levied u/s 270A in respect of undisclosed income on which penalty has

been levied u/s 271AAB. In other words, we can conclude that section 270A shall not apply in case of a search.

- ✓ (2) – Till now section 271AAB(1)(c) provides for variable penalty ranging from 30% to 90% of the undisclosed income. The amendment seeks to remove the variable penalty and prescribe a standard penalty of 60% of undisclosed income.

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

Section 271GB inserted:

- ❖ This section prescribes a new penalty.
- ❖ The provisions of this section are as under:
  - ✓ **Section 271GB(1) --** If any reporting entity covered u/s 286 fails to furnish CbC Report, penalty may be imposed as under:

Period of default	Penalty
Upto 1 month	Rs. 5,000 per day
After 1 month	Rs. 15,000 per day for delay beyond 1 month

  - ✓ **Section 271GB(2) --** If the reporting entity fails to produce information and documents within the period allowed u/s 286(6), a penalty of Rs. 5,000 per day may be imposed from the day immediately following the day on which the period for furnishing the information and document expires.
  - ✓ **Section 271GB(3) –** If the failure continues even after service of penalty-order u/s 271GB(1) / (2), a further penalty of Rs. 50,000 per day may be imposed for the continuing failure beginning from the date of service of penalty order.
  - ✓ **Section 271GB(4) –** If the reporting entity provides inaccurate information in the report and where—

    (a) the entity has knowledge of the inaccuracy at the time of furnishing the report but fails to inform the prescribed authority, or

    (b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of 15 days of such discovery; or

    (c) the entity furnishes inaccurate information or document in response to the notice issued u/s 286(6),

    then, the prescribed authority may impose penalty of Rs. 5,00,000/-.

Note: The amendments in section 92D, 271AA(2), 271GB, 273B, 286 should be read together.

Section 272A amended:

- ❖ This section prescribes penalties for several defaults.
- ❖ The amendment seeks to introduce a penalty of Rs. 10,000/- for a person who fails to comply with a notice issued u/s 142(1), 142(2A) or 143(2). In fact, this is not a new penalty. It is simply shifting of existing penalty from section 271(1)(b) to section 272A.

Note: The amendments in section 271(1)(b) and 272A should be read together.

Section 273A(1) amended:

- This section empowers the PCIT / CIT to reduce or waive penalty.
- Till now, the section 273A(1) grants waiver or reduction of penalty imposed or imposable u/s 271(1)(c). The amendment seeks to extend the benefit of section 273A(1) to the penalty imposed or imposable u/s 270A.

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

Section 273A(4A) inserted:

- We are aware that under section 273A(4), the PCIT / CIT can reduce or waive penalty, on an application by the assessee.
- The amendment seeks to provide that the order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within 12 months from the end of the month in which the application is received.
- It is further prescribed that 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.

Section 273AA amended:

- This section empowers the PCIT / CIT to grant immunity from penalty, if the penalty proceedings have been initiated in case of a person who has made application for settlement and the proceedings for settlement had abated u/s 245HA.
- The amendment seeks to provide that the order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within 12 months from the end of the month in which the application is received.
- It is further prescribed that 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.

Section 273B amended:

- This section prescribes that certain penalties shall not be imposed if the assessee proves a reasonsable cause of default or failure.
- The amendment seeks to extend the benefit of section 273B to the penalty u/s 271GB.

Note: The amendments in section 92D, 271AA(2), 271GB, 273B, 286 should be read together.

PROSECUTION

Section 276C amended:

- This section prescribes prosecution for willful attempt to evade any tax, penalty or interest chargeable or imposable under this Act.
- The amendment seeks to extend the application of section to the cases covered u/s 270A.

- ❖ Please note that if the tax on under reported income exceeds Rs. 25 lakh, there is a rigorous prosecution for a term which shall not be less than 6 months but which extend upto 7 years and with fine. And if the tax on under reported income is upto Rs. 25 lakh, there is a rigorous imprisonment for a term which shall not be less than 3 months but which may extend upto 2 years and with fine.

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

Section 279(1A) amended:

- ❖ This section has been amended to provide that the prosecution u/s 276C [or section 277] shall not be instituted against a person for an offence u/s 276C in relation to an assessment year for which the penalty imposed or imposable u/s 270A has been reduced or waived u/s 273A.

Note: The amendments in section 119, 249, 253, 270A, 270AA, 271(1)(c), 271A, 271AA(1), 271AAB, 273A(1), 276C and 279(1A) should be read together.

MISCELLANEOUS PROVISIONS

Section 281B amended:

- ❖ This section empowers the AO to provisionally attach any property of assessee during the pendency of assessment / reassessment proceeding, to protect the interest of revenue. Presently, this section has two sub-sections, viz. (1) and (2) only.

- ❖ The attachment of property of assessee causes a great discomfort to the assessee. Hence, the Govt. has taken a view that if the assessee is ready to furnish bank guarantee, the attachment of property should be substituted by bank guarantee.

- ❖ Accordingly, sub-section (3) to (9) have been inserted to provide for furnishing of bank guarantee in lieu of provisional attachment of property.

- ❖ The salient features of sub-section (3) to (9) are as under:
  - ✓ The AO shall, by an order in writing, revoke the provisional attachment of property made by him in a case where the assessee furnishes a bank guarantee, for an amount not less than the FMV of the provisionally attached property or for an amount which is sufficient to protect the interest of revenue.

  - ✓ In order to determine the FMV of the property provisionally attached, the AO can make a reference to the Valuation Officer. The Valuation Officer shall submit his report to AO within 30 days from the date of reference.

  - ✓ The AO shall pass order for revocation of attachment of property within 15 days from the date of receipt of bank guarantee. However, this period shall be 45 days from the date of receipt of bank guarantee, in a case where the AO makes a reference to the Valuation Officer.

  - ✓ The AO can invoke the bank guarantee (i) if the assessee fails to pay the demand as specified in the demand-notice, or (ii) if the assessee fails to renew bank guarantee or furnish a new guarantee within 15 days before expiry of the guarantee.

  - ✓ The amount released by invoking the guarantee shall be adjusted towards the existing demand payable by the assessee. The balance amount, if any, shall be deposited in the Personal Deposit A/c of PCIT / CIT in RBI / SBI.

  - ✓ If the AO is satisfied that the guarantee is not required anymore to protect the interest of revenue, he shall release the guarantee.

Section 282A amended:

- This section prescribes that where any notice or document is required to be issued by an income-tax authority under any provision of this Act, such notice or document shall be signed in manuscript by that authority.

- The amendment seeks to prescribe that the notice or document shall be signed and issued in paper form or communicated in electronic form in accordance with a prescribed procedure.

Section 286 inserted:

- **Background –** "BEPS" refers to "Base erosion profit shifting". **BEPS** is a tax avoidance strategy used by multinational enterprises, wherein profits are shifted from jurisdictions that have high taxes to the jurisdictions that have low (or no) taxes. In order to control BEPS, the OECD (Organization for Economic Co-operation and Development) has taken an initiative and prepared a Report called "BEPS Action Plan". The Report prescribes for (i) Standards for transfer pricing documentation, and (ii) a Template for Country-By-Country Reporting of income, earnings, income-tax paid etc. The OECD Report recommends that the countries should adopt a standard approach for transfer pricing documentation. It mandates 3-Tier structure:

Master File	This File shall provide a high-level overview of the Multi National Enterprise (MNE) [or we may call "International Group"], its global business operations, overall transfer pricing policies etc. The file shall be very comprehensive. It shall not be restricted to the transaction undertaken by a particular entity situated in a particular country. The File shall contain a standardised information relevant for all group-members of MNE. **This File shall be furnished by each entity to the tax authority of the country in which it operates.**
Country-by-Country Report **(CbCR)**	This File shall contain the Annual Information for each tax jurisdiction, relating to the amount of revenue, profit / loss before income-tax, amount of income-tax paid and accrued, details of stated capital, accumulated earnings, number of employees and tangible assets [other than cash or cash equivalents] in respect of each country or territory in which the Group operates etc. The MNE has to identify each entity within the Group doing business in a particular tax jurisdiction and provide an indication of the business activities each entity is engaged in. Since the Report contains, details of each tax jurisdiction, it is called CbCR. **The CbCR shall be submitted by the Parent Entity of an International Group to the prescribed authority in its country of residence. The CbCR shall be based on consolidated financial statements of the whole International Group.**
Local File	This File shall contain the details of material transactions of the local taxpayer.

According to OECD, the 3-Tier documentation would have following advantages:
(i) The tax payers will be required to articulate consistent transfer pricing positions;
(ii) The tax departments would get useful information to assess transfer pricing; and
(iii) The tax departments would be able to make determinations about optimum deployment of their resources, for example – where to conduct audits for transfer pricing.

- India is an active member of BEPS initiative. Hence, to obey the BEPS Report, India has amended its tax laws in following manner:

For Master File	• Section 92D has been amended. • Penalty has been prescribed u/s 271AA(2). • Income-tax Rules, 1962 are also being amended.
For CbCR	• Section 286 has been introduced. • Penalty has been prescribed u/s 271GB. • Income-tax Rules 1962 are also being amended.
For Local File	• The existing section 92D contains sufficient provisions.

- Now, we shall be discussing section 286 in detail.

- Firstly, we shall discuss the various terms defined in section 286.

Accounting year	(i) If the parent entity or alternate reporting entity is resident in India – Accounting year means a previous year. (ii) Any other case – An annual accounting period, with respect to which the parent entity of the international group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is resident.
Reporting accounting year	The accounting year in respect of which the financial and operating results are required to be reflected in the report to be furnished by the parent entity or the alternate reporting entity in respect of the international group of which it is a constituent, every year, upto the due date u/s 139(1).
Parent entity	A constituent entity of an international group holding, directly or indirectly, an interest in one or more of the other constituent entities of the international group, such that, -- (i) it is required to prepare a CFS under any law for the time being in force or the accounting standards of the country or territory of which the entity is resident, or (ii) it would have been required to prepare a CFS had the equity shares of any of the enterprises were listed on a stock exchange, and there is no other constituent entity of such group which, due to ownership of any interest, directly or indirectly, in the first mentioned constituent entity, is required to prepare a CFS, under the circumstances referred to in clause (i) or (ii), that includes the separate financial statement of the first mentioned constituent entity.
Constituent Entity	(i) any separate entity of an international group that is included in the CFS of the group for financial reporting purposes, or may be so included for the said purpose, if the equity share of any entity of the international group were to be listed on a stock exchange; or (ii) any such entity that is excluded from the CFS of the international group solely on the basis of size or materiality; or (iii) any permanent establishment of any separate business entity of the international group included in clause (i) or clause (ii), if such business entity prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes. [Here "Permanent establishment" shall have the same meaning as in section 92F].
Alternate Reporting Entity	Any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the CbCR in the country or territory in which the said constituent entity is resident on behalf of such group.

	Reporting entity	The constituent entity including the parent entity or the alternate reporting entity, that is required to furnish a report in respect of the international group of which it is a constituent, for every reporting accounting year, upto the due date u/s 139(1).
	Group	"Group" includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a CFS for financial reporting purposes, -- (i) is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident, or (ii) would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the parent entity is resident.
	International Group	Any group that includes – (i) two or more enterprises which are resident of different countries or territories, or (ii) an enterprise, being a resident of one country or territory, which carries on any business through a permanent establishment in other countries or territories.
	Consolidated Financial Statement (CFS)	The financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity.
	Agreement	(i) an agreement referred to in section 90 or 90A. (ii) any agreement notified by the Central Govt. in this behalf.
	Systematic failure	Systematic failure, with respect to a country or territory, means the country or territory has an agreement with India providing for exchange of CbCR, but – (i) in violation of the said agreement, it has suspended automatic exchange, or (ii) has persistently failed to automatically provide to India the report in its possession in respect of any international group having a constituent entity resident in India.

❖ Section 286(1) - Every **Constituent Entity** resident in India, shall, if it is a constituent of an **International Group** having **Parent Entity** which is not a resident in India, intimate to the prescribed income-tax authority in a prescribed form and manner, on or before prescribed date –

(a) whether it is the **Alternate Reporting Entity** of the **International Group**, or

(b) the details of **Parent Entity** or **Alternate Reporting Entities** of **International Group** (if any), and the country or territory of which those **Parent Entity** and **Alternate Reporting Entities** are resident.

❖ Section 286(2) - Every **Parent Entity** or **Alternate Reporting Entity**, if it is resident in India, shall, furnish a CbCR in respect of the **International Group** to the prescribed income-tax authority, for every **Reporting Accounting Year**, upto due date u/s 139(1).

❖ Section 286(3) - The CbCR shall include the aggregate information of --

- the amount of revenue,
- profit / loss before income-tax,
- amount of income-tax paid and accrued,
- details of stated capital, accumulated earnings, number of employees and tangible assets [other than cash or cash equivalents] in respect of each country or territory in which the Group operates;
- the details of each **Constituent Entity** of the **International Group** including the country or territory in which **Constituent Entity** is incorporated or organized or established and the country or territory where it is resident;

- the nature and details of the main business activity or activities of each **Constituent Entity**.
- any other information as may be prescribed.

The CbCR shall be based on the **Template** provided in BEPS Report.

- Section 286(4)/(5) - A **Constituent Entity** of an **International Group,** if it is resident in India [other than an entity referred to in sub-section (2)], shall furnish CbCR, in respect of the **International Group** for a reporting accounting year, if the **Parent Entity** is resident of a country or territory:
  (a) with which India does not have an agreement for exchange of CbCR; or
  (b) there has been a systematic failure of the country or territory and such failure has been intimated by the prescribed authority to the **Constituent Entity**.

  If there are more than one **Constituent Entities** of the **International Group**, resident in India, the CbCR shall be furnished by any one **Constituent Entity**, if the **International Group**, has nominated such entity to furnish CbCR on behalf of all **Constituent Entities** resident in India, and the information relating to nomination has been intimated in writing on behalf of the **International Group** to the prescribed income-tax authority.

  However, the **Constituent Entity** shall not be required to furnish CbCR if any **Alternate Reporting Entity** of the **International Group** has furnished a **CbCR** with the tax authority of the country or territory in which such entity is resident and the following conditions are satisfied—
  (a) The CbCR is required to be filed under the laws of that country / territory.
  (b) That country / territory has entered in an agreement with India providing for exchange of the CbCR,
  (c) The prescribed income-tax authority has not conveyed any systematic failure in respect of that country / territory to any **Constituent Entity** in India of the Group that is resident in India.
  (d) That country / territory has been informed in writing by the **Constituent Entity** that it is the **Alternate Reporting Entity** on behalf of **International Group**; and
  (e) The prescribed income-tax authority has been informed by the Constituent Entities referred to in section 286(4) in accordance with section 286(1).

- Section 286(6) – The prescribed income-tax authority may, for the purpose of determining the accuracy of the CbCR furnished by any **Reporting Entity**, issue a notice in writing and require the entity to produce such information and document as may be specified in the notice, within 30 days of the date of receipt of the notice. The prescribed income-tax authority may extend the period of 30 days by a further period not exceeding 30 days, on an application by the entity.

- Section 286(7) - The CbCR requirement shall not apply in respect of an **International Group** for an accounting year, if the **Total Consolidated Group Revenue** as reflected in the **Consolidated Financial Statement (CFS)** for the accounting year preceding such accounting year, did not exceed a prescribed limit. In other words, the CbCR requirement shall arise only if the Total Consolidated Group Revenue exceeds the prescribed limit.
  Please note that under the current international consensus, the limit is Euro 750 million (i.e. Approximate Rs. 5395 Crore on the basis of conversion rate as on 31.03.2016). Thus, for the PY 2016-17 (AY 2017-18), the reporting requirement shall arise only if the Consolidated Revenue of the IG for the PY 2015-16 had exceeded Rs. 5395 Crore.

Note: The amendments in section 92D, 271AA(2), 271GB, 273B, 286 should be read together.

Schedule IV amended:

- Under the existing law, any payment received by an employee from RPF is taxable except in some situations as prescribed in Rule 8 in Part A of the Schedule IV to Income-tax Act, 1961. For example – If the employee withdraws amount after continuous service of 5 years.

❖ The amendment seeks to provide that if the balance in RPF A/c is transferred to NPS, it shall be fully exempt.

Note: The amendments in section 10(12A), 10(13), 80CCD and Schedule IV should be read together.

TAXATION OF E-COMMERCE TRANSACTIONS

Equalisation levy (popularly known as "Google tax") introduced:

❖ In the present era of globalization and liberalization, business enterprises of one country can carry out commercial activities in other countries. In order to charge income-tax on such transactions, the concept of **"Permanent Establishment (P/E)"** has been adopted by various countries in their tax laws or Double Taxation Avoidance Agreements (DTAAs). The Govt. of India has not defined **"P/E"** in Income-tax Act, 1961. But the definition of **"P/E"** has been embodied in **Article 5 of DTAAs** entered into by Govt. of India with different countries.

Generally, **Article 5(1) of DTAAs** defines the term **"P/E"** as ***a fixed place through which the business is wholly or partly carried on.*** Thus, if a non-resident or a foreign company is having such fixed place in India, it can be treated as having a **"P/E"** in India.

Article 5(2) specifies following specific instances to signify the presence of a **"P/E"**:
- a place of management,
- a branch,
- an office,
- a factory,
- a workshop,
- a sales outlet
- a warehouse
- a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
- a farm where agriculture, forestry, plantation or related activities are carried on
- a premises used for soliciting and receiving orders.

❖ If the commercial transactions are carried out in **traditional physical mode**, it is possible to apply the aforesaid concept of **"P/E"** because the transactions are visible and the income-earner is necessarily required to set up a branch, office etc. to undertake transaction. But in **E-Commerce,** the transactions are done in cyberspace through digital technology which dissolves the need of establishing a branch, office etc.. Hence it is not possible to apply the aforesaid concept of **"P/E"** in E-Commerce. This is more serious in case of transactions of intangibles and services – such as music, teaching, software, magazines, financial instruments (purchase / sale of shares and securities) etc.

❖ Therefore, following typical issues/difficulties arise in E-Commerce:

✓ **Location of transaction and income-earner not ascertainable –** Due to absence of physical locations, a difficulty arises in locating the transaction and the income-earner (i.e tax payer). Further, it is very difficult to conclude as to whether the location of the server, or the location of website or the location of parties entering into the transaction, should be the basis in determining the location of transaction or income-earner.

✓ **Nature of transaction not ascertainable –** Many a time difficulty arises in ascertaining the exact nature of transaction. For example – Whether the transaction is in the nature of transfer of an intangible or providing an intangible for use. Different countries have different types of laws and definitions.

✓ **Nexus between transaction and taxing jurisdiction not ascertainable** -- Difficulty arises in establishing a nexus between a transaction and a taxing jurisdiction. Therefore, either the transaction escapes taxation in all countries or get taxed in several countries.

❖ The above issues cannot be tackled by applying the traditional **"P/E"** concept. Hence, there is a need to evolve new principles.

- ❖ The OECD has recommended various options to tackle the difficulties. Some of these options are:
  - (i) The countries can modify their existing **"P/E"** rules to provide that an enterprise engaged in fully dematerialised digital activities would constitute a **"P/E"**, if it maintained a significant digital presence in another country's economy.
  - (ii) A virtual place of business may be treated as "P/E" i.e. if an enterprise maintains a website on the server of another enterprise located in a jurisdiction and carries on business through such website, such website may be treated as "P/E".
  - (iii) Imposition of an **"Equalisation Levy"** on considerations for digital transactions received by a non-resident from a resident (or non-resident having a P/E) in a jurisdiction.

- ❖ Following the OECD guidelines, the Govt. of India has introduced **"Equalization Levy"** through Chapter VIII in the Finance Act, 2016. ***[Short cut to remember - "Google tax"]***.

- ❖ Some features of **"Equalisation levy"** are as under:

  - ✓ **"Equalisation levy"** shall be levied @ 6% of the amount of consideration for **"specified services"** received or receivable by a non-resident not having P/E in India, from a resident in India who carries out business or profession, or from a non-resident having "P/E" in India.

  - ✓ **"Specified service"** means –
    - (a) Online advertisement
    - (b) Any provision for digital advertising space or any other facility or service for the purpose of online advertisement.
    - (c) Any other service as may be notified by the Central Govt.

  - ✓ The **"Equalization levy"** shall not be leviable 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 P/E in India, does not exceed Rs. 1 lakh in a previous year.

- ❖ **Consequential provisions in Income-tax Act, 1961:**

  Following amendments have also been prescribed in Income-tax Act, 1961 -
  - ✓ Section 10(50) has been introduced to grant 100% exemption to any income arising to any person from any **"specified service"** which has suffered **Equalisation Levy.** This has been done to avoid double taxation.

  - ✓ Section 40(a)(ib) has been inserted to disallow the deduction of any sum paid or payable to a non-resident for a **"specified service"** on which the **Equalisation Levy** is deductible under Chapter VIII of the Finance Act, 2016, but the assessee (i) has not deducted such levy, or (ii) has deducted but not paid such levy to Govt. A/c upto the due date u/s 139(1).

    However, it is further provided that if the **Equalisation Levy** has been deducted in any subsequent year or has been deducted in the same previous year but paid in subsequent previous year, the relevant sum shall be re-allowed as deduction in the previous year in which such levy is paid.

PART (A-2): Examples from ICAI Supplement CA final (64)

Example 1

Compute the tax liability of X Ltd., a domestic company, assuming that the total income of X Ltd. is ₹ 1,01,00,000 for A.Y.2017-18 and the total income does not include any income in the nature of capital gains

[Note - The gross receipts of X Ltd. for the P.Y.2014-15 is ₹ 7,00,00,000]

Answer 1

The tax payable on total income of ₹ 1,01,00,000 of X Ltd. computed@ 32.1% (including surcharge@7%) is ₹ 32,42,100. However, the tax cannot exceed ₹ 31,00,000 (i.e., the tax of ₹ 30,00,000 payable on total income of ₹ 1 crore plus ₹ 1,00,000, being the amount of total income exceeding ₹ 1 crore). Therefore, the tax payable on ₹ 1,01,00,000 would be ₹ 31,00,000. The marginal relief is₹ 1,42,100 (i.e., ₹ 32,42,100 - ₹ 31,00,000).

Example 2

Compute the tax liability of Y Ltd., a domestic company, assuming that the total income of Y Ltd. for A.Y.2017-18 is ₹ 10,01,00,000 and the total income does not include any income in the nature of capital gains.

[Note - The gross receipts of Y Ltd. for the P.Y.2014-15 is ₹ 9,00,00,000]

Answer 2

The tax payable on total income of ₹ 10,01,00,000 of Y Ltd. computed@ 33.6% (including surcharge@12%) is ₹ 3,36,33,600. However, the tax cannot exceed ₹ 3,22,00,000 [i.e., the tax of ₹ 3,21,00,000 (32.1% of ₹ 10 crore) payable on total income of ₹ 10 crore plus ₹ 1,00,000, being the amount of total income exceeding ₹ 10 crore]. Therefore, the tax payable on ₹ 10,01,00,000 would be ₹ 3,22,00,000. The marginal relief is ₹ 14,33,600 (i.e., ₹ 3,36,33,600 - ₹ 3,22,00,000).

Example 3

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 to look after its day to day business operations in India, 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.

Answer 3

Section 6(3) has been substituted by the Finance Act, 2016 with effect from A.Y.2017-18 to provide that a company would 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 .

In this case, ABC Inc. is a foreign company. Therefore, it would be resident in India for P.Y.2016-17 only if its place of effective management, in that year, is in India.

(65)

Explanation to section 6(3) defines "place of effective management" to mean 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. In the case of ABC Inc., its place of effective management for P.Y.2016-17 is not in India, since the significant management and commercial decisions are, in substance, made by the Board of Directors outside India in Sweden.

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.

Hence, 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.

Example (4)

Mr. Anand is an Indian citizen and a member of the crew of a Singapore bound Indian ship engaged in carriage of passengers in international traffic departing from Chennai port on 6th June, 2016. From the following details for the P.Y.2016-17, determine the residential status of Mr. Anand for A.Y.2017-18, assuming that his stay in India in the last 4 previous years (preceding P.Y.2016-17) is 400 days and last seven previous years (preceding P.Y.2016-17) is 750 days:

Particulars	*Date*
Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Anand	*6th June, 2016*
Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Anand	*9th December, 2016*

Answer

In this case, the voyage is undertaken by an Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India (i.e., the Chennai port) and having its destination at a port outside India (i.e., the Singapore port). Hence, the voyage is an eligible voyage for the purposes of section 6(1). Therefore, the period beginning from 6th June, 2016 and ending on 9th December, 2016, being the dates entered into the Continuous Discharge Certificate in respect of joining the ship and signing off from the ship by Mr. Anand, an Indian citizen who is a member of the crew of the ship, has to be excluded for computing the period of his stay in India. Accordingly, 187 days [25+31+31+30+31+30+9] have to be excluded from the period of his stay in India. Consequently, Mr. Anand's period of stay in India during the P.Y.2016-17 would be 178 days [i.e., 365 days – 187 days]. Since his period of stay in India during the P.Y.2016-17 is less than 182 days, he is a non-resident for A.Y.2017-18.

Note *- Since the residential status of Mr. Anand is "non-resident" for A.Y.2017-18 consequent to his number of days of stay in P.Y.2016-17 being less than 182 days, his period of stay in the earlier previous years become irrelevant.*

Example (5)

A Ltd., a domestic company, declared dividend of ₹ 170 lakh for the year F.Y.2015-16 and distributed the same on 10.7.2016. Mr. X, holding 10% shares in A Ltd., receives dividend of ₹ 17 lakh in July, 2016. Mr. Y, holding 5% shares in A Ltd., receives dividend

66 3

assuming that Mr.X and Mr.Y have not received dividend from any other domestic company during the year.

Solution 5

(i) The dividend of ₹ 170 lakh declared and distributed in the P.Y.2016-17 is subject to dividend distribution tax under section 115-O in the hands of A Ltd. First of all, the dividend received has to be grossed up by applying the rate of 15%. The gross dividend is ₹ 200 lakh [₹ 170 lakh × 100/85]. Dividend distribution tax @17.304% is ₹ 34.608 lakh.

(ii) In the hands of Mr. X, dividend received upto ₹ 10 lakh would be exempt under section 10(34). ₹ 7 lakh, being dividend received in excess of ₹ 10 lakh, would be taxable@10% as per section 115BBDA. Such dividend would not be exempt under section 10(34). Therefore, tax payable by Mr. X on dividend of ₹ 7 lakh under section 115BBDA would be ₹ 72,100 [i.e., 10% of ₹ 7 lakh + cess@3%].

(iii) In the hands of Mr. Y, the entire dividend of ₹ 8.50 lakh received would be exempt under section 10(34), since only dividend received in excess of ₹ 10 lakh would be taxable under section 115BBDA.

Example 6

Mr. Anand sold his residential house property in March, 2016.

In June, 2016, he recovered rent of ₹ 10,000 from Mr. Gaurav, to whom he had let out his house for two years from April 2010 to March 2012. He could not realise two months rent of ₹ 20,000 from him and to that extent his actual rent was reduced while computing income from house property for A.Y.2012-13.

Further, he had let out his property from April, 2012 to February, 2016 to Mr. Satish. In April, 2014, he had increased the rent from ₹ 12,000 to ₹ 15,000 per month and the same was a subject matter of dispute. In September, 2016, the matter was finally settled and Mr. Anand received ₹ 69,000 as arrears of rent for the period April 2014 to February, 2016.

Would the recovery of unrealised rent and arrears of rent be taxable in the hands of Mr. Anand, and if so in which year?

Solution 6

Since the unrealised rent was recovered in the P.Y.2016-17, the same would be taxable in the A.Y.2017-18 under section 25A, irrespective of the fact that Mr. Anand was not the owner of the house in that year. Further, the arrears of rent was also received in the P.Y.2016-17, and hence the same would be taxable in the A.Y.2017-18 under section 25A, even though Mr. Anand was not the owner of the house in that year. A deduction of 30% of unrealised rent recovered and arrears of rent would be allowed while computing income from house property of Mr. Anand for A.Y.2017-18.

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

Particulars	₹
(i) Unrealised rent recovered	10,000
(ii) Arrears of rent received	69,000
	79,000
Less: Deduction@30%	23,700
Income from house property	55,300

(6) (4)

Example 7

Company	Actual cost of new plant and machinery (₹)	Previous year of acquisition	Previous Year of installation	Assessment Year in which deduction u/s 32AC can be claimed	Deduction u/s 32AC (₹)
B Ltd.	40 crores	P.Y.2015-16	P.Y.2016-17	A.Y.2017-18	6 crores
C Ltd.	50 crores	P.Y.2016-17	P.Y.2016-17	A.Y.2017-18	7.50 crores
D Ltd.	60 crores	P.Y.2016-17	P.Y.2017-18	-	-

(xiii) **Example:** 8

Let us consider the following particulars relating to a resident individual, Mr. A, being an eligible assessee whose gross receipts do not exceed ₹ 2 crore in any of the assessment years between A.Y.2017-18 to A.Y.2019-20 -

Particulars	A.Y.2017-18	A.Y.2018-19	A.Y.2019-20
Gross receipts (₹)	1,80,00,000	1,90,00,000	2,00,00,000
Income offered for taxation (₹)	14,40,000	15,20,000	12,00,000
% of gross receipts	8%	8%	6%
Offered income as per presumptive taxation scheme u/s 44AD	Yes	Yes	No

Answer 8

In the above case, Mr. A, an eligible assessee, opts for presumptive taxation under section 44AD for A.Y.2017-18 and A.Y.2018-19 and offers income of ₹ 14.40 lakh and ₹ 15.20 lakh on gross receipts of ₹ 1.80 crore and ₹ 1.90 crore, respectively.

However, for A.Y.2019-20, he offers income of only ₹ 12 lakh on turnover of ₹ 2 crore, which amounts to 6% of his gross receipts. He maintains books of account under section 44AA and gets the same audited under section 44AB. Since he has not offered income in accordance with the provisions of section 44AD(1) for five consecutive assessment years, after A.Y.2017-18, he will not be eligible to claim the benefit of section 44AD for next five assessment years succeeding A.Y.2019-20 i.e., from A.Y.2020-21 to 2024-25.

Note – *Section 44AB 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 ₹ 1 crore. However, if an eligible person opts for presumptive taxation scheme as per section 44AD(1), 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 ₹ 2 crore. The CBDT, has vide its Press Release dated 20th June, 2016, clarified that the higher threshold for non-audit of accounts has been given only to assessees opting for presumptive taxation scheme under section 44AD.*

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Example 9

Mr. A purchased a residential house property for self-occupation at a cost of ₹ 45 lakh on 1.6.2016, in respect of which he took a housing loan of ₹ 35 lakh from Bank of India@11% p.a. on the same date. 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.

Answer 9

	Particulars	₹
	Interest deduction for A.Y.2017-18	
(i)	**Deduction allowable while computing income under the head "Income from house property"** Deduction under section 24(b) ₹ 3,20,833 [₹ 35,00,000 × 11% × 10/12] Restricted to	2,00,000
(ii)	**Deduction under Chapter VIA from Gross Total Income** Deduction under section 80EE ₹ 1,20,833 (₹ 3,20,833 – ₹ 2,00,000) Restricted to	50,000

Example 10

Mr. Ganesh, a businessman, whose total income (before allowing deduction under section 80GG) for A.Y.2017-18 is ₹ 4,60,000, paid house rent at ₹ 12,000 p.m. in respect of residential accommodation occupied by him at Mumbai. Compute the deduction allowable to him under section 80GG for A.Y.2017-18.

Solution 10

The deduction under section 80GG will be computed as follows:

(i) Actual rent paid *less* 10% of total income

$$1,44,000 \text{ (-) } \frac{(10 \times 4,60,000)}{100} = ₹\ 98,000 \text{ (A)}$$

(ii) 25% of total income

$$\frac{25 \times 4,60,000}{100} = ₹\ 1,15,000 \text{ (B)}$$

(iii) Amount calculated at ₹ 5,000 p.m.= ₹ 60,000 (C)

Deduction allowable (least of A, B and C) = ₹ 60,000

Example 11

A Ltd. was incorporated on 1.4.2016 to carry on the business of innovation, development, deployment and commercialization of new processes driven by technology. It holds a certificate of eligible business from the notified IMBC[1].

Its total turnover and profits and gains from such business for the P.Y.2016-17 to P.Y.2020-21 are as follows:

Particulars	*P.Y.2016-17*	*P.Y.2017-18*	*P.Y.2018-19*	*P.Y.2019-20*	*P.Y.2020-21*
	(Rupees in crores)				

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Profits/ Losses	(2.52)	(1.37)	6.52	8.13	9.87

Is A Ltd. eligble for any tax benefit under the provisions of the Income-tax Act, 1961? If yes, what is the benefit available?

Answer 11

A Ltd. is an eligible start-up, since –

(1) it is a company engaged in eligible business of innovation, development, deployment and commercialization of new processes driven by technology. It holds a certificate of eligible business from the notified IMBC.

(2) it is incorporated during the period 1.4.2016 to 31.3.2019.

(3) its total turnover does not exceed Rs.25 crores in any previous year from P.Y.2016-17 to P.Y.2020-21.

(4) it holds a certificate of eligible business from the notified IMBC

Therefore, A Ltd., being an eligible start-up, is eligible for deduction under section 80-IAC of 100% of the profits and gains derived by it from an eligible business for any three consecutive assessment years out of five years beginning from the year in which the eligible start up is incorporated i.e. P.Y.2016-17.

In the first two years i.e., P.Y.2016-17 and P.Y.2017-18, A Ltd. has incurred a loss. In the subsequent three years i.e., P.Y.2018-19, P.Y.2019-20 and P.Y.2020-21, A Ltd. has earned profits from eligible business and can hence, claim 100% of its profits as deduction under section 80-IAC from the P.Y.2018-19 to P.Y.2020-21. However, for P.Y.2018-19, the profits eligible for deduction would be the profits after set-off of brought forward losses of P.Y.2016-17 and P.Y.2017-18.

Example 12

Mr. A has commenced the business of of manufacture of computers on 1.4.2016. He employed 350 new employees during the P.Y.2016-17, the details of whom are as follows -

	No. of employees	Date of employment	Regular/ Casual	Total monthly emoluments per employee (₹)
(i)	75	1.4.2016	Regular	24,000
(ii)	125	1.5.2016	Regular	26,000
(iii)	50	1.8.2016	Casual	17,000
(iv)	100	1.9.2016	Regular	24,000

The regular employees participate in recognized provident fund while the casual employees do not. Further, out of 75, 50 and 100 regular employees employed on 1.4.2016, 1.5.2016 and 1.9.2016, only 40, 30 and 60 qualify as a "workman" under the Industrial Disputes Act, 1947.

Compute the deduction, if any, available to Mr. A for A.Y.2017-18, if the profits and gains derived from manufacture of computers that year is ₹ 75 lakhs and his total turnover is 2.16 crores.

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Solution 12

Mr. A is eligible for deduction under section 80JJAA since he is subject to tax audit under section 44AB for A.Y.2017-18, as his total turnover from business exceeds ₹ 1 crore and he has employed "additional employees" during the P.Y.2016-17.

Additional employee cost = ₹ 24,000 × 12 × 75 **[See Working Note below]** = ₹ 2,16,00,000

Deduction under section 80JJAA = 30% of ₹ 2,16,00,000 = ₹ 64,80,000.

Working Note:

Number of additional employees

Particulars	No. of workmen	
Total number of employees employed during the year		350
Less: Casual employees employed on 1.8.2016 who do not participate in recognized provident fund	50	
Regular employees employed on 1.5.2016, since their total monthly emoluments exceed Rs.25,000	125	
Regular employees employed on 1.9.2016 since they have been employed for less than 240 days in the P.Y.2016-17.	100	275
Number of "additional employees"		**75**

Note - *Since casual employees do not participate in recognized provident fund, they do not qualify as additional employees. Further, 125 regular employees employed on 1.5.2016 also do not qualify as additional employees since their monthly emoluments exceed Rs.25,000. Also, 100 regular employees employed on 1.9.2016 do not qualify as additional employees for the P.Y.2016-17, since they are employed for less than 240 days in that year.*

Therefore, only 75 employees employed on 1.4.2016 qualify as additional employees, and the total emoluments paid or payable to them during the P.Y.2016-17 is deemed to be the additional employee cost. From A.Y.2017-18, it is not necessary that the employee should qualify as a "workman" under the Industrial Disputes Act, 1947 for the employer to avail benefit under section 80JJAA.

Example (13):

A business trust, registered under SEBI Regulations (Real Estate Investment Trusts), 2014 gives particulars of its income for the P.Y. 2016-17:

(1) *Interest income from Beta Ltd. – ₹ 4 crore;*

(2) *Dividend income from Beta Ltd. – ₹ 2 crore (received on 1st October, 2016);*

(3) *Short-term capital gains on sale of listed shares of Beta Ltd. – ₹ 1.5 crore;*

(4) *Short-term capital gains on sale of developmental properties – ₹ 1 crore*

(5) *Interest received from investments in unlisted debentures of real estate companies – ₹ 10 lakh;*

(6) *Rental income from directly owned real estate assets – ₹ 2.50 crore*

Beta Ltd. is an Indian company in which the business trust holds controlling interest. The business trust holds 100% of the shareholding of Beta Ltd.

Discuss the tax consequences of the above income earned by the business trust in the hands of the business trust and the unit holders, assuming that the business trust has distributed ₹ 10 crore to the unit holders in the P.Y.2016-17.

Answer 12

Tax consequences in the hands of the business trust and its unit holders

(1) **Interest income of ₹ 4 crore from Beta Ltd.:** There would be no tax liability in the hands of business trust due to pass-through status enjoyed by it under sub-clause (a) of section 10(23FC) in respect of interest income from Beta Ltd., being the special purpose vehicle. Therefore, Beta Ltd. is not required to deduct tax at source on interest payment to the business trust.

However, the business trust has to deduct tax at source under section 194LBA –

- @ 10%, on interest component of income distributed to resident unit holders; and
- @ 5%, on interest component of income distributed to non-corporate non-resident unit holders and foreign companies.

Interest component of income distributed to unit holders is taxable in the hands of the unit holders – @ 5%, in case of unit holders, being non-corporate non-residents or foreign companies; and at normal rates of tax, in case of resident unit holders.

The interest component of income received from the business trust in the hands of each unit-holder would be determined in the proportion of 4/11.1, by virtue of section 115UA(1).

(2) **Dividend income of ₹ 2 crore from Beta Ltd.:** The dividend distributed by the SPV to the business trust is exempt by virtue of section 115-O(7), since the SPV is a specified domestic company in which the business trust has become the holder of whole of the nominal value of equity share capital of the company. Further, there would be no tax liability in the hands of the business trust, due to specific exemption provided under sub-clause (b) of section 10(23FC).

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Any distributed income referred to in section 115UA, to the extent it does not comprise of interest [referred to in sub-clause (a) of section 10(23FC)] and rental income from real estate assets owned directly by the business trust [referred to in section 10(23FCA)] received by unit holders, is exempt in their hands under section 10(23FD). Therefore, by virtue of section 10(23FD), there would be no tax liability on the dividend component [referred to in sub-clause (b) of section 10(23FC)] of income distributed to unit holders in their hands.

(3) **Short-term capital gains of ₹ 1.50 crore on sale of listed shares of Beta Ltd.:** As per section 115UA(2), the business trust is liable to pay tax@15% under section 111A in respect of short-term capital gains on sale of listed shares of special purpose vehicle. There would, however, be no tax liability on the capital gain component of income distributed to unit holders, by virtue of the exemption contained in section 10(23FD).

(4) **Short-term capital gains of ₹ 1 crore on sale of developmental properties:** It is taxable at maximum marginal rate of 35.535% in the hands of the business trust as per section 115UA(2). There would be no tax liability in the hands of the unit holders on the capital gain component of income distributed to them, by virtue of the exemption contained in section 10(23FD).

(5) **Interest of ₹ 10 lakh received in respect of investment in unlisted debentures of real estate companies:** Such interest is taxable@35.535%, being the maximum marginal rate, in the hands of the business trust, as per section 115UA(2). However, there would be no tax liability in the hands of the unit holders on the interest component of income distributed to them, by virtue of section 10(23FD).

(6) **Rental income of ₹ 2.50 crore from directly owned real estate assets:** Any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt in the hands of the trust as per section 10(23FCA).

Where the income by way of rent is credited or paid to a business trust, being a REIT, in respect of any real estate asset held directly by such REIT, no tax is deductible at source under section 194-I.

The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT is deemed income of the unit holder as per section 115UA(3). The business trust has to deduct tax at source@10% under section 194LBA in case of distribution to a resident unit holder and at rates in force in case of distribution to a non-resident unit holder.

The rental income component received from the business trust in the hands of each unit-holder would be determined in the proportion of 2.5/11.1, by virtue of section 115UA(1).

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Notes:

(1) New Chapter XII-FA contains the special provisions relating to business trusts. Section 115UA(1) provides that any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder, as it had been received by, or accrued to the business trust.

(2) Sub-clause (a) of section 10(23FC) exempts any income of a business trust by way of interest received or receivable from a Special Purpose Vehicle (SPV). Thus, the business trust enjoys a pass-through status in respect of interest received or receivable from a SPV.

(3) Sub-clause (b) of section 10(23FC) exempts any income of a business trust by way of dividend received from SPV, being a specified domestic company in which a business trust has become the holder of the whole of the nominal value of equity share capital of the company. Such dividend income is also exempt in the hands of the unit-holder.

(4) SPV means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding, as may be required by the regulations under which such trust is granted registration [not less than 50% as per the current SEBI (Real Estate Investment Trusts) Regulations, 2014].

Such company should hold not less than 80% of its assets directly in properties and should not invest in other SPVs and should not be engaged in any activity other than holding and developing property and any other activity incidental to such holding or development.

Since Beta Ltd. is an Indian company in which the business trust holds controlling interest and 100% of shareholding, it is a special purpose vehicle. It is presumed that Beta Ltd. fulfills the other conditions specified in the regulations to qualify as an SPV.

(5) The distributed income of the business trust, to the extent it comprises of interest referred to in sub-clause (a) of section 10(23FC) and rental income referred to in section 10(23FCA), is deemed to be the income of the unit holder in the previous year of distribution and subject to tax in the hands of the unit holder in that year. Accordingly, the business trust is required to deduct tax at source on the interest component and rental component of income distributed to its unit holders.

(6) Any distributed income referred to in section 115UA, to the extent it does not comprise of interest referred to in sub-clause (a) of section 10(23FC) and rental income referred to in section 10(23FCA), received by unit holders is exempt in their hands under section 10(23FD).

(7) Section 115UA(2) provides that subject to the provisions of sections 111A and 112, the total income of a business trust shall be chargeable to tax at the maximum marginal rate.

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(xiv) **Examples:** 14

(1) *M/s. XYZ is a firm liable to tax@30%. The following are the particulars furnished by the firm for A.Y.2017-18:*

	Particulars of total income	₹
(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 under section 270A on M/s. XYZ? If the answer is in the affirmative, compute the penalty leviable under section 270A.

Solution

M/s. XYZ is deemed to have under-reported its income since:

(1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed under section 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
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 ₹ 15 lakhs *plus* tax on total income of ₹ 60 lakhs determined u/s 143(1)(a) ***[30% of ₹ 75 lakh + EC & SHEC@3%]***	23,17,500	
Less: Tax on total income determined u/s 143(1)(a) ***[30% of ₹ 60 lakh + EC & SHEC@3%]***	18,54,000	
	4,63,500	
Penalty leviable@50% of tax payable		2,31,750
Reassessment under section 147		
Under-reported income:		
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 ₹ 20 lakhs *plus* tax on total income of ₹ 75 lakhs assessed u/s 143(3) ***[30% of ₹ 95 lakh + EC & SHEC@3%]***	29,35,500	
Less: Tax on total income assessed u/s 143(3) ***[30% of ₹ 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.

(2) ***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 143(3) is ₹ 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 ₹ 2,50,000. Hence, penalty under section 270A is leviable in his case.

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Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 143(3)	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 ₹ 2 lakhs + ₹ 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.*

(3) *ABC Ltd. is a domestic company liable to tax@30%. The following are the particulars furnished by the company for A.Y.2017-18:*

	Particulars of total income	₹
(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	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Loss assessed u/s 143(3)	(5,00,000)	

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(-) 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
Reassessment under section 147		
Under-reported income:		
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.

Example 15

Discuss the following issues in the context of the provisions of the Income-tax Act, 1961, with specific reference to clarification given by the Central Board of Direct Taxes -

(i) Moon TV, a television channel, made payment of ₹ 50 lakhs to a production house for production of programme for telecasting as per the specifications given by the channel. The copyright of the programme is also transferred to Moon TV. Would such payment be liable for tax deduction at source under section 194C? Discuss.

Also, examine whether the provisions of tax deduction at source under section 194C would be attracted if the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house.

(ii) Mudra Adco Ltd., an advertising company, has retained a sum of ₹ 15 lakhs, towards charges for procuring and canvassing advertisements, from payment of ₹ 1 crore due to Cloud TV, a television channel, and remitted the balance amount of ₹ 85 lakhs to the television channel. Would the provisions of tax deduction at source under section 194H be attracted on the sum of ₹ 15 lakhs retained by the advertising company?

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Answer 15

(i) In this case, since the programme is produced by the production house as per the specifications given by Moon TV, a television channel, and the copyright is also transferred to the television channel, the same falls within the scope of definition of the term 'work' under section 194C. Therefore, the payment of ₹ 50 lakhs made by Moon TV to the production house would be subject to tax deduction at source under section 194C.

If, however, the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house, there is no contract for "carrying out any work", as required in section 194C(1). Therefore, such payment would not be liable for tax deduction at source under section 194C.

(ii) The issue of whether fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount' to attract the provisions of tax deduction at source has been clarified by the CBDT vide its *Circular No.5/2016 dated 29.2.2016.*

The Circular draws reference to the Allahabad High Court ruling in the case of *Jagran Prakashan Ltd.* and the Delhi High Court ruling in the matter of *Living Media Limited.* In both the cases, the Courts have held that the relationship between the media company and the advertising agency is that of a 'principal-to-principal' and, therefore, not liable for TDS under section 194H. Though these decisions are in respect of print media, the ratio is also applicable to electronic media/television advertising as the broad nature of the activities involved is similar.

In view of the above, the CBDT has clarified that no liability to deduct tax is attracted on payments made by television channels to the advertising agency for booking or procuring of or canvassing for advertisements. Hence TDS is not deductible.

PART : (A-3) – CIRCULARS

CIRCULAR No. 10/2015 DATED 10.06.2015:
In this Circular, the CBDT has given certain clarification on Roll back provisions of APA u/s 92CC. The Circular is very lengthy and does not appear to be important for examination. Interested students may please refer the **"Supplement published by ICAI for May, 2017 examination".**

CIRCULAR No. 16/2015 DATED 06.10.2015:
Sometimes the film producers abandon films i.e. the films are not fully completed and therefore not exhibited to the public. The question arises – whether the cost / expenditure incurred on such abandoned films shall be treated as a capital expenditure or revenue expenditure? Since, the film is abandoned, the Assessing Officers want to treat expenditure as capital in nature and disallow deduction. Now, the CBDT has clarified that the expenditure shall be treated as revenue expenditure and deduction shall be allowed u/s 37.

CIRCULAR No. 18/2015 DATED 02.11.2015:
Investment made by a banking concern in Non-SLR Securities is a part of the business of banking. Therefore, the income arising from such investments shall be taxable under the head "Income from Business or Profession". Further, the expenses incurred in relation to such investments shall be allowed as deduction.

CIRCULAR No. 21/2015 DATED 10.12.2015:
The CBDT has revised the monetary limits for filing of appeals by department. Now, the department shall not file appeals in cases where the **"tax effect"** does not exceed the monetary limits given hereunder:

Appeal	Monetary limit
Appeal before ITAT	10,00,000
Appeal before High Court	20,00,000
Appeal before Supreme Court	25,00,000

CIRCULAR No. 23/2015 DATED 28.12.2015:
In **UCO Bank Vs. DCIT (2014) 369 ITR 335 (Del)**, the assessee-bank accepted a fixed deposit in the name of Registrar General of the High Court and issued a FDR in compliance with a direction passed by the court in relation to certain proceedings. Subsequently, the Income-tax department took action against the bank for not deducting TDS out of interest accrued on FDR. The Bank argued that the FDRs were in the name of Registrar General of the Court. The Registrar General of the Court was merely a custodian and not a payee of interest. The actual beneficiary of FDR was unknown as the matter was subjudice. Hence the TDS would be deducted when the payment shall be made to the beneficiary (after decision of Court). Therefore, there is no case of TDS default. The Court accepted arguments of bank. Now, the CBDT has accepted this judgement in Circular No. 23/2015.

CIRCULAR No. 4/2016 DATED 29.02.2016:
Whether the payments made by the broadcaster / telecaster to production houses for production of content / programme are payments under a 'work contract' liable for TDS u/s 194C or a contract for 'professional or technical services' liable for TDS u/s 194J?

The CBDT has clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:

(i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster; and
(ii) a payment for acquisition of broadcasting/ telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/ telecaster and the copyright of the content/programme also gets transferred to the telecaster/ broadcaster, such contract is covered by the definition of the term `work' in section 194C and, therefore, subject to TDS under that section. This is also clear from the definition of "work" prescribed in section 194C.

But in the second situation where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there is no contract for ''carrying out any work", as required in section 194C(1). Therefore, such payments are not liable for TDS u/s **However, the payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act.**

CIRCULAR No. 5/2016 DATED 29.02.2016:

The issue of applicability of TDS provisions on payments made by television channels or media houses publishing newspapers or magazines to advertising agencies for procuring and canvassing for advertisements has been examined by the CBDT. The CBDT noted that there are two types of payments involved in the advertising business:

(i) Payment by client to the advertising agency, and

(ii) Payment by advertising agency to the television channel/newspaper company

Earlier in Circular No. 715 dated 8-8-1995, it was clarified that while TDS u/s 194C (as work contract) will be applicable on the first type of payment, there will be no TDS u/s 194C on the second type of payment.

Now, a further issue has been raised as to whether the fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount'. If it is in the nature of commission, section 194H shall apply, but if it is in the nature of discount, no TDS would be required. The issue has been controversial in courts. Now, the CBDT has clarified that the fee/charges is in the nature of discount and hence no TDS is required.

CIRCULAR No. 6/2016 DATED 29.02.2016:

Often controversies arise with regard to the head under which the profit generated from sale of shares and securities shall be taxable. Now, the CBDT has clarified as under:

a) **Where assessee opts to treat such shares and securities as stock-in-trade**: Where the assessee itself (irrespective of the period of holding the listed shares and securities) opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,

b) **Listed shares and securities held for a period of more than 12 months**: In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the AO. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

c) **Other cases**: In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided on the basis of facts.

CIRCULAR No. 7/2016 DATED 07.03.2016:

A consortium of contractors is often formed to implement large infrastructure projects, particularly in Engineering Procurement and Construction ('EPC') contracts and Turnkey Projects. The tax authorities, in many cases have taken a position that such a consortium constitutes an Association of Persons ('AOP') i.e., a separate entity for charging tax. The claim of taxpayers, on the other hand, is contrary to this view. This has led to tax disputes particularly in those cases where each member of the consortium, although jointly and severally liable to the contractee, has a clear distinction and role in scope of work, responsibilities and liabilities of the consortium members.

With a view to avoid tax-disputes and to have consistency in approach while handling these cases, the CBDT has decided that a consortium arrangement for executing EPC/Turnkey contracts which has the following attributes may not be treated as an AOP:

(a) each member is independently responsible for executing its part of work through its own resources and also bears the risk of its scope of work i.e., there is a clear demarcation in the work and costs between the consortium members and each member incurs expenditure only in its specified area of work;

(b) each member earns profit or incurs losses, based on performance of the contract falling strictly within its scope of work. However, consortium members may share contract price at gross level only to facilitate convenience in billing;

(c) the men and materials used for any area of work are under the risk and control of respective consortium members;

(d) the control and management of the consortium it not unified and common management is only for the inter-se co-ordination between the consortium members for administrative convenience;

There may be other additional factors also which may justify that consortium is not an AOP and the same shall depend upon the specific facts and circumstances of a particular case, which need to be taken into consideration while taking a view in the matter.

This Circular shall not be applicable in cases where all or some of the members of the consortium are Associated Enterprises within the meaning of section 92A. In that case, the AO shall decide on the basis of facts.

CIRCULAR No. 11/2016 DATED 26.04.2016:
We are aware that if the deductor pays excess TDS, the department grants refund of such excess TDS to the deductor. However, the department does not grant interest on such refund on the ground that there is no provision in section 244A of Income-tax Act for grant of interest in such cases. The Hon'ble Supreme Court held in the case of **Tata Chemicals Limited** that even if there is no express provision, the department must grant interest to the deductor because the department has used the money belonging to the depositor. Now, the CBDT has also clarified that in such cases, the department shall pay interest to the depositor.

PART : (A-4) – NOTIFICATIONS

Notification No. 50/2015, dated 24.6.2015:
We are aware that the definition of "accountant" appearing in section 288 has been amended through Finance Act, 2015. Accordingly to this, in the case of a non-corporate assessee, a person who (whether directly or indirectly) has "**business relationship with the assessee of such nature as may be prescribed**", has been excluded from the definition of "accountant".
Now, the CBDT has prescribed that the term "business relationship" shall be construed as any transaction **entered into for a commercial purpose, other than**,—
(i) commercial transactions which are **in the nature of professional services** permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;
(ii) commercial transactions which are **in the ordinary course of business of the entity at arm's length price** - like sale of products or services to the auditor, as customer, in the ordinary course of business, by entities engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses."

Notification No. 51/2015, dated 24.6.2015:
Under the authority of section 197A(1F), the Central Government has notified that no tax has to be deducted in respect of payments of the nature specified in section 10(23FBA) [i.e., any income other than the income chargeable under the head "Profits and gains of business or profession"] received by any investment fund.

Notification No. 70/2015 dated 17.8.2015:
- We are aware that the Explanation 2 to Section 6(1) prescribes that in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the prescribed manner.

- Accordingly, the CBDT has prescribed that in the case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, **not include** the period commencing from the date entered into the Continuous Discharge Certificate in respect of joining the ship and ending on the date entered into the Continuous Discharge Certificate in respect of signing off.

- Here "Continuous discharge certificate" shall have the same meaning as in Merchant Shipping Act, 1958.

- Further "Eligible voyage" means a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where–
  (i) for the voyage having originated from any port in India, has as its destination any port outside India; and
  (ii) for the voyage having originated from any port outside India, has as its destination any port in India.

Notification No. 76/2015, dated 29.09.2015:

Under section 197A, the payees can submit declaration in Form No. 15G or Form No.15H to the payers, for non-deduction of TDS. In order to reduce the cost of compliance and ease the compliance burden for both the tax payer and the tax deductor, the CBDT has simplified the format and procedure of Form No.15G or 15H.

Under the simplified procedure, a payee can submit the self-declaration either in paper form or electronically. The deductor will not deduct tax and will allot a Unique Identification Number (UIN) to all self-declarations. The particulars of self-declarations will have to be furnished by the deductor along with UIN in the Quarterly Returns of TDS. The requirement of submitting physical copy of Form 15G and 15H by the deductor to the income-tax authorities has been discontinued.

Notification No. 83/2015, dated 19.10.2015:

In this notification, the CBDT has amended Transfer Pricing Rules so as to incorporate the "Range concept" and "Use of multiple year data". This Notification is very lengthy and does not appear to be important for examination. Interested students may please refer the "Supplement published by ICAI for May, 2017 examination".

Notification No. 90/2015, dated 08.12.2015:

This notification is in relation to safe harbor rules u/s 92CB. This Notification is very lengthy and does not appear to be important for examination. Interested students may please refer the **"Supplement published by ICAI for May, 2017 examination".**

Notification No. 95 / 2015 dated 30-12-2015:

We are aware that under section 139A, there is a requirement to quote PAN in the documents relating to the notified transactions. There is a long-list of such notified transactions. Now, the Govt. has withdrawn old list and given a new list of such transactions. Therefore, the quoting of PAN shall be mandatory in the documents relating to following transactions:

Sl.	Transaction	Value of transaction for which quoting of PAN shall be mandatory
01	Sale or purchase of a vehicle (which requires registration under Motor Vehicles Act,1988), other than two wheeled vehicles.	All such transactions
02	Opening an account (other than a time-deposit covered below under Sl.No.12 and a Basic Savings Bank Deposit Account) with a bank or a co-operative bank	All such transactions
03	Making an application for issue of a credit or debit card.	All such transactions
04	Opening of a demat account	All such transactions
05	Payment to a hotel or restaurant against a bill or bills at any one time.	Payment in cash of an amount exceeding Rs. 50,000
06	Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time	Payment in cash of an amount exceeding Rs. 50,000.
07	Payment to a Mutual Fund for purchase of its units	Amount exceeding Rs. 50,000.
08	Payment to a company or an institution for acquiring debentures or bonds issued by it.	Amount exceeding Rs. 50,000.
09	Payment to the Reserve Bank of India for acquiring bonds issued by it.	Amount exceeding Rs. 50,000.
10	Cash Deposit with a bank or a co- operative bank	Deposits in cash exceeding Rs. 50,000 during any one day.
11	Purchase of bank drafts or pay orders or banker's cheques from a bank or a co-operative bank	Payment in cash of an amount exceeding Rs. 50,000 during any one day.
12	A time deposit with, - (i) a bank or a co-operative bank (ii) a Post Office; (iii) a Nidhi referred to in section 406 of the Companies Act, 2013; or	Amount exceeding Rs. 50,000 or aggregating to more than Rs. 5 lakh during a financial year.

	(iv) a non-banking financial company which holds a certificate of registration u/s 45-IA of the Reserve Bank of India Act, 1934	
13	Payment for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007, to a bank or a co-operative bank or to any other company or institution.	Payment in cash or by way of a bank draft or pay order or banker's cheque of an amount aggregating to more than Rs. 50,000 in a financial year.
14	Payment as life insurance premium to an insurer as defined in the Insurance Act, 1938.	Amount aggregating to more than Rs. 50,000 in a financial year.
15	A contract for sale or purchase of securities (other than shares) as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.	Amount exceeding Rs.1 lakh per transaction
16	Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange.	Amount exceeding Rs.1 lakh per transaction.
17	Sale or purchase of any immovable property.	Amount exceeding Rs. 10 lakh or valued by stamp valuation authority referred to in section 50C of the Act at an amount exceeding Rs. 10 lakh
18	Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. No. 1 to 17 of this Table, if any.	Amount exceeding Rs.2 lakh per transaction:

Following points should also be noted:

(1) Any person who does not have a PAN and who enters into any transaction specified in this rule, shall make a declaration in Form No. 60 giving therein the particulars of such transaction.

(2) If a person, entering into any transaction referred to in this rule, is a minor and who does not have any income chargeable to income-tax, he shall quote the PAN of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction.

(3) The requirement of PAN shall not apply to the following classes of persons:

(i) the Central Government, the State Governments and the Consular Offices;

(ii) the non-residents referred to in section 2(30) in respect of the transactions other than a transaction referred to at Sl. No. 1 or 2 or 4 or 7 or 8 or 10 or 12 or 14 or 15 or 16 or 17 of the Table.

Notification No. 95/2015 dated 30-12-2015:

We are aware that under section 285BA, there is a requirement to furnish a Statement of Financial Transactions **(Practically, we call it AIR i.e. Annual Information Return)**, as notified by the CBDT. Now, the CBDT has notified that such Statement of Financial Transactions shall be furnished by every person mentioned in column (3) of the Table below in respect of all the transactions of the nature and value specified in the corresponding entry in column (2) of the said Table, ***which are registered and recorded by him on or after 1st April, 2016:***

(1)	(2)	(3)
Sl.	**Nature and value of transaction**	**To be furnished by**
1	(a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to Rs. 10 lakh or more in a financial year. (b) Payments made in cash aggregating to Rs. 10 lakh or more during the financial year for purchase of pre-paid instruments issued by RBI under the Payment and Settlement Systems Act, 2007. (c) Cash deposits or cash withdrawals	A banking company or a co- operative bank

	(including through bearer's cheque) aggregating to Rs. 50 lakhs or more in a financial year, in or from one or more current account of a person.	
2	Cash deposits aggregating to Rs. 10 lakhs or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.	(i) A banking company or a co-operative bank; (ii) Post-Office
3	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to Rs. 10 lakhs or more in a financial year of a person.	(i) A banking company or a co-operative bank; (ii) Post Office; (iii) Nidhi referred to in section 406 of the Companies Act, 2013; (iv) NBFC which holds a certificate of registration under section 45-IA of the RBI Act.
4	Payments made by any person of an amount aggregating to- (i) Rs. 1 lakh or more in cash; or (ii) Rs. 10 lakh or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year.	A banking company or a co- operative bank or any other company or institution issuing credit card.
5	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).	A company or institution issuing bonds or debentures.
6	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring shares (including share application money) issued by the company.	A company issuing shares
7	Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to Rs. 10 lakh or more in a financial year.	A company listed on a recognized stock exchange purchasing its own securities under section 68 of the Companies Act, 2013.
8	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.
9	Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount aggregating to ` 10 lakh or more during a financial year	Authorised person as referred to in section 2(c) of the Foreign Exchange Management Act,1999.
10	Purchase or sale by any person of immovable property for an amount of Rs. 30 lakhs or more or valued by the stamp valuation authority referred to in section 50C at Rs. 30 lakhs or more	Inspector-General appointed under the Registration Act, 1908 or Registrar or Sub-Registrar appointed under that Act

11	Receipt of cash payment exceeding Rs. 2 lakh for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10 of this rule)	Any person who is liable for audit under section 44AB of the Act.

Manner of application of threshold limit: The reporting person mentioned in column (3) of the Table under sub-rule (2) [other than the person at Sl.No.9] shall, while aggregating the amounts for determining the threshold amount for reporting in respect of any person as specified in column (2) of the said Table:

(a) take into account all the accounts of the same nature as specified in column (2) of the said Table maintained in respect of that person during the financial year;

(b) aggregate all the transactions of the same nature as specified in column (2) of the said Table recorded in respect of that person during the financial year;

(c) attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained or transaction is recorded in the name of more than one person;

(d) apply the threshold limit separately to deposits and withdrawals in respect of transaction specified in item (c) under column (2), against Sl. No. 1 of the said Table.

Notification No. 5/2016 dated 17-02-2016:
This notification is in relation to safe harbor rules u/s 92CB. This Notification is very lengthy and does not appear to be important for examination. Interested students may please refer the **"Supplement published by ICAI for May, 2017 examination".**

Notification No. 7/2016 dated 19-02-2016:
The Central Government has notified the 'Atal Pension Yojana (APY)' as an eligible pension scheme for the purpose of deduction under section 80CCD.

Notification No. 13/2016 dated 03-03-2016:
The CBDT has included "Oil wells" in "Plant and Machinery". Hence, depreciation shall be allowed on "Oil wells" @ 15%.

Notification No. 18/2016, dated 17-03-2016:
The CBDT has notified new Rule 8AA in which it has been prescribed that in the case of conversion of bonds / debentures / debenture-stock / deposit certificates of a company into shares or debentures of that company, the holding period, for the purpose of computation of capital gain at the time of subsequent sale of new shares and debentures, shall be computed from the **"Old DOA"** i.e. the date on which the original bonds, debentures, debenture stock and deposit certificates were acquired by the assessee. Further, the indexation of COA shall also be done from the **"Old DOA"**.

Notification No. 21/2016 dated 23.03.2016:
Investment in Sovereign Gold Bond Scheme, 2015 shall be a permissible mode of investment for section 11(5).

Notification No. 30/2016, dated 29.04.2016:
Section 192(2D) prescribes that the PRP shall, for the purpose of estimating the income of employee or computing the TDS, obtain from employee, the evidence or proof or particulars of prescribed claims (including claim for set off of loss) in a prescribed form. Now the CBDT has notified Rule 26C and Form No. 12BB.

Notification No. 42/2016 dated 02-06-2016:
The Cost Inflation Index for the financial year 2016-17 shall be 1125.

PART : (B) – “SELECT CASES” PUBLISHED BY ICAI

CIT Vs. SAURASHTRA CEMENT LTD (2010) 325 ITR 422 (SC):
Already set out in past exam. Hence this is not discussed.

CIT Vs. M. Venkateswara Rao (2015) 370 ITR 212 (T&AP):
A partnership firm received capital contribution from its partners. During the course of scrutiny of firm, the partners admitted that they had contributed capital. The AO applied section 68 in the assessment of firm on the ground that the partners were not able to explain the source of capital contributed by them. On appeal, the High Court held that the AO cannot apply section 68 and make addition in the assessment of firm because the partners have clearly admitted that they have contributed capital to the firm i.e. provided money to the firm. The Court further held that the AO can very well proceed against the partners individually and make addition, if necessary, in their personal assessments.

CIT Vs. ALCATEL LUCENT CANADA (2015) 372 ITR 476 (Del):
The assessee, a foreign company, was enagaged in manufacture and sale of GSM. Basically, GSM is a hardware (cellular telephone system), which has pre-loaded software. The assessee sold GSM to Indian entities. Although the business income arising to the assessee from sale of GSM was not taxable in India (because there was no business connection in India), the AO computed a part of sale price as attributable to software and thus, argued that such part relatable to software was in the nature of “royalty” and hence deemed to accrue or arise in India u/s 9(1)(vi). On this basis, the AO argued that such royalty component was taxable in India.
The assessee argued that—
(a) The software did not have any independent existence.
(b) The software was an integral part of hardware (i.e. GSM).
(c) The software merely facilitates the functioning of GMS.
(d) There was a sale of GSM only. There was on commercial transaction of software.
Hence, the assessee argued that the computation made by AO in relation to software is a self-made computation of AO only, which is wrong. The Court accepted arguments of assessee.

QUEEN’S EDUCATIONAL SOCIETY (2015) 372 ITR 699 (SC):
The assessee is an educational institution, existing for advancement of education. It claimed exemption u/s 10(23C). During the relevant previous year, the Income & Exp. A/c of assessee showed net profit. The AO rejected claim of section 10(23C) on the ground that the existence of net profit in the Income & Exp. A/c indicates that the assessee is having profit motive and not the motive of advancement of education.
The assessee argued that its object was advancement of education and it did not have any profit earning motive. The earning of profit was merely a result of operations. Simply because there existed a net profit in Income & Exp. A/c, it cannot be concluded that there was no motive of advancement of education. The Court accepted arguments of assessee.

CIT Vs. Kribhco (2012) 209 Taxman 252 (Del):
The question before the Court was whether section 14A is applicable in relation to expenses incurred for earning any income eligible for deduction under chapter VI-A? The Court held that section 14A is applicable only in respect of expenses incurred for earning “incomes which do not form part of total income”. Such incomes are prescribed in chapter III of the Income-tax Act, 1961 and not in Chapter VI-A. Hence, section 14A does not apply to expenses incurred for earning any income eligible for deduction under chapter VI-A.

~~**CIT Vs. Karimangalam Onriya Pengal Semipu Amaipu Ltd. (2013) 354 ITR 483 (Mad):**~~
~~The assessee, a public charitable institution, filed an application to CIT for grant of registration u/s 12AA. Section 12AA prescribes that every order granting or refusing registration u/s 12AA shall be passed by CIT within 6 months from end of the month in which the application is received by him. However, the CIT did not dispose off application within 6 months. The assessee claimed that since the CIT has neither granted nor refused to grant registration and the time-limit of 6 months had already expired, there is an automatic or deemed registration. On appeal, the High Court did not accept.~~ **This decision has been reversed by Hon’ble Supreme Court in Society for the Promotion of Education (2016) 382 ITR 6 (SC). The latest decision of Supreme Court is reported in RTP. Please read the decisions set out in RTP, discussed below.**

DIT (Exemptions) Vs. Meenakashi Amma Endowment Trust (2013) 354 ITR 219 (Kar):

The assessee, a public charitable trust, filed application u/s 12AA to CIT within a very short span of time after its formation. By that time, the trust had not commenced any charitable activity. The CIT refused to grant registration on the ground that there was no activity done by the trust. The Trust argued following aspects:

- Section 12AA does not contain any restriction that the application cannot be filed within short span of time.
- The fact that the settlers / trustees have made initial contribution to the trust for charitable activities, itself indicates that there is a real intention of trust to carry out charitable activities.
- In absence of any activity, the department should look into the objects of trust. If the objects are charitable, registration has to be granted.
- Even if registration is granted, there is no loss to the department because if subsequent to the grant of registration, the CIT finds that the activities are not genuine, he may cancel registration by exercising power u/s 12AA(3).

On the basis of these arguments, the trust claimed that it was entitled to registration. The Court accepted.

DIT(Exemption) Vs, Khetri Trust (2014) 367 ITR 723 (Del):

As per will of Late Raja Bahadur Sardar Singh, the entire property, including immovable property and shares in foreign companies, were bequeathed to the assessee (trust). However, the properties could not be transferred to the trust because of ongoing litigation of will in the Court. The trust paid a sum of Rs. 1,10,000 for raising a memorial for late Raja Bahadur Sardar Singh and the said amount was given to a business entity for this purpose, but due to the ongoing dispute, such project was not completed. The business entity paid interest on the said amount.

In the assessment of Trust, the AO denied the benefit of exemption u/s 11, on the ground that the shares of foreign company held by trust and the advance given to the business entity were in violation of section11(5) and hence exemption was forfeited u/s 13(1)(d). In appeal, it has been held that the validity of the will has been challenged in the Court. Hence the trust has not acquired the legal right on the shares of foreign company. Further, the advance given to the business entity cannot be treated as an investment in violation of section 11(5), since the intent and purpose behind the advance was to construct a memorial and not to make any kind of investment. Finally, the Court accepted that the exemption cannot be forfeited by applying section 13(1)(d).

DIT (Exemptions) Vs. Ramoji Foundation (2014) 364 ITR 85 (AP):

The settler gave power to the trustees to add or alter the objects of the trust-deed, without approaching civil court, provided the additional or altered object is of a charitable nature. Based on such trust-deed, the department refused registration u/s 12AA.

On appeal, the Court interpreted the decision of Hon'ble Supreme Court in the case of CIT v. Kamla Town Trust (1996) 217 ITR 699 wherein it was held that the trustees are required to approach civil court only if the power is not given to them for addition or alteration of object. If, under the terms of trust deed, the trustees have a power to add or alter object clause, there would be no need to approach civil court. Finally, on the basis of this interpretation of Supreme Court, the Court held that the department must accept the trust-deed of **Ramoji Foundation** and grant registration u/s 12AA.

CIT Vs. Shankar Krishnan (2012) 349 ITR 0685 (Bom):

The assessee (a salaried employee) was provided housing facility by the employer. The employer made an interest-free refundable security deposit of Rs. 30 lacs to the landlord from whom the property was taken on rent. The AO contended that since the employer had given interest-free deposit to the landlord, notional interest on deposit should be included in calculating the taxable value of housing facility. The assessee argued that the perquisite of housing facility is taxable as per valuation rules prescribed by the department. Those valuation rules permit only 15% of salary or rent paid by employer, whichever is less. Those rules do not allow the AO to enhance valuation by way of notional interest on interest-free deposit. The Court accepted.

CIT Vs. DELHI PUBLIC SCHOOL (2011) 202 TAXMAN 318 (P&H):

In this case, the employer provided education facility to the children of employee in its own school and the value of facility exceeded Rs. 1,000/- per month (for example – the value was Rs. 1,200/- per month). The assessee argued that only 200/- per month shall be taxable, whereas the department argued that entire 1,200/- shall be taxable. The High Court held that on a plain reading of language of Rule 3 of Income-tax Rules, 1962, if the value of education facility does not exceed Rs. 1,000/- per month, it is fully exempted. But if the value of facility exceeds Rs. 1,000/-, the whole value (Rs. 1,200/- in the present example) shall be taxable.

Chennai Properties and Investments Ltd. Vs. CIT (2015) 373 ITR (SC) 673:

This is an important judgement of Hon'ble Supreme Court in which it was held that if the assessee is **engaged**

in the business of earning income from letting out or leasing out house properties, the rental income shall be taxable under the head “Income from Business or Profession” and not under the head “Income from House Property”.

New Delhi Hotels Ltd. Vs. ACIT (2014) 360 ITR 0187 (Delhi] / CIT v. Discovery Estates Pvt. Ltd. (2013) 356 ITR 159:

Even if the assessee is holding house properties as part of stock in trade, the rental income shall be taxable under the head “Income from House Property” and not under the head “Income from Business or Profession” ***(Note: Long back the Supreme Court also held that under the scheme of Income-tax Act law, “Income from HP” is a specific head and therefore the rental income of a house-property shall always be taxable under the head “Income from HP” irrespective of whether the property is residential or non-residential; whether the property is held by the assessee as a fixed asset or stock-in-trade; whether the assessee has a few number of properties or a large number of properties).***

> ***Hello……. Are you able to understand the difference in the above two judgements, viz. (i) Chennai Properties and Investments Ltd. Vs. CIT (2015) 373 ITR (SC) 673 and (ii) New Delhi Hotels Ltd. Vs. ACIT (2014) 360 ITR 0187 (Delhi] / CIT v. Discovery Estates Pvt. Ltd. (2013) 356 ITR 159.***

CIT Vs. NDR Warehousing (P) Ltd. (2015) 372 ITR 690 (Mad):

The assessee earned income from letting out of godowns and buildings. Along with letting of godowns and warehouses, the assessee also provided several services such as pest control, rodent control, fumigation, security service to the tenants. The charges were received not only for letting but also for such services. The Court held that the income shall be taxable under BPV head and not house property head.

CIT Vs. HARIPRASAD BHOJN AGARWALA (2012) 342 ITR 69 (GUJ):

The assessee is a HUF. It claimed the benefit of section 23(2) i.e. **Nil** annual value of a self-occupied house-property. The AO concluded that the benefit of section 23(2) is available only to an individual and not to HUF because HUF is a notional entity and it cannot occupy property for self-residence. The assessee argued that HUF is a body consisting of natural persons (i.e. members) and the property owned by HUF can be occupied by its members for self-occupation. The Court accepted arguments of assessee.

CIT v. Asian Hotels Ltd. (2010) 323 ITR 0490 (Del.):

The assessee received interest-free deposit from tenant to whom property has been let out. The AO computed notional interest income on the interest-free deposit at the rate of 18% per annum with the reasoning that by accepting the interest-free deposit, a benefit had accrued to the assessee which was chargeable to tax under the section 28(iv) or under section 23(1).

The High Court held that section 28(iv) is concerned with business income and brings to tax the value of any benefit or perquisite arising from business or profession. That section cannot apply to the present situation. Regarding section 23(1), the court accepted that section 23(1) deals with the determination of the annual letting value of a house-property for computing taxable income from house property. Even that section is not sufficient enough to include notional interest.

Thus, the Court held that the notional interest shall neither be assessable as business income nor as income from house property.

Tamil Nadu Tourism Development Corporation Ltd Vs. DCIT (2014) 368 ITR 533 (Mad):

The assessee-company was engaged in the business of development of tourism. It leased some of its loss making hotel units to various franchisees and received “franchise fee”. The agreement entered with the franchisees envisaged leasing of hotels with attendants including display of assessee’s name above the name of the franchisee in the name-board, quality of food supplied, maintenance of rooms and buildings etc. to be followed by the franchisee. The assessee offered franchise fee as “Income from house property” and claimed deduction at 30% of Net Annual Value (NAV) u/s 24(a). The AO taxed income under BPV head.

On appeal, the Court held that it was not a case of earning rental income from ownership of hotel buildings only. It was a case where the assessee was continuing business through frachisees. The assesee simply changed the manner and style of carrying on business. Hence the Court accepted that the income shall be taxable under the head BPV and not under House-Property head. Thus, the Court held in favour of department.

CIT v. Henkel Spic India Ltd (2015) 379 ITR 322 (SC):

The assessee came out with a public issue of shares in January,1992. The date of closure is February 3, 1992 (falling in P.Y. 1991-92, A.Y.1992-93). The share application money collected from the applicants was deposited in bank for 46 days in accordance with the requirement of law. On this deposit, the assessee earned interest of Rs. 183.32 lakhs. The shares were ultimately allotted in June 1992 (falling in P.Y. 1992-93, A.Y.1993-94). The applicants who were not allotted the shares got their application money refunded along with the interest. However, the Assessing Officer taxed the entire interest income in the year of public issue i.e. A.Y.1992-93 and ignored the subsequent event viz. allotment of shares falling in the A.Y.1993-94.

The Court accepted that the company is required to keep the application money in a bank account which yielded interest. The interest so earned cannot be regarded as an amount which was fully available to the assessee for its own use, since interest was an amount which accrued on a fund which was held in trust until the allotment of shares got completed and moneys were returned to those to whom shares are not allotted. The Court also observed that no part of this fund (i.e. neither the principal nor the interest) can be utilized by the company until the allotment process is completed. When the amount is repaid in cases of non-allotment of shares, it has to be repaid with such interest as may be prescribed having regard to the length of time or period of delay in returning the money to them. It is only after the allotment process is completed and all moneys which are refundable are refunded with interest, wherever interest becomes payable, the balance remaining application money can be regarded as belonging to the company. The application money as also interest earned remain in trust in favour of the general body of the applicants until the process of allotment is completed in all respects. As the amount of interest in the bank account includes interest payable to the applicants to whom the shares are not allotted, the trust would terminate only after allotment. The interest on balance application money (in respect of which the shares have been allotted) would accrue to the company only after completion of allotment. Hence the Court accepted that the interest income shall be taxable in AY 1993-94.

CIT Vs, K. and Co. (2014) 364 ITR 93 (Del):

The assessee running a lottery, deposited certain funds with a bank In order to obtain bank guarantee to be furnished to the State Government of Sikkim. Such guarantee enabled the assessee to carry on the business of printing lottery tickets and conducting lotteries on behalf of the State Government of Sikkim. The funds which were held as margin money, earned some interest. The Court accepted interest income as part of business income and therefore taxable under the head "Income from BPV".

CIT Vs. TVS Motors Ltd. (2014) 364 ITR 1 (Mad):

The assessee incurred expenditure on replacement of dies and moulds in place of worn out dies and moulds. In original return, the assessee treated such expenditure as capital in nature and claimed depreciation. Subsequently, the assessee filed revised return claiming deduction u/s 31 treating the expenditure as revenue in nature. The AO rejected claim of assessee on two grounds, viz. (i) that the expenditure is having capital nature, and (ii) even in earlier years the assessee has himself treated such expenditure as capital in nature and claimed depreciation.

On appeal, the Court held that:

(a) The expenditure on replacements of parts of a machine is a revenue expenditure only because such expenditure has been incurred only to maintain the functioning of machinery. There is no new addition in the capacity of machinery.
(b) Just because the assessee has treated expenditure as capital in earlier years, does not mean that in the succeeding years, the assessee cannot claim as revenue.

Finally, the Court allowed deduction u/s 31.

ICDS Ltd. Vs. CIT (2013) 350 ITR 527 (SC):

The assessee is engaged in the business of leasing activity. It purchased vehicles and leased out to various lessees. The registration of vehicle was in the name of lessees. The assessee claimed depreciation u/s 32 on the following grounds:

(a) That the registration of vehicles in the names of lessees was only to meet the requirement of Motor Vehicles Act, 1988. But the ownership continued with the assessee as per lease-agreement entered into with the lessees. Hence ownership condition is satisfied.
(b) That the vehicles are being used for the purpose of leasing business of assessee. The assessee argued that section 32 simply requires that the asset must be used for the purpose of business of assessee. It does not require that the asset must be used by assessee.

The Supreme Court accepted both of the grounds and allowed depreciation.

CIT v. BSES Yamuna Powers Ltd (2013) 358 ITR 47 (Delhi):
The High Court observed that computer accessories and peripherals such as printers, scanners and server etc. form an integral part of the computer system and they cannot be used without the computer. Hence those accessories and peripherals are part of the computer system. They are eligible for depreciation at the higher rate of 60% as applicable to computers and not to the general depreciation rate of 15% as applicable to plant and machinery.

Areva T and D India Ltd. Vs. DICT (2012) 345 ITR 421 (Delhi):
The assessee acquired a running business and paid purchase-consideration. A part of the purchase-consideration was attributable to the various tangible assets and the remaining portion was designated as cost of various intangibles categorized under the heading "Goodwill". The assessee claimed depreciation u/s 32 on the part of consideration designated as cost of "Goodwill" treating the same as cost of "other business or commercial rights". The AO denied depreciation. On appeal, the Court allowed.

CIT Vs. SMIFS SECURITIES LTD (2012) 348 ITR 302 (SC):
In these cases, the assessee purchased a running business and bifurcated part of the purchase consideration towards tangible assets and the balance amount (i.e. excess) as cost of "goodwill". Thereafter, the assessee claimed depreciation u/s 32 on the cost of goodwill. But the AO disallowed on the ground that there is no specific mention of goodwill in the list of intangible assets prescribed in section 32. The assessee argued that in section 32, intangible asset means know-how, patent, copyright, trademark, licence, franchise or any other business or commercial right of similar nature. On this basis, the assesse submitted that the goodwill falls under "any business or commercial right of similar nature" and hence depreciation is allowed. The Court has accepted

FEDERAL BANK LTD. Vs. ACIT (2011) 332 ITR 319 (KERALA):
EPABX and mobile phones cannot be treated as 'computers'. Hence 60% depreciation is not allowed.

CIT Vs. SMT. A SHIVAKAMI AND ANOTHER (2010) 322 ITR 64:
The assessee purchased three buses, owned them and used them in a hiring business. However, those buses were not registered in the name of assessee. The assessee claimed depreciation but the AO disallowed. On appeal, the Court has allowed depreciation on the ground that for the purpose of section 32, what is required is ownership of asset and not the registration of ownership ***(Note: Long-back in Podar Cement case as well as in Mysore Minerals case, the Hon'ble Supreme Court also allowed depreciation in such a case).***

CIT Vs, Gujarat State Road Transport Corporation (2014) 366 ITR 170 (Guj):
In this case, the issue arose as to whether the employees' contribution to PF etc. paid by an employer to the PF authorities shall be covered u/s 43B i.e. whether the deduction shall be allowed if the employer pays such contributions to the PF authorities after due date under the rules of relevant fund but before the due date for filing of return u/s 139(1). The Court held against assessee i.e. the deduction is not allowed ***(Note:*** **Contrary view is given in** ***CIT Vs. Kichha Sugar Ltd. (2013) 356 ITR 351 (Uttrakhand) wherein the Court has allowed deduction).***

Shyam Burlap Co Ltd v. CIT (2016) 380 ITR 151 (Cal):
The assessee is a company. The object of company, as per Memorandum of Association, was to acquire and develop properties and to deal with those properties by way of sale, lease, letting out etc. The assessee purchased some properties, developed those properties and thereafter let out to tenants. Subsequently, the assessee got those properties vacated from tenants. The tenants demanded compensation for vacation of property. The assessee paid compensation. The assessee claimed deduction of compensation as revenue expenditure. The AO disallowed deduction, on the ground that the payment of compensation was made for acquiring an enduring benefit and hence the expenditure was capital in nature.

On appeal the Court held:
(a) That one of the objects of assessee was to let out properties. Thus, the assessee was engaged in the business of letting out properties. Hence, as per decision in **Chennai Properties and Investments Ltd. Vs. CIT (2015) 373 ITR (SC) 673,** the rental income shall be taxable under the head "Income from Business or Profession" and not "Income from House property".
(b) That the compensation was paid to the tenants only for vacation of properties. There is no acquisition of any kind of asset or right in asset. Hence the expenditure is revenue in nature. Therefore the compensation is deductible as a revenue expenditure of business.

<u>Taparia Tools Ltd v. Joint CIT (2015) 372 ITR 605 (SC)</u>:

The assessee issued non-convertible debentures and gave two options as regards payment of interest to the subscribers (debenture holders), viz. (i) Either they could receive interest periodically (i.e. half-yearly) @ 18% per annum, over a period of 5 years, or (ii) opt for one time upfront payment of Rs. 55 per debenture. In the second option, Rs. 55 per debenture was to be paid immediately upfront on account of interest and at the end of five years, the debentures were to be redeemed at the face value of Rs. 100. The said upfront payment of interest on debentures was shown by the assessee as deferred revenue expenditure in the books of accounts to be written off over a period of five years. Notwithstanding this accounting treatment given to the payment *qua* interest, the assessee claimed such expenditure as fully deductible expenditure in the first year, being the year of payment. The AO treated the expenditure as "deferred revenue expenditure" to be allowed over the tenure of debentures and hence, allowed only one-fifth of the payment made and disallowed the balance of claim.

On appeal, the Court held:

(a) There is no concept of "deferred revenue" in Income-tax Act except some specific sections like 35D.

(b) If the upfront interest is spread over 5 years, there would be no difference in the two options given by the assessee to the debenture holders.

(c) The amount of upfront interest (second option) is much less than the aggregate of periodical interest (in first option). Thus, by giving upfront interest, the assessee has made a substantial saving of interest expenditure in the first year itself.

Finally, the Court held that the upfront interest is fully deductible in the first year itself.

<u>Additional CIT Vs. Dharmpur Sugar Mill (P) Ltd. (2015) 370 ITR 194 (All):</u>

The assessee incurred a heavy expenditure for erection and installation of power transmission lines, towers etc. for the purpose of its business. But the ownership of those transmission lines, towers etc. vested in Uttar Pradesh Power Corporation Ltd (UPPCL). The assessee claimed expenditure as revenue expenditure deductible u/s 37(1). The AO disallowed deduction on the ground of capital expenditure.

On appeal, the Court held that since the assessee did not have any ownership right in the power transmission lines etc. the expenditure was clearly in the nature of revenue expenditure. Hence deduction is allowed.

<u>CIT Vs. IBM GlobalServices India (P) Ltd (2014) 366 ITR 293 (Karn):</u>

The assessee-company made payments to its joint venture company for two purposes, viz. (i) for use of domestic customer database to be provided by the joint venture company, and (ii) for transfer of skilled and trained employees by the joint venture company to the assesse. The assessee claimed both of these expenses as revenue expenses. The AO treated the same as capital expenditure on the ground that both of these expenses are incurred for a long-lasting benefit.

On appeal, the Court held:

(a) The expenditure incurred for use of customer database did not result in acquisition of any capital asset. In fact, the assessee did not become owner of data base because (i) theassessee simply got the right to use the database, and (ii) the joint venture company was not excluded from using such data base.

(b) The payment for obtaining trained and skilled employees also did not result in acquisition of any capital asset. In essence, the expenditure can be said to be a lump sum expenditure for the training of staff.

Hence, the Court held that both of those expenses were revenue in nature.

<u>CIT v. Orient Ceramics and Industries Ltd. (2013) 358 ITR 49 (Delhi):</u>

The point of dispute is whether the expenditure incurred by assessee on glow-sign boards displayed at dealer's outlets is capital or revenue. The High Court accepted such expenditure as a revenue expenditure due to following reasons:

(i) The expenditure incurred by the assessee on glow sign boards does not bring into existence an asset or advantage for the enduring benefit of the business, which is attributable to the capital.

(ii) The glow sign board is not an asset of permanent nature. It has a short life.

(iii) The materials used in the glow sign boards decay with the effect of weather. Therefore, it requires frequent replacement. Consequently, the assessee has to incur expenditure on glow sign boards regularly in almost each year.

(iv) The assessee incurred expenditure on the glow sign boards with the object of facilitating the business operation and not with the object of acquiring asset of enduring nature.

CIT Vs. ITC Hotels Ltd (2011) 334 ITR 109 (Kar):
The Court accepted that the expenditure incurred on issue of convertible debentures is a revenue expenditure because the conversion of debentures into equity shares is a mere redemption of debentures. Hence, the Court allowed deduction.

CIT Vs. PRIYA VILLAGE ROADSHOWS LTD (2011) 332 ITR 594 (DEL):
The assessee wanted to extend existing business. For this purpose, feasibility study was conducted. However, the expansion project was abandoned and no asset was created. Held that the expenditure on feasibility study is revenue in nature.

CIT v. Hindustan Zinc Ltd. (2010) 322 ITR 478 (Raj.):
The assessee owned a plant which required large quantity of water. The plant does not work without water. The assessee, therefore, incurred expenditure for alteration of the dam (constructed by the State Government) to ensure sharing of the water with the State Government without having any right or ownership in the dam. The assessee's share of water is determined by the State Government. The assessee claimed the expenditure as a deduction u/s 37(1). The Court allowed.

Confederation of Indian Pharmaceutical Industry (SSI) v. CBDT (2013) 353 ITR 388 (H.P.):
In this judgement the Court has held that the Circular No. 5/2012 dated 01.08.2012 issued by the CBDT is valid.
Note: In Circular No. 5/2012 dated 01.08.2012, the CBDT has clarified as under –
- ***(a) The expenditure incurred by a pharma company on providing freebees to medical practitioners is in violation of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002. Hence such expenditure is illegal and therefore not allowable as a deduction in the assessment of pharma company due to restriction imposed in Explanation to section 37(1).***
- ***(b) However, the value of such freebees shall be taxable as income in the hands of medical practitioner.***

CIT Vs. KAP SCAN AND DIAGNOSTIC CENTRE (P) LTD Vs. (2012) 344 ITR 476 (P&H):
The assessee, engaged in running a diagnostic laboratory, paid commission to doctors for referring patients for investigations and claimed deduction u/s 37(1) on the ground that it was necessary in this type of business. The AO disallowed the expenditure on the ground that it is an illegal expenditure. On appeal, the Court analysed the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 and found that the expenditure is illegal. Finally, the Court disallowed deduction.

Echjay Forgings Ltd. Vs. ACIT (2010) 328 ITR 286 (Bom):
The assessee, a company, incurred expenditure on training director's son abroad. The assessee claimed deduction of expenditure on the ground that the training was provided under "apprentice training scheme" and hence the expenditure was incurred for business purpose. The Court found that there was no such scheme existing in the company. No evidence was produced by the assessee that there was any such scheme. The Court found that the argument was false. Hence the deduction was not allowed.

SHANTI BHUSHAN V. CIT (2011) 336 ITR 26 (Del):
Already set out in examination. Hence not discussed.

CIT v. Neelavathi & Others (2010) 322 ITR 643 (Karn):
The assessee running cinema theatres claimed deduction of the sum paid to the local police and local gundas and claimed deduction. The Court held that –
- the payment to local police is illegal gratification and therefore not allowable as deduction.
- the payment to gundas as a precautionary measure so that they will not cause any disturbance in the theatre is also illegal expenditure and therefore not allowable as a deduction.

Millennia Developers (P) Ltd. v. DCIT (2010) 322 ITR 401 (Karn.):
The assessee is engaged in the business of construction and developer. It paid amount to municipal corporation for violation of sanctioned plans of buildings and deviation. The payment was named as 'regularisation fee'. The assessee claimed deduction. The Court disallowed deduction with the reasoning that the expenditure was in the nature of penalty eventhough it is named as 'regularisation fee'.

CIT Vs. GREAT CITY MFG. CO. (2013) 351 ITR 156 (ALL):
This case is already set out in exam. Hence not discussed.

CIT Vs. KLN AGROTECHS (P) LTD. (2015) 375 ITR 301 (KAR):
The assessee took a working capital loan from bank. There was an outstanding balance of Rs. 550 (assumed figure) consisting of principal of Rs. 400 and interest of Rs. 150. The assessee was not in a position to pay Rs. 550 to bank. Ultimately, there was a settlement between the assessee and bank. The bank waived Rs. 300 (Rs. 200 out of principal and Rs. 100 out of interest). The assessee paid balance Rs. 250. The position can be summarized as under:

	Principal	Interest	Total
Outstanding	400	150	550
Waiver	200	100	300
Paid to bank	200	50	250

Under section 41(1), waiver of Rs. 200 out of principal is taxable because it was a remission of trading liability (Please note that the loan was taken for working capital). However, the waiver of Rs. 50 out of interest is not taxable because such interest was not claimed as deduction in earlier year (Please note that the bank interest is allowable only on payment basis due to section 43B).

Thus, the assessee should include Rs. 200 in taxable income. But, while submitting Return, the assessee included Rs. 250 in income u/s 41(1) and claimed deduction of Rs. 50 u/s 43B (in respect of interest). Effectively, the assessee has offered Rs. 200 for taxation purpose.

The AO taxed Rs. 250 and did not allow deduction of Rs. 50.

The assessee argued that under section 41(1), only Rs. 200 is taxable. Hence, either the AO should tax only Rs. 200. Alternatively, the AO should tax Rs. 250 and allow deduction of Rs. 50 u/s 43B. The Court accepted.

CIT v. Andhra Ferro Alloys P. Ltd. (2012) 349 ITR 255 (A.P.):
Outstanding electricity charges are not covered u/s 43B. Hence the deduction is allowed on due basis.

CIT Vs. S.R. JEYASHANKAR (2015) 373 ITR 120 (MAD):
The assessee entered into an agreement with a builder for purchase of undivided share in a piece of land and construction of a flat under a project promoted by that builder. The agreement was made on 22.02.2005. Thereafter, the assessee made sequential payments of installments to the builder. Finally, the registration of undivided share of land was made on 04.08.2005.
Thereafter, the assessee sold the entire unit through sale deed 10.04.2008.The dispute arose as to whether the holding period of assessee was from 22.02.2005 to 10.04.2008 or from 04.08.2005 to 10.04.2008?
The Court accepted the holding period from 22.02.2005 to 10.04.2008.

CIT v. Smt. Rama Rani Kalia (2013) 358 ITR 0499 (All.):
The assessee purchased a leasehold property on July 7, 1984. Such leasehold rights in the property were converted into freehold rights on March 29, 2004. Subsequently, she sold property on March 31, 2004 and declared long-term capital gain. The AO opined that since the property was acquired by converting the leasehold right into freehold right on March 29, 2004, and was sold within three days on March 31, 2004, the resultant capital gains would be short-term. On appeal, the Court held that the conversion of leasehold property into freehold property was nothing but improvement of the title over the property. The assessee was owner of property even before conversion. It was further held that the difference between "short-term capital asset" and "long-term capital asset" is the period over which the property has been held by the assessee and not the nature of title over the property. This way the capital gain was accepted as long-term.

P. P. Menon v. CIT (2010) 325 ITR 122 (Ker.):
The assessee was a partner in a firm. The firm owned building. The firm was dissolved and the assessee received building. Subsequently, the assessee sold building and claimed that in computing holding period of building, the holding period of previous owner (i.e. the firm) should also be included. The Court held that there is no such provision in section 2(42A).

Navin Jindal v. ACIT (2010) 320 ITR 708 (SC):
The court has held that in the case of renunciation of right to subscribe for additional shares, the holding period shall start from the date of offer by the company ***(Note: This is already prescribed in section 2(42A). The assessee has unnecessarily gone in appeal before Court).***

CIT Vs. MANJULA J. SHAH 16 TAXMAN 42 (BOM):
The effect of this case is explained by way of following example—

Mr. A purchased a land on 10.01.2007. He gifted this land to Mr. B on 15.12.2009. B sold this land on 25.09.2011. Mr. A was not liable to tax since the transaction is excluded from transfer u/s 47. However, Mr. B is liable to capital gain tax.

In the hands of Mr. B the holding period shall be taken from 10.01.2007 (i.e. the date on which the previous owner acquired asset) to 25.09.2011 by virtue of explanation to section 2(42A). Hence the asset is long-term and therefore the resultant capital gain is also long-term. There is no dispute about it. But the question is whether the benefit of indexation shall start from 10.01.2007 (i.e. the date on which the previous owner acquired asset) or from 15.12.2009 (i.e. the date on which the assessee became owner)?
The Court accepted that the indexation shall start from 10.01.2007.

CIT Vs. Gita Duggal (2013) (357 ITR 153 (Del):
The exemption u/s 54 is allowed if investment is made in one residential house property. In this case, the assessee constructed a residential building consisting of several floors. The question arose as to whether the exemption u/s 54 shall be restricted to one floor only or the exemption shall be allowed for the whole building consisting of all floors. The Court accepted that all floors constituted one residential house. Hence exemption shall be allowed in respect of all floors.

CIT Vs. Syed Ali Adil (2013) 352 ITR 418 (AP):
In this case, the assessee made investment in two adjacent flats. The builder (from whom the assessee purchased those two flats) had made necessary modification so as to make those two flats as one building. The question arose as to whether the exemption u/s 54 shall be restricted to one flat only or the exemption shall be allowed for the whole building consisting of two flats. The Court accepted that both of the flats constituted one building. Hence exemption shall be allowed in respect of both flats.

Through Finance (No. 2) Act, 2014, section 54 has been amended. Now, the language specifically provides that the exemption u/s 54 shall be allowed in respect of investment made in one house only. It appears that even after amendment in section 54, the judgements of Gita Duggal and Syed Ali Adil are valid because in those judgements, the Court has accepted that the multiple floors or multiple flats constituted one residential house.

CIT v. Gurnam Singh (2010) 327 ITR 278 (P&H):
The assessee claimed exemption u/s 54B in respect of the land purchased by him. However, the same was denied by the Assessing Officer on the ground that the land was registered in the joint name of assessee and his son. The Court allowed exemption.

CIT Vs. KAMAL WAHAL (2013) 351 ITR 4 (DEL) (2013) 351 ITR 4 (DELHI):
The assessee made investment in a residential house solely in the name of his wife and claimed exemption u/s 54. On appeal, the Court allowed. ***(The Court held that the purpose of section 54 is to grant benefit. Further held that the assessee has not made investment in a strange name but in the name of wife which is quite natural in practical life).***

CIT Vs. Ravinder Kumar Arora (2012) 342 ITR 38 (Delhi):
The assessee made investment in a residential property in joint names of himself and his wife and claimed exemption u/s 54F. The entire investment was made by assessee from his pocket and there was no investment of wife. The assessee claimed 100% exemption but the AO restricted exemption to 50%. On appeal, the Court allowed 100% exemption.

DIT VS. MS. JENNIFER BHIDE (2011) 203 Taxman 208:
The assessee made investment in a residential property and bonds. However, the investment was made in the joint names of assessee and his wife. Hence, the AO denied exemption u/s 54 and 54EC. In appeal, the Court allowed.

CIT VS. SAMBANDAM UDAYKUMAR (2012) 345 ITR 389 (Kar):
The assessee made investment in construction of a residential house property and claimed exemption u/s 54F. However, some construction work like flooring, electricity, fitting of doors etc. was pending. The AO did not grant exemption that the construction was not fully completed within the period of 3 years. On appeal, the Court held that it is not necessary that the construction must be completed in all respects. Hence the exemption is allowed.

CIT Vs. RAJIV SHUKLA (2011) 334 ITR 138 (DEL):

The assessee sold depreciable asset and earned short-term capital gain. Thereafter the assessee made investment in a residential house and claimed exemption u/s 54F. The assessee argued that the presumption created in section 50 that the capital gain on sale of depreciable asset shall be short-term is for a limited purpose i.e. for the purpose of section 48 and not for the purpose of section 54F. The court accepted and therefore allowed exemption. ***(Note: Earlier in Assam Petroleum Industries Ltd case, the Gauhati High Court has also allowed exemption u/s 54EC in a similar situation).***

Gouli Mahadevappa Vs. ITO (2013) 356 ITR 90 (Kar):

The assessee sold a plot for Rs. 20 lakh. The Stamp Authority Valuation was Rs. 36 lakh. The assessee invested a sum of Rs. 24 lakh (the investment of 24 lakh was financed from sale consideration of plot Rs. 20 lakh + agricultural income of Rs. 4 lakh) in a residential house property and claimed proportionate exemption as under:

$$\frac{\text{Capital gain of plot X 24}}{36}$$

The AO allowed exemption as under:

$$\frac{\text{Capital gain X 20}}{36}$$

The Court held that the assessee is correct in computing exemption on the basis of 24 lakh irrespective of the source of investment.

Hindustan Unilever Ltd. Vs. DCIT (2010) 325 ITR 102 (Bom.):

In this case, the assessee made investment in bonds within 6 months. However, the bonds were issued / allotted to the assessee after expiry of 6 months. The court allowed exemption u/s 54EC.

Fibre Boards (P) Ltd. Vs. CIT (2015) 376 ITR 596 (SC):

This judgement is not relevant from examination point of view. However, only one point decided in the judgement may be understood – The Court held that for the purpose of exemption u/s 54G, advances given towards purchase of land, building, plant, machinery etc. is also an investment in land, building, plant and machinery. Hence exemption is allowable based on such advances.

CIT Vs. Yatish Trading Co. Pvt. Ltd. (2013) 359 ITR 320 (Bom.):

The assessee is a dealer in shares and securities. The assessee converted a portion of shares held as stock-in-trade into investment. Subsequently, the assessee sold those shares and computed taxable income under two heads, viz. (i) partly under the head "Income from Business" and (ii) partly under the head "Income from Capital Gain". The AO assessed the whole income under the head "Income from Business". On appeal, the Court allowed the approach of assessee.

The High Court accepted that out of total profit, the portion arising on sale of those shares held as investments (i.e., the difference between the sale price and the fair market value on the date of conversion) were to be assessed under the head "Capital gains" and not under the head "Profits and gains of business or profession".

CIT Vs. PARLE PLASTICS LTD (2011) 332 ITR 63:

Under section 2(22)(e), if a closely-held company gives any loan or advance to a shareholder holding minimum 10% voting power, such loan or advance is deemed to be dividend. However, there is one exception. It is specifically prescribed that if any loan or advance is given by the company in its ordinary course of business where the lending of money is a substantial part of the business of the company, the loan or advance shall not be treated as dividend. The facts of this case were such that the loan / advance constituted 42% of total assets of company. Further, if the interest is excluded from net profit of the company, the company would have loss only. On these facts, the Court held that the lending of money was a substantial part of the business of the company and section 2(22)(e) would not apply.

CIT Vs. Vir Vikram Vaid (2014) 367 ITR 365 (Bom):

The assessee was holding 75% shares of a company. He had let out his building to that Company. The company incurred expenditure on construction, repair and renovation in the building for the purpose of its business. The AO held that the expenditure incurred by company was is in the nature of dividend u/s 2(22)(e).

On appeal, the Court held that the expenditure is neither in the nature of loan nor advance to the shareholder and nor any payment for the personal benefit of shareholder. It was merely an expenditure incurred by company for its own business purpose. Hence, there is no dividend.

<u>CIT Vs. Pradeep Kumar Malhotra Vs. CIT (2011) 338 ITR 538 (Cal):</u>
The case is already set out in exam. Hence not discussed.

<u>CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del):</u>
It has been held that section 2(22)(e) would not apply in the case of advance made in the course of the assessee's business as a trading transaction. In this case, the assessee, a travel agency, has regular business dealings with two concerns engaged in holiday resorts. The assessee was involved in booking of resorts for the customers of those two companies and received advance. The Court held that such financial transactions were not in the nature of loans or advances received by the assessee from those concerns and hence section 2(22)(e) shall not apply.

<u>CIT Vs. MANJOO AND CO. (2011) 335 ITR 527 (KERALA)</u>:
The assessee, a lottery agent, was having stock of unsold lottery tickets. The assessee won prize on unsold ticket. The assessee argued that the special rate of 30% u/s 115BB shall not apply. The Court did not accept.

<u>Pramod Mittal v. CIT (2013) 356 ITR 456 (Delhi):</u>
There was a partnership firm. The firm suffered losses. Subsequently, the firm was dissolved. One partner of the firm took over the business of firm and carried on the same business as a proprietary concern. That partner claimed set off of the losses suffered by the partnership firm. The Court did not accept.

<u>CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245 (Kar.):</u>
A Ltd. is having two units, Unit A and Unit B. Unit A is eligible for deduction u/s 80-IA but Unit B is non-eligible.

Position of AY 2013-14 was as under:
Unit A has a profit of Rs. 100 before claiming depreciation of Rs. 120. Thus, Unit A had a net loss of Rs. 20. Unit B has a profit of Rs. 70. Hence loss of Unit A is set off against profit of unit B. The net profit of unit B, after set off, remains only Rs. 50.
The Gross Total Income comes to Rs. 50, deduction u/s 80-IA Rs. Nil and the total income comes to Rs. 50.

Position of AY 2014-15 was as under:
Unit A has a profit of Rs. 200 and Unit B has a profit of Rs. 80. Now, the assessee wanted to claim deduction of Rs. 200 u/s 80-IA.

The Court held that in view of single-source presumption prescribed in section 80-IA(5), the deduction shall be only Rs. 180. (Profit of Unit A Rs. 200 minus the unabsorbed depreciation of Rs. 20 of AY 2013-14 on the basis of single-source presumption).

~~**<u>CIT Vs. Kiran Enterprises (2010) 327 ITR 520 (HP):</u>**~~
~~Freight subsidy (transport subsidy) flows from the incentive scheme framed by the Central Govt. That is not covered within "the profit derived from eligible business" and therefore not eligible for deduction u/s 80-IB.~~ **This decision has been reversed by Hon'ble Supreme Court. The latest decision of Supreme Court in reported in RTP. Please read the decisions set out in RTP, discussed below.**

<u>Liberty India v. CIT (2009) 317 ITR 218 (SC)</u> /
<u>CIT v. Orchev Pharma P. Ltd. (2013) 354 ITR 227 (SC) /</u>
<u>CIT Vs. Jawant Sons (2010) 328 ITR 442 (P&H):</u>
The Court held that the DEPB / Duty drawback are incentives which flow from the schemes framed by the Central Government. Those incentives given by the Govt. are not eligible for the purpose of deduction u/s 80-IB because they are not profits derived from eligible business under section 80-IB.

~~**<u>CIT Vs. Meghalaya Steels Ltd. (2011) 332 ITR 91 (Gauhati):</u>**~~
~~Transport subsidy and interest subsidy are received from Govt. under the incentive schemes framed by the Govt. They are not covered within "the profit derived from eligible business" and therefore not eligible for deduction u/s 80-IB.~~ ~~**However, refund of excise duty is eligible for deduction.**~~ **This decision has been reversed by Hon'ble Supreme Court. The latest decision of Supreme Court in reported in RTP. Please read the decisions set out in RTP, discussed below.**

<u>CIT Vs. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. (2010) 322 ITR 631 (Delhi):</u>
The assessee set up a new industry, which was eligible for deduction u/s 80-IB for 5 years. There was trial

production in March, 1998. The assessee sold one water cooler and refrigerator (i.e. the finished product) in March, 1998. Thus, the assessee was eligible to claim deduction u/s 80-IB from AY 1998-99 to 2002-03. However, the assessee claimed deduction for AY 1999-00 to 2003-04. The assessee argued that there was only a trial production in March, 1998. The real production started in April, 1998. The AO did not accept. On appeal, the Court held that the production and sale has already taken place in March, 1998, although the quantum of production and sale was very small i.e. one cooler and refrigerator only. Hence the court held that the 5 years time-limit shall be AY 1998-99 to 2002-03 only and not AY 1999-00 to 2003-04.

PRAVEEN SONI Vs. CIT (2011) 333 ITR 324 (DEL):

In this case the assessee forgot to claim deduction u/s 80-IB in some initial years. However, in later years the assessee claim deduction (of course within the permissible time-period of section 80-IB). The AO disallowed deduction on the ground that the assessee has not claimed in earlier years. The Court held that even if the assessee has not claimed deduction in earlier years, it cannot be said that the right of assessee has come to an end forever.

CIT v. Govindbhai Mamaiya (2014) 367 ITR 498 (SC):

This case is already set out in exam. Hence not discussed.

CIT v. D.L. Nandagopala Reddy (Individual) (2014) 360 ITR 0377 (Kar):

In this case, a property originally belonged to Hindu Undivided Family (HUF). One of the members of the family (i.e., the assessee's father) went out of the joint family under a release-deed dated 23.11.1927 and the remaining members continued to be the members of HUF. After death of assessee's father (and mother), the assessee became the sole surviving co-parcener. The Court held that when the property came to the assessee's hands, it was not his individual property. It was a property of HUF consisting of assessee himself, his wife and children. Hence the capital gain arising on sale of property shall be taxable in the hands of HUF.

Sudhir Nagpal v. Income-tax Officer (2012) 349 ITR 0636 (P&H):

In this case, the legal heirs (For example – 2 sons) inherited property from their father. The property consisted only of plinths and there was no building. Thereafter they earned rental income from letting out of plinths. The Court held as under:

(1) The rental income of mere plinths without building shall be taxable under the head Income from Other Sources.

(2) The legal heirs had definite share in the property. They had acquired property by way of operation of law. They have not associated together to earn rental income. Further there is nothing to demonstrate that they have acted as AOP. Hence there is no AOP. The income shall be taxable in their individual assessments in the proportion of their individual rights in the property.

MADRAS GYMKHANA CLUB Vs. DCIT (2010) 328 ITR 348 (MAD):

The assessee club is a mutual concern engaged in providing facilities like gym, library etc. to its members. It was not liable to income-tax on the ground of mutuality. The assessee made fixed deposits with corporate members and earned interest income. It argued that the interest income is not taxable due to mutuality concept. The court did not accept. According to Court, the interest income was earned from corporate members only and that too as a matter of deposit and not as a mutual concern. Hence, the interest income does not satisfy the mutuality character.

SIND CO-OPERATIVE HOUSING SOCIETY Vs. ITO (2009) 317 ITR 47 (BOM):

The assessee, a society, charged transfer fee from both incoming members and outgoing members. The dispute arose as to whether such receipt is eligible for benefit of mutuality concept. The Court held that the members, whether incoming or outgoing, have contributed to the common fund of society. Those contributions shall be used for the benefit of members as a class. The society does not have any commercial object. On this basis, the court accepted mutual character of charges recovered by the society.

Indcom Vs. CIT (2011) 335 ITR 485 (Cal):

The outcome of this judgement can be concluded as under:

(a) Umpires / referees render professional or technical services. But they are not sportsmen.

(b) If any payment is made to an umpire / referee who is resident, section 194J shall apply (Because umpires / referees are specifically prescribed in section 194J).

(c) However, if any payment is made to an umpire / referee who is a non-resident, section 194E shall not apply (Because the umpires / referees are not sportsmen). In that case, section 195 shall apply.

CIT v. Anil Hardware Store (2010) 323 ITR 0368 (HP):
This case is already set out in exam. Hence not discussed.

JOINT CIT Vs. ROLTA INDIA LTD (2011) 330 ITR 470 (SC):
A company paying MAT is liable to pay advance-tax u/s 207. Hence if there is any default in payment of advance-tax, the company shall be liable to pay interest u/s 234B and 234C.

N.J. JOSE AND CO (P) LTD Vs. ACIT (2010) 321 ITR 132 (KER):
Already set out in exam. Hence not discussed.

Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 (All):
A search was carried out in the premises of the assessee and gold bars were seized. The assessee voluntarily disclosed some income during the course of search. The assessee filed an application to AO for sale of the gold bars and adjustment of saleproceeds against tax liability on undisclosed income so that his liability to pay interest u/s 234B and 234C can be avoided / reduced. The AO dismissed application on the reasoning that there is no such system in section 132B. The AO held that under section 132B, the sale of bars can be made only for recovery of demand crystallised after completion of assessment and not in advance. The Court accepted the arguments of AO.

Kathiroor Service Co-operative Bank Ltd. v. CIT (CIB) (2014) 360 ITR 0243 (SC):
This case is already set out in exam. Hence not discussed.

Sahara Hospitality Ltd. v. CIT (2012) 211 Taxman 15 (Bom):
Section 127 prescribes that the DGIT / CCIT / CIT **may**, after giving the assessee a reasonable opportunity of hearing, transfer case from AO to another AO. Now, the dispute is whether the opportunity to assessee is mandatory or not. The Court held that the word "may" used in section 127 must be interpreted as "shall" because there is a duty cast upon the DGIT / CCIT / CIT. Hence, it is mandatory to give opportunity of hearing to the assessee.

Lodhi Property Company Ltd. v. Under Secretary, Department Revenue (2010) 323 ITR 441 (Del.):
The assessee committed delay of 1 day in filing return. It filed an application to CBDT u/s 119 for condonation of delay so that it can claim carry forward of losses. The court held that the section 119(2)(b) empowers the CBDT 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. The court accepted that the claim for carry forward of loss falls under the category of '**any other relief under the Act'**. Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

CIT Vs. Govind Nagar Sugar Ltd (2011) 334 ITR 13 (Delhi):
The Court held that section 80 read with 139(3) does not apply to carry forward of unabsorbed depreciation. Hence the unabsorbed depreciation can be carried forward even if return is not filed upto due date.

ORISSA RURAL DEVELOPMENT CORP LTD (2012) 343 ITR 316 (ORISSA):
The assessee submitted original return. Subsequently, it filed a revised statement of income but did not submit any revised return. But the AO ignored revised statement of income. The Court held that revised statement of income does not have any existence in the eyes of law. Hence the AO was justified in ignoring the revised statement. Further held that a fresh claim before Assessing Officer can be made only by filing a revised return and not by mere filing of revised statement of income. ***(Note: Earlier the Supreme Court has also given similar ruling in Goetze India Ltd. case).***
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SMT. A KOWSALYA BAI vs. UOI (2012) 346 ITR 156 (KAR):
In this case, the total income of assessee was less than MANCT. Hence, the assessee was not having PAN. The assessee was getting interest on FDR from a bank. The assessee submitted declaration in Form No. 15G / 15H to the bank for non-deduction of TDS. However, the bank did not accept declaration because under section 206AA, a declaration in Form No. 15G / 15H is not valid unless it contains PAN. Now, the Court has held that the requirement to obtain compulsory PAN u/s 139A arises only in case of a person having total income exceeding the maximum amount not chargeable to tax (MANCT). In other words, section 139A does not require obtaining of PAN if the total income does not exceed MANCT. The Court further accepted that section 206AA cannot travel against section 139A. On this basis, the court held that the declaration in Form 15G /15H is valid.

KELVINATOR INDIA LTD. (2010) 320 ITR 561 (SC) / AVENTIS PHARMA LTD. Vs. ACIT (2010) 323 ITR 570 / H.K. BUILDCON LTD. Vs. ITO (2011) 339 ITR 535 (GUJ):

Section 147 is meant for assessment or re-assessment of escaped income only. This section is not for review of a completed assessment. Hence the department cannot take action u/s 147 on the basis of "change in opinion".

ACIT Vs. ICICI SECURITIES PRIMARY DELAERSHIP LTD (2012) 348 ITR 299 (SC):
In this case, the AO completed assessment u/s 143(3) after examining the books of accounts. Subsequently, after expiry of 4 years, the AO took action 147 on the ground that it has been noticed that the assessee had incurred loss in trading in shares and such loss was speculative in nature u/s 73, which cannot be set off against non-speculative income. The assessee argued that proviso in section 147 prohibits re-assessment after 4 years because there was no failure on the part of assessee in disclosing material facts necessary for his assessment. The assessee claimed that it has produced all books of account during the course of original assessment u/s 143(3) and nothing new has been identified by the AO. On that basis, the assessee claimed support of Proviso in section 147. The Court accepted.

Hemant Traders Vs. ITO (2015) 375 ITR 167 (Bom):
The department carried out survey u/s 133A. However, no material indicating any kind of escapement was found during survey. Despite this, the AO issued notice u/s 148. The assessee challenged the validity of notice. The assessee claimed that simply because a survey has been conducted u/s 133A, the department cannot take action u/s 148, when there is no material to indicate escapement. The Court accepted.

Godrej Industries Ltd. Vs. DCIT (2015) 377 ITR 1 (Bom):
The assessee is a company. It filed Return of Income declaring normal taxable income as well as MAT. The MAT liability was higher than normal tax liability. Subsequently, the AO issued notice u/s 148 for the reason that the assessee has not made some addition, required to be made in computing book-profit for the purpose of MAT and hence there was escapement.
The addition, alleged by AO to have escaped, was not valid. Hence the notice issued by AO u/s 148 was invalid. Per chance, the Govt. amended section 115JB in subsequent budget, wherein the addition alleged by AO was also prescribed in section 115JB with retrospective effect. Now, the AO claimed that the notice u/s 148 has become valid because the amendment was retrospective.
The assessee argued that even if the impugned addition has been validated with retrospective effect, the notice u/s 148 was not valid because at the time when notice u/s 148 was issued, the law did not permit that addition. In a way, the assessee argued that the subsequent retrospective amendment of law could not validate the notice u/s 148 which was based on a ground which was not valid at the time notice u/s 148 was issued. The Court accepted.

RANBAXY LABORATORIES LTD Vs. CIT (2011) 336 ITR 136 (Delhi) / PRIYA LIMITED Vs. ITO 133 ITD 38 (MUM):
The conclusion of court is as under:
(a) If the assessment is re-opened u/s 147 on one or more points and any **one or all** of such points is finally taken into account in completing assessment u/s147 r/w 143(3), the assessment shall be valid. In such a case the AO can assess not only that income for which notice u/s 148 was issued but also any other income which comes to his notice during the course of proceedings of section 147.
(b) However, if the assessment is re-opened u/s 147 on one or more points but **none** of such points is finally taken into account in completing assessment u/s 147 r/w 143(3) i.e. the assessment u/s 147 is completed on the basis of some other points only, the assessment shall not be valid. **[Note: Regarding point (b), contrary view has been given in CIT v. Mehak Finvest P Ltd (2014) 367 ITR 769 (P&H)].**

N. GOVINDARAJU Vs. ITO (2015) 377 ITR 243 (Kar):
In this case, the Court accepted the decision of **CIT v. Mehak Finvest P Ltd (2014) 367 ITR 769 (P&H)]** and rejected the decision of **Ranbaxy Laboratories Ltd. Vs. CIT (2011) 336 ITR 136 (Delhi) / Priya Limited Vs. ITO 133 ITD 38 (Mum).**

Vipin Walia v. ITO (2016) 382 ITR 19 (Del):
A notice u/s 148, dated 27.03.2015 was addressed to the assessee for AY2008-09. The notice got returned unserved with the postal authorities endorsing on it the remarks "addressee expired". Subsequently the AO issued a letter dated 15.06.2015 to the legal heirs to complete the proceedings for the assessment year 2008-09. The assessee, being one of the legal heir of the deceased, wrote to the AO pointing out that the proceedings initiated u/s 148 were barred by limitation. The AO proceeded to make the assessment u/s 147 which the assessee challenged by means of a writ.

The High Court referred section 159 which sets out the procedure to be adopted when the assessment is made on the legal representatives. Section 159(2)(a) prescribes that any proceeding already taken against an assessee 'before his death' shall be deemed to have been taken against the legal representative. Further, section 159(2)(b) prescribes that any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative of the deceased assessee, even if it had not been taken while the assessee was alive.

The AO initiated proceedings under section 147 against the deceased for the assessment year 2008-09. The time-limit for issue of notice was 31.03.2015 (since the income escaping assessment exceeded Rs. 1 lakh). On 27.03.2015 when the notice was issued, the assessee was already dead. Thus, the notice u/s 147 was remained unserved. Hence, there was no proceeding pending against the deceased. Therefore section 159(2)(a) is not applicable. The Court further held that if the AO intended to proceed under section 147, it could have done so prior to 31.03.2015 by issuing a notice to the legal representatives of the deceased and apply section 159(2)(b). Beyond that date, the AO cannot take help of section 159(2)(b). Finally, the Court held that the action of AO was invalid.

CIT v. PP Engineering Work (2014) 369 ITR 433 (Del):
There was a cash credit entry in the books of financial year 1999-2000. The AO taxed such cash credit u/s 68 in the AY 2001-02. The matter travelled upto ITAT level. The ITAT held that the cash credit was chargeable in the AY 2000-01 and not AY 2001-02. In short, the ITAT gave a finding that the cash credit u/s 68 was assessable in a different assessment year. On the basis of ITAT order, the AO issued notice u/s 148 in respect of A.Y. 2000-01 after expiry of 6 years' time-limit. The dispute arose whether the notice u/s 148 was valid? The Court held that the notice was valid due to specific provision of section 150(1) read with Explanation 2 to section 153.

Allanasons Ltd. v. DCIT (2014) 369 ITR 648 (Bom):
The assessee filed its return of income claiming deduction under Chapter VI-A. During the course of scrutiny, the AO allowed deduction but at a reduced figure. Thereafter, the AO re-opened assessment u/s 147 after expiry of 4 years on the ground that subsequent tribunal and court decisions held that the deduction was not allowable. The assessee challenged re-opened proceeding of section 147 on the basis of Proviso to section 147 which prescribes that in a case where original assessment has been made u/s 143(3), no action shall be taken u/s 147 after expiry of 4 years from end of the relevant assessment year unless the escapement is because of assessee's failure in submitting all materials facts necessary for his assessment.
The Court accepted that in the original assessment, the AO has very well examined the deduction claimed by the assessee and that is why he reduced the amount of deduction. This clearly proves that there was no failure on the part of assessee in disclosing all materials facts relating to deduction. Therefore, the assessee will get the benefit of Proviso to section 147.

Amarnath Agrawal v. CIT (2015) 371 ITR 183 (All):
The AO issued notice u/s 148 after expiry of 4 years from end of the relevant assessment year without recording the quantum of escaped income. The assessee argued that under section 149, notice after expiry of 4 years (but before expiry of 6 years) can be issued only if the escaped income is likely to be Rs. 1 lakh or more. Hence the AO must mention the quantum of escaped income in the reasons recorded by him. If the AO does not mention the quantum of escaped income, the reasons would be invalid. Hence the whole proceeding of section 147 shall be invalid. The Court accepted.

CIT Vs. HARAYANA STATE HANDLOOM AND HANDICRAFTS CORPORATION LTD (2011) 336 ITR 699 (P&H):
The Assessing Officer issued intimation u/s 143(1). Subsequently the case was selected for security and for this purpose a notice was issued u/s 143(2). Thereafter the AO issued a notice u/s 154 for rectification of intimation u/s 143(1). Held that since the proceedings for assessment were already pending u/s 143(2), the rectification notice u/s 154 is not valid. In short, the court has accepted that the multiplicity of proceedings should be avoided.

CIT Vs. Tony Electronics Ltd (2010) 320 ITR 328 (Del):
There was an appeal against the assessment order passed by the AO. Thereafter, there was a need of rectifying assessment order u/s 154. The question arose whether the time-limit of 4 years shall be applicable with reference to the date of original assessment order or the date of appeal-order. The Court held that once an assessment order is carried in appeal, it merges with the order of appellate authority and thus, the original order ceases to exist. Hence, the time-limit of 4 years shall be computed with reference to the date of appeal order.

<u>Hyosung Corporation v. AAR (2016) 382 ITR 371 (Del)</u>:
The assessee-company, a non-resident, was regularly assessed from AY 2008-09 onwards. It filed an application for advance ruling for the assessment years 2008-09, 2009-10 and 2010-11.

For AY 2008-09 and 2009-10, the AO had already issued notices u/s 143(2) and also detailed questionnaires u/s 142(1) before filing of application by the assessee. For AY 2010-11, notice u/s 143(2) was issued before the date of filing of application with the AAR but the questionnaire u/s 142(1) was served on the assessee after the date of filing of application with the AAR. The department claimed that the AAR applications for all the three assessment years were invalid because there were pending proceedings against the assessee.

The High Court observed that the assessee received notices u/s 143(2) in a standard pre-printed format. The High Court noted that mere issue of notice under section 143(2) in pre-printed format will not amount to 'already pending' proceedings for the purpose of applying Proviso to section 245R(2). However, issue of notice under section 142(1) accompanied by a questionnaire would make the proceedings pending. Thus, the Court held that for AY 2008-09 and 2009-10, the applications for advance ruling were invalid. But for AY 2010-11, the application for advance ruling was valid.

<u>CIT Vs. Krishna Capbox (P) Ltd. (2015) 372 ITR 310 (All)</u>:
The AO passed order u/s 143(3). Subsequently, the CIT took action u/s 263 on the ground that the AO had not made enquiry on following aspects:
(a) Non-verification of source of investment in fixed assets
(b) Non-confirmation of sundry creditors
(c) Non-enquiry of unsecured loans
(d) Not obtaining bank statements
(e) Deduction of freight paid without TDS, etc.
The assessee submitted that the documents relating to all these points were duly filed to the AO during the course of scrutiny proceedings and the AO has examined them. However, the AO has not mentioned or discussed about his examination in the body of assessment order.
The assessee claimed that just because the AO has not mentioned or discussed his action in the assessment order, it cannot be said that the AO has not made enquiry. Hence, the CIT is wrong in making revision u/s 263. The Court accepted.
[Note: Finance Act, 2015 has amended section 263. After that amendment, the scope of section 263 has widened. But please note that even after amendment of section 263, this decision of CIT Vs. Krishna Capbox shall apply because in this case, the AO has made enquiry / examination. The only thing which has happened is this case is that the AO has not mentioned or described his enquiry / examination in the body of assessment order].

<u>CIT Vs. Fortaleza Developers (2015) 374 ITR 510 (Bom):</u>
In this case, an issue had been decided by CIT(A) in favour of assessee but the department filed next appeal to ITAT. Meantime the CIT took action u/s 263 in respect of the issue decided by CIT(A). The assessee claimed that the action of CIT u/s 263 is invalid.
The Court held that under section 263, there is a specific prohibition to the effect that the CIT cannot exercise revision in relation to the matters which have been considered and decided by CIT(A). Hence, in the present case, the CIT was wrong in applying section 263.

<u>Samsung India Electronics P. Ltd. v. DCIT (2014) 362 ITR 460 (Del):</u>
The assessee was subjected to regular assessment for AY 2006-07. Subsequently, the AO issued notice u/s 148. Against this notice, the assessee straightaway filed a writ petition before the High Court on the ground that the reassessment notice was *ex facie* malafide, unjustified and illegal.

During writ proceedings, the High Court observed that the Apex court has, in the case of GKN Driveshafts (India) Ltd. v. ITO [2003] 259 ITR 19 (SC), laid down that when a notice under section 148 is issued, the proper course of action for the assessee is to file a return and if he so desires, to seek reasons for issuing notice. The AO is bound to furnish reasons within a reasonable time. On receipt of the reasons, the assessee is entitled to file objections to issuance of notice and the AO is bound to dispose of the objections by passing a speaking order.

The High Court found that, in the present case, the assessee has not filed objections before the AO. The assessee has directly approached the Court by way of the writ petition. The Court held that it will not be appropriate and proper to permit and allow the assessee to bypass and forgo the procedure laid down by the Supreme Court in GKN Driveshafts (India) Ltd. (supra), since the said procedure has been almost universally followed and has helped cut down litigation and crystallise the issues.

In the result, the High Court dismissed the writ petition.

CIT Vs. Lark Chemicals Ltd. (2014) 368 ITR 655 (Bom) / CIT Vs. ICICI Bank Ltd (2012) 343 ITR 74 (BOM):
This case is already set out in exam. Hence not discussed.

CIT v. New Mangalore Port Trust (2016) 382 ITR 434 (Karn):
The AO passed order of assessment u/s 143(3). The assessee went in revision before CIT u/s 264. The CIT passed order u/s 264. Subsequently, the CIT took action u/s 263. The assessee argued that the action of CIT u/s 263 is invalid.

The Court held that under section 263, the CIT can revise any order passed by a subordinate authority (i.e. AO.) But in the present case, the order passed AO has already merged in the order of CIT u/s 264. Hence, after revision u/s 264, the order of AO is not in existence at all. Therefore the CIT cannot act u/s 263. ***[Tutorial Note: Students may please note that the Explanation 1 to section 263 prescribes that where any order of AO has been subject matter of appeal to CIT(A), the power of CIT u/s 263 shall extend to such matters as had not been considered and decided in such appeal. Thus, Explanation 1 recognises the "doctrine of partial merger". But please note that the Explanation 1 recognises the doctrine of partial merger only in a case where the order of AO has become subject-matter of appeal to CIT(A). This Explanation does not recognize the "doctrine of partial merger" in a case where the order of AO has become subject-matter of revision u/s 264].***

Sanchit Software and Solutions Pvt. Ltd. v. CIT (2012) 349 ITR 404 (Bom.):
The assessee earned exempted income but did not claim exemption in original return. In short, the assessee paid tax on exempted income. The department processed intimation u/s 143(1). Subsequently, the assessee submitted application u/s 264 to CIT for revision [because the time-limit u/s 139(5) for submission of revised return had expired]. The CIT rejected application u/s 264 on the ground that there was no mistake in the intimation issued by department u/s 143(1) since the assessee has himself not claimed exemption in the Return. On appeal, the Court held that the power of CIT u/s 264 is wide enough to accept the claim of assessee. The High Court observed that the entire object of administration of tax is to secure the revenue for the development of the country and not to charge the assessee more tax than which is due and payable by the assessee. In this context, the High Court referred to the CBDT Circular dated 11.04.1955 and held that the departmental officers should not take advantage of the assessee's mistake. Finally, held in favour of assessee.

CIT Vs. Pruthvi Brokers & Shareholders (2012) 208 Taxman 498 (Bom):
A fresh claim before AO has to be made only by filing a revised return of income. However, a fresh claim before appellate authority can be made even without filing a revised return of income.

CIT Vs. EARNEST EXPORTS LTD (2010) 323 ITR 577 (BOM) /
LACHMAN DASS BHATIA HINGWALA (P) LTD VS. ACIT (2011) 330 ITR 243 (DELHI):
The ITAT has power to recall (i.e. withdraw) its order, if the order suffers from an apparent error, mistake or omission. However, the ITAT does not have power to review its own order. The Court held that power to recall is different from power to review.

CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112 (SC):
The Supreme Court has held that the High Court has inherent power to review its own order.
[Note: Please note that earlier various courts have held that the High court does not have power to review its own order. One such judgement was Deepak Kumar Garg v. CIT (2010) 327 ITR 448 (MP). Now, after judgment of Supreme Court, those earlier judgements shall not apply].

CIT Vs. Muthoot Financiers (2015) 371 ITR 408 (Del);
The assessee-firm received loans from its partners in cash. The AO applied section 269SS and imposed penalty u/s 271D. The High Court deleted penalty due to following reasons:
(a) A partnership firm and its partners are one and same. Basically, a firm is a group of partners only. A firm is not a distinct and separate person from its partners in its true sense, although for the limited purpose of taxation under Income-tax Act, 1961, a firm is a separate taxable entity. Hence it is not a case of loan taken by a person from another person. Therefore section 269SS is not applicable.
(b) Further, there was no dispute as regards the money brought by partners. The source of money is

also not doubted. The transaction was bonafide and there was no attempt to avoid any tax liability. Hence, the assessee can take benefit of section 273B (i.e. reasonable cause).

CIT v. V. Sivakumar (2013) 354 ITR 9 (Mad.):
The assessee was a partner in a partnership firm and also had a sole-proprietary concern. The partnership firm advanced a loan to the proprietary concern in cash. The AO treated this as violation of section 269SS and therefore imposed penalty u/s 271D.

The assessee contended that the amount is taken in the capacity of partner and therefore, there is no violation of section 269SS. The assessee further argued that (i) the partnership firm is merely a group of persons, it does not have a separate legal entity and there is no separate identification between the firm and the partner, (ii) the transaction is properly verifiable and there is no reason to doubt the genuiness of transaction, (iii) The assessee has acted bonafide and that was a reasonable cause u/s 273B.

On appeal, the Court accepted all these submissions of assesee.

CIT Vs. TRIUMPH INTERNATIONAL FINANCE (I) LTD (2012) 345 ITR 270 (BOM):
The assessee had taken a loan from another person (i.e. the lender). During the year, the assessee sold shares to the lender. The sale-price of shares was adjusted against the outstanding loan. In short, the assessee repaid loan by way of sale of shares and not through A/c payee cheque. The AO took a view that it amounted to contravention of section 269T and therefore imposed penalty u/s 271E. The assessee proved the bonafides of transaction and further claimed that it was done in order to avoid the circular-transfer of funds.
On appeal, the High Court held that technically there was a contravention of section 271E (because the assessee has not repaid through A/c payee cheque), yet penalty is not imposable u/s 271E because the assessee gets benefit of section 273B (reasonable cause). The Court accepted.

UOI Vs. BHAVECHA MACHINERY AND OTHERS (2010) 320 ITR 263 (MP):
There was delay in filing of return of income. The department launched prosecution u/s 276CC. The language of section 276CC provides that the prosecution can be launched in a case where there is a willful delay in filing of return. In this case, the department was not able to prove that there was any willful attempt of assessee. Hence the court held that the prosecution cannot be launched.

Dr. Manoj Kabra Vs. ITO (2014) 364 ITR 541 (All):
Mr. A purchased a property from Mr. B. Prior to the sale, the income tax assessment of Mr. B had been completed and a certain demand was payable by Mr. B. The AO issued a notice u/s 281 to show cause as to why the sale deed executed in his favour (Mr. A) should not be treated as a void document. Mr. A relied upon the decision of Supreme Court in the case of TRO Vs. Gangadhar Vishwanath Ranade (Decd.) (1998) 234 ITR 188, where it was held that the section 281 of the Income-tax Act,1961 is only a declaratory provision and not an adjudicatory provision entitling the income-tax authority to declare a document as a void document. The Court accepted that u/s 281 of Income-tax Act,1961, the AO has no jurisdiction to *suo moto* declare the sale as void. The AO must apply the procedure of Transfer of Property Act, 1882.

~~CIT v. ITC Ltd. (2011) 338 ITR 598 (DEL):~~
~~The assessee is a hotel. It collected / received tips from its customers. Thereafter, the assessee distributed tip moneys to its employees. The AO claimed that the tip moneys distributed by the assessee to its employees was also a part of salary payment and hence TDS was required u/s 192. But the assessee argued that TDS was not applicable. On appeal, the High Court accepted arguments of AO and held that TDS was required.~~ **This decision has been reversed by Hon'ble Supreme Court. The latest decision of Supreme Court is reported in RTP. Please read the decisions set out in RTP, discussed below.**

CIT Vs. Avenue Super Chits (P) Ltd. (2015) 375 ITR 76 (Kar):
The question arose – Whether the dividend paid/distributed by a Chit Fund to the subscribers is in the nature of "interest" and therefore the requirement of TDS u/s 194A shall be applicable?
The Court held that the "dividend" distributed by a Chit Fund to its subscribers is not in the nature of "interest". Hence, TDS requirement shall not be applicable.
[Note: The ICAI has given a practical example in "Select Case" to clarify the concept of Chit Fund and dividend distribution by chit funds. Please refer that example for a better understanding].

CIT v. Hindustan Lever Ltd. (2014) 361 ITR 0001 (Kar.):
The assessee failed to deduct TDS u/s 194B in respect of the winnings, which were wholly in kind. The

dispute arose whether the AO can treat the assesee in default u/s 201?

The Court held that:

- Section 194B does not require the payer to deduct TDS in case of winning wholly in kind. But the Proviso to section 194B requires the payer to ensure that the tax is paid by the payee (i.e. the winner of the prize) before the winning is released to the payee.
- Section 201 is applicable only in a case where the payer fails to deduct or pay TDS. That section is not applicable in a situation covered under Proviso to section 194B.
- Non-compliance of Proviso to section 194B attracts only penalty u/s 271C and prosecution u/s 276B. But section 201 is not attracted.

Finally, the Court held that section 201 cannot be applied.

Ajmer Vidyut Vitran Nigam Ltd., In re (2013) 353 ITR 640 (AAR):

The electricity business has three segments, viz. generation, transmission and distribution. The assessee is engaged in distribution. It paid transmission charges and SLDC (State Load Dispatch Centre) charges to a transmission company. The transmission charges were paid for transmission of electricity from the point of generation to the point of distribution. The SLDC charges are statutory charges in terms of Electricity Act, 2003.

The AAR has held that:

- the transmission charges paid by assessee to the transmission company are in the nature of "fee for technical service" and therefore it attracts section 194J.
- However, SLDC charges are of statutory nature and not for any work or service. Hence neither section 194J nor section 194C is applicable to SLDC charges.

CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378 (SC):

The dispute is -- Whether the stamp vendors are agents of the State Government or whether the sale of stamp papers by the State Government to the stamp vendors is on "principal-to-principal" basis involving a "contract of sale". The Court observed that the crucial question is whether the ownership in the stamp papers passes onto the stamp vendors when the State Govt. delivers stamp papers on payment of discounted price. The Court examined Gujarat Stamp Supply and Sales Rules, 1987 and found that the stamp vendors, while taking delivery of the stamp papers from the Government offices, are purchasing the stamp papers. Finally, the Court held that the provisions of section 194H shall not apply.

CIT Vs. Intervet India (P) Ltd (2014) 364 ITR 238 (Bom);

The assessee-company sold its products through the channel of distributors/stockists. It introduced a sales promotion scheme to boost sales by way of product discounts and product campaign. It passed on the incentives to distributors/stockists by way of sales credit notes. The AO held that the assessee was paying commission / brokerage to those stockists/distributors for the services rendered by them for buying and selling goods, on the basis of quantum of sales effected. Thus, the AO held that the incentive was in the nature of commission/brokerage. Hence section 194H shall be applicable.

On appeal, the Court found that the relationship between the assessee and distributors/stockists was of **principal to principal**. The assessee sold its goods to distributiors/stockists and thereafter those distributors/stockist sold goods in retail market. The incentive given by the assessee to its stockists/distributors was not for any service performed by distributors/stockist for the assessee. The incentive was in the nature of discount only. Hence section 194H shall not apply.

BHARTI CELLULAR LTD Vs. ACIT (2011) 244 CTR (CAL) 185 /
VODAFONE ESSAR CELLULAR LTD (2011) 141 TTJ (CHENNAI) 461:

The franchisees selling recharge coupons are agents of Bharti Ltd. The relationship between Bharti Ltd and its franchisees is not in the nature of principal-to-principal. The relationship is in the nature of principal-to-agent. The franchisees are merely acting as middlemen. Hence, the discount given by Bharti Cellular to its franchisees in respect of recharge coupons is in the nature of commission and section 194H is applicable **[Contrary view in ACIT Vs. Idea Cellular Ltd. (29) DTR 237 (Hyd)].**

CIT VS. QATAR AIRWAYS (2011) 332 ITR 253 (BOM):

In this case, the airline company sold tickets to its agents at a minimum fixed price. The agents were permitted to sell those tickets at a higher price, subject to maximum upto the published price. The airline company also paid fixed commission @ 9% to the agents, on which it deducted TDS. Now, the dispute was whether the difference of minimum fixed price and published price can be said to be additional commission and TDS would be deductible u/s 194H. The Court held that the published price was the maximum price. The agents were allowed to sell tickets at any price below the published price. The airline company would not be in a position to know the exact price for which the tickets shall be sold by the agents. Hence the difference between minimum fixed price and published price cannot be said to be commission. Hence, the TDS would not be deductible. *[**Note: In CIT Vs. Singapore Airlines Ltd (2009) 319 ITR 29, the billing analysis statement clearly indicated the extra-commission in the form of special commission that was paid to travel agent with reference to the deal code. Hence, the Court held that the extra-commission was ascertainable by the airlines company and therefore tax was deductible on extra-commission].***

CIT v. Japan Airlines Co. Ltd. / CIT Vs. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC):

There was a dispute between assessee and department as to whether the landing and parking fee paid by an airlines company to the Airport Authority of India is within the meaning of "rent" u/s 194-I or payment for carrying out work u/s 194C. Even the High Courts had also given controversial judgements on this point. Now, the Supreme Court has held that the charges paid to the Air Port Authority of India for landing and take-off services as well as for parking of aircrafts are not simply for the "use of the land". Those charges were for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport. Thus, the fee / charges were paid for carrying out work and not for mere use of land. The use of land was a part of the whole contract of carrying out work. Finally, the Court held that the TDS shall be deductible u/s 194C and not u/s 194-I.

Indus Towers Ltd. v. CIT (2014) 364 ITR 114 (Del):

The assessee owned a network of telecom towers and infrastructure services which were let out to telecom operators. The question arose as to under which provision, the telecom operators shall deduct TDS on payment of rent? The Court held that the telecom towers and infrastructure constituted "plant and machinery". Hence it was a case of payment for use of plant and machinery. Therefore TDS shall be deducted @2% u/s 194-I.

CIT VS. Senior Manager, SBI (2012) 206 Taxman 607 (All):

The assessee paid rent of a building. The building was co-owned and the share of each co-owner was definite and ascertainable. The aggregate rent paid to the co-owners exceeded Rs. 1,80,000 but the share of each co-owner did not exceed Rs. 1,80,000. Held that TDS is not required u/s 194-I.

CIT (TDS) Vs. SHREE MAHALAXMI TRANSPORT CO. (2011) 339 ITR 484 (GUJ):

The assessee made payments for hiring of dumpers and deducted tax u/s 194C. The department took a view that tax was deductible u/s 194-I.The assessee argued that it did not take any plant, machinery etc. on rent. The assessee further argued that the nature of agreement between him and payee was for shifting of materials from place to another and not of renting of dumpers. On this basis, the assessee claimed that it has deducted proper tax u/s 194C. The Court accepted.

CIT Vs. Manipal Health Systems (P) Ltd. (2015) 375 ITR 509 (Kar):

In this case, a hospital paid professional fee to its doctors and deducted TDS u/s 194J. The agreement between the hospital and doctors demonstrated:

(a) The remuneration to doctors was based on number of patients checked by them and the treatment given to the patients.
(b) Those doctors were not entitled to gratuity, provident fund, leave travel allowance etc.
(c) The timings of doctors were fixed.
(d) The doctors cannot have private practice.

On the basis of point No. (c) and (d), the department argued that the doctors were employees and therefore the TDS should be deducted u/s 192.

The assessee argued that the point No. (c) and (d) were incorporated in the agreement only to make the doctors loyal and faithful and to get the focused attention of doctors. Those conditions did not make the doctors employees. The assessee claimed that, in the present case, the doctors were independent professionals and not salaried employees. The Court accepted.

CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC):

The assessee company was engaged in the business of share broking, depositories, mobilisation of deposits and marketing public issues. Being a member of the Bombay Stock Exchange, it made payment to the Stock Exchange by way of transaction charges in respect of fully automated online trading facility and other facilities. These services are available to all the members of the stock exchange in respect of every transaction that is entered into. The department claimed that TDS is deductible u/s 194J considering such transaction charges as "fees for technical services".

The Apex Court made the following observations:

- The services provided by the stock exchange are available to all members in respect of every transaction that is entered into. There is nothing special, exclusive or customized in the service that is rendered by the stock exchange.
- A member who wants to conduct his daily business in the stock exchange has no option but to avail such services. Each and every transaction by a member involves the use of such services provided by the stock exchange for which the member is required to pay transaction charge based on the transaction value besides charges for the membership of the stock exchange.
- Technical services like managerial and consultancy service are in the nature of specialised services made available by the service provider to cater to the special needs of the customer.
- However, there is no exclusivity in the services rendered by the stock exchange and each and every member has to avail such service in the normal course of trading in securities in the stock exchange.

Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract section 194J.

CIT v. V.S. Dempo & Co P Ltd (2016) 381 ITR 303 (Bom) (FB):

We are aware that TDS u/s 195 is not required to be deducted out of payment of shipping freight made to foreign shipping companies *[Earlier the CBDT has clarified in a Circular that the foreign shipping companies are covered under premature taxation system prescribed u/s 172 and therefore TDS need not be deducted]*. Now, the Court has held that no TDS shall be deductible out of demurrage charges payable to a foreign shipping company because such demurrage charges are covered under premature taxation system of section 172.

DIT V s .Wizcraft International Entertainment (P) Ltd. (2014) 364 ITR 227 (Bom):

The assessee (an event management company) engaged the services of a foreign agent in order to bring artistes to India. The assessee made following payments:

(i) Commission to overseas agent;
(ii) Reimburshment of travel expenses of artistes; and
(iii) Fee to the artistes.

The Court held that the position of TDS shall be as under:

(i) Commission to overseas agent shall not attract TDS in India because the foreign agent has performed all services outside India. He contacts artistes outside India. He has not done any activity in India.
(ii) Reimburshment of travel expenses of artistesis is not an income at all. Hence there would be no requirement of TDS.
(iii) However, fee to the artistes shall attract TDS in India because the artistes have given performance in India and therefore the fee is chargeable to tax in India.

CIT v. Priya Blue Industries (P) Ltd (2016) 381 ITR 210 (Guj):

The assessee, engaged in ship breaking activity, sold old and used plates, wood etc. It did not collect TCS. The AO claimed that such items were in the nature of "scrap" and therefore, TCS was required. The assessee claimed that although such items are commercially called "scrap" in practical life, they are usable as such and hence they do not fall within the definition of 'scrap' prescribed in section 206C. The Court found that the plates, wood etc. were usable as such. Hence they were not "scrap". Therefore TCS was not required.

CIT v. Bhagat Construction Co (P) Ltd (2016) 383 ITR 9 (SC):

The assessment order passed did not contain any direction for the payment of interest u/s 234B. But the amount of interest payable u/s 234B was contained in the Income-tax Computation Form (I.T.N.S 150) annexed with the order of assessment. The assessee claimed that he was not liable to interest u/s 234B in absence of specific direction in the order of assessment.

The Court observed that Form I.T.N.S 150 is also a form for determination of tax payable and when it is signed or initialled by the AO, it is certainly an order in writing determining the sum payable wiithin the meaning of section 143(3). This Form must be treated as part of the assessment order. Hence the assessee was liable to pay interest.

PART : (C) – “RTP FOR MAY, 2017” PUBLISHED BY ICAI

Notification No. 43 / 2016 dated 02.06.2016*:*

Section 14A prescribes that any expenditure incurred by an assessee for the purpose of earning **income which does not form part of total income** (i.e. Exempted income), shall not be allowed as deduction in computing taxable income of any head. In short, section 14A disallows deduction of expenditure incurred for earning exempted income.

Example – If a person borrows money for investment in shares of an Indian company, the deduction of interest is not allowed because the dividend received from Indian company is exempted u/s 10(34).

How much disallowance - Rule 8D prescribes the method for ascertaining quantum of disallowable expenditure. This Rule has been substantially amended. The latest provision of Rule 8D is as under:

(1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with --

   (a) the correctness of the claim of expenditure made by the assessee; or

   (b) the claim made by the assessee that no expenditure has been incurred

   in relation to any exempted income, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to the exempted income shall be the **aggregate of following amounts**:

   (i) **Direct Expenditure** – i.e. the amount of expenditure directly related to exempted income;

   (ii) **Standard amount to cover composite/indirect expenditure –** 1% of the *annual average of the monthly averages of the opening and closing balances of the value of investments*, from which exempted income is derived.

Overall cap over disallowance - It is specifically prescribed that the amount of disallowance calculated as above, shall not exceed the **“total expenditure claimed by the assessee”**. *[There would be controversies over the interpretation of **“total expenditure claimed by the assessee”].***

Notification No. 47 / 2016 dated 17.06.2016*:*

The Govt. has notified that no tax shall be deducted at source out of payments of following nature made by any person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934 (excluding a foreign bank) —

(i) Bank guarantee commission,

(ii) Cash management service charges,

(iii) Depository charges on maintenance of DEMAT accounts ,

(iv) Charges for warehousing services for commodities,

(v) Underwriting service charges,

(vi) Clearing charges (MICR charges) and

(vii) Credit card or debit card commission for transaction between the merchant establishment and acquirer bank.

Notification No. 66 / 2016 dated 09.08.2016*:*

“E-Return intermediary” means an intermediary who is qualified to receive Income-tax Returns from assessees in physical form, digitize those physical Returns and transmit the same electronically to a server designated by department. Thus, E-Return intermediary acts as an intermediary between the assessees and Income-tax Department ***[The concept is similar to E-Mitra]***.

Till now, a firm of Chartered Accountants or an Advocate (who holds PAN) was only qualified to be an E-Return intermediary. Now, a firm of Company Secretary or a Cost Accountant or Tax Return Preparer (TRP) (who holds PAN) would also qualify to be an E-Return Intermediary.

Notification No. 75 / 2016 dated 19.08.2016*:*

We are aware that the section 206(1E) prescribes as under:

“Nothing contained in section 206C(1D) in relation to sale of any goods (other than bullion or jewellery) or providing any service shall apply to such class of buyers who fulfill such conditions, as may be prescribed.”

Now, the Govt. has notified that the section 206C(1D) shall not apply *in relation to sale of any goods (other than bullion or jewellery) or providing any service* to the following cases of buyers:

(i) Government

(ii) Embassies, Consulates, High Commissions, Legation or Commission and Trade Representation of a foreign State.

<u>Notification No. 89 / 2016 dated 04.10.2016</u>*:*
This Notification is for section 35ABA. Please refer RTP.

<u>Notification No. 94 / 2016 dated 17.10.2016</u>*:*
This Notification is for section 115QA to 115QC. Please refer RTP.

<u>Circular No. 12/2016 dated 30.05.2016</u>*:*
We are aware that in the case of **TRF Ltd.**, the Supreme Court held that for the purpose of allowing deduction of bad debt u/s 36(1)(vii), it is sufficient to write off the relevant debt in the books of accounts. It is not necessary for the assesee to establish that the debt has become bad. Now, the CBDT has also clarified that the deduction of bad debt shall be admissible u/s 36(1)(vii) if it is written off in books of account and the assessee need not prove that the debt has become bad.

<u>Circular No. 15/2016 dated 19.05.2016</u>*:*
It has been clarified that the business of (i) printing, or (ii) printing and publishing shall be treated as manufacture or production of article and therefore entitled for additional depreciation.

<u>Circular No. 21/2016 dated 27.05.2016</u>*:*
We are aware that under Proviso to section 2(15), **"advancement of any other object of general public utility"** is not considered as a charitable purpose, if it involves carrying on of any activity in the nature of trade ……………… However, if the gross receipts from the activity in the nature of trade etc. do not exceed 20% of the total receipts, the activity is treated as a charitable purpose. ….. ***[Please read section 2(15) in your book].***

Thus, based on Proviso to section 2(15), it can happen that in one year, the assessee has a charitable character but in other year it may not have. A question has arisen as to what will happen when the charitable character is lost due to application of Proviso to section 2(15). Whether the CIT will cancel registration of the trust or simply the exemption u/s 11 / 12 shall not be allowed? This has become more serious with the introduction of "Accreted Tax" u/s 115TD. Now, the CBDT has clarified that the CIT shall not cancel registration. Only, the benefit of section 11 / 12 shall not be allowed in that particular year.

<u>Circular No. 28/2016 dated 27.07.2016</u>*:*
A resident individual who has attained the age of 60 years or more (i.e. a senior resident) at any time during the previous year is entitled to Basic Exemption Limit of Rs. 3,00,000 and a resident individual who has attained the aged of 80 years or more (very senior resident) at any time during the previous year is entitled to Basic Exemption Limit of Rs. 5,00,000.

A question has arisen - How to reckon the age of 60 years / 80 years for assessees born on 1st April? The CBDT has given an interesting clarification. According to CBDT, a person born on 1st April shall be deemed to have attained the age of 60 years / 80 years on 31st March i.e. the day preceding the anniversary of his birthday.

Example:
A resident individual whose 60th birthday falls on 01.04.2017, shall be treated as having attained the age of 60 years on 31.03.2017 i.e. in the PY 2016-17 and hence eligible to claim basic exemption limit of Rs. 3,00,000/- in the AY 2017-18. Similarly, a resident individual whose 80th birthday falls on 01.04.2017, shall be treated as having attained the age of 80 years on 31.03.2017 i.e. in the PY 2016-17 and hence eligible to claim basic exemption limit of Rs. 5,00,000/- in the AY 2017-18.

<u>Circular No. 28/2016 dated 27.07.2016:</u>
Section 194-I requires TDS out of payment of "rent". For this purpose , "Rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or other agreement or arrangement for the use of any land or building ………". Now, the CBDT has clarified that any "lump sum lease premium" or "one time upfront lease charges" paid by an assessee for acquiring long term leasehold rights for land or other property shall not be treated as "rent" for the purpose of section 194-I. Hence TDS shall not be required out of such payment.

<u>Circular No. 36/2016 dated 25.10.2016</u>:
The Govt. has passed **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation**

and Resettlement Act, 2013 (RFCTLARR Act). Section 96 of RFCTLARR Act prescribes that income-tax shall not be levied on any award or agreement made under RFCTLARR Act (except those made u/s 46 of that Act). However, there is no exemption provision in Income-tax Act to support the mandate of section 96 of RFCTLARR Act. Now, in order to obey the mandate of section 96 of RFCTLARR Act, the CBDT has issued a Circular to clarify that no tax shall be charged on the compensation received for compulsory acquisition of land (whether agricultural or non-agricultural) u/s 96 of RFCTLARR Act, even if there is no specific exemption in Income-tax Act, 1961.

Deduction u/s 80JJAA - Taxation Laws (Amendment Act), 2016*:*
In the case of seasonal business of manufacturing of apparel, the limit of minimum number of days of employment has been reduced from 240 days to 150 days during the previous year.

CIT Vs. Society for the Promotion of Education (2016) 382 ITR 6 (SC):
The assessee, a public charitable institution, filed an application to CIT for grant of registration u/s 12AA. Section 12AA prescribes that every order granting or refusing registration u/s 12AA shall be passed by CIT within 6 months from end of the month in which the application is received by him. However, the CIT did not dispose off application within 6 months. The assessee claimed that since the CIT has neither granted nor refused to grant registration and the time-limit of 6 months had already expired, there is an automatic or deemed registration. On appeal, the Supreme Court accepted the arguments of assessee.

CIT Vs. ST. PETER'S EDUCATIONAL SOCIETY (2016) 385 ITR 66 (SC):
The Supreme Court held that the institutions engaged in providing specialized training in certain fields and awarding diplomas / certificates are also eligible for section 10(23C). It is not mandatory to impart education in a formalized manner or conduct only recognized educational courses. Further, making of profit incidentally will not make the institution as existing for making profit. Hence the exemption u/s 10(23C) shall be allowed.

RAYALA CORPORATION (P) LTD. Vs. ACIT (2016) 386 ITR 500 (SC):
The assessee was engaged in leasing out its properties and earning rental income. Applying the earlier decision in case of Chennai Properties & Investments Ltd. (2015) 373 ITR 673 (SC), the Supreme Court held that the rental income shall be taxable under BPV head.

SHASUN CHEMICALS & DRUGS LTD. Vs. CIT (2016) 388 ITR 1 (SC):
The assessee-company and its employees had a dispute regarding quantum of bonus. Hence the assessee created a trust and paid bonus to that trust. Thereafter, the trust paid bonus to employees before the due date u/s 139(1) [i.e. the due date specified in section 43B]. The AO disallowed deduction applying section 40A(9). On appeal, the SC held that in this case, section 40A(9) shall not apply. The payment by assessee to trust and subsequent payment by trust to employees is, in essence, a payment of bonus by the assessee to its employees. Finally, deduction was allowed.

CIT Vs. V.S. DEMPO COMPANY (2016) 387 ITR 354 (SC):
The assessee sold a depreciable asset, after holding for 17 years. This resulted in capital gain. The assessee invested capital gain in bonds and claimed exemption u/s 54EC. The AO disallowed exemption on the ground that the capital gain was short-term and therefore not eligible for exemption u/s 54EC. On appeal, the Supreme Court held that the deeming fiction of short-term u/s 50 cannot be applied to section 54EC. The assessee held transferred asset for about 17 years. Hence the capital gain arose from long-term asset. Finally, the Supreme Court allowed exemption. ***(Please refer CIT Vs. RAJIV SHUKLA (2011) 334 ITR 138 (DEL) discussed earlier. The same view was taken in that judgement too.).***

CIT Vs. Meghalaya Steels Ltd. (2016) 383 ITR 217 (SC):
Transport subsidy, freight subsidy interest subsidy and power subsidy received from Govt. under the incentive schemes framed by the Govt. fall within "the profit derived from eligible business" and therefore eligible for deduction u/s 80-IB.

CIT Vs. TRANS AISAN SHIPPING SERVICES (P) LTD. (2016) 385 ITR 637 (SC):
The assessee company owned a qualifying ship and fulfilled all conditions for presumptive taxation under Tonnage Tax Scheme (TTS) under Chapter XII-G. The assessee opted for TTS and offered income for presumptive taxation as per TTS. In addition to income from qualifying ship, the assessee also had income from "slot charter" arrangement in other ships. The assessee offered income from "slot charter" arrangement under TTS. The AO denied benefit of TTS in relation to "slot charter" arrangement due to two reasons, viz. (i) the ships relating to slot charter arrangement were not owned by the assessee, and (ii) the assessee was not able to produce the certificate of tonnage capacity of the ships taken under "slot charter" arrangement, as required

under TTS. The assessee argued that under TTS, the presumptive income is computed in two parts, viz. (i) on the basis of actual tonnage (as per a valid certificate of tonnage capacity of a qualifying ship) and also (ii) on the basis of deemed tonnage in respect of a slot charter arrangement. Hence the assessee argued that the income earned by it from slot charterer arrangement falls in the second part of formula, viz. deemed tonnage. The assessee further argued that under TTS, a valid certificate of tonnage capacity of ship is not required for deemed tonnage. The Court accepted arguments of assessee and held that the income from slot charter arrangement is also eligible for TTS.

CIT Vs. SUBRATA ROY (2016) 385 ITR 570 (SC):
In this case, the hearing of appeal was going before Allahabad High Court, in which the Counsel of assessee appeared and made submissions. During the course of hearing, the Counsel of assesee requested for adjournment on the ground that the Senior Counsel will come from Mumbai on next day and the Senior Counsel would like to make further submissions. However, the Court denied adjournment and passed judgement on the basis of submission of junior counsel. Subsequently, the assessee requested the High Court to recall (i.e. withdraw) its judgement. The Allahabad High Court recalled its judgement. The department filed appeal to SC against recalling. On appeal, the Supreme Court held that it is true that the Courts have power to recall their orders but that power is not a general or blind power. The power to recall can be exercised only if the Court has passed an Ex-parte order and there exists appropriate circumstances for recalling. In the present case, the High Court had passed order on the basis of submission of junior advocate without granting adjournment. This order of High Court cannot be said to be an Ex-parte order. The order was perfect and based on submission of counsel, may be junior counsel. Hence the High Court cannot recall its order.

CIT Vs. AMITABH BACHCHAN (2016) 384 ITR 200 (SC):
The assessee submitted original return. Subsequently, he submitted a revised return claiming expenditure of Rs. 3.17 crore as expenditure on personal security. When the AO asked details and evidences of expenditure, the assessee submitted a letter informing to AO that although he claim deduction of expenditure on a belief that it is allowable but since it is not possible to produce evidences of expenditure, the claim may not be allowed. The AO was smart. He proposed to treat the expenditure as unexplained u/s 69C. At the time of passing order of assessment, the AO did not allow deduction of expenditure. But he even did not apply section 69C. The CIT issued notice u/s 263. Finally, the CIT passed revision order u/s 263 and directed the AO to reframe assessment. One more interesting aspect was that while passing order u/s 263, the CIT mentioned several other issues adverse to the assessee, in addition to the issue of section 69C. Even some of those issues were such that they were not mentioned in the notice of revision issued by CIT u/s 263 but only included in the order of revision.
The assessee filed appeal against the order u/s 263 on two grounds, viz (i) the CIT cannot apply section 263 at all because the AO had already closed the issue of section 69C at the time of passing order of assessment, and (ii) the order u/s 263 was further invalid because it included even those issues which were not at all mentioned in the notice of revision.
On appeal, the Supreme Court did not accept arguments of assessee. The Supreme Court held that:
(i) Regarding section 69C, the AO had committed a mistake. The AO had closed the issue of section 69C and this action was prejudicial to the interest of revenue. Hence section 263 was applicable.
(ii) Regarding other issues included in the order of revision, if we read section 263 carefully, the section 263 does not prescribe any notice. Section 263 simply requires that an opportunity of hearing shall be given to the assessee before passing order of revision. It is true that the department issues a letter (or we may call it a notice), but such notice is for the purpose of providing opportunity to the assessee and not for acquiring jurisdiction over the case ***[students may note that the notice u/s 148 is a notice for acquiring jurisdiction over the case]***. The Court further found that during the course of proceeding u/s 263, the CIT has given adequate opportunities to the assessee for making submission. Finally, the Court held that the inclusion of other issues in the order of assessment was perfect and valid.

ITC Ltd. Vs. CIT (2016) 384 ITR 14 (SC):
The assessee is a hotel. It collected / received tips from its customers. Thereafter, the assessee distributed tip moneys to its employees. The AO claimed that the tip moneys distributed by the assessee to its employees was also a part of salary payment and hence TDS was required u/s 192. But the assessee argued that TDS was not applicable. On appeal, the Supreme Court held that TDS is not required due to following reasons:
(i) The tips were not paid by the assessee as an employer. The tips were paid by the customers. The assessee was a mere channel or intermediary for payment.

(ii) The tips were not chargeable in the hands of employees under the head “Income from Salary”. The tips were chargeable under the head ‘Income from other sources”. Hence section 192 shall not apply.

PART : (D) – HOW TO ATTEMPT PAPER

Note: The aim of this Part is very limited i.e. to provide guidance to the students as to how they should attempt paper in examination. Hence the solutions are based on AY 2016-17. The solutions are not updated for AY 2017-18.

Analysis of CA (Final) DT Paper of Nov. 2015

Q.No.	(a)	(b)	(c)	(d)	(e)	Total Marks
1	10	10				20
2	16					16
3	4	2	4	6		16
4	4	4	4	4	4	16
5	4	6	6			16
6	7	3	6			16
7	3	6	4	3		16
Total Marks						100

Question 1 was compulsory. Answer any 5 from remaining 6. (Question 4 was having one internal choice too).

There were 4 types of questions:

(1) Practical Question
(2) Narrative / Explanatory Question
(3) Statement Validity Question
(4) Case study Question

It is not necessary to mention section numbers and titles of court decisions. Please mention only if you remember correctly.

Practical Question

How to answer Practical Question?

- Read the language of question and requirement of question carefully
- Write answer in following format:
  (a) Practical computation in a tabular form
  (b) Given adequate working notes in a sequential manner
- Sample format is given below:

Question:

A Ltd. is engaged in the business of running hotels of 3-Star category. The Company's Statement of Profit and Loss for the previous year ended 31st March, 2016 shows a net profit of Rs.152 lakhs after debiting or crediting the following items:

(a) Payment of Rs. 0.25 lakh and Rs. 0.30 lakh in cash on 3rd December, 2015 and 10th December, 2015 respectively for purchase of crab, lobster and squid to Mr. Raja, a fisherman and Mr. Khalid, a middleman for these products respectively.

(b) Contribution towards employees' pension scheme notified by the Central Government u/s 80CCD for a sum of Rs. 3 lakhs calculated at 12% of basic salary and dearness allowance payable to the employees.

(c) Payment of Rs. 6.50 lakhs towards transportation of various materials procured by one of its hotels to M/s. Bansal Transport, a partnership firm without deduction of tax at source. The firm has furnished a declaration to the effect that it does not own more than 10 vehicles during the previous year. The declaration contains Permanent Account Number.

(d) Profit of Rs. 12 lakhs on sale of a plot of land to Avimunya Limited a domestic company the entire shares of which are held by the assessee company. The plot was acquired by A Ltd. on 1st June, 2014.

(e) Contribution of Rs. 2.50 lakhs to Indian Institute of Technology with a specific direction for use of the amount for scientific research programme approved by the prescribed authority.

(f) Expense of Rs. 10 lakhs on foreign travel of two directors for a collaboration agreement with a foreign company for a brewery project to be set up. The negotiation did not succeed and the project was abandoned.

(g) Fees of Rs. 1 lakh paid to independent directors for attending Board meeting without deduction of tax at source u/s 194J.

(h) Depreciation charged Rs. 10 lakhs.

(i) Rs. 10 lakhs, being the additional compensation received from the State Government pursuant to an interim order of Court in respect of land acquired by the State Government in the previous year 2012-13.

(j) Dividend received from a foreign company Rs. 5 lakhs.

Additional information:

(i) As a corporate debt restructuring, the bank has converted unpaid interest of Rs. 10 lakhs upto 31st March, 2015 into a new loan account repayable in five equal annual installments. The first installment of Rs. 2 lakhs was paid in March, 2016 by debiting new loan account.

(ii) Depreciation as per Income tax Act Rs. 15 lakhs.

(iii) The company received a bill for Rs. 2 lakhs on 31st March, 2016 from a supplier of vegetables for supply made in March, 2016. The bill was omitted to be recorded in the books in March, 2016. The bill was paid in April, 2016 and the necessary entry was made in the books then.

Compute total income of A Ltd. for the Assessment Year 2016-17 indicating the reason for treatment of each item. Ignore the provisions relating to minimum alternate tax.

Solution:

Assessee: A Ltd. P.Y. : 2015-16 A.Y. 2016-17

COMPUTATION OF TOTAL INCOME

PARTICULARS	**Working Note No.**	**Amount (Rs.)**	**Amount (Rs.)**
Income from Business and Profession:			
Net profit as per profit and loss account			1,52,00,000
Payment of Rs. 25,000 to Mr. Raja, fisherman for purchase of crab, lobster etc.	1	NIL	
Add: Payment of Rs. 30,000 to Mr. Khalid, middleman for purchase of crab, lobster etc.	2	(+)30,000	
Add: Contribution towards employees' pension scheme	3	(+)50,000	
Payments to transport contractor without TDS	4	NIL	
Less: Profit on sale of plot of land to 100% subsidiary company	5	(-)12,00,000	
Less: Contribution to IIT for scientific research	6	(-)2,50,000	
Add: Expenses on foreign travel of two directors	7	(+)10,00,000	
Add: Fees paid to directors without TDS	8	(+)30,000	
Less: Depreciation	9	(-)5,00,000	
Less: Additional compensation received from State Government	10	(-)10,00,000	
Less: Dividend received from foreign company	11	(-)5,00,000	
Less: First installment paid during the year to bank	12	(-)2,00,000	
Less: Purchases omitted to be recorded in the books	13	(-)2,00,000	(-)27,40,000
Income from Business or Profession			**1,24,60,000**

Income from Other Sources:			
Dividend received from foreign company	11		5,00,000
Gross Total Income			**1,29,60,000**
Less: Deductions under Chapter VI-A			NIL
Total Income			**1,29,60,000**
Rounded off u/s 288A			**1,29,60,000**

WORKING NOTES:

1	Under section 40A(3), payment exceeding Rs. 20,000 otherwise than by way of account payee cheque / DD is disallowed. However, payment of Rs. 25,000 to the fisherman for purchase of crab, lobster etc. is covered by the exceptions prescribed in Rule 6DD. Hence it not disallowable. Therefore, it is not added back.
2	Under section 40A(3), payment exceeding Rs. 20,000 otherwise than by way of account payee cheque / DD is disallowed. The payment of Rs. 30,000 to the middileman for purchase of crab, lobster etc. is not covered by the exceptions prescribed in Rule 6DD. Hence it is disallowable. Therefore, it is added back.
3	Under section 36, the contribution made by employer to notified pension scheme is allowable to the extent of 10% of salary. Since, the assessee has made contribution @12% of salary, the excess 2% is disallowed and added back. The excess is computed as under: $\frac{3,00,000 \text{ X } 2}{12}$ Assumption: Salary means Basic Salary + Dearness Allowance forming part of salary. As the question is silent, it is assumed that the Dearness Allowance is forming part of salary.
4	Under section 194C, no tax is required to be deducted at source in respect of payment to transport contractor, if the contractor furnishes a declaration to the effect that he owns not more than 10 vehicles during the previous year and such declaration contains his PAN. Since TDS is not required, the disallowance u/s 40(a)(ia) is also not attracted.
5	Under section 47, the transaction of transfer of asset by a 100% holding company to its 100% Indian subsidiary company is excluded from “transfer” and consequently the capital gain is not taxable. Hence the gain of Rs. 12,00,000 is deducted.
6	Under section 35, the contribution made to IIT for scientific research programme approved by the prescribed authority qualifies for weighted deduction @ 200%. Since 100% of contribution has already been debited to the P&L A/c, the remaining 100% is further deducted.
7	The expenditure on foreign travel of directors is for a brewery project to be set up. The brewery project could not be set up. The expenditure is incurred before setting up business. Further, the assessee is engaged in hotel business. The brewery project is not related to the existing business of assessee. Being so, the travel expenditure is disallowable.
8	Under section 40(a)(ia), if the assessee has not deducted TDS, 30% of expenditure is disallowable. Therefore, 30% of Rs. 1,00,000 has been added back.
9	The depreciation debited to P&L A/c is Rs. 10 lakhs. But the depreciation allowable under income-tax is Rs. 15 lakhs. Hence, the difference of Rs. 5 lakhs is deducted.
10	Under section 45(5), the additional compensation pursuant to an interim order of the Court is taxable under the head "Capital Gains" in the previous year in which the final order is passed by the Court. It appears from the question that the assessee has received additional compensation pursuant to interim order and final order is not passed by Court. Hence, the additional compensation is not taxable. Therefore, deducted.
11	Dividend received from foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the P&L A/c, the same is deducted in computing “Income from BP” head and added in computing “Income from Other Sources” head.
12	Under section 43B, the conversion of unpaid interest into a fresh loan is not treated as payment of interest. The amount of unpaid interest converted into a fresh loan is allowable as a deduction only in the previous year in which such converted interest is actually paid. The first installment of Rs. 2 lakh paid by the assessee is effectively the payment of unpaid interest. Hence the same is allowable as deduction.
13	The assesee has made purchases in March, 2016. However, the purchase bill has been omitted to be recorded. Under income-tax provisions, this expenditure is allowable in the previous year 2015-16, even if it remained unrecorded. Since the expenditure is allowable, the same has been deducted. Assumption: It is assumed that the company is following mercantile method of accounting.

Narrative / Explanatory Question

How to answer Narrative / Explanatory Questions?

- Read the language of question and requirement of question carefully
- Write answer in following format:
  (a) Write the opening paragraph (It is very easy. You can extract from the language of question)
  (b) Narrate / Explain the provision
- Sample format is given below:

Question:
Books of account and certain assets are found to be in possession of the person, whose premises are searched. What are the rebuttable presumptions regarding those items?

Solution:
Books of account and assets can be found to be in possession of the person, whose premises are searched.

In such a case, section 132(4A) prescribes following rebuttable presumptions regarding those books of account and assets:
(i) Such books of account and assets belong to the searched person.
(ii) The contents of such books of account are true; and
(iii) The signature and every other part of such books of account which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting.

Statement Validity Question

How to answer valid / invalid statements:

- Read the language of question and requirement of question carefully
- Write answer in following format:
  (a) Write the Statement (It is very easy. You can extract from the language of question)
  (b) Write the relevant law
  (c) Apply the law to the Statement
  (d) Conclude whether the Statement is Valid or Invalid.
- Sample format is given below:

Question:
State with reasons the validity of the following statements:
(i) Before completing the assessment of any foreign company, the Assessing Officer has to forward a draft of the proposed order of assessment to the assessee.
(ii) Charitable trusts and institutions registered u/s 12AA, cannot claim exemption under any of the clauses of Section 10.

Solution:
(i) The statement is "Before completing the assessment of any foreign company, the AO has to forward a draft of the proposed order of assessment to the assessee".

Under section 144C, the AO has to forward a draft of the proposed order of assessment to an "eligible assessee", if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee. For this purpose, "eligible assessee" means:
(a) Any person in whose case, the variation arises as a consequence of the order of TPO u/s 92CA, and
(b) Any foreign company.

Based on above law, we find that, in the case of a foreign company, the AO has to forward a draft of the proposed order of assessment. It should be further noted that in the case of a foreign company, such draft order is to be forwarded even if the variation does not arise as a consequence of the order of TPO.

Hence, the statement is VALID.

(ii) The Statement is "Charitable trust and institutions registered u/s 12AA cannot claim exemption under any of the clauses of section 10".

Under the provisions of section 10 of Income-tax Act, 1961, it is specifically prescribed that a trust or institution registered u/s 12AA cannot claim any exemption u/s 10 except the exemption u/s 10(1) and 10(23C).

Based on above law, we find that the charitable trusts and institutions can claim exemption u/s 10(1) and 10(23C).

Hence, the Statement that the trusts and institution cannot claim exemption under any of the clauses of section 10 is INVALID.

Case Study Question

How to answer case study questions:

- Read the language of question and requirement of question carefully
- Write answer in following format:
  (a) Write the issue involved correctly (It is very easy. You can extract from the language of question)
  (b) Write the relevant law
  (c) Write the facts carefully
  (d) Conclude your opinion
- Sample format is given below:

Question:
Mr. Santhanam holding 25% voting power in VKS Ltd permitted his own land to be mortgaged to a bank for enabling the company to obtain a loan. Mr. Santhanam requested the company to release the property from the mortgage. The company failed to do so, but for retaining the benefit of bank loan it gave an advance of Rs. 10 lakhs to Mr. Santhanam, which was authorized by a resolution passed by the Board of Directors. The company's accumulated profit on the date of payment of advance was Rs. 50 lakhs. The AO proposes to tax the amount of Rs. 10 lakhs by invoking the provision of Section 2(22)(e). Is the proposition of the Assessing Officer correct in law?

Solution:
The issue under consideration is whether loan or advance given to a shareholder by the company, in return of a benefit conferred on the company by the shareholder, can be deemed as dividend u/s 2(22)(e) of the Income-tax Act, 1961?

Under section 2(22)(e), any “loan or advance” given by a closely held company to its shareholder holding 10% or more voting power, is treated as dividend. But the words "loan or advance” appearing in this section should be construed to mean only those loans or advances as are enjoyed by the shareholders because of being holder of 10% or more voting power. In fact, the very purpose of section 2(22)(e) is to restrict the practice of giving loans and advances to the shareholders for the benefit of the shareholders taking such loans and advances. Where the loan or advance is given by a company to shareholders for its own advantage or benefit (i.e. for the advantage or benefit of the company), section 2(22)(e) cannot be applied. In short, any gratuitous loan or advance given by a company to a shareholder holding 10% or more of the voting power, would come within the purview of section 2(22)(e), but not the cases where the loan or advance is given in return for an advantage conferred upon the company by such shareholder. In Pradip Kumar Malhotra v. CIT (2011) 338 ITR 538, the Court has also confirmed this view.

In this case, the advance of Rs. 10 lakhs was given by VKS (P) Ltd to Mr. Santhanam holding 25% of voting power in lieu of non-release of his personal property from mortgage is to enable the company to retain the benefit of loan obtained from bank. Therefore, the advance of Rs. 10 lakh is for the benefit of company and not for the benefit of shareholder.

Hence, the proposition of AO to tax the sum of Rs. 10 lakhs by invoking the provisions of section 2(22)(e), is not correct.

PART : (E) – SUMMARY OF PASS THROUGH PROVISIONS

SUMMARY OF PASS THROUGH PROVISIONS

PROVISIONS	SECURITISATION TRUST	BUSINESS TRUST	INVESTMENT FUND
Extent of Pass-Through	Full	Partial	Partial
Basic section	115TCA	115UA	115UB
Definition sections	2(13A), 2(42A)	--	--
Exemption sections	10(23DA)	10(23FC)(a), 10(23FCA), 10(23FD)	10(23FBA), 10(23FBB),
TDS sections	194LBC	194A(3)(xi), 194-I, 194LBA, 194LC	194LBB
Which income is taxable at Mediator level?	Nil	All incomes other than following: • Interest income • Income by way of renting or leasing or letting out any real estate asset.	Income chargeable under the head "Income from BPV".
Which income is taxable at Investor level?	Entire income	• Interest income distributed by BT. • Income distributed by BT out of renting or leasing or letting out any real estate.	Any income distributed by Investment Fund which is of the nature other than income chargeable under the head "Income from BPV".

Note: The dividend received from domestic company shall be neither taxable at Mediator Level nor at Investor level. Hence, the dividend received from domestic company shall be completely exempted.

PART : (F) – INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS)

Introductory:

The Central Govt. has issued Income Computation and Disclosure Standards. The ICAI has issued Accounting Standards. In this Chapter, we shall be having a detailed discussion of ICDSs and ASs.

Overview:

ICDS	AS
The ICDS have been notified by Central Govt. under the authority of section 145(2) of Income-tax Act, 1961.	AS have been issued by the ICAI.
There are 10 ICDS serially numbered from ICDS I to ICDS X.	There are 27 AS serially numbered from AS 1 to AS 29 (AS-6 & 8 are deleted).
These ICDS shall apply from 01.04.2016. Hence in relation to AY 2017-18.	AS have become applicable from respective dates.
ICDS are provisions-based and the purpose is proper collection of income-tax, 1961.	AS are principles based and the purpose is to present a true and fair view to the readers of financial statements.
Applicable only for computation of income (and not for maintenance of accounts and preparation of financial statements).	Applicable only for maintenance of accounts and preparation of financial statements (and not for computation of income).
Applicable only for two heads, viz. (i) Income from BPV, and (ii) Income from Other Sources. ICDSs are not applicable for other three heads, viz. (i) Income from Salary, (ii) Income from House-Property, and (iii) Income from Capital Gain.	AS issued are to be used in presentation of general purpose financial statements issued by enterprises engaged in commercial, industrial or business activities, whether it is profit oriented or established for charitable or religious purpose.
Applicable only if the assessee follows mercantile method of accounting. Not applicable if the assessee follows cash method of accounting.	As per AS 1 Accrual is fundamental accounting assumption, so no concept of cash method.
Applicable to all assesses (other than individual and HUF who is not required to get his accounts audited u/s 44AB)	Applicability has been prescribed by ICAI & Companies Act
Non-compliance of ICDS attracts section 144 i.e. best judgement assessment.	Non-compliance of AS attracts remarks / qualifications / disclaimer of auditors as well as violation of Companies Act.
In case of conflict between ICDS and provisions of Income-tax Act, 1961, the provisions of Income Tax Act shall prevail.	No such point.

ICDS and Corresponding AS:

ICDS No.	Title of ICDS	Corresponding AS
I	Accounting Policies	1
II	Valuation of Inventories	2
III	Construction Contracts	7
IV	Revenue Recognition	9
V	Tangible Fixed Assets	10
VI	Effects of changes in foreign exchange rates	11
VII	Government Grants	12
VIII	Securities	13
IX	Borrowing costs	16
X	Provisions, Contingent liabilities & Contingent assets	29

DETAILED ANALYSIS OF ICDS and AS:

Content Title	Para	ICDS requirement	AS requirement
		ICDS I – Accounting Policies	**AS 1**
Scope	1	This ICDS deals with significant accounting policies.	Same
Fundamental Accounting Assumptions	2	"**Going concern"** refers to the assumption that the person has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the business, profession or vocation and intends to continue his business, profession or vocation for the foreseeable future. "**Consistency**" refers to the assumption that the accounting policies are consistent from one previous year (accounting period) to another. "**Accrual"** refers to the assumption that the revenues and costs are accrued, i.e. recognised as they are earned or incurred (and not as money is received or paid) and recorded in the previous year to which they relate.	Same
Accounting Policies	3	**"Accounting policies"** means (i) the specific accounting principles and (ii) the methods of applying those principles, adopted by a person.	Same
Considerations in the Selection and Change of Accounting Policies	4	Accounting policies adopted by a person shall be such so as to represent a true and fair view of the state of affairs and income of the business, profession or vocation. For this purpose: (i) the treatment and presentation of transactions and events shall be governed by their substance and not merely by the legal form; and (ii) **"marked to market loss" or an "expected loss" shall not be recognised** unless the recognition of such loss is in accordance with the provisions of any other ICDS. ***Please note that ICDS does not recognize (i) prudence, and (ii) materiality.*** ***Logic:*** ***Income-tax department does not want to escape taxation on the***	The major considerations governing the selection and application of accounting policies are:- (a) Prudence (b) Substance over Form (c) Materiality Although AS is silent, the "marked to market losses" shall have to be provided for due to prudence concept. **(Refer Case Study No. 1)**

Content Title	Para	ICDS requirement	AS requirement
		basis of prudence or materiality. Hence the department has not accepted considerations of (i) prudence, and (ii) materiality.	
	5	An accounting policy shall not be changed without a ***reasonable cause***.	Change in accounting policies should be made only if: (i) it is required by statute, or (ii) for compliance with an AS, or (iii) for a more appropriate presentation of the financial statements.
Disclosure of Accounting Policies	6	All significant accounting policies adopted by a person shall be disclosed.	Same. However, AS specifically mentions that the disclosure of all significant accounting policies should form part of the financial statements and such disclosure should normally be at one place.
	7	Any change in an accounting policy which has a material effect shall be disclosed.	Any change in the accounting policies which has a material effect in the current period or which is reasonably expected to have a material effect in **later periods** should be disclosed.
		The amount by which any item is affected by such change shall also be disclosed to the extent ascertainable.	Same
		Where such amount is not ascertainable, wholly or in part, the fact shall be indicated.	Same
		If a change is made in the accounting policies which has no material effect for the current previous year but which is reasonably expected to have a material effect in later previous years, the fact of such change shall be appropriately disclosed in the previous year in which the change is adopted and **also in the previous year in which such change has material effect for the first time**.	**Same** **However such disclosure is required in year of change only**
	8	Disclosure of accounting policies or of changes therein cannot remedy a wrong or inappropriate treatment of the item.	Same
	9	If the fundamental accounting assumptions of Going Concern, Consistency and Accrual are followed, specific disclosure is not required. But If a fundamental accounting assumption is not followed, the fact shall be disclosed.	Same

Content Title	Para	ICDS requirement	AS requirement
ICDS II – Valuation of Inventories			**AS 2**
Scope	1	This ICDS shall be applied for valuation of inventories, except : (a) Work-in-progress arising under 'construction contract' including directly related service contract which is dealt with by the ICDS on construction contracts. (b) Work-in-progress which is dealt with by other ICDS. (c) Shares, debentures and other financial instruments held as stock in trade, which is dealt with by the ICDS on securities. (d) Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases to the extent that they are measured at net realisable value; (e) Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to be irregular, which shall be dealt with by the ICDS on tangible fixed assets.	Same exclusions. However WIP of service providers is also excluded from AS.
Definitions	2(1)(a)	"Inventories" are assets held: (i) for sale in the ordinary course of business; (ii) in the process of production for such sale; (iii) in the form of materials or supplies to be consumed in the production process or in the rendering of services.	Same
	2(1)(b)	"Net realisable value" is the estimated selling price in the ordinary course of business *less* the estimated costs of completion and the estimated costs necessary to make the sale.	Same
Measurement	3	Inventories shall be valued at cost or net realisable value, whichever is lower.	Same
Cost of Inventories	4	Cost of inventories shall comprise of all (i) Costs of purchase / Costs of services, + (ii) Costs of conversion, (+) (iii) Other costs incurred in bringing the inventories to their present location and condition.	Same
Costs of Purchase	5	The costs of purchase shall include duties and taxes *(whether subsequently recoverable / creditable by the enterprise or not)*, freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates and other similar items shall be deducted in	Same. However, the "Cost of purchase" cost **does not include** duties and taxes subsequently recoverable / creditable by the enterprise. ***[In short the AS recognizes***

Content Title	Para	ICDS requirement	AS requirement
		determining the costs of purchase. *It may be noted that even the duties and taxes paid by the enterprise which are subsequently recoverable or creditable (for example – Input credit is available) shall also be included in cost of purchase. This is in accordance with section 145A of Income-tax Act, 1961*. ***[In short the ICDS recognizes "inclusive method"].***	***"exclusive method"].*** **(Refer Case Study No. 2)**
Costs of Services	6	The costs of services in the case of a service provider shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads.	The AS does not prescribe this. Because, WIP of services is excluded from the scope of AS.
Costs of Conversion	7	The costs of conversion of inventories shall include costs directly related to the units of production and a systematic allocation of fixed production overheads + variable production overheads that are incurred in converting materials into finished goods. Fixed production overheads shall be those indirect costs of production that remain relatively constant regardless of the volume of production. Variable production overheads shall be those indirect costs of production that vary directly or nearly directly, with the volume of production.	Same
	8	The allocation of fixed production overheads for the purpose of their inclusion in the costs of conversion shall be based on the normal capacity of the production facilities. Normal capacity shall be the production expected to be achieved on an average over a number of periods or seasons under normal circumstances, taking into account the loss of capacity resulting from planned maintenance. The actual level of production shall be used when it approximates to normal capacity. The amount of fixed production overheads allocated to each unit of production shall not be increased as a consequence of low production or idle plant. Unallocated overheads shall be recognised as an expense in the period in which they are incurred. In periods of abnormally high production, the amount of fixed production overheads allocated to each unit of production is decreased so that inventories are not measured above the cost.	Same

Content Title	Para	ICDS requirement	AS requirement
		Variable production overheads shall be assigned to each unit of production on the basis of the actual use of the production facilities.	
	9	Where a production process results in more than one product being produced simultaneously and the costs of conversion of each product are not separately identifiable, the costs shall be allocated between the products on a rational and consistent basis. Where by-products, scrap or waste material are immaterial, they shall be measured at net realisable value and this value shall be deducted from the cost of the main product.	Same
Other Costs	10	Other costs shall be included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition.	Same
	11	Interest and other borrowing costs shall not be included in the costs of inventories, unless they meet the criteria for recognition of interest as a component of the cost as specified in the **ICDS IX** on borrowing costs.	Same
Exclusions from the Cost of Inventories	12	In determining the cost of inventories in accordance with paragraphs 4 to paragraphs 11, the following costs shall be excluded and recognised as expenses of the period in which they are incurred, namely:— (a) Abnormal amounts of wasted materials, labour, or other production costs; (b) Storage costs, unless those costs are necessary in the production process prior to a further production stage; (c) Administrative overheads that do not contribute to bringing the inventories to their present	Same. However, AS also excludes **Distribution Cost (along with Selling Cost).**

Content Title	Para	ICDS requirement	AS requirement
		location and condition; (d) Selling Costs.	
Cost Formulae – Specific identification	13	The Cost of inventories of items (i) that are not ordinarily interchangeable; and (ii) goods or services produced and segregated for specific projects shall be assigned by specific identification of their individual costs.	Same
	14	'Specific identification of cost' means specific costs are attributed to identified items of inventory.	Same
	15	If there are a large numbers of items of inventory which are ordinarily interchangeable, specific identification of costs shall not be made.	Same
Cost formulae - FIFO and Weighted Average Cost Formula	16	Cost of inventories, other than the inventory dealt with in paragraph 13, shall be assigned by using the First-in First-out (FIFO), or weighted average cost formula. The formula used shall reflect the fairest possible approximation to the cost incurred in bringing the items of inventory to their present location and condition.	Same
	17	The FIFO formula assumes that the items of inventory which were purchased or produced first are consumed or sold first, and consequently the items remaining in inventory at the end of the period are those most recently purchased or produced. Under the weighted average cost formula, the cost of each item is determined from the weighted average of the cost of similar items at the beginning of a period and the cost of similar items purchased or produced during the period. The average shall be calculated on a periodic basis, or as each additional shipment is received, depending upon the circumstances.	Same
Techniques for the Measurement of Cost	18(1)	Techniques for the measurement of the cost of inventories, such as the standard cost method or the retail method, may be used for convenience if the results approximate the actual cost. Standard costs take into account normal levels of consumption of materials and supplies, labour, efficiency and capacity utilisation. They are regularly reviewed and, if necessary, revised in the light of the current conditions.	Same
	18(2)	The retail method can be used in the retail trade for measuring inventories of large number of rapidly changing items that have similar margins and for which it is impracticable to use other costing	Same

Content Title	Para	ICDS requirement	AS requirement
		methods. The cost of the inventory is determined by reducing from the sales value of the inventory, the appropriate percentage gross margin. The percentage used takes into consideration inventory, which has been marked down to below its original selling price. An average percentage for each retail department is to be used.	
Net Realisable Value	19	Inventories shall be written down to net realisable value on an item-by-item basis. Where 'items of inventory' relating to the same product line having similar purposes or end uses and are produced and marketed in the same geographical area and cannot be practicably evaluated separately from other items in that product line, such inventories shall be grouped together and written down to net realisable value on an aggregate basis.	Same
	20	Net realisable value shall be based on the most reliable evidence available at the time of valuation. The estimates of net realisable value shall also take into consideration the purpose for which the inventory is held. The estimates shall take into consideration fluctuations of price or cost directly relating to events occurring after the end of previous year to the extent that such events c onfirm the conditions existing on the last day of the previous year.	Same
	21	Materials and other supplies held for use in the production of inventories shall not be written down below the cost, where the finished products in which they shall be incorporated are expected to be sold at or above the cost. Where there has been a decline in the price of materials and it is estimated that the cost of finished products will exceed the net realisable value, the value of materials shall be written down to net realisable value which shall be the replacement cost of such materials.	Same
Value of Opening Inventory	22	The value of the inventory as on the beginning of the previous year shall be - (i) the cost of inventory available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and (ii) the value of the inventory as on the close of the immediately preceding previous year, in any other case.	Not dealt with by AS.

Content Title	Para	ICDS requirement	AS requirement
Change of Method of Valuation of Inventory	23	The method of valuation of inventories once adopted by a person in any previous year shall not be changed without **reasonable cause.**	Not dealt with by AS-2. However, this would amount to change in accounting policy and therefore AS-5 shall be applicable.
Valuation of Inventory in case of certain dissolutions	24	In case of dissolution of a partnership firm or association of person or body of individuals, ***notwithstanding whether business is discontinued or not***, the inventory on the date of dissolution shall be valued at the net realisable value only.	If firm will not be dissolved, then inventory shall be valued at cost or NRV whichever is less. If firm will be dissolved then accounts have to be prepared on realizable value, as therefore inventory will also be valued at NRV. **(Refer Case Study No. 3)**
Disclosure	26	The following aspects shall be disclosed, namely: (a) the accounting policies adopted in measuring inventories including the cost formulae used; and (b) the total carrying amount of inventories and its classification appropriate to a person.	Same
ICDS III – Construction Contracts			**AS 7**
Scope	1	This ICDS should be applied in determination of income for a construction contract of a contractor.	This statement should be applied in accounting for construction contracts in the financial statements of contractors
Definitions	2(1)	(a) **"Construction contract"** is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use and includes: (i) contract for the rendering of services which are directly related to the construction of the asset. For example -- Contracts for the services of project managers and architects. (ii) contract for destruction or restoration of assets, and the restoration of the environment following the demolition of assets.	Same
	2(1)	(b) **"Fixed price contract"** is a construction contract in which the contractor agrees to a fixed contract price, or a fixed rate per unit of output (which may be subject to cost escalation clauses as agreed between parties).	Same
	2(1)	(c) **"Cost plus contract"** is a construction contract in which the	Same

Content Title	Para	ICDS requirement		AS requirement
			contractor is reimbursed for allowable or otherwise defined costs, plus a mark up on these costs or a fixed fee.	
	2(1)	(d)	**"Retentions"** are the amounts of progress billings which are not paid until the satisfaction of conditions specified in the contract for the payment of such amounts or until defects have been rectified.	Same
	2(1)	(e)	**"Progress billings"** are the amounts billed for work performed on a contract whether or not they have been paid by the customer.	Same
	2(1)	(f)	**"Advances"** are the amounts received by the contractor before the related work is performed.	Same
	3	A construction contract may be negotiated for the construction of a single asset. A construction contract may also deal with the construction of a number of assets which are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use.		Same
	4	Construction contracts are formulated in a number of ways which, for the purposes of this ICDS, are classified as (i) Fixed price contracts, and (ii) Cost plus contracts. Some construction contracts may contain both characteristics i.e. characteristics of fixed price contract as well as a cost plus contract. For example - A cost plus contract with an agreed maximum price.		Same
Combining and Segmenting Construction Contracts	5	The requirements of this ICDS shall be applied separately to each construction contract except as provided for in paragraphs 6, 7 and 8 herein. For reflecting the substance of a contract or a group of contracts, where it is necessary, the ICDS should be applied to the separately identifiable components of a single contract or to a group of contracts together.		Same
	6	Where a contract covers a number of assets, the construction of each asset should be treated as a separate construction contract when: (a) Separate proposals have been submitted for each asset; (b) each asset has been subject to separate negotiation and the contractor and customer have		Same

Content Title	Para	ICDS requirement	AS requirement
		been able to accept or reject that part of the contract relating to each asset; and (c) the costs and revenues of each asset can be identified.	
	7	A group of contracts, whether with a single customer or with several customers, should be treated as a single construction contract when: (a) the group of contracts is negotiated as a single package; (b) the contracts are so closely interrelated that they are, in effect, part of a single project with an overall profit margin; and (c) the contracts are performed concurrently or in a continuous sequence.	Same
	8	Where a contract provides for the construction of an additional asset at the option of the customer or is amended to include the construction of an additional asset, the construction of the additional asset should be treated as a separate construction contract when: (a) the asset differs significantly in design, technology or function from the asset or assets covered by the original contract; or (b) the price of the asset is negotiated without having regard to the original contract price.	Same
Contract Revenue	9	Contract revenue shall be recognized when there is a **reasonable certainty of its ultimate collection**.	When the **outcome of a construction contract can be estimated reliably,** contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date. In the case of a **fixed price contract**, the outcome of a construction contract can be estimated reliably when **all of the following conditions are satisfied:** (a) total contract revenue can be measured reliably; (b) it is probable that the economic benefits associated with the contract will flow to the enterprise; (c) both the contract costs to complete the contract and

Content Title	Para	ICDS requirement	AS requirement
			the stage of contract completion at the reporting date can be measured reliably; and (d) the contract costs attributable to the contract can be clearly identified and measured reliably so that actual contract costs incurred can be compared with prior estimates. In the case of a **cost plus contract**, the outcome of a construction contract can be estimated reliably when all of the following conditions are satisfied: (a) it is probable that the economic benefits associated with the contract will flow to the enterprise; and (b) the contract costs attributable to the contract, whether or not specifically reimbursable, can be clearly identified and measured reliably.
	10	Contract revenue shall comprise of: (a) the initial amount of revenue agreed in the contract, including **retentions;** and (b) variations in contract work, claims and incentive payments: (i) to the extent that it is probable that they will result in revenue; and (ii) they are capable of being reliably measured.	In respect of **claims** it is recognized only when **negotiations have reached an advance stage** such that it is **probable that customer will accept it** and amount can be measured reliably. **(Refer Case Study No. 4)** **Incentives** are included only when contract has **sufficiently advanced** that it is probable that the specified performance standards will be met or exceeded, and amount can be measured reliably. **Contract revenue also includes penalties** arising from delays caused by contractor in the completion of contract. **(Refer Case Study No. 5)** **No specific requirement to include retention money in contract revenue** **(Refer Case Study No. 6)**
	11	Where contract revenue already recognised as income is subsequently written off in the books of accounts as uncollectible, the same shall be recognised as an expense and not as	Same

Content Title	Para	ICDS requirement	AS requirement
		an adjustment of the amount of contract revenue.	
Contract Costs	12	Contract costs shall comprise of: (a) costs that relate directly to the specific contract; (b) costs that are attributable to contract activity in general and can be allocated to the contract; (c) such other costs as are specifically chargeable to the customer under the terms of the contract; and (d) allocated borrowing costs in accordance with the ICDS on Borrowing Costs. **These costs shall be reduced by any incidental income, not being in the nature of interest, dividends or capital gains which is not included in contract revenue.**	Same. **However Borrowing cost is not discussed in AS 7 as it is included in AS 16.** Also **no specific requirement to exclude interest, dividend or capital gain from contract cost**. **(Refer Case Study No. 7)**
	13	Costs that cannot be attributed to any contract activity or a contract shall be excluded from the costs of a construction contract.	Same, but AS gives examples of such costs as general administration, selling costs, R&D, depreciation of idle plant.
	14	Contract costs include the costs attributable to a contract for the period from the date of securing the contract to the final completion of the contract. Costs that are incurred in securing the contract are also included as part of the contract costs, provided (a) they can be separately identified; and (b) it is probable that the contract shall be obtained. When costs incurred in securing a contract are recognised as an expense in the period in which they are incurred, they are not included in contract costs when the contract is obtained in a subsequent period.	Same
	15	Contract costs that relate to future activity on the contract are recognised as an asset. Such costs represent an amount due from the customer and are classified as contract work in progress.	Same
Recognition of Contract Revenue and Expenses	16	Contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date.	Same. However AS requires that an **expected loss should be recognized as an expense immediately**. **(Refer Case Study No. 8)**

Content Title	Para	ICDS requirement	AS requirement
	17	The recognition of revenue and expenses by reference to the stage of completion of a contract is referred to as the percentage of completion method (POCM). Under POCM, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed.	Same
	18	The stage of completion of a contract shall be determined with reference to: (a) the proportion that contract costs incurred for work performed upto the reporting date bear to the estimated total contract costs; or (b) surveys of work performed; or (c) completion of a physical proportion of the contract work. Progress payments and advances received from customers are not determinative of the stage of completion of a contract.	Same
	19	When the stage of completion is determined by reference to the contract costs incurred up to the reporting date, only those contract costs that reflect work performed are included in costs incurred up to the reporting date. Contract costs which are excluded are: (a) contract costs that relate to future activity on the contract; and (b) payments made to sub-contractors in advance of work performed under the subcontract.	Same
	20	During the early stages of a contract, where the outcome of the contract cannot be estimated reliably contract revenue is recognised only to the extent of costs incurred. **The early stage of a contract shall not extend beyond 25% of the stage of completion.**	Same, **but no reference of 25% limit**. **(Refer Case Study No. 9)**
Changes in estimates	21	The POCM is applied on a cumulative basis in each previous year to the current estimates of contract revenue and contract costs. Where there is change in estimates, the changed estimates shall be used in determination of the amount of revenue and expenses in the period in which the change is made and in subsequent periods.	Same
Disclosure	23	A person shall disclose: (a) the amount of contract revenue recognised as revenue in the	Same However additional requirement to disclose method used to

Content Title	Para	ICDS requirement	AS requirement
		period; and (b) the methods used to determine the stage of completion of contracts in progress.	determine contract revenue.
	24	A person shall disclose the following for contracts in progress at the reporting date, namely:— (a) amount of costs incurred and recognised profits (less recognised losses) upto the reporting date; (b) the amount of advances received; and (c) the amount of retentions.	Same
	---	--	Since AS covers not only P&L A/c but also Balance-Sheet, following disclosures are also required: (a) the gross amount due from customers for contract work as an asset; and (b) the gross amount due to customers for contract work as a liability.
ICDS IV- Revenue recognition			**AS 9**
Scope	1(1)	This ICDS deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from (i) the sale of goods; (ii) the rendering of services; (iii) the use by others of the person's resources yielding interest, royalties or dividends.	Same
	1(2)	This ICDS does not deal with the aspects of revenue recognition which are dealt with by other ICDS.	No such para. However AS has specified list of exclusions.
Definitions	2(1)	"**Revenue"** is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person (i) from the sale of goods, (ii) from the rendering of services, or (iii) from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, "Revenue" is the amount of commission and not the gross inflow of cash, receivables or other consideration	Same

Content Title	Para	ICDS requirement	AS requirement
Sale of Goods	3	In a transaction involving sale of goods, the revenue shall be recognised when the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership. In a situation, where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership, revenue shall be recognised at the time of transfer of significant risks and rewards of ownership to the buyer.	Same
	4	Revenue from sale of goods shall be recognised when there is reasonable certainty of its ultimate collection	Same. In Addition AS requires that there should be **no significant uncertainty of amount** of consideration.
	5	Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising **any claim for escalation of price and export incentives,** revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved.	Same
Rendering of Services	6	Subject to Para 7, Revenue from service transactions shall be recognized **by the Percentage Completion Method.** Under this method, revenue from service transactions is matched with the service transactions costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed. ICDS on construction contract also requires the recognition of revenue on this basis. The requirements of that Standard shall apply *mutandis mutandis* to the recognition of revenue and the associated expenses for a service transaction. However, when services are provided by an indeterminate number of acts over a specific period of time, revenue may be recognised on a straight line basis over the specific period.	AS permits two methods: (i) **Proportionate completion method:** Performance consists of the execution of more than one act. Revenue is recognized proportionately by reference to the performance of each act. For practical purposes, when services are provided by an indeterminate number of acts over a specific period of time, revenue is recognised on a straight line basis over the specific period unless there is evidence that some other method better represents the pattern of performance. (ii) **Completed service contract method**: Performance consists of the execution of a single act. Alternatively, services are performed in more than a single act, and the services yet to be performed are so significant in relation to the transaction taken as a whole

Content Title	Para	ICDS requirement	AS requirement
			that performance cannot be deemed to have been completed until the execution of those acts. Accordingly revenue is recognised when the sole or final act takes place and the service becomes chargeable. Along with this, AS further requires that there should be **no significant uncertainty of amount** of consideration as well as it is not unreasonable to **expect ultimate collection.** **(Refer Case Study No. 10)**
	7	Revenue from service contracts with duration of **not more than ninety days** may be recognised when the rendering of services under that contract is completed or substantially completed.	No such para
The use of Resources by Others Yielding Interest, Royalties or Dividends	8 (1)	Subject to sub paragraph (2), interest shall accrue on the time basis determined by the amount outstanding and the rate applicable.	Same. However AS also requires that revenue should only be recognised when **no significant uncertainty** as to **measurability or collectability** exists. **(Refer Case Study No. 11)**
	8 (2)	Interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received	No such para
	8 (3)	Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.	Same
	9	Royalties shall accrue in accordance with the terms of the relevant agreement and shall be recognised on that basis unless, having regard to the substance of the transaction, it is more appropriate to recognise revenue on some other systematic and rational basis.	Same. However As also requires that revenue should only be recognised when **no significant uncertainty** as to **measurability or collectability** exists.
	10	Dividends shall be recognised in accordance with the provisions of Income-tax Act, 1961 ***(Please refer section 8 of Income-tax Act, 1961).***	Dividends are recognized when the owner's **right to receive** the payment is established. AS also requires that revenue should only be recognised when **no significant uncertainty** as to **measurability or collectability** exists.
Disclosure	13	Following disclosures shall be made in respect of revenue recognition, namely- (a) in a transaction involving sale of good, total amount not recognised as revenue during the previous year due to lack of	No such detailed disclosure requirements.

Content Title	Para	ICDS requirement	AS requirement
		reasonably certainty of its ultimate collection along with nature of uncertainty (b) the amount of revenue from service transactions recognised as revenue during the previous year; (c) the method used to determine the stage of completion of service transactions in progress; and (d) for service transactions in progress at the end of previous year: (i) amount of costs incurred and recognized profits (less recognised losses) upto end of previous year; (ii) the amount of advances received; and (iii) the amount of retentions.	
ICDS-V : Tangible fixed assets			**AS 10**
Scope	1	This ICDS deals with the treatment of tangible fixed assets.	
Definitions	2 (1)	(a) **"Tangible fixed asset"** is an asset being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business. (b) **"Fair value"** of an asset is the amount for which that asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.	**Property, plant and equipment** are tangible items that: (a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and (b) are expected to be used during more than a period of twelve months. **Fair value** is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.
Identification of Tangible Fixed Assets	3	The definition of "Tangible fixed asset" in paragraph 2(1) above itself provides criteria for determining whether an item is to be classified as a tangible fixed asset.	Same. However AS permits that an enterprise may decide to **expense** an item which could otherwise have been included as fixed asset, because the amount of the **expenditure is not material**.
	4	Stand-by equipment and servicing equipment are to be capitalised. Machinery spares shall be charged to the revenue as and when consumed. When such spares can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, they shall be capitalised.	Items such as **spare parts, stand-by equipment and servicing equipment** are recognised in accordance with this Standard when they meet the definition of property, plant and equipment. Otherwise, such items are classified as inventory.

Content Title	Para	ICDS requirement	AS requirement
Components of Actual Cost	5	The actual cost of an acquired tangible fixed asset shall comprise its purchase price, import duties and other taxes, excluding those subsequently recoverable, and any directly attributable expenditure on making the asset ready for its intended use. Any trade discounts and rebates shall be deducted in arriving at the actual cost.	The cost of an item of property, plant and equipment comprises: (a) **its purchase price**, including import duties and **non – refundable** purchase **taxes**, after deducting trade discounts and rebates. (b) any **costs directly attributable** to bringing the asset to the **location and condition** necessary for it to be capable of operating in the manner intended by management. (c) **the initial estimate of the costs of dismantling**, removing the item and restoring the site on which it is located, referred to as **decommissioning, restoration and similar liabilities**, the obligation for which an enterprise incurs either when the item is acquired or as a consequence of having used the item during a particular period for purposes other than to produce inventories during that period.
	6	The cost of a tangible fixed asset may undergo changes subsequent to its acquisition or construction on account of-- (i) Price adjustment, changes in duties or similar factors; or (ii) Exchange fluctuation as specified in ICDS on the effects of changes in foreign exchange rates.	Same
	7	Administration and other general overhead expenses are to be excluded from the cost of tangible fixed assets if they do not relate to a specific tangible fixed asset. Expenses which are specifically attributable to construction of a project or to the acquisition of a tangible fixed asset or bringing it to its working condition, shall be included as a part of the cost of the project or as a part of the cost of the tangible fixed asset	Same
	8	The expenditure incurred on start-up and commissioning of the project, including the expenditure incurred on test runs and experimental production, shall be capitalised. The expenditure incurred after the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as	Same

Content Title	Para	ICDS requirement	AS requirement
		revenue expenditure.	
Self constructed Tangible Fixed Assets	9	In arriving at the actual cost of self-constructed tangible fixed assets, the same principles shall apply as those described in paragraphs 5 to 8. Cost of construction that relate directly to the specific tangible fixed asset and costs that are attributable to the construction activity in general and can be allocated to the specific tangible fixed asset shall be included in actual cost. Any internal profits shall be eliminated in arriving at such costs.	Same
Non Monetary Consideration	10	When a tangible fixed asset is acquired in exchange for another asset, the fair value of the tangible fixed asset so acquired shall be actual cost of asset so acquired.	If an enterprise is able to measure reliably the fair value of either the asset received or the asset given up, then the **fair value of the asset given up is used to measure the cost of the asset received unless the fair value of the asset received is more clearly evident.**
	11	When a tangible fixed asset is acquired in exchange for shares or other securities, the fair value of the tangible fixed asset so acquired shall be its actual cost.	If an enterprise is able to measure reliably the fair value of either the asset received or the asset given up, then the **fair value of the asset given up is used to measure the cost of the asset received unless the fair value of the asset received is more clearly evident.**
Improvements and Repairs	12	An expenditure that increases the future benefits from the existing asset beyond its previously assessed standard of performance is added to the actual cost.	An enterprise **adds in the carrying amount** of an item of property, plant and equipment the cost of replacing part of such an item when that cost is incurred if the recognition criteria are met. The **carrying amount of those parts that are replaced is derecognized** (deducted) in accordance with the de-recognition provisions.
	13	The cost of an addition or extension to an existing tangible fixed asset which is of a capital nature and which becomes an integral part of the existing tangible fixed asset is to be added to its actual cost. Any addition or extension, which has a separate identity and is capable of being used after the existing tangible fixed asset is disposed of, shall be treated as separate asset.	
Valuation of Tangible Fixed Assets in Special Cases	14	Where a person owns tangible fixed assets jointly with others, the proportion in the actual cost, accumulated depreciation and written down value is grouped together with similar fully owned tangible fixed assets. Details of such jointly owned tangible fixed assets shall be indicated separately in the tangible fixed assets register.	Same
	15	Where several assets are purchased for a consolidated price, the	Fair basis as determined by competent valuers.

Content Title	Para	ICDS requirement	AS requirement
		consideration shall be apportioned to the various assets on a fair basis.	
Depreciation	17	Depreciation on a tangible fixed asset shall be computed in accordance with the provisions of Income-tax Act, 1961 ***(Please refer section 32 of Income-tax Act, 1961)***.	The depreciation method used should reflect the **pattern in which the future economic benefits** of the asset are expected to be consumed by the enterprise. A variety of depreciation methods can be used to allocate the depreciable amount of an asset on a systematic basis over its useful life. These methods include the **straight-line method, the diminishing balance method and the units of production method**. For companies -- Schedule II to the Companies Act, 2013 is applicable, which permits (i) WDV method, and (ii) SLM only.
Transfers	18	Income arising on transfer of a tangible fixed asset shall be computed in accordance with the provisions of Income-tax Act, 1961.	Gain or loss has to be recognized and transferred to P&L.
Disclosures	19	Following disclosure shall be made in respect of tangible fixed assets, namely:- (a) Description of asset or block of assets; (b) Rate of depreciation; (c) Opening value (i.e. actual cost or WDV, as the case may be) (d) Addition during the year with dates of additions and dates on which the asset is put to use (e) Sales during the year with dates (f) Deductions on account of- (i) CENVAT credit claimed and allowed under the CENVAT Credit Rules, 2004; (ii) Change in rate of exchange of currency; (iii) Subsidy or grant or reimbursement, by whatever name called; (g) Depreciation allowable; and (h) WDV at the end of year;	The financial statements should disclose, for each class of property, plant and equipment: (a) the measurement bases (i.e., cost model or revaluation model) used for determining the gross carrying amount; (b) the depreciation methods used; (c) the useful lives or the depreciation rates used. In case the useful lives or the depreciation rates used are different from those specified in the statute governing the enterprise, it should make a specific mention of that fact; (d) the gross carrying amount and the accumulated depreciation (aggregated with accumulated impairment losses) at the beginning and end of the period; and (e) a reconciliation of the carrying amount at the beginning and end of the period showing: (i) additions; (ii) assets retired from active use and held for disposal; (iii) acquisitions through business combinations ; (iv) increases or decreases

Content Title	Para	ICDS requirement	AS requirement
			resulting from revaluations and from impairment losses recognised or reversed directly in revaluation surplus in accordance with AS 28; (v) impairment losses recognised in the statement of profit and loss in accordance with AS 28; (vi) impairment losses reversed in the statement of profit and loss in accordance with AS 28; (vii) depreciation; (viii) the net exchange differences arising on the translation of the financial statements of a non-integral foreign operation in accordance with AS 11; and (ix) other changes.
Revaluation	--	***Not covered by ICDS because under Income-tax Act, 1961, revaluation is not allowed. The income and expenses are recognized only on due or receipt basis.***	***Allows revaluation Model as basis for valuation, which should be done with sufficient regularity***
Change in method of depreciation, useful life, scrap value	--	***Not covered by ICDS because under Income-tax Act, 1961, depreciation is to be computed in a specific manner prescribed in section 32.***	***AS-10 deals with all these aspects.***
Component Accounting	--	***Not covered by ICDS because under Income-tax Act, 1961, depreciation is to be computed in a specific manner prescribed in section 32.***	***Schedule II & AS -10 mandates fixed assets to be componentized for depreciation purposes in respect of financial years commencing on or after 1st April 2015 / 1st April 2016***
Major Inspection cost	--	***Not covered by ICDS***	**When each major inspection is performed, its cost is recognised** in the carrying amount of the item of property, plant and equipment **as a replacement** if the recognition criteria are satisfied. **Any remaining carrying amount of the cost of the previous inspection is derecognised**.
De-commissioning, Restoration and other Liabilities	--	***Not covered by ICDS***	***AS-10 requires to make provision for such liabilities at the time of acquisition of Fixed Assets***

Content Title	Para	ICDS requirement	AS requirement
ICDS-VI : Effects of changes in foreign exchange rates			**AS 11**
Scope	1	This ICDS deals with: (a) treatment of transactions in foreign currencies; (b) translating the financial statements of foreign operations; (c) treatment of foreign currency transactions in the nature of forward exchange contracts	Same
Definitions	2(1)	(a) **"Average rate"** is the mean of the exchange rates in force during a period. (b) **"Closing rate"** is the exchange rate at the last day of the previous year (c) **"Exchange difference"** is the difference resulting from reporting the same number of units of a foreign currency in the reporting currency of a person at different exchange rates. (d) **"Exchange rate"** is the ratio for exchange of two currencies. (e) **"Foreign currency"** is a currency other than the reporting currency of a person. (f) **"Foreign operations of a person"** is a branch, by whatever name called, of that person, the activities of which are based or conducted in a country other than India. (g) **"Foreign currency transaction"** is a transaction which is denominated in or requires settlement in a foreign currency, including transactions arising when a person:— (i) buys or sells goods or services whose price is denominated in a foreign currency; or (ii) borrows or lends funds when the amounts payable or receivable are denominated in a foreign currency; or (iii) becomes a party to an unperformed forward exchange contract; or (iv) otherwise acquires or disposes of assets, or incurs or settles liabilities, denominated in a foreign currency: (h) **"Forward exchange contract"** means an agreement to exchange different currencies at a forward rate, and includes a foreign currency option contract	Following definitions are in different / addition to ICDS: **"Foreign operations"** includes branch, associate, subsidiary and joint ventures, the activities of which are based or conducted in a country other than India. **"Forward exchange contract"** means an agreement to exchange different currencies at a forward rate. **Note: It does not include option and other financial instruments as included in ICDS.**

Content Title	Para	ICDS requirement	AS requirement
		or another financial instrument of a similar nature; (i) **“Forward rate”** is the specified exchange rate for exchange of two currencies at a specified future date; (j) **“Indian currency”** shall have the meaning as assigned to it in section 2 of the Foreign Exchange Management Act, 1999; (k) **“Monetary items”** are money held and assets to be received or liabilities to be paid in fixed or determinable amounts of money. Examples of monetary items are Cash, Receivables and Payables. (l) **“Non-monetary items”** are assets and liabilities other than monetary items. Examples of non-monetary items are fixed assets, inventories, and investments in equity shares. (m) **“Reporting currency”** means Indian currency except for foreign operations where it shall mean currency of the country where the operations are carried out.	
Initial Recognition	3(1)	A foreign currency transaction shall be recorded, on initial recognition in the reporting currency, by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency **at the date of the transaction.**	Same.
	3(2)	An average rate for a week or a month that approximates the actual rate at the date of the transaction may be used for all transaction in each foreign currency occurring during that period. If the exchange rate fluctuates significantly, the actual rate at the date of the transaction shall be used.	Same
Conversion at Last Date of Previous Year	4	At last day of each previous year:- (a) foreign currency monetary items shall be converted into reporting currency by applying the closing rate; (b) where the closing rate does not reflect with reasonable accuracy, the amount in reporting currency that is likely to be realised from or required to disburse, a foreign currency monetary item owing to restriction on remittances or the closing rate being unrealistic and it is not possible to effect an	Same However for **non monetary items** which are carried at which are **carried at fair value** or other similar valuation are reported using the exchange rates that existed when the **values were determined.** **(Refer Case Study No. 12)**

Content Title	Para	ICDS requirement	AS requirement
		exchange of currencies at that rate, then the relevant monetary item shall be reported in the reporting currency at the amount which is likely to be realised from or required to disburse such item at the last date of the previous year; and (c) **non-monetary items** in a foreign currency shall be converted into reporting currency by using the **exchange rate at the date of the transaction** (d) non-monetary item being inventory which is carried at net realisable value denominated in a foreign currency shall be reported using the exchange rate that existed when such value was determined.	
Recognition of exchange differences	5	(i) In respect of **monetary items**, exchange differences arising on the settlement thereof or on conversion thereof at last day of the previous year shall be **recognised as income or as expense in that previous year.** (ii) In respect of **non-monetary items**, exchange differences arising on conversion thereof at the last day of the previous year shall **not be recognised** as income or as expense in that previous year.	Same **Exception** to the above is that there is a limited period irrevocable option for entities to **capitalize/ amortize exchange differences on long-term foreign currency monetary items.**
Exception to Paragraphs 3,4, and 5	6	Notwithstanding anything contained in paragraph 3, 4 and 5, the initial recognition, conversion and recognition of exchange difference shall be subject to the provisions of **section 43A** of Income-tax Act, 1961 or Rule 115 of Income-tax Rules, 1962.	No such para
Financial Statements of Foreign Operations	7	The financial statements of an integral foreign operation shall be translated using the principles and procedures in paragraphs 3 to 6 as if the transactions of the foreign operation had been those of the person himself.	AS has different rules for integral and non-integral foreign operations
Forward Exchange Contracts	8(1)	Any premium or discount arising at the inception of a forward exchange contract shall be amortized as expense or income over the life of the contract. Exchange differences on such a contract shall be recognised as income or as expense in the previous year in which the exchange rates change. Any profit or loss arising on cancellation or renewal shall be recognised as income or as expense for the previous year.	Same

Content Title	Para	ICDS requirement	AS requirement
	8(2)	The provisions of paragraph 8(1) shall apply provided the contract - (a) is not intended for trading or speculation purposes; and (b) is entered into to establish the amount of the reporting currency required or available at the settlement date of the transaction.	Same
	8(3)	The provisions of paragraph 8(1) shall not apply to the contract that is entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction. For this purpose, firm commitment, shall not include assets and liabilities existing at the end of the previous year	Not covered by AS 11
	8(4)	The premium or discount that arises on the contract is measured by the difference between the exchange rate at the date of the inception of the contract and the forward rate specified in the contract. Exchange difference on the contract is the difference between: (a) the foreign currency amount of the contract translated at the exchange rate at the last day of the previous year, or the settlement date where the transaction is settled during the previous year; and (b) the same foreign currency amount translated at the date of inception of the contract or the last day of the immediately preceding previous year, whichever is later.	Same
	8(5)	Premium, discount or exchange difference on contracts that are intended for **trading or speculation purposes**, or that are entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction **shall be recognised at the time of settlement.**	The premium or discount on the contract is ignored and at **each balance sheet date**, the value of the contract is **marked to its current market** value and the **gain or loss** on the contract is **recognized.** **(Refer Case Study No. 13)**
	ICDS-VII : Government grants		**AS 12**
Scope	1	This ICDS deals with the treatment of Government grants. The Government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc.	Same
	2	This ICDS does not deal with:— (a) Government assistance other than in the form of Government grants; and (b) Government participation in	Same

Content Title	Para	ICDS requirement	AS requirement
		the ownership of the enterprise	
Definitions	3(1)	(a) "Government" refers to the Central Government, State Governments, agencies and similar bodies, whether local, national or international. (b) "Government grants" are assistance by Government in cash or kind to a person for past or future compliance with certain conditions. They exclude those forms of Government assistance which cannot have a value placed upon them and the transactions with Government which cannot be distinguished from the normal trading transactions of the person.	Same
Recognition of Government Grants	4(1)	Government grants should not be recognised until there is reasonable assurance that: (i) the person shall comply with the conditions attached to them, and (ii) the grants shall be received.	Government grants available to the enterprise are considered for inclusion in accounts: (i) where there is reasonable assurance that the enterprise will comply with the conditions attached to them; and (ii) where such **benefits have been earned by the enterprise** and it is reasonably certain that the ultimate collection will be made
	4(2)	Recognition of Government grant shall **not be postponed beyond the date of actual receipt.**	**Mere receipt of a grant is not necessarily a conclusive evidence** that conditions attaching to the grant have been or will be fulfilled
Treatment of Government Grants	5	Where the Government grant relates to a depreciable fixed asset or assets of a person, the grant shall be deducted from the actual cost of the asset or assets concerned or from the written down value of block of assets to which concerned asset or assets belonged to.	Grants related to **depreciable assets** are **either:** (i) **treated as deferred income** and transferred to the statement of profit and loss in proportion to depreciation, or (ii) **deducted from the cost of the asset**. Grants relating to **non-depreciable assets** are credited to **capital reserve** or **deducted from cost of asset**.
	6	Where the Government grant relates to a non-depreciable asset or assets of a person requiring fulfillment of certain obligations, the grant shall be recognised as income over the same period over which the cost of meeting such obligations is charged to income.	Same
	7	Where the Government grant is of such a nature that it cannot be directly relatable to the asset acquired, so	Government grants in the nature of **promoter's contribution** i.e. they are given with reference to

Content Title	Para	ICDS requirement	AS requirement
		much of the amount which bears to the total Government grant, the same proportion as such asset bears to all the assets in respect of or with reference to which the Government grant is so received, shall be deducted from the actual cost of the asset or shall be reduced from the written down value of block of assets to which the asset or assets belonged to.	the total investment in an undertaking or by way of contribution towards its total capital outlay and no repayment are ordinarily expected are **credited directly to shareholders' funds**. **(Refer Case Study No. 14)**
	8	The Government grant that is receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support to the person with no further related costs, shall be recognised as income of the period in which it is receivable.	Same
	9	The Government grants other than covered by paragraph 5, 6, 7, and 8 shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate.	Same
	10	The Government grant in the form of non-monetary assets, given at a concessional rate, shall be **accounted for on the basis of their acquisition cost.**	Same
Refund of Government Grants	11	The amount refundable in respect of a Government grant referred to in paragraphs 6, 8 and 9 shall be applied first against any unamortised deferred credit remaining in respect of the Government grant. To the extent that the amount refundable exceeds any such deferred credit, or where no deferred credit exists, the amount shall be charged to profit and loss statement.	Same
	12	The amount refundable in respect of a Government grant related to a depreciable fixed asset or assets shall be recorded by increasing the actual cost or written down value of block of assets by the amount refundable. Where the actual cost of the asset is increased, depreciation on the revised actual cost or written down value shall be provided prospectively at the prescribed rate	Same
Disclosures	14	Following disclosure shall be made in respect of Government grants, namely :- (a) nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of	The following disclosures are required: (i) the accounting policy adopted for government grants, including the methods of presentation in the financial statements;

Content Title	Para	ICDS requirement	AS requirement
		the asset or assets or from the written down value of block of assets during the previous year; (b) nature and extent of Government grants recognised during the previous year as income; (c) nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof; and (d) nature and extent of Government grants not recognised during the previous year as income and reasons thereof.	(ii) the nature and extent of government grants recognised in the financial statements, including grants of non-monetary assets given at a concessional rate or free of cost.
ICDS VIII – Securities			**AS 13**
Scope	1	This ICDS deals with securities held as stock-in-trade.	AS 13 deals with Accounting for Investments. Shares, debentures held as stock in trade are not investments. However, provisions of AS 13 relating to current investments are applicable to securities held as stock-in-trade with suitable modifications.
	2	This ICDS does not deal with: (a) the bases for recognition of interest and dividends on securities which are covered by the ICDS on revenue recognition; (b) securities held by a person engaged in the business of insurance securities held by mutual funds, venture capital funds, banks and public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 or the Companies Act, 2013.	Same
Definitions	3(1)	(a) "Fair value" is the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction. (b) "Securities" shall have the meaning assigned to it in Section 2(h) of the Securities Contract (Regulation) Act,1956 [other than derivatives referred to in sub-clause (1a) of that clause].	No such definitions
Recognition	4	A security on acquisition shall be	Same

Content Title	Para	ICDS requirement	AS requirement
and Initial Measurement of Securities		recognized at actual cost.	
	5	The actual cost of a security shall comprise of its purchase price and include acquisition charges such as brokerage, fees, tax, duty or cess.	Same
	6	Where a security is acquired in exchange for other securities, the fair value of the security so acquired shall be its actual cost.	If an investment is acquired, or partly acquired, by the issue of shares or other securities, the acquisition cost is **the fair value of the securities issued** (which, in appropriate cases, may be indicated by the issue price as determined by statutory authorities). The fair value may not necessarily be equal to the nominal or par value of the securities issued.
	7	Where a security is acquired in exchange for another asset, the fair value of the security so acquired shall be its actual cost.	If an investment is acquired in exchange, or part exchange, for another asset, the acquisition cost of the investment is determined by reference to the **fair value of the asset given up. It may be appropriate to consider the fair value of the investment acquired if it is more clearly evident.**
	8	Where unpaid interest has accrued before the acquisition of an interest bearing security and is included in the price paid for the security, the subsequent receipt of interest is allocated between pre acquisition and post acquisition periods; the pre-acquisition portion of the interest is deducted from the actual cost.	Same
Subsequent measurement of Securities	9	At the end of any previous year, securities held as stock-in-trade shall be valued at actual cost initially recognized or net realisable value at the end of that previous year, whichever is lower.	Current investments are carried at lower of cost and fair value.
	10	For the purpose of para 9, the comparison of actual cost initially recognized and net realizable **value shall be done category wise and not for each individual security.** For this purpose, securities shall be classified into the following categories, namely:- (a) shares; (b) debt securities; (c) convertible securities; and (d) any other securities not covered above.	Valuation of current investments on overall (or global) basis is not considered appropriate. Sometimes, the concern of an enterprise may be with the value of a category of related current investments and not with each individual investment, and accordingly the investments may be carried at the lower of cost and fair value computed category- wise (i.e. equity shares, preference shares, convertible debentures, etc.). However, the more prudent and appropriate method is to **carry investments individually at the**

Content Title	Para	ICDS requirement	AS requirement
			lower of cost and fair value. **(Refer Case Study No. 15)**
	11	The value of securities held as stock-in-trade of a business as on the beginning of the previous year shall be: (a) the cost of securities available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and (b) the value of the securities of the business as on the close of the immediately preceding previous year, in any other case.	No such para
	12	Notwithstanding anything contained in para 9, 10 and 11, at the end of any previous year, s**ecurities not listed on a recognized stock exchange**; or listed but not quoted on a recognized stock exchange with regularity from time to time, **shall be valued at actual cost initially recognized.**	Current investments are carried at lower of cost and fair value.
	13	For the purposes of para 9, 10 and 11 where the actual cost initially recognized cannot be ascertained by reference to **specific identification**, the cost of such security shall be determined on the basis of **first-in-first-out method**.	It permits **FIFO & Weighted average** method for securities held as stock in trade.
	PART - B		
Scope	1	This part of Income Computation and Disclosure Standard deals with securities held by a scheduled bank or public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013 (18 of 2013).	No such Para
Definitions	2	(a) “Scheduled Bank” shall have the meaning assigned to it in clause (ii) of the Explanation to clause (viia) of sub-section (1) of section 36 of the Act.	No such Para
Classification, Recognition and Measurement of Securities		Securities shall be classified, recognised and measured in accordance with the extant guidelines issued by the Reserve Bank of India in this regard and any claim for deduction in excess of the said guidelines shall not be taken into account. To this extent, the provisions of Income Computation and Disclosure Standard VI on the effect of changes in foreign exchange rates relating to forward exchange contracts shall not apply.”	No such Para

Content Title	Para	ICDS requirement	AS requirement
Bonus Shares	--	***If bonus shares are held as capital asset, cost shall be Nil u/s 55 of Income-tax Act, 1961.*** ***If bonus shares are held as stock-in-trade, there is no guidance in Income-tax Act, 1961 and ICDS.***	***Valued at average cost in all cases.***
Sale of Right entitlement	--	***Under section 55, Cost is taken at Nil. Hence entire sale proceed shall be taxable as income under Capital Gain head.***	***Deducted from cost of investments (if acquired on cum-right basis), else treated as income.***
ICDS IX – Borrowing Costs			**AS 16**
Scope	1(1)	This ICDS deals with treatment of borrowing costs.	Same
	1(2)	This ICDS does not deal with the actual or imputed cost of owners' equity and preference share capital.	Same
Definitions	2(1)	"Borrowing costs" are interest and other costs incurred by a person in connection with the borrowing of funds and include: (i) commitment charges on borrowings; (ii) amortised amount of discounts or premiums relating to borrowings; (iii) amortised amount of ancillary costs incurred in connection with the arrangement of borrowings; (iv) finance charges in respect of assets acquired under finance leases or under other similar arrangements.	Same. AS 16 includes exchange difference arising from **foreign currency borrowings** to the extent it can be regarded as adjustment to interest cost.
		"Qualifying asset" means: (i) land, building, machinery, plant or furniture, being tangible assets; (ii) knowhow, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets; (iii) **inventories that require a period of 12 months or more** to bring them to a saleable condition.	Qualifying asset is one which takes **substantial period of time** to get ready for its intended use or sale. Land is thus not a qualifying asset as per AS 16.
Recognition	3	Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset shall be capitalised as part of the cost of that asset. The amount of borrowing costs eligible for capitalisation shall be determined in accordance with this ICDS. Other borrowing costs shall be recognised in accordance with the provisions of Income-tax Act, 1961.	Similar
	4	For the purposes of this ICDS, "capitalisation" in the context of	Not specifically in AS, but have same meaning

Content Title	Para	ICDS requirement	AS requirement
		inventory referred to in item (iii) of clause (b) of paragraph 2(1) means addition of borrowing cost to the cost of inventory.	
Borrowing Costs eligible for Capitalisation	5	To the extent the funds are borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised on that asset shall be the **actual borrowing costs incurred during the period on the funds so borrowed**.	Borrowing costs to be capitalised is **actual borrowing costs incurred less any income on the temporary investment of those borrowings.** **(Refer Case Study No. 16)**
	6	To the extent the funds are borrowed generally and utilised for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised shall be computed in accordance with the following formula, namely **:** $$\frac{A \times B}{C}$$ Where **A=** Borrowing costs incurred during the previous year except on borrowings directly relatable to specific purposes;	To the extent that funds are borrowed generally and used for the purpose of obtaining a qualifying asset, the amount of borrowing costs eligible for capitalisation should be determined by applying a **capitalisation rate to the expenditure on that asset**. The capitalization rate should be the **weighted average** of the borrowing costs applicable to the borrowings of the enterprise that are outstanding during the period, other than borrowings made specifically for the purpose of obtaining a qualifying asset. The amount of borrowing costs capitalised during a period should not exceed the amount of borrowing costs incurred during that period. **(Refer Case Study No. 17)**
		B = (i) The average of costs of qualifying asset as appearing in the balance sheet of a person on the first day and the last day of the previous year; (ii) In case the qualifying asset does not appear in the balance sheet of a person on the first day or both on the first day and the last day of the previous year, half of the cost of the qualifying asset; (iii) In case the qualifying asset does not appear in the balance sheet of a person on the last day of previous year, the average of the costs of qualifying asset as appearing in the balance sheet of a person on the first day of the previous year and on the date of put to use or completion, as the case may be, other	

Content Title	Para	ICDS requirement	AS requirement
		than those qualifying assets which are directly funded out of specific borrowings	
		C = The average of the amount of total assets as appearing in the balance sheet of a person on the first day and the last day of the previous year, other than those assets which are directly funded out of specific borrowings;	
Commencement of Capitalisation	7	The capitalisation of borrowing costs shall commence: (a) in a case referred to in paragraph 5, from the date on which funds were borrowed; (b) in a case referred to in paragraph 6, from the date on which funds were utilised.	The capitalization starts at later of the following dates: (a) expenditure for acquisition, construction or production of a qualifying asset is being incurred; (b) borrowing costs are being incurred; and (c) activities that are necessary to prepare the asset for its intended use or sale are in progress.
Cessation of Capitalisation	8	Capitalisation of borrowing costs shall cease: (a) in case of a qualifying asset referred to in item (i) and (ii) of clause (b) of paragraph 2(1), when such asset is **first put to use**; (b) in case of inventory referred to in item (iii) of clause (b) of paragraph 2(1), when substantially **all the activities necessary to prepare such inventory for its intended sale are complete**.	Capitalization of borrowing costs should cease when **substantially** all the activities necessary to prepare the qualifying asset for its intended use or sale are complete. **(Refer Case Study No. 18)**
	9	When the construction of a qualifying asset is **completed in parts** and a completed part is capable of being used while construction continues for the other parts, capitalisation of borrowing costs in relation to a part shall cease:— (a) in case of part of a qualifying asset referred to in item (i) and (ii) of clause (b) paragraph 2(1), when such part of a qualifying asset is **first put to use**; (b) in case of part of inventory referred to in item (iii) of clause (b) of paragraph 2(1), when substantially all the activities necessary to prepare such part of inventory for its intended sale are complete.	Capitalization of borrowing costs should cease when **substantially all the activities necessary to prepare the qualifying asset for its intended use or sale are complete**.
Disclosure	11	The following disclosure shall be made in respect of borrowing costs, namely: (a) the accounting policy adopted for	Same

Content Title	Para	ICDS requirement	AS requirement
		borrowing costs; and (b) the amount of borrowing costs capitalised during the previous year.	
ICDS X - Provisions, contingent liabilities and contingent assets			**AS 29**
Scope	1	This ICDS deals with provisions, contingent liabilities and contingent assets, except those: (a) resulting from financial instruments; (b) resulting from executory contracts (c) arising in insurance business from contracts with policyholders; and (d) covered by another ICDS	Same
	2	This ICDS does not deal with the recognition of revenue which is dealt with by ICDS Revenue Recognition.	Same
	3	The term 'provision' is also used in the context of items such as depreciation, impairment of assets and doubtful debts which are adjustments to the carrying amounts of assets and are not addressed in this ICDS.	Not specified in AS, but the same principle applies as other AS covers such provisions.
Definitions	4(1)	(a) **"Provision"** is a liability which can be measured only by using a substantial degree of estimation. (b) **"Liability"** is a present obligation of the person arising from past events, the settlement of which is expected to result in an outflow from the person of resources embodying economic benefits. (c) **"Obligating event"** is an event that creates an obligation that results in a person having no realistic alternative to settling that obligation. (d) **"Contingent liability is"-** (i) a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the person; or (ii) a present obligation that arises from past events but is not recognised because (A) it is not reasonably certain that an outflow of resources embodying economic benefits will be required to settle the	Same AS also defines **Possible obligation** as an obligation is a possible obligation if, based on the evidence available, its existence at the balance sheet date is considered not probable. A **restructuring** is a programme that is planned and controlled by management, and materially changes either: (a) the scope of a business undertaken by an enterprise; or (b) the manner in which that business is conducted.

Content Title	Para	ICDS requirement	AS requirement
		obligation; or (B) a reliable estimate of the amount of obligation cannot be made. (e) **“Contingent asset”** is a possible asset that arises from past events the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the person. (f) **“Executory contracts”** are contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent. (g) **“Present obligation”** is an obligation if, based on the evidence available, its existence at the end of the previous year is considered reasonably certain.	
Recognition of Provisions	5	A provision shall be recognised when: (a) a person has a present obligation as a result of a past event; (b) it is **reasonably certain** that an outflow of resources embodying economic benefits will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of obligation. If these conditions are not met, no provision shall be recognized	A provision shall be recognized when all of the following conditions are met: (a) an enterprise has a present obligation as a result of a past event; (b) it is **probable** that an outflow of resources embodying economic benefits will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation.
	6	No provision shall be recognised for costs that need to be incurred to operate in the future.	Same
	7	It is only those obligations arising from past events existing independently of a person’s future actions, that is the future conduct of its business, that are recognised as provisions	Same
	8	Where details of a proposed new law have yet to be finalised, an obligation arises only when the legislation is enacted.	Same
Recognition of Contingent Liabilities	9	A person shall not recognise a contingent liability	Contingent liabilities may develop in a way not initially expected. Therefore, they are **assessed continually** to determine whether an outflow of resources embodying economic benefits has become probable. If it **becomes probable that an outflow of future economic benefits will be required** for an

Content Title	Para	ICDS requirement	AS requirement
			item previously dealt with as a contingent liability, **a provision is recognised** in the financial statements of the period in which the change in probability occurs (except in the extremely rare circumstances where no reliable estimate can be made).
Recognition of Contingent Assets	10	A person shall not recognise a contingent asset.	Same
	11	Contingent assets are assessed continually and when it becomes **reasonably certain** that inflow of economic benefit will arise, the asset and related income are recognised in the previous year in which the change occurs.	Contingent assets are assessed continually and if it has become **virtually certain** that an inflow of economic benefits will arise, the asset and related income are recognised in the financial statements of the period in which the change occurs.
Measurement - Best estimate	12	The amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation at the end of the previous year. The amount of a provision shall **not be discounted to its present value**.	Same
	13	The amount recognised as asset and related income shall be the best estimate of the value of economic benefit arising at the end of the previous year. The amount and related income shall not be discounted to its present value.	No specifically dealt with in AS, but will have same interpretation.
Reimbursement	14	Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognised when it is **reasonably certain** that reimbursement will be received if the person settles the obligation. The amount recognised for the reimbursement shall not exceed the amount of the provision.	Similar but AS **requires virtual certainty** of reimbursement.
	15	Where a person is not liable for payment of costs in case the third party fails to pay, no provision shall be made for those costs.	Same
	16	An obligation, for which a person is jointly and severally liable, is a contingent liability to the extent that it is expected that the obligation will be settled by the other parties.	Same
Review	17	Provisions shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation, the	Same

Content Title	Para	ICDS requirement	AS requirement
		provision should be reversed.	
	18	An asset and related income recognised as per paragraph No. 11 shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer reasonably certain that an inflow of economic benefits will arise, the asset and related income shall be reversed.	No such requirement because contingent assets are recognized only when they are virtually certain.
Use of Provisions	19	A provision shall be used only for expenditures for which the provision was originally recognised.	Same
Disclosure	21(1)	Following disclosure shall be made in respect of each class of provision, namely:- (a) a brief description of the nature of the obligation; (b) the carrying amount at the beginning and end of the previous year; (c) additional provisions made during the previous year, including increases to existing provisions; (d) amounts used, that is incurred and charged against the provisions, during the previous year; (e) unused amounts reversed during the previous year; and (f) the amount of any expected reimbursement, stating the amount of any asset that has been recognized for that expected reimbursement.	Same
	21(2)	Following disclosure shall be made in respect of each class of asset and related income recognized as provided in para 11, namely:- (a) a brief description of the nature of the asset and related income; (b) the carrying amount of asset at the beginning and end of the previous year; (c) addition amount of asset and related income recognized during the year; including increased to assets and related income already recognized; and (d) amount of asset and related income reversed during the previous year.	No such requirement for contingent assets
Restructuring	--	***Not covered by ICDS***	***Contains detailed provisions for restructuring***

Case Studies on ICDS v/s AS

Case Study No. 1

A ltd has entered into Stock Futures in NSE. As on 31^{st} March, 2016 the position is as follows:

Profit on contacts which has been settled/ expired before 31^{st} March.	20Lakhs
MT M Loss till 31^{st} March on open contracts which will be settled in next year	(11Lakhs)
Net Gain till 31^{st} March 2015	09Lakhs

What will be the treatment as per AS and ICDS?

Case Study No. 2

Mr. X purchased raw material for Rs. 10 Lakhs and paid excise duty of Rs. 2 Lakhs for which Cenvat is available. What will be the value closing stock of raw material.

Case Study No. 3

M/s ABC is a partnership firm with A, B and C as partners. A retired from the firm on 31^{st} March, 2016 and B & C decided to continue the business.

Inventory held by the firm on that date had cost of Rs. 10 Lakhs with NRV of 12 Lakhs. Since business is being continued and therefore going concern assumption is valid, what will be value of closing stock.

Case Study No. 4

M/s ABC provides following information on 31^{st} March, 2016, for one of the contracts:

Original Contract Price	35 Lakhs
Total Estimated Cost	25 Lakhs
Cost Incurred till date	15 Lakhs
Additional Revenue for variation	2 Lakhs

Variation is probable to be realized, but not approved by customer till balance sheet date. What will be Contract Revenue and expense for the year.

Case Study No. 5

On 31^{st} March, 2016, one of the contracts has the following position:

Contract Price	50 Lakhs
Total Estimated Cost	40 Lakhs
Cost Incurred till date	32 Lakhs
Penalty for substandard work	2 Lakhs

What will be Contract Revenue and expense for the year.

Case Study No. 6

M/s XYZ is a contractor engaged in construction of roads. On 31^{st} March, 2016, one of the contracts has the following position:

Contract Price	50 Lakhs (including retention)
Retention Money	5 Lakhs to be paid after rectification of substandard work
Total Estimated Cost	40 Lakhs
Cost Incurred till date	12 Lakhs

As at the end of the year, company is uncertain about recovery of retention money. What will be revenue and expense as well as profit/loss for the year.

Case Study No. 7

A Ltd. is a contractor. On 31^{st} March, 2016, one of the contracts has the following position. What will be Contract Revenue and expense for the year.

Contract Price	100 Lakhs
Total Estimated Cost	80 Lakhs
Cost Incurred till date (excluding Borrowing Cost)	48 Lakhs
Borrowing cost for specific funds for this contract	6 Lakhs
Sale of Surplus material	1 Lakhs
Interest received on idle funds, borrowed for contract	2 Lakhs

Case Study No. 8

M/s ABC is a contractor. On 31^{st} March, 2016, one of the contracts has the following position:

Contract Price	30 Lakhs
Total Estimated Cost	40 Lakhs

Cost Incurred till date 12 Lakhs

What will be revenue and expense as well as profit/loss for the year.

Case Study No. 9

M/s ABC is a Contractor engage in construction of buildings. On 31st March, 2016, one of the contracts has the following position:

Contract Price 50Lakhs

Cost Incurred till date 12 Lakhs

Stage of Completion 26%

However enterprise argues that it is early stage of a contract and outcome of the contract cannot be estimated reliably at present stage, based on this decide how much revenue & cost to be recognized.

Case Study No. 10

X Ltd provides financial consultancy for its clients. It has undertaken a contract to arrange a loan of Rs. 50 Lakhs for its client for a fee of Rs. 2 Lakhs. By 31st March, papers etc have been prepared and submitted with bankers, but sanction has not been obtained. It can be said that 70% of the work has been done and expenditure incurred till date is Rs. 1 Lakh. What should be revenue for such service for current year.

Case Study No. 11

Mr. A engaged in finance business has given loan of Rs. 10 Lakhs to Mr. B on 01.04.2015 at 12% rate of interest. Mr. B is in financial difficulty and it is not probable that interest will be received. How much interest income should be recognized for the year ending 31.03.2016.

Case Study No. 12

A company purchased shares of Apple Inc. in foreign currency for US $ 12,000 (exchange rate on date of transaction was 1$= Rs. 60).

On 31st March the fair value of such investments was $10,000 and closing exchange rate was 1$= Rs. 62. What will be valuation of these current investments?

Case Study No. 13

Mr. A entered into foreign currency forward contract for speculation purpose, the details are as follows:

1.1.2016 Long (purchase contract) for 4 months : $5,000 at forward exchange rate 1$= 64

1.1.2016 Spot rate 1$=63

31.3.2016 Spot rate 1$= 67 and forward rate for one month contract is 69

30.4.2016 date of realization/ settlement 1$=62

Calculate Foreign exchange gain/ loss for year ending 31.3.2016 and 31.03.2017.

Case Study No. 14

A company received a Government Grant of Rs. 5 Lakhs under KVIC scheme for setting up an industry outside municipal limits (in village). The grant is in nature of capital subsidy for establishment of business, with no correlation with investment in fixed asset. However total expenditure incurred was 50 Lakhs and out of that fixed assets constituted 20 Lakhs. What will be treatment of grant?

Case Study No. 15

A company holds investments as stock in trade. The details are as follows:

Particulars	**Cost**	**NRV as on 31.3.2016**	**Loss as Per AS**	**Loss as per ICDS**
Listed Securities (shares)				
A Ltd	25,000	20,000		
B Ltd	50,000	57,000		
C Ltd	38,000	38,000		
Total (A)	**1,13,000**	**1,15,000**		
Listed Securities (Debt)				
M Ltd	40,000	35,000		
N Ltd	25,000	24,000		
O Ltd	15,000	19,000		
Total (B)	**80,000**	**78,000**		
Total (A + B)	**1,93,000**	**1,93,000**		
Unlisted Securities (Shares)				
X Ltd	30,000	25,000		

Y Ltd Z Ltd	40,000 25,000	42,000 21,000		
Total (C)	**95,000**	**88,000**		
Total (A + B + C)	**2,88,000**	**2,81,000**		

How much loss can be claimed for the year ending 31.03.2016.

Case Study No. 16

A company is constructing a qualifying asset for which it has taken a specific borrowing of Rs. 100 Lakhs. Borrowing cost for the year was Rs. 11 Lakhs. During the year expenditure incurred on asset was Rs. 70 Lakhs. The surplus borrowed funds were invested resulting in income of Rs. 2 Lakhs.
How much borrowing cost will be capitalised.

Case Study No. 17

A company is constructing a building. Expenditure incurred upto beginning of the year (1.4.2015) was Rs. 30 Lakhs and upto 31.3.2016 was Rs. 80 Lakhs. Assume expenditure during the year was incurred at middle of the year(6 months). There were no specific borrowings. Borrowing cost of general borrowings for the year was Rs. 20 Lakhs. Weighted average rate of general borrowing was 13.25%.
Expenditure on total assets other than those funded by specific borrowings was Rs. 70 Lakhs at beginning of the year and Rs. 160 Lakhs at end of the year.
How much borrowing cost will be capitalised.

Case Study No. 18

A company purchased Building for 50 Lakhs on 1.7.2015 with a specific loan of Rs. 30 Lakhs @ 12%. The building was ready for use at the time of acquisition but was first put to use from 1.2.2016. How much borrowing cost should be capitalised.

WITH BEST WISHES

If you have any query / feedback / suggestions / criticism, do feel free to contact:
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(Preferably Whatsup)

Your suggestions / feedback / criticism shall be highly appreciated.
