DIRECT TAXES

POWER PACK REVISION MATERIAL

RELEVANT FOR NOV 2017 EXAM

- CA MEHUL THAKKER

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Relevant for Nov 2017 Exam

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ASSESSMENT YEAR 2017-18

Special Thanks to CA Chetan V Chaudhary

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

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All disputes are subject to Ahmedabad Jurisdiction only.

A MILLION TON QUESTION

WHAT TO REVISE IN DIRECT TAX ON LAST DAY?

IF YOU FIND

- ✓ IMPORTANT AMENDMENTS MADE BY FA 2016
- ✓ RECENT CIRCULARS
- ✓ RECENT NOTIFICATIONS
- ✓ FREQUENTLY ASKED PRACTICALS
- ✓ IMPORTANT CASE STUDIES
- ✓ RTP NOV 2017

AT ONE PLACE

AND THAT TOO CHAPTER WISE

JUST

249

PAGES

HERE IS THE POWER PACK REVISION MATERIAL

ANALYSIS OF CA FINAL DIRECT TAX MAY 2017

VIS-A-VIS

POWER PACK REVISION MATERIAL MAY 2017

ONLY 173 PAGES

CA Final Direct Tax – May 2017		Power Pack Revision Material by CA Mehul Thakker [Uploaded on CA Club]
Question No. in Exam Paper	**Marks**	**Page No.**
Q.1(a)	10	77
Q.1(b)	10	63
Q.2(iv)	1	30
Q.2(xi)	2	73
Q.2 (a) & (b)	2	17
Q.4(c)	4	128
Q.4(d)	4	164
Q.6(d)	7	156
Q.7(a)	6	ICDS
Total	**46**	

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INDEX

UNIT A – BASIC CONCEPTS

1. REBATE

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

(a) Section 87A has been inserted to provide a rebate from the tax payable (before education cess) by an individual who is resident in India, provided his total income **does not exceed Rs.5,00,000.**

(b) Such rebate shall be the amount of **income-tax payable** on the total income for any assessment year **or** an amount of Rs. 2,000 ***[Rs. 5,000 W.e.f. A.Y. 2017-18]*** **whichever is less.**

Practical 1

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

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

Calculate tax liability of Mr. Mohan under following alternatives
(1) If he is resident.
(2) If he is non-resident.

Solution

Computation of Total Income of Mr. Mohan

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

Computation of Tax Liability

Alternative (1):- If Mr. Mohan is resident

TI= Rs. 3,40,000

LTCG

LTCG	Rs.1,00,000
Less: Shifting Benefit **(Refer Note 1)**	(Rs. 10,000)
Taxable LTCG @20%	Rs.90,000

Tax on LTCG =90,000 x 20%

Balance Income

Balance Income	Rs.2,40,000
Add: Shifting Benefit	Rs. 10,000
Taxable Income Slab Rate	Rs.2,50,000

Tax on Balance Income = Nil

Tax	Rs.18,000
Less: Rebate u/s 87A **(Refer Note 2)**	(Rs. 5,000)
	Rs.13,000
Add: 3% Edu cess	Rs.390
Tax Payable	**Rs.13,390**

NOTES:

1. Generally Long Term Capital Gain should be taxed at 20% under section 112. However, if other incomes are less than exemption limit, then to that extent long term capital gain shall be shifted to other income and balance long term capital gain shall be taxed at 20%.

2. Here total income doesn't exceed Rs.5,00,000 and Mr. Mohan being resident individual, therefore he can avail rebate under section 87A which shall be Rs. 18,000 or Rs.5,000 whichever is less.

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

TI= Rs. 3,40,000

LTCG

LTCG	Rs.1,00,000
Less: Shifting Benefit **(Refer Note 1)**	Not Available
Taxable LTCG @20%	Rs.1,00,000

Tax on LTCG =1,00,000 x 20%

Balance Income

Balance Income	Rs.2,40,000
Add: Shifting Benefit	Nil
Taxable Income Slab Rate	**Rs.2,40,000**

Tax on Balance Income = Nil

Tax	Rs.20,000
Less: Rebate u/s 87A **(Refer Note 2)**	Not Applicable
	Rs.20,000
Add: 3% Edu cess	Rs.600
Tax Payable	**Rs.20,600**

NOTES:

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

Readers Note:

2. GOVERNMENT GRANT OR SUBSIDY, FOR THE PURPOSE OF THE CORPUS OF A TRUST OR INSTITUTION ESTABLISHED BY THE CENTRAL GOVERNMENT OR STATE GOVERNMENT NOT TO BE INCLUDED IN THE DEFINITION OF INCOME

Section:- 2(24) – Effective From A.Y. 2017-18

Amendment made by Finance Act, 2015

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

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

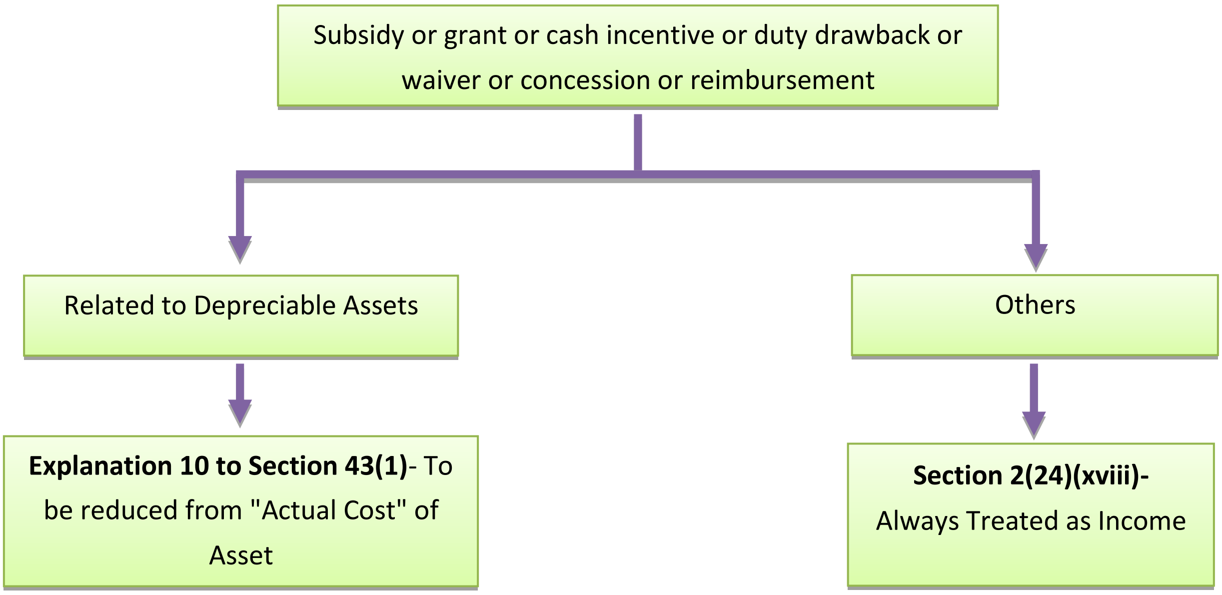
The only exclusion is the subsidy or grant or reimbursement which has been taken into account for determination of the actual cost of the asset in accordance with Explanation 10 to section 43(1).

Explanation 10 to Section 43(1)

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

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

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



Amendment made by Finance Act, 2016

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

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

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

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

Practical 2

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

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

Find out "Actual cost" of depreciable assets.

Solution

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

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

Readers Note:

Practical 3

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

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

Solution

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

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

Readers Note:

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

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

Provisions of Section 115BBE(2)

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

Further, tax rate applicable in respect of income referred to in above mentioned sections is 30% (60% plus surcharge @ 25%). This surcharge @25% is payable by all assessee irrespective of their residential status or quantum of income.

Practical 4

Mr. X, resident, filed return for the A.Y. 2017-18 declaring non-speculative business loss of Rs.55,50,000. However, the assessing officer made an addition of Rs. 6,00,000 on account of unexplained cash credit under section 68 of the Act. Mr. X denies tax liability on the ground that he is entitled for set-off of loss against the addition made by assessing officer. Whether claim made by Mr. X is correct? Also find out tax payable by Mr. X, if any.

Solution

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

Computation of Tax Liability of Mr. X

	Particulars	**Rs.**
	Unexplained cash credit u/s 68	6,00,000
	Total Income	**6,00,000**
	Tax @ 60%	**3,60,000**
Less	Surcharge (25%)	90,000
	Sub-Total	**4,50,000**
Add:	Education Cess @ 3%	13,500
	Tax Liability	**4,63,500**

Readers Note:

4. Notifications/Circulars

Circular No. 28/2016, dated 27-07-2016

Clarification regarding attaining prescribed age of 60 years/80 years on 31st March itself, in case of senior/very senior citizens whose date of birth falls on 1st April

The Supreme Court had an occasion to consider a similar issue in the case of *Prabhu Dayal Sesma vs. State of Rajasthan &, another 1986, AIR, 1948* wherein it has dealt with on the general rules to be followed for calculating the age of the person. **The Apex Court observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the day preceding, the anniversary of his birthday.**

The CBDT has, vide this Circular, clarified that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would be decided on the basis of above criteria.

Therefore, a resident individual whose 60th birthday falls on 1st April, 2017, would be treated as having attained the age of 60 years in the P.Y.2016-17, and would be eligible for higher basic exemption limit of Rs. 3 lakh in computing his tax liability for A.Y.2017-18.

Likewise, a resident individual whose 80th birthday falls on 1st April, 2017, would be treated as having attained the age of 80 years in the P.Y.2016-17, and would be eligible for higher basic exemption limit of Rs.5 lakh in computing his tax liability for A.Y.2017-18.

IMPORTANT CASE LAW

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

UNIT B – RESIDENTIAL STATUS AND SCOPE OF TOTAL INCOME

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

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

Question 5

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

Solution

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

(a) in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export ;

(b) in the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India ;

(c) in the case of a non-resident, being—

(1) an individual who is not a citizen of India ; or

(2) a firm which does not have any partner who is a citizen of India or who is resident in India ; or

(3) a company which does not have any shareholder who is a citizen of India or who is resident in India,

no income shall be deemed to accrue or arise in India to such individual, firm or company through or from operations which are confined to the shooting of any cinematograph film in India;

(d) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India ;

(e) ***in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to the display of uncut and unassorted diamond in any special zone notified by the Central Government in the Official Gazette in this behalf. [Inserted by Finance Act, 2016 w.r.e.f. A.Y. 2016-17]***

Readers Note:

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

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

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

(i) it is an Indian company; or

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

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

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

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

Practical 6

ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in April, 2016 in compliance with RBI guidelines. It just spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day to day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine the residential status of ABC Inc. for A.Y.2017-18. Whether ABC Inc. is required to file any statement under Income Tax Act, 1961?

Solution

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

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

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

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

(a) Consequently, the CBDT has, vide this notification, prescribed the form and particulars of the Annual Statement to be furnished by the non-resident having Liaison Office in India. The statement shall be given in **Form 49C** and **shall be submitted in the electronic form along with the digital signature**.

(b) The statement is to be v**erified by a Chartered Accountant or by the Authorized Signatory** i.e., the person authorized by the non-resident in this behalf.

Readers Note:

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

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

7. Notifications/Circulars

Various

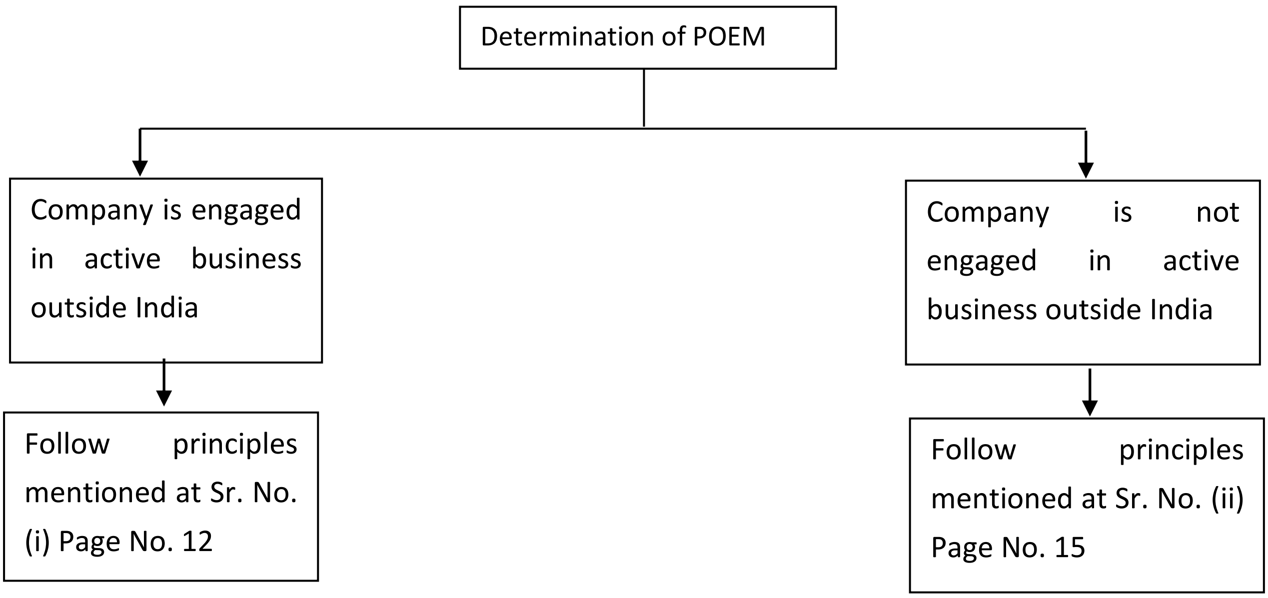
1. Circular No. 6/2017, dated 24.01.2017 & Circular No. 8/2017, dated 23-02-2017

Guiding principles for determination of Place of Effective Management (POEM) of a company, other than an Indian company

The CBDT has, vide this circular, laid down the following guiding principles to be followed for determination of POEM.

Any determination of the POEM will depend upon the facts and circumstances of a given case. The POEM concept is one of substance over form. It may be noted that an entity may have more than one place of management, but it can have only one place of effective management at any point of time. Since "residence" is to be determined for each year, POEM will also be required to be determined on year to year basis.

The process of determination of POEM would be primarily based on the fact as to **whether or not the company is engaged in active business outside India**.



A company shall be said to be engaged in "active business outside India"

- if the passive income is not more than 50% of its total income; and
- less than 50% of its total assets are situated in India; and
- less than 50% of total number of employees are situated in India or are resident in India; and
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Meaning of certain terms:

<table>
<tr><th>Term</th><th>Meaning</th></tr>
<tr><td>Income</td><td>(a) As computed for tax purpose in accordance with the laws of the country of incorporation; or
(b) As per books of account, where the laws of the country of incorporation does not require such a computation</td></tr>
<tr><td>Value of assets</td><td><table>
<tr><td>(a)</td><td>In case of an individually depreciable asset</td><td>The average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the previous year;</td></tr>
<tr><td>(b)</td><td>In case of pool of fixed asset, being treated as a block for depreciation</td><td>The average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the year;</td></tr>
<tr><td>(c)</td><td>In case of any other asset</td><td>Value as per books of account</td></tr>
</table></td></tr>
<tr><td>Number of employees</td><td>The average of the number of employees as at the beginning and at the end of the year. It shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees.</td></tr>
<tr><td>Pay roll</td><td>This term includes the cost of salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer</td></tr>
<tr><td>Passive income</td><td>It is the aggregate of, -
(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and
(ii) income by way of royalty, dividend, capital gains, interest or rental income;
However, any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation.</td></tr>
</table>

Place of Effective Management:

(i) In case of companies engaged in active business outside India

POEM of a company engaged in active business shall be presumed to be outside India if the majority of the board meetings are held outside India.

However, in case the Board is not exercising its powers of management and such powers are being exercised by either the holding company or any other person, resident in India, then POEM shall be considered to be in India.

For this purpose, merely because the Board of Directors (BOD) follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Pay roll functions, Accounting, Human resource (HR) functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; would not constitute a case of BoD of companies standing aside.

For the purpose of determining whether the company is engaged in active business outside India, the average of the data of the previous year and two years prior to that shall be taken into account. In case the company has been in existence for a shorter period, then, data of such period shall be considered. Where the accounting year for tax purposes, in accordance with laws of country of incorporation of the company, is different from the previous year, then, data of the accounting year that ends during the relevant previous year and two accounting years preceding it shall be considered.

Example 1: Company A Co. is a sourcing entity, for an Indian multinational group, incorporated in country X and is 100% subsidiary of Indian company (B Co.). The warehouses and stock in them are the only assets of company and are located in country X. All the employees of the company are also in country X. The average income wise breakup of the company's total income for three years is, -

(i) 30% of income is from transaction where purchases are made from parties which are non-associated enterprises and sold to associated enterprises;

(ii) 30% of income is from transaction where purchases are made from associated enterprises and sold to associated enterprises;

(iii) 30% of income is from transaction where purchases are made from associated enterprises and sold to non-associated enterprises; and

(iv) 10% of the income is by way of interest.

Interpretation: In this case passive income is 40% of the total income of the company. The passive income consists of, -

(i) 30% income from the transaction where both purchase and sale is from/to associated enterprises; and

(ii) 10% income from interest.

The A Co. satisfies the first requirement of the test of active business outside India. Since no assets or employees of A Co. are in India the other requirements of the test is also satisfied. Therefore, company is engaged in active business outside India.

Example 2: *The other facts remain same as that in Example 1 with the variation that A Co. has a total of 50 employees. 47 employees, managing the warehouse, storekeeping and accounts of the company, are located in country X. The Managing Director (MD), Chief Executive Officer (CEO) and sales head are resident in India. The total annual payroll expenditure on these 50 employees is of* Rs. *5 crore. The annual payroll expenditure in respect of MD, CEO and sales head is of* Rs. *3 crore.*

Interpretation: Although the first limb of active business test is satisfied by A Co. as only 40% of its total income is passive in nature. Further, more than 50% of the employees are also situated outside India. All the assets are situated outside India. However, the payroll expenditure in respect of the MD, the CEO and the sales head being employees resident in India exceeds 50% of the total payroll expenditure. Therefore, A Co. is not engaged in active business outside India.

Example 3: *The basic facts are same as in Example 1. Further facts are that all the directors of the A Co. are Indian residents. During the relevant previous year 5 meetings of the Board of Directors is held of which two were held in India and 3 outside India with two in country X and one in country Y.*

Interpretation: The A Co. is engaged in active business outside India as the facts indicated in Example 1 establish. The majority of board meetings have been held outside India. Therefore, the POEM of A Co. shall be presumed to be outside India.

Example 4: *The facts are same as in Example 3 but it is established by the Assessing Officer that although A Co.'s senior management team signs all the contracts, for all the contracts above* Rs. *10 lakh the A Co. must submit its recommendation to B Co. and B Co. makes the decision whether or not the contract may be accepted. It is also seen that during the previous year more than 99% of the contracts are above* Rs. *10 lakh and over past years also the same trend in respect of value contribution of contracts above* Rs. *10 lakh is seen.*

Interpretation: These facts suggest that the effective management of the A Co. may have been usurped by the parent company B Co. Therefore, POEM of A Co. may in such cases be not presumed to be outside India even though A Co. is engaged in active business outside India and majority of board meeting are held outside India.

Example 5: *An Indian multinational group has a local holding company A Co. in country X. The A Co. also has 100% downstream subsidiaries B Co. and C Co. in country X and D Co. in country Y. The A Co. has income only by way of dividend and interest from investments made in its subsidiaries. The Place of Effective Management of A Co. is in India and is exercised by ultimate parent company of the group. The subsidiaries B, C and D are engaged in active business outside India. The meetings of Board of Director of B Co., C Co. and D Co. are held in country X and Y respectively.*

Interpretation: Merely because the POEM of an intermediate holding company is in India, the POEM of its subsidiaries shall not be taken to be in India. Each subsidiary has to be examined separately. As indicated in the facts since companies B Co., C Co., and D Co. are independently engaged in active business outside India and majority of Board meetings of these companies are also held outside India. The POEM of B Co., C Co., and D Co. shall be presumed to be outside India.

(ii) In case of companies not engaged in active business outside India

The guidelines provide a two-stage process for determination of POEM in case of companies not engaged in active business.

(a) First stage: Identifying the person(s) who actually make the key management and commercial decisions for the conduct of the company as a whole.

(b) Second stage: Determining the place where these decisions are, in fact, being made.

The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of POEM, it is the substance which would be conclusive rather than the form.

Some of the guiding principles which may be taken into account for determining the POEM are as follows:

(a) **<u>The location where a company's Board regularly meets and makes decisions</u>** may be the company's place of effective management provided the Board-

(i) retains and exercises its authority to govern the company; and

(ii) does, in substance, make the key management and commercial decisions necessary for the conduct of the company's business as a whole.

It may be mentioned that mere formal holding of board meetings at a place would by itself not be conclusive for determination of POEM being located at that place. If the key decisions by the directors are in fact being taken in a place other than the place where the formal meetings are held then such other place would be relevant for POEM.

As an example, there may be a case where the board meetings are held in a location distinct from the place where head office of the company is located or such location is unconnected with the place where the predominant activity of the company is being carried out.

If a board has de facto delegated the authority to make the key management and commercial decisions for the company to the senior management or any other person including a shareholder, promoter, strategic or legal or financial advisor etc. and does nothing more than routinely ratifying the decisions that have been made, the company's place of effective management will ordinarily be the place where these senior managers or the other person make those decisions.

> "Senior Management" in respect of a company means the person or persons who are generally responsible for developing and formulating key strategies and policies for the company and for ensuring or overseeing the execution and implementation of those strategies on a regular and on-going basis. While designation may vary, these persons may include:
>
> (i) Managing Director or Chief Executive Officer;
>
> (ii) Financial Director or Chief Financial Officer;
>
> (iii) Chief Operating Officer; and
>
> (iv) The heads of various divisions or departments (for example, Chief Information or Technology Officer, Director for Sales or Marketing).

(b) Location of Executive Committee, in case powers are delegated by the board: A company's board may delegate some or all of its authority to one or more committees such as an executive committee consisting of key members of senior management. In these situations, the location where the members of the Executive Committee are based and where that committee develops and formulates the key strategies and policies for mere formal approval by the full board will often be considered to be the company's place of effective management.

The delegation of authority may be either *de jure* (by means of a formal resolution or Shareholder Agreement) or *de facto* (based upon the actual conduct of the board and the executive committee).

(c) Location of head office: The location of a company's head office will be a very important factor in the determination of the company's place of effective management because it often represents the place where key company decisions are made. The following points need to be considered for determining the location of the head office of the company:-

If the company's senior management and their support staff are based in a single location and that location is held out to the public as the company's principal place of business or headquarters, then, that location is the place where head office is located.

If the company is more decentralized (for example, where various members of senior management may operate, from time to time, at offices located in the various countries) then, the company's head office would be the location where these senior managers,-

(i) are primarily or predominantly based; or
(ii) normally return to following travel to other locations; or
(iii) meet when formulating or deciding key strategies and policies for the company as a whole.

Members of the senior management may operate from different locations on a more or less permanent basis and the members may participate in various meetings *via* telephone or video conferencing rather than by being physically present at meetings in a particular location. In such situation the head office would normally be the location, if any, where the highest level of management (for example, the Managing Director and Financial Director) and their direct support staff are located.

In situations where the senior management is so decentralised that it is not possible to determine the company's head office with a reasonable degree of certainty, the location of a company's head office would not be of much relevance in determining that company's place of effective management.

"Head Office" of a company would be the place where the company's senior management and their direct support staff are located or, if they are located at more than one location, the place where they are primarily or predominantly located. A company's head office is not necessarily the same as the place where the majority of its employees work or where its board typically meets.

(d) **Use of modern technology:** The use of modern technology impacts the place of effective management in many ways. It is no longer necessary for the persons taking decision to be physically present at a particular location. Therefore physical location of board meeting or executive committee meeting or meeting of senior management may not be where the key decisions are in substance being made. In such cases the place where the directors or the persons taking the decisions or majority of them usually reside may also be a relevant factor.

(e) **Decisions via circular resolution or round robin voting:** In case of circular resolution or round robin voting the factors like, the frequency with which it is used, the type of decisions made in that manner and where the parties involved in those decisions are located etc. are to be considered. It cannot be said that proposer of decision alone would be relevant but based on past practices and general conduct; it would be required to determine the person who has the authority and who exercises the authority to take decisions. The place of location of such person would be more important.

(f) **Decisions made by Shareholders are not relevant factor in determination of POEM:** The decisions made by shareholder on matters which are reserved for shareholder decision under the company laws are not relevant for determination of a company's place of effective management. Such decisions may include sale of all or substantially all of the company's assets, the dissolution, liquidation or deregistration of the company, the modification of the rights attaching to various classes of shares or the issue of a new class of shares etc. These decisions typically affect the existence of the company itself or the rights of the shareholders as such, rather than the conduct of the company's business from a management or commercial perspective and are therefore, generally not relevant for the determination of a company's place of effective management.

However, the shareholder's involvement can, in certain situations, turn into that of effective management. This may happen through a formal arrangement by way of shareholder agreement etc. or may also happen by way of actual conduct. As an example if the shareholders limit the authority of board and senior managers of a company and thereby remove the company's real authority to make decision then the shareholder guidance transforms into usurpation and such undue influence may result in effective management being exercised by the shareholder.

Therefore, whether the shareholder involvement is crossing the line into that of effective management is one of fact and has to be determined on case-to-case basis only.

(g) **Day to day routine operational decisions are not relevant for determination of POEM:** It may be clarified that day to day routine operational decisions undertaken by junior and middle management shall not be relevant for the purpose of determination of POEM. The operational decisions relate to the oversight of the day-to-day business operations and activities of a company whereas the key management and commercial decision are concerned with broader strategic and policy decision. For example, a decision to open a major new manufacturing facility or to discontinue a major product line would be examples of key commercial decisions affecting the company's business as a whole. By contrast, decisions by the plant manager appointed by senior management to run that facility, concerning repairs and maintenance, the implementation of company-wide quality controls and human resources policies, would be examples of routine operational decisions. In certain situations it may happen that person responsible for operational decision is the same person who is responsible for the key management and commercial decision. In such cases it will be necessary to distinguish the two type of decisions and thereafter assess the location where the key management and commercial decisions are taken.

If the above factors do not lead to clear identification of POEM then the final guidelines provide that following secondary factors may be considered:

- Place where main and substantial activity of the company is carried out; or
- Place where the accounting records of the company are kept.

It needs to be emphasized that the determination of POEM is to be based on all relevant facts related to the management and control of the company, and is not to be determined on the basis of isolated facts that by itself do not establish effective management, as illustrated by the following examples:

(i) The fact that a foreign company is completely owned by an Indian company will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(ii) The fact that there exists a Permanent Establishment of a foreign entity in India would itself not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(iii) The fact that one or some of the Directors of a foreign company reside in India will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(iv) The fact of, local management being situated in India in respect of activities carried out by a foreign company in India will not, by itself, be conclusive evidence that the conditions for establishing POEM have been satisfied.

(v) The existence in India of support functions that are preparatory and auxiliary in character will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

It is reiterated that the above principles for determining the POEM are for guidance only. No single principle will be decisive in itself. The above principles are not to be seen with reference to any particular moment in time rather activities performed over a period of time, during the previous year, need to be considered.

In other words a "snapshot" approach is not to be adopted. Further, based on the facts and circumstances if it is determined that during the previous year the POEM is in India and also outside India then POEM shall be presumed to be in India if it has been mainly /predominantly in India

The CBDT also clarified that the Assessing Officer (AO) shall, before initiating any proceedings for holding a company incorporated outside India, on the basis of its POEM, as being resident in India, seek prior approval of the Principal Commissioner or the Commissioner, as the case may be.

Further, in case the AO proposes to hold a company incorporated outside India, on the basis of its POEM, as being resident in India then any such finding shall be given by the AO after seeking prior approval of the collegium of three members consisting of the Principal Commissioners or the Commissioners, as the case may be, to be constituted by the Principal Chief Commissioner of the region concerned, in this regard. The collegium so constituted shall provide an opportunity of being heard to the company before issuing any directions in the matter.

Further, the CBDT vide Circular no. 8/2017 dated 23.02.2017 also clarified that POEM guidelines shall not apply to a company having turnover or gross receipts of **Rs.** ***50 crores or less in a financial year.***

Turnover of the company (not being Indian Company)

- Does not Exceeds Rs. 50 Crores → POEM Guidelines not applicable
- Exceeds Rs. 50 Crores → POEM Guidelines applicable

2. Circular No. 13/2017, dated 11-04-2017 and **Circular No. 17/2017, dated 26-04-2017**

Clarification regarding liability to income-tax in India for a non-resident seafarer receiving remuneration in NRE (Non-Resident External) account maintained with an Indian Bank

Representations were received by the CBDT that income by way of salary, received by non-resident seafarers, for services rendered outside India on-board foreign ships, are being subjected to tax in India for the reason that the salary has been received by the seafarer into the NRE bank account maintained in India by the seafarer.

The CBDT has examined the matter. It noted that section 5(2)(a) of the Income-tax Act, 1961 provides that only such income of a non-resident shall be subjected to tax in India that is either received or is deemed to be received in India.

Accordingly, the CBDT has, vide this circular, clarified that that salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

UNIT C - INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

8. EXEMPTION UNDER SECTION 10(34) NOT TO APPLY TO DIVIDEND CHARGEABLE TO TAX IN ACCORDANCE WITH SECTION 115BBDA

Section:- 115BBDA and 10(34) - Effective from A.Y. 2017-18

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

Practical 7

Find out tax liability of Mr. X and Mr. Y (both being residents) for the **assessment year 2017-18.**

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

Solution

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

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

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

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

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

Note: Loss under the head "PGBP" Rs. 12,00,000 (Rs.15,00,000 – Rs. 3,00,000) shall be carried forward for next 8 assessment years.

Computation of Tax liability of Mr. X

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

<u>Points to be considered while computing total income and tax liability of Mr. Y</u>

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

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

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

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

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

Computation of Tax liability of Mr. Y

Since total income is negative, tax payable is NIL.

Readers Note:

9. Notifications/Circulars

Various

Notification No. 43/2016, dated 02-06-2016

Method for determining the amount of expenditure in relation to income which does not form part of the total income under Rule 8D

As per section 14A(1), for the purposes of computing the total income under Chapter IV of the Income-tax Act, 1961, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income, which does not form part of total income under the Income-tax Act, 1961.

Section 14A(2) provides that the Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under Income-tax Act, 1961 in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure.

Section 14A(3) also provides that the Assessing officer shall proceed to determine the amount of expenditure incurred in relation to exempt income in accordance with such method as may be prescribed, where assessee claims that no expenditure has been incurred by him in relation to exempt income.

Rule 8D prescribes the method for determining the amount of expenditure in relation to income not includible in total income. Since there have been considerable number of disputes on the application of the formula prescribed therein, the Finance Minister had, in para 167 of his Budget Speech [Union Budget 2016-17] proposed to amend Rule 8D to restrict the disallowance to 1% of the average monthly value of investments yielding exempt income, but not exceeding the actual expenditure claimed.

Accordingly, vide this notification, the Central Government has substituted sub-rule (2) and omitted sub-rule (3) of the said Rule 8D.

New sub-rule (2) provides that the expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts:

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

However, the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.

Practical 8

Mr. W has provided the following information regarding his income and expenditure of the previous year 2016-17.

Particulars	Rs.
Income from business (computed)	5,00,000
Dividend income from Money Market Mutual Funds	1,25,000
Consultancy charges to Mutual Fund agent	15,000
Interest expenditure relating to both taxable and non-taxable income	2,25,000

Annual average of the monthly average of the opening and closing balances of the value of investments in mutual fund is Rs. 50,00,000.

Value of total assets as appearing in Balance Sheet as on first day and last day of the previous year are Rs. 50,00,000 and Rs. 70,00,000.

Mr. W claims that no expenditure was incurred by him for exempt income earned. The Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income. You are required to compute the amount of expenditure incurred in relation to exempt income and resultant total income, assuming that Mr. W has no other income.

Solution

As per section 14A, expenditure incurred in relation to any exempt income is not allowed as deduction. However, if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income, or the claim made by the assessee that no expenditure has been incurred in relation to exempt income for such previous year, he shall determine the amount of expenditure in relation to such income in the manner provided in Rule 8D.

In this case, Mr. is in receipt of dividend income which represents exempt income and further he claims that no expenditure is incurred for the purpose of earning this income, the assessing officer is empowered to invoke Rule 8D. The computation as per Rule 8D is given as under:

Particulars	Rs.
(i) The amount of expenditure directly relating to exempt income	
• Consultancy charges paid to Mutual Fund Agent	15,000
(ii) 1% of the annual average of the monthly average of the opening and closing balances of the value of investment in Mutual Fund Units 1% of 50,00,000	50,000
[The amount in (i) & (ii) put together should not exceed the total expenditure claimed by the assessee]	
Amount of expenditure in relation to exempt income	**65,000**

Computation of total income of Mr. W for the A.Y. 2017-18

Particulars	Rs.
Income from business (computed)	5,00,000
Add: Amount of expenditure in relation to exempt income	65,000
Income from business / Total Income	**5,65,000**

Readers Note:

UNIT D - INCOME FROM HOUSE PROPERTY

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

Section:- 24(b)

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

Practical 9

Mr. Gajanan provides following information:

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

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

Solution

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

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

Remark:

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

Readers Note:

11. TAXABILITY OF UNREALISED RENT AND ARREARS OF RENT

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

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

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

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

Practical 10

Mr. Parmanand provides following information:

(a) In July, 2016, he recovered unrealized rent of Rs. 50,000 (which was reduced from Gross Annual Value earlier) from Mr. Saif (tenant).

(b) In October, 2016, he received arrears of rent (which was not taxed earlier) of Rs. 70,000 from State Bank of India (tenant).

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

(1) Mr. Parmanand has already sold out the captioned house property on 10-2-2016.

(2) Mr. Parmanand continued to own the house property in previous year 2016-17.

Solution

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

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

Readers Note:

IMPORTANT CASE LAWS

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

UNIT E – PROFITS AND GAINS FROM BUSINESS OR PROFESSION

12. NON-COMPETE FEE RECEIVED/RECEIVABLE FOR NOT CARRYING ON A PROFESSION CHARGEABLE UNDER THE HEAD "PROFITS AND GAINS OF BUSINESS OR PROFESSION"

Section:- 28(va) – Effective from A.Y.2017-18

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

Practical 11

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

Solution

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

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

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

Readers Note:

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

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

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

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

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

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

= 15% of Actual Cost subject to following conditions

13.3 Conditions

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

13.4 Year in which deduction can be claimed.

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

13.5 Other Points

(1) Meaning of "New Asset" used in above provision:-

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

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

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

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

(iv) any vehicle; or

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

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

- The new asset shall not be sold or otherwise transferred within a period of 5 years from the date of its installation.
- If the new asset is sold or otherwise transferred within 5 years from its installation, then the amount of deduction claimed under section 32AC(1A) shall be deemed to be the income of assessee of the previous year in which such asset is sold or otherwise transferred.
- Such deemed income will be taxable under the head "Profit and gains of business or profession".
- Such deemed income shall be in addition to taxability of capital gain, if any.

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

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

Practical 12

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

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

You are required to calculate:-

Investment Allowance under section 32 AC(1A) and

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

Solution

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

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

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

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

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

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

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

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

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

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

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

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

Year in which deduction can be claimed.

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

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

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

Readers Note:

Practical 13

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

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

You are required to calculate:-

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

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

Solution

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

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

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

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

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

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

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

Readers Note:

14. DEDUCTION IN RESPECT OF EXPENDITURE ON SPECIFIED BUSINESS

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

14.1 Conditions

(1) Assessee must be carrying on "specified business".

(2) The specified business should not be set up by splitting up, or the reconstruction, of a business already in existence.

Not only that, it should not be set up by the transfer of old plant and machinery. However, in following two cases old machinery is permitted:

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

Case 2:- Second-hand imported machinery is treated as new subject to satisfaction of few conditions in this regard.

(3) Books of account of the assessee must be audited.

14.2 Quantum of Deduction

Sr. No.	Specified business	Quantum of deduction (Percentage of capital Expenditure)
(1)	Setting up and operating a cold chain facility (Refer Note 1)	150% (see Note 5)
(2)	Setting up and operating a warehousing facility for Storage of agricultural produce	150%(see Note 5)
(3) *	Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network. (Refer Note 2)	100%
(4)	Building and operating anywhere in India a new hotel of 2 star or above category (Refer Note 3)	100%
(5)	Building and operating anywhere in India, new hospital with at least 100 beds for patients	150%(see Note 5)

(6)	Developing and building a housing project under a scheme for slum redevelopment or rehabilitation	100%
(7)	Developing and building a housing project under a scheme for affordable housing	150%(see Note 5)
(8)	Production of fertilizer in India	150%(see Note 5)
(9)	setting up and operating an inland container depot or a container freight station	100%
(10)	Bee-keeping and production of honey and beeswax	100%
(11)	setting up and operating a warehousing facility for storage of sugar	100%
(12)	Laying and operating a slurry pipeline for the transportation of iron ore	100%
(13)	Setting up and operating a semiconductor wafer fabrication manufacturing unit.	100%
(14) *	Developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility (Amendment by Finance Act, 2016 but effective from A.Y. 2018-19) (Refer Note 4)	100%

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

Notes

(1) "Cold chain facility" means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.

(2) This business shall make not less than one-third (for a natural gas pipeline network) or one-fourth (for petroleum product pipeline network) of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person. Associated person is a person who participates in the management of the assessee; holds at least 26 per cent voting power in the assessee; appoints more than half of the board of directors or who guarantees not less than 10 per cent of the total borrowing of the assessee.

(3) Where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business.

(4) infrastructure facility" means—

- **(i) a road including toll road, a bridge or a rail system;**
- **(ii) a highway project including housing or other activities being an integral part of the highway project;**
- **(iii) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;**
- (iv) **a port, airport, inland waterway, inland port or navigational channel in the sea.**

(5) However, weighted deduction will not be available from the assessment year 2018-19 onwards.

14.3 YEAR OF DEDUCTIBILITY

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

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

14.4 RESTRICTIONS

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

(i) land

(ii) goodwill

(iii) financial instrument

Practical 14

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

The following information is available from the records of LLP.

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

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

Solution

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

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

Reader's Note:

14.5 CONSEQUENCES OF CLAIMING DEDUCTION UNDER SECTION 35AD

A. Basic Consequences

(1) Once deduction has been claimed in respect of capital expenditure under section 35AD, the same cannot be claimed under any other provisions of the Income-tax Act. (e.g., depreciation under section 32, Investment allowance under section 32AC, 32 AD cannot be claimed for the same capital expenditure.)

(2) Once deduction is claimed under this section, the assessee shall not be allowed any deduction in respect of the specified business under section 10AA and sections 80HH to 80RRB for the same or any other assessment year. Readers must note that all other deductions under 80C to 80U can be claimed except deductions starting from Section 80HH to 80RRB. (For example, deduction under 80G, 80GGA, 80GGB etc., can be claimed)

(3) Further, loss from specified business shall not be set off except against profits and gains of any other specified business. Any unabsorbed loss from specified business shall be carried forward for indefinite period. After carry forward, the same shall be adjusted against profit of specified business only.

(4) For the purpose of set off of losses only, in respect of the business of hotels and hospitals, the word "new" has been removed from the definition of "specified business".

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

Practical 15

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

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

Solution

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

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

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

Reader's Note:

B. Other Consequences of Claiming Deduction under section 35AD

(1) An asset (in respect of which a deduction has been claimed and allowed under section 35AD) shall be used only for the specified business for a period of 8 years beginning with the previous year in which such asset is acquired or constructed.

(2) If such asset is used for any purpose other than the specified business during the abovementioned 8 years, then following shall be deemed to be income of the assesse of the previous year in which the asset is so used. [Section 35AD(7B)]

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

(3) However, this provision will not apply to a company which has become a sick industrial company, under section 17(1) of the Sick Industrial Companies (Special Provisions) Act within the time period of abovementioned 8 years.

(4) If any sum received or receivable on account of any capital asset, in respect of which deduction has been claimed under section 35AD, being demolished, destroyed, discarded or transferred then same shall be treated as income and chargeable to tax under the head "Profits and gains of business or profession". [Section 28(vii)]

Practical 16

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

Solution

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

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

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

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

Reader's Note:

Practical 17

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

Solution

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

Reader's Note:

15. TAX TREATMENT OF SPECTRUM FEE

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

- The provisions of section 35ABB shall apply as if for the word "licence", the word "spectrum" had been substituted.

- Further, any deduction has been claimed and granted to the assessee under this section, and subsequently, there is failure to comply with any of the provisions of this section, then-
  (a) The deduction shall be deemed to have been wrongly allowed
  (b) The assessing officer may, re-compute total income of the assessee for the said previous year and make necessary rectification invoking section 154 of the Act.

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

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

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

Any Foreign Bank Public Financial Institution or State Financial Corporation or State Industrial Investment Corporation or **NBFC (Inserted by Finance Act, 2016 w.e.f A.Y. 2017-18)**	5% of its total income*	Not available	Not available

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

Notes:

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

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

Practical 18

The following are the particulars in respect of Indian Bank

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

Compute deduction:

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

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

Solution

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

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

Working Note:

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

Dr. **Cr.**

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

Bad-Debts A/c

Dr. **Cr.**

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

Reader's Note:

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17. GENERAL DEDUCTION

Section:- 37(1)

Conditions for allowability of expenditure:

(1) The expenditure should not be in the nature as prescribed u/s. 30 to 36.

(2) It should be incurred in connection with business or profession carried on by the assessee.

(3) It should have been expended wholly and exclusively for the purpose of such business or profession.

(4) The expenditure should not be in the nature of capital expenditure

(5) It should not be of personal expenditure

(6) It should be incurred during the previous year.

Explanation 1:- No deduction shall be allowed under this section in respect of an expenditure incurred for any purpose, which is an offence or is prohibited by law.

Explanation 2:- No deduction shall be allowed under this section in respect of an expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013.

Summary Of frequently tested issues on section 37(1)

- Following are debited to profit and loss account. Discuss the allowability of the same while computing income under the head "PGBP" with reasons.

Sr. No.	Particulars of debit	Allowable / Disallow	Reason / Remark
1.	Compensation of Rs. 2,00,000 paid to the suppliers of automatic kitchen appliances because of termination of the contract after receipt of 50% of appliances	Disallow	Compensation paid for breach of a contract for supply of a capital asset is in the nature of capital expenditure as held by the **Supreme Court in case of Swadeshi Cotton Mills Co. Ltd. vs. CIT (1967) 63 ITR 65.**
2.	Wines and liquor imported and held as stock-in trade amounting to Rs. 5 lac. Entire stock so held were confiscated by the Custom Officer being an illegal import hence written off.	Allowable	**The Apex Court in case of Dr. T.A. Quereshi vs CIT (2006) 287 ITR 547** observed that loss of stock-in-trade has to be considered as a trading loss. Business loss is allowable on ordinary commercial principles. Explanation to section 37(1) is not relevant here since it is not a case of business expenditure but one of business loss.
3.	Retrenchment compensation paid to employees of one of the units closed down during the year Rs.10,00,000.	Allowable	Compensation paid to workers **on closing one of units** be allowed to be deducted when there was unity of control and management of various units and all were assessed in assessee's hands as one business. - Jayshree Tea and Industries Ltd. v. CIT [2005] (Cal.); CIT V. JK Cotton Spinning & Weaving Co. Ltd. (2005) 145 Taxman 591 (All)
4.	Rs. 5 lacs paid to N. Ltd, towards feasibility study conducted for examining proposals for technological advancement relating to the existing business. The project was abandoned later.	Allowable	**The Delhi High Court, in CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594**, observed that in such cases, whether or not a new business/asset comes into existence would become the relevant factor. If there is no creation of a new asset, then the expenditure incurred would be of revenue nature.
5.	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. This project is not related to the existing	Disallow	Where expenditure is incurred for a project not related the existing business and the project was abandoned without creating a new asset, the expenses are capital in nature **McGaw-Ravindra Laboratories (India) Ltd. v. CIT (1994) 210 ITR 1002 (Guj.)**

	business of the assessee.		
6.	Commission of Rs. 1 lakhs paid to a recovery agent for realization of a debt. Tax has been deducted and remitted as per Chapter XVIIB of the Act	Allowable	Commission paid to a recovery agent for realisation of a debt is an allowable expense under section 37(1) as per **DCIT v. Super Tannery (India) Ltd. (2005) 274 ITR 338 (All)**
7.	Rs. 12 lakhs paid towards course fee and hostel expenses for MBA course of a close relative of a director. The relative is not in employment with the company.	Disallow	Such expenditure is not incurred wholly and exclusively for the purposes of business and therefore not deductible under section 37 **Enkay (India) Rubber Co. Pvt. Ltd v. CIT (2003) 263 ITR 521 (Del).**
8.	Rs. 3 lakhs spent on gift items distributed to various dealers under the company's sales incentive scheme.	Allowable	Expenses on distribution of gift items to dealers under sales incentive scheme would promote goodwill and is made in the interest of business. Such gifts are prompted by commercial expediency and hence, the expenditure is allowable under section 37(1) **[CIT v. Avery Cycle Industries Ltd. (2008) 298 ITR 239 / 296 ITR 393 (Punjab & Haryana)].**
9.	Rs. 25 lacs paid for the higher studies of the director's son abroad, with a stipulation that he would be appointed as a trainee in the company under "apprentice training scheme" where there is no evidence of existence of such scheme	Disallow	Since there is no evidence of existence of any “apprentice training scheme”, the expenditure of Rs. 25 lakhs incurred in respect of higher studies abroad for the director’s son is not allowable as deduction as there is no nexus between the education expenditure incurred abroad for the director’s son and the business of the assessee. **Bombay High Court in Echjay Forgings Ltd. v. ACIT (2010) 328 ITR 286.**
10.	Secret commission of Rs. 3 lacs was paid.	Disallow	As per Explanation to section 37(1), any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law, shall not be deemed to have been incurred for the purpose of business and no deduction or allowance shall be made in respect of such expenditure. Therefore, payment of secret commission, if it is established as a payment for any purpose which is an offence or which is prohibited by law,

			cannot be allowed as deduction. **Tarini Tarpauline Productions v. CIT (2002) 254 ITR 495 (Ori.)**
11.	Purchased a brand new bus for Rs. 15 lacs and donated to a school where the employees' children were studying and debited the same to the Workmen and Staff Welfare Account.	Allowable	The expenditure incurred for acquiring a new bus and donating it to the school is for the welfare of the children of staff/workmen of the company. Such expenditure is a part of employees' welfare expenses incurred for the purpose of securing healthy services for staff members. Therefore, such expenses were incurred wholly and exclusively for the purpose of the business. Since the bus had been donated to the school, no benefit of enduring nature was derived by the assessee as the right of ownership was transferred to school. Hence, it is not a capital expenditure. Since such expenditure is incurred wholly and exclusively for the purpose of business and is not capital in nature, S Ltd. is entitled to claim deduction in full under section 37(1). **Rajasthan High Court in CIT v. Rajasthan Spinning and Weaving Mills Ltd. (2006) 281 ITR 408.**
12.	Legal fees incurred in defending title to factory premises	Allowable	Legal fees incurred in defending title to factory premises is an expenditure incurred wholly and exclusively for the purpose of business and is, therefore, allowable under section 37(1). **Supreme Court in Dalmia Jain & Co. Ltd. v. CIT (1971) 81 ITR 754.**
13.	Interest paid on arrears of GST	Allowable	Interest paid on arrears of sales tax is not penal in nature but is compensatory in character and is an allowable deduction under section 37(1) **Supreme Court in Lachmandas Mathurdas v. CIT (2002) 254 ITR 799.**
14.	Penalty for delay in filing of GST returns	Disallow	Penalty imposed for delay in filing sales tax return is not deductible since it is on account of

			infraction of the law requiring filing of the return within the specified period. – **CIT v. Ratanchand Bholanath (S.S) (1986) 160 ITR 500 (M.P.)**
15.	Rs. 2,50,000 incurred on public issue of shares. However, the public issue could not materialize on account of non-clearance by SEBI	Disallow	Share issue expenses incurred by the company constitutes a capital expenditure, even though it could not go in for the public issue on account of non-clearance by SEBI. Though the efforts were aborted, the fact remains that the expenditure incurred was only for the purpose of expansion of the capital base. The capital nature of the expenditure would not be lost on account of the abortive efforts **Mascon Technical Services Ltd. v. CIT (2013) 358 ITR 545 (Mad.)**
16.	Rs. 1,00,000 paid as compounding fee for violation of provisions of Kerala Building Act.	Disallow	The amount paid for compounding an offence is inevitably a penalty and the mere fact that it has been described as compounding fee cannot, in any way, alter the character of the payment which is in the nature of penalty. Hence, the same is not allowable as revenue expenditure in view of explanation to section 37(1) **Millenia Developers P Ltd. v. Deputy CIT (2010) 322 ITR 401 (Kar.).**
17.	The company lost cash of Rs. 25,00,000 due to theft when it was withdrawn from bank and taken to administrative office.	Allowable	In order to determine whether any loss from theft, dacoity, embezzlement, etc., is deductible or not, what is material is whether the loss incurred by theft, dacoity, etc., is incidental to the carrying on of the business. It does not make much difference whether such act is committed by the employees of the assessee or by strangers **G.G. Dandekar Machine Works Ltd. v. CIT (1993) 202 ITR 161 (Bom.)**
18.	Rs.5 lakhs, being expenses incurred on the travelling of the wife of Managing Director, who accompanied him on tour to Beijing on invitation of Trade & Commerce Chamber, China.	Allowable	Expenses on travelling of wife of Managing Director to Bejing on the invitation of Trade and Commerce Chamber, China, is an allowable expense on the grounds of commercial expediency and business consideration. **Hero Honda Motors Ltd. v. CIT (2005) 3 SOT 572**

			(Delhi)
19.	Legal charges in connection with alteration of the Articles of Association Rs. 1.50 lacs	Allowable	Legal charges of for amendment of Articles of Association is deductible. **Allahabad High Court in CIT vs Modi Spinning & Weaving Mills Co Ltd. (1973) 89 ITR 304.**
20.	An executive, while on business trip abroad, died and gratuity paid voluntarily amounted to Rs. 6.00 lacs to his family members	Allowable	Payment of gratuity on account of death of an executive while on business trip is allowable as deduction. **CIT vs. Laxmi Cement Distributors (P) Ltd. (1976) 104 ITR 711 (Gujarat)**
21.	Rs. 2 lakh on alteration of Memorandum of Association in connection with increase in authorized capital.	Disallow	Rs. 2 lakhs, being legal expenses in relation to alteration of memorandum in connection with increase in Authorised Capital is directly related to expansion of the capital base of the company and is, hence, a capital expenditure. Therefore, the same is not allowable as deduction. It has been so held in **Punjab State Industrial Development Corporation Ltd. vs. CIT (1997) 225 ITR 792 (SC).**
22.	Rs. 10 lakh on issue of bonus shares	Allowable	There is no fresh inflow of funds or increase in capital employed on account of issue of bonus shares and there is only reallocation of the company's fund. Consequently, since there is no increase in the capital base of the company, legal expenses of Rs. 10 lakhs in connection with issue of bonus shares is a revenue expenditure and is hence, allowable as deduction. It has been so held by Apex Court in case of **CIT vs. General Insurance Corpn. (2006) 286 ITR 232.**
23.	Interest of Rs. 3,000 paid on an overdraft of Rs. 1 lac taken for making payment of installment of advance tax of Rs. 1.25 lacs.	Disallow	Interest on the overdraft taken for making payment of installment of advance tax is not allowable under section 37(1) since it is not an expenditure wholly and exclusively incurred for the purpose of business as held by the **Apex Court in the case of East India Pharmaceutical Works Ltd. v. CIT (1997) 224 ITR 627.**

18. PROVISIONS IN RELATION TO MAINTENANCE OF BOOKS OF ACCOUNTS UNDER INCOME TAX ACT

Section:- 44AA

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

(a) Financial criteria;

(b) Persons specified under Section 44AA (1).

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

Types of profession / Business	**Financial criteria**	**Books of account / documents to be maintained**
Specified professions u/s 44AA(1)	• Total gross receipts exceed Rs.1,50,000 in any of the three years immediately preceding the previous year **or** • where the profession is newly set up in the previous year, total gross receipts are likely to exceed Rs.1,50,000.	Books and documents as prescribed under Rule 6F (2).
Specified professions u/s 44AA (1)	• Total gross receipt Rs.1,50,000 or below in any of the three years immediately preceding the previous year **or** • total gross receipts not likely to exceed Rs.1,50,000 in the previous year, if the profession is newly set up.	Such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of the Act.
Other persons	• Income from business or profession exceeds Rs.1,20,000 or total sales, turnover or gross receipts exceed Rs.10 lakhs in any of the three years preceding the previous year **or** • Where the business or profession newly set up in the previous year, if his income from business or profession likely to exceed Rs. 1,20,000 or total sales, turnover or gross receipts likely to exceed Rs.10 lakhs, **or** • where profits and gains from the business are claimed to be lower than profits	Such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of the Act.

	computed under Section 44AE or 44BB or 44BBB or • ~~where the profits and gains from the business are claimed to be lower than the profits under section 44AD and his total income exceeds maximum amount which is not chargeable to tax during such previous year~~ • **Where the provisions of section 44AD(4) are applicable in his case and his income exceeds maximum amount not chargeable to tax in any previous year**	
Other persons	Not covered by above	Not required to maintain any books of account.

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

(2) Books and documents specified under Rule 6F: The books of account and other documents prescribed under Rule 6F(2) are:

(i) a cash book;
In cases where the cash book maintained by the assessee contains adequate particulars in respect of the expenditure incurred by him, it would not be necessary to prepare and sign the payment voucher.

(ii) a journal, if the accounts are maintained under mercantile system of accounting

(iii) a ledger;

(iv) for an amount exceeding Rs.25, carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the assessee and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him;

(v) original bills wherever issued to the assessee and receipts in respect of expenditure incurred by the assessee or, where such bills and receipts are not issued and the expenditure incurred does not exceed Rs.50, payment vouchers prepared and signed by the assessee.

(3) In addition to the above books of account and other documents, under Rules 6F(3) a person carrying on medical profession shall also maintain the following:

(i) a daily case register in Form No.3C;

(ii) an inventory under broad heads, as on the first and the last day of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.

(4) The books of account and other documents specified above under rule 6F(2) and 6F(3) shall be kept and maintained for a period of 6 years from the end of the relevant assessment year.

19. PRESUMPTIVE TAXATION FOR ELIGIBLE ASSESSEE CARRYING ON ELIGIBLE BUSINESS

Section:- 44AD

19.1 Eligible Assessee

– would mean an assessee who:

(i) is a resident, individual, Hindu undivided family or a partnership firm (limited liability partnership firm specifically excluded) and

(ii) has not claimed deduction under any of the sections 10AA and 80H to 80RRB.

19.2 Eligible business means—

(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of **two crore rupees** (Amendment by Finance Act, 2016).

19.3 Provisions of this section shall not apply to-

(i) a person carrying on profession as referred to in sub-section (1)of section 44AA;

(ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business

19.4 Presumptive Income

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

19.5 Other salient features of this presumptive scheme

- **Section 44 AD(2):-** All the deductions under section 30 to 38 shall deemed to have been allowed. Due to deletion of proviso to this section, if eligible assessee is a firm then it cannot claim deduction in respect of interest and salary paid to partners. **(Amendment made by Finance Act, 2016).**

- **Section 44 AD(3) :-** The WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years.

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

- **Section 44 AD(5):-** Consequently, such assessee, if total income exceeds maximum amount not chargeable to tax, shall be required to keep and maintain books of accounts and other documents as per section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Practical 19

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

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

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

Solution

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

Particulars	Rs.
Business income	8,96,000
Income from other Sources	10,000
Total Income	**9,06000**

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

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

Other Notes:

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

Reader's Note:

Practical 20

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

Solution

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

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

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

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

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

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

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

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

Reader's Note:

Practical 21

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

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

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

Solution

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

Notes:

(1) As per para **31.1** of the **circular no. 684 of CBDT dated 10-06-1994,** gross receipts are the amount received from the clients for contract and will not include the value of material supplied by the client.

(2) Once assessee opts for section 44AD, deduction under section 30 to 38 shall be deemed to have been allowed. Therefore, question of disallowance in respect of labour payment of Rs. 50,00,000 in cash under section 40 A(3) does not arise.

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

Reader's Note:

20. PRESUMPTIVE TAXATION FOR ASSESSEE ENGAGED IN BUSINESS OF PLYING, HIRING AND LEASING GOODS CARRAIGES

Section:- 44AE

20.1 Eligible assessee:

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

20.2 Presumptive Income

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

20.3 Other salient features of this presumptive scheme

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

Practical 22

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

Solution

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

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

Reader's Note:

Practical 23

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

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

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

Solution

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

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

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

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

Other Notes:

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

Reader's Note:

21. PRESUMPTIVE TAXATION FOR ASSESSEE ENGAGED IN SPECIFIED PROFESSION

Section:- 44ADA

21.1 Eligible Assessee

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

21.2 Presumptive Income

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

21.3 Other salient features of this presumptive scheme

1. All the deductions under section 30 to 38 shall deemed to have been allowed.
2. If eligible assessee is a firm then it cannot claim deduction in respect of interest and salary paid to partners.
3. The WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years.
4. Where an eligible assessee declares lower profits than the profits required under this section and whose total income exceeds maximum amount not chargeable to tax, then he shall be required to keep and maintain books of accounts and other documents as per section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Practical 24

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

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

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

Solution

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

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

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

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

Other Notes:

1. Thakker & Co., is a firm of chartered accountants and gross receipts for the relevant previous year does not exceed Rs. 50 Lacs. Therefore, it is an eligible assessee under section 44ADA of the Act.
2. As per the provisions of section 44ADA of the Act, assessee has to declare minimum 50% of gross receipts as income under the head "PGBP", if firm would not like to maintain books of accounts.
3. Once firm opts for the section 44ADA, all deductions under section 30 to 38 shall be deemed to have been allowed.
4. Further under section 44ADA, firm cannot claim interest and remuneration paid to partners as well.

Reader's Note:

22. TAX AUDIT

Section:- 44AB

22.1 Applicability of this provision:

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

Clause No.	Situation giving rise to tax audit
(a)	Every person carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year;

(b)	Every person carrying on profession shall, if his gross receipts in profession exceed **twenty-five (fifty – Amendment by Finance Act, 2016)** lakh rupees in any previous year; or
(c)	Every person carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and **he has claimed his income to be lower than the profits** or gains **so deemed** to be the profits and gains of his business, as the case may be, in any previous year;
(d)	Every person carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under **section 44ADA and he has claimed such income to be lower than the profits** and gains **so deemed** to be the profits **and** gains of his profession **and his total income exceeds the maximum amount which is not chargeable** to income-tax in any previous year; **(modified by Finance Act, 2016)**
(e)	Every person carrying on the business shall, if the provisions of **sub-section (4) of section 44AD** are applicable in his case and **his total income exceeds the maximum amount** which is **not chargeable to** income-**tax** in any previous year,

Practical 25

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

Solution

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

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

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

Reader's Note:

Practical 26

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

Solution

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

Reader's Note:

Practical 27

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

Solution

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

Computation of Total Income of Mr. Utsav

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

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

Reader's Note:

Practical 28

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

Solution

Computation of Total Income

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

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

Reader's Note:

22.2 Audit

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

22.3 Specified date for furnishing report

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

22.4 Forms of report

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

22.5 Consequence of non – compliance

Failure to

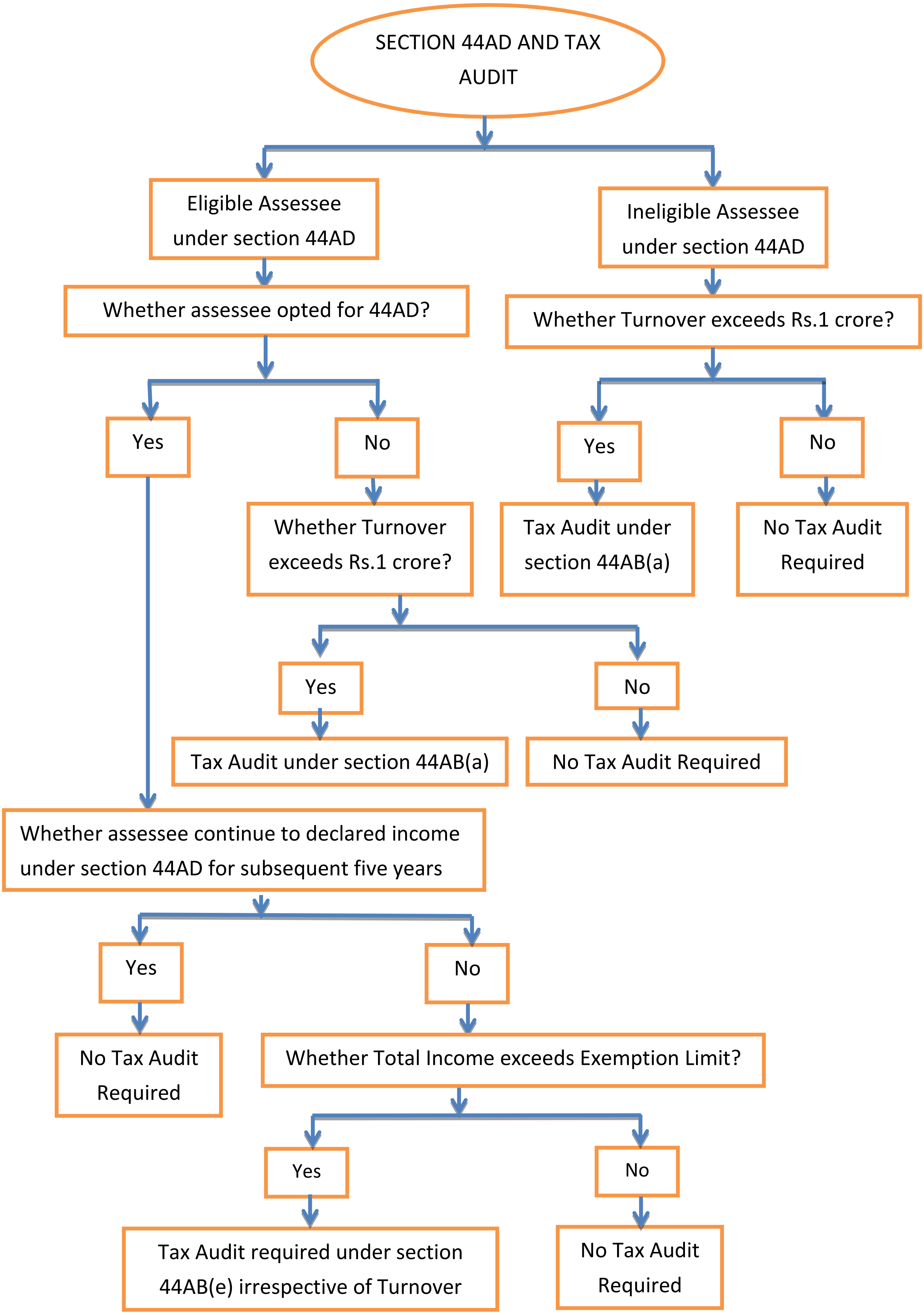
(1) get accounts audited;

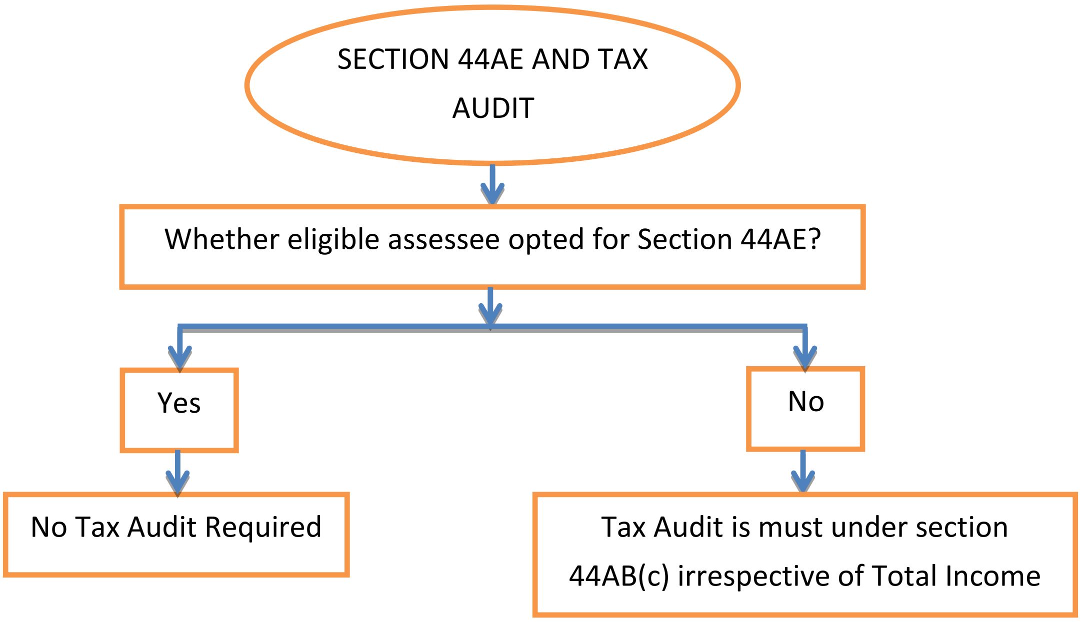
(2) obtain a audit report as required u/s. 44AB;

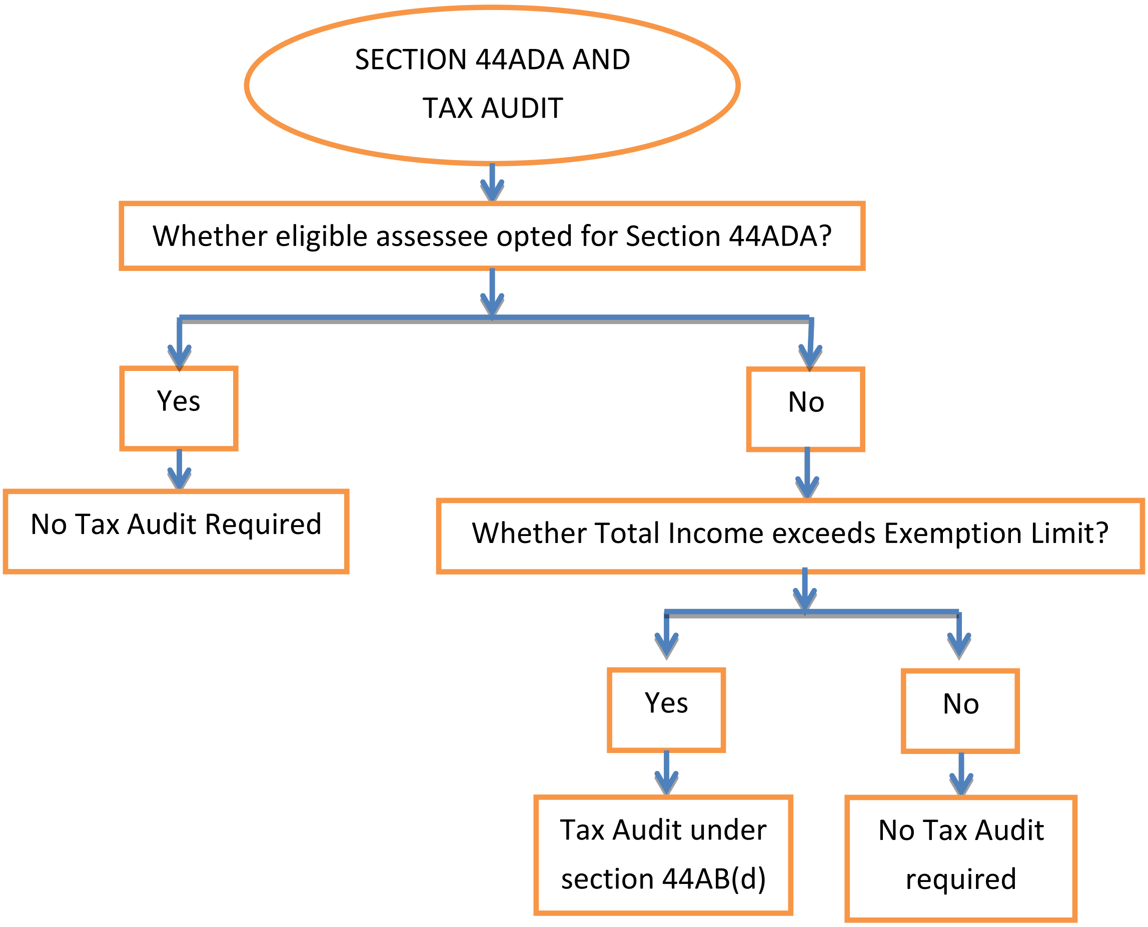
(3) furnish the said report before the due date;

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

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







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

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

23. EQUALISATION LEVY

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

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

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

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

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

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

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

(a) If the non-resident service provider has a permanent establishment in India and income from such specified services is effectively connected to this permanent establishment;

(b) Where the payment for specified service by the person resident in India (or the permanent establishment in India) is not for the purpose of carrying out business or profession.

(c) If the aggregate amount of consideration for specified services received or receivable by a non-resident from a person resident in India (or from a non-resident having a permanent establishment in India) does not exceed Rs.1 lakh in any previous year.

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

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

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

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

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

(7) Consequential amendments in the Income Tax Act:

- **Section 10(50):** Any income arising from any specified service provided on or after 1st June, 2016 and chargeable to equalization levy shall be exempt from tax.

- **Section 40(a)(ib**): Any consideration paid or payable to a non-resident for a specified service on which equalisation levy is deductible, shall be disallowed, if such levy has not been deducted or after deduction, has not been paid on or before the due date under section 139(1) . However such sum shall be allowed as a deduction in the previous year in which such levy has been paid.

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

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

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

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

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

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

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

Facts of the case: The assessee-company and its employees union had a dispute as regard the quantum of bonus which led to labour unrest. Due to this reason, the workers refused to accept the bonus offered to them. However, in order to comply with the requirement of section 43B (i.e., deduction in respect of bonus would be allowable only if actual payment is made) the assessee made payment to a trust. The dispute with the workers was settled well in time and the bonus was paid to the workers on the very next day of deposit of the said amount in the trust that too, before the 'due date' by which such payment is supposed to be made in order to claim deduction under section 36.
The Assessing Officer, however, took a view that since the payment was made from the trust and not made by the assessee directly to the employees, it is not allowable in view of the provisions of section 40A(9) of the Act.

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

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

26. Notifications/Circulars

Notification No. S.O. 3079(E) dated 29-09-2016

1. **Press Release, dated 19-12-2016**
Reduction in the existing rate of deemed profit under section 44AD in respect of amounts/receipts through banking channel/digital means

In order to achieve the Government's mission of moving towards a less cash economy and to incentivise small traders / businesses to proactively accept payments by digital means, with effect from A.Y. 2017-18, the existing rate of deemed profit of 8% under section 44AD of the Act has been reduced to 6% in respect of the amount of total turnover or gross receipts received through banking channel/digital means i.e., by an A/c payee cheque/bank draft or use of ECS through a bank A/c during the previous year or before the due specified in section 139(1) in respect of that previous year.

However, the existing rate of deemed profit of 8% referred to in section 44AD of the Act, shall continue to apply in respect of total turnover or gross receipts received in cash.

2. **Circular No. 12/2016, dated 30-05-2016**
Admissibility of claim of deduction of bad debts under section 36(1)(vii) read with section 36(2)

There are disputes on the allowability of bad debt that are written off as irrecoverable in the accounts of the assessee in the cases where assessee fails to establish that the debt is irrecoverable.

The CBDT noted the decision of the Hon'ble Supreme Court pronounced on 9.2.2010 in the case of *TRF Ltd. CA Nos. 5292 to 5294 of 2003* which has stated that the position of law is well settled. *"After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee.*

Accordingly, the CBDT has clarified, vide this Circular, that claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii), if it is written off as irrecoverable in the books of account of the assessee for that previous year and it fulfills the conditions stipulated in section 36(2). Thus, there is no requirement in law that the assessee has to establish that the debt has, in fact, become irrecoverable.

3. **Circular No. 15/2016, dated 19-05-2016**
Eligibility for grant of additional depreciation under section 32(1)(iia) in the case of an assessee engaged in printing or printing and publishing

An assessee, engaged in the business of manufacture or production of an article or thing, is eligible to claim additional depreciation under section 32(1)(iia) in addition to the normal depreciation under section 32(1).

Whether or not an assessee engaged in printing or printing and publishing is eligible for grant of additional depreciation under section 32(1)(iia), has been a contentious issue. In other words, whether printing or printing and publishing amounts to manufacture or production of article or thing has been contested in legal forums.

The Kerala High Court, in the case of *Mathrubhoomi Printing & Publishing Co.,ITA No 23 of 2015* relying upon the Delhi High Court judgement in the case of *Delhi Press Patra Prakashan Ltd.,ITA No 49 of 2016* held that printing and publishing activity is a manufacturing activity and therefore, the assessee is eligible for grant of additional depreciation under section 32(1)(iia).

The CBDT has accepted the judgement of the Kerala High Court and Delhi High Court on this issue.

4. Circular No. 38/2016, dated 22-11-2016
Admissibility of expenditure incurred by a Firm on Keyman Insurance Policy in the case of a Partner

The issue relating to admissibility of expenditure incurred by a firm on Keyman Insurance Policy premium in the case of a partner has been a contentious one.

CBDT Circular no. 762/1998 dated 18.02.1998 clarifies that the premium paid on the Keyman Insurance Policy is allowable as business expenditure.

The High Court of Punjab and Haryana has, in the case of M/s. Ramesh Steels, ITA No. 437 of 2015, vide judgement dated 2.2.2016, reiterating the above view, held that, "the said policy when obtained to secure the life of a partner to safeguard the firm against a disruption of the business is equally for the benefit of the partnership business which may be effected as a result of premature death of a partner. Thus, the premium on the Keyman Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure".

The CBDT has accepted the judgement of the Punjab and Haryana High Court.

Practical 29

XYZ Ltd. is engaged in the manufacture of textile since 01-04-2009. Its Statement of Profit & Loss shows a net profit of Rs. 700 lakhs after debit/credit of the following items:

(1) Depreciation calculated on the basis of useful life of assets as per provisions of the Companies Act, 2013 is Rs. 50 lakhs.

(2) Employer's contribution to EPF of Rs. 2 lakhs and Employees' contribution of Rs. 2 lakhs for the month of March, 2017 were remitted on 8th May 2017.

(3) The company appended a note to its Income Statement that industrial power tariff concession of Rs. 2.5 lakhs was received from the State Government and credited the same to P & L Account.

(4) The company had provided an amount of Rs. 25 lakhs being sum estimated as payable to workers based on agreement to be entered with the workers union towards periodical wage revision once in 3 years. The provision is based on a fair estimation on wage and reasonable certainty of revision once in 3 years.

(5) The company had made a provision of 10% of its debtors towards bad and doubtful debts. Total sundry debtors of the company as on 31-03-2017 was Rs. 200 lakhs.

(6) A debtor who owed the company an amount of Rs. 40 lakhs was declared insolvent and hence, was written off by debit to Profit and loss account.

(7) Sundry creditors include an amount of Rs. 50 lakhs payable to A & Co, towards supply of raw materials, which remained unpaid due to quality issues. An agreement has been made on 31-03-2017, to settle the amount at a discount of 75% of the outstanding. The amount waived is credited to Profit and Loss account.

(8) The opening and closing stock for the year were Rs. 200 lakhs and Rs. 255 lakhs, respectively. They were overvalued by 10%.

(9) Provision for gratuity based on actuarial valuation was Rs. 500 lakhs. Actual gratuity paid debited to gratuity provision account was Rs. 300 lakhs.

(10) Commission of Rs. 1 lakhs paid to a recovery agent for realization of a debt. Tax has been deducted and remitted as per Chapter XVIIB of the Act.

(11) The company has purchased 500 tons of industrial paper as packing material at a price of Rs. 30,000/ton from PQR, a firm in which majority of the directors are partners. PQR's normal selling price in the market for the same material is Rs. 28,000/ton.

Additional Information:

(1) There was an addition to Plant & Machinery amounting to Rs. 50 lakhs on 10-06-2016, which was used for more than 180 days during the year. Additional depreciation has not been adjusted in the books.

(2) Normal depreciation calculated as per income-tax rules is Rs.80 lakhs.

(3) The company had credited a sub-contractor an amount of Rs. 10 lakhs on 31-03-2016 towards repairing a machinery component. The tax so deducted was remitted on 31-12-2016.

(4) The company has collected Rs. 7 lakhs as sales tax from its customers and paid the same on the due dates. However, on an appeal made, the High Court directed the Sales Tax Department to refund Rs. 3 lakhs to the company. The company in turn refunded Rs. 2 lakhs to the customers from whom the amount was collected and the balance of Rs. 1 lakh is still lying under the head "Current Liabilities".

Compute total income and tax payable. Ignore MAT provisions.

Solution

Computation of Total Income of XYZ Ltd. for the A.Y.2017-18

Particulars	Rs.	Rs.
Net Profit as per Statement of Profit and Loss		7,00,00,000
Add: Items debited but to be considered separately or to be disallowed:		

(a) Depreciation as per Companies Act, 2013 disallowed	50,00,000	
(b) Employees contribution to EPF **[See Note 1 below]** [Since employees contribution to EPF has not been deposited on or before the due date under the PF Act, the same is not allowable as deduction as per section 36(1)(va). Since the same has been debited to profit and loss account, it has to be added back for computing business income].	2,00,000	
(c) Employers contribution to EPF [As per section 43B, employers' contribution to EPF is allowable as deduction since the same has been deposited on or before the 'due date' of filing of return under section 139(1). Since the same has been debited to profit and loss account, no further adjustment is necessary]	Nil	
(d) Industrial power tariff concession received from State Government [Any assistance in the form of, inter alia, concession received from the Central or State Government would be treated as income as per section 2(24)(xviii). Since the same has been credited to profit and loss account, no adjustment is required	Nil	
(e) Provision for wages payable to workers [The provision is based on fair estimate of wages and reasonable certainty of revision, the provision is allowable as deduction, since ICDS X requires 'reasonable certainty for recognition of a provision, which is present in this case. As the provision has been debited to profit and loss account, no adjustment is required while computing business income]	Nil	
(f) Provision for doubtful debts [10% of Rs. 200 lakhs] [Provision for doubtful debts is allowable as deduction under section 36(1)(viia) only in case of banks, public financial institutions, state financial corporations and state industrial investment corporations. Such provision is not allowable as deduction in the case of a manufacturing company. Since the same has been debited to profit and loss account, it has to be added back for computing business income]	20,00,000	
(g) Bad debts written off [Bad debts write off in the book of account is allowable as deduction under section 36(1)(vii). Since the same has already been debited to profit and loss account, no further adjustment is required]	Nil	
(h) Discount given by Sundry Creditors for supply of raw materials [Discount of 75% given by Sundry Creditors for supply of raw	Nil	

materials is taxable under section 41(1). Since the same has already been credited to profit and loss account, no further adjustment is required]		
(i) Provision for gratuity [Provision of Rs. 500 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of Rs. 300 lakhs paid is allowable as deduction. Hence, the difference has to be added back]	2,00,00,000	
(j) Commission paid to recovery agent for realization of a debt. [Commission of Rs. 1 lakh paid to a recovery agent for realisation of a debt is an allowable expense under section 37 as per DCIT v. Super Tannery (India) Ltd. (2005) 274 ITR 338 (All). Since the same has been debited to profit and loss account, no further adjustment is required]	Nil	
(k) Purchase of paper at a price higher than the fair market value 10,00,000 [As per section 40A(2), the difference between the purchase price (Rs. 30,000 per ton) and the fair market value (Rs. 28,000 per ton) multiplied by the quantity purchased (500 tons) has to be added back since the purchase is from a related party, a firm in which majority of the directors are partners, at a price higher than the fair market value]	10,00,000	
(l) Sales tax not refunded to customers out of sales tax refund [The amount of sales tax refunded to the company by the Government is a revenue receipt chargeable to tax under section 41(1). Deduction can be claimed of amount refunded to customers [CIT v. Thirumalaiswamy Naidu & Sons (1998) 230 ITR 534 (SC)]. Hence, the net amount of Rs. 1,00,000 (i.e., Rs. 3,00,000 minus Rs. 2,00,000) would be chargeable to tax]	1,00,000	2,83,00,000
		9,83,00,000
Less: Items credited but to be considered separately / permissible expenditure and allowances		
(m) Depreciation as per Income-tax Act,1961 already debited in profit and loss account	80,00,000	
(n) Over-valuation of stock [Rs. 55 lakhs × 10/110] [The amount by which stock is over-valued has to be reduced for computing business income. Rs. 50 lakhs, being the difference between closing and opening stock, has to be adjusted to remove the effect of over-valuation]	5,00,000	

(o) Additional Depreciation **[See Note 2 below]** [Additional depreciation@20% is allowable on Rs. 50 lakhs, being actual cost of new plant & machinery acquired on 10.06.2016, as the same was put to use for more than 180 days in the P.Y.2016-17.]	10,00,000	
Payment to a sub-contractor where tax deducted last year was remitted after the due date of filing of return [See Note 3 below] [30% of Rs. 10 lakhs, being payment to a sub-contractor, would have been disallowed under section 40(a)(ia) while computing the business income of A.Y.2016-17, since tax deducted was remitted after the due date of filing of return. However, the same is allowable in A.Y.2017-18, since the remittance has been made on 31.12.2016]	3,00,000	98,00,000
Total Income		**8,85,00,000**

Computation of tax liability of XYZ Ltd. for A.Y.2017-18

Particulars	Rs.
Tax @30% on the above total income	2,65,50,000
Add: Surcharge@7% (since total income exceeds Rs. 1 crore but less than Rs. 10 crore)	18,58,500
	2,84,08,500
Add: Education cess@2%	5,68,170
Secondary and Higher Education cess@2%	2,84,085
Total tax liability	**2,92,60,755**
Total tax liability (rounded off)	**2,92,60,760**

Notes:

(1) Employees contribution to PF deposited after the due date mentioned under the PF Act is not allowable as deduction as per section 36(1)(va). The same has also been affirmed by the Gujarat High Court in CIT v. Gujarat State Road Transport Corporation (2014) 366 ITR 170. Hence, in the above solution, employees' contribution to PF has been disallowed while computing business income.

Alternate View - An alternate view has, however, been expressed in CIT v. Kiccha Sugar Co. Ltd. (2013) 356 ITR 351 (Uttarakhand), CIT v. AIMIL Ltd (2010) 321 ITR 508 (Del) and CIT v. Nipso Polyfabriks Ltd (2013) 350 ITR 327 (HP) that employees contribution to PF, deducted from the salaries of the employees of the assessee, shall be allowed as deduction from the income of the employer-assessee, if the same is deposited by the employer-assessee with the provident fund authority on or before the due date of filing of return for the relevant previous year. If this view is considered, then no disallowance would be attracted in this case, since the employees' contribution has been remitted before the due date of filing of return of income.

(2) Rs. 50 lakhs, being the addition to plant and machinery on 1.6.2016 qualifies for additional depreciation@20% under section 32(1)(iia). Since only the normal depreciation as per Income-tax Rules, 1962, has been debited to profit and loss account, additional depreciation of Rs. 10 lakhs (being

20% of Rs. 50 lakhs) has to be deducted while computing business income.

(3) Since the tax deducted during the P.Y.2015-16 was remitted only on 31.12.2016, i.e., after the due date of filing of return for A.Y.2016-17, Rs. 3,00,000, being 30% of Rs. 10 lakh would have been disallowed while computing the business income of that year. Since the tax deducted has been remitted on 31.12.2016, Rs. 3,00,000 would be allowed as deduction while computing the business income of the A.Y.2017-

Reader's Note:

IMPORTANT CASE LAWS

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

UNIT F – CAPITAL GAINS

27. PERIOD OF HOLDING OF UNLISTED SHARES TO QUALIFY AS A LONG-TERM CAPITAL ASSET TO BE REDUCED FROM "MORE THAN 36 MONTHS" TO "MORE THAN 24 MONTHS"

Section:- 2(42A) – Effective from A.Y.2017-18

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

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

Remark:

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

Practical 30

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

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

Solution

(a) Period of holding in respect of shares of Tata Motors Limited is exceeding 12 months. Hence, shares of Tata Motors Limited are long term capital assets.

(b) Period of holding of share of Bye Bye Private Limited is not exceeding 24 months. Hence, shares of Bye Bye Private Limited are short term capital assets.

Readers Note:

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

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

Transactions not regarded as transfer

(i) transfer of a capital asset or intangible asset by a private company or unlisted public company (ULC) to a limited liability partnership

(ii) transfer of a share or shares held in the company by a shareholder

as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 is not treated as transfer if following conditions are satisfied:-

(a) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;

(b) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;

(c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;

(d) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;

(e) the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and

(f) **the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed five crore rupees**; and **(inserted by Finance Act, 2016 effective from A.Y. 2017-18)**

(g) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

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

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

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

Practical 31

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

(a) Interest earned on such RDBs.

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

Solution

(a) Interest earned on such RDBs shall be taxed in the hands of Mr. Raghav @ 5% under section 115A of the Act.

(b) As per the amendment made by Finance Act, 2016 under section 48, gain arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company subscribed by him, shall be ignored while computing full value of consideration. That means, such gain is not taxable.

Readers Note:

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

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

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

Notification No. 108/2016, dated 29-11-2016

Period of holding of a capital asset declared under the Income Declaration Scheme, 2016 prescribed under Rule 8AA

Section 2(42A) defines the term "short-term capital asset" which means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. Clause (ii) of Explanation 1 to Section 2(42A) empowers the CBDT to make rules prescribing period of holding of capital assets other than those enlisted in clause (i) of Explanation (1). Rule 8AA provides the method of determination of period of holding of capital assets in such cases.

The CBDT has, vide this notification, inserted sub-rule (3) in Rule 8AA to provide that in the case of a capital asset, declared under the Income Declaration Scheme, 2016 (IDS) -

- being an immovable property, the period for which such property is held shall be reckoned from the date on which such property is acquired if the date of acquisition is evidenced by a deed registered with any authority of a State Government.
- in any other case, the period for which such asset is held shall be reckoned from 1st June, 2016.

Practical 32

Mr. Black provides following information:

(a) He purchased gold worth Rs. 1,00,000 in the financial year 1987-88 out of unaccounted money.

(b) He disclosed this gold under IDS and paid tax, surcharge and penalty at the rate of 45 per cent of fair market value of gold on June 1, 2016.

(c) The fair market value of gold on June 1, 2016 was Rs. 12,00,000.

(d) He then sold out gold on 11th January, 2017 for Rs. 12,65,000.

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

Solution

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

Period of Holding: 01.06.2016 to 11.01.2017

Nature of Capital Asset: Short Term

Particulars	Rs.
Full value of consideration	12,65,000
Less: Expenses in connection with Transfer	-
Net Consideration	12,65,000
Less: Cost of acquisition	(12,00,000)
Short Term Capital Gain	**65,000**

Readers Note:

31. EXEMPTION OF LONG-TERM CAPITAL GAINS ON INVESTMENT IN NOTIFIED UNITS OF SPECIFIED FUND (FUND TO BE ESTABLISHED FOR "START UP INDIA ACTION PLAN")

Section:- 54EE - Effective From A.Y.2017-18

Q 1. Who can claim exemption?

Ans. Any person

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

Ans. Long Term Capital Asset

Q3. Which specific asset is eligible for exemption (that means which asset has been transferred?)

Ans. Any Capital Asset

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

Ans. Units issued before 1st day of April 2019, of such fund as Central Government may notify (Fund to be established for "Start up India Action plan")

Q5. What is time-limit for acquiring the new capital asset?

Ans. Six months from the date of transfer

Q6. What is the quantum of exemption?

Ans. Exemption under section 54EE = Amount invested in units of notified fund or capital gain whichever is lower.

Upper Limit for exemption: Under no circumstances, exemption under 54EE shall exceed Rs. 50 Lac in a financial year.

Q7. Is it possible to revoke the exemption in a subsequent year? (Can exemption be taken back?)

Ans. If such units of notified funds are transferred or loan is taken on the security of new asset within 3 years **from the date of its acquisition.**

Q7.1.What is the nature of capital gain if exemption is taken back in subsequent year?

Ans. Long term

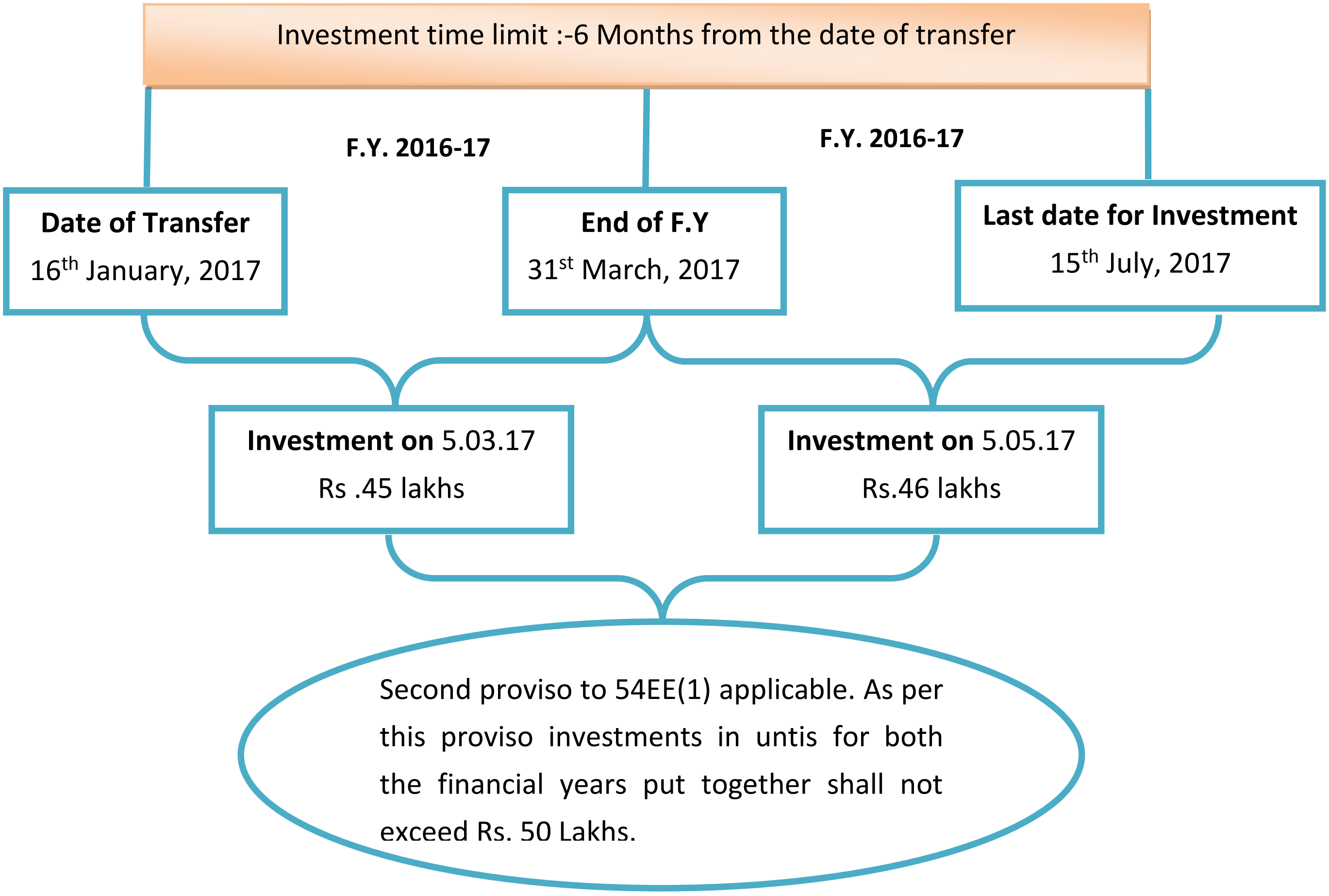
Q8. Is scheme of Deposit available?

Ans. No.

Practical 33

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

Solution



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

Readers Note:

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

Section:- 54 GB

Q 1. Who can claim exemption?

Ans. Individual or HUF

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

Ans. Long Term Capital Asset

Q3. Which specific asset is eligible for exemption?

Ans. Residential House Property or plot of land provided transfer takes place on or before 31-03-2017. **However, for an eligible start up last date of transfer shall be 31-03-2019 instead of 3103-2017.**

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

Ans. Equity shares of eligible company.

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

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

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

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

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

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

(i) *any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;*
(ii) *any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house;*
(iii) *any office appliances including computers or computer software;* ***(However, for eligible start up new asset shall include computers or computer software – Amendment by Finance Act, 2016)***
(iv) *any vehicle; or*
(v) *any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.*

Q5. What is the quantum of exemption?

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

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

Ans. In following cases, exemption is taken back

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

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

Ans. Long term

Q7. Is scheme of Deposit available?

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

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

Practical 34

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

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

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

Solution

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

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

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

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

Readers Note:

33. COST OF ACQUISION IN CASE OF TRANSFER OF RIGHT TO CARRY ON PROFESSION SHALL BE TAKEN AS NIL

Section:- 55 – Effective from A.Y. 2017-18

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

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

(a) The rule mentioned in above table is applicable only in the case of "self-generated assets". If an asset is purchased and later on sold, then the actual purchase price shall be taken as cost of acquisition.

(b) If above assets were acquired before April 1, 1981, the option of adopting the fair market value on the said date is not available.

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

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

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

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

Practical 35

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

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

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

Solution

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

Long Term Capital Gain in Indian Currency
= $ 10,539.91 x Buying Rate on the date of transfer
= $ 13,337.33 x Rs.65.90
= Rs.7,71,887

Tax under section 112 (No shifting benefit) @ 20%	Rs.1,54,377
Add: 3% Education Cess	Rs. 4,631
Total Tax Liability	Rs.1,59,008

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

- Non resident shall not avail
  (a) Benefit of conversion rule **as well as**
  (b) Benefit of Indexation

- That means for this section, gain shall be worked out directly in Indian currency.
  Gain = Rs.18,00,000 - Rs.50,000- Rs.3,00,000
  = Rs.14,50,000
  Tax = 10.30% of Rs.10,50,000
  = Rs.1,49,350

Hence, this option is better for TOM

Readers Note:

35. CIT V. V.S. DEMPO COMPANY LTD (2016) 387 ITR 354 (SC)

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

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

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

The High Court referred the decision of the Bombay High Court in the case of CIT v. ACE Builders (P) Ltd (2006) 281 ITR 210 (Bom), wherein it was analysed that the assessee cannot be denied exemption under section 54EC, because firstly, fiction created by the legislature has to be confined for the purpose for which is created. Secondly, section 54EC does not make any distinction between depreciable and non-depreciable asset for the purpose of re-investment of capital gains in long term specified assets for availing the exemption thereunder. Further, section 54EC specifically provides that when the capital gain arising on the transfer a long-term capital asset is invested or deposited in long-term specified assets, the assessee shall not be subject to capital gains to that extent. Therefore, the exemption under section 54EC cannot be denied to the assessee on account of the fiction created in section 50.

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

Section 50:- Special provision for computation of capital gains in case of depreciable assets.

Notwithstanding anything contained in section 2(42A), where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), **the provisions of sections 48 and 49 shall be subject to the following modifications :—**

(1) where the full value of the consideration received or accruing as a result of the transfer of the asset together with the full value of such consideration received or accruing as a result of the transfer of any other capital asset falling within the block of the assets during the previous year, exceeds the aggregate of the following amounts, namely :—

(i) expenditure incurred wholly and exclusively in connection with such transfer or transfers;

(ii) the written down value of the block of assets at the beginning of the previous year; and

(iii) the actual cost of any asset falling within the block of assets acquired during the previous year, **such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets**;

(2) where any block of assets ceases to exist as such, for the reason that all the assets in that block are transferred during the previous year, the cost of acquisition of the block of assets shall be the written down value of the block of assets at the beginning of the previous year, as increased by the actual cost of any asset falling within that block of assets, acquired by the assessee during the previous year and the income received or accruing as a result of such transfer or transfers **shall be deemed to be the capital gains arising from the transfer of short-term capital assets.**

36. Notifications/Circulars

Notification No. S.O. 3079(E) dated 29-09-2016

Circular No. 36/2016, dated 25-10-2016

Clarification on taxability of the compensation received by the land owners for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act)

Under the existing provisions of the Income-tax Act, 1961, an agricultural land which is not situated in specified urban area, is not regarded as a capital asset. Hence, capital gains arising from the transfer (including compulsory acquisition) of such agricultural land is not taxable. The Finance (No.2) Act, 2004 has inserted section 10(37) from 1-4-2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban limit, subject to fulfilment of certain conditions. Therefore, compensation received from compulsory acquisition of an agricultural land is not taxable under the Act (subject to fulfilment of certain conditions for specified urban land).

As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land.

The matter has been examined by the CBDT and it has been clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision for exemption of such compensation in the Income-tax Act, 1961.

IMPORTANT CASE LAWS

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

UNIT G – INCOME FROM OTHER SOURCES

37. SHARES RECEIVED BY AN INDIVIDUAL OR HUF AS A CONSEQUENCE OF DEMERGER OR AMALGAMATION OF A COMPANY OR A BUSINESS REORGANISATION OF A CO-OPERATIVE BANK NOT TO BE SUBJECT TO TAX BY VIRTUE OF SECTION 56(2)(VII)

Section:- 56(2)(vii) – Effective from A.Y. 2017-18

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

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

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

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

UNIT H – DEDUCTIONS FROM GROSS TOTAL INCOME

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

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

(i) In computing the total income of an individual, there shall be deducted, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property. The maximum deduction allowable is Rs. 50,000.

(ii) The conditions to be satisfied for availing deduction under section 80EE are as follows –

(a) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, 2016 and ending on the 31st day of March, 2017;

(b) the amount of loan sanctioned for acquisition of the residential house property does not exceed thirty-five lakh rupees;

(c) the value of residential house property does not exceed fifty lakh rupees;

(d) the assessee does not own any residential house property on the date of sanction of loan.

(iii) The deduction under this section is over and above the deduction available under section 24 of the Act.

(iv) Meaning of certain terms:

(1) Financial institution

(a) A banking company to which the Banking Regulation Act, 1949 applies ; or

(b) Any bank or banking institution referred to in section 51 of the Banking Regulation Act, 1949; or

(c) A housing finance company.

(2) Housing finance company

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

Practical 36

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

Does your answer differ if loan was sanctioned on 01.02.2016?

Solution

Computation of Interest Deduction for A.Y. 2017-18

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

Readers Note:

39. TAX INCENTIVES FOR NEW START-UPS

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

39.1 Eligible Business

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

39.2 Conditions to be fulfilled for an eligible start-up

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

   Exception: This condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;
6. Further, undertaking should not be set up by the transfer of old plant and machinery. However, following two cases old machinery is permitted:

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

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

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

39.3 Quantum of deduction

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

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

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

40.1 Eligible Business

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

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

40.2 Conditions

(i) The project is approved by the competent authority (*authority empowered to approve the building plan by or under any law for the time being in force)* after June 1, 2016, but on or before March 31, 2019.

(ii) The project is completed within a period of 3 years from the date of first approval by the competent authority. The project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority.

(iii) The built up area of the shops and other commercial establishments included in the housing projects does not exceed 3 per cent of the aggregate built up area.

(iv) Size of the plot, area of residential units and minimum utilization of FAR (floor area ratio) should satisfy the criteria given below-

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

(v) The project is the only housing project on such plot of land as specified in column 2 of the above table.

(vi) Where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual.

(vii) The assessee maintains separate books of account in respect of the housing project.

40.3 Quantum & Period of deduction

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

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

40.4 Reversal of deduction if project not completed within stipulated time

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

41. CIT V. MEGHALAYA STEELS LTD (2016) 383 ITR 217 (SC)

Practical 37

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

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

Solution

- As per section 80-IB(1) read with section 80-IB(9), where the gross total income of an assessee includes any profits and gains derived from, inter alia, the business of commercial production of mineral oil, deduction will be allowed at 100% of such profits for a period of seven consecutive assessment years.
- The issue under consideration in this case is whether transport subsidy, interest subsidy and power subsidy received from the Government can be treated as profits derived from business or undertaking to qualify for deduction under section 80-IB.
- This issue came up before the Supreme Court in CIT v. Meghalaya Steels Ltd. (2016) 383 ITR 217, wherein it was observed that an important test to determine whether the profits and gains are derived from business or an undertaking is that there should be a direct nexus between such profits and gains and the undertaking or business. Such nexus should not be only incidental. The profits and gains referred to in section 80-IB has reference to net profit, which can be calculated by deducting from the sale price of an article, all elements of cost which go into manufacturing or selling it. Thus, the profits arrived at after deducting manufacturing costs and selling costs reimbursed to the assessee by the Government, is the profits and gains derived from the business of the assessee.
- The Supreme Court observed that section 28(iiib) specifically states that income from cash assistance, by whatever name called, received or receivable by any person against exports under any scheme of the Government of India, will be income chargeable to income-tax under the head "Profits and gains of business or profession". The Apex Court further observed that if cash assistance received or receivable against exports schemes are being included as income under the head "Profits and gains of business or profession", subsidies which go to reimbursement of cost in the production of goods of a particular business would also have to be included under the head "Profits and gains of business or profession", and not under the head "Income from other sources".
- Accordingly, the Supreme Court held that transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products. Therefore, there is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies. The subsidies were

only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products.

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

Readers Note:

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42. Notifications/Circulars

Various

1. **Circular No. 39/2016, dated 29-11-2016**

Transport, Power and Interest subsidies received by an Industrial Undertaking - Eligibility for deduction under sections 80-IB, 80-IC etc.,

The issue of whether revenue receipts such as transport, power and interest subsidies received by an Industrial Undertaking/eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/80-IC of the Income-tax Act, 1961 and, thus, eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'Income from other sources' by the Assessing Officers.

The Hon'ble Supreme Court in its judgment dated 9.3.2016 in the case of *Meghalaya Steels Ltd* and other cases has held that the subsidies of transport, power and interest given by the Government to the Industrial Undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profit and gains of the industrial undertaking/business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the Industrial Undertaking and are not to be included under the head 'Income from other sources'. Therefore, deduction is admissible under section 80-1B/80-IC of the Act on such revenue receipts derived from the Industrial Undertaking.

In view of the above, the CBDT has accordingly, clarified that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the Industrial Undertaking /eligible business, and are thus, admissible for applicable deduction under Chapter VI-A of the Act.

2. **Circular No.37/2016, Dated 02-11-2016**

Admissibility of deduction under Chapter VI-A on the profits enhanced due to disallowance of expenditure related to business activity

Chapter VI-A of the Income-tax Act, 1961, provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits.

The issue is whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

The courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits.

In view of the aforesaid judgements, the CBDT has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

3. Circular No. 16/2017, dated 25-04-2017
Lease rent from letting out buildings/developed space along with other amenities in an Industrial Park /SEZ - to be treated as business income

The issue whether income arising from letting out of premises/developed space along with other amenities in an Industrial Park/SEZ is to be charged under head 'Profits and Gains of Business' or under the head 'Income from House Property' has been subject matter of litigation in recent years. Assessees claim the letting out as business activity, the income arising from which to be charged to tax under the head 'Profits and Gains of Business', whereas the Assessing Officers hold it to be chargeable under the head 'Income from House Property'.

In the case of *Velankani Information Systems Pvt Ltd* (NJRS Citation [2013-LL-0402-44]), the Hon'ble Karnataka High Court observed that any other interpretation would defeat the object of section 80-IA and government schemes for development of Industrial Parks in the country. SLPs filed in this case by the Department have been dismissed by the Hon'ble Supreme Court.

The CBDT has considered the matter. Income from the Industrial Parks/SEZ established under various schemes framed and notified under section 80-IA(4)(iii) is liable to be treated as income from business provided the conditions prescribed under the schemes are met.

UNIT I – ASSESSMENT OF VARIOUS ENTITIES

43. CONCESSIONAL TAXATION REGIME FOR ROYALTY INCOME IN RESPECT OF PATENT DEVELOPED AND REGISTERED IN INDIA

Section:- 115BBF – Effective From A.Y.2017-18

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

- **For the purpose of this section,**

  (1) <u>Eligible assessee means:</u>

  - A person resident in India,
  - who is the true and first inventor of the invention and
  - whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970.

  (2) <u>Meaning of royalty:</u>

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

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

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

(3) <u>Meaning of Patent:</u>

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

- **Amendment under section 115JB:**

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

  Positive Adjustment:

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

  Negative Adjustment

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

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

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

Question 38

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

Answer

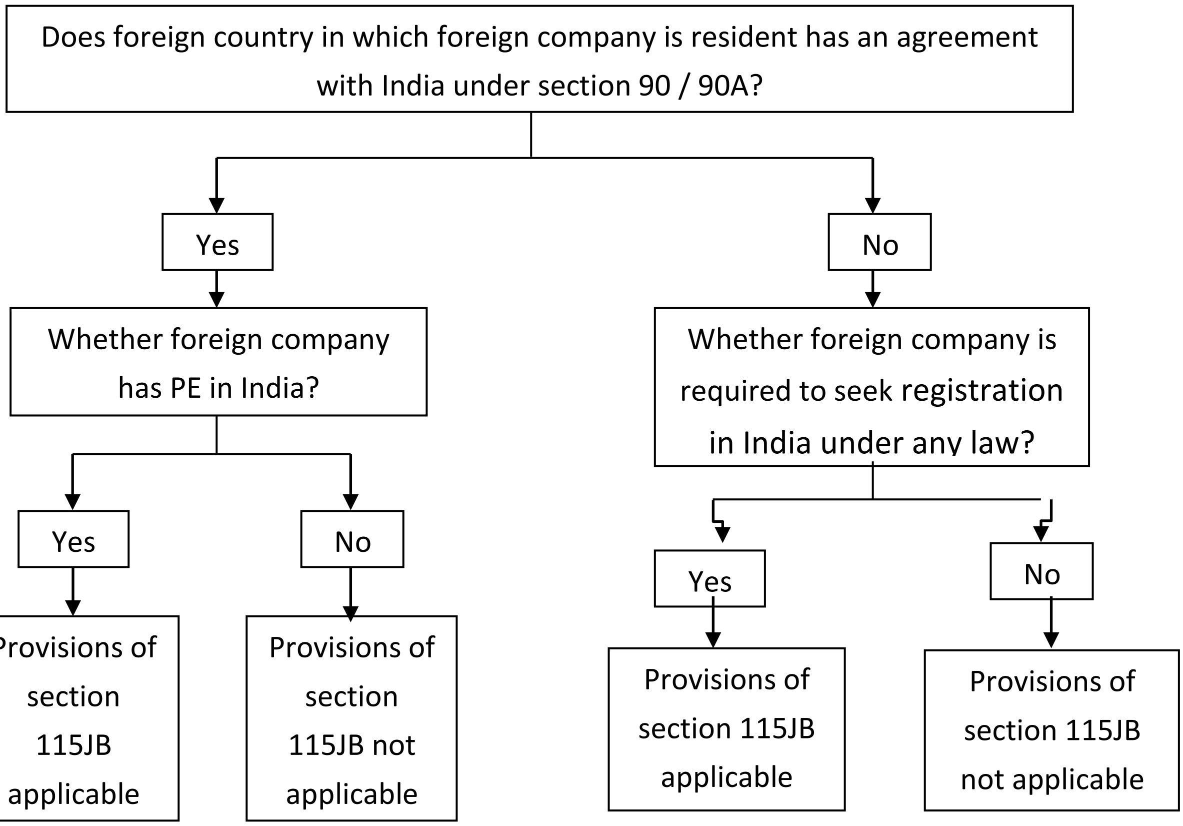
Amendment by Finance Act, 2016: with retrospective effect from A.Y. 2001-02

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

(a) The assessee is a resident of a foreign country or specified territory with which India has an agreement under section 90/90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such agreement or

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

To sum up,



Readers Note:

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45. TAX INCENTIVES TO INTERNATIONAL FINANCIAL SERVICES CENTRES

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

- In order to encourage the growth of International Financial Services Centres (IFSCs), the following amendments were carried out by Finance Act, 2016.
- W.e.f. 1st June, 2016, STT, shall not be levied on taxable securities transactions entered into by any person on a recognised stock exchange located in IFSC where the consideration for such transaction is paid or payable in foreign currency.
- long-term capital gains from transaction undertaken in foreign currency on a recognised stock exchange located in an International Financial Services Centre shall be exempt under section 10(38) even when securities transaction tax is not paid in respect of such transaction.- Second proviso has been inserted in section 10(38).
- Short term capital gains from transaction undertaken in foreign currency on a recognised stock exchange located in an International Financial Services Centre shall be taxed at 15% under section 111A even when securities transaction tax is not paid in respect of such transaction.- Second proviso has been inserted in section 111A.
- No tax on distributed profits shall be chargeable in respect of the total income of a company being a unit located in International Financial Services Centre, deriving income solely in convertible foreign

exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after 1st April, 2017 out of its current income, either in the hands of the company or the person receiving such dividend. – Section 115-O (8)

46. MINIMUM ALTERNATE TAX (MAT)

Section:- 115JB(1), 115JB(5A), 115JB(6) and 115JB(7)

The concept of MAT under the Income Tax Act is very wide. Therefore, it has been divided into following paras for better understanding.

Para No.	Description
Para 46	MAT and its applicability
Para 46A	Book Profit – How to Determine?
Para 46B & C	Computation of Tax Liability

Section 115JB has been inserted from the assessment year 2001-02. It provides that in case the income-tax payable on total income *is less than* 18.5 per cent of the book profit, **such book profit shall be deemed to be the 'total income', chargeable to tax at the rate of 18.5 per cent (plus SC+EC).**

Amendment by Finance Act, 2016

Section 115JB (7) provides that if the assessee is a unit located in International Financial Services Centre and derives its income solely in convertible foreign exchange, then book profit shall be taxed at the rate of **9 per cent** instead of **18.5 percent.**

46A BOOK PROFIT – HOW TO DETERMINE?

Section:- 115JB(2)

Net profit as shown in profit and loss account (after 27 adjustments) is book profit.

46A.1 Meaning of Net Profit

Net Profit in case of –

(a) any insurance or banking company or any company engaged in the generation or supply of electricity (or any other class of company for which a form of profit and loss account has been specified in or under the Act governing such class of company), shall be calculated on the basis of profit and loss account prepared in accordance with the provisions of their regulatory Acts, or

(b) any other company shall be calculated on the basis of profit and loss account prepared in accordance with Schedule Vl to the Companies Act, 1956.

46A.2 Importants adjustments to Net Profit to convert it into Book Profit [Explanation to section 115JB (1) and (2)]

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

Few Positive Adjustments –

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

(1) the amount of income-tax paid or payable, and the provisions therefore; or

(2) the amounts carried to any reserves, by whatever name called; or

(3) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(4) the amount by way of provision for losses of subsidiary companies; or

(5) the amount or amounts of dividends paid or proposed; or

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

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

(8) the amount or amounts of expenditure relatable to income accruing or arising to an assessee, being a foreign company, from,—

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

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

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

(9) the amount or amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF (Inserted by FA 2016, effective from A.Y. 2017-18)

(10) the amount of depreciation

(11) The amount of deferred tax and the provisions therefore

(12) The amount or amounts set aside as provision for diminution in the value of any asset;

(13) Amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset;

Few Negative Adjustments–

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

(1) the amount withdrawn from reserves or provisions, if any such amount is credited to the profit and loss account; or (Provided book profits was increased in the year of creation of reserve or reserve was created by way of debit to profit and loss account)

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

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

(4) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (3) above; or

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

(6) the amount of income accruing or arising to assessee, being a foreign company, from,—

a. the capital gains arising on transactions in securities; or

b. the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,

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

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

(8) the amount of loss brought forward or unabsorbed depreciation, whichever is less, as per books of account

Explanation.—For the purposes of this clause,—

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil ;or

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

46B COMPUTATION OF TAX LIABILITY

Step 1: Book Profit	Compute Book Profit as per Section 115JB
Step 2: MAT Liability	Compute tax @ 18.50% on Book Profit + (Surcharge) + (Education Cess)
Step 3: Total Income	Compute total income of the company as per the provisions of Income Tax Act, 1961.
Step 4: Regular Tax Liability	Find out Regular tax liability of the company applying tax rates as per para No. 25C.
Step 5: Tax Payable	Tax Liability shall be ***higher of the step 2 or step 4***

REMARK:

In the case of a company, if tax liability is governed by MAT provisions, then book profit is taken as total income.

46C TAX RATES APPLICABLE FOR COMPANIES

Section:- Annual Finance Act and section 115BA

46C.1 Income Tax Rates

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

46C.2 Tax on income of certain domestic companies.[Section 115BA]

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 111A and section 112, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent, if the conditions contained in sub-section (2) are satisfied.

(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

(a) the company has been set-up and registered on or after the 1st day of March, 2016;

(b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and

(c) the total income of the company has been computed,—

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AC or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AC or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

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

(iii) depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed. **[By notification no. 103/2016, depreciation claim has been has been restricted to 40% in case of block of assets where the prescribed rate of depreciation is more than 40%].**

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

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

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

46C.3 Surcharge

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

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

46C.4 Education Cess

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

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

Practical 39

PQR Ltd. is engaged in manufacturing of goods. It provides following information for the relevant previous year.

Profit & Loss Account

Particulars	Rs.	Particulars	Rs.
Cost of Goods sold	7,02,52,000	Sales	7,36,19,350
Entertainment Expenses	19,500	Interest on Fixed Deposit	1,54,900
Traveling Expenses	31,500	Dividend (from Indian Companies)	1,00,000
Salary & Wages	1,75,000	Deferred Tax	25,000
Salary to Directors	4,50,000	Share from AOP (where AOP had paid tax at Maximum Marginal Rate)	41,100
Professional fees	29,000		
Depreciation	5,17,000		
Provision for Bad and doubtful Debts	16,000		
Penalty under Income-Tax Act	10,000		
Interest for late filing of return	2,000		
Wealth-Tax (P.Y. 2013-14)	15,000		
Outstanding custom duty	21,000		
Provision for unascertained liabilities	75,000		
Loss of subsidiary company	39,000		
Provision for Income-Tax	2,25,000		
Proposed Dividend and CDT	64,350		
Net Profit	**19,99,000**		
	7,39,40,350		**7,39.40,350**

Additional Information

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

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

(3) Depreciation allowable under section 32 of Income Tax Act was Rs. 5,36,000

(4) Brought forward business loss for tax purpose Rs. 13,52,000

(5) Brought forward unabsorbed depreciation for tax purpose Rs. 13,000

(6) Company is eligible for deduction under section 80-IC @ 30%

(7) Total turnover of the company for the previous year 2014-15 was Rs. 6.05 Cr.

Compute tax liability.

Solution

Step 1: Computation of Book Profit

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

Step 2: Computation of MAT Liability

Particulars	Rs.
MAT @18.5% of Book Profit (Rs. 22,65,250)	4,19,071
Add: education Cess: (3%)	12,572
MAT Liability	**4,31,643**

Step 3. Computation of total income

Particulars	Rs.)
<u>Income Under head PGBP</u>	
Net Profit as per profit and loss account	19,99,000
Less: Interest on Fixed Deposit (to be considered under "IFOS")	(1,54,900)
Less: Dividend from Indian Companies (Exempt)	(1,00,000)
Less: Deffered Tax	(25,000)

Less: Share from AOP (Not taxable)	(41,100)
Add: Depreciation	5,17,000
Add: Provision for bad and doubtful debts	16,000
Add: Penalty under Income Tax Act	10,000
Add: Interest for late filing of return	2,000
Add: Wealth Tax (P.Y. 2013-14)	15,000
Add: Custom Duty (Assuming that it has not paid before due date of filing return)	21,000
Add: Provision for unascertained liability	75,000
Add: Losses of subsidiary	39,000
Add: Provision for Income Tax	2,25,000
Add: Proposed Dividend and CDT	64,350
Sub-total	26,62,350
Less: Depreciation as per Income Tax	(5,36,000)
Balance	21,26,350
Less: brought forward Business Loss	(13,52,000)
Balance	7,74,350
Less: unabsorbed depreciation	(13,000)
Income Under the head PGBP	7,61,350
Add: Income from Other Sources (FD Interest)	1,54,900
Gross total income	9,16,250
Less: Deduction under section 80IB (30% of PGBP)	2,28,405
Total Income	**6,87,845**

Step 4: Computation of Regular Tax Liability

Particulars	Rs.
Regular tax @ 30% of Total Income	2,06,354
Add: education Cess: (3%)	6191
Regular tax liability	**2,12,545**

Step 5: Final Tax Payable

Particulars	Rs.
MAT Liability as per Step 2	4,31,643
Regular Tax Liability as per Step 4	2,12,545
Whichever is higher	**4,31,643**

Readers Note:

Practical 40

Sona Ltd., a resident company, earned a profit of Rs. 15 lakhs after debit/credit of the following items to its Statement of Profit and Loss for the year ended on 31/03/2017:

(i) Items debited to Statement of Profit and Loss

Sr. No.	Particulars	Rs.
1.	Provision for the loss of Subsidiary	70,000
2.	Provision for doubtful debts	75,000
3.	Provision for Income- tax	1,05,000
4.	Provision for gratuity based on actuarial valuation	2,00,000
5.	Depreciation	3,60,000
6.	Interest to financial institution (unpaid before filing of return)	1,00,000
7.	Penalty for infraction of law	50,000

(ii) Items credited to Statement of Profit and Loss:

Sr. No.	Particulars	Rs.
1.	Profit from unit established in special economic zone	5,00,000
2.	Share in income of an AOP as a member	1,00,000
3.	Income from units of UTI	75,000
4.	Long term capital gains	3,00,000

Other Information:

(i) Depreciation includes Rs. 1,50,000 on account of revaluation of fixed assets.

(ii) Depreciation as per Income-tax Rules is Rs. 2,80,000.

(iii) Balance of Statement of Profit and Loss shown in Balance Sheet at the asset side as at 31/03/2016 was Rs. 10 lakhs which includes unabsorbed depreciation of Rs. 4 lakhs.

(iv) The capital gain has been invested in specified assets under section 54EC.

(v) The AOP, of which the company is a member, has paid tax at maximum marginal rate.

(vi) Provision for income-tax includes Rs. 45,000 of interest payable on income-tax.

Compute minimum alternate tax under section 115JB of the Income-tax Act, 1961, for A.Y. 2017-18.

Solution

Computation of "Book Profit" for levy of MAT under section 115JB for A.Y.2017-18

Particulars	Rs.	Rs.
Net Profit as per Statement of Profit and Loss		15,00,000
Add: Net profit to be increased by the following amounts as per Explanation 1 to section 115JB:		

- Provision for the loss of subsidiary	70,000	
- Provision for doubtful debts, being the amount set aside as provision for diminution in the value of any asset	75,000	
- Provision for income-tax [Further, as per Explanation 2 to section 115JB, income-tax shall include, inter alia, any interest charged under the Act, therefore, whole of the amount of provision for income-tax including Rs. 45,000 towards interest payable has to be added]	1,05,000	
- Depreciation	3,60,000	6,10,000
		21,10,000
Less: Net profit to be decreased by the following amounts as per Explanation 1 to section 115JB:		
- Share in income of an AOP as a member [In a case, where AOP has paid tax on its total income at maximum marginal rate, no income-tax is payable by the company, being a member of AOP, in accordance with the provisions of section 86. Therefore, share in income of an AOP on which no income-tax is payable in accordance with the provisions of section 86, would be reduced while computing book profit, since the same has been credited to profit and loss account]	1,00,000	
- Income from units in UTI [Income from units in UTI shall be reduced while computing the book profits, since the same is exempt under section 10(35)]	75,000	
- Depreciation other than depreciation on revaluation of assets (Rs. 3,60,000 – Rs. 1,50,000)	2,10,000	
- Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account. Lower of unabsorbed depreciation Rs. 4,00,000 and brought forward business loss Rs. 6,00,000 as per books of accounts has to be reduced while computing the book profit]	4,00,000	7,85,000
Book Profit		**13,25,000**

Computation of MAT liability under section 115JB

Particulars	Rs.
18.50% of book profit	2,45,125
Add: Education cess@2%	4,903
Secondary and higher education cess@1%	2,451
Minimum Alternate Tax liability	2,52,479
MAT liability (rounded off)	**2,52,480**

Notes:

(1) It is only the specific items mentioned under Explanation 1 to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:

- Interest to financial institution (unpaid before filing of return) and
- Penalty for infraction of law

(2) Provision for gratuity based on actuarial valuation is an ascertained liability [CIT v. Echjay Forgings (P) Ltd. (2001) 251 ITR 15 (Bom.)]. Hence, the same should not be added back to compute book profit.

(3) As per proviso to section 115JB(6), the profits from unit established in special economic zone cannot be excluded while computing the book profit, and hence, such income would be liable for MAT.

(4) Long-term capital gains cannot be deducted while computing book profit even if such amount of capital gains is invested in specified assets under section 54EC, since book profit has to be computed by adding/deducting the items mentioned under Explanation 1 to section 115JB alone. Capital Gains reflected in the statement of profit and loss shall be part of book profit under section 115JB. Capital gains exempted under section 54EC cannot also be excluded for computing book profit. [CIT v. Veekaylal Investment Co. P. Ltd. (2001) 249 ITR 597 (Bom.) & N J Jose and Co. (P) Ltd. v. ACIT (2010) 321 ITR 132 (Ker.)]

Readers Note:

47. SCHEME OF TAXATION OF INVESTMENT FUNDS AND ITS STAKEHOLDERS

Section:- SECTION 10(23FBA), 10(23FBB), 115UB, 139 & 194LBB

47.1 Tax Treatment in the hands of Investment Fund (in the form of trust or company or LLP) registered as a Category I or a Category II Alternative Investment Fund under the SEBI (AIF) regulations, 2012 [Effective from A.Y. 2016-17]

- As per section 10(23FBA) any income of Investment Fund other than PGBP income is exempt from tax.
- As per section 115UB(4), the total income of the investment fund is chargeable to tax as under:

Investment Fund	Tax Rate
A company or a firm	30%
Other than a company or a firm	34.50% (Maximum Marginal Rate) plus E.C. = 35.535%

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

- Income paid by an investment fund to its unit holders would not be subject to dividend distribution tax under Chapter XII-D or tax on distributed income under Chapter XII-E [Section 115UB(5)].
- With effect from 1st June, 2015, tax has to be deducted@10% on any income (other than the proportion of income which is of the same nature as income chargeable under the head "Profits and gains of business or profession" which is taxable at investment fund level) payable by the investment fund to a unit holder. Such tax has to be deducted at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier [Section 194LBB].

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

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

  This section has been further amended w.e.f. 1st June, 2016 to provide that where payee is a non-resident or foreign company, then no tds shall be made under this section if such income is not chargeable to tax in their hands in India.
- The person responsible for crediting or making payment of the income on behalf of an investment fund and the investment fund are required to furnish, within the prescribed time, to the person who is liable to tax in respect of such income and to the prescribed income-tax authority a statement in the prescribed form and verified in the prescribed manner. Such statement should give details of the nature of the income paid or credited during the previous year and such other relevant details as may be prescribed [Section 115UB(7)].
- TDS provisions would not be attracted in respect of the income received by the investment fund. This would be provided by issue of appropriate notification under section 197A(1F) subsequently.
- Every investment fund has to compulsorily file its return of income or loss under section 139(4F), if it is not required to do so under any other provision of section 139. The provisions of the Act would apply as if such return of income or loss were a return required to be furnished under section 139(1).

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

- Any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments, made by the investment fund, been made directly by him.
- The income paid or credited by the investment fund shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as if it had been received by, or had accrued or arisen to, the investment fund [Section 115UB(3)].

- Income accruing or arising to, or received by, a unit holder of an investment fund, being that proportion of income which is of the same nature as income chargeable under the head "Profits and gains of business and profession" at investment fund level, shall be exempt under section 10(23FBB).
- If the income accruing or arising to, or received by, an investment fund, during a previous year is not paid or credited to the unit-holders, it shall be deemed to have been credited to the account of the unit-holder on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year [Section 115UB(6)].

Practical 41

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

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

Compute the total income and tax liability of the PQR Private Limited.

Also compute income of each shareholders from the said investment fund.

Solution

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

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

Computation of Income of each shareholder from PQR Private Limited

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

Readers Note:

Practical 42

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

Particulars	P.Y. 2016-17	P.Y. 2017-18
Business Income	(20,00,000)	8,00,000
Long Term Capital Gain	(25,00,000)	35,00,000
Income from other sources	60,00,000	30,00,000

Compute the total income of the ABC Trust. What is the applicable tax rate to ABC Trust?

Also compute income of each unit holders from the said investment fund.

Solution

Computation of Total Income of ABC Trust

Particulars	P.Y.2016-17	
	Rs.	Rs.
Business Income (Adjusted against Income from other sources)		Nil
Long Term Capital Loss (Rs. 25 lakhs carried forward)		Nil
Income from other sources	60,00,000	
Less: Business Loss to be set-off	(20,00,000)	
	40,00,000	Exempt u/s 23(FBA)
Total Income		Nil

Particulars	P.Y.2017-18	
	Rs.	Rs.
Business Income		8,00,000
Long Term Capital Gain	35,00,000	Nil
Less: Brought forward Long Term Capital Loss	(25,00,000)	
	10,00,000	Exempt u/s 23(FBA)
Income from other sources	30,00,000	Exempt u/s 23(FBA)
Total Income		8,00,000

Computation of Income of each Unit Holder from ABC Trust

Particulars	P.Y.2016-17	P.Y.2017-18
Business Income (If any)	Exempt u/s 10(23FBB)	Exempt u/s 10(23FBB)
Long Term Capital Gains	Nil	50,000 [10,00,000 ÷ 20]
Income from other sources	2,00,000 [40,00,000 ÷ 20]	1,50,000 [30,00,000 ÷ 20]
Income	**2,00,000**	**2,00,000**

Readers Note:

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

Section:- 11(7)

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

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

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

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

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

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

Practical 43

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

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

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

Solution

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

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

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

Considering above two options, answer is as under**:**

Option 1

	Particulars	**Rs.**
	Income from property held under trust	9,00,000
Add:	Voluntary Contribution received from public	7,00,000
Add:	Corpus Donations are not an income	Nil
Add:	Dividend income from shares (Exemption u/s 10(34) not available in view of amendment discussed above)	1,00,000
Add:	LTCG on sale of shares (Exemption u/s 10(38) not available in view of amendment discussed above)	3,00,000
Add:	Income from Agricultural Operations(Exemption u/s 10(1) is available to trust)	Nil
		20,00,000
Less:	15% Set apart	(3,00,000)
	Balance	17,00,0,00
Less:	Applied for the objects of Trust	(11,60,000)
Less:	Applied for purchase of Office	(5,00,000)
	Total Income	**40,000**

Option 2

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

	Balance	16,57,500
Less:	Applied for the objects of Trust	(11,60,000)
	Total Income	**4,97,500**

Reader's Note:

Practical 44

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

Solution

Computation of total income of trust

Particulars	Rs. in lakhs
Income derived from property held under trust	250
Less: Expenses incurred in earning income	(55)
Less: Depreciation on used assets	(15)
Business Income	180
Less: 15% to be set apart (15% of Rs.180)	(27)
Balance	153
Less: Income not received during the year [Note 3]	(20)
	133
Less: Non-application of income resulting from non-signing lease agreement [Note 1]	(30)
Available amount	103
Less: Development and installation expenses of ERP package [Note 2]	(85)
Less: Purchase of desktop and laptop computers [Note 2]	(12)
Taxable income	**6**

Notes:

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

Reader's Note:

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

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

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

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

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

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

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

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

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

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

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

(i) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit;

(ii) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive;

(iii) A distinction must be drawn between making of a surplus and the institution being carried on 'for profit'. No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit;

(iv) If after meeting the expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes;

(v) The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons".

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

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

51. CIT V. TRANS ASIAN SHIPPING SERVICES (P) LTD (2016) 385 ITR 637 (SC)

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

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

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

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

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

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

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

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

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

The requirement of producing a certificate would not apply when entire ship is not chartered and the arrangement pertains only to purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel. This position becomes abundantly clear by reading Rule 11Q(1) which specifies the basis/formula of computing deemed tonnage in respect of arrangement of slot charter.

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

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

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

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

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

2.5 TEU = 1 Net Tonnage (1NT)

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

52. Notifications/Circulars

Notification No. 103/2016, dated 7-11-2016

Circular No. 21/2016, Dated 27-05-2016

Clarification regarding cancellation of registration under section 12AA in certain circumstances

Section 2(15) provides that "charitable purpose" includes *inter alia* "advancement of any other object of general public utility". However, the advancement of any other object of general public utility shall not be charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity unless –

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and
(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities of that previous year.

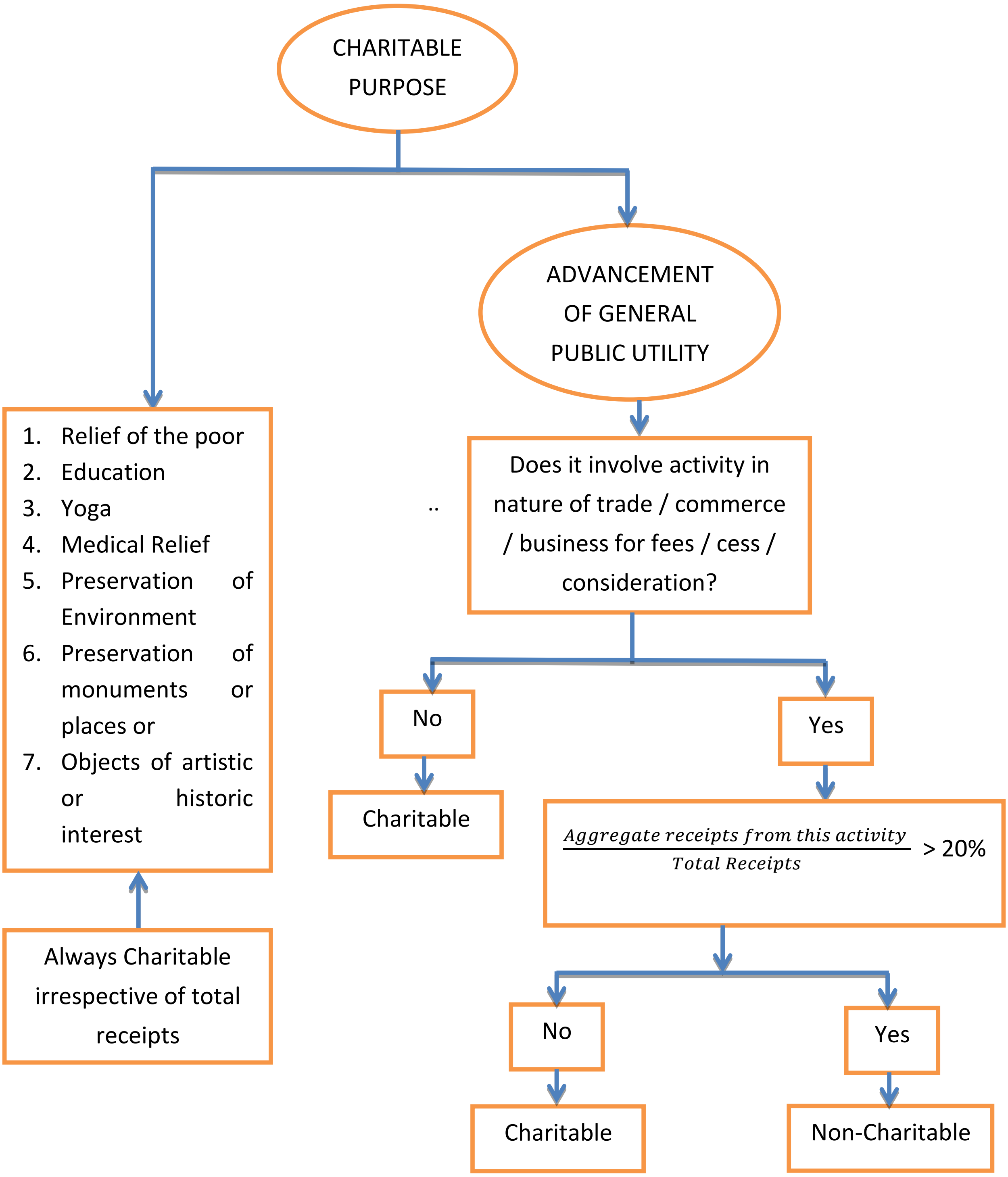
Thus, an entity, pursuing advancement of object of general public utility, could be treated as a charitable institution in one year and not a charitable institution in the other year depending on the percentage of aggregate value of receipts from commercial activities to total receipts of the trust or institution.

The temporary excess of receipts beyond the specified cut-off in one year may not necessarily be the outcome of alteration in the very nature of the activities of the trust or institution requiring cancellation of registration already granted to the trust or institution.

Accordingly, the CBDT clarified that it shall not be mandatory to cancel the registration already granted under section 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to section 2(15) is exceeded in a particular year without there being any change in the nature of activities of the institution.

If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary in accordance with section 12AA(3) and 12AA(4).

IMPORTANT CASE LAWS	
1.	N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) 321 ITR 132 (Ker.) ***[DECISION NO. 9 OF ICAI CASE STUDY BOOK - PAGE NO. 75]***
2.	Commissioner of Income-tax v. D. L. Nandagopala Reddy (Individual) (2014) 360 ITR 0377 (Kar) ***[DECISION NO. 2 OF ICAI CASE STUDY BOOK - PAGE NO. 70]***
3.	Madras Gymkhana Club v. DCIT (2010) 328 ITR 348 (Mad.) ***[DECISION NO. 4 OF ICAI CASE STUDY BOOK - PAGE NO. 72]***
4.	Indcom v. Commissioner of Income-tax (TDS) (2011) 335 ITR 485 (Cal.) ***[DECISION NO. 6 OF ICAI CASE STUDY BOOK - PAGE NO. 73]***
5.	Queen's Educational Society v. CIT (2015) 372 ITR 699 (SC) ***[DECISION NO. 5 OF ICAI CASE STUDY BOOK-PAGE NO. 5]***


CHARITABLE PURPOSE
1. Relief of the poor
2. Education
3. Yoga
4. Medical Relief
5. Preservation of Environment
6. Preservation of monuments or places or
7. Objects of artistic or historic interest
Always Charitable irrespective of total receipts
ADVANCEMENT OF GENERAL PUBLIC UTILITY
Does it involve activity in nature of trade / commerce / business for fees / cess / consideration?
No
Charitable
Yes
$\frac{Aggregate\ receipts\ from\ this\ activity}{Total\ Receipts} > 20\%$
No
Charitable
Yes
Non-Charitable

UNIT J - FILING OF RETURN AND PAYMENT OF SELF-ASSESSMENT TAX

53. RETURN OF INCOME

Section:- 139(1)

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

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

(iii) Every other person, whose total income or total income of any other person in respect of which he is assessable exceeds the maximum amount not chargeable to tax, shall furnish a return of income. [For this proviso, total income = Total income without giving effect to the provisions of sections 10A, 10(38) and sections 80C to 80U]

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

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

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

Exceptions:

1. This clause is not applicable to resident but not ordinary resident

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

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

Practical 45

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

(a) Mr. Ashok, an individual, aged 50 years, whose gross total income before deduction under section 80C is Rs. 2,60,000 and total income after deduction under section 80C is Rs.1,05,000.

(b) Mr. Jayesh earned long term capital gain of Rs.3,80,000 [Eligible for exemption u/s 10(38)]. He does not have any other income.

(c) M/s. N.R.K & Co., a firm, which has incurred a loss.

Solution

(a) As per fourth proviso to section 139(1), every person (other than company and firm) whose total income or total income of any other person in respect of which he is assessable exceeds the maximum amount not chargeable to tax, shall furnish a return of income.

For this proviso, total income means total income without giving effect to the provisions of sections 10A, 10(38) and sections 80C to 80U.

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

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

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

Readers Note:

Practical 46

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

Solution

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

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

Readers Note:

Due Dates for filing Income Tax Return under section 139(1)

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

3.2 where the assessee is a "working partner" in a firm whose accounts are required to be audited under this Act or under any other law	September 30 of assessment year
3.3 In any other case	July 31 of assessment year

54. RETURN OF LOSS

Section:- 139(3)

- A loss sustained by the assessee in any previous year under the
  (a) Section 72(1) - Profits and Gains of business or profession
  (b) Section 73(2) - Speculation business
  (c) Section 73A(2)-Specified business
  (d) Section 74A(3) - Owning and maintaining of horse races
  (e) Section 74(3) - Capital Gains
  can be carried forward only if the return is furnished within the time allowed u/s. 139(1).

- Section 139 (3) read with section 80 is not applicable to the followings:
  (a) Unabsorbed depreciation u/s 32(2)
  (b) Loss under the head "Income from house property" u/s. 71B

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

SECTION 119-POWERS OF CBDT

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

Circular No.8 / 2001 dated 16th May 2001

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

Practical 47

Rajesh regularly files his return of income electronically. While he was trying to upload his return of income for assessment year **2017-18** on **31st July, 2017**, last date for filing the same, he found it extremely difficult to do the same due to network problems and ultimately he became successful in making e-filing of his return only at 1 A.M. on **1st August, 2017**. The return contained a claim for carry forward of business loss of Rs.1 lakh. This circumstance was recorded in a letter delivered to the office of the Deputy Commissioner of Income Tax on **1st August, 2017** during normal office hours. Rajesh made a request to the CBDT for condonation of delay in filing the return of income.

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

Solution

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

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

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

Readers Note:

55. BELATED RETURN

Section:- 139(4)

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

56. RETURN BY CHARITABLE TRUST

Section:- 139(4A)

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

57. RETURN BY POLITICAL PARTIES

Section:- 139(4B)

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

58. RETURN BY CERTAIN ASSOCIATIONS/INSTITUTIONS

Section:- 139(4C)

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

i) Research association –Section 10(21)

ii) News agency – Section 10 (22B)

iii) association or institution referred to in Section 10(23A) / (23B)

iv) Fund or Institution, University or other educational institution or hospital or other medical Institution referred to under section 10(23C) *(iiiab)/ (iiiac)/ (iiiad)/(iiiae)*/(iv)/(v)/(vi)/(via)

v) *Mutual Fund referred to in section 10(23D)*

vi) *Securitisation trust referred to in section 10(23DA)*

vii) *Venture capital company or venture capital fund referred to in section 10(23FB)*

viii) Trade Union or association covered under section 10(24).

ix) Any body or authority or board or trust referred to in section 10 (46)

x) Infrastructure debt fund referred to in section 10(47)

Practical 48

Discuss obligation of followings to file income tax return

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

Solution

Sr. No.	Name of the entity	Total income before giving effect to the provisions of section 10 (in Rs.)	Section under which entity is eligible for exemption	Whether entity falls in the list of section 139(4C)?	Whether return is required to be filed?
1	Competition Commission of India	50.25 Crores	Section 10(46)	Yes	Yes
2	Prasar Bharati	10.22 Crores	Section 10(23BBH)	No	No
3	Reliance Mutual Fund	22.78 Crores	Section 10(23D)	Yes	Yes
4	Trade Union	2.08 lacs	Section 10(24)	Yes	No because income does not exceed exemption limit
5.	Insurance Regulatory and Development Authority (IRDA)	8.05 Crores	Section 10(23BBE)	No	No

Readers Note:

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

Section:- 139(4D)

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

60. RETURN BY BUSINESS TRUST

Section:- 139(4E)

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

61. RETURN BY INVESTMENT FUND

Section:- 139(4F)

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

62. REVISED RETURN

Section:- 139(5)

Conditions for filing revised return

(i) The original return must have been furnished under section 139(1) or section 139(4) and

(ii) The assessee discovers an omission or wrong statement therein.

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

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

Fill in the blanks:

(a) Belated return _______ be revised (can/cannot)

(b) Revised return replaces __________ return. [**Dhampur sugar mills Ltd. V CIT *(1973) 90 ITR 236 (All)].***

(c) Filing of a revised return after discovery of the omission or wrong statement is not by itself sufficient to bring the revised return within the ambit of section 139(5) .A further requirement is that this omission or wrong statement in the original return must be due to a _________ (bonafide / Malafide) inadvertence or mistake on the part of the assessee. [***Sunanda Ram Deka v. CIT (1994) 210 ITR 988 (Gau)].***

(d) Second revised return _______ be submitted (Can/Cannot)

(e) Original return filed under section 139(1) declaring loss of Rs. 8,00,000. However, assessee failed to include Loss from Business D amounting to Rs. 3,50,000 and therefore submitted revised return declaring total loss of Rs. 11,50,000. Assessee is entitled to carry forward loss of Rs.______________. **[CIT Vs. Periyar District Co-operative Milk Producers Union Ltd. [2004] 266 ITR 705 (Mad.)]**

Practical 49

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

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

Solution

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

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

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

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

Readers Note:

63. DEFECTIVE RETURN

Section:- 139(9)

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

Rectification of Defect:-

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

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

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

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

(a) The annexure, statements and columns in the return of income has not been duly filled in.

~~(b) The tax together with interest, if any, payable in accordance with the provisions of section 140A, has not been paid on or before the date of furnishing of the return.~~**– *deleted by Finance Act, 2016.***

(c) The return is not accompanied by the following:

- (i) Statement showing the computation of tax.
- (ii) Audit report u/s. 44AB or
- (iii) Proof of TDS/TCS, advance tax or self – assessment tax paid.
- (iv) Proof the compulsory deposit made under Compulsory Deposit Scheme.
- (v) Audited Profit and Loss account, Balance Sheet and Auditor's Report (including Cost Audit Report under section 233B of the Companies Act) if the accounts of the assessee have been audited under any other law.
- (vi) ***Where regular books of account are maintained by the assessee:-***
  - i. Manufacturing Account, Trading Account, Profit and Loss account, or Income and Expenditure account or similar account and Balance Sheet
  - ii. In case of the proprietary business, personal account of the proprietor; in case of firm, AOP/BOI, the accounts of the partners/members and in case of a partner / member his personal account in the firm, AOP/BOI.
- (vii) **Where *regular books are not maintained by the assessee:-***
  - i. statement indicating the turnover, gross receipts, gross profit, expenses and net profit and the basis of such computation
  - ii. Statement of sundry debtors, creditors, stock in trade and cash balance at the end of the previous year

NOTE:

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

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

(i) In case of a defective return, the Commissioner shall intimate this to the person through e-mail or by placing a suitable communication on the e-filing website.

(ii) A person shall comply with the notice regarding defective return by uploading the rectified return within the period of time mentioned in the notice.

(iii) The Commissioner may, in order to avoid hardship to the person, condone the delay in uploading of rectified return.

(iv) In case no response is received from the person in reply to the notice of defective return, the Commissioner may declare a return as not having been uploaded at all or process the return on the basis of information available

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

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

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

Fill in the blanks:

(a) The defects mentioned in the section 139(9) are ________ (illustrative / exhaustive) [***Rai Bahadur Bissesswarlal Motilal Malwasie Trust 195 ITR 825 [1992]***(**Cal.**)]

(b) The assesse submitted e-return. But it is not verified at all. Hence, the return was an absolutely ________ (Invalid/Defective) as it had a glaring inherent defect which could not be cured inspite of the deeming effect of section 292B. **[CIT V. Harjinder Kaur 310 ITR 71 (P & H)]**

64. SELF – ASSESSMENT TAX

Section:- 140A

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

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

- The return of income is to be accompanied by proof of payment of both tax and interest.
- Where the amount paid by the assessee falls short of the aggregate of tax and interest, the amount so paid shall first be adjusted towards interest and the balance, if any, shall be adjusted towards tax.
- After a regular assessment under section 143 or 144 or an assessment under section 153A has been made, any amount paid under section 140A shall be deemed to have been paid towards such regular assessment.
- If any assessee fails to pay whole or any part of such tax or interest or both in accordance with this section, he shall be deemed to be an assessee in default and all the provision of the Act shall apply accordingly.

SECTION 221: Penalty payable when tax in default

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

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

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

SECTION 222: Certificate to be drawn by TRO

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

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

UNIT K – INQUIRY, AUDIT AND REFERENCE TO VALUATION OFFICER

65. INQUIRY BEFORE ASSESSMENT

Section:- 142(1)

Notice for filing return of income

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

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

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

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

66. INQUIRIES

Section:- 142(2)

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

67. SPECIAL AUDIT

Section:- 142(2A)

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

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

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

(ii) Prior approval of the Chief Commissioner or Commissioner shall be obtained.

(iii) However, the Assessing Officer shall not direct the assessee to get the accounts audited unless the assessee has been given a reasonable opportunity of being heard.

Nomination of Auditor and expenses of audit

(i) The Chief Commissioner / Commissioner shall nominate the auditor and his decision in this regard is final.

(ii) On or after the 1st day of June, 2007, the expenses of, and incidental to, such audit (including the remuneration of the Accountant) shall be determined by the Chief Commissioner or Commissioner and the expenses so determined shall be paid by the Central Government.

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

(i) The audit report shall be furnished within the period specified by the A. O. or extended time. Such extension can be done either by the A.O. *on his own motion (Amendment Finance Act, 2008)* or on application made by assessee.

(ii) The total time limit (including such extended time) shall not exceed 180 days.

(iii) Assessing Officer can direct the assessee to get his accounts audited under this section even if the accounts are already audited under this Act or under any other law.- ***Super Cassettes Industries Ltd. V CIT (1999) 102 Taxman 202 (Delhi).***

68. OPPORTUNITY OF BEING HEARD

Section:- 142(3)

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

Practical 50

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

Mr. X challenged assessment order on following grounds:

(i) Assessment had been framed without giving opportunity of being heard.

(ii) A.O. had not acted upon the return which was very well in time as per section 139(4).

Discuss validity of contentions raised by Mr. X.

Solution

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

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

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

Or

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

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

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

Readers Note:

69. ESTIMATES BY VALUATION OFFICER IN CERTAIN CASES

Section:- 142A

(1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.

(2) The Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.

(3) The Valuation Officer, on a reference made, shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section 38A of the Wealth-tax Act, 1957.

(4) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

(5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.

(6) The Valuation Officer shall send a copy of the report of the estimate made, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made.

(7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Practical 51

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

Solution

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

Readers Note:

UNIT L – INTIMATION AND REGULAR ASSESSMENT

70. INTIMATION / POPULARLY KNOWN AS SUMMARY ASSESSMENT

Section:- 143(1)

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

(a) the total income or loss shall be computed after making the following adjustments, namely;

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

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

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

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

(c) the amount of refund due to the assessee shall be granted to him.

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

Time limit

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

Meaning of incorrect claim

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

(a) of an item, which is inconsistent with another entry of the same or some other item in such return;

(b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished;

(c) in respect of a deduction, where such deduction exceeds specified statutory limits which may have been expressed as monetary amount or percentage or ratio or fraction.

(1A) For the purpose of processing the returns as mentioned above, the Board may make a scheme for centralized processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee.

(1B) For the purpose of giving effect to the scheme, the Central Government may, by notification, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. Further, such notification may be issued at any time but not after 31st March, 2012.

(1C) Every such notification shall be laid before each house of Parliament.

(1D) The processing of a return shall not be necessary before the expiry of one year from the end of the financial year in which return is submitted, where a notice has been issued to the assessee under section 143 (2).

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

71. NOTICE FOR SCRUTINY/ REGULAR ASSESSMENT

Section:- 143(2)

To ensure that the assessee has not

(a) understated the income or (b) computed excessive loss or (c) underpaid the tax in any manner;

The Assessing Officer or the prescribed income-tax authority may **serve a notice** on the assessee requiring him on a date to be specified in this notice, either:

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

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

72. SCRUTINY/REGULAR ASSESSMENT

Section:- 143(3)

(i) The Assessing Officer shall take into account all relevant material gathered by him and also the evidence produced by the assessee.

(ii) On this basis, he shall make an assessment of the total income or loss of the assessee.

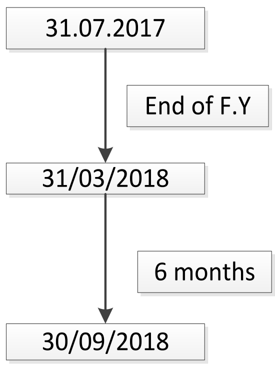
(iii) On the basis of such assessment, he shall determine the sum payable by the assessee or refund due to him.

Practical 52

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

Solution

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



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

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

Readers Note:

Practical 53 **Section 143(1) – section 143(2)**

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

Solution

Intimation u/s 143(1) in fact is not an assessment, it is merely intimation. It is a mechanical process adopted by Income Tax department to make certain adjustments based on information contained in the return like disallowance of excess depreciation, reducing claim of 80C, wrong calculation of tax etc.

In this entire process, neither taxpayer nor the evidences are called upon to verify the correctness of return filed. Therefore, the contention raised by Mr. X challenging the scrutiny notice is not valid.

Readers Note:

Practical 54 **SECTION 143(1)–Section 143(1D)-Section 143(3)-GEB's Case**

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

Solution

Position before amendment made by Finance Act, 2016

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

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

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

Position after amendment made by Finance Act, 2016

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

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

Readers Note:

73. SPECIAL PROCEDURE FOR ASSESSMENT IN CASE OF ……

Section:- 143(3)

73.1 Assessment in the case of research association or fund or trust, news agency, notified trust etc.

(i) The Assessing Officer may intimate the Central Government or the prescribed authority about the contravention of the relevant provisions of section 10.

(ii) If any such intimation has been sent, no order shall be passed under section 143(3) without giving effect to the provisions of section 10 unless the approval granted to the entity has been withdrawn or rescinded.

(iii) In all such cases, the period commencing from the date of intimation by the Assessing Officer and ending with the date of withdrawal or rescinding shall be excluded in computing the time limit of completion of assessment under section 143(3).

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

(i) The Assessing Officer is satisfied that activities are carried out in contravention of the conditions subject to which such university, college or other institutions referred to in clause (ii) and clause (iii) of section 35(1) was approved.

(ii) Then, A.O. may, after giving reasonable opportunity of being heard against the proposed withdrawal to the concerned university, college, or other institution, recommend to the Central Government to withdraw approval.

(iii) And that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college, or other institution and the Assessing Officer.

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

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

74. BEST JUDGMENT ASSESSMENT

Section:- 144

When Best Judgment assessment can be made?

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

Opportunity of being heard:-

(i) The assessee will be given an opportunity by a show cause notice as to why assessment shall not be completed to the best judgement of the Assessing Officer.

(ii) **Opportunity need not be given where notice u/s. 142(1) has already been issued.**

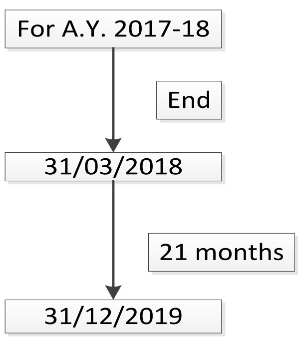
75. TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND CERTAIN PERIODS ARE EXCLUDED FROM THE TIME LIMIT FOR PASSING ASSESSMENT ORDERS

Section:- 153(1), 153(4) and Explanation 1 to Section 153

Time limit for completion of assessment under section 143(3)/ 144

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

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



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

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(iii) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of section 10(21), section 10(22B), section 10(23A), section 10(23B) or section 10(23C) and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, under those clauses is received by the Assessing Officer; or

(iv) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 142(2A) and—

(a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or

(b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or

(v) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under section 142A(1) and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

(vi) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him; or

(vii) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

(viii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under section 245Q(1) and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under section 245R(3); or

(ix) the period commencing from the date on which an application is made before the Authority for Advance Rulings under section 245Q(1) and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under section 245R(7); or

(x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or

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

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

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

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

Practical 55

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

Solution

Step 1: **Regular Time Limit under section 153**

21 months from the end of Assessment Year

End of the Assessment year + 21 months

31.3.2018 + 21 months

31.12.2019

Step 2: **Revised Time Limit**

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

31.12.2019 + 46 days

15.02.2020

Step 3: **Minimum Time Limit**

Day on which authority can reassume jurisdiction + 60 days

30.01.2020 + 60 days

31.03.2020

Step 4: **Effective Time Limit**

Step 2 or Step 3 whichever is later

31.03.2020

Readers Note:

76. NOTICE OF DEMAND

Section:- 156

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

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

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

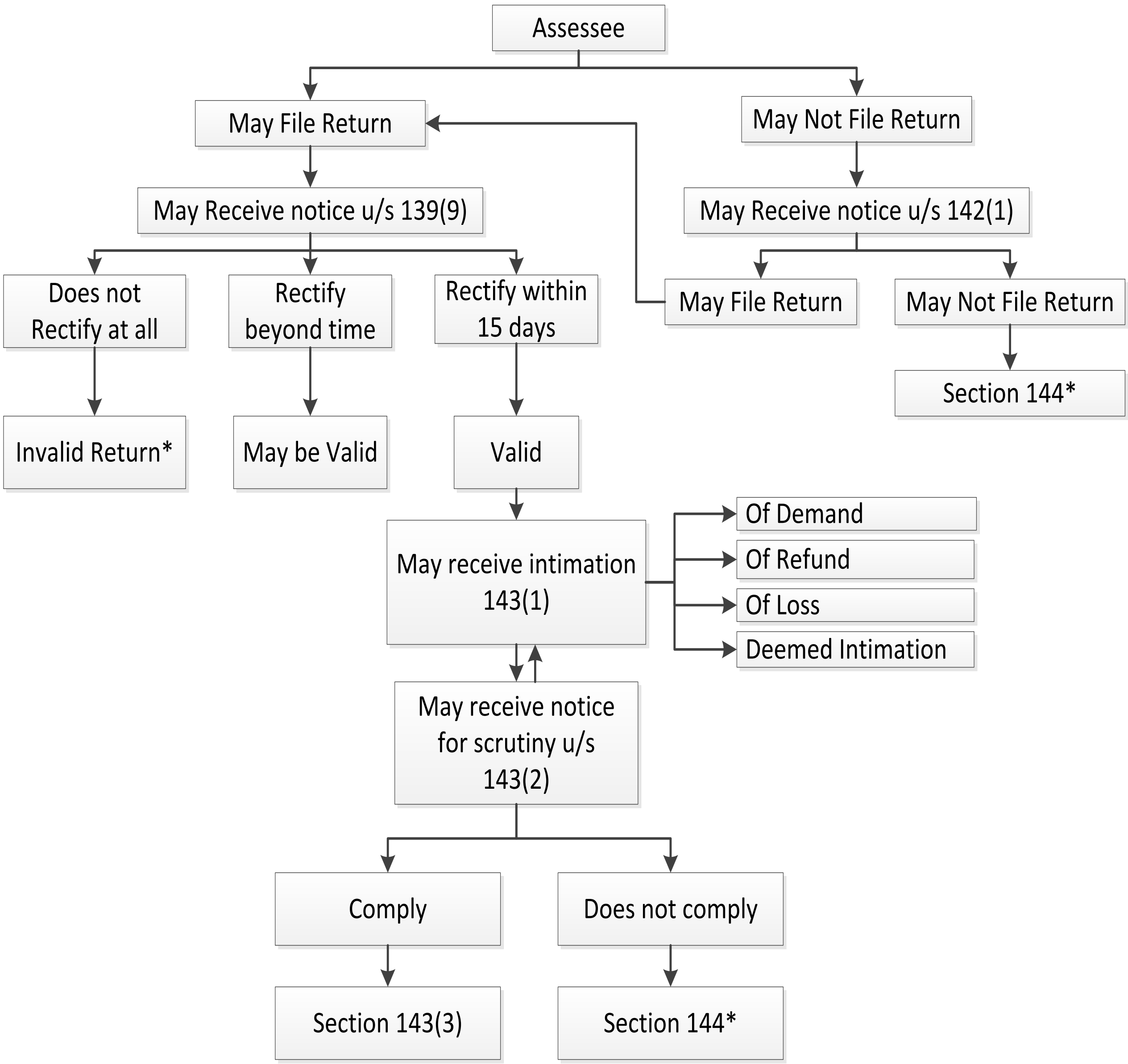
Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid *within thirty days of the service of the notice* at the place and to the person mentioned in the notice.

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

SECTION 246A: Appeal to Commissioner (Appeals)

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

Summary Chart of Assessment Procedure



Section 144*

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

IMPORTANT CASE LAWS

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

UNIT M - RE-ASSESSMENT AND RECTIFICATION

77. SUMMARY OF PROCEEDINGS UNDER SECTION 147

Sr. No.	Primary Flow of Procedure under section 147
(1)	There must be an information or some tangible material with the assessing officer.
(2)	Such information or tangible material must be specific.
(3)	Based on such specific information or material, assessing officer should form a belief in a subjective manner that income has escaped assessment.
(4)	The assessing officer must record the reasons for re-opening.
(5)	He must obtain appropriate sanction (as mentioned under section 151) for issuing notice under section 148.
(6)	Thereafter notice under section 148 shall be served to the taxpayer requiring him to file return. Such notice must be issued within the time limit prescribed under section 149 read with section 150.
(7)	On receipt of notice under section 148, appropriate course of action on the part of assessee is to file return. (Such return will have same effect as if it is required to be filed under section139).
(8)	Thereafter, assessee, if desires, then request assessing officer to supply the copy of reasons.
(9)	On receipt of the request, the assessing officer is obliged to supply the reasons within reasonable time.
(10)	Thereafter, assessee may prefer to file an objection to the assessing officer.
(11)	On being filed objection, it is the duty of the assessing officer to pass a speaking order overruling objection even before commencing section 147 proceedings.
(12)	A.O. may proceed under section 143(1) or 143(3) or 144 to complete the assessment under section 147, since return filed by the assessee will have same effect as if it is required to be filed under section 139.
(13)	During the course of proceedings under section 147, if any other income which has escaped assessment and which comes to the notice of assessing officer, then same can also be included while passing order under section147.
(14)	Assessing officer shall ensure that order under section 147 shall be passed within 9 months from the end of financial year in which notice under section 148 is served. (Section 153).

78. CASES OF DEEMING ESCAPEMENT

Section:- 147 - With effect from 1st June, 2016

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

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

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

Time limit for completion of assessment u/s 147

1. Within 9 months ***from*** the end of financial year in which the notice under section 148 was served.
2. Within ***21 months*** from the end of financial year in which the notice under section 148 was served in case reference is made to TPO under section u/s 92CA (1).
   Explanation 1 to section 153 has already been discussed in para no. 31 of Unit C

Practical 56

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

Solution

Supreme Court in case of R.K.Upadhyaya v. Shanabhai P. Patel [1987] 166 ITR 163 held that the time-limits prescribed under section 149 are relevant for "issue of notice" and not for "service of notice".
Therefore, if the Assessing Officer issues notice within the time-limit prescribed under section 149 of the Act, it is a valid notice even if "service of notice" takes place after such time-limit.
Considering the above, notice issued by A.O. is valid, subject to fulfillment of other conditions.

Readers Note:

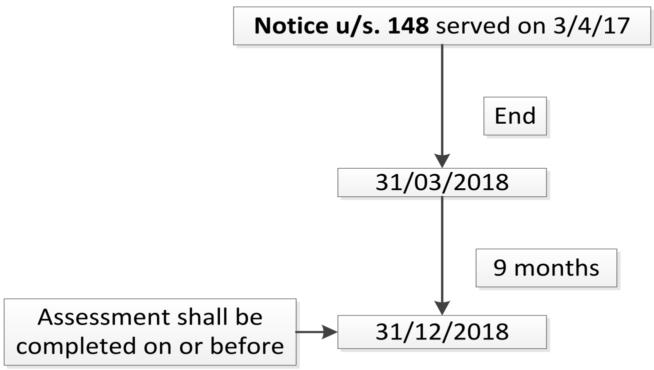
Practical 57

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

Solution

(i) Maximum time limit by which notice u/s 143(2) shall be served is ***30/9/18***.

(ii) Time limit for completing assessment under section 147 is 9 months from the end of financial year in which notice u/s 148 is served.



Readers Note:

80. RECTIFICATION OF MISTAKES BY I.T. AUTHORITY OF ANY ORDER OR INTIMATION

Section:- 154

Section 154(1)

With a view to rectifying **any mistake apparent from the record** an income-tax authority referred to in section 116 may,

(a) amend any order passed by it under the provisions of this Act ;

(b) amend any intimation or deemed intimation under sub-section (1) of section 143.

(c) amend any intimation issued under sub-section (1) of section 200A
(d) amend any intimation issued under sub-section (1) of section 206CB.

Section 154(1A)

Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

Section 154(2)

Subject to the other provisions of this section, the authority concerned

(a) may make an amendment under sub-section (1) of its own motion, and
(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee or by the deductor or collector, and where the authority concerned is the Commissioner (Appeals), by the Assessing Officer also.

Section 154(3)

An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or deductor or collector, shall not be made under this section unless the authority concerned has given notice to the assessee or deductor or collector of its intention so to do and has allowed the assessee or deductor or collector a reasonable opportunity of being heard.

Section 154(4)

Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

Section 154(5)

Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor or collector, the Assessing Officer shall make any refund which may be due to such assessee or the deductor or collector.

Section 154(6)

Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or collector, the Assessing Officer shall serve on the assessee or the deductor or collector, as the case may be a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

Section 154(7)

No amendment under this section shall be made **after the expiry of four years from the end of the financial year in which the order sought to be amended was passed.**

Section 154(8)

Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee or by deductor or collector to an income-tax authority, the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,

(a) making the amendment; or

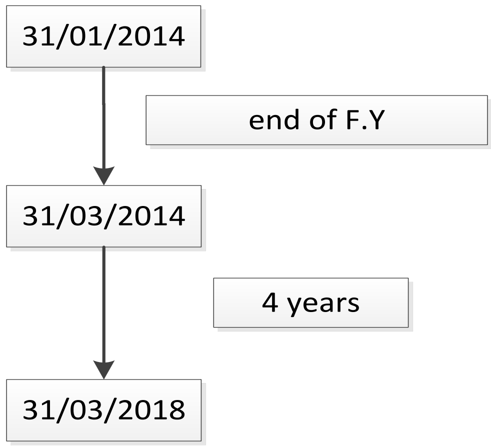
(b) refusing to allow the claim.

Practical 58

For **A.Y. 2012-13**, Assessing Officer passed the order u/s 143(3) on **31/01/14.** In this order, the assessing officer found the mistake apparent from record. Ascertain the maximum time limit available with assessing officer to rectify this order.

Solution

Time limit under Section 154(7): When A.O. acting on his own motion



Readers Note:

Practical 59

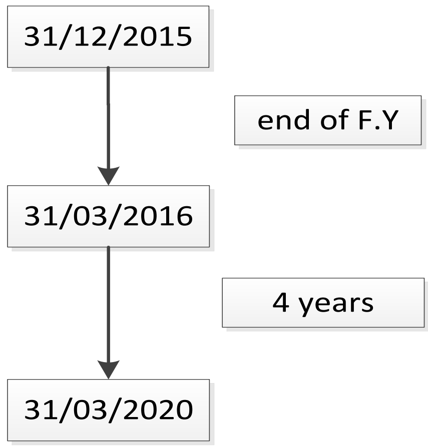
For **A.Y. 2013-14**, Assessing Officer completed the assessment under u/s 143(3) on **31/12/15**. In this order, the assessee found the mistake apparent from record. Ascertain the maximum time limit by which assessee can submit an application (request) for rectification to the assessing officer.

Assuming that the assessee submitted application for rectification on **10/06/2016**, what shall be the maximum time limit by which the assessing officer shall dispose of this application?

Solution

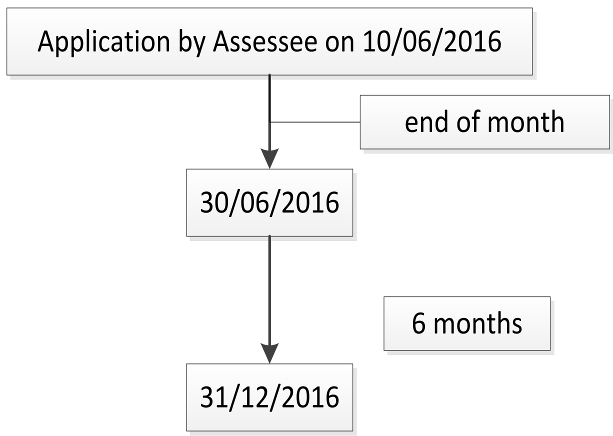
(1) Time limit for submitting an application to the assessing officer:

Readers must note that on analysis of **Circular No. 73, dated 7-1-1972,** assesse can make an application within 4 years from the end of financial year in which order sought to be amended was passed. In that case, the departmental authority shall dispose of this application within the time frame given under section 154 (8).



Therefore, the assessee can make an application for rectification on or before **31/03/2020.**

(2) Time limit under Section 154(8): When Assessee makes an application



The assessing officer shall dispose of the application of the assessee under section 154 either approving or refusing on or before **31/12/2016.**

Readers Note:

Practical 60

Whether following result into mistake apparent from record?

(i) Debatable point of law

(ii) Subsequent Supreme Court Decision

(iii) Retrospective Amendment

Solution

(i) Debatable point of law

The Supreme Court in the case of ***T. s. Balaram, ITO v. Volkart Bros 82 ITR 50*** , held that "a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions.

Therefore, a decision on a debatable point of law is not a mistake apparent from the record.

(ii) Subsequent Supreme Court Decision

The Andhra Pradesh High Court in case of ***B.V.K. Seshavataram*** **v.** ***CIT 210 ITR 633*** held that "A subsequent decision of Supreme Court can validly form basis for rectifying an order of assessment under section 154 provided decision is given by the Apex Court within **four years from the end of the financial year in which the order sought to be amended was passed.**

Therefore, a subsequent Supreme Court decision result into mistake apparent from record for the purpose of section 154. CBDT has also expressed similar view in circular No. 68 dated November 17, 1971.

(iii) Retrospective Amendment

The Calcutta High Court in case of ***CIT v. E.Sefton and Co. (P.) Ltd. (1989) 179 ITR 435*** held that if the assessment order is plainly and obviously inconsistent with the specific and clear provision as amended retrospectively, undisputedly there is a mistake apparent from record.

Therefore, in the light of the retrospective amendment, the assessment order had to be rectified /amended under section 154.

Readers Note:

Practical 61

In an order of assessment for the **A.Y. 2011-12,** the assessee noticed a mistake for which application under section 154 was moved and the order was rectified. Subsequently, the assessee moved further application for rectification under section 154 which was rejected by the Assessing Officer on the ground that the order once rectified cannot be rectified again. Is the contention of the Assessing Officer correct?

Solution

The word “order” in expression “from the end of the financial year in which the order sought to be amended” in section 154(7) includes amended or rectified order and, therefore, where original assessment was subsequently rectified, a second application for rectification can be made.— **Hind Wire Industries Ltd. v. CIT 212 ITR 639 (1995) (SC)**

Readers Note:

81. Notifications/Circulars

Circular No. 40/2016, dated 9-12-2016

Increase in turnover due to digital payments may not lead to reopening of cases under section 147: Direction under section 119

Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, Assessing Officers have been advised not to reopen past assessments in cases merely on the ground that the current year's turnover has increased.

UNIT N – APPEALS

82. APPEALS TO COMMISSIONER (APPEALS)-APPEALABLE ORDERS

Section:- 246A

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

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

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

Section:- 249(1)

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

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

84. TIME LIMIT FOR PRESENTING APPEAL

Section:- 249(2), 248

<u>Section 249(2)</u>

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

(a) where the appeal is u/s 248, the date of payment of the tax, or

(b) where the appeal relates to any assessment or penalty, the date of service of notice of demand relating to the assessment or penalty, or

(c) in any other case, the date on which intimation of the order sought to be appealed against is served.

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

<u>Section 248</u>

Appeal by person denying liability to deduct tax

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

85. CONDONATION OF DELAY IN FILING APPEAL

Section:- 249(3)

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

Points to remember:

1. The statutory right of appeal must be construed in furtherance of justice and therefore liberal meaning shall be given to the expression "sufficient cause".

2. A distinction must be made between a case where delay is inordinate and a case where delay is of a few days. Where assessee requests for condonation of delay of few days on genuine ground, then such type of delay must be condoned.

86. AMOUNT OF TAX PAYABLE BEFORE FILING APPEAL

Section:- 249(4)

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

(a) Where return has been filed by the assessee, the assessee has **paid the tax** due on the income returned by him.

(b) Where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him.

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

87. PROCEDURE IN APPEAL

Section:- 250

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

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

88. POWERS OF COMMISSIONER (APPEALS)

Section:- 251

The Commissioner (Appeals) enjoys the following powers:

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

89. WHETER PRODUCTION OF ADDITIONAL EVIDENCE BEFORE COMMISSIONER (A) IS PERMISSIBLE?

Rule:- 46A

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

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

Section:- 220(4)

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

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

Section:- 220(6)

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

Consider following case study:

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

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

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

Section:-

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

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

93. FUNCTIONING OF TRIBUNAL

Section:- 255

Section 255(2)

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

Section 255(3)

The President or a member of the Appellate Tribunal may be empowered by the Central Government, sitting singly, to dispose of any case where total income assessed does not exceed Rs.15 lakhs. (Rs. 50 lakh with effect from 01.06.2016). The President may constitute a Special Bench consisting of three or more members, one of whom shall be a judicial member and one on accountant member.

Section 255(4)

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

Practical 62

Mahakuteshwar Oil Industries was a manufacturer of edible oil. For the **A.Y. 1996-97**, it had declared the total income of Rs.8,660 in the return of income. The Assessing Officer computed the total income at Rs.48,27,614. The Commissioner(Appeals) enhanced the income to Rs.63,89,795. In appeal before the Tribunal, the Single Member of the Tribunal decided the appeal and granted relief to the assessee. Whether the single member of the Tribunal is justified in assuming jurisdiction to decide this appeal?

Solution

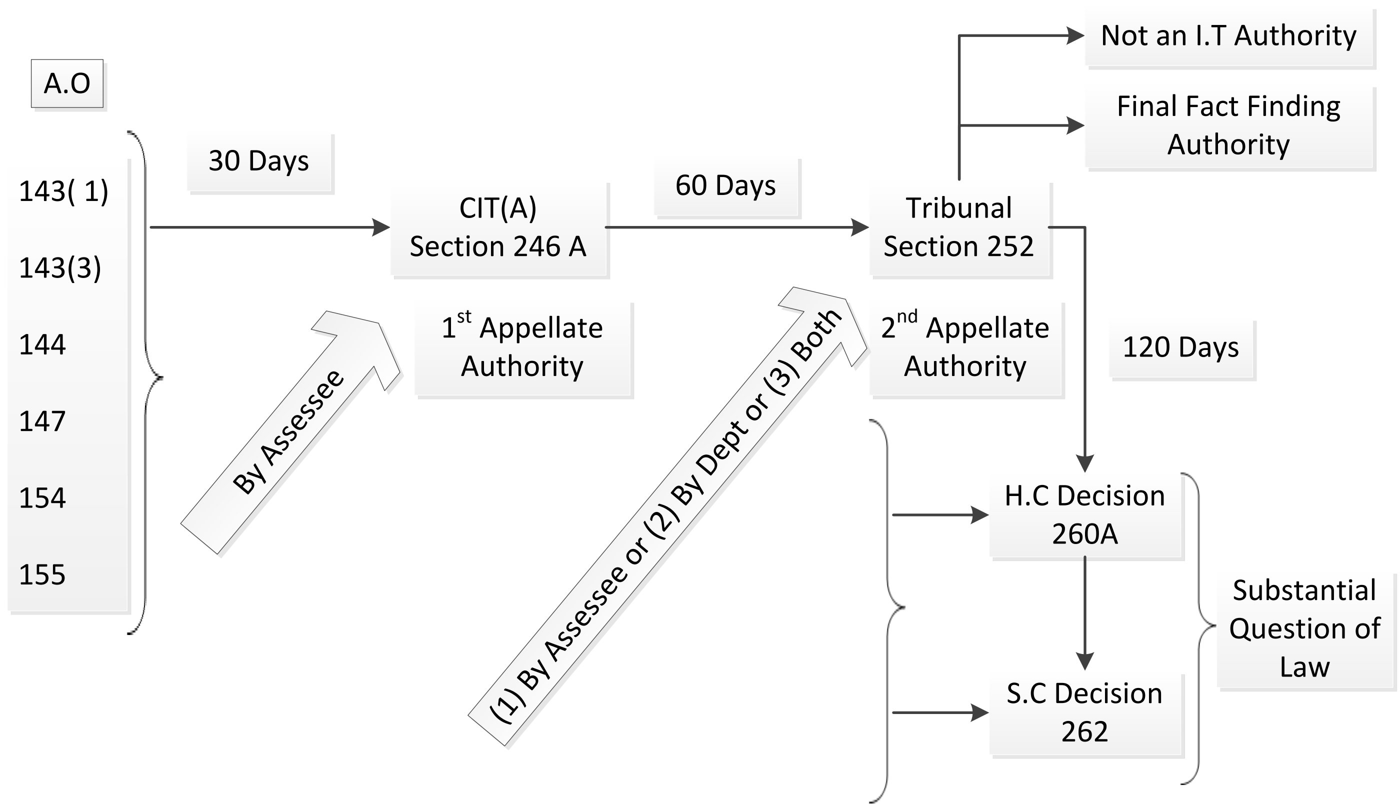
The Karnataka High Court in case of **CIT v. Mahakuteshwar Oil Industries 298 ITR 390** held as under :

"A single member of the Tribunal can exercise powers if the income computed by the Assessing Officer is less than Rs.5 lakhs (Amended limit is Rs. 50 Lakhs), even though the same has been enhanced by the Commissioner (Appeals) in excess of Rs.5 lakhs (Amended limit is Rs. 50 Lakhs)".

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

Readers Note:

Summary Chart of provisions relating to Appeals



94. CIT V. SUBRATA ROY (2016) 385 ITR 570 (SC)

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

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

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

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

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

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

Accordingly, the Supreme Court set aside the order dated 21.2.2014 of the High Court.

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

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

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

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

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

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

Supreme Court's Observations: The Apex Court noted that to exercise jurisdiction under section 263 the requirement is that the order passed by the assessing authority is erroneous and prejudicial to the interests of the revenue. Section 263 does not require any specific show cause notice to be served on the assessee. What is required is granting of opportunity to the assessee of being heard before making the revision order. Failure to give such an opportunity would render the revisionary order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice.
The Supreme Court observed that the Tribunal had not recorded any finding that in course of the suo moto revisionary proceedings, the opportunity of hearing was not afforded to the assessee and that the assessee was denied an opportunity to contest the facts on the basis of which the Commissioner had come to the conclusions as recorded in the order under section 263.

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

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

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

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

IMPORTANT CASE LAWS

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

UNIT O – ASSESSMENT ON REMAND

96. TIME LIMIT FOR COMPLETION OF FRESH ASSESSMENT

Section:- 153(3)

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

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

Practical 63

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

Based on the above facts, answer following questions:

(a) What is the scope of assessment proceedings at the time of fresh assessment after the order of Principal Commissioner?

(b) What is the time limit for completion of above assessment?

Solution

(a) Considering the ratio laid down in **Kundanlal Maru v. CIT (1982) 135 ITR 84 (MP)** and the **Rambilas Chandran v. CIT (1985) 156 ITR 344 ,** where the Principal Commissioner sets aside the whole assessment and directs the assessing officer to pass the order afresh without imposing any restrictions or limitations as to how the fresh proceedings to be conducted by the Assessing Officer, then the Assessing Officer has the same powers in making such fresh assessment as he had originally when making an assessment under section 143(3) / 144 of the Act.

(b) Time limit for completion of "fresh assessment" is now governed by section 153(3). Considering the provisions of this section, the assessing officer shall complete the "fresh assessment" within 9 months form the end of financial year in which order under section 263 was passed by the Principal Commissioner.

Readers Note:

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97. ASSESSMENT/REASSESSMENT IS MADE IN CONSEQUENCE OF OR TO GIVE EFFECT TO A FINDING OR DIRECTION

Section:- 153(6)

Nature of order	Time limit available with the assessing officer to pass the order giving effect to finding/ direction
Finding or direction is contained in an order passed under: section 250, section 254, section 260, section 262, section 263 or section 264 or an order of any Court in a proceedings otherwise than by way of appeal or reference under the Act	**Twelve months** from the end of month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be.
The assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147 of the Act	**Twelve months** from the end of month in which the assessment order in the case of firm is passed under section 147.

Explanations 2 relevant for section 153(6)

(a)	(b)
1. A finding or direction is given in an order under sections 250, 254, 260A, 262, 263, 264 or any order of any court.	1. A finding or direction is given in an order under sections 250, 254, 260A, 262, 263, 264 or any order of any Court
2. Under such order an income is excluded from the total income of the assessee for an assessment year	2. Under such order any income is excluded from total income of one person and held to be income of another person

3. An assessment of such income for another assessment year may be made within twelve months from the end of month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be.	3. An assessment of such income on such other person may be made within twelve months from the end of month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be.
	4. Such other person should be given an opportunity of being heard before passing on such other person.

Practical 64

For the A.Ys. 1979-80 to 1983-84 the Commissioner of Income-tax issued notice u/s.263 to the film producer Mr. D.N. Dosani as regards the following two items:

(a) Total investment in films not properly considered.

(b) Write off cost of films wrongly allowed.

After hearing the assessee the Commissioner passed the following order:

"The assessments under review are, therefore, set aside with a direction to the Income-tax Officer to look into the above mentioned aspects and redo the assessments as per law and keeping in view the directions given here the Income-tax Officer will also take the necessary consequential actions as the case may be."

While giving effect to the said order, the Assessing Officer made additions and disallowances beyond the said two issues. Assessee challenged those additions and disallowances. Whether the challenge made by the assessee is correct?

Solution

While dealing with the above issue, ITAT- Ahmedabad allowed the appeal and held that the assessments were not set aside in entirety and that Assessing Officer traveled beyond his jurisdiction as he had acquired jurisdiction to look into only those two aspects and nothing else.

Further, on reference at the instance of the revenue, the Gujarat High Court in case of **CIT v. D. N. Dosani, 280 ITR 275 (Guj.)** upheld the decision of the Tribunal and held as under:

"In the instant case the assessee was called upon by the Commissioner to tender an explanation qua two items mentioned in the show cause notice. On a plane reading of S. 263(1), it was apparent that the Commissioner could not have treated any further item or part of the assessment order as being erroneous and prejudicial to the interest of the revenue without giving the assessee an opportunity of being heard. Therefore, **what the Commissioner himself could not have done, could not be permitted to be done by the Assessing Officer while giving effect to the order u/s.263**. The Tribunal was right in law in holding that, in the fresh assessment orders the Assessing Officer was entitled to consider only those two items which had been considered by the Commissioner and was not entitled to consider any other item afresh for making additions."

Readers Note:

98. ORDER GIVING EFFECT TO AN ORDER UNDER SECTION 250, 254, 260, 262, 263 AND 264

Section:- 153(5)

Order to be given effect to	*Time-limit available with assessing officer to give the said effect*
• If effect to an order under section 250, 254, 260 or 262 is given wholly or partly by the assessing officer	Such order (effect) shall be given within a period of **3 months** from the end of the month in which order under section 250,254,260 or 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be.
• If effect to an order under section 263 or 264 is given wholly or partly by the assessing officer	Such order (effect) shall be given within a period of **3 months** from the end of the month in which order under section 263 or 264 is passed by the Principal Commissioner or Commissioner.

However, if it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, **may allow an additional period of six months** to give effect to the order.

Practical 65

The assessment of Smt. Daxaben Thakker (55 years) for the assessment year **2014-15** was completed under section 143(3) of Act. The assessing officer determined the assessed income as under:

Particulars	**Rs.**
Returned Income	3,00,000
Add: G.P. addition	7,00,000
Add: Unexplained cash credit	2,00,000
Total income assessed	**12,00,000**

As a result, the assessing officer served the notice of demand under section 156 of the Act amounting to Rs. 2,12,300.

Being aggrieved, Smt. Daxaben Thakker preferred an appeal to Commissioner Income Tax (Appeals). The Ld. CIT (A) passed the order under section 250 of the Act dated **10-03-2017** granting relief in G.P. addition to the tune of Rs. 1,50,000 and Rs. 50,000 in relation to unexplained cash credit. Such order was received by the Principal Commissioner on **04-04-2017.**

Based on the above facts, answer the following questions:

(a) Find out the total income of Smt. Daxaben Thakker after giving effect to the order of CIT (Appeals) under section 250 of the Act.

(b) What is the time limit available with assessing officer to pass the order giving effect to CIT (A)'s order?

Solution

(a) Computation of total income of Smt. Daxaben Thakker after giving effect to the order of CIT (Appeals) under section 250 of the Act is as under:

Particulars	Rs.
Total Income assessed under section 143(3) of the Act	**12,00,000**
Less: Relief given by CIT (A) in G.P. addition	(1,50,000)
Less: Relief given by CIT (A) in unexplained cash credit	(50,000)
Total income assessed after giving effect to CIT(A)'s order	**10,00,000**

(b) Time limit for passing above order giving effect to the order of CIT (A) under section 250 of the Act is now governed by section 153(5). Considering the provisions of this section, the assessing officer shall pass the order within **3 months** from the end of the month in which order under section 250 is received by the Principal Commissioner.

However, if it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, **may allow an additional period of six months** to give effect to the order.

Readers Note:

99. SPECIAL TIME LIMIT FOR THE PENDING MATTERS BEFORE 1ST JUNE, 2016 RELEVANT TO SECTION 153(5) / 153(6)

Section:- 153(7)

Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to be given by the Assessing Officer, within the time specified in the said sub-sections, and such order has been received or passed, as the case may be, by the income-tax authority specified therein before the 1st day of June, 2016, the Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, on or before the 31st day of March, 2017.

UNIT P - ASSESSMENT IN CASE OF SEARCH OR REQUISITION

100. TIME LIMIT FOR COMPLETION OF ASSESSMENT U/S 153A

Section:- 153B: Effective From A.Y.2017-18

1. The time available for completion of assessment or reassessment in respect of each assessment year falling within six assessment years shall be ***21 months*** from the end of the financial year in which the last of the authorizations for **search** u/s 132 or for **requisition** u/s 132A **was executed.**
2. In respect of the assessment year relevant to the previous year in which search is conducted u/s 132 or requisition is made u/s 132A, a period of ***21 months*** from the end of the financial year in which the last of the authorizations for **search** u/s 132 or for **requisition** u/s 132A was **executed** shall be allowed.
3. A proviso to sub-section (1) of section 153B provides that in case of such other person, the time limit for making assessment or reassessment shall be the either:
   (a) ***21 months*** from the end of the financial year in which the last of authorisations for search under section 132 or for requisition under section 132A was executed; or
   (b) ***9 months*** from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person,

   whichever is later.

UNIT Q – INCOME TAX AUTHORITIES AND ITS POWER

101. JURISDICTION OF ASSESSING OFFICER

Section:- 124: With effect from 1st June, 2016

(1) If an Assessing Officer has been vested with jurisdiction over any area then he shall have jurisdiction within the limit of such area :-

(a) In case of any person carrying on a business or profession within that area or where the business/profession is carried on by any person in more places than one, if the principal place of business or profession is situated within that area.

(b) In respect of any other person residing within the area.

(2) Any dispute relating to jurisdiction of an Assessing Officer to assess any person shall be determined by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax.

(3) If the question of jurisdiction is relating to areas within the jurisdiction of different higher authorities mentioned above, then the concerned authorities shall determine the issue.

(4) If they are not in agreement then it shall be decided by the Board or by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax as the Board may by notification in the Official Gazette authorize in this behalf.

(5) The assessee can object to the jurisdiction of Assessing Officer within the time limit specified below:

Return of income filed	No return of income filed
Within one month from the date of service of notice issued u/s 142(1)/143(2) Or Before completion of assessment, whichever is earlier	Within the time allowed in notice u/s 142(1) or u/s 148 for filing the ROI Or Time allowed to show cause as to why best judgment assessment u/s 144 should not be made, whichever is earlier

(6) In case of search under section 132 or requisition under section 132A, the assessee can object jurisdiction of the assessing officer within one month from the date of service of notice under section 153A(1) or section 153C(2)

Or

Completion of the assessment whichever is earlier.

(7) Where the assessee calls on question the jurisdiction of an Assessing Officer and the Assessing Officer is not satisfied with such claim, he shall refer the matter for determination by Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax before completing the assessment.

102. INQUIRY BY PRESCRIBED INCOME-TAX AUTHORITY

Section:- 133C: With effect from 1st June, 2016

This section provides that the prescribed income-tax authority, may for the purposes of verification of information in its possession relating to any person, issue a notice to such person requiring him, on or before a date to be specified therein, to furnish information or documents (verified in the manner specified therein), which may be useful for, or relevant to, any inquiry or proceeding under the Act.

The information or document received in response to a notice issued under this section by the prescribed income-tax authority may be processed and outcome of such processing may be made available to the Assessing Officer.

EXPLANATION 2 TO SECTION 147 : ONE OF THE CASES OF DEEMING ESCAPEMENT

Where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under section 133C (2) , it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return, then it shall be deemed to be the case where income chargeable to tax has escaped assessment.

IMPORTANT CASE LAWS	
1.	Sahara Hospitality Ltd. v. CIT (2013) 352 ITR 38 (Bom.) ***[DECISION NO. 3 OF ICAI CASE STUDY-PAGE NO. 78]***

UNIT R - COLLECTION & RECOVERY OF TAX

103. POWER OF PRINCIPAL CHIEF COMMISSIONER OR CHIEF COMMISSIONER OR PRINCIPAL COMMISSIONER OR COMMISSIONER TO WAIVE OR REDUCE INTEREST PAYABLE UNDER SECTION 220(2)

Section:- 220(2A) : With effect from 1st June, 2016

(A) Conditions

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under section 220(2) if he is satisfied that –

(i) payment of such amount has caused or would cause genuine hardship to the assessee;

(ii) default in the payment of the amount on which interest has been paid or was payable under the said sub–section was due to circumstances beyond the control of the assessee; and

(iii) the assessee has co–operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The above conditions for waiver must be satisfied cumulatively- Mani v. CIT (2010) 190 Taxman 417 (Mad). However, contrary view has been expressed by Karnataka High Court in case M.V. Amar Shetty wherein court held that first condition is independent of second and third condition.

(B) Time limit for passing order and opportunity of being heard

- **The order accepting or rejecting the application, either in full or part, shall be passed within a period of twelve months from the end of the month in which the application is received.**
- **However, in respect of any application pending as on the 1st day of June, 2016, the order shall be passed on or before the 31st day of May, 2017.**
- The order rejecting the application, either in full or in part, shall not be passed unless the assessee has been given an opportunity of being heard.

UNIT S – TAXATION OF NON-RESIDENT

104. TAXABILITY OF FOREIGN NATIONAL NON-RESIDENT SPORTSMAN (INCLUDING ATHLETE)

Section:- 115BBA

(a) Eligible Assessee: Foreign national non-resident sportsman (including athlete)

	NATURE OF INCOME	TAX RATE
1.	Income from participation in any game or sport(other than those given in Sec.115 5BB);	20%
2.	Income from advertisement; or	20%
3.	Income from contribution of articles relating to any game or sport in India in journals, newspapers etc.	20%

(b) Eligible Assessee: Non- resident sports association or institution

	NATURE OF INCOME	TAX RATE
1.	Income by way of amount guaranteed to be paid or payable in relation to any game or sport played in Indi. (other than those given in Sec. 115BB)	20%

(c) Eligible Assessee: Non-resident foreign citizen entertainer

	NATURE OF INCOME	TAX RATE
1.	Income received or receivable from his performance in India.	20%

(d) Other Points:

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

(a) The total income comprises only of the income referred in this section; and

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

Practical 66

Smith, a foreign national, non-resident and a cricketer came to India for the first time, as a member of Australian cricket team in the year ended **31st March, 2017**. He received Rs. 5 lakhs for participation in matches in India. He also received Rs. 1 lakh for an advertisement of a product on TV. He contributed articles in a newspaper for which he received Rs. 10,000. When he stayed in India, he also won a prize of Rs. 12,000 from horse racing in Mumbai. He incurred Rs. 30,000 on travelling expense for visit to India. He has no other income in India during the year.

(i) Compute tax liability of Smith for previous year **2016-17**.

(ii) Are the income specified above subject to deduction of tax at source?

(iii) Is he liable to file his return of income for previous year **2016-17**?

(iv) What would have been his tax liability, had he been a match referee instead of a cricketer?

Solution

(i) Computation of Total Income and Tax Liability of Smith

Computation of Total Income

Particulars	Rs.
Income taxable under section 115BBA	
Income from participation in matches in India	5,00,000
Advertisement of product on TV	1,00,000
Contribution of articles in newspaper	10,000
Income taxable under section 115BB	
Income from horse races	12,000
Total income	**6,22,000**

Computation of Tax Liability

Particulars	Rs.
Tax@ 20% under section 115BBA on Rs. 6,10,000	122,000
Tax@ 30% under section 115BB on income of Rs. 12,000 from horse races	3,600
	1,25,600
Add: Education cess@2% and Secondary and higher education cess@1%	3,768
Total tax liability of Smith	**1,29,368**

Note:-

Since income of Smith falls under Chapter XII, travelling expenditure is not allowed as deduction.

(ii) Yes, the above income is subject to tax deduction at source.

- Income referred to in section 115BBA (i.e., Rs. 6,10,000, in this case) is subject to tax deduction at source@ 20% under section 194E.
- Income referred to in section 115BB (i.e., Rs. 12,000, in this case) is subject to tax deduction at source@30% under section 194BB.
- Since Smith is a non-resident, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by education cess@2% and secondary and higher education cess@1%.

(iii) Section 115BBA provides that if the total income of the non-resident sportsman comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income.

However, in this case, Mr. Smith has income from horse races as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he would be liable to file his return of income for **A.Y.2017-18**

(iv) The Calcutta High Court in Indcom v. CIT (TDS) (2011) 335 ITR 485 has held that 'match referee' would not fall within the meaning of "sportsman". Therefore, the provisions of section 115BBA would not apply to him. As a result, computation of total income of 'match referee' is governed by the general provisions of chapter "PGBP". As a result, he can claim deduction of travelling expense from his professional income. Computation of total income of 'Match referee' is as under:

Computation of Total Income

Particulars	Rs.	Rs.
Income under the head "PGBP"		
Income from participation in matches in India	5,00,000	
Advertisement of product on TV	1,00,000	
Contribution of articles in newspaper	10,000	
	6,10,000	
Less: Travelling Expenses	(30,000)	5,80,000
Income From Other Sources		
Income from horse races		12,000
Total income		**5,92,000**

Computation of Tax Liability

Particulars		Rs.
Tax@30% under section 115BB on winnings of Rs. 12,000 from horse races		3,600
Upto Rs. 2,50,000	Nil	
2,50,000 – 5,00,000 @ 10%	25,000	
5,00,000 – 5,80,000 @ 20%	16,000	**41,000**
		44,600
Add: Education cess@2% and secondary and higher education cess@1%		1,338
Total tax liability of Smith as a 'match referee'		**45,938**

Readers Note:

105. CHAPTER XIIA - SPECIAL PROVISIONS APPLICABLE TO NON-RESIDENTS INDIANS

Section:- 115C to 115I

105.1 Income covered by Chapter XII A and special tax rates [Section 115E]

1. Income arising from "Foreign Exchange Asset" (to be called income from investment) - Taxed @ 20 %
2. Long term capital gains arising on transfer of foreign exchange asset – Taxed @ 10%

105.2 Definitions [Section 115C]

(a) "Foreign exchange asset" means the following assets acquired or purchased with or subscribed to in, convertible foreign exchange :

(i) Shares in an Indian company ;

(ii) Debentures issued by an Indian public company;

(iii) Deposits with an Indian public company;

(iv) Securities of the Central Government; and

(v) Such other assets as may be notified by the Central Government.

(b) *"Non-resident Indian" means an individual, being a citizen of India or a person of Indian origin who is not a resident.*

A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India.

105.3 How to compute income covered by section 115 E? [Section 115D]

(a) In computing investment income,

- No deduction in respect of any expenditure or allowance under any provisions of the Income-tax Act shall be allowed.
- No deduction under chapter VIA shall be allowed.

(b) While computing capital gain,

- First proviso to section 48 (Conversion Rule) is applicable and therefore benefit of Indexation is not available.
- No deduction under chapter VIA shall be allowed.

105.4 Exemption for long term capital gains [Section 115F]

The long term capital gains arising from the transfer of any foreign exchange asset will be exempt as per following formula provided net proceeds realised on such transfer are re-invested or re-deposited within 6 months from the date of such transfer in the "Foreign exchange assets" or savings certificates notified u/s.10 (4B).

$$\frac{\text{Amount invested}}{\text{Net consideration}} \times \textit{Long Term Capital Gain}$$

However, where the new asset is transferred or converted (otherwise than by transfer) into money within a period of three years from its acquisition, the capital gains arising from the transfer of the original asset which has been exempted from tax shall be deemed to be the long term capital gains of the previous year in which the new asset is transferred or converted into money.

105.5 Return of income [Section 115G]

A non-resident Indian having only investment income or income by way of long-term capital gains arising from the transfer of any foreign exchange asset or both, need not file his return of income u/s. 139, if the tax deductible from such income has been correctly deducted at source.

105.6 Benefit after the assessee becomes resident [Section 115H]

A non-resident Indian who becomes a resident in any subsequent year has the option to claim that the special provisions shall continue to apply to him in relation to investment income derived from foreign exchange asset for that assessment year and for every subsequent assessment year until the transfer or conversion of such assets into money.

Such option can be exercised by furnishing a declaration in writing to the Assessing Officer to that effect along with his return of income for that assessment year.

105.7 Option to Assessee [Section 115 I]

A non-resident Indian has the option to claim that in respect of any particular assessment year the special provisions relating to chapter XII A should not apply to him by furnishing his return of income with such declaration for that assessment year u/s. 139. In such a case, the whole of the total income of that assessment year will be charged to tax under the general provisions of the Income-tax Act.

Practical 67

Ajay, a non-resident Indian, has the following sources of income in India during the previous year **2016-17**:

Sr. No.	Particulars	Rs.	Rs.
(i)	Income from house property located in India (computed)		1,80,000
(ii)	Dividend from Indian Companies		75,000
(iii)	Interest on debentures of Indian company (Subscribed in convertible foreign exchange)	1,00,000	
	Less: Interest on loan taken for purchase of debentures	20,000	80,000
(iv)	Long-term capital gains on sale of debentures subscribed in US $:		
	Cost in 2004-05	4,00,000	
	Sale in 2016-17	6,00,000	
		2,00,000	
	Less: Commission to brokers	6,000	1,94,000
	Cost Inflation Index: F.Y. 2004-05 - 480; F.Y.2016-17 – 1125.		

Compute the tax payable by Ajay for A.Y **2017-18**, if he opts for the provisions of Chapter XII-A of the Income-tax Act, 1961.

Solution

Computation of tax liability of Mr. Ajay for the A.Y. 2017-18 as per Chapter XII-A

Particulars	**Rs.**	**Rs.**
Tax on long term capital gain (Rs. 1,94,000 × 10% as per chap. XIIA)	19,400	
Tax on interest on debentures being investment income (Rs.1,00,000 × 20% as per chap. XIIA)	20,000	
Tax on balance income of Rs. 1,80,000	Nil	39,400
Add: Education cess @ 2%		**788**
Add: Secondary and higher education cess @ 1%		394
Total tax liability		**40,582**
Total tax liability (rounded off)		**40,580**

Notes:

(1) Computation of total income of Mr. Ajay for the A.Y. 2017-18 as per provisions of Chapter XII-A

Particulars	Rs.	Rs.
Income from house property (computed)		1,80,000
Capital Gains on sale of debentures		
Sale consideration	6,00,000	
Less: Commission to brokers	6,000	
Net consideration	5,94,000	
Cost of acquisition **(Refer Note 2)**	4,00,000	
Long term capital gain		1,94,000
Dividend income received from Indian companies [exempt u/s 10(34)]		Nil
Interest on debentures of Indian company **(Refer Note 3)**		1,00,000
Total Income		**4,74,00**

(2) It has been assumed that the debentures referred to in the question are issued by an Indian company which is not a private company and are hence, specified assets. Since the specified assets have been subscribed in convertible foreign exchange, they are foreign exchange assets.

If a non-resident purchases shares in, or debentures of, an Indian company by utilising foreign currency, capital gain shall be calculated under first proviso to section 48 in the same foreign currency which was initially utilised in purchase of shares and debentures. Capital gains so computed in foreign currency shall be reconverted into Indian currency. Since the telegraphic transfer buying rates and telegraphic transfer selling rates of US $ on the date of acquisition, date of sale and 31st March, 2017 are not given in the question, effect has not been given to the first proviso to section 48 in the above solution.

As per section 115D, the indexation benefit would not be available for calculating cost of acquisition for computing long term capital gains under Chapter XII-A.

(3) No expenditure is allowed to be deducted from the interest on debentures being the investment income as per the provisions of section 115D. Therefore, interest on loan taken for purchase of debentures is not deductible.

Readers Note:

106. COUNTRIES WITH WHICH NO AGREEMENT EXISTS [UNILATERAL RELIEF]

Section:- 91

Unilateral relief under section 91 will be available, if the following conditions are satisfied:

1) The assessee in question must be resident in India.
2) That some income must have accrued or arisen to him outside India.
3) In respect of that income, the assessee must have paid by deduction or otherwise tax under the law in force in the foreign country in question in which the income outside India has arisen.
4) There shall be no reciprocal arrangement for relief or avoidance from double taxation with the said country.

If all the above conditions are satisfied, such person shall be entitled to deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said (other) country, whichever is the lower or at the Indian rate of tax if both the rates are equal.

Indian rate of tax means the tax payable on total income divided by the total income.

Rate of tax of other country means income tax and super tax actually paid in that country in accordance with the corresponding laws in force in that country after deduction of all relief due,divided by the whole amount of income as assessed in that country.

As per section 91(2) the unilateral relief is also available in respect of agricultural income in Pakistan on which income-tax is levied in India and income-tax is levied in Pakistan on such agricultural income.

Judicial Rulings

Unilateral Relief under this section is available only in respect of doubly taxed income i.e. that part of income which is included in the total income of assessee. [CIT vs. Dr. R.N. Jhanji 185 ITR 586 (Raj)]

Average foreign tax rate shall be worked out for each foreign country separately and not on aggregate basis, if more than one foreign country's income is involved. [CIT vs. Bombay Burmah Trading Corporation Ltd. 259 ITR 423 (Bom.)]

Practical 68

Nandita, an individual resident retired employee of the Prasar Bharati aged 60 years, is a well-known dramatist deriving income of Rs. 1,10,000 from theatrical works played abroad. Tax of Rs. 11,000 was deducted in the country where the plays were performed. India does not have any Double Tax Avoidance Agreement under section 90 of the Income-tax Act, 1961, with that country. Her income in India amounted to Rs. 5,10,000. In view of tax planning, she has deposited Rs. 1,50,000 in Public Provident Fund and paid contribution to approved Pension Fund of LIC Rs. 32,000. She also contributed Rs. 28,000 to Central Government Health Scheme during the previous year and gave payment of medical insurance premium of Rs. 26,000 to insure the health of her father, a non-resident aged 84 years, who is not dependent on her. Compute the tax liability of Nandita for the Assessment year 2017-18.

Solution

Computation of tax liability of Nandita for the A.Y. 2017-18

Particulars	Rs.	Rs.
Indian Income		5,10,000
Foreign Income		1,10,000
Gross Total Income		6,20,000

Less: **<u>Deduction under section 80C</u>**		
Deposit in PPF	1,50,000	
<u>Under section 80CCC</u>		
Contribution to approved Pension Fund of LIC	32,000	
<u>Under section 80CCE</u>		
The aggregate deduction under section 80C, 80CCC and 80CCD(1) has to be restricted to Rs. 1,50,000	1,50,000	
<u>Under section 80D</u>		
Contribution to Central Government Health Scheme Rs. 28,000 is also allowable as deduction u/s section 80D. Since she is a resident senior citizen, the deduction is allowable to a maximum of Rs. 30,000 (See Note)	28,000	
Medical insurance premium of Rs. 26,000 paid for father aged 84 years. Since the father is a non-resident in India, he will not be entitled for the higher deduction of Rs. 30,000 eligible for a senior citizen, who is resident in India. Hence, the deduction will be restricted to maximum of Rs. 25,000.	25,000	2,03,000
Total Income		**4,17,000**
Tax on Total Income		
Income-tax (See Note below)	11,700	
Less: Rebate u/s 87A	5,000	
	6,700	
Add : Education cess @ 2%	134	
Add: SHEC @ 1%	67	6,901
Average rate of tax in India (i.e. Rs. 6,901/ Rs. 4,17,000 × 100) 1.65%		
Average rate of tax in foreign country (i.e. Rs. 11,000/ Rs. 1,10,000 ×100) 10%		
Rebate under section 91 on Rs. 1,10,000 @ 1.65% (lower of average Indian-tax rate or average foreign tax rate)		(1,815)
Tax payable in India (Rs. 6,901 - Rs. 1,815)		5,086

Notes:

Section 80D allows a higher deduction of up to Rs. 30,000 in respect of the medical premium paid to insure the heath of a senior citizen. Therefore, Nandita will be allowed deduction of Rs. 28,000 under section 80D, since she is a resident Indian of the age of 60 years.

Readers Note:

UNIT T –TRANSFER PRICING

107. CONDITIONS FOR APPLICABILITY OF ARM'S LENGTH PRICE IN THE INTERNATIONAL TRANSACTION

Section:-

CONDITION 1 – TWO OR MORE ENTERPRISES

International transaction is subjected to the arm's length price only in case of transaction between two entities called associate enterprises.

ENTERPRISES – MEANING OF – Enterprise means a person who engages or has been engaged or proposed to engage in the following activities:

a. Any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods:
b. Know-how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights:
c. Any activity relating to the provision of services of any kind:
d. Carrying out any work in pursuance of a contract (e.g. construction contract).
e. Investment activity:
f. Activity relating to provision of loan
g. Business of acquiring, holding, underwriting or dealing with shares, debenture or other securities of any body corporate.

A person would be an enterprise if it carries on the specified activity / business directly or through one or more of its units or divisions or subsidiaries.

CONDITION 2 – ENTERPRISES SHOULD BE REGARDED AS ASSOCIATED ENTERPRISES

The provisions regarding taxation of international transactions apply in case the two enterprises are associated enterprises.

An enterprise would be regarded as an associated enterprise of another enterprise, if---

a. it participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise: or
b. in respect of it one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Clause (a) of section 92A (1) is about participation by one enterprise into other enterprise. While clause (b) of the said section is about participation by a third enterprise into both the enterprises.

DEEMED ASSOCIATED ENTERPRISES

Section92A(2) provides that two enterprises shall be deemed to be associated enterprises if for the purpose of section 92A(1), the two enterprises satisfy, at **any time during the previous year**, any of the following conditions:

Thirteen categories - Two enterprises shall be deemed to be associated enterprises for the purpose of section 92A(1), if, at any time during the previous year ---

I. one enterprise holds (directly or indirectly) shares carrying not less than twenty-six per cent of the voting power in the other enterprise or
II. any person or enterprise holds (directly or indirectly) shares carrying not less than twenty-six percent of the voting power in each of such enterprises or
III. a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one percent of the book value of the total assets of the other enterprise or
IV. one enterprise guarantees not less than ten percent of the total borrowings of the other enterprise or
V. more than half of the board of directors or members of the governing board, or one or more of the executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise or
VI. more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons or
VII. the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights or
VIII. ninety percent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise or
IX. the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise and the prices and other conditions relating thereto are influenced by such other enterprise or
X. where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual or
XI. where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family, or by a relative of a member of such Hindu undivided family, or jointly by such member and his relative or

XII. where one enterprise is a firm, association of persons or body of individuals the other enterprise holds not less than ten percent interest in such firm, association of persons or body of individuals or

XIII. there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

CONDITION 3 – INTERNATIONAL TRANSACTION SHOULD BE CARRIED OUT BY THE ASSOCIATED ENTERPRISES [Section 92B]

An international transaction should be carried out by the associated enterprises (either or both are non-residents). To constitute an international transaction, it should be:-

1. A transaction between two or more associated enterprises in nature of (a) purchase, sale or lease of intangible property or (b) provision of services or (c) lending or borrowing money.
2. A transaction between two or more associated enterprises having a bearing on the profits, income, losses or assets of such associated enterprises.
3. Mutual agreement or arrangement between two or more associated enterprises for (a) allocation or appointment of, or (b) contributing to, any cost or expense incurred (or to be incurred) regarding a benefit, service or facility provided (or to be provided) to any one or more of such associated enterprise.

DEEMED TRANSACTION

Practical 69

On 10/06/2015, A Ltd., a resident entity has entered into an agreement for sale of goods with PQR Ltd., another resident entity but unrelated to A Ltd.

PQR Ltd. had already entered into an agreement (prior agreement) for the sale of same goods to C Inc. (unrelated to PQR Ltd.), a non-resident entity.

For the purpose of chapter "Transfer Pricing", C Inc. and A Ltd. are associated enterprises.

A Ltd. claims that provisions of "transfer pricing" shall not be applicable to it because of following grounds:

(i) A Ltd. and PQR Ltd. are not associated enterprises

(ii) Since A Ltd. and PQR Ltd. both are residents therefore transaction entered into by them is not an international transaction.

Verify the contention of A Ltd.

Solution

On close reading of section 92B(2), a transaction **(i.e. sale of goods)** entered into by an enterprise **(i.e. by A Ltd.)** with a person other than an associated enterprise **(i.e. with PQR Ltd.)** shall be *deemed to be a transaction* entered into between two associated enterprises (**i.e. such transaction shall be deemed to be a transaction entered into between A Ltd. and C Inc**.), if there exists a prior agreement in relation to the relevant transaction between such other person (**i.e. there is a prior agreement of PQR Ltd**.) and the associated enterprise (**i.e. with C Inc.)** , *whether such other person is a non-resident or not* ***(i.e. whether PQR Ltd. is a non-resident or not).***

Therefore, considering the provisions of section 92B(2), A Ltd. is deemed to have entered into an international transaction with C Inc. and therefore, it is subject to transfer pricing regulations.

Readers Note:

Explanation to Section 92B

Section 92B has been amended with retrospective effect from the assessment year 2002-03, to clarify that "international transaction" shall include—

(a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
(b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;
(c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
(d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
(e) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

108. ARM'S LENGTH PRICE – Computation of (Sec. 92C)

Section:-

Arm's length price – **Meaning of** – Arm's length price as per section 92F is the price applied (or proposed to be applied) when two unrelated persons enter into a transaction in uncontrolled conditions.

Therefore to constitute arm's length price:

a. The price should be applied or proposed to be applied in a transaction.
b. The transaction is between unrelated persons and
c. The transaction is taking place in uncontrolled conditions.

However, if certain Government Policies hinder the free market play by restricting, then the arm's length price shall be computed by taking into account such restrictions of Government policies.

The arm's length price shall be determined by any of the method specified in this section being the most appropriate method.

Method of computing arm's length price - Arm's length price can be computed by the following methods:

(a) Comparable uncontrolled price method.
(b) Resale price method.
(c) Cost *plus* method
(d) Profit split method
(e) Transactional net margin method
(f) Such other method as may be prescribed by the Board.

109. RESALE PRICE METHOD (RPM)

Section:-

Under this method

a. The price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise is identified;
b. Such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services in a comparable uncontrolled transaction or a number of such transactions;
c. The price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;
d. The price so arrived at is adjusted to take into account the functional and other differences including differences in accounting practices, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions which could materially affect the amount of gross profit margin in the open market;
e. The adjusted price arrived at under (d) (supra) is taken to be an arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise.

Practical 70

Swinhoe LLP of France and Rani Ltd of India are associated enterprises. Rani Ltd. imports 3,000 compressors for Air Conditioners from Swinhoe at Rs. 7,500 per unit and these are sold to Paharpur Cooling Solutions Ltd at a price of Rs. 11,000 per unit. Rani had also imported similar products from Cold Ltd and sold outside at a Gross Profit of 20% on Sales.

Swinhoe offered a quantity discount of Rs. 1,500 per unit. Cold could offer only Rs. 500 per unit as Quantity Discount. The freight and customs duty paid for imports from Poland had cost Rani Rs. 1,200 apiece. In respect of purchase from Cold Ltd, Rani had to pay Rs. 200 only as freight charges.

Determine the Arm's Length Price and the amount of increase in Total Income of Rani Ltd.

Solution

A. Computation of Arm's Length Price of Products bought from Swinhoe, France by Rani Ltd.

Particulars	**Amount Rs.**
Resale Price of Goods Purchased from Swinhoe	11,000
Less: Adjustment for differences	
(a) Normal gross profit margin @ 20% of sale price [20% × Rs. 11,000]	2,200
(b) Incremental Quantity Discount by Swinhoe [Rs. 1,500 – Rs. 500]	1,000
(c) Difference in Purchase related Expenses [Rs. 1,200 – Rs. 200]	1,000
Arms Length Price	**6,800**

B. Computation of Increase in Total Income of Rani Ltd

Particulars	**Amount Rs.**
Price at which actually bought from Swinhoe LLP of France	7,500
Less : Arm's Length Price per unit under Resale Price Method	(6,800)
Decrease in Purchase Price per Unit	700
No. of Units purchased from Swinhoe	1,000
Increase in Total Income of Rani Ltd [3,000 Units × Rs. 700]	Rs.21,00,000

Reader's Note:

110. PROFIT SPLIT METHOD

Section:-

This method is applicable mainly in international transactions involving transfer of unique intangibles or in multiple international transactions which are so interrelated that they cannot be evaluated separately for the purpose of determining the arm's length price of any one transaction. As per profit split method which-

a. The combined net profit of the associated enterprises arising from the international transaction in which they are engaged is determined

b. The relative contribution made by each of the associated enterprises to the earning of such combined net profit is then evaluated on the basis of the functions performed assets employed or to be employed and risks assumed by each enterprise and on the basis of reliable external market data which indicates how such contribution would be evaluated by unrelated enterprises performing comparable functions in similar circumstances

c. The combined net profit is then split amongst the enterprises in proportion to their relative contributions as evaluated under (b) (supra)

d. The profit thus apportioned to the assessee is taken into account to arrive at an arm's length price in relation to the international transaction:

Practical 71

NBR Medical Equipments Inc. (NBR) of Canada has received an order from a leading UK based Hospital for development of a hi-tech medical equipment which will integrate the best of software and latest medical examination tool to meet varied requirements. The order was for 3, 00,000 Euros. To execute the order, NBR joined hands with its subsidiary Precision Components Inc. (PCI) of USA and Bioinformatics India Ltd (BIL), an Indian Company. PCI holds 30% of BIL. NBR paid to PCI and BIL Euro 90,000 and Euro 1,00,000 respectively and kept the balance for itself. In the entire transaction, a profit of Euro 1,00,000 is earned. Bioinformatics India Ltd incurred a Total Cost of Euro 80,000 in execution of its work in the above contract. The relative contribution of NBR, PCI and BIL may be taken at 30%, 30% and 40% respectively. Compute the Arm's Length Price and the incremental Total Income of Bioinformatics India Ltd, if any due to adopting Arms Length Price determined here under:-

Solution

Particulars	**Euros [€]**
A. Share of each of the Associates in the Value of the Order	
value of the order:	**3,00,000**
Share of BIL (given)	**1,00,000**
Share of PCI (given)	**90,000**
Share of NBR [Amount retained = 3,00,000 – 1,00,000 – 90,000]	1,10,000
B. Share of each of the Associates in the profit of the order	
Combined Total Profits	**1,00,000**
Share of BIL [Contribution of 40% × Total Profit € 1,00,000]	40,000
Share of PCI [Contribution of 30% × Total Profit € 1,00,000]	30,000
Share of NBR [Contribution of 30% × Total Profit € 1,00,000]	30,000

C. Computation of Incremental Total Income of BIL

Total Cost to Bioinformatics India Ltd	80,000
Add: Share in the Profit to BIL (from B above)	40,000
Revenue of BIL on the basis of Arm's Length Price	1,20,000
Less: Revenue Actually received by BIL	(1,00,000)
Increase in Total Income of BIL	20,000

Reader's Note:

111. RANGE CONCEPT

Notification:- 83/2015, dated 19.10.2015

In case of an international transaction or specified domestic transaction undertaken on or after 1.4.2014, where more than one price is determined by the most appropriate method, the arm's length price shall be computed in the prescribed manner specified in Rule 10CA.

Rule 10CA(1) provides that where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method referred to in section 92C(1) results in determination of more than one price, then, the arm's length price in respect of such international transaction or specified domestic transaction has to be computed on the basis of the dataset constructed by placing such prices in an ascending order as provided in Rule 10CA(2).

However, where the most appropriate method is the resale price method or cost plus method or transactional net margin method and the comparable uncontrolled transaction has been identified on the basis of data relating to the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in either or both of the two financial years immediately preceding the current year undertaken the same or similar comparable uncontrolled transaction then,-

(i) the most appropriate method used to determine the price of the comparable uncontrolled transaction undertaken in the current year shall be applied in similar manner to the comparable uncontrolled transaction or transactions undertaken in the aforesaid period and the price in respect of such uncontrolled transactions shall be determined; and

(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the current year and in the aforesaid period preceding it shall be included in the dataset instead of the price referred to in sub-rule (1).

Further, where the most appropriate method is the resale price method or cost plus method or transactional net margin method where the comparable uncontrolled transaction has been identified on the basis of the data relating to the financial year immediately preceding the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in the financial year immediately preceding the said financial year undertaken the same or similar comparable uncontrolled transaction then, -

(i) the price in respect of such uncontrolled transaction shall be determined by applying the most appropriate method in a similar manner as it was applied to determine the price of the comparable uncontrolled transaction undertaken in the financial year immediately preceding the current year; and
(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the aforesaid period of two years shall be included in the dataset instead of the price referred to in sub-rule (1).

Also, in such cases, where the use of data relating to the current year for determination of ALP subsequently at the time of assessment establishes that,-

(i) the enterprise has not undertaken same or similar uncontrolled transaction during the current year; or
(ii) the uncontrolled transaction undertaken by an enterprise in the current year is not a comparable uncontrolled transaction,

then, irrespective of the fact that such an enterprise had undertaken comparable uncontrolled transaction in the financial year immediately preceding the current year or the financial year immediately preceding such financial year, the price of comparable uncontrolled transaction or the weighted average of the prices of the uncontrolled transactions, as the case may be, undertaken by such enterprise shall not be included in the dataset.

Rule 10CA(3) provides that where an enterprise has undertaken comparable uncontrolled transactions in more than one financial year, then for the purposes of sub-rule (2) the weighted average of the prices of such transactions shall be computed in the following manner, namely:-

Sr. No.	Method used determine to the prices	Manner of computation of weighted average of the prices
(i)	The resale price method	By assigning weights to the quantum of sales which has been considered for arriving at the respective prices
(ii)	The cost plus method	By assigning weights to the quantum of costs which has been considered for arriving at the respective prices
(iii)	The transactional net margin method	By assigning weights to the quantum of costs incurred or sales effected or assets employed or to be employed, or as the case may be, any other base which has been considered for arriving at the respective prices

Rule 10CA(4) provides that where the most appropriate method applied is –

(i) a method other than the profit split method or a method prescribed by the CBDT under section 92C(1)(f); and

(ii) the dataset constructed in accordance with sub-rule (2) consists of six or more entries,

an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed.

If the price at which the international transaction or the specified domestic transaction has actually been undertaken is within the said range, then, the price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price [Rule 10CA(5)].

If the price at which the international transaction or the specified domestic transaction has actually been undertaken is outside the said arm's length range, the arm's length price shall be taken to be the median of the dataset [Rule 10CA(6)].

In a case where the provisions of Rule 10CA(4) are not applicable, the arm's length price shall be the arithmetical mean of all the values included in the dataset. However, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three percent. of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price [Rule 10CA(7)].

<u>Meaning of certain terms [Rule 10CA(8)]</u>

Sr. No.	Term	Meaning
(a)	the thirty-fifth percentile of a dataset (having values arranged in an ascending order)	The lowest value in the dataset such that at least 35% of the values included in the dataset are equal to or less than such value. However, if the number of values that are equal to or less than the aforesaid value is a whole number, then the thirty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.
(b)	the sixth-fifth percentile of a dataset (having values arranged in an ascending order)	The lowest value in the dataset such that at least 65% of the values included in the dataset are equal to or less than such value. However, if the number of values that are equal to or less than the aforesaid value is a whole number, then, the sixty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.

(c)	the median of the dataset (having values arranged in an ascending order)	The lowest value in the dataset such that at least 50% of the values included in the dataset are equal to or less than such value. However, if the number of values that are equal to or less than the aforesaid value is a whole number, then, the median shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.

Summary : Source [ICAI -Transfer Pricing Module]

Range of tolerance

- In the case of Sony India P. Ltd., the Delhi Tribunal recognized that the ALP determined by the most appropriate method is only an approximation and not a scientific evaluation.
- Therefore, even though the price charged in a comparable uncontrolled transaction (selected after carrying out a detailed comparability analysis) should theoretically conform to the price charged in the controlled transaction, it is only natural for there to be a slight deviation between the said two prices given the constantly changing business scenarios and the economic environments surrounding the two transactions. Recognizing the possibility of such a difference, a second proviso was added to section 92C(2) of the Act, which provides that if the variation between the arm's length price determined by the most appropriate method and the price of the controlled transaction does not exceed such percentage as may be prescribed (3%), the price of the controlled transaction may be taken as the arm's length price.
- For instance, if a taxpayer sells one unit of an article for Rs. 100 to its AE and one unit of the same article for Rs. 102 to an unrelated party. In light of the second proviso, if the ALP determined by the most appropriate method (i.e. Rs. 102) falls between Rs. 97 and Rs. 103, the price of the controlled transaction, i.e. Rs. 100 would be deemed as the arm's length price of the controlled transaction and no transfer pricing addition would be called for with respect to this transaction.
- In this context, it also needs to be highlighted that in view of the clear wordings of the second proviso, the range of +/- 3% is to be applied on the controlled transaction and not the comparable uncontrolled transaction to determine the acceptable ALP.
- The Central Board of Direct Taxes (CBDT) has vide Notification No. 83/2015 dated 19th October, 2015 issued the final rules to give effect to the use of 'multiple year data' and 'range concept' which were introduced by Finance Act, 2014. These rules are applicable to international transactions and specified domestic transactions that are entered into by taxpayers on or after 1 April 2014.
- **As per the notification, the 'range concept' shall be applicable when:**
  (a) the MAM is either Comparable Uncontrolled Price (CUP) Method, RPM, CPM, or TNMM; and
  (b) there are at least 6 comparables.
- **Where these conditions are not fulfilled, 'arithmetic mean' shall continue to apply, as before, along with the tolerance range benefit (3% or 1%)**
- For the determination of the quartiles, the margins in the data set (i.e., set of comparable companies) are required to be arranged in ascending order and the arm's length range would be data points lying

between the 35th and 65th percentile of the data set.

- If the transaction price falls within the range, then the same shall be deemed to be the ALP. If the transaction price falls outside the range, the ALP shall be taken to be the Median of the data set

Use of multiple year data and the range concept:

The Central Board of Direct Taxes (CBDT) on October 20, 2015 issued the final rules to give effect to the use of 'multiple year data' and 'range concept' which were introduced by Finance Act, 2014. These rules are applicable to international transactions and specified domestic transactions that are entered into by taxpayers on or after 1 April 2014.

(a) Multiple year data

- As per the notification issued by CBDT, use of multiple year data (of the comparable companies for the purpose of comparability analysis) is applicable only in cases where RPM, CPM or TNMM has been selected as the Most Appropriate Method. Thus, in cases where CUP, PSM or Other Method are selected as the Most Appropriate Method, multiple year data of comparable companies cannot be used.
- For each comparable selected (under RPM, CPM or TNMM), the data of the current year is required to be considered. In case such data is not available at the time of furnishing the return of income, data pertaining to up to two preceding financial years may be used.

- To illustrate, say if the current year is Year zero and the financial year preceding that is Year 1 and the year prior to such year is Year 2, then it is worth noting that the rules do not envisage a situation wherein a comparable is selected only if it has data relating to Year 2.
- If a comparable is selected on the basis of preceding year data (say Year 1 and Year 2), but is not found to be comparable for the current year (Year 0) for qualitative or quantitative reasons, then such comparable would need to be rejected from the data set.
- When using multiple year data, data for each comparable shall be the weighted average of the selected years. An illustration explaining the computation is provided below:

	Year 0	**Year 1**	**Year 2**	**Total**	
Operating Profit	250	300	350	900	OP / TC for the comparable would be 900/ 5400 = 16.7%
Total Cost	1700	1800	1900	5400	

- Further, the notification provides that in the event current year data becomes available during the course of the assessment proceedings, then the same shall be used by the Transfer Pricing Officer (TPO) for the purpose of the analysis.

(b) Application of range

- As per the notification, the 'range concept' shall be applicable when: (a) the MAM is either Comparable Uncontrolled Price (CUP) Method, RPM, CPM, or TNMM; and (b) there are at least 6 comparables. Where these conditions are not fulfilled, 'arithmetic mean' shall continue to apply, as before, along with the tolerance range benefit (3% or 1%)

- For the determination of the quartiles, the margins in the data set (i.e., set of comparable companies) are required to be arranged in ascending order and the arm's length range would be data points lying between the 35th and 65th percentile of the data set. The computation mechanism of range, is explained by way of illustrations below:

Illustration 1: Where the data set comprises 7 data points (arranged in ascending order), and the percentiles computed are not whole numbers

Percentile	Formula	Result	Value to be selected
35th	Total no. of data points in dataset x 35%=[7 x 35%]	2.45	3rd Value*
65th	Total no. of data points in dataset x 65% = [7 x 65%]	4.55	5th Value*
Median	Total no. of data points in datasets x 50% = [7 x 0.5]	3.50	4th Value*

* Value referred to here is the place value in the data set as arranged in ascending order.

Illustration 2: Where the data set comprises 20 data points (arranged in ascending order), and the percentiles computed are whole numbers.

Percentile	Formula	Result	Value to be selected
35th	Total no. of data points in dataset x 35%=[20 x 35%]	7	Mean of 7th & 8th Value
65th	Total no. of data points in dataset x 65% = [20 x 65%]	13	Mean of 13th & 14th Value
Median	Total no. of data points in datasets x 50% = [20 x 0.5]	10	Mean of 10th & 11th Value

If the transaction price falls within the range, then the same shall be deemed to be the ALP. If the transaction price falls outside the range, the ALP shall be taken to be the Median of the data set.

Use of Arithmetic Mean

Where 'range' concept does not apply, the arithmetic mean concept shall apply along with benefit of tolerance range. (3% or 1%).

Where multiple year data is to be used, the same would apply whether "range" concept is used or arithmetic mean is used for determining the ALP.

112. SAFE HARBOUR

Rule:- 10TD

(1) Where an eligible assessee has entered into an eligible international transaction and the option exercised by the said assessee is not held to be invalid under rule 10TE, the transfer price declared by the assessee in respect of such transaction shall be accepted by the income-tax authorities, if it is in accordance with the circumstances as specified in sub-rule (2).

(2) The circumstances referred to in sub-rule (1) in respect of the eligible international transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:-

SNO	Eligible International Transaction	Circumstances
(1)	**(2)**	**(3)**
1.	Provision of software development services referred to in item (i) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is – (i) not less than 20 per cent., where the aggregate value of such transactions entered into during the previous year does not exceed a sum of five hundred crore rupees; or (ii) not less than 22 per cent., where the aggregate value of such transactions entered into during the previous year exceeds a sum of five hundred crore rupees.
2.	Provision of information technology enabled services referred to in item (ii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is – (i) not less than 20 per cent., where the aggregate value of such transactions entered into during the previous year does not exceed a sum of five hundred crore rupees; or (ii) not less than 22 per cent., where the aggregate value of such transactions entered into during the previous year exceeds a sum of five hundred crore rupees.
3.	Provision of knowledge process outsourcing services referred to in item (iii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 25 per

		cent..
4.	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan does not exceed fifty crore rupees.	The Interest rate declared in relation to the eligible international transaction is not less than the base rate of State Bank of India as on 30th June of the relevant previous year plus 150 basis points.
5.	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan exceeds fifty crore rupees.	The Interest rate declared in relation to the eligible international transaction is not less than the base rate of State Bank of India as on 30th June of the relevant previous year plus 300 basis points.
6.	Providing corporate guarantee referred to in sub-item (a) of item (v) of rule 10TC.	The commission or fee declared in relation to the eligible international transaction is at the rate not less than 2 per cent. Per annum on the amount guaranteed.
7.	Providing corporate guarantee referred to in sub-item (b) of item (v) of rule 10TC	The commission or fee declared in relation to the eligible international transaction is at the rate not less than 1.75 per cent. Per annum on the amount guaranteed.
8.	Provision of contract research and development services wholly or partly relating to software development referred to in item (vi) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 30 per cent.
9.	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs referred to in item (vii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 29 per cent..
10.	Manufacture and export of core auto components referred to in item (viii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 12 per cent..
11.	Manufacture and export of noncore auto components referred to in item (ix) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 8.5 per cent.

(3) The provisions of sub-rules (1) and (2) shall apply for the assessment year 2013-14 and four assessment years immediately following that assessment year.

(4) No comparability adjustment and allowance under the second proviso to sub-section (2) of section 92C shall be made to the transfer price declared by the eligible assessee and accepted under sub-rules (1) and (2) above.

(5) The provisions of sections 92D and 92E in respect of an international transaction shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.

Practical 72

Examine the following transactions and discuss whether the transfer price declared by the following assessees, who have exercised a valid option for application of safe harbour rules, can be accepted by the Income-tax Authorities –

	Assessee	**International Transaction**	**Aggregate value of transactions entered into in the P.Y.2013-14**	**Declared Operating Margin**	**Operating Expense**
(1)	A Ltd., an Indian company	Provision of system support services to X Inc., which is a "specified foreign company" in relation to A Ltd.	Rs. 600 crore	Rs. 90 crore	Rs.450 crore
(2)	B Ltd., an Indian company	Provision of data processing services with the use of information technology to Y Inc., its foreign subsidiary	Rs. 400 crore	Rs. 62 crore	Rs.300 crore
(3)	C & Co., a partnership firm registered under the Partnership Act, 1932	Provision of contract R & D services relating to development of internet technology, to XYZ & Co., a foreign firm, which holds 12% interest in C & Co.	Rs. 100 crore	Rs. 20 crore	Rs. 70 crore
(4)	D Ltd., an Indian company	Provision of contract R & D services relating to generic pharmaceutical drug, to ABC Inc., a foreign company which guarantees 15% of the total borrowings of D Ltd.	Rs. 50 crore	Rs. 9 crore	Rs. 30 crore
(5)	Sole proprietary concern of Mr.E, solely engaged in the original manufacture and export of automobile transmission	100% export of automobile transmission and steering parts to LMN LLP, a foreign LLP, controlled by Mr.E jointly with his relatives.	Rs. 12 crore	Rs. 1 crore	Rs. 10 crore

	and steering parts.				
(6)	F Ltd. an Indian company, solely engaged in the original manufacture and export of noncore auto components.	100% export of non-core auto components to GKG Inc., a foreign company. F Ltd. appoints two-thirds of the Board of Directors of GKG Inc.	Rs. 12 crore	Rs. 1 crore	Rs. 10 crore

In all the above cases, it may be assumed that the Indian entity which provides the services assumes insignificant risk. It may also be assumed that the foreign entities referred to above are non-resident in India.

Would your answer change, if in any of the cases mentioned above, the foreign entity is located in a notified jurisdictional area?

Solution

Section 92CB(1) provides that the determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules. Safe harbour means circumstances in which the income tax authorities shall accept the transfer price declared by the assessee. Section 92CB(2) empowers the CBDT to prescribe such safe harbor rules or circumstances under which the transfer price declared by the assessee shall be accepted by the Income-tax Authorities.

Accordingly, in exercise of the powers conferred by section 92CB read with section 295 of the Income-tax Act, 1961, the CBDT has, vide Notification No.73/2013 dated 18.9.2013, prescribed safe harbour rules. Rule 10TD provides that where an eligible assessee has entered into an eligible international transaction and the option exercised by the said assessee is not held to be invalid under Rule 10TE, the transfer price declared by the assessee in respect of such transaction shall be accepted by the incometax authorities, if it is in accordance with the circumstances set out thereunder.

An eligible assessee is a person who has exercised a valid option for application of safe harbour rules and is engaged in, inter alia, providing the following services, with insignificant risk, to a non-resident associated enterprise –

(i) software development services; or
(ii) information technology enabled services; or
(iii) knowledge process outsourcing services; or
(iv) contract R & D services wholly or partly relating to software development; or
(v) contract R & D services wholly or partly relating to generic pharmaceutical drugs.

A person who is engaged in the manufacture and export of core or non-core auto components and where 90% or more of total turnover during the relevant previous year is in the nature of original equipment manufacturer sales also falls within the definition of eligible assessee if he has exercised a valid option for application of safe harbour rules.

(1) X Inc. is a specified foreign company in relation to A Ltd. Therefore, the condition of A Ltd. holding shares carrying not less than 26% of the voting power in X Inc is satisfied. Hence, X Inc. and A Ltd. are deemed to be associated enterprises. Therefore, provision of systems support services by A Ltd., an Indian company, to X Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case. Systems support services falls within the definition of "software development services", and hence, is an eligible international transaction. Since A Ltd. is providing software development services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee. Since the aggregate value of transactions entered into in the P.Y.2013-14 exceed Rs. 500 crore, A Ltd. should have declared an operating profit margin of not less than 22% in relation to operating expense, to be covered within the safe harbour rules.

However, since A Ltd. has declared an operating profit margin of only 20% (i.e., $\frac{90}{450} \times 100$) , the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by A Ltd.

(2) Y Inc., a foreign company, is a subsidiary of B Ltd., an Indian company. Hence, Y Inc. and B Ltd. are associated enterprises. Therefore, provision of data processing services by B Ltd., an Indian company, to Y Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Data processing services with the use of information technology falls within the definition of "information technology enabled services", and is hence, an eligible international transaction. Since B Ltd. is providing data processing services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Since the aggregate value of transactions entered into in the P.Y.2013-14 does not exceed Rs. 500 crore, B Ltd. should have declared an operating profit margin of not less than 20% in relation to operating expense, to be covered within the scope of safe harbour rules. In this case, since B Ltd. has declared an operating profit margin of 20.67% (i.e., $\frac{62}{300} \times 100$), the same is in accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by B Ltd in respect of such international transaction.

(3) XYZ & Co., a foreign firm holds 12% interest in C & Co., an Indian firm. Therefore, the condition of one enterprise, being a foreign firm, holding not less than 10% interest in another enterprise, being an Indian firm, is satisfied. Hence, XYZ & Co. and C & Co. are deemed to be associated enterprises. Therefore, provision of contract R & D services relating to software development by C & Co., an Indian firm, to XYZ & Co., a foreign firm, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Development of internet technology falls within the meaning of "contract R&D services wholly or partly relating to software development", and hence, is an eligible international transaction. Since C & Co., an Indian firm, is providing contract R & D services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, C & Co. should have declared an operating profit margin of not less than 30% in relation to operating expense, to be covered within the safe harbour rules.

However, since C & Co. has declared an operating profit margin of only 28.57% (i.e., $\frac{20}{70} \times 100$), the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by C & Co.

(4) ABC Inc., a foreign company, guarantees 15% of the total borrowings of D Ltd., an Indian company. Since ABC Inc. guarantees not less than 10% of the total borrowings of D Ltd., ABC Inc. and D Ltd. are deemed to be associated enterprises.

Therefore, provision of contract R & D services relating to generic pharmaceutical drug by D Ltd., an Indian company, to ABC Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Provision of contract R& D services in relation to generic pharmaceutical drug is an eligible international transaction. Since D Ltd. is providing such services to a nonresident associated enterprise and has exercised a valid option for safe harbor rules, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, D Ltd. should have declared an operating profit margin of not less than 29% in relation to operating expense, to be covered within the scope of safe harbour rules.

In this case, since D Ltd. has declared an operating profit margin of 30% (i.e., $\frac{9}{30} \times 100$), the same is in accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by D Ltd in respect of such international transaction.

(5) LMN LLP, a foreign LLP, is controlled by Mr.E jointly with his relatives. Mr. E also has control over his own sole proprietorship concern. Therefore, the sole proprietorship concern of Mr.E in India and LMN LLP are deemed to be associated enterprises.

Automobile transmission and steering parts fall within the meaning of “core auto components”, and hence, 100% export of all such parts originally manufactured by the sole proprietorship concern of Mr.E is an eligible international transaction.

Since the sole proprietorship concern of Mr.E is solely engaged in the original manufacture and 100% export of such parts and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, the sole-proprietorship concern of Mr.E should have declared an operating profit margin of not less than 12% in relation to operating expense, to be covered within the safe harbour rules. However, since A Ltd. has declared an operating profit margin of only 10% (i.e., $\frac{1}{10} \times 100$), the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by Mr.E.

(6) F Ltd. and GKG Inc. are deemed to be associated enterprises since F Ltd. appoints more than half of the Board of Directors of GKG Inc. Manufacture and export of non-core auto components is an eligible international transaction. Since F Ltd. is engaged in original manufacture of non-core auto

components and 100% export of the same, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, F Ltd. should have declared an operating profit margin of not less than 8.5% in relation to operating expense, to be covered within the scope of safe harbour rules.

In this case, since F Ltd. has declared an operating profit margin of 10% (i.e., $\frac{1}{10} \times 100$), the same is in accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by F Ltd in respect of such international transaction.

The safe harbour rules shall not apply in respect of eligible international transactions entered into with an associated enterprise located in a notified jurisdictional area. Therefore, if in any of the cases mentioned above, the foreign entity is located in a NJA, the safe harbour rules shall not be applicable, irrespective of the operating profit margin declared by the assessee.

Reader's Note:

UNIT U- ADVANCE TAX AND INTEREST

113. INSTALMENTS OF ADVANCE TAX AND DUE DATES

Section:- 211: With effect from 1st June, 2016

Due date of instalment	Amount payable in case of all assessee (except an eligible assessee referred to in section 44AD of the Act)	Amount payable in case of an eligible assessee in respect of an eligible business referred to in section 44AD of the Act
On or before June 15 of the previous year	Upto 15 percent of advance tax payable	NA
On or before September 15 of the previous year	Upto 45 percent of advance tax payable	NA
On or before December 15 of the previous year	Upto 75 percent of advance tax payable	NA
On or before March 15 of the previous year	Upto 100 percent of advance tax payable	Upto 100 percent of advance tax payable

- Any payment of advance tax made on or before 31st day of March shall also be treated as advance tax paid during the financial year.

114. INTEREST FOR DEFERMENT OF ADVANCE TAX.

Section:- 234C : With effect from 1st June, 2016

(I) Period for which and amount on which interest is payable

(A) Eligible assessee under section 44AD

Dates of Installment	*Advance Tax Paid Till Date*	*Advance Tax Payable*	*Amount on which interest is payable [(3)-(2)]*	*Period for which interest is payable*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
15.03.17		100%		1 month

(B) Other assessee

Dates of Installment	*Advance Tax Paid Till Date*	*% of "tax due on returned income"*	*Amount on which interest is payable [(3)-(2)]*	*Period for which interest is payable*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
15.06.16		15%		3 months
15.09.16		45%		3 months
15.12.16		75%		3 months
15.03.17		100%		1 month

However, no interest under section 234 C shall be levied for the first and second instalment, if advance tax paid by the assessee is not less than 12% or 36% of tax due on returned income.

(II) Points to remember

(a) Meaning of "Tax due on returned income"

Particulars	**Rs.**
Tax on returned income	xxx
Less: TDS or TCS/ Relief u/s 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Tax due on returned income	**xxxx**

(b) Calculation of interest under section 234C is always with reference to "tax due on returned Income". Therefore interest under section 234C will not undergo change even if assessing officer may complete the assessment at higher figure under section 143(1) / 143(3) / 144 / 147 / 153A, as the case may be.

(III) Short payment of advance tax in case of capital gains/lottery income etc.

No interest will be levied in respect of any shortfall in the payment of advance tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate-

(a) the amount of capital gains; or

(b) income of the nature referred to in section 2(24)(ix) (i.e., winning from lottery, crossword puzzle income, races including horse race etc.); or

(c) income under the head "PGBP" in cases where the income accrues or arises under that head for the first time,

and the assesse has paid the whole of the amount of tax payable in respect of such income, as part of the remaining instalments of advance tax which are due or if no such instalments are due, then such tax is paid by the 31st day of March of the financial year.

Practical 73

Zandu & Co, a partnership firm submits the following information for the previous year **2016-17**.

Income under the head "PGBP"	5,00,000
LTCG on sale of land dated 1st November, 2016	99,515

You are required to compute the minimum amount of advance tax payable by Zandu & Co. for each of the installments in such a way that it will not attract interest liability under section 234C.

Solution

Particulars	**Minimum amount of advance tax (Rs.)**
1st Instalment of advance tax payable {15.06.2016} [upto 12%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 x 12%	**18,540**
2nd Instalment of advance tax payable { 15.09.2016} [upto 36%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 x 36%	**37,080** **[55,620-18,540]**
3rd Instalment of advance tax payable {15.12.2016} [upto 75%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 Add: Tax on LTCG Rs. 99,515 @ 20.60% =Rs. 20,500 Total Tax =Rs.1,75,000 x 75%	**75,630** **[1,31,250-18,540-37,080]**
4th Instalment of advance tax payable {15.03.2017} [100%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 Add: Tax on LTCG Rs. 99,515 @ 20.60% =Rs. 20,500 Total Tax =Rs.1,75,000 x 100%	**43,750** **[1,75,000-18,540-37,080-75,630]**

Readers Note:

Practical 74

Will the provisions of section 234A are applicable, if self-assessment tax paid before the due date of filing return while return has been submitted after due date?

Solution

CIRCULAR NO. 2/2015, DATED 10-2-2015 will be of great help in this regard. Following is the text of circular:

Interest under section 234A not chargeable on self-assessment tax paid before the due date of filing of return of income

Interest under section 234A is charged in case of default in furnishing return of income by an assessee. The interest is charged at the specified rate on the amount of tax payable on the total income, as reduced by the amount of advance tax, TDS/TCS, any relief of tax allowed under section 90 and 90A, any deduction allowed under section 91 and any tax credit allowed in accordance with section 115JAA and section 115JD. Since self-assessment tax is not mentioned as a component of tax to be reduced from the amount on which interest under section 234A is chargeable, interest is being charged on the amount of self-assessment tax paid by the assessee even before the due date of filing of return.

However, it has been held by **Hon'ble Supreme Court in the case of CIT vs Prannoy Roy (2009), 309 ITR 231** that interest under section 234A on default of furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the Income-tax return for the relevant assessment year.

Accordingly, the CBDT reviewed the present practice of charging interest and decided that no interest under section 234A shall be charged on self-assessment tax paid by the assessee on or before the due date of filing of return.

Readers Note:

UNIT V - PENALTIES

115. PENALTY ON THE BASIS OF MISREPORTING /UNDER REPORTED OF INCOME

Section:- 270A

Section 270A has been inserted from the assessment year 2017-18. Under this section, the Assessing Officer, CIT (Appeals) or the Principal CIT or CIT may, during the course of any proceedings under this Act, levy penalty if a person has under – reported his income

Cases of under-reported income

(a) the income assessed is greater than the income determined in the return processed under section 143(1)(a);
(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;
(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;
(d) the amount of deemed total income assessed or reassessed under section 115JB or section 115JC is greater than the deemed total income determined in the return processed under section 143(1)(a);
(e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;
(f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment;
(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

Quantum of under-reported income

The amount of under-reported income shall be determined as follows-

Sr. No.	Different situations	Quantum of under-reported income
1.	In a case where income has been assessed for the first time, and	
	(a) Return has been furnished	The difference between the income assessed and the income determined under section 143(1)(a).
	(b) Return has not been furnished	- **In the case of a company, firm or local authority;** The amount of income assessed,
		- **In any other case:-** The difference between the income assessed and the maximum amount not chargeable to tax.

2.	Where income is not assessed for the first time	The difference between the income assessed/reassessed/ recomputed and the amount of income assessed/reassessed/recomputed in a preceding order
3.	Where an assessment /reassessment has the effect of reducing the loss declared in the return or converting that loss into income	The difference between the loss claimed and the income (or loss) as assessed / reassessed
4.	Where under-reported income arises out of determination of deemed income in accordance with the provisions of section 115JB/115JC	(A-B) + (C-D)

Calculation of under-reported income in case of applicability of provision of sections 115JB/JC- It shall be determined on the basis of the following formula-

Under-report income = (A-B) +(C-D)

A	=	the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);
B	=	the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;
C	=	the total income assessed as per the provisions contained in section 115JB or section 115JC
D	=	the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income:

Note: where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

Under-reported income shall not include the following-

a. Where the assessee offers an explanation and the income-tax authority is satisfied that the explanation is bonafide and all the material facts have been disclosed;
b. Where such under-reported income is determined on the basis of an estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deducted therefrom;
c. Where the assessee has, on his own, estimated a lower amount of addition or disallowance on the issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance;

d. Where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction and disclosed all the material facts relating to the transaction;
e. Where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB.

Rate of penalty: the rate of penalty shall be 50 percent of the tax payable on under-reported income. However, in cases of under-reported income falling under misreporting of income, penalty shall be 200 percent of the tax payable on such misreporting of income

Misreporting of income [section 270A(9)]- cases of misreporting of income shall be the following-

(a) misrepresentation or suppression of facts;
(b) failure to record investments in the books of account;
(c) claim of expenditure not substantiated by any evidence;
(d) recording of any false entry in the books of account;
(e) failure to record any receipt in books of account having a bearing on total income; and
(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

How to calculate tax on under-reported income. The tax payable on under-reported income shall be calculated as follows-

Different situations	**Mode of computation of tax on under-reported income**
Case 1- where no return has been furnished and the income has been assessed for the first time	Amount of tax computed on (under-reported income + exemption limit)
Case 2- where total income determined under section 143(1)(a) or assessed/reassessed/re-computed in a preceding order is a loss	Amount of tax computed on under-reported income, as if it were total income
Case 3-In any other case	Tax on under-reported income is (x-y)
	x=amount of tax computed on [under-reported income + total income determined under section 143(1)(a) or total income assessed/reassessed/recomputed in a preceding order]
	y=amount of tax computed on total income determined under section 143(1)(a) or total income assessed/reassessed/recomputed in a preceding order]

<u>Penalty to be levied by whom?</u>

The penalty under this section shall be imposed, by an order in writing, by the Assessing Officer, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be.

116. IMMUNITY FROM IMPOSITION OF PENALTY

Section:- 270AA

- An assessee may make an application under section 207AA to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings u/s 276C or 276CC.
- The assessee can make an application subject to following conditions:
  (a) The assessee pays tax an interest payable as per the order of assessment/reassessment order under section 143(3)/147 within the period specified in such notice of demand and does not prefer an appeal against such assessment order and
  (b) The assessee makes such application in a prescribed form within 1 month from the end of the month in which the order of assessment or reassessment is received.
- The Assessing Officer shall, on fulfilment of the above conditions and after the expiry of the period of filing the appeal as specified in section 249(2), grant immunity from penalty proceedings under section 270A and initiation of proceedings under 276C.
- However, immunity shall not be granted for penalty under section 270A(9) of the Act.
- The Assessing Officer is required to pass an order accepting (or rejecting) such application, within a period of 1 month from the end of the month in which such application is received. However, the Assessing Officer shall give an opportunity of being heard before rejecting the application.
- The order passed under this section shall be final.
- No appeal under section 246A or an application for revision under section 264 shall be admissible against the order of the assessment or reassessment in a case where the order granting immunity is passed.

Practical 75

M/s. XYZ., partnership firm provides following details for the A.Y.2017-18:

Sr. No.	Particulars of Income	Rs.
1.	As per the return of income furnished u/s 139(1)	50,00,000
2.	Determined under section 143(1)(a)	60,00,000
3.	Assessed under section 143(3)	75,00,000
4.	Reassessed under section 147	95,00,000

Can penalty be levied u/s 270A on M/s. XYZ? If the answer is in the affirmative, compute the penalty leviable u/s 270A.

Solution

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

1) its income assessed u/s143(3) exceeds its income determined in a return processed u/s 143(1)(a); and
2) the income reassessed under section 147 exceeds the income assessed u/s 143(3).

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

Computation of penalty leviable under section 270A

Particulars	**Rs.**	**Rs.**
<u>Assessment under section 143(3)</u>		
<u>Under-reported income:</u>		
Total income assessed under section 143(3)	75,00,000	
(-) Total income determined u/s 143(1)(a)	60,00,000	
	15,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of Rs. 15 lakhs plus tax on total income of Rs. 60 lakhs determined u/s 143(1)(a) [30% of Rs. 75 lakh + EC & SHEC@3%]	23,17,500	
Less: Tax on total income determined u/s 143(1)(a) [30% of Rs. 60 lakh + EC & SHEC@3%]	18,54,000	
	4,63,500	
Penalty leviable@50% of tax payable		2,31,750
<u>Reassessment under section 147</u>		
<u>Under-reported income:</u>		
Total income reassessed under section 147	95,00,000	
(-) Total income assessed under section 143(3)	75,00,000	
	20,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of Rs. 20 lakhs plus tax on total income of Rs. 75 lakhs assessed u/s 143(3) [30% of Rs. 95 lakh + EC & SHEC@3%]	29,35,500	
Less: Tax on total income assessed u/s 143(3) [30% of Rs. 75 lakh + EC & SHEC@3%]	23,17,500	
	6,18,000	
Penalty leviable@50% of tax payable		3,09,000

Note – The following assumptions have been made -

1) None of the additions or disallowances made in assessment or reassessment qualifies u/s 270A(6); and
2) The under-reported income is not on account of misreporting.

Readers Note:

Practical 76

Mr. Ram, a resident individual of the age of 55 years, has not furnished his return of income for A.Y.2017-18. However, the total income assessed in respect of such year under section 144 is Rs. 12 lakh. Is penalty under section 270A attracted in this case, and if so, what is the quantum of penalty leviable?

Solution

Mr. Ram is deemed to have under-reported his income since he has not filed his return of income and his assessed income exceeds the basic exemption limit of Rs. 2,50,000. Hence, penalty under section 270A is leviable in his case

Computation of penalty leviable under section 270A

Particulars	Rs.	Rs.
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 144	12,00,000	
(-) Basic exemption limit	2,50,000	
	9,50,000	
Tax payable on under-reported income as increased by the basic exemption limit [30% of Rs. 2 lakhs + Rs. 1,25,000]	1,85,000	
Add: EC & SHEC@3%	5,550	
	1,90,550	
Penalty leviable@50% of tax payable		95,275

Note – It is assumed that the under-reported income is not on account of misreporting.

Readers Note:

Practical 77

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

Sr. No.	Particulars of Income	Rs.
1.	As per the return of income furnished u/s 139(1)	(15,00,000)
2.	Determined under section 143(1)(a)	(8,00,000)
3.	Assessed under section 143(3)	(5,00,000)
4.	Reassessed under section 147	4,00,000

Is penalty leviable under section 270A on ABC Ltd., and if so, what is the quantum of penalty?

Solution

ABC Ltd. is deemed to have under-reported its income since:

1) the assessment under 143(3) has the effect of reducing the loss determined in a return processed under section 143(1)(a); and
2) the reassessment under section 147 has the effect of converting the loss assessed under section 143(3) into income.

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

Computation of penalty leviable under section 270A

Particulars	**Rs.**	**Rs.**
Assessment under section 143(3)		
Under-reported income:		
Loss assessed u/s 143(3)	(5,00,000)	
(-) Loss determined under section 143(1)(a)	(8,00,000)	
	3,00,000	
Tax payable on under-reported income@30%	90,000	
Add: EC & SHEC@3%	2,700	
	92,700	
Penalty leviable@50% of tax payable		46,350
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.

Readers Note:

117. PENALTY UNDER SECTION 272A

Section:- 272A

Question 78

Penalty of Rs. 10,000 per default may be levied under section 272A of the Act. List out such defaults.

Answer

If any person,—

(a) refuses to answer any question put to him by an income-tax authority in the exercise of its powers under this Act; or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an income-tax authority may legally require him to sign; or

(c) to whom a summons is issued under section 131(1) either to attend to give evidence or produce books of account or other documents at a certain place and time omits to attend or produce books of account or documents at the place or time,

(d) **fails to comply with a notice under section 142(1) or section 143(2) or fails to comply with a direction issued under section 142(2A),**

he shall pay, by way of penalty, a sum of ten thousand rupees for each such default or failure.

Readers Note:

118. PENALTY UNDER SECTION 273A/273AA

Section:- 273A/273AA

Practical 79

Subject to fulfilment of certain conditions prescribed under section 273A/273AA , the Commissioner or Principal Commissioner are vested with the powers to grant waiver or reduction from penalty. Is there any time for passing such orders granting waiver or reduction from penalty.

Solution

The order under section 273A/273AA, either accepting or rejecting the application in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received by the Principal Commissioner or the Commissioner.

However, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

Any application which is pending as on the 01.06.2016, the order shall be passed on or before the 31.05. 2017

Readers Note:

119. PENALTY IN RESPECT OF CERTAIN INCOME

Section:- 271AAC

Nature of Default

Income determined by Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year. [if such income is not included by assessee in his return or tax in accordance with section 115BBE has not been paid]

Penalty

10% of tax payable under section 115BBE.

120. PENALTY UNDER SECTION 271AAB

Section:- 271AAB

Section 271AAB(1) This section is applicable if search is initialed on or after July 1, 2012 but before 15-12-2016. In such a case, the assessee shall pay a penalty under section 271AAB in addition to tax on "undisclosed income" pertaining to a "specified previous year" as follows—

Quantum of penalty - The quantum of penalty under section 271AAB is as follows—

1. If undisclosed income is admitted during the course of search, the taxpayer will be liable for penalty at the rate of 10 per cent of undisclosed income provided the following conditions are satisfied—
   a. The assessee in the course of the search, in a statement under section 132(4) admits the undisclosed income and specifies the manner in which such income has been derived;
   b. he substantiates the manner in which the undisclosed income was derived;
   c. he pays the tax, together with interest, if any, in respect of the undisclosed income; and
   d. he furnishes the return of income for the specified previous year declaring such undisclosed income therein.
2. If undisclosed income is not admitted during the course of search but he satisfies conditions (c) and (d) (supra), he will be liable for penalty at the rate of 20 per cent of undisclosed income.
3. In a case not covered under (1) and (2) above, the taxpayer will be liable for penalty at the rate of 60 percent of undisclosed income.

Section 271AAB(1A) This section is applicable if search is initialed on or after 15-12-2016. In such a case, the assessee shall pay a penalty under section 271AAB in addition to tax on "undisclosed income" pertaining to a "specified previous year" as follows—

1. If undisclosed income is admitted during the course of search, the taxpayer will be liable for penalty at the rate of 30 per cent of undisclosed income provided the following conditions are satisfied—

e. The assessee in the course of the search, in a statement under section 132(4) admits the undisclosed income and specifies the manner in which such income has been derived;
f. he substantiates the manner in which the undisclosed income was derived;
g. he pays the tax, together with interest, if any, in respect of the undisclosed income; and
h. he furnishes the return of income for the specified previous year declaring such undisclosed income therein.

2. In a case not covered under (1) above, the taxpayer will be liable for penalty at the rate of 60 percent of undisclosed income.

Specified previous year - "Specified previous year" means the previous year in which search is conducted. It also includes the previous year which has ended before the date of search but the due date of furnishing return of income under section 139(1) has not expired before the date of search and the assessee has not furnished his return of income for the previous year.

Undisclosed Income:-

Undisclosed income, for the purpose of this section, means:

(1) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has-
(a) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or
(b) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of search; or

(2) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.

Remark: Penalty under section 270A cannot be levied in respect of the undisclosed income referred to in this section.

UNIT W – TAX DEDUCTION AND COLLECTION AT SOURCE

121. TAX DEDUCTION AT SOURCE

Section:- Section 192A, 194BB, 194C, 194D, 194DA, 194EE, 194G,194H, 194LA

Amendment in Threshold Limits and rate of TDS

Section	Nature of Payment	Threshold Limit / Rate of TDS	
		Before 31st May 2016	**From 1st June, 2016**
192A	Payment of accumulated balance due to an employee	Rs. 30,000	Rs.50,000
194BB	Winnings from horse race	Rs. 5,000	Rs. 10,000
194C	Payments to contractors - Single Payment - Aggregate Payment	 Rs. 30,000 Rs. 75,000	 Rs. 30,000 Rs. 1,00,000
194D	Insurance Commission - Threshold limit - Rate of TDS when recipient is a person other than Domestic Company - If recipient is a Domestic Company	 Rs. 20,000 10% **[Upto 31.03.2016]** 10% **[No Change]**	 Rs. 15,000 5% **[W.e.f. 01.04.2016]** 10% **[No Change]**
194DA	Payment in respect of life insurance policy	2%	1%
194EE	Payments in respect of deposits under National Savings Scheme, etc.	20%	10%
194G	Commission, etc., on the sale of lottery tickets	Rs. 1,000 10%	Rs. 15,000 5%
194H	Commission or brokerage.	Rs.5,000 10%	Rs.15,000 5%
194LA	Payment of compensation on acquisition of certain immovable property	Rs.2,00,000	Rs.2,50,000

Practical 80

SUN TV, a television channel, made payment of Rs.80 lakhs to a production house for production of content (programme). All rights of the programme rests with SUN TV. Would such payment be liable for tax deduction at source under section 194C?

Would answer differ if, the payment was made by SUN TV for acquisition of telecasting rights of the content (programme) already produced by the production house.

Solution

- The CBDT has, vide ***Circular No. 4/2016 dated 29.2.2016***, 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 Rs.work' in section 194C and, therefore, subject to TDS under that section.
- However, in a case 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 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act. Considering the above clarification, SUN TV is required to deduct tax at source under section 194C of the Act in respect of payment made for production of content.
- But where SUN TV acquires only telecasting right in respect of content already developed by production house, it is not the 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.

Readers Note:

122. TAX COLLECTION AT SOURCE

Section:- 206C

122.1 Section 206 C(1)

(1) Every person, being a seller, shall collect, from the buyer of following goods, income tax at the rates mentioned in corresponding column.

Nature of goods	Percentage of rate of TCS
1. Alcoholic liquor for human consumption (other than Indian made foreign liquor)	1
2. Indian made foreign liquor	1
3. Tendu leaves	5
4. Timber obtained under a forest lease	2.50
5. Timber obtained by any mode other than under a forest lease	2.50

6. Any other forest produce (not being timber or tendu leaves)	2.50
7. Scrap	1
8. Minerals, being coal or lignite or iron ore	1

(2) Tax has to be collected by the seller at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time or receipt of such amount from the buyer in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.

(3) "Seller" means-
(a) the Central Government,
(b) a State Government
(c) any local authority
(d) corporation
(e) authority established by or under a Central, State or Provincial Act
(f) any company
(g) firm
(h) Co – operative society.
(i) Individual or a HUF whose books of account are required to be audited under section 44AB (a)/ (b) during the financial year immediately preceding the financial year in which goods are sold.

(4) "Buyer" means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in section 206C(1) or the right to receive any such goods. However, buyer does not include the following:
- ✓ a public sector company, the Central Government, a State Government, and an Embassy, a High Commission, Legation, Commission, Consulate and the trade representation, of a foreign State and a club.
- ✓ a buyer in the retail sale of such goods purchased by him for personal consumption.

(5) "Scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons. Accordingly, following would not be covered within the meaning of scrap and therefore not subject to tax collection at source.
a. Scrap or waste not arising from manufacture or mechanical working of material. (e.g. old newspapers)
b. Scrap or waste which is usable as such.

(6) No collection of tax shall be made from a resident buyer who purchases goods (which are to be utilized) for the purposes of manufacturing, processing or producing any article or thing or for

the purpose of generation of power and not for the purpose of trading. For this purpose, resident buyer shall give a declaration in Form No. 27 C to the seller in duplicate.
The seller shall deliver one copy to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner on or before the seventh day of the month next following the month in the declaration is furnished to him.

122.2 Section 206C (1C)

(1) Every person, who grants a lease or a license or enters into a contract or otherwise, transfers any right or interest in

(a) any parking lot or

(b) toll plaza or

(c) mine or quarry,

to another person (hereafter referred to as “licensee or leasee”) for the use of such parking lot or toll plaza or mine or quarry, for the purpose of business, shall collect tax at source at two percent.

The provisions of this section shall not apply to mining and quarrying of mineral oil, petroleum and natural gas.

The provisions of this section shall not apply if the licensee or lessee is a public sector company.

(2) Tax has to be collected by the seller at the time of debiting of the amount payable by the licensee or leasee to the account of the licensee or leasee or at the time or receipt of such amount from the licensee or leasee in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.

122.3 Section 206 C(1D)

(1) Every person, being a seller, who receives any amount in cash as consideration for sale of –

(a) bullion

(b) jewellery

(c) any other goods [other than (a) and (b) above] or

(d) for providing any service

shall collect tax at one percent of sale consideration provided such consideration exceeds following limits.

Particulars	**Limit**
Bullion	Rs. 2,00,000
Jewellery	Rs. 5,00,000
Any other goods (other than bullion and jewellery)- **Applicable from 1st June, 2016**	Rs. 2,00,000
Any services – **Applicable from 1st June, 2016**	Rs. 2,00,000

(2) ***<u>Attention is invited to the circular no. 23 /2016 regarding how to collect TCS?</u>***

Q.1. Whether tax collection at source under section 206C(1D) at the rate of 1% will apply in cases where the sale consideration received is partly in cash and partly in cheque and the cash receipt is less than Rs.2,00,000?

Ans: No. Tax collection at source will not be levied if the cash receipt does not exceed Rs.2,00,000 even if the sale consideration exceeds Rs.2,00,000.

Illustration: Goods worth Rs.5,00,000 is sold for which the consideration amounting to Rs.4,00,000 has been received in cheque and Rs.1,00,000 has been received in cash. As the cash receipt does not exceed Rs.2,00,000, no tax is required to be collected at source as per section 206C(1D).

Q.2. Whether tax collection at source under section 206C(1D) will apply only to cash component or in respect of whole of sales consideration?

Ans: Under section 206C(1D), the tax is required to be collected at source on cash component of the sales consideration and not on the whole of sales consideration.

Illustration: Goods worth Rs.5,00,000 is sold for which the consideration amounting to Rs.2,00,000 has been received in cheque and Rs.3,00,000 has been received in cash. Tax is required to be collected under section 206(1D) only on cash receipt of Rs.3,00,000 and not on the whole of sales consideration of Rs.5,00,000.

(3) Tax shall be collected at the time of receipt of amount in cash from the buyer.

(4) "Seller" means- Seller as defined in **Para 41.1 (3)**

(5) Buyer means a person who obtains in any sale, goods of nature mentioned in section 206 C(1D).

However, as per section 206C(1E), the tax collection at source shall not be made in relation to sale of any goods (other than bullion or jewellery) or providing any service to the following class or classes of buyers, namely:-

(a) Government

(b) Embassy, a High Commission, Legation, Commission, Consulate and the trade representation, of a foreign State

(c) Institutions notified under United Nations (Privileges and Immunities) Act, 1974.

122.4 Section 206C(1F)

(1) Every person, being seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ten lakh rupees, shall collect tax from buyer at one percent of sale consideration. – **Applicable from 1st June, 2016**

(2) Tax shall be collected at the time of receipt of amount from the buyer.

(3) "Seller" means- Seller as defined in **Para 41.1 (3)**

(4) Buyer means buyer of motor vehicle of the value exceeding ten lakh rupees.

Practical 81

ABC Ltd., a manufacturer of automobiles, sells high value cars (each of value exceeding Rs. 10 lakh) and the middle segment cars (each of value between Rs. 5 lakh to Rs. 10 lakh) to its dealers across the country. Discuss whether the manufacturers are liable to collect tax at source under section 206C.

Also, discuss the liability, if any, of dealers to collect tax at source on sale of these cars to the retail customers, if no part of the consideration is received in cash?

What would be your answer if part of the consideration is received in cash?

Solution

- Section 206C(1F) provides for collection of tax at source@1% by the seller from the buyer, at the time of receipt of consideration for sale of motor vehicle, the value of which exceeds Rs. 10 lakhs. CBDT Circular No.22/2016 dated 8.6.2016 clarifies that sub-section (1F) was inserted by the Finance Act, 2016 to cover all transactions of retail sales and accordingly, it will not apply to sale of motor vehicles by manufacturers to dealers.
- Hence, car manufacturers are not liable to collect tax at source under section 206C(1F). In respect of sale of high value cars (each of value exceeding Rs. 10 lakhs) by dealers to retail customers, tax has to be collected at source@1% under section 206C(1F), even if no part of the consideration is received in cash.
- As regards cars in the middle segment (each of value between Rs. 5 lakhs and Rs. 10 lakhs), no tax has to be collected at source if no part of the consideration is received in cash. However, if whole or part of the consideration is received in cash, tax has to be collected at source@1% under section 206C(1D) on the cash component of the sale consideration, if the same exceeds Rs. 2 lakhs.
- These clarifications have been given by the CBDT vide its Circulars 22/2016 dated 8.6.2016 and 23/2016 dated 24.6.2016.

Reader's Note:

122.5 Where the Assessing Officer is satisfied that the total income of the buyer or licensee justifies the collection of the tax at any lower rate than the relevant rate specified, the Assessing Officer shall, on an application made by the buyer or licensee in Form No.13 in this behalf, give to him a certificate for collection of tax at such lower rate.

Where such certificate is given, the person responsible for collecting the tax shall, until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate. The certificate shall be issued directly to the person responsible for collecting the tax under advice to the buyer who made an application for issue of such certificate.

122.6 Time Limit for deposit of tax:-

Time limit for deposit of tax collected at source with Government is as under:

Different situations	*Time limit*
(i) Tax is collected by an office of the Government and tax is paid	
(a) Without production of an income-tax challan	**Tax shall be deposited on the same day on which tax is collected.**
(b) By income-tax challan	**Tax shall be deposited on or before 7 days from the end of the month in which it is was collected.**
(ii) Tax is collected by a person other than the office of the Government	
(a) Where amount is received or debited in the month of March	**Tax shall be deposited by 30th April.**
(b) Where amount is received or debited before 1st March	**Tax shall be deposited within 7 days from the end of the month in which it was collected.**

122.7 TCS Return

TCS return shall be submitted in form no. 27 EQ within the time limit give below:-

Date of ending of the quarter of the financial year	**Due date**
30th June	15th July of the financial year
30th September	15th October of the financial year
31st December	15th January of the financial year
31st March	15th May of the financial year immediately following the financial year in which deduction is made.

122.8 Certificate of tax collection at source

Certificate of tax collection at source shall be issued within 15 days from the due date of furnishing quarterly TDS/TCS returns.

122.9 The amount collected under this section is deemed to be a payment of tax on behalf of the person from whom the amount has been collected. A tax credit is given to him for the amount so collected in the assessment for which the income is assessable.

122.10 **Section 206 C(6A)**: If any person responsible for collecting tax in accordance with the provisions of this section does not collect the whole or any part of the tax or after collecting, fails to pay the tax as required by or under this Act, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax:

Provided that any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee—

(i) has furnished his return of income under section 139;

(ii) has taken into account such amount for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

Provided further that no penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that the person has without good and sufficient reasons failed to collect and pay the tax.

122.11 **Section 206C(7):** Without prejudice to the above, if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter.

Provided that in case any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is not deemed to be an assessee in default under the first proviso of sub-section (6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee.

122.12 Section 206C(8): Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the person responsible for collecting tax.

122.13 Processing of statements of tax collected at source [Section 206CB]

(1) Where a statement of tax collection at source or a correction statement has been made by a person collecting any sum (herein referred to as collector) under section 206C, such statement shall be processed in the following manner, namely:—

(a) the sums collectible under this Chapter shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the statement;

(ii) an incorrect claim, apparent from any information in the statement;

(b) the interest, if any, shall be computed on the basis of the sums collectible as computed in the statement;

(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;

(d) the sum payable by, or the amount of refund due to, the collector, shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 206C or section 234E and any amount paid otherwise by way of tax or interest or fee;

(e) an intimation shall be prepared or generated and sent to the collector specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) the amount of refund due to the collector in pursuance of the determination under clause (d) shall be granted to the collector

Provided that no intimation under this sub-section shall be sent after the expiry of the period of one year from the end of the financial year in which the statement is filed

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of collection of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) The Board may make a scheme for centralised processing of statements of tax collected at source to expeditiously determine the tax payable by, or the refund due to, the collector, as required under sub-section (1).

Practical 82

ABC Pvt. Ltd. submitted TCS return for the quarter ending on 30-06-2015. It was in receipt of intimation under section 206CB(1) demanding Rs. 24,200. Answer the following questions:

1. Is it necessary for the income tax department to issue separate notice of demand under section 156 for the same amount of Rs. 24,200?
2. ABC Pvt. Ltd. found mistake apparent from record in the intimation issued under section 206CB(1), then what are the remedies available under the Act?
3. ABC Pvt. Ltd. failed to meet demand within the time allowed under section 156. Explain the manner in which interest under section 220(2) shall be levied.

Solution

1. As per the provisions of section 156 **(As amended by Finance Act, 2015)**, intimation issued under section 206CB(1) shall be deemed to be the notice of demand. Therefore, it is not necessary on the part of income tax department to issue separate notice of demand under section 156 of the Act.

2. If there is mistake apparent from record in the intimation issued under section 206CB (1), same shall be rectified under section 154 of the Act **(As amended by Finace Act, 2015)**. Further, ABC Pvt Ltd. can prefer an appeal to CIT (A) under section 246A against the intimation issued under section 206CB(1).

3. In order to remove possibility of charging interest on the same amount for the same period of default both under section 206C(7) and section 220(2), section 220(2C) has been inserted to specifically provide that ***where interest is charged for any period under section 206C(7) on the amount of tax specified in the intimation issued under 206CB(1), no interest shall be charged under section 220(2)*** on the same amount for the same period.

Reader's Note:

123. MANDATORY REQUIREMENT OF FURNISHING PAN

Section:- 206AA

Non-quoting of PAN by deductees in many cases have led to delay in issue of refund on account of problems in the processing of returns of income and in granting credit for tax deducted at source.

With a view to strengthening the PAN mechanism, new section 206AA has been inserted to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at **higher of the following rates** –

(1) applicable rate of TDS or

(2) at the rate of 20%.

The other salient features of the section are:

- No certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.
- Tax would be deductible at the rates mentioned above also in cases where the taxpayer files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.
- If the PAN provided to the deductor is invalid or it does not belong to the deductee,it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the highest of the three rates specified above.
- These provisions will also **apply to non-residents** where tax is deductible on payments or credits made to them.
- Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.
- Banks and financial institutions cannot ask for Permanent Account Number (PAN) from persons whose income is below taxable limit-**A. Kowsalya Bai v. Union of India [2012] 208 Taxman 208 (Kar.).**
- **Amendment made by Finance Act, 2016 [w.e.f 01.06.2016]**

  The provisions of this section shall not apply to a non-resident, not being a company, or to a foreign company, in respect of—

  (i) payment of interest on long-term bonds as referred to in section 194LC; and

  (ii) any other payment subject to such conditions as may be prescribed.

124. ITC LTD V. CIT (2016) 384 ITR 14 (SC)

Whether "tips" received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of "Salaries" to attract tax deduction at source under section 192?

Facts of the case: The assessee company, engaged in the business of owning, operating and managing hotels, allowed its employees to receive tips from customers. In case of credit card payments by the customers, the employer company collected the tips which were later on disbursed to its employees. The Assessing Officer treated the receipt of tips as income under the head "Salaries" in the hands of the employees and contended that the assessee was liable to deduct tax at source from such payments under section 192. As the assessee company had not deducted tax at source on the tips disbursed to the employees, the Assessing Officer treated the assessee as assessee in default under section 201(1).

However, the Commissioner (Appeals) held that the assessee could not be treated as assessee in default under section 201(1) for non-deduction of tax on tips collected by them and disbursed to their employees. Thereafter, the Tribunal also dismissed the appeal of the revenue.

High Court's Decision: The High Court held that the tips would amount to "profit in addition to salary or wages" and hence would fall under section 15 read with section 17(1) and section 17(3). It also held that the while the tips received by the employees directly from customers would be outside the purview of section 192 but the moment a tip is paid by the customer by way of credit card along with the bill amount to the employer, it would assume the character of salary since it goes into the account of the employer after which it is distributed to the employees.

Supreme Court's Observations: The Apex Court analysed the provisions of section 192 and noted that "any person responsible" for paying any income chargeable under the head "salaries" is alone brought into the dragnet of deduction of tax at source. The person responsible for paying an employee an amount which is to be regarded as the employee's income is only the employer. However, in the present case, the person who is responsible for paying the employee is not the employer at all, but a third party, namely, the customer. Thus, income from tips would be chargeable in the hands of employees as "Income from Other Sources". Since such tips are being received from customers and not from the employer, section 192 would not get attracted.

The Supreme Court observed that section 15 applies when an employee has a vested right to claim any salary from an employer or former employer. However, in the case on hand, there is no vested right on the part of the employee to claim any amount of tips from the employer, since tips are purely voluntary amounts that may or may not be paid by customers for services rendered. The Supreme Court observed that the amount of tips paid by the employer to the employees had no reference to the contract of employment at all. Tips were received by the employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to the customer.

There was, therefore, no reference to the contract of employment when these amounts were paid by the employer to the employee.

Therefore, the tips received by the employees could not be regarded as "profits in lieu of salary" in terms of section 17(3). The payment by the employer of tips collected from the customers to the employees would not be a payment made "by or on behalf of" an employer. Such payments would be outside the purview of section 15(b) of the Act.

The Apex Court observed that the person who paid the tip was the customer and not the employer. Even though the amounts were with the employer he had no title to the money and it was held in a fiduciary capacity as trustee for and on behalf of the employees.

Supreme Court's Decision: The Supreme Court observed that contract of employment is not the proximate cause for the receipt of tips by the employee from a customer hence, it would be outside the dragnet of sections 15 and 17 of the Act. Therefore, it held that, in such a case, no liability to deduct tax at source under section 192 arises, and hence, the assessee company cannot be treated as an assessee in default for non-deduction of tax at source from the amount of tips collected and distributed to its employees.

125. Exemption from TDS on specified payments made to banks etc.

Various

1. **Exemption from TDS on specified payments made to banks etc. [Notification No. 47/2016, dated 17-06-2016]**

   Section 197A(1F) provides that no deduction of tax shall be made from such specified payment to such institution, association or body or class of institutions, associations or bodies as may be notified by the Central Government.

   Accordingly, the Central Government has notified that no deduction of tax under Chapter XVII of the Income-tax Act, 1961 shall be made on specified payments, in case such payments are made by a person-

   (a) to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank, or
   (b) to any payment systems company authorised by the Reserve Bank of India under section 4(2) of the Payment and Settlement Systems Act, 2007.

   The specified payments are:

   (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) including interchange fee or any other similar charges, by whatever name called, charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007;
   (vii) credit card or debit card commission for transaction between merchant establishment and acquirer bank.

2. **Relaxation from deduction of tax at higher rate under section 206AA [Notification No 53/2016, dated 24-06-2016]**

   For the purpose of reducing the compliance burden of non-corporate non-residents and foreign companies, sub-section (7) of section 206AA has been substituted with effect from 1st June, 2016 to provide for non-applicability of the requirements contained in section 206AA to a non-corporate non-resident or a foreign company, in respect of any other payment [other than interest on long-term bonds as referred to in section 194LC] subject to such conditions as may be prescribed.

Accordingly, the CBDT has, vide this notification, inserted Rule 37BC to provide that the provisions of section 206AA shall not apply to a non-corporate non-resident, or to a foreign company not having PAN in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details and documents to the deductor:

- **Name, e-mail id, contact number;**
- **address in the country or specified territory outside India of which the deductee is a resident;**
- **a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory, if the law of that country or specified territory provides for issuance of such certificate;**
- **Tax Identification Number of the deductee in the country or specified territory of his residence. In case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or specified territory of which he claims to be a resident**

3. Clarification on applicability of TDS provisions of section 194-I on lump sum lease premium paid for acquisition of long term lease [Circular No.35/2016, dated 13-10-2016]

Under section 194-I, tax is required to be deducted at source at the prescribed rates from payment of any income by way of rent. For the purposes of this section, "rent" has been defined as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or machinery or plant or equipment or furniture or fittings.

The issue of whether or not TDS under section 194-I is applicable on 'lump sum lease premium' or 'one-time upfront lease charges" paid by an assessee for acquiring long-term leasehold rights for land or any other property has been examined by the CBDT.

In the case *Foxconn India Developer Limited (Tax Case Appeal No. 801/2013)*, the Chennai High Court held that the one-time non-refundable upfront charges paid by the assessee for the acquisition of leasehold rights over an immovable property for 99 years could not be taken to constitute rental income in the hands of the lessor, obliging the lessee to deduct tax at source under section 194-I and that in such a situation the lease assumes the character of "deemed sale". The Chennai High Court has also in the cases of *Tril Infopark Limited (Tax Case Appeal No. 882/2015)* ruled that TDS was not deductible on payments of lump sum lease premium by the company for acquiring a long-term lease of 99 years.

In view of the above decisions, the CBDT has clarified, vide this Circular, that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I. Therefore, such payments are not liable for TDS under section 194-I.

IMPORTANT CASE LAWS

1.	UCO Bank v. Dy. CIT (2014) 369 ITR 335 (Del)) ***[DECISION NO. 2 OF ICAI CASE STUDY - PAGE NO. 117]***
2.	Ajmer Vidyut Vitran Nigam Ltd., In re (2013) 353 ITR 640 (AAR) ***[DECISION NO. 5 OF ICAI CASE STUDY - PAGE NO. 122]***
3.	Indus Towers Ltd v. CIT (2014) 364 ITR 114 (Del) ***[DECISION NO. 11 OF ICAI CASE STUDY - PAGE NO. 130]***
4.	CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.) ***[DECISION NO. 12 OF ICAI CASE STUDY - PAGE NO. 131]***
5.	DIT (International Taxation) v. Wizcraft International Entertainment (P) Ltd (2014) 364 ITR 227 (Bom) ***[DECISION NO. 17 OF ICAI CASE STUDY - PAGE NO. 136]***
6.	CIT v. Avenue Super Chits (P) Ltd (2015) 375 ITR 76 (Kar ***[DECISION NO. 3 OF ICAI CASE STUDY - PAGE NO. 118]***
7.	CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC) ***[DECISION NO. 15 OF ICAI CASE STUDY - PAGE NO. 134]***
8.	CIT v. V.S. Dempo & Co P Ltd (2016) 381 ITR 303 (Bom) (FB) ***[DECISION NO. 16 OF ICAI CASE STUDY - PAGE NO. 135]***

UNIT W – MISCELLENEOUS TOPIC

126. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES.

Section:- 281B

Question 83

Discuss the provisions of provisional attachment to protect revenue in certain cases

Answer

1. Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.
2. Every such provisional attachment shall remain in force for a period of six months from the date of the such order.

   However, above period can be extended by such further period or periods as the concerned authority thinks fit but the total period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later.
3. Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached, the Assessing Officer shall, by an order in writing, revoke such attachment:

   However, if the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, then he may accept such guarantee and revoke the attachment.
4. The Assessing Officer may, for the purposes of determining the value of the property provisionally attached, make a reference to the Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the Assessing Officer within a period of thirty days from the date of receipt of such reference.
5. An order revoking the provisional attachment shall be made—

   (i) within forty-five days from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made; or
   (ii) within fifteen days from the date of receipt of guarantee in any other case.
6. Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the Assessing Officer may

invoke the guarantee furnished, wholly or in part, to recover the amount.

7. The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee, or fails to furnish a new guarantee from a scheduled bank for an equal amount, fifteen days before the expiry of such guarantee.
8. The amount realised by invoking the guarantee shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent at the place where the office of the Principal Commissioner or Commissioner is situate.
9. Where the Assessing Officer is satisfied that the guarantee is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

Readers Note:

127. Notifications/Circulars

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

Furnishing of Statement of Financial Transaction [Rule 114E]

The statement of financial transaction required to be furnished under section 285BA(1) of the Income-tax Act, 1961 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.

Sr. No.	Nature and value of transaction	Class of person (reporting person)
(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 Reserve Bank of India under the Payment and Settlement Systems Act, 2007. (c) Cash deposits or cash withdrawals (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	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act)

(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 to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898.
(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 to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898; (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 Reserve Bank of India Act, 1934, to hold or accept deposit from public.
(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 to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) 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	A company listed on a recognised stock exchange purchasing its own securities under

	amount or value aggregating to Rs. 10 lakh or more in a financial year	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 Rs. 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, if any).	Any person who is liable for audit under section 44AB of the Act
(12)	Cash deposits during the period 09th November, 2016 to 30th December, 2016 aggregating to— (i) twelve lakh fifty thousand rupees or more, in one or more current account of a person; or (ii) two lakh fifty thousand rupees or more, in one or more accounts (other than a current account) of a person.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).]
(13)	Cash deposits during the period 1st of April, 2016 to 9th November, 2016 in respect of accounts that are reportable under Sl.No.12.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).]

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.10 and Sl. No. 11] 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.

IMPORTANT CASE LAWS	
1.	Dr. Manoj Kabra v. ITO (2014) 364 ITR 541 (All) ***[DECISION NO. 1 OF ICAI CASE STUDY – PAGE NO.115]***

UNIT F – INCOME COMPUTATION AND DISCLOSURE STANDARS (ICDS)

128. ORIGIN AND APPLICABILITY OF ICDS

Question 84

Discuss the origin of ICDS.

Answer

Section 145 of the Income-tax Act, 1961 deals with the method of accounting.

- Section 145(1) requires income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" to be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assessee, subject to the provisions of section 145(2).
- Under section 145(2), the Central Government is empowered to notify in the Official Gazette from time to time, income computation and disclosure standards (ICDSs) to be followed by particular class of assessees or in respect of particular class of income.
- Accordingly, the Central Government had, vide Notification No.S.O.892(E) dated 31.3.2015 notified ten income computation and disclosure standards (ICDSs).
- However, the Central Government has, vide Notification No.S.O.3078(E) dated 29.9.2016, rescinded Notification No.S.O.892(E) dated 31.3.2015 (above notification).
- Simultaneously, vide Notification No.S.O.3079(E) dated 29.9.2016, the Central Government has notified ten new ICDSs to be applicable from A.Y.2017-18.

Reader's Note:

Question 85

Discuss the applicability of ICDS.

Answer

- The newly notified ICDSs have to be followed by all assessees following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources",
- However, following class of assessee is not required to follow ICDSs.
  "An individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB."
- ICDSs are required to be followed with effect from A.Y.2017-18.

Reader's Note:

129. DEVIATION OF ICDS FROM ACCOUNTING STANDARDS AND COURT RULINGS

The deviation of ICDS from Accounting Standards has been divided into following paras for better understanding.

Para No.	Description
Para 129	Deviation of ICDS from Accounting Standards and Court Rulings
Para 129A	Accounting Policy
Para 129B	Valuation of Inventories
Para 129C	Construction Contracts
Para 129D	Government Grants
Para 129E	Securities
Para 129F	Borrowing Costs
Para 129G	Provisions, Contingent Liabilities & Contingent Assets

Question 86

What shall be the impact of ICDS on tax liability since they deviate from accounting standards and judicial rulings?

Answer

- There are significant deviations between the notified ICDSs and Accounting Standards.
- Further, the ICDSs, at many places, differ significantly from decisions pronounced by the Supreme Court and High Courts.
- These deviations are likely to have the effect of:-
  (a) advancing the recognition of income or gains or
  (b) postponing the recognition of expenditure or losses under tax laws
  and consequently, impacting the computation of tax liability under the Income-tax Act, 1961.
- These deviations would also increase the timing differences between taxable income and accounting income.

Reader's Note:

129A. ACCOUNTING POLICY

ICDS:- I vis-à-vis AS-1

Question 87

How would non-consideration of prudence in selection and application of accounting policies impact the computation of total income under the Income-tax Act, 1961? Give examples of non-consideration of prudence in the Income Computation and Disclosure Standards (ICDSs).

Answer

- **ICDS I** on Accounting Policies does not recognize the concepts of "materiality" and "prudence" in selection and application of accounting policies.
- The concept of prudence requires that provisions should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information.
- Examples of non-consideration of prudence in the ICDSs:
  (i) The requirement in ICDS VII on Government Grants that recognition of a Government grant shall not be postponed beyond the date of actual receipt, even if conditions attached to the grant are not fulfilled.
  (ii) Non-recognition of expected losses on construction contracts and contract costs, recovery of which is not probable, as an expense immediately, in ICDS III on Construction Contracts.
  (iii) Non-recognition of provision for loss on onerous contracts
- Non-consideration of prudence in selection and application of accounting policies may have the impact of earlier recognition of income and gains or later recognition of expenses or losses for tax computation.

Reader's Note:

Question 88

Whether change in accounting policy is permissible under ICDS-I? How it differs from AS-1?

Answer

- **Requirement of "reasonable cause" for change in accounting policy:- <u>AS 5 vis-à-vis ICDS I</u>**
- **AS 5** which deals with changes in accounting policies, permits change in accounting policies if adoption of different accounting policies is required by -
  (a) statute; or
  (b) for the purpose of compliance with an accounting standard; or
  (c) if such change results in a more appropriate presentation of financial statements.
- **ICDS I**, however, states that an accounting policy should not be changed without any **'reasonable cause'**.
- The term "reasonable cause" has not been defined and would involve exercise of judgment by management and tax authorities.

Reader's Note:

129B. VALUATION OF INVENTORIES

ICDS:- II vis-à-vis AS-2

Question 89

How is inventory on the date of dissolution of a firm to be valued, where the firm's business is to be continued by one of its partners, in a case where the dissolution has taken place on or after 1.4.2016? What was the manner in which such inventory would have been valued had the dissolution taken place on 31.3.2016?

Or

Discuss the significant deviation of ICDS II visa-vis Supreme Court Ruling.

Answer

Dissolution has taken place on or after 1.4.2016

- If dissolution has taken place on or after 1.4.2016 means dissolution is taking place during previous year 2016-17 (A.Y. 2017-18) and onwards. As discussed earlier that ICDSs are applicable with effect from A.Y. 2017-18.
- In case of dissolution of a partnership firm or association of persons or body of individuals, Paragraph 24 of **ICDS II** on Valuation of Inventories deals as under:
  "The inventory on the date of dissolution to be valued at the net realisable value, notwithstanding whether business is discontinued or not."

Dissolution has taken place on 31.3.2016

- If dissolution took place on 31.3.2016, then ICDS were not applicable. Therefore, one has to follow the method of valuation suggested by Supreme Court in case of **Shakti Trading Co. vs. CIT (2001) 250 ITR 871.** This decision requires valuation of inventory to be done as under in the event when firm is dissolved due to death of a partner and the surviving partners reconstitute the firm and continue the business as before.
  "The inventory on the date of dissolution to be valued at the cost or market price, whichever is lower."

Reader's Note:

129C. CONSTRUCTION CONTRACTS

ICDS:- III vis-à-vis AS-7

Question 90

What are the main differences between the treatment given in AS 7 and ICDS III relating to construction contracts?

Answer

Point of Difference	AS 7	ICDS III	Impact
Point in time of recognition of expected loss on construction contracts	AS 7 permits recognition of expected loss on construction contract as well as contract costs, recovery of which is not probable, as an expense immediately. It also permits recognition of expected loss immediately as an expense, when it is probable that total contract costs will exceed total contract revenue.	There is no specific requirement in ICDS to recognize such expected losses on construction contracts immediately as expense. This is a deviation from judicial pronouncement also.	By implication, such losses are also to be recognized on Percentage of Completion Method as per ICDS III. Consequently, recognition of losses for tax purposes is postponed.
Treatment of penalties arising from delays caused by the contractor in completion of the contract	Paragraph 11 of AS 7 permits decrease in contract revenue as a result of penalties arising from delays caused by the contractor in the completion of the contract.	However, ICDS III does not permit such reduction in contract revenue.	Non-recognition of decrease in contract revenue as a result of such penalties would have the effect of inflating the taxable income and consequent tax liability
Point in time of recognition of retention money	As per paragraph 10 of AS 7, contract revenue should comprise the initial amount of revenue agreed in the contract. While there is a specific requirement in paragraph 10 of ICDS III to include retentions, there is no such requirement in paragraph 10 of AS 7	As per para 10 of ICDS III requires retention money to be treated as part of "Contract revenue and recognized on percentage of completion method.	This is a deviation from following court decisions: - **CIT v. Associated Cables (P) Ltd. (2006) 286 ITR 596 (Bom.)** - **CIT v. Ignifluid Boilers (I) Ltd. (2006) 283 ITR 295 (Mad)** This will result into early recognition of income and therefore will have impact on tax liability.

Reader's Note:

129D. GOVERNMENT GRANTS

ICDS:- VII vis-à-vis AS-12

Question 91

Compare and contrast the provisions of ICDS VII and AS-12 with regard to recognition of Government Grants.

Answer

(1) Recognition of Government Grants

- **AS 12 provides** that Government Grants should not be recognized until there is a reasonable assurance that the enterprise will comply with the conditions attached to them and the grants will be received.
- **Paragraph 4(1) of ICDS VII** also provides that Government Grants should not be recognized until there is a reasonable assurance that the enterprise will comply with the conditions attached to them and the grants will be received. This requirement is in line with AS 12.
- **However, Paragraph 4(2) of ICDS VII** goes on to provide that recognition of government grant shall not be postponed beyond the date of actual receipt.
- Therefore, as per ICDS VII, initial recognition of government grants cannot be postponed beyond the date of actual receipt even in a case where all the recognition conditions in accordance with AS 12 are not met.

(2) Treatment of Government Grants of capital nature and Government Grants in the nature of promoter's contribution

- **AS 12** permits government grants in the nature of promoters' contribution, i.e., grants given with reference to the total investment in an undertaking or by way of contribution towards its total capital outlay (for example, central investment subsidy scheme) to be treated as capital reserve which can neither be distributed as dividend nor considered as deferred income.
- **ICDS VII**, however, does not contain specific requirement to capitalize government grants in the nature of promoter's contribution. Except in case of government grant relating to a depreciable fixed asset, which has to be reduced from written down value or actual cost and corpus grant subject to certain conditions, all other grants have to be recognized as upfront income or as income over the periods necessary to match them with the related costs which they are intended to compensate.

<u>Deviation from judicial precedent:</u>

The requirement in ICDS VII to recognize such grants as upfront or deferred income is not in line with the rationale of the Supreme Court. The Supreme Court in, **CIT v Ponni Sugar Mills (2008) 306 ITR 392,** observed that it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. If the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account.

Reader's Note:

129E. SECURITIES

ICDS:- VIII vis-à-vis judicial pronouncement

Question 92

Discuss the manner in which valuation of securities held as stock-in-trade is done? How it deviates from the judicial pronouncements?

Answer

ICDS VIII requires securities held as stock-in-trade to be valued at lower of actual cost initially recognized or net realizable value at the end of the year, whichever is lower. Further, such comparison has to be done **category-wise** and not for each individual security.

Deviation from judicial precedents:

- The Supreme Court, in the case of **UCO Bank Ltd. v CIT 240 ITR 355**, observed that it is not proper to take into account anticipated profit in the shape of appreciated value of closing stock, as no prudent trader would show increased profit before actual realization. This is the theory underlying the valuation of closing stock at the lower of cost or market price.
- The requirement in ICDS VIII to compare the actual cost and net realizable value **category-wise**, in effect, results in recognition of anticipated profits since rise in value of some securities will absorb the decrease in value of the remaining securities in the same category

Reader's Note:

129F. BORROWING COSTS

ICDS:- IX vis-à-vis AS-16

Question 93

Compare and contrast the AS 16 vis-à-vis ICDS IX.

Answer

(1) Treatment of income earned from temporary investment of borrowed funds

Paragraph 11 of AS 16 permits **income earned on temporary investment** of borrowed funds pending their expenditure on the qualifying asset **to be deducted from borrowing costs** incurred.

ICDS IX however, **does not permit such reduction** from borrowing costs.

(2) Suspension of capitalization of borrowing costs

Paragraph 17 of AS 16 permits suspension of capitalization of borrowing costs during extended periods in which active development is interrupted.

ICDS IX does **not permit suspension** of capitalization of borrowing costs in such cases.

Above deviations between AS 16 and ICDS IX would result in increase in taxable income.

Reader's Note:

129G. PROVISIONS, CONTINGENT LIABILITIES & CONTINGENT ASSETS

ICDS:- X vis-à-vis AS-29

Question 94

"The conditions for recognition of provisions and contingent assets are more stringent in **ICDS X** as compared to **AS 29**" - Elucidate.

Answer

(1) Condition for recognition of Provision

- AS 29 requires recognition of a provision when it is **probable** that an outflow of resources embodying economic benefits will be required to settle the obligation.
- ICDS X requires recognition of a provision only when it is **reasonably certain** that an outflow of resources embodying economic benefits will be required to settle the obligation.
- The requirement of "reasonable certainty" in ICDS X to recognize a provision is more stringent as compared to the requirement of "probability" in AS 29. This will have the effect of postponing the recognition of provision for tax purposes and consequently, result in earlier payment of taxes.

(2) Condition for recognition of Contingent Asset

- Both AS 29 and ICDS X provide that a contingent asset should not be recognized. Further, both AS 29 and ICDS X require contingent assets to be assessed continually.
- Thereafter, recognition of contingent assets and related income is required in –
  - AS 29, if inflow of economic benefits is **"virtually certain"**;
  - ICDS X, if inflow of economic benefits is **"reasonably certain"**.
- The requirement of "reasonable certainty" in ICDS X to recognize a contingent asset and the related income is more stringent as compared to the requirement of "virtual certainty" in AS 29. This deviation between AS 29 and ICDS X would have the effect of advancing recognition of income for tax purposes and consequently, result in earlier payment of taxes.

Reader's Note:

130. NOTIFICATIONS AND CIRCULARS

Rescinding of initially notified Income Computation Disclosure Standards (ICDSs) [Notification No S.O. 3078(E) dated 29.9.2016] and Notification of new ICDSs to be applicable from A.Y.2017-18 [Notification No. S.O. 3079(E) dated 29-09-2016]

Circular No. 10/2017, dated 23-03-2017

Clarification on Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961

The CBDT has, vide this circular, issued the following clarification on certain issues arising out of the notified ICDSs:

Question 1: *Preamble of ICDS I states that this ICDS is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purposes of maintenance of books of account. However, Para 1 of ICDS I states that it deals with significant accounting policies. Accounting policies are applied for maintenance of books of accounts and preparing financial statements. What is the interplay between ICDS I and maintenance of books of accounts?*

Answer: As stated in the Preamble, ICDS is not meant for maintenance of books of accounts or preparing financial statements. Persons are required to maintain books of accounts and prepare financial statements as per accounting policies applicable to them. For example, companies are required to maintain books of account and prepare financial statements as per requirements of Companies Act, 2013. The accounting policies mentioned in ICDS-I being fundamental in nature shall be applicable for computing income under the heads "Profits and gains of business or profession" or "Income from other sources".

Question 2: *Certain ICDS provisions are inconsistent with judicial precedents. Whether these judicial precedents would prevail over ICDS?*

Answer: The ICDSs have been notified after due deliberation and after examining judicial views for bringing certainty on the issues covered by it. Certain judicial pronouncements were pronounced in the absence of authoritative guidance on these issues under the Act for computing Income under the head "Profits and gains of business or profession" or Income from other sources. Since certainty is now provided by notifying ICDS under section 145(2), the provisions of ICDS shall be applicable to the transactional issues dealt therein in relation to assessment year 2017-18 and subsequent assessment years.

Question 3: *Does ICDS apply to non-corporate taxpayers who are not required to maintain books of account and/or those who are covered by presumptive scheme of taxation like sections 44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. of the Act?*

Answer: ICDS is applicable to specified persons having income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources'. Therefore, the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme. For example, for computing presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on Construction Contract or Revenue recognition shall apply for determining the receipts or turnover, as the case may be.

Question 4: *If there is conflict between ICDS and other specific provisions of the Income-tax Rules,1962 governing taxation of income like Rules 9A, 9B etc. of the Rules, which provisions shall prevail?*

Answer: ICDS provides general principles for computation of income. In case of conflict, if any, between the provisions of Rules and ICDS, the provisions of Rules, which deal with specific circumstances, shall prevail.

Question 5: *ICDS is framed on the basis of accounting standards notified by Ministry of Corporate Affairs (MCA) vide Notification No. GSR 739(E) dated 7th December, 2006 under section 211(3C) of erstwhile Companies Act 1956. However, MCA has notified in February, 2015 a new set of standards called 'Indian Accounting Standards' (Ind-AS). How will ICDS apply to companies which adopted Ind-AS?*

Answer: ICDS shall apply for computation of taxable income under the head " Profit and gains of business or profession" or "Income from other sources" under the Income-tax Act. This is irrespective of the accounting standards adopted by companies i.e. either Accounting Standards or Ind-AS.

Question 6: *Whether ICDS shall apply to computation of Minimum Alternate Tax (MAT) under section 115JB of the Act or Alternate Minimum Tax (AMT) under section 115JC of the Act?*

Answer: MAT under section 115JB of the Act is computed on 'book profit' that is net profit as shown in the Profit and Loss Account prepared under the Companies Act subject to certain specified adjustments. Since, the provisions of ICDS are applicable for computation of income under the regular provisions of the Act, the provisions of ICDS shall not apply for computation of MAT.

AMT under section 115JC of the Act is computed on adjusted total income which is derived by making specified adjustments to total income computed as per the regular provisions of the Act. Hence, the provisions of ICDS shall apply for computation of AMT.

Question 7: *Whether the provisions of ICDS shall apply to Banks, Non-banking financial institutions, Insurance companies, Power sector, etc.?*

Answer: The general provisions of ICDS shall apply to all persons unless there are sector specific provisions contained in the ICDS or the Act. For example, ICDS VIII contains specific provisions for banks and certain financial institutions and Schedule I of the Act contains specific provisions for Insurance business.

Question 8: *Para 4(ii) of ICDS-1 provides that Marked to Market (MTM) loss or an expected loss shall not be recognized unless the recognition is in accordance with the provisions of any other ICDS. Whether similar consideration applies to recognition of MTM gain or expected incomes?*

Answer: Same principle as contained in ICDS-I relating to MTM losses or an expected loss shall apply *mutatis mutandis* to MTM gains or an expected profit.

Question 9: *ICDS-1 provides that an accounting policy shall not be changed without 'reasonable cause'. The term 'reasonable cause' is not defined. What shall constitute 'reasonable cause'?*

Answer: Under the Act, 'reasonable cause' is an existing concept and has evolved well over a period of time conferring desired flexibility to the tax payer in deserving cases.

Question 10: *Which ICDS would govern derivative instruments?*

Answer: ICDS -VI (subject to para 3 of ICDS-III) provides guidance on accounting for derivative contracts such as forward contracts and other similar contracts. For derivatives, not within the scope of ICDS-VI, provisions of ICDS-1 would apply.

Question 11: *Whether the recognition of retention money, receipt of which is contingent on the satisfaction of certain performance criterion is to be recognized as revenue on billing?*

Answer: Retention money, being part of overall contract revenue, shall be recognised as revenue subject to reasonable certainty of its ultimate collection condition contained in para 9 of ICDS III on Construction contracts.

Question 12: Since there is no specific scope exclusion for real estate developers and Build-Operate-Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS III and ICDS IV should be applied by real estate developers and BOT operators. Also, whether ICDS is applicable for leases.

Answer: At present, there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply to these transactions as may be applicable.

Question 13: *The condition of reasonable certainty of ultimate collection is not laid down for taxation of interest, royalty and dividend. Whether the taxpayer is obliged to account for such income even when the collection thereof is uncertain?*

Answer: As a principle, interest accrues on time basis and royalty accrues on the basis of contractual terms. Subsequent non-recovery in either cases can be claimed as deduction in view of amendment to section 36(1)(vii). Further, the provision of the Act (e.g. Section 43D) shall prevail over the provisions of ICDS.

Question 14*: Whether ICDS is applicable to revenues which are liable to tax on gross basis like interest, royalty and fees for technical services for non-residents u/s. 115A of the Act.*

Answer: Yes, the provisions of ICDS, also apply for computation of these incomes on gross basis for arriving at the amount chargeable to tax.

Question 15: *Para 8 of ICDS-V states expenditure incurred on commissioning of project, including expenditure incurred on test runs and experimental production shall be capitalized. It also states that expenditure incurred after the plant has begun commercial production i.e., production intended for sale or captive consumption shall be treated as revenue expenditure. What shall be the treatment of expense incurred after the conduct of test runs and experimental production but before commencement of commercial production?*

Answer: As clarified in Para 8 of lCDS-V, the expenditure incurred till the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as capital expenditure.

Question 16: *What is the taxability of opening balance as on 1st April 2016 of Foreign Currency Translation Reserve (FCTR) relating to non-integral foreign operation, if any, recognised as per Accounting Standards (AS) 11?*

Answer: FCTR balance as on 1 April 2016 pertaining to exchange differences on monetary items for non-integral operations, shall be recognised in the previous year relevant for assessment year 2017-18 to the extent not recognised in the income computation in the past.

Question 17: *For subsidy received prior to 1st April 2016 but not recognised in the books pending satisfaction of related conditions and achieving reasonable certainty of receipt, how shall the same be recognised under ICDS on or after 1st April 2016?*

Answer: Para 4 of ICDS VII read with Para 5 to Para 9 of ICDS-VII provides for timing of recognition of government grant. The transitional provision in Para 13 of ICDS-VII provides that a government grant which meets the recognition criteria on or after 1st April 2016 shall be recognised in accordance with ICDS VII. All government grants actually received prior to 1st April 2016 shall be deemed to have been recognised on its receipt in accordance with Para 4(2) of ICDS VII and accordingly will be outside the transitional provision and therefore the government grants received on or after 1st April 2016 and for which recognition criteria provided in Para 5 to Para 9 of ICDS VII is also satisfied thereafter, the same shall be recognised as per the provisions of ICDS VII. The grants received prior to 1st April 2016 shall continue to be recognised as per the law prevailing prior to that date.

For example, if out of total subsidy entitlement of ` 10 Crore an amount of ` 6 Crore is recognised in the books of account till 31st March 2016 and recognition of balance ` 4 Crore is deferred pending satisfaction of related conditions and/or achieving reasonable certainty of receipt. The balance amount of ` 4 Crore will be taxed in the year in which related conditions are met and reasonable certainty is achieved. If these conditions are met over two years, the amount of ` 4 Crore shall be taxed over the period of two years. The amount of ` 6 Crore for which recognition criteria were met prior to 1st April 2016 shall not be taxable post 1st April 2016.

But if the subsidy is already received prior to 1st April 2016, Para 13 of ICDS-VII shall not apply even if some of the related conditions are met on or after 1 April 2016. This is in view of Para 4(2) of ICDS-VII which provides that Government grant shall not be postponed beyond the date of actual receipt. Such grants shall continue to be governed by the provisions of law applicable prior to 1st April 2016.

Question 18: *If the taxpayer sells a security on 30th April 2017. The interest payment dates are December and June. The actual date of receipt of interest is on 30th June 2017 but the interest on accrual basis has been accounted as income on 31st March 2017. Whether the taxpayer shall be permitted to claim deduction of such interest i.e. offered to tax but not received while computing the capital gain?*

Answer: Yes, the amount already taxed as interest income on accrual basis shall be taken into account for computation of income arising from such sale.

Question 19: *Para 9 of ICDS-VIII on securities requires securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value (NRV) at the end of that previous year, whichever is lower. Para 10 of Part-A of ICDS-VIII requires the said exercise to be carried out category wise. How the same shall be computed?*

Answer: For subsequent measurement of securities held as stock-in-trade, the securities are first aggregated category wise. The aggregate cost and NRV of each category of security are compared and the lower of the two is to be taken as carrying value as per ICDS-VIII. This is illustrated below-

Security	Category	Cost	NRV	Lower of cost or NRV	ICDS Value
A	Share	100	75	75	
B	Share	120	150	120	
C	Share	140	120	120	
D	Share	200	190	190	
	Total	560	535	505	535
E	Securities	150	160	150	
F	Securities	105	90	90	
G	Securities	125	135	125	
H	Securities	220	230	220	
	Total	600	615	585	600
Securities Total		**1160**	**1150**	**1090**	**1135**

Question 20: *There are specific provisions in the Act read with Rules under which a portion of borrowing cost may get disallowed under sections like 14A, 43B, 40(a)(i), 40(a)(ia), 40A(2)(b), etc. of the Act. Whether borrowing costs to be capitalized under ICDS-IX should exclude portion of borrowing costs which gets disallowed under such specific provisions?*

Answer: Since specific provisions of the Act override the provisions of ICDS, it is clarified that borrowing costs to be considered for capitalization under ICDS IX shall exclude those borrowing costs which are disallowed under specific provisions of the Act. Capitalization of borrowing cost shall apply for that portion of the borrowing cost which is otherwise allowable as deduction under the Act.

Question 21: *Whether bill discounting charges and other similar charges would fall under the definition of borrowing cost?*

Answer: The definition of borrowing cost is an inclusive definition. Bill discounting charges and other similar charges are covered as borrowing cost.

Question 22: *How to allocate borrowing costs relating to general borrowing as computed in accordance with formula provided under Para 6 of ICDS-IX to different qualifying assets?*

Answer: The capitalization of general borrowing cost under ICDS-IX shall be done on asset by-asset basis.

Question 23: *What is the impact of Para 20 of ICDS X containing transitional provisions?*

Answer: Para 20 of ICDS X provides that all the provisions or assets and related income shall be recognised for the previous year commencing on or after 1st day of April 2016 in accordance with the provisions of this standard after taking into account the amount recognised, if any, for the same for any previous year ending on or before 31st day of March, 2016.

The intent of transitional provision is that there is neither 'double taxation' of income due to application of ICDS nor there should be escapement of any income due to application of ICDS from a particular date. This is explained as under –

Provision required as per ICDS on 31 March 2017 for items brought forward from 31st day of March 2016 (A)	INR 3 Crores
Provisions as per ICDS for FY 2016-17 (B)	INR 5 Crores
Total gross provision (C) =(A)+(B)	INR 8 Crores
Less: Provision already recognised for computation of taxable income in FY 2016-17 or earlier (D)	INR 2 Crores
Net provision as per ICDS in FY 2016-17 to be recognised as per transition provision (E) = (C) - (D)	INR 6 Crores

Question 24: *Expenditure on most post-retirement benefits like provident fund, gratuity, etc. are covered by specific provisions. There are other post-retirement benefits offered by companies like medical benefits. Such benefits are covered by AS-15 for which no parallel ICDS has been notified. Whether provision for these liabilities are excluded from scope of ICDS X?*

Answer: It is clarified that provisioning for employee benefit which are otherwise covered by AS 15 shall continue to be governed by specific provisions of the Act and are not dealt with by ICDS-X.

Question 25: *ICDS-1 requires disclosure of significant accounting policies and other ICDS requires specific disclosures. Where is the taxpayer required to make such disclosures specified in ICDS?*

Answer: Net effect on the income due to application of ICDS is to be disclosed in the Return of income. The disclosures required under ICDS shall be made in the tax audit report in Form 3CD. However, there shall not be any separate disclosure requirements for persons who are not liable to tax audit.

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