

DIRECT **TAXES**



POWER PACK REVISION MATERIAL

RELEVANT FOR MAY 2020 EXAM

- CA MEHUL THAKKER

POWER PACK REVISION MATERIAL

FOR MAY 2020

CA MEHUL THAKKER

ASSESSMENT YEAR 2020-21

CA Mehul Thakker

Special Thanks to CA Chetan V Chaudhary

Law stated in this book is as amended by the Finance Act, 2019

Every effort has been made to avoid errors and omissions in this publication. In spite of this, errors may creep in. It is notified that neither the publisher nor the author or seller will be responsible for any damage or loss of action to anyone, of any kind, in any manner, therefrom. It is suggested that to resolve any doubts, the readers may cross-check the facts, the relevant law and contents of the publication with Government publication or notifications.

Any mistake, error or discrepancy noted may be brought to our notice which shall be taken care of in the next edition.

Further, no part of this book may be reproduced or copied in any form or by any means [graphic, electronic or mechanical, including photocopying, recording, taping, or information retrieval systems] or reproduced on any disc, tape, perforated media or other information storage device, etc., without the written permission of the author. Breach of this condition is liable for legal action.

All disputes are subject to Ahmedabad Jurisdiction only.

A MILLION TON QUESTION
WHAT TO REVISE IN DIRECT TAX
ON LAST DAY?

IF YOU FIND

- ✓ **ALL AMENDMENTS MADE BY FA 2019**
- ✓ **RECENT CIRCULARS**
- ✓ **RECENT NOTIFICATIONS**
- ✓ **FREQUENTLY ASKED PRACTICALS**
- ✓ **IMPORTANT CASE STUDIES**
- ✓ **RTP MAY 2020**

AT ONE PLACE





**HERE IS THE
POWER PACK
REVISION
MATERIAL**

PART – I

IMPORTANT PROVISIONS

OF INCOME TAX ACT, 1961

1 – BASICS OF INCOME TAX

1.1 RATES OF INCOME TAX

Annual Finance Act

(i) Paragraph A:

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

Level of Total Income	Rate of income-tax
Where the total income	
- Does not exceed Rs. 2,50,000	Nil
- Exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000	5% of the amount by which the total income exceeds Rs. 2,50,000
- Exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	Rs. 12,500 plus 20% of the amount by which the total income exceeds Rs. 5,00,000
- Exceeds Rs. 10,00,000	Rs. 1,12,500 plus 30% of the amount by which the total income exceeds Rs. 10,00,000

(b) For resident individuals of the age of 60 years or more but less than 80 years at any time during the previous year.

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

(c) For resident individuals of the age of 80 years or more at any time during the previous year

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

(ii) Paragraph B : Co-operative society

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

(iii) Paragraph C : Firm/Limited Liability Partnership (LLP)

The rate of tax for a firm (LLP) for A.Y. 2020-21 is 30%.

(iv) Paragraph D : Local Authority

The rate of tax for local authority for A.Y. 2020-21 is 30%.

1.2 SURCHARGE AND MARGINAL RELIEF

The rates of surcharge applicable to Individuals/HUF/AOPs/BOIs/Artificial Juridical Persons for A.Y.2020-21 are as follows –

Nature of Income	If total income (including income u/s 111A and 112A) in the range of		If total income (excluding income u/s 111A and 112A) in the range of	If total income (excluding income u/s 111A and 112A) is	Where total income (including income u/s 111A and 112A) exceeds Rs.2 crore in cases not covered under (4) and (5) above
	Rs.50 lakhs to Rs.1 crore	Rs.1 crore to Rs.2 crore			
(1)	(2)	(3)	(4)	(5)	(6)
Income other than covered under section 111A and 112A	10%	15%	25%	37%	15%
Income covered under section 111A and 112A	10%	15%	15%	15%	15%

The rates of surcharge applicable to Individuals/HUF/AOPs/BOIs/Artificial Juridical Persons (having any income under section 115AD) for A.Y.2020-21 are as follows –

Nature of Income	If total income [including STCG/ LTCG on securities referred to in section 115AD(1)(b)] in the range of		If total income [excluding STCG/ LTCG on securities referred to in section 115AD(1)(b)] in the range of	If total income [excluding STCG/ LTCG on securities referred to in section 115AD(1)(b)] is	Where total income [including STCG/ LTCG on securities referred to in section 115AD(1)(b)] exceeds Rs.2 crore in cases not covered under (4) and (5) above
	Rs.50 lakhs to Rs.1 crore	Rs.1 crore to Rs.2 crore	Rs.2 crore to Rs.5 crore	Above Rs.5 crore	
(1)	(2)	(3)	(4)	(5)	(6)
Income other than covered under section 111A and 112A	10%	15%	25%	37%	15%
STCG/ LTCG on securities referred to in section 115AD(1)(b)	10%	15%	15%	15%	15%

The rates of surcharge applicable to firm, Co-operative Society, Local Authority for A.Y.2020-21 are as follows–

Surcharge (as a percentage of income tax)-	If total income is	If total income (including income u/s 111A and 112A) in the range of
	Upto Rs.1 Crores	Above Rs.10 Crores
Firm	Nil	12%
Co-operative society	Nil	12%
Local Authority	Nil	12%

The above surcharge is subject to a Marginal relief

Practical 1

Find out relevant rate of surcharge applicable for the assessment year 2020-21 for the following cases

Amount in Rs.

Sr. No.	Nature of Income	Mr. X	Mr. Y	Mr. Z	Mr. A	Mr. B
1.	Short Term Capital gain u/s 111A	30,00,000	60,00,000	54,00,000	50,00,000	60,00,000
2.	Long Term Capital gain u/s 112A	25,00,000	65,00,000	55,00,000	65,00,000	55,00,000
3.	Other Income	40,00,000	50,00,000	3,00,00,000	6,00,00,000	1,10,00,000
	Total Income	95,00,000	1,75,00,000	4,04,00,000	7,05,00,000	2,25,00,000

Solution

Sr. No.	Nature of Income	Rate of Surcharge on Income Tax on				
		Mr. X	Mr. Y	Mr. Z	Mr. A	Mr. B
1.	Short Term Capital gain u/s 111A and Long Term Capital gain u/s 112A	10%	15%	15%	15%	15%
2.	Other Income	10%	15%	25%	37%	15%

Reader's Note:**1.3 HEALTH AND EDUCATION CESS (HEC)**

“Health and Education cess (HEC)” is to be calculated at the rate of 4% of income-tax and surcharge. HEC is applicable to all assessees i.e., individuals, HUFs, AOP/BOIs, co-operative societies, firms, LLPs, local authorities and companies. The format of computation of HEC is as under:-

(a) Income Tax	XXXXXX
(b) Add: Surcharge on Income Tax (if any)	XXXXXX
(c) Sub-Total (a+b)	XXXXXX
(d) Health and Education cess @ 4% on (c)	XXXXXX
(e) Total Tax payable (c+d)	XXXXXX

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

1.4 REBATE**Section:- 87A**

- (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.3,50,000 [Rs. 5,00,000 – Amended by Finance Act, 2019 w.e.f. A.Y. 2020-21]**.
- (b) Such rebate shall be the amount of **income-tax payable** on the total income **or** an amount of Rs. **2,500 [Rs. 12,500 – Amended by Finance Act, 2019 w.e.f. A.Y. 2020-21]** whichever is less.

Practical 2

The gross total income of Mr. X, a resident aged 30 years, comprises of salary (Rs.5,35,000) and interest on savings bank (Rs.8,000). Compute his tax liability, assuming that he had deposited Rs.50,000 in public provident fund.

Solution**Computation of total income of Mr. X**

Particulars	Rs.	Rs.
Salary		5,35,000
Interest on savings bank account		8,000
Gross Total Income		5,43,000
Less: Deductions under chapter VIA		
Section 80C (deposit in PPF)	50,000	
Section 80TTA (interest on savings bank account)	8,000	58,000
Total Income		4,85,000

Computation of tax liability of Mr. X

Particulars	Rs.
Tax on total income @ 5% of Rs.85,000 (Rs.4,85,000-Rs.2,50,000)	11,750
Less: Rebate under 87A	(11,750)
	Nil
Add: Health and Education cess @4%	Nil
Total tax liability	Nil
Total tax liability (Rounded off)	Nil

Reader's Note:

2 – INCOME WHICH DO NOT FORM PART OF TOTAL INCOME

2.1 INCOMES EXEMPT FROM TAX

Section:- 10

Sec.	Eligible Assessee	Nature of Income	Conditions/Definitions/Comments
10(12A)	Assessee	40% of total amount payable to him is exempt [60% - Amended by FA, 2019, w.e.f A.Y. 2020-21].	(1) Such amount is payable to assessee at the time of closure of his account under NPS or opting out of the pension scheme referred to in section 80CCD. (2) If above amount have been received by nominee on death, then as per proviso to 80CCD (3), nothing shall be taxed in the hands of nominee.
10(12B)	Employee	Any payment from NPS to an employee on partial withdrawal	(1) Withdrawal is made in accordance with the terms and conditions, specified under the Pension Fund Regulatory and Development Authority Act, 2013 and (2) Exemption shall not exceed twenty-five percent of the amount of contributions made by him.
10(23C)	Refer Chapter 15 :- Section 12AA		

Practical 1

Mr. Suresh, an employee of ECO POWER LTD contributed Rs.5,00,000 to New Pension System (NPS) since few years and claimed deduction under section 80CCD. Mr. Suresh was in need of money and therefore, planning to make partial withdrawal of Rs. 2,00,000 from the contribution made by him. Discuss taxability if any. What would have been your answer if he decided to opt out of NPS and received Rs. 11,00,000.

Solution

Particulars	Partial Withdrawal(Rs.)	Opting out of NPS (Rs.)
Amount received from NPS is deemed to be the income u/s 80CCD(3)	2,00,000	11,00,000
Less: Exemption under section 10(12A)	NA	(6,60,000)
Less: Exemption under section 10(12B)	(1,25,000)	NA
Taxable amount	75,000	Rs.4,40,000

Readers Note:

2.2 INCOME OF POLITICAL PARTY

Section:- 13A

- (1) Political party means an AOP or BOI citizens of India registered or deemed to be *registered with the Election Commission of India* as a political party.
- (2) Following categories of *income are not included in computing total income*:
 - (a) Income under the head “House Property”, “Capital Gain” and “Other sources”
 - (b) Any income by way of voluntary contribution

(3) Conditions for availing the exemption:

- (a) The political party keeps and maintains such books of account and other documents as would enable the A.O. to properly deduce its income therefrom.
- (b) The political party keeps and maintains a record of each voluntary contribution (except contribution by way of electoral bond) in excess of Rs. 20,000/- and of the names and addresses of persons who have made such contributions.
- (c) The accounts of the political party are audited by a chartered accountant or other qualified accountants.
- (d) The treasurer of a political party shall in each financial year prepare a report in respect of contribution received by the political party in excess of Rs. 20,000/- from any person in that year and submit it (before due date of submission of return of income) to the Election Commission.
- (e) No donation exceeding Rs. 2,000 is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond **or such other electronic mode as may be prescribed [Amendment made by Finance Act, 2019 w.e.f. 01.04.2019]**.
- (f) It shall furnish the return of income in accordance with the provisions of section 139(4B) on or before the due date u/s 139(1) of the Act.

2.3 SPECIAL PROVISIONS IN RESPECT OF NEWLY ESTABLISHED UNITS IN SPECIAL ECONOMIC ZONES

Section:- 10AA

(A) Conditions:

- (1) *A unit in SEZ has begun to manufacture or produce any article or things or provide any services after 31.03.2005 but on or before 31st March, 2020.*
- (2) *The unit in SEZ is not formed by the splitting up, or the reconstruction, of a business already in existence.*
However, where an industrial undertaking is formed as a result of re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section the same will qualify for the tax concession.

Section 33B

The business of any industrial undertaking carried on in India is discontinued in any previous year by reason of extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee and used for the purposes of such business as a direct result of—

- (i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature ; or
- (ii) riot or civil disturbance ; or
- (iii) accidental fire or explosion ; or
- (iv) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),

and, thereafter, at any time before the expiry of three years from the end of such previous year, the business is re-established, reconstructed or revived by the assessee.

- (3) *The unit in SEZ is not set up by the transfer of plant and machinery previously used for any purpose. This condition is subject to following relaxation:*
 - (a) 20 per cent previously used plant and machinery is permitted - If the value of the previously used plant and machinery does not exceed 20 per cent of the total value of the machinery or plant used in the business, this condition is deemed to have been complied with.

- (b) Second-hand imported machinery is treated as new- Any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled—
- Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India.
 - Such machinery or plant is imported into India from any country outside India.
 - No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.
- (4) The assessee shall furnish the *report from a chartered accountant* in a prescribed form along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provision of this section.
- (5) Deduction under section 10AA is *not available unless it is claimed in the return of income*. – Section 80A(5).
- (6) *If deduction is claimed in respect of a specified business [as referred to in section 35AD(8)(c)] under section 10AA, no deduction in respect of that business will be available under section 35AD.*

(B) Period and quantum of deduction: -

<i>First 5 consecutive assessment years</i> (beginning with the assessment year in which undertaking begins to manufacture or produce articles or things or computer software, as the case may be)	100% of profits and gains derived from export
<i>Next 5 assessment years</i>	50% of profits and gains derived from export
<i>Next 5 assessment years</i>	50% of profits and gains derived from export or amount transferred to “Special Economic Zone Reinvestment Allowance Reserve Account” whichever is lower.

(C) Manner of utilization of “Special Economic Zone Reinvestment Allowance Reserve Account”.

- The new plant and machinery shall be first put to use before the expiry of 3 years from the end of year in which the reserve was created.
- Until the acquisition of new plant and machinery, the reserve may be utilized for the business purposes of the unit. However, it cannot be utilized for the distribution of dividends or profits or for remittance outside India as profits or for creating any asset outside India.
- Prescribed particulars shall be submitted in respect of new plant and machinery along with the return of income for the previous year in which such plant and machinery was first put to use.
- If the reserve is misutilized then the deduction shall be taken back in the year in which the reserve is misutilized and chargeable to tax in that year.
- If the reserve is not utilized for acquiring new plant and machinery within three years as stated above then the deduction shall be taken back in the year immediately following the period of three years.

(D) Profits and gains derived from export shall be worked out as under: -

$$\text{Profits of the business of the unit} \times \frac{\text{Export turnover of the unit}}{\text{Total Turnover of the unit}}$$

- *Export Turnover* means the *consideration* in respect of export by the unit of articles or things or services *received* in, or brought into India by the assessee, *but does not include the following*:
 - a. Freight;
 - b. Telecommunication charges;
 - c. Insurance attributable to the delivery of the articles or things outside India;
 - d. Expenses, if any, incurred in foreign exchange in rendering of services outside India.
- The *profits and gains derived from on-site development* of computer software including services for development of software outside India *shall be deemed to be export profits* eligible for deduction.

(E) Ceiling on deduction to be claimed under section 10AA of the Act

- (a) *Amount of deduction under section 10AA shall be allowed from the total income* of the assessee computed under the Act *before giving deduction under section 10AA* and
- (b) *Deduction under section 10AA shall not exceed* (a) above.

(F) Power of A.O. to re-compute Profit

The provisions of 80IA (8) and 80IA (10) shall apply mutatis mutandis to the unit of SEZ claiming benefit under this section.

(G) Impact once benefit has been availed under section 10AA

- During the period of deduction, depreciation is deemed to have been allowed on the assets. Written down value shall be accordingly reduced.
- No deduction u/s.80 IA or 80-IB shall be allowed in relation to the profits and gains of unit of SEZ.
- Any unabsorbed depreciation u/s.32(2); or business loss u/s.72 (1) or loss under the head 'Capital gains' u/s.74 of the unit shall not be allowed to be carried forward and set off where such loss relates to any of the assessment years ending before the 1st day of April, 2006.

(H) Impact when amalgamation or demerger takes place: -

Where an undertaking is transferred to another company under a scheme of amalgamation or demerger, the deduction under this section shall be allowable in the hands of the amalgamated or the resulting company for the unexpired period.

However, no deduction shall be admissible under this section to the amalgamating company or demerged company for the previous year in which amalgamation or demerger takes place.

Practical 2

Rajesh Exports Pvt Ltd. has set up its manufacturing unit in SEZ which is eligible for the benefit under section 10AA of Income Tax Act. Apart from that it has another manufacturing unit in Non-SEZ area. It provides following information for the year under consideration:

Particulars	(Rs. In lakhs)
Profit from the manufacturing unit set up in SEZ (Export turnover/Total Turnover = 90%)	80
Profit from the manufacturing unit in Non-SEZ area	-40
Income from other sources	22
Amount eligible for deduction under section 80G	5

Compute total income of Rajesh Exports Pvt Ltd.

Solution**Computation of Total Income of Rajesh Export Pvt Ltd.**

Particulars	Rs.	Rs.
Profit from the manufacturing unit set up in SEZ	80	
Profit from the manufacturing unit in Non-SEZ Area	(40)	
Income under the head PGBP (A)		40
Income from Other sources (B)		22
Gross Total Income (A) plus (B)		62
Less: Deduction under section 80 G		(5)
Total Income before giving deduction under section 10AA (C)		57
Less: <i>Deduction under 10 AA</i> is lower of followings:		(57)
(a) <i>Total income as per (C) above</i>	57	
(b) <i>Deduction under section 10AA (90% of Rs. 80)</i>	72	
Total Income		Nil

Readers Note:**Practical 3**

Siddarth Ltd. has an undertaking (Unit-X) in Special Economic Zone (SEZ) and another undertaking (Unit- Y) in Free Trade Zone (FTZ) for development of computer software. It furnishes the following particulars for its 2nd year of operations:

Particulars	Unit X (Rs. In lakhs)	Unit Y (Rs. In lakhs)
Total Sales:	180	120
Export Sales : (Inclusive of Rs. 10 lacs for onsite development of computer software outside India by Unit X)	120	10
Profit earned[After claim of bad debts under section 36(1)(vii) in Unit X]	63	36

Plant and machinery used in the business has been depreciated at 15% on straight line method (SLM) basis and depreciation of Rs. 9 lacs was charged to profit and loss account in the proportion of sales during the previous year.

Rs. 100 lacs were realized out of export sales in time and balance of Rs. 20 lacs become irrecoverable due to bankruptcy of one of the foreign buyers in Unit-X. Compute the deduction under section 10AA of the Income-tax Act, 1961 and taxable income of Siddarth Ltd. for the 2nd year assuming that it has earned interest income of Rs.10,000.

Solution**Computation of Total Income of Siddarth Ltd.**

Particulars	Rs.	Rs.
Profit from undertaking in Special Economic Zone (Unit X) – See Note 4	63,81,000	
Profit from undertaking in Free Trade Zone (Unit Y) - See Note 4	36,54,000	
Income under the head PGBP (A)		1,00,35,000
Income from other sources (B)		10,000
Gross Total Income (A) plus (B)		1,00,45,000
Less: Deduction under Chapter VI A		Nil
Total Income before giving deduction under section 10AA (C)		1,00,45,000

Less: <i>Deduction under 10 AA</i> is lower of followings:		35,45,000
(a) <i>Total income as per (C) above</i>	1,00,45,000	
(b) <i>Deduction under section 10AA (Working Note)</i>	35,45,000	
Total Income		65,00,000

Working Note:

Deduction under section 10AA in respect of Unit X (See Notes 1, 2 & 3)

$$\begin{aligned}
 &= \text{Profits of Unit X} \times \frac{\text{Export turnover of the Unit X}}{\text{Total turnover of Unit X}} \\
 &= \text{Rs. } 63,81,000 \times \frac{\text{Rs. } 1,00,00,000}{\text{Rs. } 1,80,00,000} \\
 &= \text{Rs. } 35,45,000
 \end{aligned}$$

Notes:

- (1) It is assumed that Unit X has fulfilled all the specified conditions for claiming deduction under section 10AA of the Act. Unit Y is, however, not eligible for deduction under section 10AA in respect of the exports made by it since it is located in a Free Trade Zone.
- (2) Export turnover, for the purpose of section 10AA, means the consideration received in respect of export by the unit in SEZ. Therefore, in this case, the amount of Rs. 20,00,000 which has become irrecoverable due to bankruptcy of one of the foreign buyers in Unit X will not be included in its export turnover. Therefore, export turnover of Unit X (in SEZ) = Rs. 1,20,00,000 – Rs. 20,00,000 = Rs. 1,00,00,000.
- (3) Profits and gains from on site development of computer software outside India shall be deemed to be the profits and gains derived from export of computer software outside India. Since the same has already been included in the figure of export sales, no further adjustment is required.
- (4) Computation of unit-wise profits of the business

Particulars	Unit X (Rs.)	Unit Y (Rs.)
Profit earned [after claim of bad debts u/s 36(1)(vii) in Unit X]	63,00,000	36,00,000
Add: Depreciation calculated on SLM basis and charged in the proportion of sales (3:2)	5,40,000	3,60,000
Sub-total	68,40,000	39,60,000
Less: Depreciation calculated @15% on WDV basis and charged in the proportion of sales (3:2) (See Note 5)	(4,59,000)	(3,06,000)
Profits of the business	63,81,000	36,54,000

- (5) Depreciation as per the Income-tax Rules, 1962 for the 2nd year has to be calculated as follows–

Particulars	Unit X (Rs.)
Actual cost of plant and machinery (Rs. 9,00,000 / 15%)	60,00,000
Less: Depreciation @15% for the first year of operations. It is logical to assume that the assets were put to use for more than 180 days during the year.	9,00,000
Written down value as on 1.4.2018	51,00,000
Depreciation @15% on WDV for 2nd year (Rs. 51,00,000 × 15%)	7,65,000

Readers Note:

2.4 RESTRICTIONS ON ALLOWABILITY OF EXPENDITURE

Section:- 14A and Rule 8D

Section 14A(1): As per section 14A, expenditure incurred in relation to any exempt income is not allowed as a deduction while computing income under any of the five heads of income.

Section 14A(2): The Assessing Officer is empowered to determine the amount of expenditure incurred in relation to such income which does not form part of total income in accordance with such method as may be prescribed. Such method shall be adopted by the Assessing Officer if he is not satisfied with the correctness of the claim of the assessee, having regard to the accounts of the assessee.

Section 14A(3): Further, the Assessing Officer is empowered to adopt such method, where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of total income.

Rule 8D

Rule 8D lays down the method for determining amount of expenditure in relation to income not includible in total income. If the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with –

- (a) the correctness of the claim of expenditure by the assessee; or
- (b) 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 hereunder -

The expenditure in relation to income not forming part of total income shall be the aggregate of the following:

- (i) the amount of expenditure directly relating to income which does not form part of total income;
- (ii) an amount equal to 1% of the opening and closing balance of the annual average of the monthly average of the value of investment, income from which does not form part of total income. However, such amount cannot exceed the total expenditure claimed by the assessee.

Clarification regarding disallowance of expenses under section 14A in cases where corresponding exempt income has not been earned during the financial year [Circular No. 5/2014, dated 11.2.2014]

Section 14A provides that no deduction shall be allowed in respect of expenditure incurred relating to income which does not form part of total income. A controversy has arisen as to whether disallowance can be made by invoking section 14A even in those cases where no income has been earned by an assessee, which has been claimed as exempt during the financial year.

The CBDT has, through this Circular, clarified that the legislative intent is to allow only that expenditure which is relatable to earning of income. Therefore, it follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether such income has been earned during the financial year or not.

Practical 4

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

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

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 [The amount in (i) & (ii) put together should not exceed the total expenditure claimed by the assessee]	50,000
Amount of expenditure in relation to exempt income	65,000

Computation of total income of Mr. W

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:

2.5 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 further Amended by FA 2017

- Section 115BBDA provides that any income by way of aggregate dividends (declared, distributed or paid by domestic company or companies) in excess of Rs. 10 lakh shall be chargeable to tax in the case of a **specified assessee** 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 while taxing such dividend income in excess of Rs.10 lakh.
- 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 sec. 2(22) except sec. 2(22)(e).
- For the purpose of this section, **specified assessee means any person other than-**
 - Domestic company
 - Fund or institution or trust or university or medical institution referred to in section 10(23C)(iv)/(v)/(vi)/(via)
 - Trust or institution registered under section 12A or section 12AA
- 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 5

Find out tax liability of Mr. X and Mr. Y for the relevant previous year.

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 received from a foreign company	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. As a result, taxable dividend under section 115BBDA shall be Rs. 8,00,000. (Readers must note that for the purpose of section 115BBDA, dividend declared, distributed or paid by the domestic company alone shall be considered and not the dividend from foreign companies). Such dividend shall be taxed at the flat rate of 10% without being set off of any loss.

However, dividend from foreign companies shall be charged to tax u/s 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 from a foreign company	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 c/f for next 8 A.Ys.

Computation of Tax liability of Mr. X

Tax on Rs.8,00,000 @ 10.40% (including education cess) = Rs. 83,200

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

Mr. Y is not subject to section 115BBDA since dividend from Indian companies on which CDT has been paid (Rs.7,30,000 in present case) did not exceed Rs. 10,00,000. (Readers must remember that for the purpose of section 115BBDA, dividend declared, distributed or paid by the domestic company alone shall be considered and not the dividend from foreign companies). Hence entire dividend income of Rs. 7,30,000 is exempt under section 10(34) in the hands of Mr. Y.

However, dividend from foreign company shall be charged to tax u/s 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 from a foreign company	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 c/f for next 8 A.Ys.

Computation of Tax liability of Mr. Y

Since total income is negative, tax payable is NIL.

Readers Note:

3 – SALARY

3.1 DEDUCTIONS FROM SALARIES

Section:- 16

The income chargeable under the head "Salaries" shall be computed after making the following deductions

(1) Standard Deduction {Section 16(ia)}

Deduction of ~~Rs.40,000~~ **[Rs. 50,000 – substituted by Finance Bill, 2019 (Interim Budget) w.e.f. A.Y. 2020-21]** or the amount of the salary, whichever is less

(2) Entertainment Allowance {Section 16(ii)}

Entertainment allowance received from employer is firstly included in salary and then deduction u/s 16(ii) will be allowed only to Government employees which is least of the following:

- (a) Rs.5000/-
- (b) 20% of Basic salary
- (c) Actual amount of entertainment allowance

(3) Professional Tax or Tax on Employment {Section 16(iii)}

Professional tax or tax on employment levied under article 276(2) of the Constitution is allowed as a deduction.

Practical 1

Mr. Krishna is a chartered accountant and employed by Dwarika Ltd. He is paid Rs.2,50,000 per month as salary and bonus equivalent to one month pay. Besides, Dwarika Ltd. provides the following-

- (1) Transport allowance: Rs. 1,600 per month.
- (2) Entertainment allowance: Rs. 4,000 p.a.
- (3) Medical facility in a hospital owned by Dwarika Ltd. Cost to the company for providing this facility to Mr. Krishna was Rs. Rs.51,000.
- (4) Medical facility in private hospital costing Rs.22,500 (this private hospital is approved by the Central Government for the medical treatment of its employees).
- (5) Medical facility in a hospital approved by the Chief Commissioner: Rs.5,000.
- (6) Medi-claim insurance premium paid by Dwarika Ltd. for Mr. Krishna and his family: Rs.15,000.
- (7) Reimbursement of other medical expenditure: 15,000.
- (8) Professional tax paid by employer: Rs.2,000

Determine the income from Salary.

Solution**Computation of Salary Income of Mr. Krishna**

Particulars	Rs.	Rs.
Basic salary		30,00,000
Bonus		2,50,000
Transport allowance		19,200
Entertainment allowance		4,000
Medical facility in a hospital maintained by employer		Nil
Medical facility in private hospital approved by Central Govt.		Nil
Medical facility in a hospital approved by Chief Commissioner		Nil
Medi-claim insurance premium paid by an employer		Nil
Reimbursement of other medical expenditure		15,000
Professional tax paid by employer		2,000
Gross salary		32,90,200
Less: Deduction under section 16		
(1) Standard deduction under section 16(ia)	(50,000)	
(2) Entertainment <i>allowance under section 16(ii)</i>	Nil	
(3) Professional <i>tax paid under section 16(iii)</i>	(2,000)	(52,000)
Income under head “salaries”		32,38,200

Readers Note:

4 – HOUSE PROPERTY

4.1 CALCULATION OF INCOME UNDER THE HEAD HOUSE PROPERTY UNDER DIFFERENT SITUATIONS

Situation 1 :- When assessee owns **more than one residential house property and all are reserved for self-occupation.**

For this situation, at the option of assessee, ~~one house property~~ **[two house properties- substituted by Finance Bill, 2019 (Interim Budget) w.e.f. A.Y. 2020-21]** is to be selected as self occupied and other house properties shall be deemed to be let out.

The ~~one house~~ **[two houses- substituted by Finance Bill, 2019 (Interim Budget) w.e.f. A.Y. 2020-21]** which has been selected as self-occupied, computation shall be done as per Situation 2.

While for deemed to be let out properties, computation shall be done as per Situation 1 – For deemed to be let out properties, Gross Annual Value shall be Expected Rent.

Section 24 has also been amended by Finance Bill, 2019 (Interim Budget) w.e.f. A.Y. 2020-21 to provide that Interest (including pre-construction period interest) is deductible in respect of self-occupied house property subject to following limits:

- (1) If amount has been borrowed for purchase, construction, repair or renovation of house property, then interest is generally deductible upto Rs. 30,000 p.a. **in aggregate.**
- (2) Above limit of Rs. 30,000 shall be increased to Rs. 2,00,000 **in aggregate**, if following conditions are satisfied:-
 - (i) Amount has been borrowed on or after 1st April 1999 and
 - (ii) Amount has been borrowed for purchase or construction of House Property and
 - (iii) Purchase or construction has been completed within five years from the end of financial year in which amount has been borrowed.
- (3) **Aggregate of the amounts of deduction in respect of interest under point (1) and (2) shall not exceed Rs. 2,00,000.**

Situation 2 :- When house property is held in stock in trade [Section 23(5)]

Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and

the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property,

for the period up to ~~one year~~ **[two years- substituted by Finance Bill, 2019 (Interim Budget) w.e.f. A.Y. 2020-21]** from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority,

shall be taken to be nil.

Situation 3 :- When house property is owned by more than one owner **[Co-owner]**

If a house property is owned by two or more persons, then such persons are known as co-owners. Tax treatment of such property is given under section 26. Section 26 is applicable if the following conditions are satisfied –

- (a) The property must consist of building or building and land appurtenant thereto
- (b) It is owned or deemed to be owned by two or more persons.
- (c) The respective shares of the co-owners are definite and ascertainable.

If above conditions are satisfied, then computation shall be done, as if each co-owner is the complete owner of his respective share in the house property.

Practical 1

Mr. X provides the following details

Particulars	House 1 (Amount in Rs.)	House 2 (Amount in Rs.)	House 3 (Amount in Rs.)
NAV (if let out)	3,00,000	4,00,000	5,00,000
Interest on borrowed capital	1,80,000	2,04,000	96,000

Calculate the income under the head house property assuming that all are reserved for self-occupation.

Solution

Working Note 1:- Computation of income under head house property assuming that they are let out properties.

Particulars	House 1 Amount Rs.	House 2 Amount Rs.	House 3 Amount Rs.
Net Annual Value (NAV)	3,00,000	4,00,000	5,00,000
Less: Standard Deduction u/s 24(a) [30% of NAV]	(90,000)	(1,20,000)	(1,50,000)
	2,10,000	2,80,000	3,50,000
Less: Interest on borrowed capital u/s 24(b)	(1,80,000)	(2,04,000)	(96,000)
Income / (Loss) from House Property	30,000	76,000	2,54,000

Working Note 2:- Computation of income under the head "house property" assuming that they are self-occupied properties.

Particulars	House 1 Amount Rs.	House 2 Amount Rs.	House 3 Amount Rs.
Net Annual Value (NAV)	Nil	Nil	Nil
Less: Standard Deduction u/s 24(a) [30% of NAV]	Nil	Nil	Nil
	Nil	Nil	Nil
Less: Interest on borrowed capital u/s 24(b)	(1,80,000)	(2,00,000)	(96,000)
Income / (Loss) from House Property	(1,80,000)	(2,00,000)	(96,000)

Working Note 3:- Various options

Option I :- House 1 and House 2 are Self-occupied

Particulars	Amount (in Rs.)	Amount (in Rs.)
Income / (Loss) from House Property 1	(1,80,000)	
Income / (Loss) from House Property 2	(2,00,000)	
Aggregate deduction of interest for self-occupied property restricted upto Rs.2,00,000		(2,00,000)
Income/(Loss) from House Property 3		2,54,000
Income from House Property		54,000

Option II :- House 1 and House 3 are Self-occupied

Particulars	Amount (in Rs.)	Amount (in Rs.)
Income / (Loss) from House Property 1	(1,80,000)	
Income / (Loss) from House Property 3	(96,000)	
Aggregate deduction of interest for self-occupied property restricted upto Rs.2,00,000		(2,00,000)
Income/(Loss) from House Property 2		76,000
Income from House Property		(1,24,000)

Option III :- House 2 and House 3 are Self-occupied

Particulars	Amount (in Rs.)	Amount (in Rs.)
Income / (Loss) from House Property 2	(2,00,000)	
Income / (Loss) from House Property 3	(96,000)	
Aggregate deduction of interest for self-occupied property restricted upto Rs.2,00,000		(2,00,000)
Income/(Loss) from House Property 1		30,000
Income / (Loss) from House Property		(1,70,000)

Mr. X shall opt for Option III.

Reader's Note:

4.2 AMOUNTS NOT DEDUCTIBLE FROM INCOME FROM HOUSE PROPERTY

Section:- 25

Any interest chargeable under this Act which is payable outside India, on which tax has not been paid or deducted under Chapter XVII-B, shall not be deducted in computing the income chargeable under the head "Income from house property".

4.3 TAXABILITY OF UNREALISED RENT AND ARREARS OF RENT.

Section:- 25A

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:

Sr. No.	Taxability of Arrears of Rent or Unrealised Rent
(i)	Taxable in the year of receipt
(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 2

Mr. Parmanand provides following information:

- In July, **2019** he recovered unrealized rent of Rs. 50,000 (which was reduced from Gross Annual Value earlier) from Mr. Saif (tenant).
- In October, **2019**, 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:

(a) Mr. Parmanand has already sold out the captioned house property on **10-2-2019**

(b) Mr. Parmanand continued to own the house property in previous year **2019-20**.

Solution

Computation of income from house property of Mr. Parmanand for A.Y.2020-21

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

Reader's Note:

5 – PROFITS AND GAINS FROM BUSINESS OR PROFESSION

UNIT A – TAXABILITY AND ALLOWANCES

5.1 CHARGEABILITY UNDER THIS HEAD

Section:- 28

(1) Section	Chargeable Income
28(ii)	Compensation or other payment received by, - (a) any person managing the whole or substantially the whole of affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto; (b) any person managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the term and conditions relating thereto; (c) any person, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto; (d) any person, for or in connection with the vesting in the Government or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business. (e) any person at or in connection with the termination or the modification of the terms and conditions, of any contract relating to his business; [Amended by Finance Act, 2018 w.e.f. A.Y.2019-20]

Practical 1

The assessee, Saurashtra Cement Ltd., a cement manufacturing company, entered into an agreement with a supplier for purchase of additional cement plant. One of the conditions in the agreement was that if the supplier failed to supply the machinery within the stipulated time, the assessee would be compensated at 5% of the price of the respective portion of the machinery without proof of actual loss. The assessee received Rs. 8.50 lakhs from the supplier by way of liquidated damages on account of his failure to supply the machinery within the stipulated time.

Discuss the taxability of such compensation in the hands of a company:

- (a) before the amendment made by Finance Act, 2018 in section 28 of the Act
- (b) After the amendment made by Finance Act, 2018 in the said section.

Solution

Before the amendment made by Finance Act, 2018 in section 28 of the Act

Supreme Court in case of **CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422** held that the damages were directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which lead to delay in coming into existence of the profit-making apparatus. It was not a receipt in the course of profit earning process. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, is not in the ordinary course of business, hence **it is a capital receipt** in the hands of the assessee and therefore not chargeable to tax.

After the amendment made by Finance Act, 2018 in section 28 of the Act

Clause (e) has been inserted under section 28(ii) by Finance Act, 2018 which reads as under:

Compensation or other payment received by any person at or in connection with the termination or the modification of the terms and conditions, of any contract relating to his business.

The objective behind introduction of above clause under section 28(ii) has been clarified by the Memorandum explaining budget proposal 2018 is as under:

“Under the existing provisions of the Act, certain types of compensation receipts are taxable as business income under section 28. However, the existing provisions of clause (ii) of section 28 is restrictive in its scope as far as taxation of compensation is concerned; a large segment of compensation receipts in connection with business and employment is out of the purview of taxation leading to base erosion and revenue loss. Therefore, it is proposed to amend section 28 of the Act to provide that any compensation received or receivable, **whether revenue or capital**, in connection with the termination or the modification of the terms and conditions of any contract relating to its business shall be taxable as business income.”

Considering the objective behind introduction of this amendment, compensation received by Saurashtra Cement Ltd. may be chargeable to tax even though it is a capital receipt.

Reader's Note:

(2)	Section	Chargeable Income
	28(via)	the fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner. [Amended by Finance Act, 2018 w.e.f. A.Y.2019-20]



SECTION 49(9): For detailed discussion: Refer Module I – Chapter 6 -Capital Gains

5.2 TEA OR COFFEE OR RUBBER DEVELOPMENT ACCOUNT

Section:- 33AB

(A) Who can claim?

All assesses who carry on the business of growing and manufacturing tea or coffee or rubber in India.

(B) Conditions:

- The assessee shall deposit the amount with NABARD / Tea or Coffee or Rubber Development Account within 6 months from the end of the relevant previous year or before the due date of filing return under section 139(1), whichever is earlier.
- The accounts of the assessee of this business shall be audited by a chartered accountant and audit report shall be furnished in a prescribed form along with his return of income.

(C) Quantum of deduction:

Least of the following is deductible:

- Amount deposited; or
- 40% of profits or gains of business or profession before making any deduction under this section and u/s. 72 (i.e. before claiming set off).

(D) Where any deduction is allowed under this section, no deduction shall be allowed in respect of such amount in any other previous year.

(E) Deduction under this section shall not be allowed in computation of income of a partner of a firm or member of AOP or BOI.

(F) Manner of utilisation of deposit:

The amount kept in the deposit will not be allowed to be withdrawn except for the purposes specified in the scheme.

(G) Ineligible Assets:

- (a) Any machinery or plant installed in office or residential accommodation or guesthouse.
- (b) Any office appliances other than computer
- (c) Any machinery or plant entitled for 100% depreciation or deduction under the Act.
- (d) Any new plant or machinery to be installed in an industrial undertaking manufacturing any article specified in Eleventh Schedule.

(H) Taxability treatment of deposits in case of closure of business:

Event of closure	Taxability
(i) Closure of business; (ii) Dissolution of firm	Amount withdrawn shall be deemed to be the profits and gains of the previous year in which it is withdrawn (i.e. it is taxable under the head "PGBP")
(iii) Death of assessee; (iv) Partition of HUF (v) Liquidation of Company	Amount withdrawn shall not be taxable.

(I) Subsequent withdrawal of benefit claimed under section 33AB:

(a) Non-utilisation / mis-utilisation:- The amount withdrawn during any previous year is not utilised within the previous year or utilised for a purpose other than those specified in the scheme, then it shall be treated as the income and charged to tax in that previous year.

(b) Subsequent sale of asset: Where the asset acquired in accordance with the scheme is transferred or sold within 8 years from the end of the previous year in which it was acquired, the portion of the deduction allowed shall be treated as income of the previous year in which the asset is sold or otherwise transferred.

The above provision relating to subsequent sale of asset shall not apply in the following situations:

- (i) Transfer to Government or local authority or Corporation or Government Company
- (ii) Succession of firm by a company

Practical 2

X Ltd., is a company engaged in the business of growing, manufacturing and selling of tea. It provides following information for the accounting year ended **31st March, 2020**.

- (i) Composite business profits, before an adjustment u/s 33AB of the Income-tax Act, were Rs.60 lakhs.
- (ii) In the year, it deposited Rs.20 lakhs with NABARD. The company has a business loss of Rs.10 lakhs brought forward from the previous year.

Indicate clearly the tax consequences of the above transaction and the total income for the relevant year.

Solution

Before we refer solution, let's understand following important point:

Computation of agricultural income of an assessee who grows and manufactures tea, coffee or rubber.

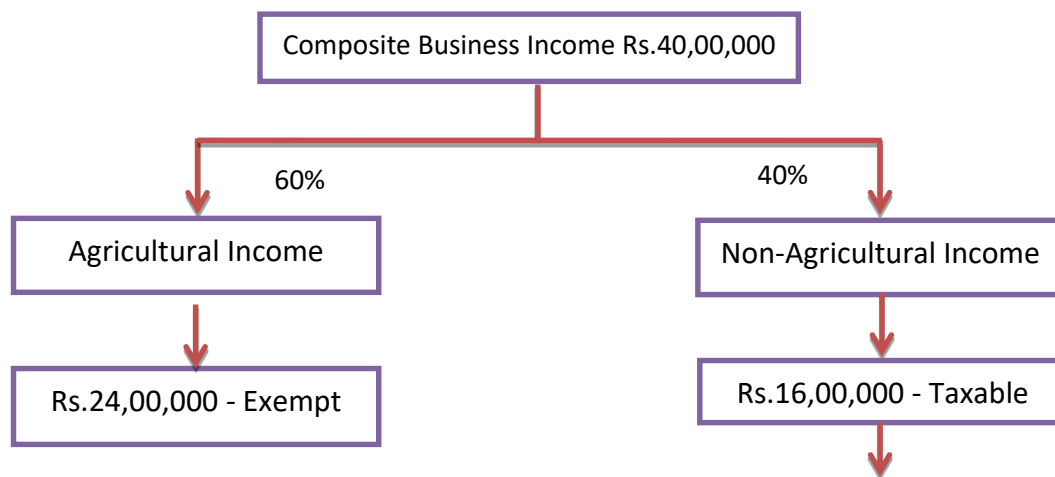
First of all, we have to determine income under the head "Profit and Gains of Business" (POB) as if entire activity is chargeable to tax and thereafter such income shall be bifurcated in the following manner:

Nature of Business	Agricultural Income	Non-Agricultural Income
Sale of centrifuged latex or cenex manufactured from rubber	65% of POB	35% of POB
Sale of coffee grown, cured, roasted and grounded by seller in India	60% of POB	40% of POB
Sale of coffee grown and cured by seller in India	75% of POB	25% of POB
Growing and manufacturing tea	60% of POB	40% of POB

P.Y. 2019-20

A.Y. 2020-21

Particulars	Rs.
Business Income before deduction u/s 33AB	60,00,000
Less: Deduction u/s 33AB [W.N.1]	(20,00,000)
Composite Business Income under the head 'PGBP'	40,00,000



Particulars	Rs.
Income	16,00,000
Less: B/f business loss	(10,00,000)
Taxable Income	6,00,000

Working Note 1:

Deduction u/s 33AB is

(a) Amount deposited : Rs. 20,00,000

(b) 40% of Rs.60,00,000 : Rs. 24,00,000

Whichever is lower.

Reader's Note:

Practical 3

Continuing **Practical 4**, the company withdrew in **February, 2022** Rs.20 lakhs from the deposit account to buy a non-depreciable asset for Rs.18 lakhs and could not use the balance before the end of the accounting year. The withdrawal and the purchase were under a scheme approved by the Tea Board.

Indicate clearly the tax consequences of the above transaction and the total income for the relevant year.

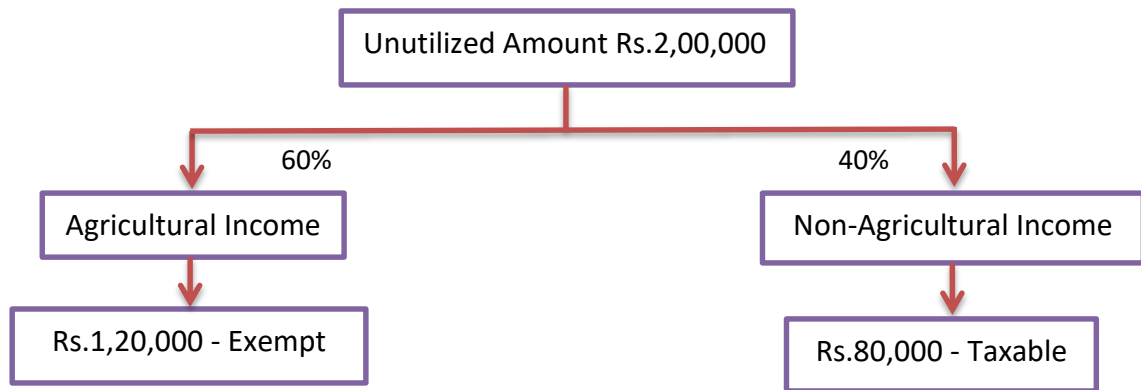
Solution

P.Y. 2021-22

A.Y. 2022-23

Particulars	Rs.
Amount withdrawn from a special account during the previous year 2021-22	20,00,000
Less: Amount utilised during the same previous year (i.e., 2021-22)	(18,00,000)
Amount unutilized	2,00,000

Tax Treatment of Unutilized Amount



Reader's Note:

Practical 4

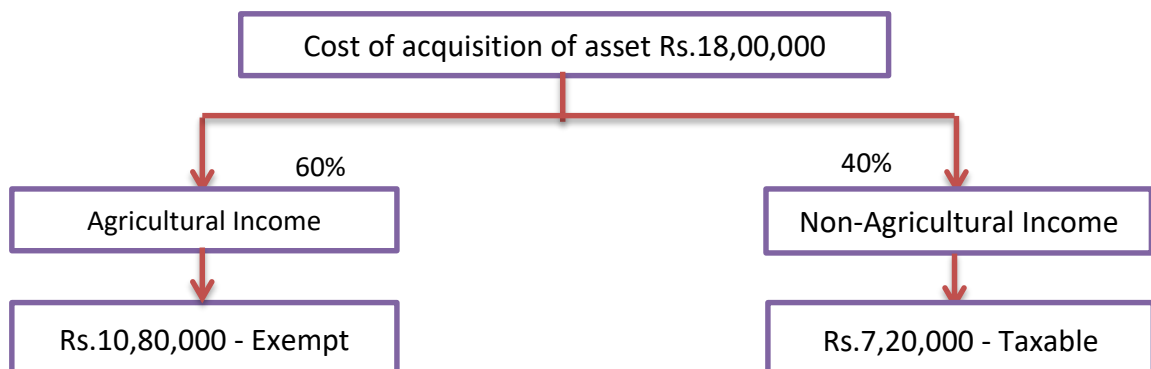
Continuing **Practical 4** and **Practical 5**, the non-depreciable asset was sold in **November, 2024** for Rs.29 lakhs. Indicate clearly the tax consequences of the above transactions and the total income for the relevant years.

Solution

P.Y. 2024-25

A.Y. 2025-26

(1) Tax Treatment under the head 'Profit and Gains from Business or Profession'



(2) Tax Treatment under the head 'Capital Gains'

Period of holding: February, 2022 to November, 2024 (i.e., not exceeding 36 months)

Nature of Asset: Short term capital asset

Computation of Capital Gain

Particulars	Rs.
Full value of consideration	29,00,000
Less: Cost of acquisition	(18,00,000)
Short Term Capital Gain	11,00,000

Reader's Note:

5.3 EXPENDITURE ON SCIENTIFIC RESEARCH**Section:- 35****(A) Deduction of expenditure on in house research by any assessee [Section 35(1)(i) and (2)]**

The following expenditure **incurred** by the assessee on scientific research in relation to the assessee's business shall be allowed as deduction:

- (i) Current year revenue expenditure on scientific research.
- (ii) Current year capital expenditure on scientific research.
- (iii) Prior period revenue expenditure or capital expenditure incurred during 3 years immediately preceding the date of commencement of business will be allowed as deduction in the previous year in which the assessee commences the business.
- (iv) Revenue expenditure of a prior period shall be the payment of salary (excluding perquisites) to research personnel and material cost used for research.
 - Prior period revenue expenditure shall be deductible to the extent certified by prescribed authority.
 - But prior period capital expenditure are not required to be certified by prescribed authority.
- (v) The expenditure on acquisition of land will not be allowed as a deduction.
- (vi) The assessee is not entitled to claim any depreciation on the capital expenditure which has been allowed as deduction u/s. 35(2).

(B) Deduction for expenditure on in house research by companies in special business [Section 35(2AB)]

- (i) In case of a company engaged in the business of bio-technology or any business of manufacture or production of any article or thing except those specified in the Eleventh Schedule, an amount equal to 150% of the expenditure incurred on scientific research shall be allowed as deduction.
- (ii) The cost of any land or building shall not be allowed as a deduction.
- (iii) Once deduction is claimed under this section, then same expenditure shall not be allowed as deduction under any other provision of Income Tax Act.
- (iv) For the purpose of claiming deduction under this section, company shall enter into an agreement with the prescribed authority for co-operation in such research and development facility and fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed.
- (v) The prescribed authority shall submit its report in relation to the approval of the said facility to the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General in such form and within such time as may be prescribed.

Comparison between {Section 35(1) (i) /(2)} and {Section 35(2AB)}

Section No.	Who can Claim?	Nature of Expenditure	Percentage of Deduction	Whether Prior Period covered?	Restriction
35(1)/(2)	Any assessee	Revenue/Capital	100%	Yes	Land
35(2AB)	Company in Special Business	Capital as well as Revenue	150%	No	Land & Building

Section 35(1) and 35(2) are applicable to any assessee including company in special business also.

Therefore, company in special business can claim-

- (a) deduction of building at 100 %.
- (b) deduction of prior period capital as well as revenue expenditure at 100%.

Practical 5

An assessee commenced production of chemicals on **1st November, 2019**. It has made the following expenditure on scientific research before commencement of production:

- (a)** Salary to research personnel and the cost of research material during the 12 months ending on **31st October, 2016**: Rs.8,30,000.
- (b)** Salary to research personnel from **1st November, 2016 to 31st October, 2019**: Rs.24,50,000 (out of which amount certified by the prescribed authority was Rs.18,12,000)
- (c)** Expenditure on providing rent – free flats to research personnel, from **1st November, 2016 to 31st October, 2019**: Rs.1,80,000.
- (d)** Cost of research material from **1st November, 2016 to 31st October, 2019**: Rs.18,75,200 (out of which amount certified by the prescribed authority was Rs.17,44,800).
- (e)** Capital expenditure on scientific research upto **31st October, 2016** –
 - (i) Payment towards purchase of land : Rs. 50,00,000.
 - (ii) Payment towards construction of laboratory building: Rs.12,00,000.
 - (iii) Purchase of plant and machinery to be used in laboratory: Rs. 17,00,000.
- (f)** Capital expenditure on scientific research between **1st November, 2016 to 31st October, 2019** - not certified by the prescribed authority
 - (i) Payment towards purchase of land : Rs. 20,00,000.
 - (ii) Payment towards construction of laboratory building: Rs.6,00,000.
 - (iii) Purchase of plant and machinery to be used in laboratory: Rs. 28,00,000.
- (g)** Revenue expenditure on scientific research incurred after commencement of business: Rs. 20,00,000.

Determine the amount of deduction available under section 35 under following alternatives assuming that the scientific research is related to the business of the assessee :

Alternative (1) : An assessee is a partnership firm.

Alternative (2): An assessee is an Indian company engaged in special business.

Solution

Alternative 1: An assessee is a partnership firm

Statement showing deduction under section 35

Particulars	Rs.
a. Expenditure incurred till October 2016 -not deductible as it is incurred beyond 3 years.	Not Deductible
b. Prior period revenue expenditure incurred during 3 years immediately preceding 01.11.2019 to the extent certified by prescribed authority.	18,12,000
c. Expenditure on providing perquisites (i.e, rent – free flats) to research personnel	Not Deductible
d. Expenditure on research material to the extent certified by prescribed authority.	17,44,800
e. Capital expenditure incurred till October 2016 –not deductible as it is incurred beyond 3 years.	Not Deductible
f. Capital expenditure incurred during 3 years immediately preceding 01.11.2019 . (Certification of prescribed authority not required)	
(i) Purchase of land	Not Deductible
(ii) Construction Cost	6,00,000
(iii) Cost of plant and machinery	28,00,000
g. Revenue expenditure on research after commencement of business.	20,00,000
Total deduction under section 35	89,56,800

Alternative 2: An assessee is an Indian company engaged in special business**Statement showing deduction under section 35**

Particulars	Rs.
a. Expenditure incurred till October 2016 —not deductible as it is incurred beyond 3 years.	Not Deductible
b. Prior period revenue expenditure incurred during 3 years immediately preceding 01.11.2019 to the extent certified by prescribed authority. (at 100%)	18,12,000
c. Expenditure on providing perquisites (i.e, rent – free flats) to research personnel	Not Deductible
d. Expenditure on research material to the extent certified by prescribed authority. (at 100%)	17,44,800
e. Capital expenditure incurred till October 2016 —not deductible as it is incurred beyond 3 years.	Not Deductible
f. Capital expenditure incurred during 3 years immediately preceding 01.11.2019 . (Certification of prescribed authority not required)	
(i) Purchase of land	Not Deductible
(ii) Construction Cost (at 100%)	6,00,000
(iii) Cost of plant and machinery (at 100%)	28,00,000
g. Revenue expenditure on research after commencement of business. (at 150%)	30,00,000
Total deduction under section 35	99,56,800

Reader's Note:**(C) Contribution made to outsiders [Section 35(1)(ii)/(iii)/(iiia) and Section 35(2AA)]**

Where assessee makes contributions to other institutions for research purpose, a weighted deduction is allowed, as follows-

Section No.	To whom contribution can be given?	To be utilized for?	Weighted deduction from the A.Y. 2018-19 to 2020-21	Weighted deduction A.Y. 2021-22 onwards
35 (1) (ii)	An approved association or an approved university, college or other institution	Scientific research	150 % of contribution	100 % of contribution
35 (1) (iii)	An approved association or an approved university, college or other institution	Social science research or Statistical research	100 % of contribution	100 % of contribution
35 (2AA)	National Laboratory, University, IIT or specified person approved by prescribed authority	Scientific research	150% of Contribution	100% of Contribution
35(1)(iia)	Company registered in India having main object of scientific research and development provided such company is time being approved by the prescribed authority	Scientific research	100% of Contribution	100% of Contribution

Notes:

1. Above deduction can be claimed by any assessee even if research is not related to assessee's business.
2. Deduction in respect of above contribution made to above institutions shall not be denied merely on the ground that, subsequent to contribution made by assessee, the approval granted to these institutions have been withdrawn.

Practical 6

PQR private limited has shown a net profit of Rs. 32,88,000 after debiting following items:

1. Rs.1,00,000 paid to the Indian Agricultural Research Institute, New Delhi, being an approved scientific research institution u/s 35(1)(ii) for the purpose of carrying out scientific research in natural science.
2. Rs.75,000 paid to the Indian Institute of Management, Ahmedabad being an approved institute u/s 35(1)(iii), for the purpose of carrying out scientific research in social or statistical science.
3. Rs.51,000 paid to an approved National Laboratory for carrying out scientific research.
4. Rs. 11,000 paid to IIT for carrying out scientific research.
5. Rs. 30,000 paid to TATA Research Limited, an Indian company approved under section 35(1) (ia) for carrying out scientific research.

Find out income of PQR private limited under the head "PGBP".

Solution

Particulars	Rs.
Net Profit as per Profit & Loss account	32,88,000
Add: Contribution to Indian Agricultural Research Institute, New Delhi	1,00,000
Less: Contribution to Indian Agricultural Research Institute, New Delhi-Sec.35(1)(ii)[150% of Rs.1,00,000]	(1,50,000)
Add: Contribution to Indian Institute of Management, Ahmedabad	75,000
Less: Contribution to Indian Institute of Management, Ahmedabad–Sec.35(1)(iii)[100% of Rs.75,000]	(75,000)
Add: Contribution to approved National Laboratory	51,000
Less: Contribution to approved National Laboratory-Sec. 35(2AA)[150% of Rs.51,000]	(76,500)
Add: Contribution to IIT	11,000
Less: Contribution to IIT - Section 35(2AA) [150% of Rs.11,000]	(16,500)
Add: Contribution to TATA Research Limited	30,000
Less: Contribution to TATA Research Limited- Section 35(1) (ia)[100% of Rs.30,000]	(30,000)
Income under head "PGBP"	32,07,000

Reader's Note:**Practical 7**

ABC Scientific Research (P) Ltd is a company registered in India and approved u/s 35(1)(ia) as well as eligible to claim deduction under section 35(2AB). During previous year it spent Rs. 3 crore on scientific research related to its business. Can it claim 150% of Rs.3 crore as deduction u/s 35(2AB)?

Solution

On close reading of the clarification given u/s 35(1)(ia), company approved for accepting contribution u/s 35(1)(ia) cannot claim weighted deduction of 150% u/s 35(2AB). Considering the same, ABC Scientific Research (P) Ltd. cannot claim weighted deduction u/s 35(2AB).

However, the restriction is for sec.35(2AB) & not for sec.35(1)&35(2). Therefore, it can claim deduction of Rs.3 cr.

Reader's Note:

(D) Carry forward and set off of unabsorbed scientific research expenditure

It shall be given the same treatment as is given to the unabsorbed depreciation.

5.4 DEDUCTION IN RESPECT OF EXPENDITURE ON SPECIFIED BUSINESS**Section:- 35AD****(1) Conditions**

- (a) Assessee must be carrying on "specified business".
- (b) 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.

- (c) Books of account of the assessee must be audited.

(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)	100%
2.	Setting up and operating a warehousing facility for Storage of agricultural produce	100%
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	100%
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	100%
8.	Production of fertilizer in India	100%
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.

(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.

(4) Restrictions

Capital expenditure incurred on the following shall not be eligible for deduction under section 35AD

- (i) land
- (ii) goodwill
- (iii) financial instrument
- (iv) any capital expenditure in respect of which the payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or *through such other electronic mode as may be prescribed [Inserted by Finance Act, 2019 w.e.f. A.Y.2020-21]*, exceeds Rs.10,000.

Practical 8

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, 2019**.

The following information is available from the records of LLP.

Particulars	Rs.
<u>Expenses incurred prior to April 1, 2019 and capitalized in the books</u>	
Purchase of land for warehouse	80,00,000
Construction cost of warehouse (Material)	12,00,000
Payment to labour contractor for construction of warehouse (single payment made in cash)	7,00,000
<u>Expenses incurred during 2019-20</u>	
Further construction cost of warehouse	50,00,000
Purchase of old plant and machinery (from India)	2,50,000
Purchase of old plant and machinery (from Denmark)	3,50,000
Purchase of new plant and machinery	9,00,000

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

Solution

Statement showing computation of deduction under section 35AD in the hands of Priyanka warehouse LLP:

Particulars	Rs.
<u>Expenses incurred prior to April 1, 2019 and capitalized in the books</u>	
Purchase of land for warehouse	Not Eligible for 35AD benefit
Construction cost of warehouse	12,00,000
Payment to labour contractor for construction of warehouse (Not eligible because single payment is made in cash exceeding Rs.10,000)	Nil
<u>Expenses incurred during 2019-20</u>	
Further construction cost of warehouse	50,00,000
Purchase of old plant and machinery (from India)	2,50,000
Purchase of old plant and machinery (from Denmark)	3,50,000
Purchase of new plant and machinery	9,00,000
Total Deduction under section 35AD	77,00,000

Reader's Note:

(5) Consequences Of Claiming Deduction Under Section 35AD

A. Basic Consequences

- (i) 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 32 AD cannot be claimed for the same capital expenditure.)
- (ii) 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)
- (iii) 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.

(iv) 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 9

XYZ Ltd. commenced operations of the business of a new three-star hotel in Madurai, Tamil Nadu on **1.4.2019**. The company incurred capital expenditure of Rs. 50 lakh during the period **January, 2019 to March, 2019** exclusively for the above business, and capitalized the same in its books of account as on **1st April, 2019**. Further, during the **P.Y.2019-20**, 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.2020-21**, 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.2021-22** 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.2020-21**.

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.2019-20 (excluding the Expenditure incurred on acquisition of land)	50	
Capital expenditure incurred prior to 1.4.2019 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2019	50	
Total deduction under section 35AD for A.Y.2020-21		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

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

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

- (c) 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.
- (d) 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 10

ABC Ltd. set up warehousing unit for storage of agricultural produce on **10.06.2017**. The construction cost of warehouse was Rs. 75 lacs on which weighted deduction (150%) was claimed under section 35AD. However, it started using this warehouse for storage of edible oils with effect from **01.04.2019**. Discuss tax consequences for the assessment year **2020-21** 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.2019-20**, 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
<i>Less:</i> 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
<i>Less:</i> Depreciation for the previous year 2017-18 [10%]	7,50,000
	67,50,000
<i>Less:</i> Depreciation for the previous year 2018-19 [10%]	6,75,000
	60,75,000
Total Depreciation [Rs.7,50,000 + Rs.6,75,000]	14,25,000

Reader's Note:

Practical 11

What would have been your answer in the above practical if ABC Ltd had sold out this warehouse building for Rs. 82 lacs on **01.04.2019**?

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.2020-21**

Reader's Note:

5.5 AMORTISATION OF PRELIMINARY EXPENSES

Section:- 35D

(1) Eligible Assessee

Indian company or a non-corporate resident assessee

(2) Time and purpose of incurring preliminary expenses:

Time of Incurring expenses	Purpose of expenses
Before commencement of business	For setting up of any undertaking or business
After commencement of business	Extension of the undertaking or setting up new unit

(3) List of specified expenditure

The work shall be carried on by the assessee itself or by a concern approved by the Board	The work can be carried on by the assessee itself or by any concern (approved or not approved)
Expenditure in connection with :- • preparation of feasibility report, • preparation of project report, • conducting a market survey or • engineering services relating to the business of the assessee.	• Legal charges for drafting any agreement between the assessee and any other person relating to the setting up of the business of the assessee. • Legal charges for drafting the memorandum and articles of association if the taxpayer is a company. • Printing expenses of the memorandum and articles of association if the taxpayer is a company. • Registration fee of a company under the provisions of the Companies Act. • Expenses in connection with the public issue of shares or debentures of a company, underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus. • Any other expenditure which may be prescribed.

(4) Maximum qualifying expenditure:

In the case of a corporate assessee	In the case of a non-corporate assessee
a. 5 per cent of cost of project; or b. 5 per cent of capital employed, whichever is more	5 per cent of cost of project

(5) Quantum of Deduction

The maximum qualifying expenditure as computed above will be allowed as a deduction in 5 equal installments starting from the previous year in which the business commences.

(6) Meaning of certain terms

(a) Capital employed

- It is the aggregate of the issued share capital, debentures and long-term borrowings, as on the last day of the previous year in which the business of the company commences.
- Long-term borrowings - The term "long-term borrowing" in the above context, includes following—

<i>From whom borrowed?</i>	<i>Time period in which the loan is repayable</i>
Any money borrowed by the company from the (a) Government or (b) the Industrial Finance Corporation or India or (c) the Industrial Credit and Investment Corporation of India or (d) any other financial institution which is eligible for deduction u/s 36(1)(viii) or (e) any banking institution	No time period prescribed.
Any money borrowed or debt incurred by the company in foreign country in respect of purchases outside India of capital plant and machinery	Repayable for a period of not less than 7 years

(b) Cost of the project

It means the actual cost of fixed assets namely, land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings), which are shown in the books of the assessee as on the last day of the previous year in which the business of the assessee commences.

(7) Audit Report

In case of non-corporate assessee, the assessee is required to furnish the audit report in Form 3B along with the return of income for the first year.

Practical 12

Vita biscuit Limited (VBL) was incorporated on **1st November, 2018**. However, it started commercial production on **14th February, 2020**. VBL incurred following preliminary expenses before commencement:

- (a) registration fees for incorporation : Rs. 20,000 ;
- (b) legal charges for drafting the memorandum, articles and prospectus etc. : Rs. 50,000 ;
- (c) printing expenses of memorandum, articles, prospectus, etc. : Rs. 30,000 ;
- (d) Advertisements expenses for issue of shares : Rs. 1,00,000;
- (e) Underwriting commission for issue of shares : Rs. 3,75,000 ;
- (f) Expenditure on preparation of feasibility report (the work is undertaken by the VBL) : Rs. 75,000 ;
- (g) Expenditure on preparation of the project report (the work is undertaken by an approved concern) : Rs. 50,000;
- (h) Expenditure on conducting market survey necessary (the work is undertaken by a concern which is not approved for this purpose) :Rs. 85,000;
- (i) Legal charges for foreign collaboration agreement : Rs. 2,00,000 ;
- (j) Expenditure on engineering services in connection with the erection of plant and machinery : Rs. 3,50,000.

Following is the extract of balance sheet of VBL

	On March 31, 2019 (Rs.)	On March 31, 2020 (Rs.)
Cost of fixed assets (excluding engineering services)	17,00,000	1,32,50,000
Issued share capital	1,00,000	1,50,00,000
Paid up share capital	1,00,000	1,30,00,000
Debentures	10,00,000	10,00,000
Long-term borrowing in foreign country	9,00,000	15,00,000

Determine the amount deduction under section 35D.

Solution**Step 1: Total Qualifying Amount**

Particulars	Rs.
Registration fees	20,000
Legal charges for drafting	50,000
Printing expenses	30,000
Advertisement expenses	1,00,000
Underwriting Commission	3,75,000
Expenditure on preparation of feasibility report	75,000
Expenditure on preparation of project report	50,000
Expenditure on conducting market survey (not eligible as the work is undertaken by an unapproved concern)	Nil
Legal Charges for foreign collaboration agreement	2,00,000
Expenditure on engineering services (it is beneficial to capitalize)	Nil
Total Qualifying Amount	9,00,000

Step 2: Limit on Total Qualifying Amount is higher of the following**(1) 5% of Cost of the project on March 31, 2020**

5% (Rs.1,32,50,000 + Rs.3,50,000=Rs.1,36,00,000 x 5%) = Rs. 6,80,000

(2) 5% of Capital Employed on March 31, 2020

5% of (i.e., Rs.1,50,00,000 + Rs.10,00,000 + Rs.15,00,00=Rs.1,75,00,000)

Rs.8,75,000

Step 3: Maximum Qualifying Amount is lower of

Step 1: Rs. 9,00,000

Step 2: **Rs. 8,75,000**

Step4: Amount of deduction under section 35D = step 3 / 5 years

= Rs.8,75,000 / 5 years

= Rs.1,75,000

Above amount is to be allowed as deduction u/s. 35D beginning with the previous year in which assessee commences business i.e. **previous year 2019-20**.

Reader's Note:**(8) How to compute deduction under section 35D in case of extension of undertaking****(a) Meaning of capital employed:**

It is the aggregate of issued share capitals debentures and long-term borrowing as on the last day of the previous year in which the extension of undertaking is completed or, as the case may be, the new industrial unit commences production or operation, insofar as such capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the undertaking or the setting up of the new industrial unit of the company.

(b) Meaning of Cost of project

The cost of project is defined to mean the actual cost of fixed assets, as stated above, which are shown in the books of the assessee as on the last day of the previous year in which the extension of undertaking is completed, or, as the case may be, the new unit commences production or operation in so far as such fixed assets have been acquired or developed in connection with the extension of the undertaking or setting up of the new unit of the assessee.

In case of extension of undertaking, deduction shall be allowed in 5 equal installments starting from the previous year in which extension of undertaking is completed.

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

Section:- 36(1)(viiia)

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 8.5% 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	5% of its total income*	Not available	Not available
Public Financial Institution or State Financial Corporation or State Industrial Investment Corporation or NBFC	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)(viiia) 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) (viiia) **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 13

The following are the particulars in respect of Indian Bank

Sr. No.	Particulars	Rs. in lakhs
(i)	Provision for bad and doubtful debts u/s 36(1)(viiia) as on 1st April 2019	200
(ii)	Gross Total Income of A.Y.2020-21 [before deduction u/s 36(1)(viiia)]	1000
(iii)	Aggregate average advances made by rural branches of the bank (assume that bank opened first time rural branches in previous year 2019-20).	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 2019-20	350

Compute deduction:

- in respect of provision for bad and doubtful debt under section 36(1) (viiia)
- 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) (viiia) = Rs. 85 lacs + Rs. 40 Lacs = Rs. 125 Lacs

(b) Deduction in respect of bad debts under section 36(1) (vii) = Rs. 25 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 8.5%]	85
To Debtors A/c	325	By Profit & Loss A/c [400 x 10%]	40
	325		325

Bad-Debts A/c

Dr.			Cr.
Particulars	Rs. in lakhs	Particulars	Rs. in lakhs
To Debtors A/c [350-325]	25	By Profit & Loss A/c	25
	25		25

Reader's Note:

5.7 MARKED TO MARKET LOSS or EXPECTED LOSS

Section:- 36(1)(xviii) – Inserted by Finance Act, 2018 w.r.e.f. 2017-18

Marked to market loss or other expected loss computed in accordance with the ICDS.

5.8 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.



Expenditure incurred on Keyman Insurance Policy

Issue:

Whether premium paid by the firm on the keyman Insurance policy of a partner, to safeguard the firm against disruption of the business, is an admissible expenditure under section 37 of the Act?

Clarification from CBDT

CBDT through this circular accepted the decision of the High Court of Punjab and Haryana in the case of M/s. Ramesh Steels, ITA No. 437 of 2015, vide judgement dated 02.02.2016 and clarified that in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37 of the Act.

UNIT B – SPECIFIC DISALLOWANCES

5.9 INTEREST, ROYALTY, FEES FOR TECHNICAL SERVICES PAYABLE OUTSIDE INDIA OR PAYABLE TO NON-RESIDENTS

Section:- 40(a)(i)

In the case of any assessee—any interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

A. outside India; or

B. in India to a non-resident, not being a company or to a foreign company, on which tax is deductible at source under Chapter XVII-B (TDS Chapter) and

- (i) such tax has not been deducted or,
- (ii) after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 139 :

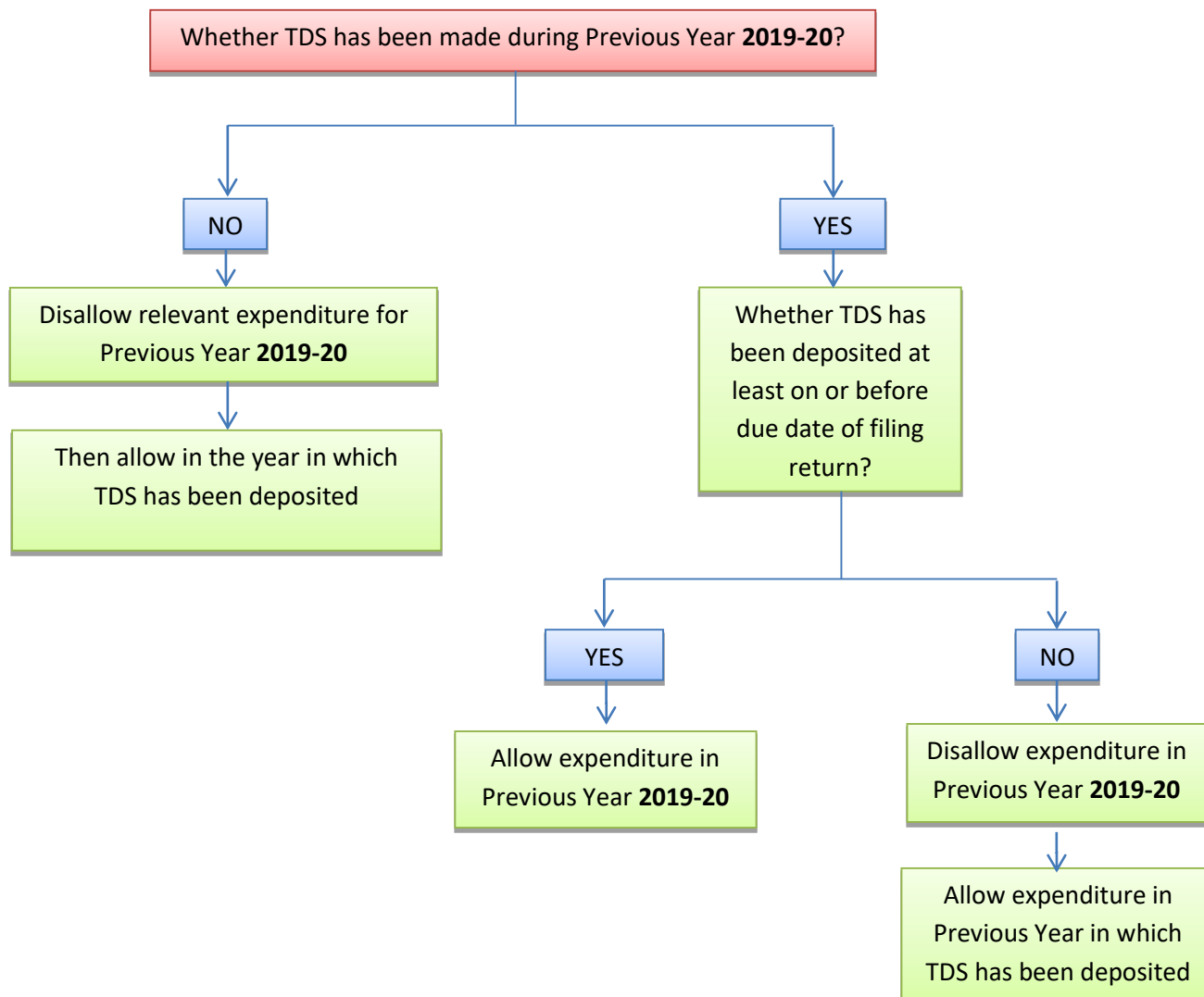
Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Following second proviso shall be inserted after the existing proviso to sub-clause (i) of clause (a) of section 40 by the Finance Act (No. 2) 2019, w.e.f. 1-4-2020:

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purposes of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.

For Practical Refer : Chapter 27 Section 201

Summary :- Payment to Non-Resident other than Salary [Section 40(a) (i)]



5.10 ANY SUM PAYABLE TO RESIDENT

Section:- 40(a)(ia)

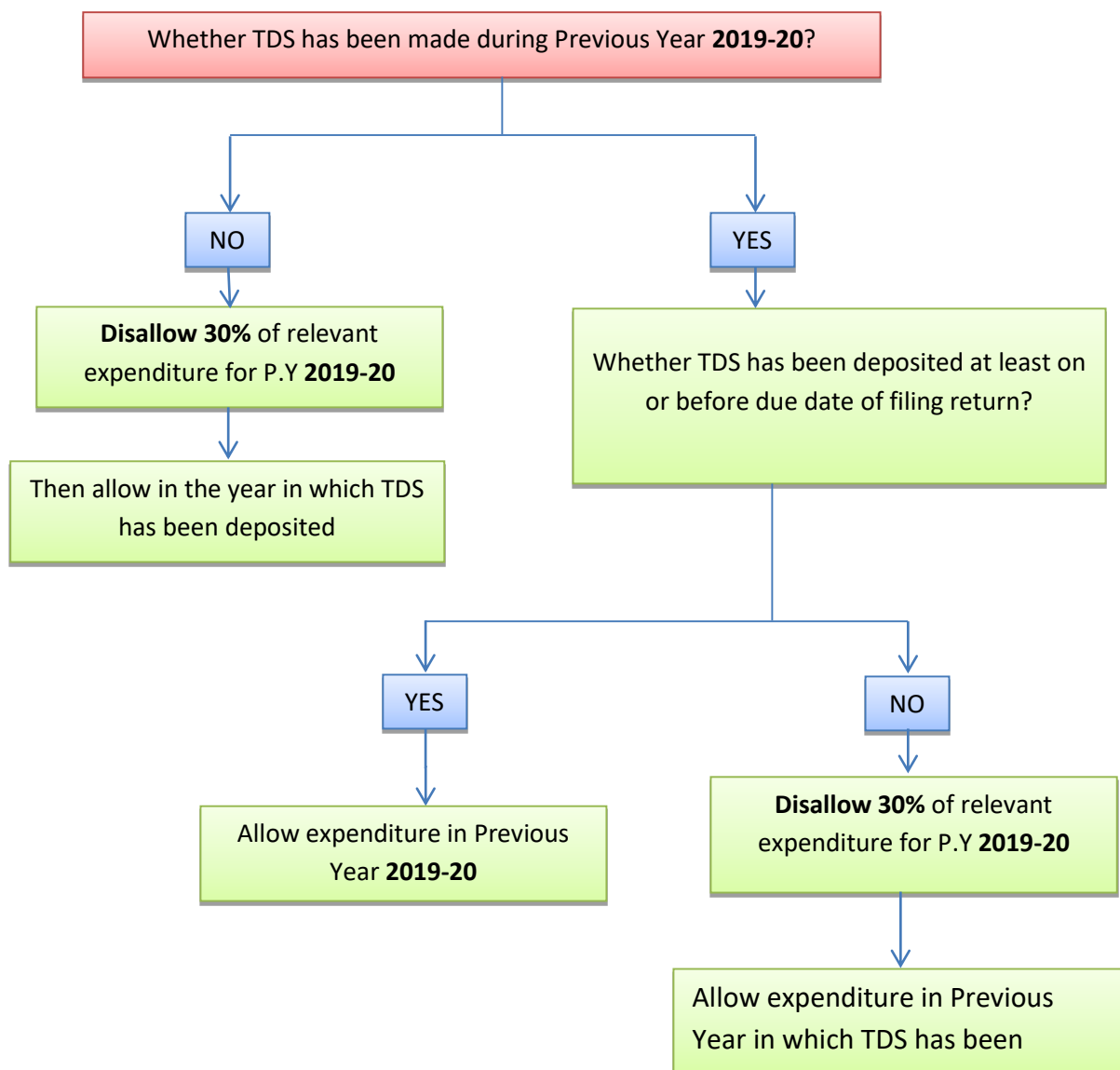
30% of any sum payable to a resident on which tax is deductible at source under Chapter XVII-B and

- (i) such tax has not been deducted or,
- (ii) after deduction, has not been paid on or before the due date specified in sub-section (1) of [section 139](#).

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of [section 139](#), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

"Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the **resident [omitted by Finance Act, 2019 w.e.f. A.Y. 2020-21]** payee referred to in the said proviso."

Summary :- Any Payment to Resident [Section 40(a)(ia)]



5.11 SALARY PAYABLE OUTSIDE INDIA OR PAYABLE TO NON-RESIDENTS

Section:- 40(a)(iii)

In this case, verify that

(a) Either TDS has been deducted

OR

(b) TDS has been deposited

If any of the above (a) or (b) is satisfied then, allow salary expenditure in the previous year to which it pertains (Previous year 2019-20).

Practical 14

Fill in the last column considering the provisions of section 40(a)(iii) of Income Tax Act, 1961 assuming that payment is made by a company to (a) any person outside India or (b) non-resident in India –

Amount Rs. (Salary for the Previous year 2019-20)	Actual date of tax deduction	Actual date of tax deposit	Previous year in which salary payment is deductible
90,000	March 31, 2020	April 7, 2020	
1,60,000	March 31, 2020	May 12, 2020	
70,000	Not deducted	May 12, 2020	
75,000	March 31, 2020	Not deposited	
95,000	Not deducted	Not deposited	

Solution

Amount of Salary	Previous year in which salary payment is deductible
90,000	2019-20
1,60,000	2019-20
70,000	2019-20
75,000	2019-20
95,000	No deduction

Reader's Note:**5.12 TAX ON NON-MONETARY PERQUISITES****Section:- 40(a)(v) and 10(10CC)**

- (1) Any obligation of employee which has been met by employer is treated as perquisite and therefore it shall be added to the salary income of employee.
- (2) On the basis of same reasoning, income tax liability of employee which has been met by employer shall be treated as perquisite and therefore added to salary.
- (3) However, as per Section 10 (10CC) if income tax is borne by employer in respect of non-monetary perquisite, then such tax (though borne by employer) shall not be added to salary income.
- (4) However, there is a punishment to employer under section 40(a)(v). As per this section employer will not get deduction of tax so borne while computing his PGBP income.

Practical 15

Mr. Jabanz, an employee of Himmat Software Private Limited (HSPL), provides following information:

- (a) Salary : Rs. 50,000 p.m.
 - (b) Employer had taken unfurnished house property on monthly lease of Rs. 12,000 and provided the same to Mr. Jabanz as rent-free unfurnished accommodation,
 - (c) It was agreed that the tax on above perquisite is to be borne by employer
- You are required to compute tax liability of Mr. Jabanz.

Further, discuss tax consequences of above transactions in the hands of Himmat Software Private Limited.

Solution**Computation of total income and tax liability in the hands of Mr. Jabanz**

Particulars	Rs.
Salary	6,00,000
Value of rent free accommodation (15% of salary or lease rent paid whichever is lower)	90,000
Tax borne by Employer on rent- free accommodation [Exempt under section 10(10CC)]	NIL
Total Income	6,90,000
Tax on total income (A)	52,520
Average rate of tax (Rs. 52,520 / Rs. 6,90,000 x 100) :	7.6116%
Tax on perquisite (7.6116% of Rs. 90,000) (B)	(6,850)
Net Tax Payable (A-B)	45,670

Tax consequences of following payments in the hands of Himmat Software Private Limited:

Particulars	Rs.	Tax Treatment under head PGBP
Salary to Mr. Jabanz	4,80,000	Deductible under section 37(1)
Lease rent paid	1,44,000	Deductible under section 30/37(1)
Tax on perquisite borne by HSPL.	6,850	Not deductible due to section 40(a)(v)

Reader's Note:

5.13 PAYMENT EXCEEDING RS.10,000 MADE OTHERWISE THAN BY ACCOUNT PAYEE CHEQUE OR DEMAND DRAFT

Section:- 40A(3)

- (1) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or *through such other electronic mode as may be prescribed [Inserted by Finance Act, 2019 w.e.f. A.Y.2020-21]*, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.
- (2) However, in the case of payment made for plying, hiring or leasing goods carriages, the monetary limit of Rs.35,000 shall be applicable while giving effect to the provisions of this section.
- (3) The provisions of this section shall be applicable to all types of expenditure including payment made for purchase of goods which are to be claimed under the head "PGBP".
- (4) However, no disallowance shall be made under this sub-section, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.
- (5) Circumstances prescribed under Rule 6DD, for which no disallowance shall be made under this section, are as under:

(a)	Payment made to the Reserve Bank of India or any banking company or State Bank of India or any subsidiary bank or any co-operative bank or land mortgage bank or any primary agricultural credit society or any primary credit society.
(b)	Payment made to Government and as per rules such payment is required to be made in legal tender
(c)	Payment through banking system e.g. (i) any letter of credit (ii) a mail or telegraphic transfer (iii) book adjustment from any account in a bank to any other account in that or any other bank (iv) bill of exchange (v) The use of electronic clearing system through a bank account (vi) A credit card; (vii) A debit card.
(d)	where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;

(e)	Where the payment is made for the purchase of— (i) Agricultural or forest produce; or (ii) The produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or (iii) Fish or fish products; or (iv) The products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products; Circular No. 4 /2006 It is further clarified that benefit under this clause will not be available on the payment for the purchase of livestock, meat, hides and skins from a person who is not proved to be the producer of these goods and is only a trader, broker or any other middleman by whatever name called. Circular No. 8/2006 (a) The Board after examination of the issue is of the view that any person, by whatever name called, who buys animals from the farmers, slaughters them and then sells the raw meat carcasses to the meat processing factories or to the traders/retail outlets would be considered as producer of livestock & meat. (b) The benefit of rule 6DD of the Income-tax Rules, 1952 shall be available to the person referred to at para (a) above subject to furnishing of the following :— (i) A declaration from the person receiving the payment that he is a producer of meat; (ii) A confirmation that the payment, otherwise than by an account payee cheque or account payee bank draft, was made on his insistence; and (iii) A further confirmation from a veterinary doctor certifying that the person specified in the certificate is a producer of meat and that slaughtering was done under his supervision.
(f)	Where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
(g)	Where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
(h)	Where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;
(i)	Payment made by an assessee by way of salary to his employee after deducting tax from salary in accordance with the provisions of section 192 and when such employee- (a) is temporarily posted for a continuous period of 15 days or more in a place other than his normal place of duty or on a ship and (b) does not maintain any account in any bank at such place or ship.
(j)	Where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;
(k)	Where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
(l)	Where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

5.14 DEDUCTION HAS BEEN CLAIMED EARLIER ON DUE BASIS AND PAYMENT IS MADE SUBSEQUENTLY OTHERWISE THAN BY ACCOUNT PAYEE CHEQUE OR DRAFT

Section:- 40A(3A)

A special provision has been introduced to cover the above-mentioned payments under section 40A (3A) which is given below-

- (i) The taxpayer had claimed deduction in respect of an expenditure in any of the earlier years.
- (ii) The amount of deduction exceeds Rs. 10,000.
- (iii) Subsequent year payment is made in respect of the aforesaid liability
- (iv) The payment exceeds Rs. 10,000.
- (v) The payment is made otherwise than by an account payee cheque or draft or use of electronic clearing system through a bank account or *through such other electronic mode as may be prescribed*
[Inserted by Finance Act, 2019 w.e.f. A.Y.2020-21]

If above conditions are satisfied, the payment so made shall be deemed to be the business income of the previous year in which payment is made.

5.15 MARKED TO MARKET LOSS OTHER THAN UNDER SECTION 36(1)(xviii)

Section:- 40A(13) - Inserted by Finance Act, 2018 w.r.e.f. A.Y. 2017-18

No deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss except as allowable under section 36(1)(xviii).

5.16 CERTAIN DEDUCTIONS TO BE ONLY ON ACTUAL PAYMENT

Section:- 43B

- Followings are deductible on payment basis:
 - (a) Any sum payable by way of tax, duty, cess or fees by whatever name called under any law for the time being in force e.g. Municipal tax, Excise Duty, VAT, Service Tax, Custom Duty
 - (b) Any sum payable by an employer by way of contribution to provident fund or superannuation fund or any other fund for the welfare of employees. **(Employers' Contribution)**
 - (c) Any sum payable as bonus or commission to employees.
 - (d) Any sum payable as interest on any loan or borrowing from a public financial institution or a state financial corporation or a state industrial investment corporation.
 - (e) *any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing. [Inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21]*
 - (f) Any sum payable by the assessee as interest on any loan or advances taken from a scheduled bank or a co-operative bank other than a primary agriculture society or a primary co-operative agricultural and rural development bank.
 - (g) Any sum payable by an employer in lieu of leave at the credit of his employee
 - (h) any sum payable by the assessee to the Indian Railways for the use of railway assets.

- Above expenditures are deductible in the previous year in which they have been incurred provided actual payment has been made on or before the due date for furnishing return of income u/s 139(1).
- If payment is not made within the time mentioned above, then relevant expenditure is first disallowed and thereafter it shall be allowed as deduction in the previous year in which actual payment is made.

• **Explanation 3AA - Inserted Finance Act, 2019, A.Y. 2020-21**

For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (e) is allowed in computing the income referred to in section 28, of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 2019, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

• **Explanation 3C and 3D of section 43B**

If any sum payable by an assessee as interest on any loan or borrowing or advance is converted by the bank or financial institution into a fresh loan, the interest so converted (but not actually paid) shall not be deemed to have been actually paid for the purpose of this section and therefore same shall not be allowed as deduction under the head PGBP.

• **Explanation 3CA - Inserted Finance Act, 2019, w.e.f. A.Y. 2020-21**

If any sum payable by an assessee as interest on any loan or borrowing or advance is converted by the non-banking financial company into a fresh loan, the interest so converted (but not actually paid) shall not be deemed to have been actually paid for the purpose of this section and therefore same shall not be allowed as deduction under the head PGBP.

• **Explanation 4 -Following clauses (e) to (g) Amended made by Finance Act, 2019, w.e.f. A.Y. 2019-20**

(e) "deposit taking non-banking financial company" means a non-banking financial company which is accepting or holding public deposits and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934 (2 of 1934);

(f) "non-banking financial company" shall have the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(g) "systemically important non-deposit taking non-banking financial company" means a non-banking financial company which is not accepting or holding public deposits and having total assets of not less than five hundred crore rupees as per the last audited balance sheet and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934 (2 of 1934).

- Further, student must note that **Employees' Contribution** is not governed by section 43B. It is governed by section 2(24) & section 36(1)(va). Tax treatment of Employees' Contribution is as under:-

N.P. as per profit and loss account	XXX
Add: Employees' Contribution :- It is deemed income as per definition of Income [Section 2(24) (x)]	XXX
Less: Amount deposited within the due date under Provident Fund Act or any other relevant Act [Section 36(1)(va)]	XXX

UNIT C- DEEMED INCOME UNDER "PGBP"**5.17 SECTION 41****Sub - Section:- (1)**

To whom it is applicable?	Particulars of deemed receipt
All assessee including successor of business	<i>Condition one</i> - In any of the earlier years, a deduction was allowed in respect of loss, expenditure or trading liability incurred by the assessee. <i>Condition two</i> - During the current previous year, the assessee— a. has obtained in cash or any other manner, any amount in respect of such loss, expenditure or trading liability (to be called refund or recovery); Or b. has obtained some benefit in respect of such trading liability by way of remission or cessation thereof [Explanation 1-“remission or cessation” for this purpose includes unilateral act of the assessee by way of writing off of such liability in his books of account]. If the above two conditions are satisfied, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to tax as the income of that previous year.

UNIT D-SPECIAL PROVISIONS UNDER "PGBP"**5.18 SPECIAL PROVISIONS CONSEQUENTIAL TO CHANGES IN RATE OF EXCHANGE OF CURRENCY****Section:- 43A**

Where an assessee acquires an asset from abroad and in consequence of the variation in exchange rate, the liability of the assessee in terms of payment towards the acquisition of that asset increases or decreases, then the actual cost of that asset shall be increased or decreased for the following sections:

- Section 43(1)
- Section 35(1)(iv)
- Section 36(1)(ix)
- Section 48.

However, the abovementioned increase or decrease in liability due to exchange rate fluctuation shall be taken into account at the time of making payment, irrespective of method of accounting followed by the taxpayer.

Explanation 1.—In this section, —

- (a) "rate of exchange" means the rate of exchange determined or recognised by the Central Government for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;
- (b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in section 2 of the Foreign Exchange Management Act, 1999.

Explanation 2.—Where the whole or any part of the liability aforesaid is met, not by the assessee, but, directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this section.

Explanation 3.—Where the assessee has entered into a contract with an authorised dealer for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, to be added to, or deducted from, the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset under this section shall, in respect of so much of the sum specified in the contract as is available for discharging the liability aforesaid, be computed with reference to the rate of exchange specified therein.

Practical 16

Nicholas Manufacturing Ltd. purchased a machinery (eligible for depreciation at 15%) on credit from Germany for Euro 1,00,000 on **08.09.2018**. The exchange rate on the date of acquisition was Rs.73. The assessee made payment on **08.10.2019** and for that he took a forward exchange for that exchange rate specified in the contract was Rs.77 per Euro. Compute depreciation for the previous year **2018-19** and **2019-20**. Ignore additional depreciation.

Solution

Computation of depreciation for the assessment years 2018-19 and 2019-20

	Rs.	Rs.
Cost of the asset [€1,00,000 x Rs.73]	73,00,000	10,95,000
Less: Depreciation for the previous year 2018-19 @15%	10,95,000	
WDV as on 1.4.2019	62,05,000	
Add: Exchange rate difference u/s 43A [€1,00,000 x Rs.4]	4,00,000	9,90,750
WDV for the previous year 2019-20	66,05,000	
Depreciation @15% for the previous year 2019-20	9,90,750	
WDV as on 1.4.2020	56,14,250	

Reader's Note:

5.19 TAXATION OF FOREIGN EXCHANGE FLUCTUATION

Section:- 43AA – Inserted by Finance Act, 2018 , w.r.e.f. A.Y.2017-18

Section 43AA provides that any gain or loss arising on account of any change in foreign exchange rates shall be treated as income (or loss) and such income (or loss) shall be computed in accordance with ICDS notified under section 145(2).

It further provides that gain (or loss) arising on account of the effects of change in foreign exchange rates shall be in respect of all foreign currency transactions including those relating to

- (a) monetary items and non-monetary items;
- (b) translation of financial statements of foreign operations;
- (c) forward exchange contracts;
- (d) foreign currency translation reserves.

Remark: The above provisions (of section 43AA) shall not be applicable where provisions of section 43A are applicable.

5.20 SPECIAL PROVISION IN CASE OF INCOME OF PUBLIC FINANCIAL INSTITUTIONS, PUBLIC COMPANIES, ETC.

Section:- 43D

Assessee	Nature of Income	Year of taxability
- Public Financial Institutions - Scheduled banks - co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) – Inserted by Finance Act, 2017 - a deposit taking non-banking financial company or a systematically important non-deposit taking non-banking financial company- Inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21 - State Financial Corporations - State Industrial Investment Corporations	Interest on advances categorized as 'Bad & Doubtful debts' as per the guidelines issued by RBI.	Year in which such interest is: (i) credited to P&L account or (ii) actually received by the assessee whichever is earlier

Practical 1

Ratnakar Home Furniture Private Ltd (RHFPL) had raised term loan from Bajaj Finserv Limited (BFL), a deposit taking non-banking financial company (NBFC) two years before. However, RHFPL failed to pay the instalments of term loan and therefore BFL categorized this term loan as "Bad and Doubtful Debts" as per the guidelines issued by RBI. The total interest not served by RHFPL was Rs. 32,00,000 for the previous year 2019-20. Discuss tax consequence of the abovementioned transaction in the hands of

(a) RHFPL

(b) BFL

Solution

Tax consequence in the hands of RHFPL

As per the amended provisions of sec. 43B by the Finance Act, 2019, RHFPL is not entitled to claim unpaid interest of Rs. 32,00,000 unless it has been actually paid on or before due date of filing return u/s 139(1) of the Act.

Tax consequence in the hands of BFL

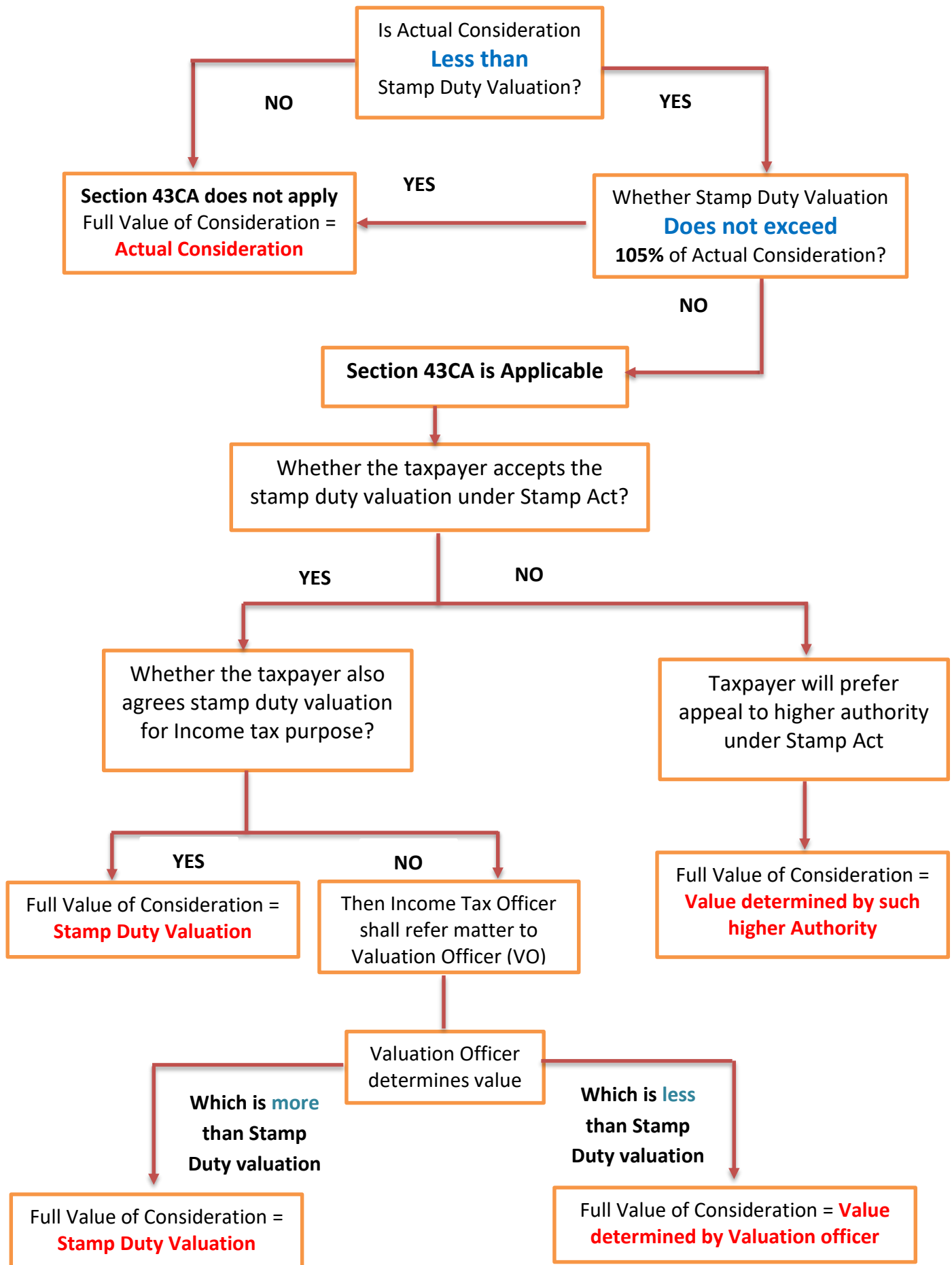
As per the amended provisions of section 43D by the Finance Act, 2019, if BFL does not recognize Rs. 32,00,000 as interest income in its books account then it would not be taxable in the previous year 2019-20.

Reader's Note:

5.21 STAMP DUTY VALUE OF LAND AND BUILDING TO BE TAKEN AS THE FULL VALUE OF CONSIDERATION IN RESPECT OF TRANSFER, EVEN IF THE SAME ARE HELD BY THE TRANSFEROR AS STOCK-IN-TRADE

Section:- 43CA

This section is applicable when consideration received on transfer of land or building or both is less than the value adopted by Stamp Authority for the purpose of payment of stamp duty. Consider the following chart:-



NOTES RELEVANT FOR SECTION 43CA:**(1) Following proviso shall be inserted in sub-section (1) of section 43CA by the Finance Act, 2018, w.e.f. 1-4-2019:**

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration. Readers must note that the effect of this proviso has already been incorporated in the chart discussed above.

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

However, for the same, at least a part of the consideration has been received by way of an account-payee cheque or draft or by use of electronic clearing system through a bank account **or through such other electronic mode as may be prescribed (Inserted by Finance Act, 2019, w.e.f. A.Y. 2020-21)** on or before the date of agreement

**SECTION 50C: For detailed discussion: Refer Module I – Chapter 6 -Capital Gains****Practical 17**

M/s. Radheshyma Builders would like to sell the flats constructed by it. The valuation of one flat for the purpose of stamp duty is Rs. 25,00,000. Find out the revenue to be booked under the head PGBP under following alternatives, if actual consideration received by it is:

Alternative I	Alternative II	Alternative III
Rs.25,21,000	Rs.24,00,000	Rs.23,00,000

Solution

Alternative	Actual Consideration (AC)	Stamp Duty Valuation (SDV)	Is AC < SDV?	If yes, then find out 105% of AC.	Whether SDV does not exceed 105% of AC?	Applicability of section 43CA?	Revenue to be booked under the head PGBP
I	25,21,000	25,00,000	No	NA	NA	NA	AC=25,21,000
II	24,00,000	25,00,000	Yes	25,20,000	Yes	NA	AC=24,00,000
III	23,00,000	25,00,000	Yes	24,15,000	No	Yes	SDV=25,00,000

Reader's Note:**Practical 18**

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

1. Date of entering into agreement: **1.8.2019**.
2. Agreed consideration : Rs. 100 lakhs
3. Down payment of Rs. 5 lakhs was received by bearer cheque on the date of agreement.
4. Stamp duty value of the building on the date of agreement was Rs. 135 lakhs.
5. On receipt of balance payment, registration of sale deed took place on **1.1.2020**.
6. Stamp Duty value on the date of registration of sale deed was Rs. 145 lakhs.
7. Rahul has purchased this building for Rs. 65 Lakh on **12.07.2018**.

Discuss tax implication in the hands of Rahul.

Solution**Computation of taxable business income in the hands of Rahul**

Particulars	Rs. in lakhs	Remarks
Sale Consideration	145	The amendment made by Finance Act, 2018 under section 43CA(4) gives an option to adopt stamp duty value on the date of registration provided some consideration has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement Readers shall pay attention to the fact that Rahul received bearer cheque. Therefore, he cannot take advantage of above amendment.
Less: Purchase Price	<u>65</u>	-
Business Income	<u>80</u>	-

Reader's Note:**5.22 COMPUTATION OF INCOME FROM CONSTRUCTION AND SERVICE CONTRACTS****Section:- 43CB – Inserted by Finance Act, 2018 w.r.e.f. A.Y. 2017-18**

- Section 43CB (1) provides that the profits and gains arising from (i) a construction contract or (ii) a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the ICDS
- It further provides that profits and gains arising from a contract for providing services -
 - (a) with duration of not more than 90 days shall be determined on the basis of project completion method.
 - (b) involving indeterminate number of acts over a specific period of time shall be determined on the basis of straight line method.
- Section 43CB (2) provides that for the purpose of project completion method or straight line method
 - (a) the contract revenue shall include retention money.
 - (b) the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.

Practical 19

Vrindavan Construction Private Limited undertaken a construction contract on 01/04/2017. The fixed contract price agreed was Rs. 2,00,00,000 (including retention money Rs. 10,00,000). The company incurred Rs. 81,00,000 in previous year 2017-18 for 45% work and received Rs. 79,00,000 as progress payment from the customer. The cost incurred in previous year 2018-19 was Rs. 89,00,000 to complete the rest of work. During previous year 2018-19 company also earned a small gain of Rs. 88,000 on disposal of plant specifically purchased for this contract. Besides, company recovered interest of Rs. 1,12,000 on advances made to sub-contractor for this contract.

You are required to ascertain:

- (a) Contract Revenue
- (b) Contract Cost for the previous year 2017-18 and 2018-19
- (c) Profit to be recognized for the previous year 2017-18 and 2018-19 from this construction contract.

Solution**Computation of Contract Revenue**

Contract Revenue = Rs. 2,00,00,000 (Retention money Rs. 10,00,000 cannot be deducted in view of the provisions of section 43CB and ICDS III)

Computation of Contract Cost

As per the provisions of section 43CB(2), the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains. Therefore, the contract cost for the previous year 2017-18 shall be Rs. 81,00,000 and for previous 2018-19, it shall be Rs. 89,00,000.

Computation of profit to be recognized for the previous year 2017-18.

Particulars	Amount (Rs.)
Contract Revenue (45%)	90,00,000
Contract Cost for 45% work done	(81,00,000)
Profit	9,00,000

Computation of profit to be recognized for the previous year 2018-19

Particulars	Amount (Rs.)
Contract Revenue (55%)	1,10,00,000
Contract Cost for 45% work done	(89,00,000)
Profit	21,00,000

Note: In addition to the above income of Rs. 21,00,000, company is required to offer short-term capital gain of Rs. 88,000 (assuming that block ceases to exist) and Rs. 1,12,000 interest income under the head "PGBP".

Reader's Note:

UNIT E - MAINTENANCE OF ACCOUNTS, PRESUMPTIVE TAXATION AND TAX AUDIT**5.23 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:

- Financial criteria;
- 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	(a) 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 (b) 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 (c) In case of person being an individual or Hindu undivided family, the provisions of clause (a) and (b) above, the limit of Rs. 1,20,000 shall be substituted by Rs. 2,50,000 and the limit of Rs. 10 lakhs shall be substituted by Rs. 25 lakhs (Inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19) or (d) where profits and gains from the business are claimed to be lower than profits computed under Section 44AE or 44BB or 44BBB or (e) Where the provisions of section 44AD(4) are applicable in his case and his income exceeds maximum amount not chargeable to tax in any previous year.	Such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of the Act.
Other persons	Not covered by above	Not required to maintain any books of account.

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

(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.

5.24 PRESUMPTIVE TAXATION FOR ASSESSEE ENGAGED IN BUSINESS OF PLYING, HIRING AND LEASING GOODS CARRIAGES

Section:- 44AE

(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

(2) Presumptive Income

- The profits and gains from each goods carriage
 - (a) being heavy goods vehicle, shall be an amount equal to Rs.1,000 per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month during which the heavy goods vehicle is woned by the assessee in the previous year or an amount actually earned from such vehicle, whichever is higher;
 - (b) other than heavy goods vehicle, shall be an amount equal to 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
- The expressions “goods carriage”, “gross vehicle weight” and “unladen weight” shall have the respective meaning assigned to them in section 2 of the Motor Vehicles Act, 1988.
- The expression “heavy goods vehicle” means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms.

(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 u/s 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 20

Mr. Jambaz owns 12 heavy trucks throughout the previous year **2019-20**. 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 **2019-20**, he wants to opt for the presumptive taxation under section 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, in this case, Mr. Jambaz is not eligible to opt for the presumptive taxation under section 44AE because he owns 12 trucks during the previous **2019-20**.

Reader's Note:

Practical 21

M/s. Chhabada & Co., a partnership firm is engaged in the business of plying goods carriages. On **1st April, 2019**, it owns 10 goods carriages (9 goods carriages – gross vehicle weight of each being 30,000 kgs and one goods carriage heaving gross vehicle wiehgt of 12,000 kg.). On **2nd May, 2019**, firm sold one of the goods carriages (the gross vehicle weight was 12,000 kg.) and purchased another goods carriage (the gorss vehicle weight was 1,285 kg) on **6th May, 2019**. This new goods carraige could however be put to use only on **15th June, 2019**.

Compute the total income of M/s. Chhabada & Co. for the A.Y. **2020-21**, taking note of the following data:

Particulars	Rs.
Freight charges collected	39,60,000
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)]	(20,00,000)
Other office expenses	(15,000)
Net profit	11,35,000
Income from other sources	70,000

Solution

Computation of Total income of Chhabada & Co. for the A.Y. 2020-21

Particulars	Total Income, if books are not maintained	Total Income, if books are maintained and audited
Income from business of plying goods carriages	13,37,500 [Refer Notes]	11,35,000
Income from other sources	70,000	70,000
Total Income	14,07,500	12,05,000

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

Particulars	No. of months	Rate per month	Amount (Rs.)
9 heavy goods vehicle – held throughout the year	12	30,000	32,40,000
1 other than heavy goods vehicle – held up to 2 nd May	2	7,500	15,000
1 other than heavy goods vehicle – held from 6 th May	11	7,500	82,500
Presumptive Income as per section 44AE			33,37,500
Less: Salary and interest to partners (as permitted by section 40(b))			(20,00,000)
Net presumptive income under section 44AE			13,37,500

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. Once firm opts for the section 44AE, all deductions u/s 30 to 38 shall be deemed to have been allowed.
3. Further under section 44AE, firm is eligible to claim interest and remuneration paid to partners.

Reader's Note:

5.25 PRESUMPTIVE TAXATION FOR ELIGIBLE ASSESSEE CARRYING ON ELIGIBLE BUSINESS

Section:- 44AD

(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.

(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).

(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

(4) Presumptive Income

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

However, the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account *or through such other electronic mode as may be prescribed (Inserted by Finance Act, 2019, w.e.f. A.Y. 2020-21)* during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.

Other salient features of this presumptive scheme

- **Section 44 AD(2):-** All the deductions under section 30 to 38 shall be deemed to have been allowed. Due to deletion of proviso to this section, if eligible assessee is a firm then it cannot claim deduction in respect of interest and salary paid to partners. (Amendment made by Finance Act, 2016).
- **Section 44 AD(3) :-** The WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years.
- **Section 44 AD(4):-** Where an eligible assessee declares profit for any assessment year in accordance with the provisions of this section and he declares profit for any of the five consecutive subsequent assessment years at lower than the required 8 percent, then he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared up to 8 percent.

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

Practical 22

M/s. Patel & Co., a partnership firm has opened medical store on **10-5-2019**. The firm purchased small furnished shop on **15-04-2019** 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 (Cash Sales)	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 **2020-21**.

Solution**Computation of Total income of Patel & Co. for the A.Y. 2020-21**

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

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

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

Other Notes:

1. Patel & Co. runs medical store and its turnover is less than Rs. 2 Crore, therefore, it is an eligible assessee under section 44AD of the Act.
2. As per the provisions of section 44AD of the Act, assessee has to declare minimum 8% of gross receipts as income under the head "PGBP", if firm would not like to maintain books of accounts.
3. Once firm opts for the section 44AD, all deductions u/s 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 23**

Continuing above problem, M/s. Patel & Co. offered its income under section 44AD for the **assessment year 2021-22** and **2022-23** also. However, for **assessment year 2023-24**, 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 2023-24**.

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 2020-21**, ideally, it shall declare the profits under section 44AD of the Act 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

However, Patel & Co. would like to declare profit from the medical store lower than 8% of turnover in **assessment year 2023-24**, then it shall not be eligible to claim benefit of section 44AD for the following five assessment years:

Sr. No.	Assessment years
1	2024-25
2	2025-26
3	2026-27
4	2027-28
5	2028-29

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 44 AD(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 **2023-24** as under:

Particulars	Building (Rs.)	Furniture (Rs.)
WDV as on 01-4-2019	Nil	Nil
Add: Purchased during previous year 2019-20	40,00,000	5,00,000
Less: Sold out during previous year 2019-20	Nil	Nil
WDV for the previous year 2019-20	40,00,000	5,00,000
Less: depreciation for the previous year 2019-20	(4,00,000)	(50,000)
WDV as on 01-04-20	36,00,000	4,50,000
Less: Depreciation for the previous year 2020-21	3,60,000	45,000
WDV as on 01-04-21	32,40,000	4,05,000
Less: Depreciation for the previous year 2021-22	3,24,000	40,500
WDV as on 01-04-2022	29,16,000	3,64,500
Less: Depreciation for the previous year 2022-23 (A.Y. 2023-24)	2,91,600	36,450

Reader's Note:

Practical 24

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

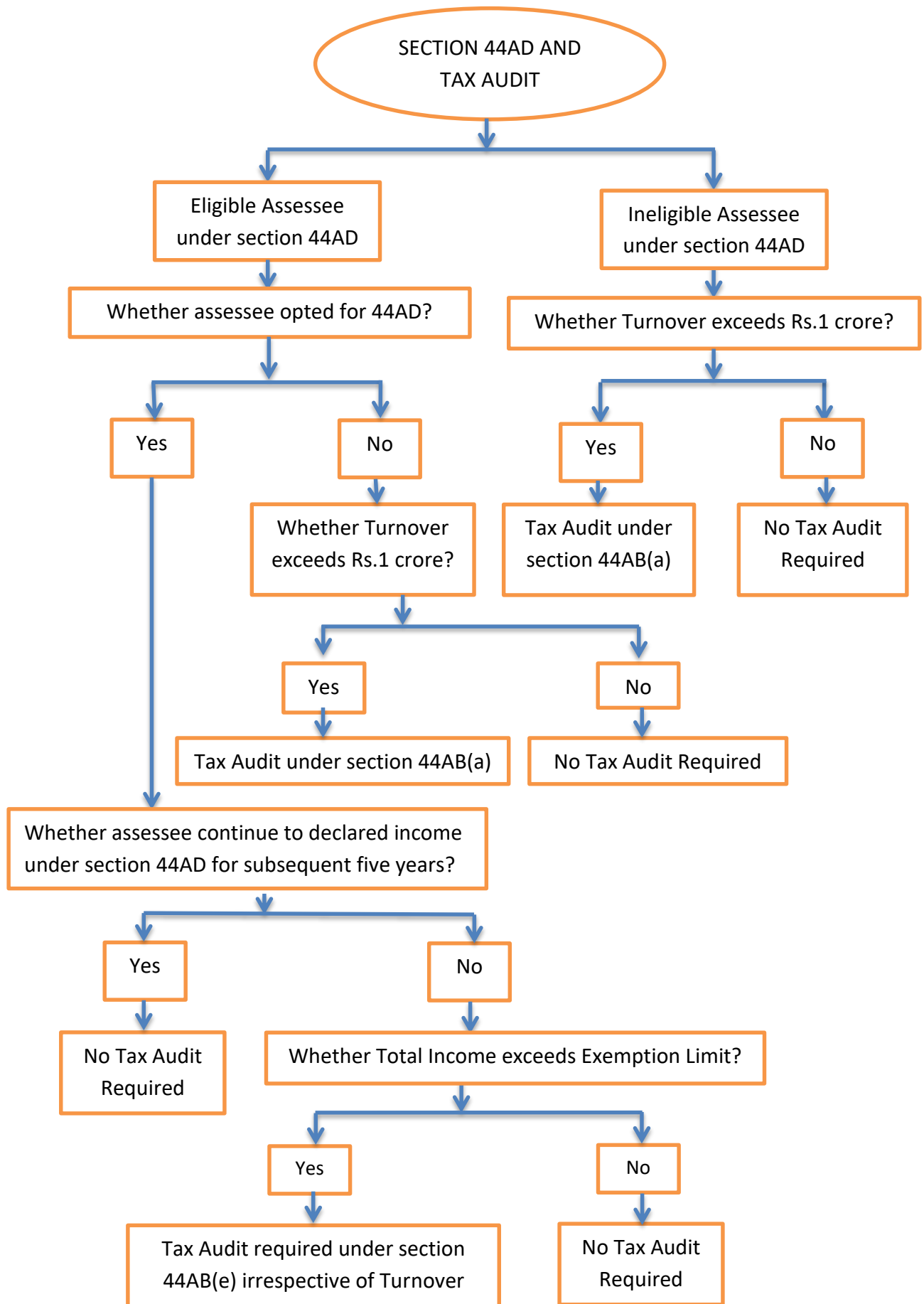
Particulars	Rs.
Presumptive income under section 44AD [Rs. 70,00,000 x 8%]	5,60,000
Less: unabsorbed depreciation	Nil
	5,60,000
Less: Business loss brought forward u/s 72	(45,000)
Business Income	5,15,000

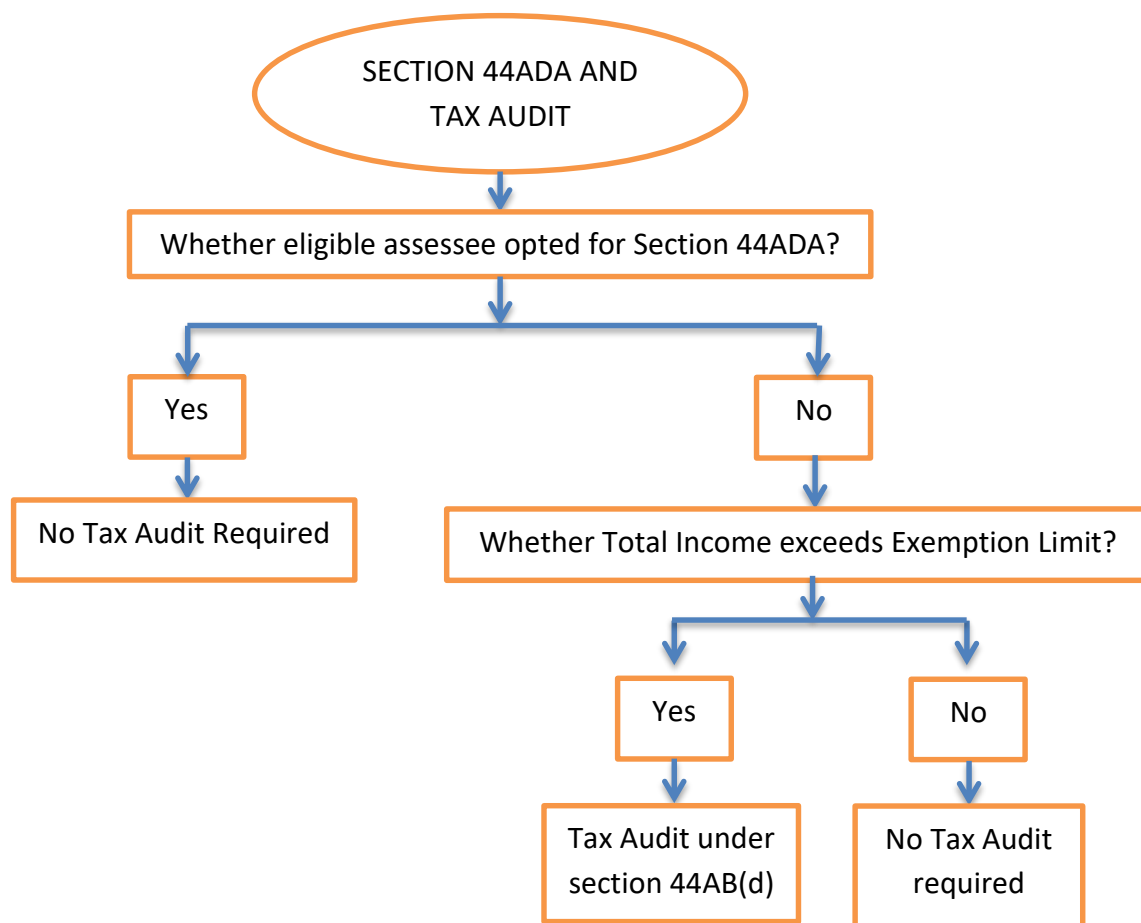
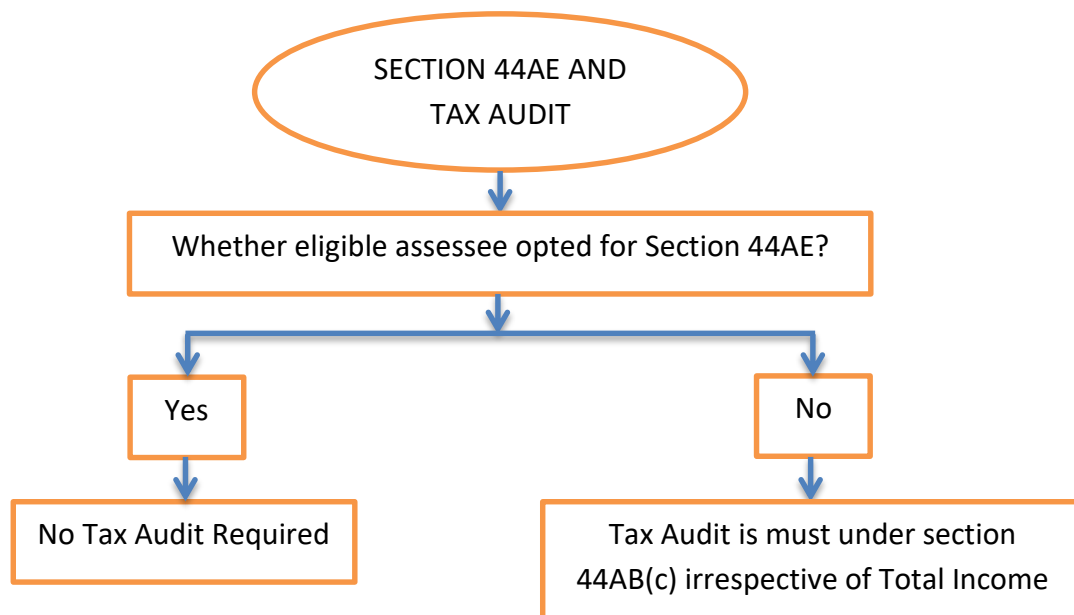
Notes:

- (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:

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

UNIT F – MISCELLANEOUS PROVISIONS**5.26 TAXABILITY OF SPECULATIVE TRANSACTIONS****Section:- 43(5) and Explanation to Section 73****(1) Meaning**

Speculative transaction means a transaction involving a contract for purchase and sale of commodities, including stocks and shares, which is periodically or ultimately settled other than by actual delivery or transfer of commodities or scrips [Section 43(5)].

(2) Exceptions: [Proviso to Section 43(5)]

Following transactions are not regarded as speculative transactions

- (a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him;
- (b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations;
- (c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member;
- (d) an eligible transaction in respect of trading in derivatives referred to in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 carried out in a recognised stock exchange;
- (e) an eligible transaction in respect of trading in commodity derivatives carried out in a recognised association, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013. ***However, in respect of trading in agricultural commodity derivatives, the requirement of chargeability of commodity transaction tax under Chapter VII of the Finance Act, 2013 shall not apply. [Amended by Finance Act, 2018 w.e.f. A.Y.2019-20]***

(3) Speculative business in the case of a company [Explanation to sec. 73]

Where any part (or whole) of the business of a company consists in the purchase and sale of shares of other companies, such company shall be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares.

The above Explanation to section 73 does not apply to the following companies:

- (1) companies whose gross total income consists mainly of income which is chargeable under the heads 'Income from house property', 'Capital gains' and 'Income from other sources';
- (2) companies whose principle business is the business of banking;
- (3) companies whose principle business is the business of trading in share;
- (4) companies whose principle business is the business of granting loans and advances.

Practical 25

Surana Trading Pvt. Ltd. provides following information:

Sr. No.	Particulars	Rs.
(i)	Surplus from trading in goods (Delivery based)	4,80,000
(ii)	Surplus from speculative business	3,22,000
(iii)	Loss from trading in commodity derivatives	1,22,000
(iv)	Loss from business of buying and selling shares of other companies. (Delivery based trading)	2,22,000
(v)	Surplus from trading in stock derivatives	22,000

Find out business income of the company under following alternatives:

- (i) Trading in shares is not the principle business of a company.
- (ii) Trading in shares is the principle business of a company

Solution

Alternative 1 : Trading in shares is not the principle business of a company

Computation of Income under the head 'PGBP'

Particulars	Rs.	Rs.
<u>Non-Speculative Income</u>		
Surplus from Trading in goods (Delivery based)	4,80,000	
Loss from trading in commodity derivatives	(1,22,000)	
Surplus from trading in stock derivatives	22,000	3,80,000
<u>Speculative Income</u>		
Surplus from speculative business	3,22,000	
Loss from business of buying and selling shares of other companies. (Delivery based trading) [NOTE]	(2,22,000)	1,00,000
Income under the head "PGBP"		4,80,000

Note:

As discussed above, where any part (or whole) of the business of a company consists in the purchase and sale of shares of other companies, then such company shall be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares, even though it is delivery-based trading. Therefore, Loss from business of buying and selling shares of other companies is treated as speculative loss.

Alternative 2:- Trading in shares is the principle business of a company.

Computation of Income under the head 'PGBP'

Particulars	Rs.	Rs.
<u>Non-Speculative Income</u>		
Surplus from non-speculative business	4,80,000	
Loss from trading in commodity derivatives	(1,22,000)	
Loss from business of buying and selling shares of other companies. (Delivery based trading) [NOTE]	(2,22,000)	
Surplus from trading in stock derivatives	22,000	1,58,000
<u>Speculative Income</u>		
Surplus from speculative business		3,22,000
Income under the head "PGBP"		4,80,000

Note: As per amendment made by Finance Act, 2014, deeming provisions of explanation to section 73 shall not be applicable to a company whose principle business is the business of trading in share. Therefore, Loss from business of buying and selling shares of other companies is treated as non-speculative loss.

Reader's Note:

Practical 26

Sur-Taal Trading Pvt. Ltd. provides following information:

Sr. No.	Particulars	Rs.
(i)	Surplus from trading in goods (Delivery based)	6,12,000
(ii)	Surplus from trading in goods (Contracts settled without delivery)	4,73,000
(iii)	Loss from trading in commodity derivatives carried out on a recognized association, chargeable to CTT	2,72,000
(iv)	Loss from trading in agricultural commodity derivatives carried out on a recognized association, not chargeable to CTT	3,01,000
(v)	Surplus from trading in stock derivatives carried out on a recognized stock exchange	58,000

Find out income chargeable under the head “PGBP”.

Solution**Computation of Income under the head ‘PGBP’**

Particulars	Rs.	Rs.
<u>Non-Speculative Income</u>		
Surplus from non-speculative business	6,12,000	
Loss from trading in commodity derivatives	(2,72,000)	
Loss from trading in agricultural commodity derivatives carried out on a recognized association, not chargeable to CTT [NOTE]	(3,01,000)	
Surplus from trading in stock derivatives	58,000	97,000
<u>Speculative Income</u>		
Surplus from speculative business		4,73,000
Income under the head “PGBP”		5,70,000

NOTE: As per amendment made by Finance Act, 2018, trading in agricultural commodity derivatives on a recognized association shall be regarded as non-speculative even though the transaction was not subject to CTT.

Reader’s Note:

5.27 DEDUCTION IN RESPECT OF EXPENDITURE ON ACQUISITION OF DISTRIBUTION RIGHTS OF FEATURE FILM (I.E. IN THE HANDS OF FILM DISTRIBUTOR)

Rule :- 9B

Where a feature film is acquired by the film distributor in any previous year and in such previous year,

(1) Situation (a)

The film distributor sells all rights of exhibition of the film, the entire cost of acquisition of the film shall be allowed as a deduction in computing the profits and gains of such previous year.

(2) Situation (b)

Where the film distributor

- (i) himself exhibits the film on a commercial basis in all or some of the areas; or
- (ii) sells the rights of exhibition of the film in respect of some of the areas; or
- (iii) himself exhibits the film on a commercial basis in certain areas and sells the rights of exhibition of the film in respect of all or some of the remaining areas,

and the film is released for exhibition on a commercial basis at least ninety days before the end of such previous year, the entire cost of production of the film shall be allowed as a deduction in computing the profits and gains of such previous year.

However, if film is not released for exhibition on a commercial basis at least ninety days before the end of such previous year, the cost of production of the film shall be allowed as deduction to the extent of amount realized from such release and the balance, if any, shall be carried forward to the next following previous year and allowed as a deduction in that year.

(3) Situation (c)

Where the film distributor does not himself exhibit the film on a commercial basis or does not sell the rights of exhibition of the film, no deduction shall be allowed in respect of the cost of production of the film in computing the profits and gains of such previous year; and the entire cost of production of the film shall be carried forward to the next following previous year and allowed as a deduction in that year.

(4) Meaning of Cost of acquisition

Cost of acquisition, in relation to a feature film, means the amount paid by the film distributor to the film producer or to another distributor under an agreement for acquiring the rights of exhibition and, where the rights of exhibition have been acquired on a minimum guarantee basis, the minimum amount guaranteed, but does not include—

- (i) the amount of expenditure incurred by the film distributor for the preparation of the positive prints of the film; and
- (ii) the expenditure incurred by him in connection with the advertisement of the film.

Practical 27

Meghna Film Distributors have acquired the rights of exhibition of a feature film 'Nasha' in the territory of Rajasthan from the producers under an agreement executed on **11.06.2019** against a consideration of Rs. 300 lacs. It thereafter executed a sub-agreement with a distributor to whom the rights of exhibition of the film in some of the areas of Rajasthan were assigned against an amount of Rs. 100 lacs. The film was released for exhibition on commercial basis on **25.12.2019**. Collection from the exhibition of film of "Meghna Film Distributors" for **25.12.2019 to 10.01.2020** was Rs. 50 lacs and thereafter up to **31.03.2020** was Rs. 190 lacs. It asks you to clarify as to how these transactions will be reflected in the Income-tax return for **A.Y. 2020-21**. Would your answer be different if the film was released for exhibition on **11.01.2020**?

Solution

Meghna Film Distributors is engaged in the business of exhibition of feature films after taking the rights from the producers. The profits and gains of such business are to be computed as per the provisions given in Rule 9B of the Income-tax Rules, 1962.

In the present problem, the agreement was executed on **11.06.2019** and the film also stands released for exhibition on commercial basis before 90 days from the end of the financial year i.e., on **25.12.2019**. Accordingly, the profit of the assessee will be computed as under: -

Particulars	Rs. In lakhs
Collection from exhibition of film (Rs. 50 lakhs + Rs.190 lakhs)	240
Collection from sub-distributor	100
	340
Less : Cost of acquisition	
Amount paid to producer for exhibition rights of the film	(300)
Net income of film "Nasha"	40

Release of film for exhibition on commercial basis in the second case on **11.01.2020** i.e., less than 90 days before the end of the previous year. In this case, the profits of the assessee will be as under :-

Particulars	Rs. In lakhs
Collection from exhibition of film (Refer Note)	190
Collection from sub-distributor	100
	290
Less : Cost of acquisition	
Amount paid to producer for exhibition rights of the film (` 300 lacs, but restricted to Rs. 290 lacs)	(290)
Net income of film “Nasha”	Nil

The balance of Rs. 10 lacs (i.e. Rs. 300 lacs – Rs.290 lacs) has to be carried forward to the next following previous year and allowed as a deduction in that year i.e., **F.Y.2020-21**.

Note- Collection from exhibition of film from **25.12.2019 to 10.01.2020** amounting to Rs. 50 lacs is not considered in case of release of film on **11.01.2020** as it relates to a period before the date of release, so, it is relevant only in the first case when the film was released on **25.12.2020**.

Reader’s Note:

5.28 CRITICAL JUDICIAL RULINGS – 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.

(1) 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 business of the assessee.	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.)
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 XVIIIB 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 u/s 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	Allowable	Expenses on distribution of gift items to dealers under sales incentive scheme would promote goodwill and is made in the interest of business.

	the company's sales incentive scheme.		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 u/s 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 Beijing 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.

Practical 28

XYZ Ltd. is engaged in the manufacture of textile since 01-04-2010. 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, 2020** were remitted on **8th May 2020**.
- (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 **31-03-2020** 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 **31-03-2020**, 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 XVIIIB 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 **10-06-2019**, 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 **31-03-2019** towards repairing a machinery component. The tax so deducted was remitted on **31-12-2019**.
- (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.

Solution**Computation of Total Income of XYZ Ltd. for the A.Y.2020-21**

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 materials is taxable under section 41(1). Since the same has already been credited to profit and loss account, no further adjustment is required]	Nil	

(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
Less: Items credited but to be considered separately / permissible expenditure and allowances		9,83,00,000
(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 10.06.2019, as the same was put to use for more than 180 days in the P.Y.2019-20.] 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.2019-20, since tax deducted was remitted after the due date of filing of return. However, the same is allowable in A.Y.2020-21, since the remittance has been made on 31.12.2019]	10,00,000	
	3,00,000	98,00,000
Total Income		8,85,00,000

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 **01.06.2019** 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.2018-19** was remitted only on **31.12.2019**, i.e., after the due date of filing of return for **A.Y.2019-20**, 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 **31.12.2019**, Rs. 3,00,000 would be allowed as deduction while computing the business income of the **A.Y.2020-21**.

Reader's Note:

6 – CAPITAL GAINS

UNIT A – FUNDAMENTALS OF CAPITAL GAINS

6.1 TYPES OF CAPITAL ASSET

Section:- 2(42A)

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:

1. *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.*
2. *In case of an immovable property, being land or building or both, if transfer takes place on or after 1st April, 2017, the period of holding not exceeding 24 months shall be taken into consideration instead of 36 months.*

Practical 1

Mr. Jagmohan purchased residential building on **10th August, 2017**. Thereafter, he sold out this building on **15th August, 2019**. Determine the nature of asset.

Solution

Period of holding in respect of residential building exceeded 24 months. Hence, the residential building transferred by Mr. Jagmohan is a long term capital asset.

Reader's Note:

UNIT B – DEEMED FULL VALUE OF CONSIDERATION

6.2 SPECIAL PROVISIONS FOR COMPUTATION OF CAPITAL GAIN IN CASE OF JOINT DEVELOPMENT AGREEMENT

Section:- 45(5A) and 49(7) - Effective from A.Y.2018-19

The definition of 'transfer', inter alia, includes any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred.

And therefore, execution of Joint Development Agreement between the owner of immovable property and the developer attracts capital gain tax liability in the hands of owner in the year in which possession is handed over to the developer.

With a view to minimize the genuine hardship which the owner of land or building may face in paying capital gains tax in the year of transfer, a sub-section (5A) in section 45 has been inserted to provide that

- in case of an assessee being *individual or Hindu undivided family who transfers land or building or both under a specified agreement,*
- *then capital gain arising from such transfer shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.*

What is the full value of consideration? The stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by any consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

Benefit of provisions of section 45(5A) not available [Proviso to section 45(5A)]:- It may, however, be noted these beneficial provisions would not apply, where the assessee transfers his share in the project on or before the date of issue of said completion certificate and therefore, the capital gain tax liability would be deemed to arise in the previous year in which such transfer took place. In such a case, full value of consideration received or accruing shall be determined by the general provisions of the Act.

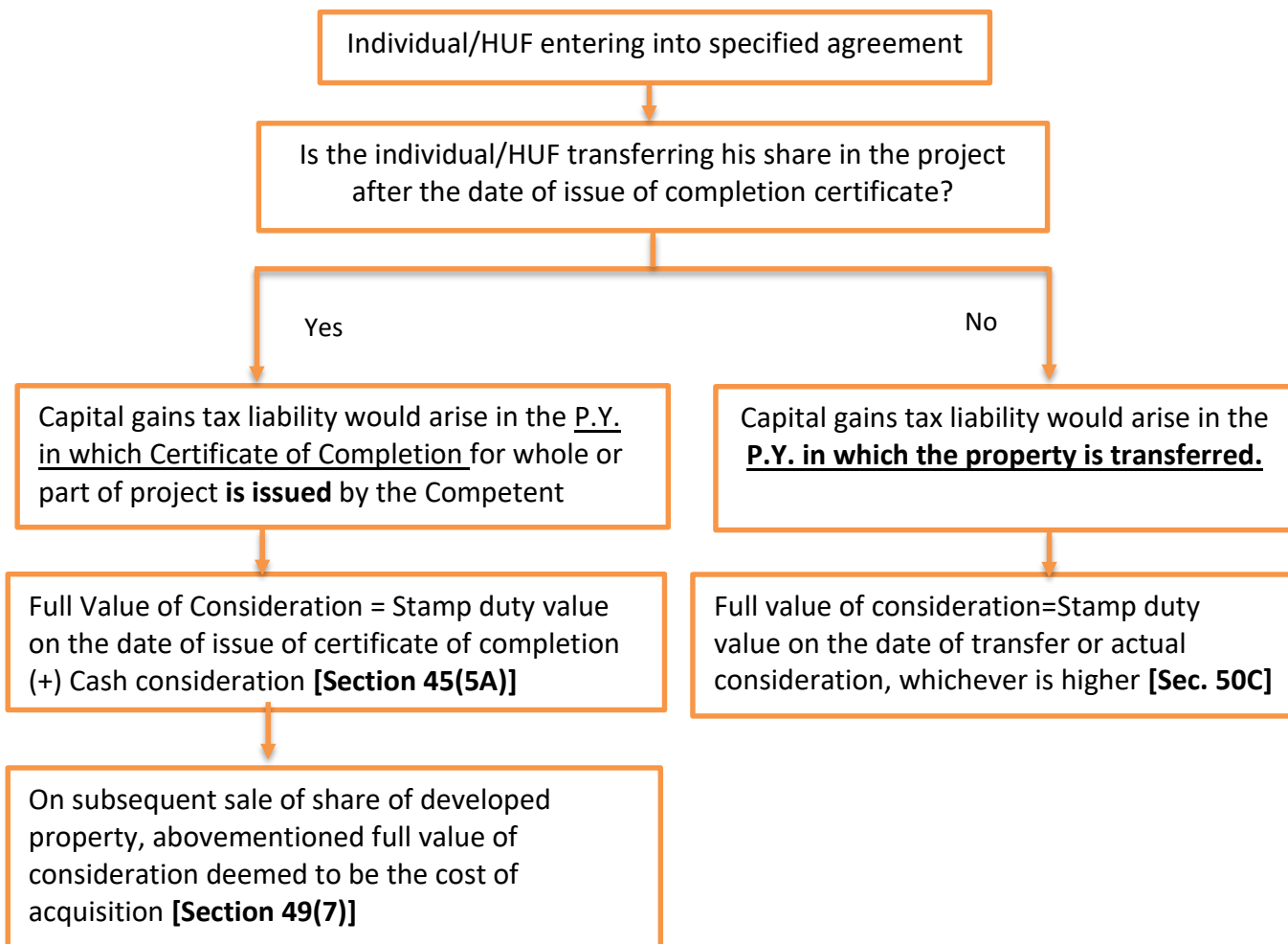
Meaning of certain terms:

- (a) **Specified Agreement:-** Specified agreement means the registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.
- (b) **Competent authority:-** The authority empowered to approve the building plan by or under any law for the time being in force.
- (c) **Stamp duty value:-** The value adopted or assessed or reassessable by any authority of Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.

Section 49(7):- Cost of acquisition of capital asset, being share in the project referred u/s 45(5A)

Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in section 45(5A) which is chargeable to tax in the previous year in which the completion of certificate for the whole or part of the project is issued by the competent authority), the cost of acquisition of such asset, shall be the amount which is deemed as full value of consideration in that sub-section.

SUMMARY



Practical 2

Mr. Abhinav provides following information:

- He purchased small plot of land in Ahmedabad on 10th July 1998 for Rs. 10 lakh (fair market value of such plot as on 1st April, 2001 was Rs. 12 lakh)
- He entered into a “Specified Agreement” with Amrapali Developers Ltd. on **18th May 2019**.
- Agreed consideration was : Cash component Rs. 1 Crore and 50% share in constructed area
- Project completion certificate was issued by Local authority on **10th August, 2020**.
- Stamp duty valuation of 50% share in constructed area (as on **10th August, 2020**): Rs. 2.25 Crore.
- He sold out the constructed area allotted to him on **1st May, 2021** for Rs. 3 Cr.

Discuss tax consequences of above transaction in the hands of Mr. Abhinav.

Solution**Computation of Capital Gain in the hands of Abhinav for P.Y. 2020-21**

Period of Holding: 10-07-1998 to 18-05-2019	
Nature of Capital Asset: Long Term	
Particulars	Rs.
Full value of consideration (Rs. 1 Cr. + Rs. 2.25 Cr.)	3,25,00,000
Less: Expenses in connection with Transfer	Nil
Net Considerations	3,25,00,000
Less: Indexed Cost of Acquisition $(Rs. 12,00,000) \times \frac{289}{100}$	(34,68,000)
Taxable Long-Term Capital Gain	2,90,32,000

Computation of Capital Gain in the hands of Abhinav P.Y. 2021-22

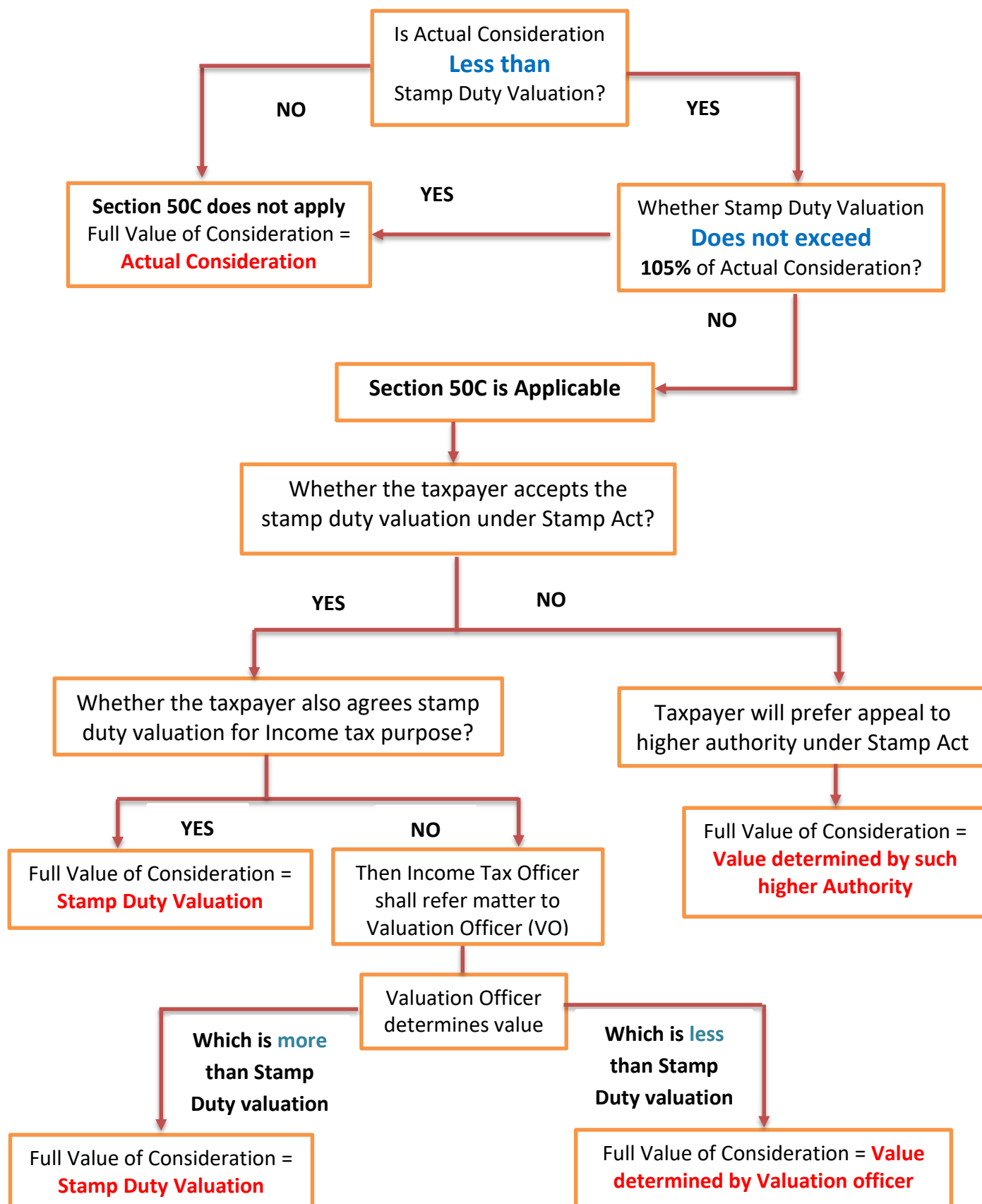
Period of Holding: 10-08-2020 to 01-05-2021	
Nature of Capital Asset: Short Term	
Particulars	Rs.
Full value of consideration	3,00,00,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	3,00,00,000
Less: Cost of Acquisition as per section 49(7)	(2,25,00,000)
Taxable Short Term Capital Gain	75,00,000

Reader's Note:

6.3 FULL VALUE OF CONSIDERATION IN CASE OF REAL ESTATE TRANSACTIONS

Section:- 50C

This section is applicable when consideration received on transfer of land or building or both is less than the value adopted by Stamp Authority for the purpose of payment of stamp duty. Consider the following chart:-

**NOTES RELEVANT FOR SECTION 50C:**

(1) Following third proviso shall be inserted in section 50C(1) by the Finance Act, 2018, w.e.f. 1-4-2019.

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

Readers must note that the effect of this proviso has already been incorporated in the chart discussed above.

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

However, for the same, at least a part of the consideration has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or *through such other electronic mode as may be prescribed [Inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21]*, on or before the date of the agreement.

Practical 3

Bala sold his vacant site on **30.09.2019** for Rs. 7,00,000. It was acquired by him on **01.10.2005** for Rs. 1,50,000. The state stamp valuation authority fixed the value of the site at the time of transfer @ Rs. 13,00,000. Compute capital gains in the hands of Bala and give your reasons for computation. What would have been the capital gain if Bala sold this vacant site for Rs. 12,50,000?

Solution

(a) Computation of Capital Gain if Bala sold vacant site for Rs.7,00,000

Period of Holding : 01.10.2005 to 30.09.2019	
Nature of Capital Asset: Long Term	
Particulars	(Rs.)
Full value of consideration under section 50 C	13,00,000
Less: Expenses in connection with Transfer	-
Net Consideration	13,00,000
Less: Indexed Cost of acquisition $1,50,000 \times \frac{289}{117}$	(3,70,513)
Long Term Capital Gain	9,29,487

(b) Computation of capital gain if Bala sold vacant site for Rs. 12,50,000.

As per third proviso to section 50C(1), if stamp duty valuation (in this case Rs. 13,00,000) does not exceed 105% of the consideration (Rs. 12,50,000) [which comes to Rs.13,12,500], then actual consideration i.e. Rs. 12,50,000 shall be deemed to be the full value of consideration.

Period of Holding : 01.10.2005 to 30.09.2019	
Nature of Capital Asset: Long Term	
Particulars	(Rs.)
Full value of consideration under section 50 C	12,50,000
Less: Expenses in connection with Transfer	-
Net Consideration	12,50,000
Less: Indexed Cost of acquisition $1,50,000 \times \frac{289}{117}$	(3,70,513)
Long Term Capital Gain	8,79,487

Readers Note:

Practical 4

Mr. Thomas inherited a house in Jaipur under will of his father in **May, 2012**. The house was purchased by his father in January, 2000 for Rs. 2,50,000. He invested an amount of Rs. 7,00,000 in construction of one more floor in this house in **June, 2015**. The house was sold by him in **November, 2019** for Rs. 37,50,000. The valuation

adopted by the registration authorities for charge of stamp duty was Rs. 47,25,000 which was not contested by the buyer, but as per assessee's request, the Assessing Officer made a reference to Valuation Officer. The value determined by the Valuation Officer was Rs. 47,50,000. Brokerage @ 1% of sale consideration was paid by Mr. Thomas to Mr. Sunil. The market value of house as on 01.04.2001 was Rs. 2,70,000. You are required to compute the amount of capital gain chargeable to tax for Previous Year **2019-20** with help of given information.

Solution

Computation of Capital Gain for the Previous Year 2019-20 in the hands of a Mr. Thomas

Period of Holding: January 2000 to November 2019	
Nature of Capital Asset: Long Term	
Particulars	Rs.
Full value of consideration as per section 50C	47,25,000
Less: Expenses in connection with Transfer	(37,500)
Net Consideration	46,87,500
Less: Indexed Cost of acquisition $2,70,000 \times \frac{289}{100}$	(7,80,300)
Less: Indexed Cost of improvement $7,00,000 \times \frac{289}{254}$	(7,96,457)
Long Term Capital Gain	31,10,743

Readers Note:

Practical 5

Suppose, in the above problem, valuation officer determines value under the stamp act at Rs. 47,00,000. What would be the amount of capital gain chargeable to tax?

Solution

Computation of Capital Gain for the Previous Year 2019-20 in the hands of a Mr. Thomas

Period of Holding: January 2000 to November 2019	
Nature of Capital Asset: Long Term	
Particulars	Rs.
Full value of consideration as per section 50C	47,00,000
Less: Expenses in connection with Transfer	37,500
Net Consideration	46,62,500
Less: Indexed Cost of acquisition $2,70,000 \times \frac{289}{100}$	(7,80,300)
Less: Indexed Cost of improvement $7,00,000 \times \frac{289}{240}$	(7,96,457)
Long Term Capital Gain	30,85,743

Readers Note:

Practical 6

Mr. Raj Kumar had purchased the land on **1st June 2015** for Rs. 5,19,000 and completed the construction of house on **1st October, 2018** for Rs. 14,00,000. He sold this house to his friend Mr. Dhruv on **1st November, 2019** for a consideration of Rs. 35,00,000. The sub-registrar refused to register the document for the said value, as according to him, stamp duty had to be paid on Rs. 65,00,000, which was the government guideline value. Mr. Raj Kumar preferred an appeal to the Revenue Divisional Officer under Stamp Act, who fixed the value of the house at Rs. 44,00,000 (Rs.29,00,000 for land and the balance for building portion). The differential stamp duty was paid, accepting the said value determined. Compute capital gain in the hands of Raj Kumar.

Solution**Computation of Capital Gain for the Previous Year 2019-20 in the hands of a Mr. Raj Kumar**

- Capital Asset: Land**

Period of Holding : 01.06.2015 to 01.11.2019	
Nature of Capital Asset: Long Term	
Particulars	(Rs.)
Full value of consideration as per Section 50 C	29,00,000
Less: Expenses in connection with Transfer	-
Net Consideration	29,00,000
Less: Indexed Cost of acquisition (Land)	$5,19,000 \times \frac{289}{254}$
Long Term Capital Gain	23,09,484

- Capital Asset: Building**

Period of Holding : 01.10.2018 to 01.11.2019	
Nature of Capital Asset: Short Term	
Particulars	(Rs.)
Full value of consideration as per Section 50 C	15,00,000
Less: Expenses in connection with Transfer	-
Net Consideration	15,00,000
Less: Cost of acquisition (Building)	(14,00,000)
Short Term Capital Gain	1,00,000

Readers Note:

6.4 FAIR MARKET VALUE TO BE THE FULL VALUE OF CONSIDERATION FOR TRANSFER OF UNQUOTED SHARES - Effective from A.Y.2018-19

Section:- 50CA

In order to ensure the full consideration is not understated in case of transfer of unlisted shares, a new section 50CA has been inserted to provide that where the consideration received or accruing as a result of transfer of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, such fair market value shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

For the purpose, "quoted shares" means the share quoted on any recognized stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

Following proviso shall be inserted in section 50CA by the Finance Act (No. 2) of 2019, w.e.f. A.Y. 2020-21:

Provided that the provisions of this section shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.

Note:

The fair market value of the unquoted shares would be determined in the manner provided in sub-clause (b) or sub-clause (c), as the case may be, of Rule 11UA(1)(c) and for this purpose the reference to valuation date in the Rule 11U and 11UA shall mean the date on which the capital asset, being unquoted share of a company is transferred (Rule 11UAA).

For determination of fair market value: Refer Rule 11U and Rule 11UA under **Chapter 7: Income from Other Sources**.

Practical 7

Mr. Dravid provides following information:

- (a) He subscribed shares of ABC Infrastructure Private Limited for Rs. 12,00,000 on **16th May, 2002**.
- (b) He sold out these shares for Rs. 85,00,000 on **18th May, 2019**.
- (c) Fair market value of this share on **18th May, 2019** was Rs. 98,00,000.

Discuss tax consequences of above transaction in the hands of Mr. Dravid.

Solution**Computation of Long Term Capital Gain in the hands of Mr. Dravid for P.Y.2019-20**

Period of Holding: From 16-05-2002 to 18-05-2019	
Type of Capital Asset : Long Term	
Particulars	Rs.
Full value of consideration (actual consideration or FMV whichever is higher)	98,00,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	98,00,000
Less: Indexed Cost of Acquisition (Rs. 12,00,000) × $\frac{289}{105}$	33,02,857
Taxable Long Term Capital Gain	64,97,143

Reader's Note:

UNIT C – DEEMED COST OF ACQUISITION**6.5 HOW TO FIND OUT CAPITAL GAINS WHEN EQUITY SHARES RECEIVED ON CONVERSION ARE SUBSEQUENTLY SOLD?**

Section:- 49(2AE) - Effective from A.Y.2018-19

- (a) Section 49(2AE) has been inserted to provide that cost of acquisition of preference shares shall be treated as cost of acquisition for equity shares (received on conversion).
- (b) Further, to find out whether such equity shares received on conversion are long-term capital assets or not, the period of holding shall be determined from date of acquisition of preference shares of such company.–

Explanation 1 to section 2(42A).

- (c) The benefit of indexation will start from the date of acquisition of preference shares in the company.

Practical 8

Ms. Mayuri subscribed 10,000 preference shares of Online Education Private Limited @ Rs. 10 each on 18th August, **2017**. Such shares were converted into 12,500 equity shares on 10th April, **2019**. She then transferred 8,000 shares on 21st September, **2019** for Rs. 12 per share. Discuss tax consequences of above transaction in the hands of Ms. Mayuri.

Solution

As discussed earlier, conversion of preference shares into equity shares is not treated as transfer by virtue of section 47 (xb). Therefore, conversion will not attract capital gain tax liability in the hands of Ms. Mayuri.

Computation of Capital Gain in the hands of Ms. Mayuri.

Period of Holding: From 18-08-2017 to 21-09-2019	
Type of Capital Asset : Long Term	
Particulars	Rs.
Full value of consideration (8,000 X Rs. 12)	96,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	96,000
Less: Indexed Cost of Acquisition (Working Note)	(68,000)
Taxable Long Term Capital Gain	28,000

Working Note:-

Total Cost of 12500 equity shares	= Cost of preference shares = 10000 × Rs. 10 = Rs. 1,00,000
Hence, cost per equity share	= $\frac{1,00,000}{12500}$ = Rs. 8
Hence, cost of acquisition of 8000 equity shares	= 8000 × Rs. 8 = Rs. 64,000
Therefore, Indexed Cost of Acquisition =	= $\left(64000 \times \frac{289}{272} \right)$ = Rs. 68,000

Readers Note:**6.6 COST OF ACQUISITION IN THE CASE OF CONVERSION OF STOCK-IN-TRADE INTO CAPITAL ASSET****Section:-** 49(9) - Inserted by Finance Act, 2018 w.e.f. A.Y. 2019-20.

- Section 49(9) provides that if stock in trade is converted into capital asset, cost of such capital asset shall be deemed to be the fair market value which has been taken into account for the purpose of section 28(via) [i.e., fair market value on the date of conversion of stock-in-trade into capital asset].
- Further, section 2(42A) has been amended to provide that in case of conversion of stock-in-trade into capital asset, for determining the nature of converted asset, the period of holding shall be reckoned from the date of conversion.

Practical 9

Mr. Rajesh Shah is a proprietor of "Abhushan Jewelers". He closed down this shop w.e.f. **10th July, 2019** and converted stock-in-trade into capital asset with immediate effect. On such date, the book value of jewelry was Rs. 30,00,000 while fair market value of such jewelry was Rs. 30,62,000. Later on, he sold out such jewelry on **10th March, 2021** for Rs. 31,12,000. Discuss tax consequences in the hands of Mr. Rajesh assuming that such jewelry was purchased on **2nd April, 2017**.

Solution**Computation of Business Income for A.Y. 2020-21**

Particulars	Rs.
Sale consideration = Fair Market Value on the date of conversion [Section 28(via)]	30,62,000
Less: Purchase Cost	(30,00,000)
Taxable Business Income	62,000

Computation of Capital Gain in the hands of Mr. Rajesh for A.Y. 2021-22

Period of Holding: 10.04.2019 to 10.03.2021	
Type of Capital Asset : Short Term	
Particulars	Rs.
Full value of consideration	31,12,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	31,12,000
Less: Cost of Acquisition [Fair Market value adopted for the purpose of section 28(via)]	(30,62,000)
Short Term Capital Gain	50,000

Readers Note:

UNIT D – EXEMPTION UNDER SECTION 10**6.7 | EXEMPTIONS UNDER SECTION 10****Section:-** 10(33) and 10(37)

Sec.	Eligible Assessee	Nature Of Income	Conditions/Definitions/Comments
10(33)	Any assessee	Capital Gain from transfer of units of Unit Scheme 1964.	The transfer of such unit is made after 1-4-2002
10(37)	Individual / HUF	Capital Gains arising out of sale of agricultural land	(1) The land is situated in area as referred to in section 2(14)(iiia) or 2(14)(iiib) (2) Such land was used in previous two years from the date of transfer for agricultural purpose by the assessee or his parents (3) Transfer is by way of compulsory acquisition or consideration or enhanced consideration of which is approved by RBI or Central Government (4) such income arises on or after 1.4.2004

UNIT E – EXEMPTION UNDER SECTION 54 TO 54GB**6.8 | EXEMPTIONS FROM CAPITAL GAIN****Section:-** 54**Q1.** 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 (that means which asset has been transferred?)**Ans.** A residential house property**Q4.** Which asset the tax-payer shall acquire to avail exemption under this section?**Ans.** One residential house in India

Following provisos shall be inserted after clause (ii) of sub-section (1) of section 54 by the Finance Act (No. 2) 2019, w.e.f. A.Y. 2020-21:

Provided that where the amount of the capital gain does not exceed two crore rupees, the assessee may, at his option, purchase or construct two residential houses in India

Provided further that where during any assessment year, the assessee has exercised the option referred to in the first proviso, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

Q5. What is time-limit for acquiring the new capital asset?**Ans.** For purchase: 1 year backward or 2 years forward from date of transfer

For construction: 3 years forward from date of transfer

Q6. What is the quantum of exemption?

Ans. Exemption under section 54 = Amount invested in new asset or capital gain whichever is lower.

Practical 10

Raghvan owned a residential house at Madurai. The original cost of which was Rs.1,00,000. It was acquired on 01.09.2010. He sold the house on 01.06.2019 for Rs.10,00,000 and purchased another house on 30.05.2019 at Trichy for Rs.6,00,000. Find out Capital gain in the hands of Raghvan.

Solution

Computation of Capital Gain for the Previous Year 2019-20 in the hands of a Mr. Raghvan

Period of Holding: 01.09.2010 to 01.06.2019	
Nature of Capital Asset: Long Term	
Particulars	Rs.
Full value of consideration	10,00,000
Less: Expenses in connection with Transfer	-
Net Consideration	10,00,000
Less: Indexed Cost of acquisition $1,00,000 \times \frac{289}{167}$	(1,73,054)
Long Term Capital Gain Before Exemption	8,26,946
Less: Exemption u/s 54	(6,00,000)
Long Term Capital Gain	2,26,946

Readers Note:

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

Ans. Yes. If new asset is transferred 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. Short term

Q7.2 What is the computation methodology when exemption under section 54 is revoked?

Ans. For this purpose, while computing capital gain in respect of transferred asset, its cost of acquisition shall be reduced by the amount of exemption claimed earlier.

Practical 11

In continuation of problem, the second house at Trichy was sold by him for Rs.8,00,000 on 30.06.2020. Discuss the impact of this transaction with regard to assessment to capital gains.

Solution

Computation of Capital Gain for the Previous Year 2020-21 in the hands of a Mr. Raghvan

Period of Holding: 30.05.2019 to 30.06.2020	
Nature of Capital Asset: Short Term	
Particulars	Rs.
Full value of consideration	8,00,000
Less: Expenses in connection with Transfer	-
Net Consideration	8,00,000
Less: Cost of acquisition [6,00,000 – 6,00,000]	-
Short Term Capital Gain	8,00,000

Readers Note:

Q8. Is scheme of deposit available?

Ans. If the new asset is not acquired on or before the due date of filing return under section 139(1), then the taxpayer will have to deposit the money in “Capital gain deposit account scheme” with a nationalized bank. Exemption under section 54 shall be worked out on the basis of actual investment and the amount deposited in the abovementioned scheme.

The taxpayer is required to acquire a new asset by withdrawing from the deposit account. But the new asset must be acquired within the dead-line mentioned in an answer to **Q5** above.

If a deposit account is not fully utilized for acquiring the new asset, the unutilized amount will become chargeable to tax in the previous year in which the 3 years' time – limit from date of transfer expires.

The unutilized amount can be withdrawn by the taxpayer only after the expiry of 3 years' time-limit from the date of transfer.

Practical 12

Rima provides following information about residential house property at Ahmedabad:

Date of transfer	: -	25th August, 2019
Sale Consideration	: -	Rs. 40,00,000
Stamp Duty Value	: -	Rs. 45,00,000
Indexed Cost of Acquisition	: -	Rs. 3,84,698
Expenses in connection with transfer	: -	Rs. 50,000

In order to avail exemption under section 54, Rima deposited Rs. 35,00,000 with capital gains deposit account scheme on **20th July, 2020**.

Thereafter, she withdrawn Rs. 30 Lacs from the deposit account and purchased property at Baroda on **15th August, 2021**.

You are required to answer following questions:-

1. Determine capital gain chargeable to tax for different assessment years.
2. What is the earliest date when Rima can withdraw the unutilized amount?

Solution

1. Computation of Capital Gain for the Previous Year 2019-20 in the hands of Rima

Indexed cost of acquisition readily given in the practical, therefore, Nature of Capital Asset: Long Term	
Particulars	Rs.
Full value of consideration	45,00,000
Less: Expenses in connection with Transfer	(50,000)
Net Consideration	44,50,000
Less: Indexed Cost of acquisition	(3,84,698)
Long Term Capital Gain Before Exemption	40,65,302
Less: Exemption u/s 54	(35,00,000)
Long Term Capital Gain	5,65,302

Computation of Capital Gain for the Previous Year 2022-23 in the hands of Rima

Nature of Capital Asset: Short Term	
Particulars	Rs.
Unspent Amount (Rs. 35,00,000 less Rs. 30,00,000)	5,00,000
Long Term Capital Gain	5,00,000

2. Rima can withdraw unutilized amount earliest by **25th August, 2022**.

Readers Note:

Practical 13

Mr. Ghanshyam, 62 years sold out his residential house property being long term capital asset. He seeks your advice on following issue while claiming exemption under section 54.

“He wants to purchase three residential houses in India and one residential house at USA, out of sale proceeds of his old property. Can he claim exemption under section 54 for all the four residential properties?”

Solution

Considering the amendment, Mr. Ghanshyam can avail exemption under section 54 in respect of two residential house property provided capital gain does not exceed Rs. 2 crore. Therefore, he shall be advised to select any two house which carries highest investment while claiming exemption under section 54.

Further, Ghanshyam can take exemption under section 54 in respect of investment made in residential house **in INDIA only**. Therefore, house property to be purchased at USA will not qualify for claiming exemption under section 54.

Reader's Note:**6.9 | EXEMPTIONS FROM CAPITAL GAIN****Section:- 54EC**

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. Long Term Capital Asset **being land or building or both [Amended by Finance Act, 2018 w.e.f A.Y.2019-20].**

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

Ans. Bonds of National High-way Authority of India (NHAI) or Rural Electrification Corporation Limited or **any other notified by the Central Government in this behalf.**

Notification No. 47/2017 dated 8th June, 2017:- Bonds (redeemable after three years) issued on or after 15th day of June, 2017 by Power Finance Corporation Limited are eligible for availing benefit u/s 54EC.

Notification No. 79/2017 dated 8th August, 2017:- Bonds (redeemable after three years) issued on or after 8th day of August, 2017 by Indian Railway Finance Corporation Limited are eligible for availing benefit u/s 54EC

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 54EC = Amount invested in new asset or capital gain whichever is lower

Upper Limit for exemption: Under no circumstances, exemption under 54EC 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. Yes.

If investment is made on or after 1 st April 2018	If new asset is transferred or converted into money or loan is taken on the security of new asset within 5 years from the date of its acquisition [Amended by Finance Act, 2018 w.e.f A.Y. 2019-20]
If investment is made before 1 st April 2018	If new asset is transferred or converted into money 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

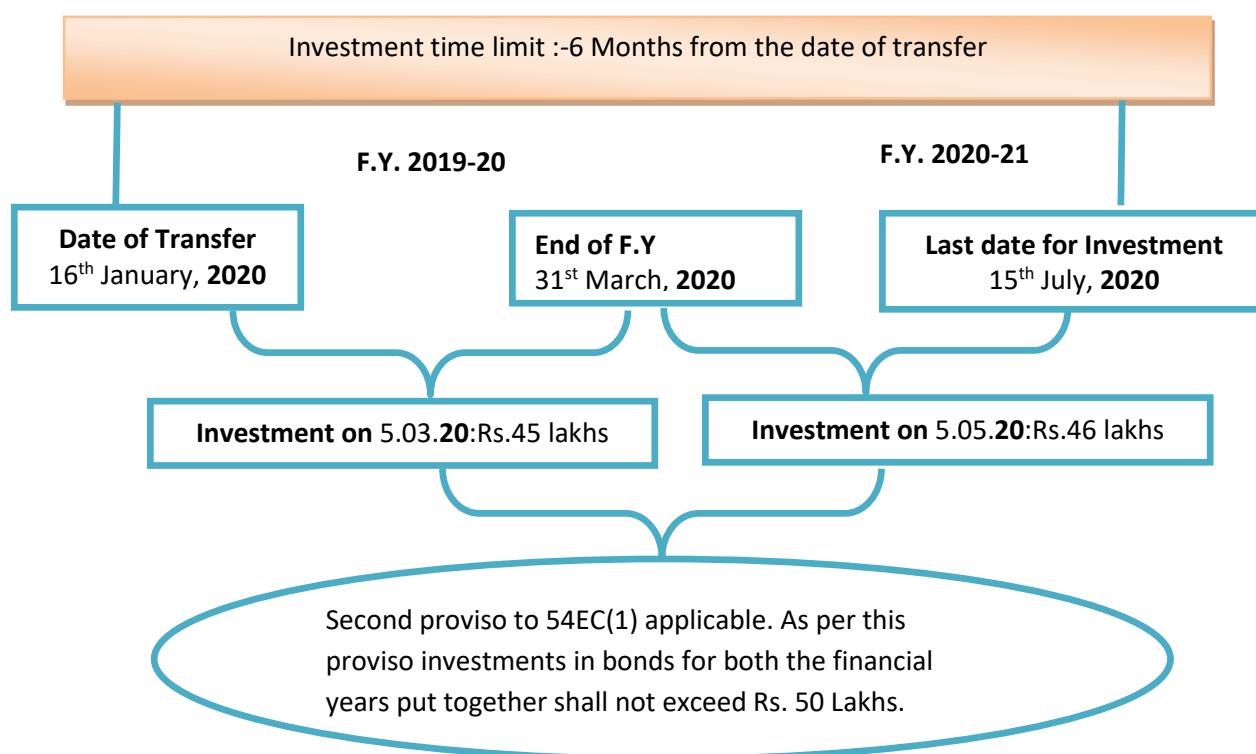
Q8. Is scheme of deposit available?

Ans. No

Practical 14

Mrs. X, resident woman, transfers (Date of transfer:-January 16, **2000**) 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 capital gains bonds issued by Power Finance Corporation Limited on March 5, **2020**. She further invests a sum of Rs. 46,00,000 in the same bonds on May 5, **2020**. Accordingly, she wants to claim exemption of Rs. 91,00,000 under 54EC. Advise her suitably.

Solution



Therefore, Mrs. X is entitled to claim exemption of Rs. 50,00,000 u/s 54EC instead of Rs 91,00,000.

Readers Note:

6.10 EXEMPTIONS FROM CAPITAL GAIN

Section:- 54G

Q 1. Who can claim exemption?

Ans. Any person

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

Ans. Short Term / Long Term Capital Asset

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

Ans. Land, building, plant or machinery in order to shift an industrial undertaking from urban area to rural area.

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

Ans. Land, building, plant or machinery for the purpose of the business of industrial undertaking in rural area.

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

Ans. For purchase: 1 year backward or 3 years forward from date of transfer

Q6. What is the quantum of exemption?

Ans. Readers are advised to follow below mentioned chart strictly

Particulars	Amount Rs.
Compute Capital gain on sale of Land	
Compute Capital gain on sale of Building	
Compute Capital gain on sale of P & M	
Aggregate all of above (A)	
Less: Exemption under section 54G (Refer working note) (B)	
Remark: Exemption shall not exceed (A)	
Balance Taxable Capital Gain (C)= (A-B)	
Compute Capital gain on sale of other asset, if any (D)	
Total Capital Gain Chargeable to Tax = (C) plus (D)	

Working Note: Exemption under section 54G is aggregate of the followings:

Particulars	Amount Rs.
Amount invested in Land at Rural Area	
Amount invested in Building at Rural Area	
Amount invested in Plant & Machinery at Rural Area	
Amount of Shifting Expenditure incurred (don't forget this)	
Total	

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

Ans. Yes. If new asset is transferred 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. Short term

Q8. Is scheme of Deposit available?

Ans. If the new asset is not acquired on or before the due date of filing return under section 139(1), then the taxpayer will have to deposit the money in "Capital gain deposit account scheme" with a nationalized bank. Exemption under this section shall be worked out on the basis of actual investment and the amount deposited in the abovementioned scheme.

The taxpayer is required to acquire a new asset by withdrawing from the deposit account. But the new asset must be acquired within the dead-line mentioned in **Q5** above.

If a deposit account is not fully utilized for acquiring the new asset, the unutilized amount will become chargeable to tax in the previous year in which the 3 years' time – limit from date of transfer expires.

The unutilized amount can be withdrawn by the taxpayer only after the expiry of 3 years' time-limit from the date of transfer.

Practical 15

X Ltd, located within the corporation limits, decided in December, **2019** to shift its industrial undertaking to non-/urban area. The company sold some of the assets and acquired new assets in the process of shifting. Further, it incurred Rs. 25,000 as shifting expenses. The relevant details are as follows:

(Rs. In lakhs)

Particulars	Land	Building	Plant & Machinery	Furniture
Sale proceeds (sale effected in March, 2020)	8	18	16	3
Indexed cost of acquisition	4	10	12	2
Cost of acquisition in terms of section 50	-	4	5	2
Cost of new assets purchased in July, 2020 for the purpose of business in the new place	4	7	17	2

Compute the capital gains of X Ltd. for the previous year **2019-20**.

Solution

Computation of Capital Gain for the Previous Year 2019-20 in the hands of X Ltd.

Particulars	Amount (Rs.)
Long Term Capital gain on sale of Land (Rs.8,00,000 less Rs. 4,00,000)	4,00,000
Short Term Capital gain on sale of Building (Rs. 18,00,000 less Rs. 4,00,000)	14,00,000
Short Term Capital gain on sale of P & M (Rs.16,00,000 less Rs. 5,00,000)	11,00,000
Aggregate all of above (A)	29,00,000
Less: Exemption under section 54G (Refer working note) (B)	28,25,000
Remark: Exemption shall not exceed (A)	
Balance Taxable Capital Gain (C)= (A-B)	75,000
Short Term Capital gain on sale of Furniture (Rs. 3,00,000 less Rs.2,00,000) (D)	1,00,000
Total Capital Gain Chargeable to Tax = (C) plus (D)	1,75,000

Working Note: Exemption under section 54G is aggregate of the followings:

Particulars	Amount (Rs.)
Amount invested in Land at Rural Area	4,00,000
Amount invested in Building at Rural Area	7,00,000
Amount invested in Plant & Machinery at Rural Area	17,00,000
Amount of Shifting Expenditure incurred (don't forget this)	25,000
Total	28,25,000

Readers Note:

6.11 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:- 54GB

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 ~~31-03-2019~~ **31-03-2021. [Amendment made by Finance Act (No.2) 2019 w.e.f.A.Y.2020-21]**

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 an eligible business;*
- (iii) *it is a company in which the assessee has more than ~~fifty per cent~~ [twenty five per cent – Amendment made by Finance Act, (No.2) 2019 w.e.f. A.Y.2020-21] share capital or more than ~~fifty per cent~~ [twenty five per cent – Amendment made by Finance Act, (No.2) 2019 w.e.f. A.Y.2020-21] voting rights after the subscription in shares by the assessee; and*
- (iv) *it is a company which is an eligible start-up.*

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

- If equity shares of eligible company are sold or otherwise transferred within 5 years from the date of its acquisition.
- If new asset (being computer and computer software) is sold or otherwise transferred within **5 years** **[3 years – Amendment made by Finance Act (No.2) 2019 w.e.f. A.Y. 2020-21]** from the date of its acquisition.
- If new asset (not being computer and computer software) 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 16

Mr. Akash sold his residential property on 2nd February, **2020** 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, **2020**, 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 –

- Purchase of new plant and machinery during July **2020** – Rs. 59 lakh
- Included in (a) above are Rs. 6 lakh for purchase of computers and Rs. 8 lakh for purchase of cars.
- Air-conditioners purchased for Rs. 1 lakh, included in the (a) above, were installed at the residence of Mr. Akash.
- Amount deposited in specified bank on 28.09.**2020**– Rs. 10 lakh

Compute the chargeable capital gain for the A.Y.**2020-21**. Assume that Mr. Akash is liable to file his return of income on or before 30th September, **2020**.

Solution

Computation of taxable capital gains for A.Y.2020-21

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, 2020		59,00,000
<i>Less:</i>		
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:**6.12 COST INFLATION INDEX CHART**

The Central Government has notified the “Cost inflation index” for the purpose of long-term capital gain as follows:

<i>Financial year</i>	<i>Cost inflation index</i>	<i>Financial year</i>	<i>Cost inflation index</i>
2001-02	100	2011-12	184
2002-03	105	2012-13	200
2003-04	109	2013-14	220
2004-05	113	2014-15	240
2005-06	117	2015-16	254
2006-07	122	2016-17	264
2007-08	129	2017-18	272
2008-09	137	2018-19	280
2009-10	148	2019-20	289
2010-11	167		

7 – INCOME FROM OTHER SOURCES

7.1 MEANING OF DIVIDEND

Sections:- 56(2)(i) and 2(22)(a) to 2(22)(e)

(1) Distribution of accumulated profits entailing (requiring / necessitating) release of company's assets [Section 2(22)(a)]

In order to be called dividend under this clause, following two conditions are required to be satisfied.

- First** Distribution by a company out of accumulated profits (whether capitalized or not) and
- Second** Such distribution entails release of the assets by the company to its shareholders.

(2) Distribution of accumulated profits in the form of debentures, preference bonus shares etc. [Section 2(22)(b)]

This clause covers following two distributions to be treated as deemed dividend to the extent of accumulated profits (whether capitalized or not)-

- a.** Distribution by a company to its shareholders of
- debentures,
 - debenture-stock or
 - deposit certificates
 - in any form, whether with or without interest; and
- b.** Distribution by a company to its preference shareholders of preference bonus shares.

(3) Distribution of accumulated profits at the time of liquidation [Section 2(22)(c)]

Any distribution made to the shareholders of a company on its liquidation, to the extent to which distribution is attributable to the accumulated profits (whether capitalised or not) of the company immediately before its liquidation.

Readers here note that distribution to shareholders of a company on liquidation also results into transfer of capital asset and therefore such distribution attract head "Capital gain" also.

Therefore, amount received by a shareholder on liquidation needs to be bifurcated into:-

1. Deemed Dividend (IFOS) and
2. Capital recovery (Capital Gain)

While doing above bifurcation, following points merit consideration:-

- (i) In case of a company, which is in liquidation, accumulated profits includes all profits of the company up to the date of liquidation. That means, any profits or loss arising as a result of liquidation are not a part of accumulated profits.
- (ii) The distribution is deemed to take place in the ratio of accumulated profits and share capital. - **CIT v. Girdhardas & Co. (P.) Ltd. [1967] 63 ITR 300 (SC).**
- (iii) **Ceiling:-** Further, deemed dividend has to be restricted to the extent of share of shareholder in accumulated profits and balance amount is towards capital recovery.

(4) Distribution of accumulated profits on the reduction of capital [Section 2(22)(d)]

Any distribution made to shareholders of the company on the reduction of capital is treated as dividend to the extent the company possesses accumulated profits (whether capitalized or not).

Let's do analysis of this clause.

Capital reduction takes place in two situations:

Situation I :- When company is incurring huge losses and having liabilities more than the recoverable value of assets. In this event, management may, subject to the provisions of Companies Act, opt for capital reduction together with compromise with creditors.

In this situation, question of deemed dividend in the hands of shareholders does not arise as company does not have accumulated profits.

Situation II :- When company is having huge reserve and surplus and management decides for buy back of shares in accordance with provisions of Companies Act.

In this situation, there is an accumulated profits in the hands of company and therefore distribution at the time buy back of shares may result into deemed dividend in the hands of shareholders but with effect from the assessment year 2000-01, any payment made by a company on purchase of its own shares (Buy Back of shares) in accordance with the provisions contained in section 77A of the Companies Act does not amount to deemed dividend.

Readers must note that capital reduction results into transfer of capital assets and therefore, it envisages computation gain or loss under the head “Capital Gain”.

(5) Payment by way of loan or advance to a shareholder / concern. [Section 2(22)(e)]

Under this clause, following two types of transactions are covered:

- (i) loan or advance to a shareholder to the extent company possesses accumulated profits.
- (ii) loan or advance to a concern to the extent company possesses accumulated profits.

(A) Loan or advance to a shareholder - Loan or advance to a shareholder is treated as dividend in the hands of shareholder if the following conditions are satisfied:

- a. loan or advance is given by a company in which the public are not substantially interested (closely held company);
- b. loan or advance is given to a shareholder (being a person who is a registered shareholder as well as the beneficial owner of at least 10 per cent equity shares);
- c. the company must possess accumulated profits (excluding capitalized profits) at the time of granting loan or advance.

Remark: Section 2(22)(e) is applicable even if loan is given in kind—**M.D. Jindal v. CIT [1986] 28 Taxman 509 (Cal.).**

Readers must note that section 2(22) (e) covers following payments:-

- a. any payment by way of advance or loan to a shareholder;
- b. any payment on behalf of a shareholder; or
- c. any payment for the benefit of a shareholder.

(B) Loan or advance to a concern:- Loan or advance to a concern is treated as a deemed dividend in the hands of the shareholder if the following conditions are satisfied:

- a. loan or advance is given by a company in which the public are not substantially interested (closely held company) to a concern;
- b. there is a shareholder (being a person who is a registered shareholder as well as the beneficial owner) who holds 10 percent equity share capital in the above mentioned company;
- c. the abovementioned shareholder also have substantial interest in such concern;
- d. the company must possess accumulated profit (excluding capitalized profits) at the time of granting loan or advance.

Substantial Interest: A person, shall be deemed to have a substantial interest in a concern, if he is at any time during the previous year, beneficially entitled to at least 20 per cent of income of such concern.

Similarly, a person, shall be deemed to have a substantial interest in a company, if he is the beneficial owner of at least 20 per cent equity share capital of that company.

Concept of Registered owner Vs. Beneficial owner | Concept of Substantial interest

Mr. Chandragupt Mourya has subscribed 20 percent equity shares of Chankya Education Limited in the name of his son.

Then, in this case, son is called “a registered shareholder” while Mr. Chandragupt Mourya is called “a beneficial owner of shares”.

Further, Mr. Chandragupt Mourya is said to have substantial interest in Chankya Education private limited even though he does not hold single share in his name.

On the other hand, son is not said to have substantial interest in Chankya Education private limited even though he holds 20 percent equity shares in his name

7.2 FEW DISTRIBUTIONS ARE NOT TREATED AS DIVIDEND

Section:- 2(22)

- (1) Any payment made by a company on purchase of its own shares in accordance with the provisions contained in section 77A of the Companies Act, 1956
- (2) Any distribution of shares made in accordance with the scheme of demerger by the resulting company to the shareholders of the demerged company whether or not there is a reduction of capital in the demerged company.
- (3) For the purpose of section 2(22) (c) and 2(22) (d), the following are not treated as dividend:
 - a. any distribution to preference shareholders when preference shares are issued for full cash consideration; &
 - b. any distribution to equity shareholders in respect of bonus shares allotted to them after March 31, 1964, but before April 1, 1965.
- (4) For the purpose of Section 2(22)(e), following payments are, however, not treated as dividend:
 - a. Any advance or loan made to a shareholder or a concern by a company in the ordinary course of its business, where money-lending is a substantial part of the business of the company. and
 - b. Any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend under section 2(22)(e).

7.3 MEANING OF ACCUMULATED PROFITS

Section:- Explanation 1, 2 and 2A of section 2(22)

- (a) An accumulated profit does not include capital gains arising before April 1, 1946 and after March 31, 1948 but before April 1, 1956.
- (b) In case of a company, which is not in liquidation, it includes all profits of a company up to the date of distribution or payment.
- (c) In case of a company, which is in liquidation, it includes all profits of the company up to the date of liquidation.
- (d) In case of company, which is in liquidation consequent on the compulsory acquisition of a company's undertaking by the Government or a corporation owned or controlled by the Government, then accumulated profits do not include any profits of the company prior to the three successive years immediately preceding the previous year in which such acquisition took place
- (e) In the case of an amalgamated company, accumulated profits or loss in the hands of the amalgamated company shall be increased by the accumulated profits of the amalgamating company (whether capitalized or not) on the date of amalgamation. *[Inserted by Finance Act, 2018 w.r.e.f. A.Y. 2018-19].*

(A) Based on decisions of courts, Accumulated profit includes:

- Balance of Profit and loss account
- Current Profit
- General Reserve
- Development Rebate Reserve
- Investment Allowance Reserve
- Any other free Reserve e.g. Building Reserve Fund
- Additions made by Assessing Officer on account of concealed income
- Exempt Incomes
- Capital Gain chargeable to tax

(B) Based on decisions of courts, Accumulated Profit does not include:

- Balancing Charge computed under section 41(2)
- Capital Gain not chargeable to tax
- Additions made by Assessing Officer in respect of inadmissible expenses
- Depreciation Reserve / Fund
- Provisions for taxation
- Proposed Dividend

Note: - For determining accumulated profits, depreciation as per Income tax Act has to be considered.

Practical 1

XYZ Ltd. is a company registered in India. The balance sheet of the company on March 31, 2020 is as under:

<i>Liabilities</i>	<i>Rs.</i>	<i>Assets</i>	<i>Rs.</i>
Preference share capital (issued for cash)	4,00,000	Fixed assets (before depreciation)	15,00,000
		Investment in share (market value Rs. 13,00,000)	4,00,000
Equity share capital		Other assets	9,20,000
- issued for cash	6,00,000		
- issued as bonus shares in 1960 and 1976 by capitalising profits	6,00,000		
General reserve	3,00,000		
Investment allowance reserve	90,000		
Depreciation reserve	1,00,000		
P & L A/c balance as on April 1, 2019:			
Rs.2,40,000			
Add: Profit of the year ending March 31, 2020 Rs. <u>60,000</u>	3,00,000		
Provision for taxation and dividend	2,30,000		
Current liabilities	2,00,000		
	28,20,000		28,20,000

Note: Profit and loss account balance on April 1, 2019 includes agricultural income of Rs.30,000.

You are required to ascertain the accumulated profits of the company to apply the deeming fiction of Section 2(22).

Solution**Computation of accumulated profits for the purpose of section 2(22) (a) to (d)**

Particulars	Rs.
General Reserve	3,00,000
Investment allowance reserve	90,000
Profit and Loss Account	3,00,000
Bonus shares (Capitalized profits)	6,00,000
Total Accumulated Profits	12,90,000

Computation of accumulated profits for the purpose of section 2(22)(e)

Particulars	Rs.
General Reserve	3,00,000
Investment allowance reserve	90,000
Profit and Loss Account	3,00,000
Bonus shares (Capitalized profits)	Nil (Refer note)
Total Accumulated Profits	6,90,000

Note: Accumulated profits for the purpose of section 2(22)(e) excludes capitalized profits.

Reader's Note:

7.4 TAXABILITY OF INTEREST RECEIVED ON COMPENSATION OR ENHANCED COMPENSATION

Section:- 56(2)(viii)

Section 56(2)(viii) provides that interest received on compensation or enhanced compensation referred to in section 145A(b) shall be taxable as income from other sources.

Finance Act, 2018 had substituted the provisions of section 145A with section 145A and section 145B. However, no consequential amendment were made in section 56(2)(viii).

Finance (No.2) Act, 2019 amends section 56(2)(viii) to provide correct reference of section 145B(1) in place of existing reference of section 145A(b).

This amendment takes retrospective effect from A.Y. 2017-18

7.5 SUM OF MONEY/PROPERTIES RECEIVED WITHOUT CONSIDERATION OR PROPERTIES RECEIVED FOR A CONSIDERATION WHICH IS LESS THAN FAIR MARKET VALUE OR STAMP DUTY, AS THE CASE MAY BE

Section:- 56(2)(x)

Following paragraphs deal with taxation of sum of money or properties received without consideration or properties received for a consideration which is less than fair market value or stamp duty, as the case may be.

Para No.	Description
Para 7.5	Sum of money/ properties received without consideration.
Para 7.5A	Exceptions / Relief from taxation
Para 7.5B	Meaning of Property
Para 7.5C	Determination of fair market value of Jewellery etc.
Para 7.5D	Determination of fair market value of Shares and Securities
Para 7.5E	What is the cost of acquisition if properties are subsequently sold?

Conditions for taxability:

If any person receives one or more of the following during the previous year from any other person, on or after the 1st day of April, 2017, then shall be regarded as income and subject to tax under this head:

(A) Sub Clause (a) of section 56(2)(x)

<i>Transaction</i>	<i>Condition</i>	<i>Taxable amount</i>
<i>Sum of money received without consideration</i>	<i>Aggregate amount received exceeds Rs.50,000</i>	<i>Aggregate amount received</i>

Practical 2

During concerned previous year, Mr. Krishna received following sum of money without consideration. Discuss tax consequences.

From	Rs.
Friend A	17,000
Friend B	14,000
Friend C	19,000

Solution

Mr. Krishna received exactly Rs.50,000 (not exceeding Rs. 50,000) without consideration. Therefore nothing shall be taxed in his hands.

Reader's Note:**Practical 3**

Suppose in the above problem, amount received from Friend C is Rs.19,001 instead of Rs. 19,000. Discuss tax consequences.

Solution

The aggregate amount received without consideration by Mr. Krishna is Rs.50,001 (exceeding Rs. 50,000), therefore, entire Rs. 50,001 shall be taxed in the hands of Mr. Krishna under the head "Income from other sources."

Reader's Note:**(B) Sub Clause (A) of section 56(2)(x)(b)**

<i>Transaction</i>	<i>Condition</i>	<i>Taxable amount</i>
<i>Immovable property received without consideration</i>	<i>Stamp duty value of immovable property exceeds Rs50, 000.</i>	<i>Stamp duty value of such property. (This rule shall be applicable for each property separately)</i>

Practical 4

During concerned previous year, Mr. Yudhisthir received following urban lands without consideration.

From	Valuation for Stamp Duty Purpose (Rs.)
Friend P	32,000
Friend Q	68,000

Solution

The valuation of land received from friend “P” does not exceed Rs. 50,000 (It is Rs. 32,000), therefore, it shall not be taxed in the hands of Mr. Yudhisthir. However, value of land received from friend “Q” exceeds Rs. 50,000 (It is Rs. 68,000), the same shall be taxed.

Reader’s Note:**Practical 5**

Suppose in the above problem, land received from friend Q is an agricultural land instead of urban land. Discuss tax consequences.

Solution

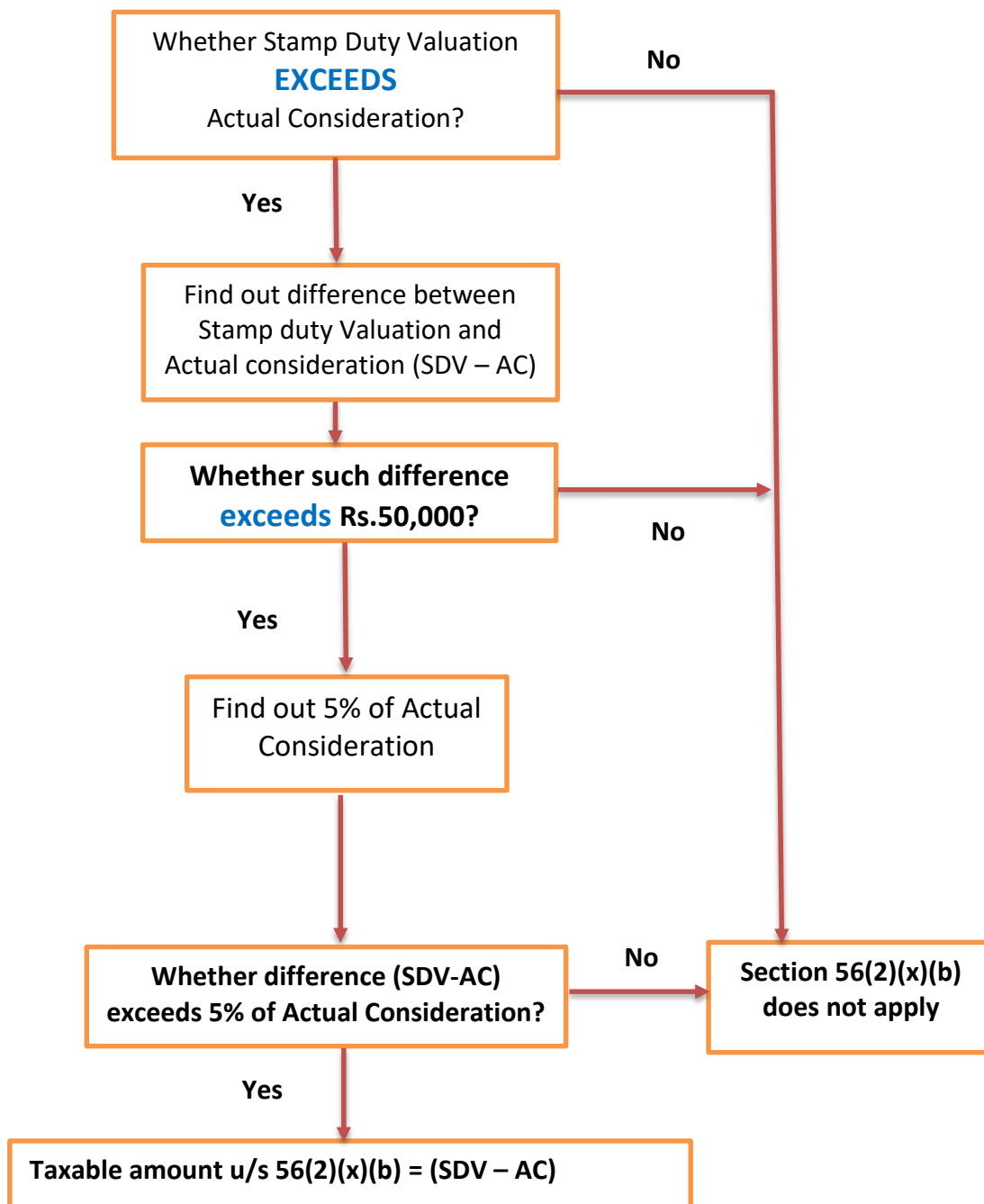
Since land received from Friend Q is not a capital asset (in this case, it is an agricultural land), nothing shall be taxed in the hands of Mr. Yudhisthir even though value of this land exceeds Rs. 50,000.

Reader’s Note:**(C) Sub Clause (B) of section 56(2)(x) (b)**

Transaction	Condition	Taxable amount
Immovable property received for a consideration	the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely: (i) the amount of fifty thousand rupees; and (ii) the amount equal to five per cent of the consideration: [Amended by Finance Act, 2018 w.e.f. A.Y. 2019-20.]	Difference between stamp duty value and the consideration (This rule shall be applicable for each property separately)

Notes:

1. If there is a time gap between date of agreement and date of registration, **the stamp duty value may be taken as on the date of agreement** instead of the date of registration. However, for this purpose, at least a part of the consideration has been paid by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account **or through such other electronic mode as may be prescribed [Amendment made by Finance Act, (No.2) Act w.e.f. 01.04.2020]**, on or before the date of agreement.
2. If assessee may dispute the stamp duty value of property on grounds mentioned under section 50C(2), then the assessing officer may refer the valuation of such property to the valuation officer, and the provisions of section 50C and section 155(15) shall apply accordingly for the purpose of sub clause (b) of Section 56(2)(x).

**Practical 6**

Shweta purchased flat from Rahul, details of which are as under:

1. Date of entering into agreement :-1.7.2019.
2. Agreed consideration : Rs. 100 lakhs
3. Down payment of Rs. 15 lakhs was paid by cheque on the date of agreement.
4. Stamp duty value of flat on the date of agreement was Rs. 135 lakhs.
5. Registration of sale deed in respect of flat took place on 1.1.2020.
6. Stamp Duty value on the date of registration of sale deed was Rs. 150 lakhs.

Discuss tax implications in the hands Shweta.

Solution**(1) Taxable Amount under the head “Income from Other Sources”**

Taxable Amount = Stamp Duty Value Less Actual Consideration
 = Rs.135 lakhs – Rs.100 lakhs
 = Rs. 35 lakhs

(2) Further, Shweta shall deduct TDS under section 194 IA at 1 % of consideration (Readers must note that 1% is not of stamp duty value, it is of consideration). Therefore, Shweta shall deduct TDS of Rs. 1,00,000/- while making payment to Rahul.

Reader’s Note:**Practical 7**

Ms. Radha would like to purchase flat. The valuation of this flat for the purpose of stamp duty is Rs. 25,00,000. Find out taxable amount under section 56(2)(x)(b), if any, under following alternatives, if actual consideration paid by her is:

Alternative I	Alternative II	Alternative III	Alternative IV
Rs.25,21,000	Rs. 24,70,000	Rs.24,00,000	Rs.23,00,000

Solution

Alt	AC	SDV	Whether SDV > AC?	SDV-AC	Is (SDV-AC) > Rs.50,000?	5% of Actual consideration	Does (SDV-AC) > 5% of Actual Consideration?	Taxable Amount (SDV-AC)
I	25,21,000	25,00,000	No	NA	NA	NA	NA	Nil
II	24,70,000	25,00,000	Yes	30,000	No	NA	NA	Nil
III	24,00,000	25,00,000	Yes	1,00,000	Yes	1,20,000	No	Nil
IV	23,00,000	25,00,000	Yes	2,00,000	Yes	1,15,000	Yes	2,00,000

Readers Note:**(D) Sub Clause (A) of section 56(2)(x) (c)**

Transaction	Condition	Taxable amount
Movable property received without consideration	Aggregate fair market value of movable properties exceeds Rs 50,000	fair market value on aggregate basis

Practical 8

During concerned previous year, Mr. Arjuna received following properties without consideration. Discuss tax consequences.

Description of Property	Fair Market Value (Rs.)
Jewelry from friend M	27,000
Archeological Collections from friend N	14,000
Mobile from friend O	15,000

Solution

Description of Property	Fair Market Value (Rs.)
Jewelry from friend M	27,000
Archeological Collections from friend N	14,000
Mobile from friend O (Not covered within the meaning of property)	-
Aggregate	41,000

Since aggregate amount does not exceed Rs. 50,000, nothing is taxable in the hands of Mr. Arjuna.

Reader's Note:**(E) Sub Clause (B) of section 56(2)(x) (c)**

Transaction	Condition	Taxable amount
Movable property received for a consideration which is less than the aggregate fair market value.	Consideration is less than the aggregate fair market value of properties by an amount exceeding Rs 50,000	Difference between fair market value and consideration on aggregate basis

Practical 9

During concerned previous year, Mr. Bhima purchased following properties. Discuss the tax consequences.

Particulars	Fair Market Value (Rs.)	Purchase Price
Golden Ring	78,000	72,000
L.C.D. Television	42,000	32,000
Paintings	1,00,000	61,000

Solution

Particulars	Fair Market Value (Rs.)	Purchase Price (Rs.)	Difference (Rs.)
Golden Ring	78,000	72,000	6,000
L.C.D. Television (Not covered within the meaning of property)	-	-	-
Paintings	1,00,000	61,000	39,000
Aggregate of Difference			45,000

Since aggregate amount does not exceed Rs. 50,000, nothing is taxable in the hands of Mr. Bhima.

Reader's Note:**Practical 10**

Suppose in the above problem painting was purchased for Rs.51,000 instead of Rs. 61,000. Discuss the tax consequences.

Solution

Particulars	Fair Market Value (Rs.)	Purchase Price (Rs.)	Difference (Rs.)
Golden Ring	78,000	72,000	6,000
L.C.D. Television (Not covered within the meaning of property)	-	-	-
Paintings	1,00,000	51,000	49,000
Aggregate of Difference			55,000

Since aggregate amount exceeds Rs. 50,000, entire difference of Rs. 55,000 is taxable in the hands of Mr. Bhima.

Reader's Note:

Practical 11

Mr. Nakula provides the following information for the concerned previous year. Discuss the tax consequences.

- (i) Received gift of Rs. 48,000 from friend X.
- (ii) Received house property without consideration from friend's grandmother, valuation of the same for stamp duty purpose was Rs. 42,000.
- (iii) Purchased urban land for Rs. 11,82,000 though the value of the same for stamp duty purpose was Rs. 11,00,000.
- (iv) Received gift of shares worth Rs. 29,000
- (v) Purchased sculpture for Rs.9,000 though fair market value was Rs.49,000

Solution**Tax Consequences in the hands of Mr. Nakula**

Sr. No.	Particulars	Relevant Para Applicable (Rs.)				
		Para 7.11 (A)	Para 7.11 (B)	Para 7.11 (C)	Para 7.11 (D)	Para 7.11 (E)
(i)	Received Cash	48,000				
(ii)	Received House property without consideration		42,000			
(iii)	Purchased Urban land			Refer Note		
(iv)	Gift of Shares				29,000	
(v)	Sculpture					40,000
	Which rule Applicable- Aggregation or each transaction?	Aggregate	Each transaction	Each transaction	Aggregate	Aggregate
	Aggregate	48,000	NA	NA	29,000	40,000
	Taxability	Not Taxable	Not Taxable	Not Taxable	Not Taxable	Not Taxable

Reader's Note:

Note: Section 56 is not applicable since Nakula purchased land for a value more than the value adopted for stamp duty purpose.

7.5A EXCEPTIONS / RELIEF FROM TAXATION**Section:-** Proviso to section 56(2)(vii)

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

1. Any sum of Money/properties which is received from any relative
2. Any sum of Money/properties which is received on the occasion of the marriage of the individual.
3. Any sum of Money/properties which is received under a will or by way of inheritance.
4. Any sum of Money/properties which is received in contemplation of death of the payer.
5. Money/properties received from a local authority
6. Money/properties received from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in section 10(23C).

7. Money/properties received from a charitable institute registered under section 12AA.
8. Money/properties received by way of transaction not regarded as transfer under clause (vicb) or clause (vid) or clause (vii) of section 47. [i.e., receipt of money/ properties in a scheme of amalgamation, demerger, etc.]
9. Capital asset received by way of transaction not regarded as transfer *under clause (i) or [clause (iv) or clause (v) or -i.e., transfer of capital asset between holding and its 100 per cent subsidiary companies or vice a versa provided the transferee-company is an Indian Company, etc. – Amended by Finance Act, 2018 w.e.f A.Y. 2019-20.] clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of section 47.*
10. Money / properties received by a trust from an individual where trust is created or established solely for the benefit of relative of the individual.
Following clause shall be inserted after clause (X) of proviso to clause (x) of sub-section (2) of section 56 by the Act No. 23 of 2019, w.e.f. 1-4-2020:
11. **Money/ properties received from such class of persons and subject to such conditions, as may be prescribed [Amendment made by Finance Act,2019 w.e.f. 01.04.2020].**

Meaning of relative in relation to “Individual” -For the aforesaid purpose, the term "relative" in relation to “Individual” means—

1. Spouse of the individual
2. Brother or sister of the individual
3. Brother or sister of the spouse of the individual
4. Brother or sister of either of the parents of the individual
5. Any lineal ascendant or descendant of the individual
6. Any lineal ascendant or descendant of the spouse of the individual
7. Spouse of the person referred to in (2) to (6)

Meaning of relative in relation to “HUF” - For the aforesaid purpose, the term "relative" in relation to “HUF” means any member thereof.

That means any sum of money or property received without consideration or for an inadequate consideration by an HUF from its members will not be subject to tax.

Practical 12

Mr. Jayesh received gift of Rs. 1, 00,000 from his uncle. Discuss tax consequences in the hands of Mr. Jayesh.

Solution

Mr. Jayesh received Rs.1,00,000 from his uncle who falls under the definition of relative for Mr. Jayesh. Any sum of money / property received from relative does not fall under section 56(2)(vii), therefore, nothing shall be taxed in the hands of Mr. Jayesh.

Reader’s Note:

Practical 13

Mr. Uncle received gift of Rs. 1,00,000 from his nephew. Discuss tax consequences in the hands of Mr. Uncle.

Solution

Mr. Uncle received Rs.1,00,000 from his nephew who does not fall under the definition of relative for Mr. Uncle. And amount received exceeds Rs. 50,000 therefore entire Rs. 1,00,000 shall be taxed in the hands of Mr. Uncle.

Reader’s Note:

Practical 14

Mr. Manmoji received gold from various persons without consideration. The fair market value of gold is Rs. 1,25,000. Discuss tax consequences in the hands of Mr. Manmoji under following alternatives:-

Alternative (a) : Mr. Manmoji received gold on occasion of his marriage.

Alternative (b) : Mr. Manmoji received gold on his 25th marriage anniversary.

Solution**Alternative (a)**

For the purpose of section 56(2)(vii), any sum of money/properties received on the occasion of the marriage of the individual shall excluded.

Therefore, gold received on the occasion of marriage by Mr. Manmoji is not taxable.

Alternative (b)

As discussed above, For the purpose of section 56 (2)(vii), any sum of money/properties received on the occasion of the marriage of the individual shall excluded. However it does not exclude any money/properties received on the occasion of marriage anniversary from non-relative.

Therefore, gold receive worth Rs. 1,25,000 (exceeding Rs. 50,000) on the occasion of 25th marriage anniversary shall be chargeable to tax in the hands of Mr.Manmoji.

Reader's Note:**7.5B MEANING OF PROPERTY****Section:- 56(2)(vii)**

“Property” means capital asset of the assessee being

- (i) immovable property being land or building or both;
- (ii) shares and securities;
- (iii) jewellery;
- (iv) archaeological collections;
- (v) drawings;
- (vi) paintings;
- (vii) sculptures;
- (viii)** any work of art;
- (ix)** bullion;

Practical 15

During concerned previous year, Mr. Sahdev received 1,000 shares of WIPRO Limited from his friend, without consideration. Fair market value of this shares on the date of gift was Rs. 2,500 per share. Discuss tax consequences in the hands of Sahdev under following alternatives:-

Alternative (a): Mr. Sahdev is a share trader

Alternative (b): Mr. Sahdev is not a share trader

Solution

On minute reading of the definition of property, it shall be taxed in the hands of recipient only if it is a capital asset for the recipient.

Alternative (a):- In this alternative, Mr. Sahdev is a share trader and if he treats the shares of WIPRO Limited received by him from his friend as a part of stock-in-trade (not a capital asset), then nothing shall be taxed under section 56(2)(x)(c)(A)

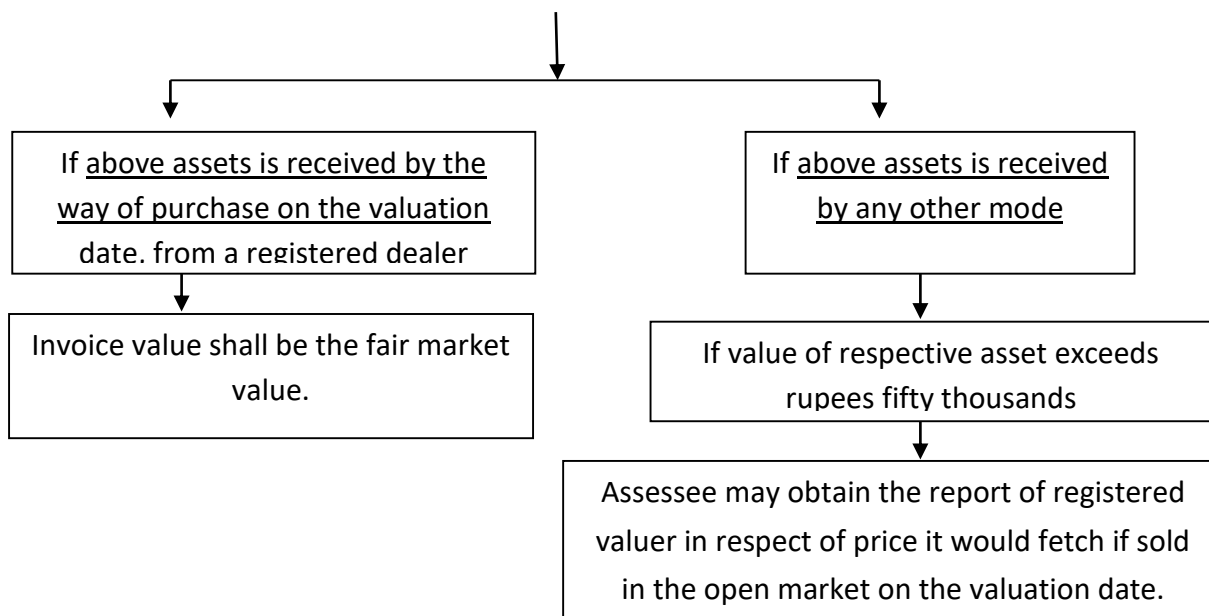
Alternative (b):- In this alternative, Mr. Sahdev is not a share trader and therefore, shares of WIPRO Limited received by him from his friend are capital asset. Hence, Rs. 25,00,000 (Fair market value) shall be taxed under section 56(2)(x)(c)(A).

Reader's Note:

7.5C DETERMINATION OF FAIR MARKET VALUE OF JEWELLERY, DRAWINGS ETC.

Rule:- 11 U, 11 UA

The FMV of jewellery, archeological collections, drawings, paintings, sculptures or any work of art shall be estimated to be price which it would fetch if sold in the open market on the valuation date: Consider following chart:-



Relevant definitions:

1) Registered dealer

“registered dealer” means a dealer who is registered under Central Sales tax Act, 1956 or General Sales-tax Law for the time being in force in any State including value added tax laws.

2) Registered valuer

“Registered valuer” shall have the same meaning as assigned to it in section 34AB of the Wealth Tax Act, 1957 read with rule 8A of wealth-tax Rules, 1957.

3) Valuation date

“valuation date” means the date on which the property is received by the assessee.

Practical 16

Ms. Jaya purchased diamond jewellery from “Abhushan” Jewellers, a registered dealer under Gujarat VAT Act for Rs. 55,000. Similar jewellery was purchased by Ms. Chhaya on the same day from “Kalyan Jewellers”, a registered dealer under Gujarat VAT Act for Rs. 62,000. Find out fair market value for the purpose of section 56 in the hands of Ms. Jaya and Ms. Chhaya under following alternatives:-

Alternative (a): Both Ms. Jaya and Ms. Chhaya have obtained the invoice from respective jewellers.

Alternative (b): Both Ms. Jaya and Ms. Chhaya have not obtained the invoice from respective jewellers

Alternative (c): Both Ms. Jaya and Ms. Chhaya have obtained the invoice from respective jewellers but both the jewellers are unregistered.

Solution**Alternative (a): Both Ms. Jaya and Ms.Chhaya have obtained the invoice from respective jewellers.**

If diamond is purchased from a registered dealer by obtaining invoice, then as per valuation rule, invoice value shall be the fair market value.

Therefore, respective invoice value of the diamond shall be the fair market value in the hands of Ms. Jaya and Ms. Chhaya.

Alternative (b):Both Ms. Jaya and Ms.Chhaya have not obtained the invoice from respective jewellers

If diamond is purchased from a registered dealer without obtaining invoice, then as per valuation rules, assessee may obtain the report of registered valuer in respect of fair market value of diamond on the date of purchase.

Alternative (c): Both Ms. Jaya and Ms.Chhaya have obtained the invoice from respective jewellers but both the jewellers are unregistered.

If Diamond is purchase from a unregistered dealer, then as per valuation rules, assessee may obtain the report of registered valuer in respect of fair market value of diamond on the date of purchase.

Reader's Note:**Practical 17**

Ms. Kamli purchased gold jewellery from "Gharana Jewellers", being unregistered dealer for Rs. 45,000. Further, she purchased painting from "Modern Art" being unregistered dealer for Rs. 38,000. Is Ms. Kamli required to obtain report of registered valuer?

Solution

On reading of valuation rule, Ms. Kamli required to obtain report of registered valuer only when the value of respective asset exceeds Rs.50,000. In this case, value of each asset (i.e. jewellery and painting) does not exceed Rs.50,000, therefore, Ms Kamli is not required to obtain report from registered valuer.

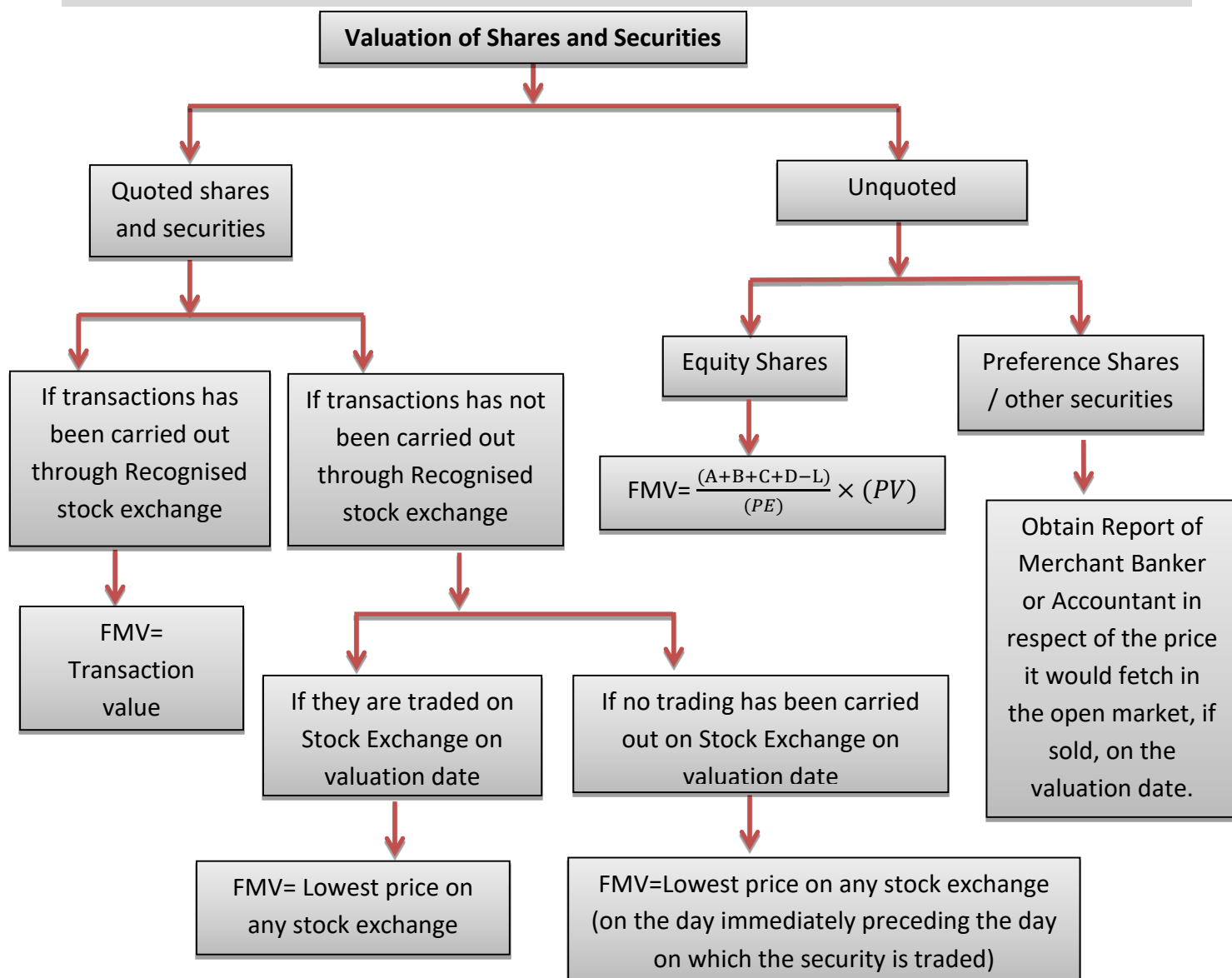
Reader's Note:**Practical 18**

Mr. Viru purchased painting on **5th May, 2019** from registered dealer for Rs.1, 00,000 and obtained the invoice of same. He gifted this painting to Miss Mohmaya on **9th September 2019**. Fair market value of this painting, as per registered valuer report on **9th September, 2019** was Rs.1, 25,000. Discuss taxability of this transaction in the hands of Miss Mohmaya.

Solution

Miss Mohmaya has received paintings without consideration, therefore, fair market value of painting on the date of gift (i.e. Rs.1,25,000) shall be chargeable to tax in her hands.

Reader's Note:

7.5D DETERMINATION OF FAIR MARKET VALUE OF SHARES AND SECURITIES**RULE:- 11U, 11UA**

Meaning of various terms used in the above valuation rule:

A= book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,-

- (i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and
- (ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in this rule;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L= book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—

- (i) the paid-up capital in respect of equity shares;
- (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

- (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
- (iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PV= the paid up value of such equity shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;”

Relevant definitions

- (a) "accountant" shall have the same meaning as assigned to it in the Explanation below sub-section (2) of section 288 of the Act;
- (b) The balance-sheet in relation to any company means balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor appointed u/s 224 of the Companies Act, 1956(1 of 1956);
- (c) "Merchant banker" means category I merchant banker registered with Security and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (d) "quoted shares or securities" in relation to share or securities means a share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;
- (e) "recognized stock exchange" shall have the same meaning as assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (f) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (g) "unquoted shares and securities", in relation to shares or securities, means shares and securities which is not a quoted shares or securities;
- (h) "valuation date" means the date on which the property is received by the assessee.

Practical 19

Mr. Abhishek gifted 10,000 unquoted shares of Ajitabh Bachhan Corporation Limited (ABCL) to Dr. Deval on **10th July, 2019**. Find out amount, if any, to be taxed in the hands of Dr. Deval under the head "Income from other sources".

Balance Sheet of ABCL on 10th July, 2019

Liabilities	Rs. In crores	Assets	Rs. In crores
30,00,000 equity shares of Rs.10 each	3.00	Fixed Assets	10.00
12% Cumulative Preference shares	2.00	Investments	2.00
Reserves and Surplus	1.50	Current Assets	2.00
Loan funds	2.50		
Current liabilities	5.00		
	14.00		14.00

Additional information:

- (i) Fixed assets represents immovable properties of the company and the valuation assessable for the purpose of stamp duty for these assets is Rs. 25 Cr.
- (ii) Investment represents investment in shares and securities, the fair market value of such investments in accordance with Rule 11UA is Rs. 3.5 Cr.

(iii) Current Asset includes advance tax Rs.50 lakh.

(iv) Current liability includes

- a. Provision for unascertained liability Rs. 30 lakhs
- b. Proposed dividend Rs.10 lakhs.

(v) Reserve and Surplus includes Depreciation Reserve Rs. 22.50 lakhs

(vi) Further, company reported contingent liabilities Rs. 55 lakhs which includes unpaid preference dividend of one year.

Solution

Amount to be taxed in the hands of Dr. Deval = 10,000 shares x Rs. 68.12 = Rs.6,81,200

Working Notes:

Calculation of Fair Market Value as on 10th July, 2019

$$\begin{aligned}\text{Fair Market Value} &= \frac{(A+B+C+D-L)}{PE} \times PV \\ &= \frac{(1.5 \text{ Cr} + \text{Nil} + 3.50 \text{ Cr} + 25 \text{ Cr} - 9.565 \text{ Cr})}{3.00 \text{ Cr}} \times 10 \\ &= \text{Rs. 68.12 per share}\end{aligned}$$

Calculation of Assets (A)

Particulars	Rs.in crores
Total Assets	14.00
Less: Fixed Assets	(10.00)
Less: Investments	(2.00)
Less: Advance Tax	(0.50)
Assets (A)	1.50

Calculation of Assets (B) = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer = **NIL**

Calculation of Assets (C) = fair market value of shares and securities as determined in the manner provided in this rule = **Rs. 3.5 Cr**

Calculation of Assets (D) = the value assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property = **Rs. 25Cr.**

Calculation of Liabilities (L)

Particulars	Rs.in crores
Total Liabilities	14.00
Less:(1) Paid up equity share capital	(3.00)
(2) Provisions for unascertained liabilities	(0.30)
(3) Proposed dividend	(0.10)
(4) Reserves and surplus (other than depreciation reserve)	(1.275)
Add: Unpaid Preference share dividend	0.24
Liabilities (L)	9.565

Calculation of PE

PE = Total amount of paid up equity share capital as shown in the balance sheet
= Rs. 3.00 crores

Calculation of PV

PV = the paid value of equity share = Rs.10

Reader's Note:

7.5E WHAT IS THE COST OF ACQUISITION IF PROPERTIES ARE SUBSEQUENTLY SOLD?**Section:- 49(4) and 49(1)**

Particulars	Section Applicable	Cost of acquisition	Period of holding
Gift transaction – taxable under section 56(2)	Section 49(4)	Value adopted for purpose of section 56	Period of holding of previous owner not included
Gift transaction – not taxable under section 56 (2)	Section 49(1)	Cost to the previous owner	Period of holding of previous owner included

Practical 20

Mr. Surya purchased diamond ring for Rs. 38,000 on **09-09-16**. He gifted the same to Miss Maya on **14-02-2019**, on that day fair market value of this diamond ring was Rs. 48,000. It is the only gift received by Miss Maya during previous year **2018-19**. After break-up with Mr. Surya, Miss Maya sold out this diamond ring for Rs. 52,000 on **12-12-19**. Discuss tax consequences in the hands of Miss Maya.

Cost of Inflation Index

2016-17: 264**2019-20: 289****Solution****In the hands of Miss Maya****(1) Taxability for the P.Y. 2018-19**

Aggregate fair market value of gift received by Miss Maya does not exceed Rs. 50,000 therefore, nothing is taxable for the previous year **2018-19**.

(2) Taxability for the P.Y. 2020-21

Period of Holding: 09-09- 2016 to 12-12- 2019	
Nature of Capital Asset: Long Term	
Particulars	(Rs.)
Full value of consideration	52,000
Less: Expenses in connection with Transfer	-
Net Consideration	52,000
Less: Cost of acquisition $\left(38,000 \times \frac{289}{264}\right)$	(41,598)
Long Term Capital Gain	10,402

Reader's Note:**Practical 21**

Suppose in the above problem Miss Maya also received gift of gold ornament worth Rs. 22,000 on **30-03-2019** from another boy-friend Mr. Prakash. Discuss tax consequences assuming that she sold out diamond ring received from Mr. Surya as per the information given in above problem.

Solution**(1) Taxability for the P.Y. 2018-19**

Particulars	Fair Market Value (Rs.)
Diamond Ring from Mr. Surya	48,000
Gold Ornament from Mr. Prakash	22,000
Aggregate	70,000

Aggregate fair market value of gift received by Miss Maya exceeds Rs. 50,000 therefore, Rs.70,000 shall be taxed for the previous year **2018-19**

(2) Taxability for the P.Y. 2019-20

Period of Holding: 14-02-2019 to 12-12-2019

Particulars	Rs.
Full value of consideration	52,000
Less: Cost of acquisition u/s 49(4)	(48,000)
Short Term Capital Gain	4,000

Reader's Note:

7.6 SHARE PREMIUM IN EXCESS OF THE FAIR MARKET VALUE TO BE TREATED AS INCOME

Section:- 56(2)(viib), Rule 11UA(2)

(A) Applicability

This sub-clause is applicable to a company in which the public are not substantially interested.

(B) Taxability

Conditions

1. It receives consideration for issue of shares from a resident person.
2. The consideration received for issue of shares exceeds the face value of such shares. (i.e. shares are issued at a premium).
3. The aggregate consideration received for such shares exceeds the fair market value of the shares.

If all the above mentioned conditions are satisfied then following shall be chargeable to income-tax in the hands of closely held company under section 56(2)(viib) under the head "Income from other sources".

Taxable Amount = Aggregate consideration received for shares (less) fair market value of shares.

(C) Exceptions:

However, provision of this section shall not apply in the following two cases –

- a. where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a Venture capital fund **or specified fund [Amendment made by Finance Act, (No.2) 2019 w.e.f. 01.04.2020]**

Meaning of "specified fund"

Specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992.

Meaning of "trust"

"trust" means a trust established under the Indian Trusts Act, 1882 or under any other law for the time being in force.

- b. where the consideration for issue of shares is received by a company from a class or classes of person notified by the Central Government.

Notification No. 13/2019, dated 5-03-2019

The Central Government has, vide this notification, notified that the provisions of section 56(2)(viib) shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration received from a person, being a resident, by a company which fulfills the conditions specified by the Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade and files the declaration referred to in the said notification. The Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade has, vide Notification No. G.S.R. 127(E) dated 19.2.2019, specified in para 4 thereunder, that a startup shall be eligible for exemption under clause (ii) of the proviso to section 56(2)(viib), if it fulfills the following conditions:

- (i) It has been recognized by the Department for Promotion of Industry and Internal Trade as start up as per this notification or any earlier notification on the subject.
- (ii) Aggregate amount of paid up capital and share premium of the startup after issue or proposed issue of shares, if any, does not exceed, twenty five crore rupees.

However, in computing the aggregate amount of paid up share capital, the amount of paid up share capital and share premium of twenty five crore rupees in respect of shares issued to any of the following persons shall not be included:

- (a) a non-resident
- (b) a venture capital company or a venture capital fund

Further, consideration received by such startup for shares issued or proposed to be issued to a specified company shall also be exempt and shall not be included in computing the aggregate amount of paid up share capital and share premium of twenty five crore rupees. For this purpose, a specified company means a company whose shares are frequently traded within the meaning of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and whose net worth on the last date of financial year preceding the year in which shares are issued exceeds one hundred crore rupees or turnover for the financial year preceding the year in which shares are issued exceeds two hundred fifty crore rupees.

- (iii) It has not invested in any of the following assets –
 - (a) building or land appurtenant thereto, being a residential house, other than that used by the Startup for the purposes of renting or held by it as stock-in-trade, in the ordinary course of business;
 - (b) land or building, or both, not being a residential house, other than that occupied by the Startup for its business or used by it for purposes of renting or held by it as stock-in trade, in the ordinary course of business;
 - (c) loans and advances, other than loans or advances extended in the ordinary course of business by the Startup where the lending of money is substantial part of its business;
 - (d) capital contribution made to any other entity;
 - (e) shares and securities;
 - (f) a motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ten lakh rupees, other than that held by the Startup for the purpose of plying, hiring, leasing or as stock-in-trade, in the ordinary course of business;
 - (g) jewellery other than that held by the Startup as stock-in-trade in the ordinary course of business;

- (h) any other asset, whether in the nature of capital asset or otherwise, of the nature specified in section 56(2)(vii)(d)(iv) to (ix) i.e., archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

However, the Startup should not invest in any of the assets mentioned above for the period of seven years from the end of the latest financial year in which shares are issued at premium.

Meaning of Startup:

A company would be considered as Startup if the following conditions are satisfied:

- (i) **Period** – It would be considered as a Startup upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) in India.
- (ii) **Turnover limit** - Turnover of the company for any of the financial years since incorporation/registration has not exceeded one hundred crore rupees.
- (iii) **Object and Purposes** - The company is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

However, a private limited company shall not be considered a “Startup”, if it formed by splitting up or reconstruction of an existing business.

This notification shall be deemed to have come into effect from 19.02.2019.

c. **Second Proviso to section 56(2)(viib) inserted by Finance Act, (No.2) Act w.e.f. 01.04.2020**

- However, company fails to comply with any of conditions mentioned in above notification, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and,
- it shall also be deemed that the company has under-reported the income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of section 270A for the said previous year.

(D) Meaning of Fair Market Value

The fair market value of the shares shall be the higher of the value—

- (a) as may be determined in accordance with the method as may be prescribed; [Refer Rule 11UA(2) given below]

Rule 11UA (2):-

The fair market value of unquoted equity shares shall be :-

(1) $(A+B+C+D-L) * (PV) / (PE)$

Or

(2) The fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method.

whichever is higher:

- (b) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value of its assets, including intangible assets, being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

Meaning of certain terms used for Rule 11 UA (2):

- (i) *"balance-sheet", in relation to any company, means the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956)*
- and*
- (ii) *where the balance-sheet on the valuation date is not drawn up, the balance-sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company;*
- (iii) "accountant" means a fellow of the Institute of Chartered Accountants of India within the meaning of the Chartered Accountants Act, 1949 (38 of 1949) who is not appointed by the company as an auditor under section 44AB of the Act or under section 224 of the Companies Act, 1956 (1 of 1956);
- (iv) Valuation date: "valuation date" means the date on which consideration is received by the assessee.
- (v) Term "A", "B", "C", "D", "L", "PV" and "PE" has same meaning as assigned in earlier valuation rules.

7.7	COMPENSATION FOR TERMINATION OF EMPLOYMENT OR MODIFICATION OF THE TERMS AND CONDITIONS THERETO.

Section:- 56(2)(xi) – Inserted by Finance Act, 2018 – A.Y. 2019-20

Clause (xi) has been inserted in section 56(2) w.e.f A.Y. 2019-20 to provide that any compensation or other payment, due to or received by any person, by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto shall be chargeable to tax under the head "Income from other sources".

Conflict: Readers shall consider section 17(3) (i) which reads as under:

"the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of terms and conditions relating thereto" – shall be termed as "profits in lieu of salary".

8 – CLUBBING OF INCOME

9 – SET OFF AND CARRY FORWARD OF LOSSES

10 – DEDUCTIONS FROM GROSS TOTAL INCOME

10.1 DEDUCTIONS IN RESPECT OF PROFITS AND GAINS FROM HOUSING PROJECTS

Section:- 80-IBA

(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.

(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~~ **March 31, 2020 [substituted by Finance Act, 2019 w.e.f. A.Y. 2020-21]**.
- (ii) The project shall be completed within a period of 5 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 carpet area of the shops and other commercial establishments included in the housing projects does not exceed 3 per cent of the aggregate carpet 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	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

The above table is replaced by below table w.e.f. A.Y.2020-21 for the projects approved on or after September 1, 2019. [Amendment made by Finance Act, 2019]

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 metropolitan cities of Bengaluru, Chennai, Delhi NCR (limited to Delhi Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan Region)	Not less than 1,000 square meters	Not to exceed 60 square meters	Not less than 90%
Project is located in any other place	Not less than 2,000 square meters	Not to exceed 90 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.
- (viii) *The stamp duty value of a residential unit does not exceed forty-five lakh rupees [This condition is relevant only for the housing projects approved on or after the 1st day of September, 2019- Inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21]*
- (ix) *"stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property [Inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21].*

(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.

(4) Reversal of deduction if project not completed within stipulated time

Where the housing project is not completed within 3 years **(5 years with effect from A.Y. 2018-19, Amendment by Finance Act, 2017)** 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.

10.2 DEDUCTION IN RESPECT OF CERTAIN INCOMES NOT TO BE ALLOWED UNLESS RETURN IS FILED BY THE DUE DATE

Section:- 80AC Substituted by Finance Act, 2018 w.e.f. A.Y. 2018-19 (*Retrospective*)

Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes" -

no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.

10.3 DEDUCTION IN RESPECT OF LIFE INSURANCE PREMIA, DEFERRED ANNUITY, CONTRIBUTIONS TO PROVIDENT FUND, SUBSCRIPTION TO CERTAIN EQUITY SHARES OR DEBENTURES, ETC.

Section:- 80C

Section 80C provides deduction in respect of specified qualifying amounts paid or deposited by the assessee in the previous year.

(1) Eligible assessee:- Individual or a Hindu undivided family.

(2) Payments / deposits / contributions eligible for deduction under section 80 C

(a) Life insurance premium

Note

In the case of an individual life insurance policy may be taken on his own life, life of the spouse or any child.

In the case of a Hindu undivided family, policy may be taken on the life of any member of the family.

Deduction in respect of Insurance Premium paid cannot exceed the ceiling given below-

	<i>Where the insurance is on the life of a person with disability or severe disability as referred to in section 80U or a person suffering from disease or ailment as specified under section 80DDB.</i>	<i>Where the insurance is on the life of any other person</i>
<i>In respect of policies issued between 1.4.2003 and 31.3.2012</i>	<i>20% of sum assured</i>	<i>20% of sum assured</i>
<i>In respect of policies issued on or after 1.4.2012 but before 1.4.2013</i>	<i>10% of sum assured</i>	<i>10% of sum assured</i>
<i>In respect of policies issued on or after 1.4.2013</i>	<i>15% of sum assured</i>	<i>10% of sum assured</i>

Sum assured means minimum amount assured under the policy. Further, sum assured will not include any premium agreed to be returned and /or any benefit by way of bonus or otherwise.

(b) Premium paid in respect of a contract for deferred annuity

Note: Annuity plan may be taken in the name of the individual, his wife/her husband or any child of such individual.

- (c)** Any sum deducted from salary payable to a Government employee for the purpose of securing a deferred annuity (subject to a maximum of one-fifth of salary)

Note: This annuity shall be for the benefit of the individual, his wife or children.

- (d)** Contribution towards statutory provident fund
- (e)** Contribution (not being repayment of loan) towards 15 year public provident fund

Note:

In the case of an individual, the provident fund account may be in his own name or in the name of his/ her spouse or any child.

In the case of a Hindu undivided family, provident fund account may be in the name of any member of the family.

- (f)** Contribution by an exmployee towards recognized provident fund
- (g)** Contribution by an employee towards an approved superannuation fund
- (h)** Subscription to National Savings Certificates, VIII Issue including accrued interest thereon or IX Issue.
- (i)** Deposit in 'Sukanya Samriddhi Account' [Notification No. 9/2015 [F.NO.178/3/2015-ITA-I]/SO 210(E), Dated 21-1-2015]

Note: In the case of an individual, deposit in Sukanya Samriddhi Account can be made in the name of individual, or any girl child of that individual or any girl child for whom such person is the legal guardian, if the scheme so specifies.

- (j)** Contribution in the unit-linked insurance plan (ULIP) of Unit Trust of India

Note : In the case of an individual, ULIP may be taken on his own life, life of the spouse or any child. In the case of a Hindu undivided family, ULIP may be taken on the life of any member of the family.

- (k)** Contribution in the unit-linked insurance plan (ULIP) of LIC Mutual Fund

Note : In the case of an individual, ULIP may be taken on his own life, life of the spouse or any child. In the case of a Hindu undivided family, ULIP may be taken on the life of any member of the family

- (l)** Payment for notified annuity plan of LIC (i.e., New Jeevan Dhara, Jeevan Akshay) or any other insurer (Tata AIG Easy Retire Annuity Plan

- (m)** Subscription towards notified units of Mutual Fund or UTI

- (n)** Contribution to notified pension fund set up by Mutual Fund or UTI

- (o)** Subscription to any notified deposit scheme or pension fund set up by the National Housing Bank. [National Housing Bank (Tax Saving) Term Deposit Scheme, 2008 vide Notification No. 3/2009]

- (p)** Subscription to any deposit scheme of—

- a. public sector company engaged in providing long-term finance for purchase/construction of residential houses in India;

- b.** housing board constituted in India for the purpose of planning, development or improvement of cities, towns and villages or both.
- (q)** Any sum paid as tuition fees (excluding any payment towards development fees / donation / payment of similar nature) whether at the time of admission or otherwise to any university or college or educational institution in India for full time education of any two children of the individual [Note 10]

Note : Full-time education includes any educational course offered by any university, college, school or other educational institution to a student who is enrolled full-time for the said course. Full-time education includes play-school activities, pre - nursery and nursery classes. –Circular No. 17/2014, dated December 10, 2014.

- (r)** The following payment made towards the cost of purchase/construction of a new residential house property is qualified for the purpose of section 80C :
 - a.** any instalment or part payment of the amount due under any self-financing or other scheme of any development authority, housing board or other authority engaged in the construction and sale of house property on ownership basis ; or
 - b.** any instalment or part payment of the amount due to any company or co-operative society of which the assessee is a shareholder or member:): towards the cost of the house property allotted to him (it is not applicable if the assessee is not a shareholder or member of the company/co-operative society which provides house to the assessee); or
 - c.** repayment of the amount borrowed by the assessee from —
 - (i)** the Central Government or any State Government, or
 - (ii)** any bank, including a co-operative bank, or
 - (iii)** the Life Insurance Corporation of India, or
 - (iv)** the National Housing Bank, or
 - (v)** any public company formed and 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 which is eligible for deduction under section 36(1)(viii), or
 - (vi)** any company in which the public are substantially interested or any co-operative society, where such company or co-operative society is engaged in the business of financing the construction of houses, or
 - (vii)** the assessee's employer where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or
 - (viii)** the assessee's employer where such employer is a public company or public sector company, or a university established by law or a college affiliated to such university or local authority or co-operative society;
 - d.** stamp duty, registration fee and other expenses for the purpose of transfer of such house property to the assessee.

Note:

The following payments are not qualified for the purpose of section 80C :

- a. the admission fee, cost of the share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming such shareholder or member; or
 - b. the cost of any addition or alteration to, or renovation or repair of, the house property which is carried out after the issue of the completion certificate in respect of the house property by the authority competent to issue such certificate or after the house property (or any part thereof) has either been occupied by the assessee or any other person on his behalf or been let out; or
 - c. any expenditure in respect of which deduction is allowable under the provisions of section 24.
- (s)** Subscription to equity shares or debentures of a public company engaged in infrastructure including power sector or units of a mutual fund proceeds of which are utilised for the purpose of business referred to in section 80 IA (4)
- (t)** Subscription to any units of any mutual fund referred to in section 10(23D) and approved by the Board.

Note:

It is necessary that such units shall be subscribed only in the issue made by the public company formed in India or a public financial institution and entire proceeds of the issue are utilized wholly and exclusively for the purpose of business referred to in section 80 IA (4)

- (u)** Amount deposited as term deposit for a period of not less than 5 years and it is in accordance with a scheme framed and notified by the Central Government.
- (v)** Subscription to any notified bonds of National Bank for Agriculture and Rural Development (NABARD)
- (w)** Amount deposited under Senior Citizens Saving Scheme
- (x)** Amount deposited in five year time deposit scheme in post office.
- (y)** Section 80(c)(xxv) - Inserted by Finance Act, (No.2) Act w.e.f. A.Y. 2020-21

Contribution to a specified account [NPS Tier- II Account] of the pension scheme referred to in section 80CCD by the Central Government Employee

- (a)** for a fixed period of not less than three years; and
- (b)** which is in accordance with the scheme as may be notified by the Central Government in the Official Gazette for the purposes of this clause.

(3) Amount of Deduction – The amount deduction under section 80C shall not exceed Rs. 1,50,000.

(4) Lock-in-period

In respect of the few investments/deposits/contributions eligible for deduction under section 80C, law provides lock-in-period.

Investments/deposits/contribution	Lock-in-period
Unit-linked insurance plan (ULIP)	5 years
Life insurance premium	2 years
House Property	5 years
Deposit under Senior Citizen Saving Scheme	5 years
Time Deposit in Post Office	5 years

(5) Consequences when lock-in-period not observed.

- (a) **ULIP:** Where a member participating in ULIP, terminates his participation before 5 years, then following consequences would arise

Any contribution made towards ULIP in the year of termination shall not be eligible for deduction under section 80C.

The amount of deduction already claimed under this section in the earlier years shall be deemed as income of the taxpayer in the year in which ULIP is terminated.

- (b) A similar rule is to be followed in case of termination of life insurance policy before 2 years and transfer of residential house property before 5 years.
- (c) In case of withdrawal before 5 years by the depositor during his lifetime from amount deposited under Senior Citizen Saving Scheme or time deposit in Post Office, the amount withdrawn shall be taxable in the year of withdrawal. For this purpose, interest which has already been taxed in earlier years shall be excluded.

10.4 DEDUCTION IN RESPECT OF CONTRIBUTION TO PENSION SCHEME OF CENTRAL GOVERNMENT OR ANY OTHER EMPLOYER

Section:- 80CCD

- (1) **Eligible assessee** - Individual who is employed by the Central Government (on or after January 1, 2004) or being an individual employed by any other employer or any other assessee being an individual (self-employed person)
- (2) **Conditions** - The amount shall be paid or deposited in any account under a pension scheme notified by the Central Government.
- (3) **Amount of deduction**
- (a) Employee's contribution is deductible as does not exceed 10 per cent of the salary of the employee. *In case of self-employed person, contribution to pension scheme is deductible as does not exceed 20 percent of his gross total income. [Section 80CCD(1)]*
- (b) **With effect from A.Y. 2016-17 sub section (1B) has been inserted in section 80CCD so as to provide for an additional deduction in respect of any amount paid (upto Rs.50,000) for contributions made by any individual assessee under the NPS. On this additional contribution, the ceiling of Rs.1,50,000 under section 80CCE will not be applicable.**
- (c) Contribution by the Central Government to the notified pension scheme is deductible as does not exceed 14 per cent of the salary of the employee *[Amendment made by Finance Act, 2019 w.e.f A.Y. 2020-21] - [Section 80CCD(2)]*
- (d) Contribution by the any other employer (not being Central Government) to the notified pension scheme is deductible as does not exceed 10 per cent of the salary of the employee. *[Section 80CCD(2)]*

(4) Other points to be kept in mind

- (a) The amounts standing to the credit of the employee in the pension account, for which a deduction has already been claimed by him, and the amount accrued on them, shall be taxed as income in the year in which such amounts are received by the assessee (or his nominee) on closure of the account or his opting out of the said scheme or on receipt of pension from the annuity plan. **[Section 80CCD(3)]**

With effect from A.Y.2017-18, the amount received by the nominee, on the death of the assessee, on closure or opting out of NPS, shall not be deemed to be the income of the nominee. **[Proviso to 80CCD (3)]**

- (b) If deduction is claimed under section 80C, in respect of the same investment, deduction is not available under section 80CCD.
- (c) "Salary" for the purpose of points 1 and 2 (supra) includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites. **[Amendment made by Finance Act, 2014, w.e.f from A.Y 2015-16]**

10.5 LIMIT ON DEDUCTIONS UNDER SECTION 80 C, 80 CCC AND 80 CCD

Section:- 80CCE

The aggregate amount of deduction under sections 80C, 80CCC and 80CCD(1) cannot exceed Rs. 1,50,000.

Readers are requested to consider the following summary:-

SECTION	MAXIMUM DEDUCTION	
	For A.Y. 2019-20	For A.Y. 2020-21
80C	Rs.1,50,000	Rs.1,50,000
80CCC	Rs.1,50,000	Rs.1,50,000
80CCD(1) [i.e., employee's or assessee's contribution to NPS]	10% of Salary or 20% of GTI as the case may be.	10% of Salary or 20% of GTI as the case may be.
80CCE : The aggregate deduction under sections 80C, 80CCC and 80CCD(1)	Rs.1,50,000	Rs.1,50,000
80CCD(1B) [i.e., contribution to NPS by an individual]	Rs.50,000	Rs.50,000
80CCD(2) [Central Government contribution to NPS]	10% of salary	14% of salary
80CCD(2) [any other employer's contribution to NPS]	10% of salary	10% of salary

Practical 1

Mr. Raj Shekhar joined the Jupiter Pvt Ltd. on 25.01.2000. He draws a salary income of Rs. 11,00,000 for the previous year 2019-20. He purchased a residential house property for self-occupation on 1.6.2019, in respect of which he took a housing loan from ICICI bank on the same date. During the previous year 2019-20, he paid Rs.1,87,000 towards loan which consist of Rs.5,000 towards principal and Rs.1,82,000 towards interest component. Further, he invested Rs.50,000 with public provident fund. Jupiter Pvt. Ltd. contributes 13% of Salary towards NPS. The contribution of Mr. Raj Shekhar towards NPS is 15% of salary. His income from other source is Rs. 2,50,000. Compute total income.

Solution

Computation of Total Income of Mr. Raj Shekhar

Particulars	Amount Rs.	Amount Rs.
Basic Salary	11,00,000	
Add: Employer's Contribution to NPS [Rs.11,00,000 x 13%]	<u>1,43,000</u>	
Income under the head "Salary"		12,43,000

Income under the head “House Property” (S.O.)		(1,82,000)
Income under the head “Income from Other Sources”		2,50,000
Gross Total Income		13,11,000
Less: Deduction under section 80C to 80U		
<i>(a) Deductions under section 80C, 80CCC, 80CCD(1)</i>		
Deduction u/s 80C – PPF	50,000	
Deduction u/s. 80C-Principal repayment of Housing Loan	5,000	
Deduction u/s 80CCD(1)-Employee’s contribution to NPS is lower of the followings: - 10% of salary (i.e., Rs.11,00,000) - Rs.1,50,000	1,10,000	
Total of (a)	1,65,000 But restricted to	(1,50,000)
<i>(b) Deduction u/s 80CCD(2)-Employer’s contribution to NPS- 10% of Rs.11,00,000</i>		(1,10,000)
<i>(c) Deduction u/s 80CCD(1B) - Additional contribution to NPS not exceeding Rs.50,000.</i>	55,000	(50,000)
TOTAL INCOME		<u>10,01,000</u>

Readers Note:

10.6 DEDUCTION IN RESPECT OF MEDICAL INSURANCE PREMIA

Section:- 80D

(1) Eligible assessee: - Individual or Hindu undivided family

(2) Conditions –

- (a)** Mediciam insurance is paid by the individual or HUF. In the case of individual, payment can also be made to the Central Government Health Scheme or such other scheme as may be notified by the Central Government in this behalf and/or on account of preventive health check-up.
- (b)** It is paid out of income chargeable to tax.
- (c)** Payment shall be made by any mode other than cash. However, payment on account of preventive health check-up can be made by any mode including cash.

(3) Maximum Deductible Amount:- The maximum deductible amount and other relevant points are given below-

	Individual		HUF
	Family	Parents	
• For whose benefits payment can be made	For the benefit of the assessee, spouse of the assessee and dependent children of the assessee	For the benefit of the parents of the assessee whether dependent or not	For the benefit of any member of family
(A) Nature of payment			
a. Medi-claim insurance premium	Deduction available	Deduction available	Deduction available
b. Contribution made to Central Government Health Scheme or such other scheme as	Deduction available	-	-

may be notified by the Central Government in this behalf			
c. Payment made on account of preventive health check-up	Deduction available	Deduction available	-
Maximum amount of deduction			
- General deduction [applicable in respect of (a), (b) and (c) given above but payment on account of preventive health check-up of self, spouse, dependent children and parents cannot exceed Rs.5,000]	Rs.25,000	Rs.25,000	Rs.25,000
- Additional deduction (applicable only in the case of medi-claim insurance premium when policy is taken on the life of a senior citizen)	Rs.25,000	Rs.25,000	Rs.25,000
(B) Medical Expenditure on the health of a person who is a <i>senior citizen</i> if mediclaim insurance is not paid on the health of such person	<i>Deduction available</i>	<i>Deduction available</i>	<i>Deduction available</i>
- <i>Maximum deduction in respect of (B)</i>	Rs.50,000	Rs.50,000	Rs.50,000
(C) Maximum deduction in respect of (A) & (B)-	Rs.50,000	Rs.50,000	Rs.50,000

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

‡ Notification No. 9 /2018 dated 16-2-2018 ‡

Contributory Health Service Scheme notified for the purpose of section 80D

Under section 80D, a deduction to the extent of Rs. 25,000 (Rs. 30,000, in case of resident senior citizens) is allowed in respect of premium paid to effect or keep in force an insurance on the health of self, spouse and dependent children or any contribution made to the Central Government Health Scheme or such other health scheme as may be notified by the Central Government.

Accordingly, the Central Government has, vide this notification, notified the Contributory Health Service Scheme of the Department of Atomic Energy, contribution to which would qualify for deduction under section 80D.

Practical 2

Mr. Agam, resident individual, aged 39 years, paid medical insurance premium of

(a) Rs. 18,000 to insure his health as well as the health of his spouse.

(b) Rs. 48,000 to insure the health of his father, being resident, aged 63 years, who is not dependent on him.

He also contributed Rs. 5,600 to Central Government Health Scheme during the year.

He has incurred Rs. 5,200 in cash on preventive health check-up of himself and his spouse and Rs. 4,200 by cheque on preventive health check-up of his father.

Compute the deduction allowable under section 80D.

Solution**Deduction allowable under section 80D**

Particulars	Actual Payment Rs.	Maximum deduction allowable Rs.
(A) Premium paid and medical expenditure incurred for self and spouse		
(i) Medical insurance premium paid for self and spouse	18,000	18,000
(ii) Contribution to CGHS	5,600	5,600
(iii) Exp. on preventive health check-up of self & spouse	5,200	1,400
	28,800	25,000
(B) Premium paid or medical expenditure incurred for father, who is a senior citizen		
(i) Mediciclaim premium paid for father, who is over 60 years of age	48,000	48,000
(ii) Expenditure on preventive health check-up of father	4,200	2,000
	52,200	50,000
Total deduction under section 80D (Rs. 25,000 + Rs. 50,000)		75,000

Readers Note:**Practical 3**

Mr. Shrenik, aged 44 years, paid medical insurance premium of

- (a) Rs. 24,000 to insure his health as well as the health of his spouse and dependent children.
 (b) Rs. 31,000 during the year to insure the health of his mother, aged 67 years, who is not dependent on him.
 He also contributed Rs. 8,000 to Central Government Health Scheme during the year.

He also incurred medical expenditure of Rs. 29,000 on his father, aged 71 years, who is not covered under mediclaim policy. His father is also not dependent upon him.

Compute the deduction allowable under section 80D.

Solution**Deduction allowable under section 80D**

Particulars	Actual Payment Rs.	Maximum deduction allowable Rs.
(i) Medical insurance premium paid for self, spouse and dependent children	24,000	
(ii) Contribution to CGHS	8,000	
	32,000	
Restricted to		25,000
(iii) Mediciclaim premium paid for mother, who is over 60 years of age	31,000	
(iv) Medical expenditure incurred for father, who is over 60 years of age and not covered by any insurance	29,000	
	60,000	
Restricted to		50,000
Total deduction u/s 80D (Rs. 25,000 + Rs. 50,000)		75,000

Readers Note:**10.7 DEDUCTION IN RESPECT OF INTEREST ON LOAN TAKEN FOR RESIDENTIAL HOUSE PROPERTY**

Section:- 80EEA – Inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21

(1) Eligible Assessee:- An individual

(2) Conditions:-

- (a) He is not eligible to claim any deduction under section 80EE
- (b) He has taken a loan for the purpose of acquisition of residential house property.
- (c) The loan has been sanctioned by a financial institution during the period beginning on the 1st day of April, 2019 and ending on the 31st day of March, 2020.
- (d) The stamp duty value of residential house property does not exceed Rs.45 lakh. The expression "stamp duty value" means value adopted (or assessed or assessable) by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.
- (e) The assessee does not own any residential house property on the date of sanction of loan.

(3) Amount deductible:-

The maximum deduction allowable is Rs. 1,50,000. This deduction is over and above the deduction available u/s 24 of the Act.

(4) Other points to be kept in mind

(a) Financial institution

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

(b) 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 4

Mr. Rajababu entered into an agreement to purchase a residential house property for self-occupation at a cost of Rs. 50 lakh on 01.02.2019. For this purpose, he took a housing loan of Rs. 40 lakh from State Bank of India @8% p.a. The Loan was sanctioned on 10.4.2019 and was disbursed on 31.05.2019. Compute the eligible deduction in respect of interest on housing loan for A.Y.2020-21 under the provisions of the Income-tax Act, 1961, assuming that the entire loan was outstanding as on 31.3.2020 and he does not own any other house property. The stamp duty value of said property was Rs. 44 lakh.

Does your answer differ if loan was sanctioned on 01.02.2019?

Solution

Computation of Interest Deduction for A.Y. 2020-21

Particulars	Rs.
Interest Deduction	
(1) Under the head "House Property" (section 24)	
Interest on Loan $\left(40,00,000 \times 8\% \times \frac{10}{12}\right) = \text{Rs.} 2,66,667$	
Deduction = Rs.2,66,667 or Rs.2,00,000 whichever is lower	2,00,000
(2) From Gross Total Income u/s 80EEA	
Balance Interest on loan = Rs.2,66,667 – Rs.2,00,000	
= Rs.66,667	
Deduction = Rs.66,667 or Rs.1,50,000 whichever is lower	66,667
Total Benefit of deduction to Mr. Rajababu	2,66,667

Readers Note:

10.8 DEDUCTION IN RESPECT OF INTEREST ON LOAN TAKEN FOR PURCHASE OF AN ELECTRICAL VEHICLE

Section:- 80EEB – Inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21

(1) Eligible Assessee:- An individual

(2) Conditions:-

- (a) He has taken a loan for the purpose of purchase of an electric vehicle.
- (b) Interest is payable on loan taken by him from any financial institution for the purpose of purchase of an electric vehicle.
- (c) The loan has been sanctioned by a financial institution during the period beginning on the 1st day of April, 2019 and ending on the 31st day of March, 2023.

(3) Amount deductible:-

The maximum deduction allowable is Rs. 1,50,000.

(4) Other Points to be kept in mind

- (a) If interest is claimed as deduction under section 80EEB, then same is not again deductible under any provision of the Act for the same or any other assessment year.
- (b) For the purposes of this section,—
 - (a) "electric vehicle" means a vehicle which is powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle and has such electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electrical energy;
 - (b) "financial institution" means a banking company to which the Banking Regulation Act, 1949 applies, or any bank or banking institution referred to in section 51 of that Act and includes any deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company as defined in clauses (e) and (g) of Explanation 4 to section 43B.

Practical 5

The following are the particulars relating to Mr. Mohan, Mr. Vasudev and Mr. Jagdish for A.Y.2020-21 –

Particulars	Mr. Mohan	Mr. Vasudev	Mr. Jagdish
Source of Income	Salary	Business	Business
Amount of loan	Rs. 20 lakhs	Rs. 20 lakhs	Rs. 20 lakhs
Loan taken from	Deposit taking NBFC	Public sector bank	Public sector bank
Date of sanction of loan	01.04.2019	01.04.2019	01.04.2019
Date of disbursement of loan	01.05.2019	01.05.2019	01.05.2019
Purpose of loan	Purchase of electric vehicle for personal use	Purchase of electric vehicle for personal use	Purchase of electric vehicle for business purpose
Rate of interest	10% p.a	10% p.a	10% p.a

Compute the amount of deduction, if any, allowable under the provisions of the Act in the hands of Mr. Mohan, Mr. Vasudev and Mr. Jagdish assuming that entire loan is outstanding as on 31.03.2020 .

Solution

Interest payable on loan taken for electric vehicle in all the three cases shall be = Rs.20 lakhs x 10% x 11/12 = Rs. 1,83,333.

Mr. Mohan

However, deduction under section 80EEB shall be restricted to Rs.1,50,000, being the maximum permissible deduction.

Mr. Vasudev

However, deduction under section 80EEB shall be restricted to Rs.1,50,000, being the maximum permissible deduction.

Mr. Jagdish

Deduction under section 36(1)(iii) shall be allowed in respect of entire interest liability of Rs. 1,83,333 provided same has been actually paid on or before due date of filing return under section 139(1) of the Act as required by the provisions of section 43B of the Act.

Readers Note:**10.9 DEDUCTION IN RESPECT OF EMPLOYMENT OF NEW WORKMEN****Section:- 80JJAA****(1) Eligible Assessee and Amount of deduction**

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

(2) Conditions

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

(3) Other Points

(a) **Explanation.**—For the purposes of this section,—

- (i) "additional employee cost" means total emoluments paid or payable to additional employees employed during the previous year.
 - However, in the case of an existing business, the additional employee cost shall be nil, if—
 - (a) there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;
 - (b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or *through such other electronic mode as may be prescribed [Amendment made by Finance Act, 2019 w.e.f. A.Y. 2020-21]*

- For the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;
- (ii) "additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year.
 - However, additional employee does not include,—
 - (a) an employee whose total emoluments are more than twenty-five thousand rupees per month; or
 - (b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; or
 - (c) an employee employed for a period of less than 240 days during the previous year; or (150 days if assessee is engaged in the business of manufacturing of apparel and **footwear or leather products [As amended by Finance Act, 2018 w.e.f.A.Y.2019-20]**
 - (d) an employee who does not participate in the recognised provident fund;

Provided further that where an employee is employed during the previous year for a period of less than two hundred and forty days or one hundred and fifty days, as the case may be, but is employed for a period of two hundred and forty days or one hundred and fifty days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of this section shall apply accordingly **[Amended by Finance Act, 2018-A.Y. 2019-20]**.

- (iii) "emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include—
 - (a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and
 - (b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.
- (b) No deduction under this section shall be allowed if it has not been claimed in the return of income.
- (c) Double deduction is not possible in respect of the same business income under section 80H to 80RRB.
- (d) The aggregate deductions under the various provisions referred to above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be.

10.10 DEDUCTION IN RESPECT OF CERTAIN INCOME OF OFFSHORE BANKING UNITS AND INTERNATIONAL FINANCIAL SERVICES CENTRE

Section:- 80LA

(1) Eligible assessee :

- (a) a scheduled bank and having an offshore banking unit in a special economic zone; or
- (b) a foreign bank and having an offshore banking unit in a special economic zone; or
- (c) a unit of International Financial Services Centre.

(2) Conditions - The following conditions should be satisfied—

- (a) The gross total income of the eligible assessee includes (a) any income from the offshore banking unit in a Special Economic Zone; (b) from the business referred to in section 6(1) of the Banking Regulation Act, with an undertaking located in Special Economic Zone or any other undertaking which develops, develops and operates or operates and maintains a Special Economic Zone; (c) from any unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a centre in a Special Economic Zone.
- (b) No deduction shall be allowed under this section unless assessee furnishes along with the return-
- The report from a Chartered Accountant in a prescribed Form certifying that the deduction has been correctly claimed in accordance with the provisions of this section should be submitted along with the return of income.
 - A copy of permission obtained under section 23(1)(a) of Banking Regulation Act for opening the branch of a banking company.

(3) Amount of deduction upto A.Y. 2019-20

100 per cent of the aforesaid income is allowed as deduction for 5 consecutive assessment years beginning with the assessment year relevant to the previous year in which the permission as stated above is obtained.

For the next 5 years, 50 per cent of such income shall be allowed as deduction

(4) However law has been modified w.e.f. A.Y. 2020-21 for the unit of International Financial Services Centre as under:

Amount of deduction available to unit of International Financial Services shall be 100 per cent of the aforesaid income for any 10 consecutive assessment years out of 15 years beginning with the assessment year relevant to the previous year in which the permission as stated above is obtained.

(5) Others points to be kept in mind

- No deduction under this section shall be allowed if it has not been claimed in the return of income
- Double deduction is not possible in respect of the same business income under section 80H to 80RRB.
- The aggregate deductions under the various provisions referred to above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be.

10.11 DEDUCTION IN RESPECT OF CERTAIN INCOME OF PRODUCER COMPANIES**Section:- 80PA**

(1) Eligible assessee: Assessee being Producer company u/s 581A(I) of the Companies Act, 1956

(2) Conditions:-

- The total turnover of the producer company is less than Rs.100 crore in any previous year.
- The gross total income of the producer company includes any profits and gains derived from “eligible business”.

(3) Amount of deduction :

100% of the profit and gain attributable to “eligible business” is deductible for the assessment years 2019-20 to 2024-25. If the assessee is also entitled to deduction under any other provision or provision of Chapter VI-A (i.e., sections 80C to 80U), the deduction under section 80PA shall be allowed from the gross total income as reduced by the deductions under such other provisions.

(4) Other points to be kept in mind:**(1) Eligible business means**

- (a)** the marketing of agricultural produce grown by the members; or
- (b)** the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or
- (c)** the processing of the agricultural produce of the members;
- (d)** "member" shall have the meaning assigned to it in clause (d) of section 581A of the Companies Act, 1956 (1 of 1956);

11 – COMPUTATION OF TOTAL INCOME AND TAX LIABILITY

11.1 TAX ON SHORT TERM CAPITAL GAIN IN CERTAIN CASES

Section:- 111A

(1) Conditions [Section 111A(1)]

- (i) Total income of an assessee includes any income chargeable under the head "Capital gains", arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust and
- (ii) the transaction of sale of such equity share or unit is entered into on or after 1st October, 2004; and
- (iii) such transaction is chargeable to securities transaction tax under that Chapter VII of the Finance (No. 2) Act, 2004.

Remark: The condition specified in clause (iii) shall not apply to a transfer undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency

(2) Tax Rate applicable on such short -term capital gain :

Section 112A(1) prescribes that the tax shall be calculated on such short -term capital gains at the rate of 15%. It also provides that shifting benefit is available to an individual or Hindu Undivided Family, being a resident, in the event of other income falls short of the maximum amount not chargeable to tax.

(3) Section 111 A(2):- Non-availability of deductions under Chapter VI-A

Where the gross total income of an assessee includes any short -term capital gains chargeable to tax u/s 111 A, the deduction under Chapter VI-A shall not be allowed from such short-term capital gains.

(4) Meaning of Equity Oriented Fund

Before Amendment	After Amendment
"equity oriented fund" means a fund— (i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than sixty-five per cent of the total proceeds of such fund; and (ii) which has been set up under a scheme of a Mutual Fund specified under clause (23D): Provided that the percentage of equity share holding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;	"equity oriented fund" means a fund set up under a scheme of a mutual fund specified under clause (23D) of section 10 and,— (i) in a case where the fund invests in the units of another fund which is traded on a recognised stock exchange,— (A) a minimum of ninety per cent of the total proceeds of such fund is invested in the units of such other fund; and (B) such other fund also invests a minimum of ninety per cent of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and

	(ii) in any other case, a minimum of sixty-five per cent of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange: Provided that the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;

Objective behind this Amendment

Fund of funds set up for disinvestment of Central Public Sector Enterprises (CPSEs) are now qualified as "Equity Oriented Funds" for the purpose of Section 111A w.e.f. A.Y. 2020-21.

11.2 TAX ON LONG-TERM CAPITAL GAINS IN CERTAIN CASES

Section:- 112A

(1) Sub-section 112A(1) :- Overriding Effect and Conditions for applicability of this section

This section has an overriding effect over the provisions of section 112.

Cumulative conditions for applicability of Section 112 A

- (i) the total income of an assessee includes any income chargeable under the head "Capital gains";
- (ii) the capital gains arise from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust;
- (iii) securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 has,—
 - (a) in a case where the long-term capital asset is in the nature of an equity share in a company, been paid on acquisition and transfer of such capital asset; or
 - (b) in a case where the long-term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, been paid on transfer of such capital asset.

Remarks:

1. The condition specified in clause (iii) shall not apply to a transfer undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency. **[Section 112A(3)]**
2. The Central Government may, by notification in the Official Gazette, specify the nature of acquisition in respect of which the Condition no. (iii) (a) shall not apply. **[Section 112A(4)]**:- Refer Notification No.60/2018 given below.

(2) Sub-section 112A(2):-Tax Rate applicable on such long-term capital gain

Section 112A(2) prescribes that the tax shall be calculated on such long-term capital gains exceeding Rs. one lakh rupees at the rate of 10%.

It also provides that shifting benefit is available to an individual or Hindu Undivided Family, being a resident, in the event of other income falls short of the maximum amount not chargeable to tax.

(3) Section 112 A(5):- Non-availability of deductions under Chapter VI-A

Where the gross total income of an assessee includes any long-term capital gains chargeable to tax under section 112 A, the deduction under Chapter VI-A shall not be allowed from such long-term capital gains.

(4) Section 112 A(6):- Non-availability of rebate under section 87 A

Where the total income of an assessee includes any long-term capital gains chargeable to tax under section 112 A, the rebate under section 87A shall not be allowed from the income-tax on such long-term capital gains.

Explanation.—For the purposes of this section,—

(a) "equity oriented fund" means a fund set up under a scheme of a mutual fund specified under clause (23D) of section 10 and,—

- (i) in a case where the fund invests in the units of another fund which is traded on a recognised stock exchange,—
 - (A) a minimum of ninety per cent of the total proceeds of such fund is invested in the units of such other fund; and
 - (B) such other fund also invests a minimum of ninety per cent of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and
- (ii) in any other case, a minimum of sixty-five per cent of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange:

Provided that the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;

(b) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(c) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43

‡ **Notification No. 60/2018, dated 01-10-2018** ‡

As on 01/10/2018 Government issued a notification no. 60/2018. In preamble of said notification, the Government notifies all transactions (with few specific exclusion and few specific inclusion) of acquisition of equity share entered into on or after the 1st day of October, 2004 which are not chargeable to STT EXCEPT the **Column 1** transactions but including the **column 2** transactions;

Column 1	Column 2
Specific exclusion – STT on acquisition not paid, not eligible for concessional tax rate under section 112A	Specific Inclusion – STT on acquisition not paid, still eligible for concessional tax rate under section 112A
Acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue	Acquisition of listed equity shares in a company which has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf
	Acquisition of listed equity shares in a company by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India
	Acquisition of listed equity shares in a company by an investment fund referred to in clause (a) of Explanation 1 to section 115UB of the Act or a venture capital fund referred to in clause (23FB) of section 10 of the Act or a Qualified Institutional Buyer

	Acquisition of listed equity shares in a company through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply
Where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange of India	Following acquisition of listed equity shares in a company made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 - acquisition through an issue of share by a company other than the issue referred to in clause (a) i.e. preferential allotment. - acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business - acquisition which has been approved by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf - acquisition under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 - acquisition by any non-resident in accordance with foreign direct investment guidelines of the Government of India - where acquisition of shares of company is made under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 - acquisition from the Government - acquisition by an investment fund referred to in clause (a) to Explanation 1 to section 115UB of the Income-tax Act or a venture capital fund referred to in clause (23FB) of section 10 of the income-tax Act or a Qualified Institutional Buyer - acquisition by mode of transfer referred to in sections 47 or 50B of the Income-tax Act, if the previous owner of such shares has not acquired them by any mode referred to in clause (a) or clause (b) or clause (c) [other than the transactions referred to in the proviso to clause (a) or clause (b)].
Acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules made thereunder	-

Explanation,—For the purposes of this notification,—

- (a) **“frequently traded shares”** means shares of a company, in which the traded turnover on a recognised stock exchange during the twelve calendar months preceding the calendar month in which the acquisition and transfer is made, is at least ten per cent. of the total number of shares of such class of the company: Provided that where the share capital of a particular class of shares of the company is not identical throughout such period, the weighted average number of total shares of such class of the company shall represent the total number of shares.
- (b) **“listed”** means listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder
- (c) **“preferential issue” and “Qualified Institutional Buyer”** shall have the meanings respectively assigned to them in sub-regulation (1) of regulation (2) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- (d) **“public financial institution” and “scheduled bank”** shall have the meanings respectively assigned to them in Explanation to clause(viia) of sub-section (1) of section 36 of Income-tax Act.
- (e) **“recognised stock exchange”** shall have the same meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956
- (f) **“reconstruction company” and “securitisation company”** shall have the meanings respectively assigned to them in sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

11.3	MANNER OF DETERMINATION OF COST OF ACQUISITION FOR COMPUTING CAPITAL GAIN FOR AN ASSET REFERRED TO IN SECTION 112A (1)

Section:- 55(2)(ac)

The cost of acquisition for the purposes of computing capital gains referred to in section 112A(1) in respect of the long-term capital asset acquired by the assessee before the 01.02.2018, shall be deemed to be the higher of—

- (i) the actual cost of acquisition of such asset;
- (ii) the lower of—
- the fair market value of such asset;
 - the full value of consideration received or accruing as a result of the transfer of the capital asset.

Meaning of of "fair market value"

- (i) in a case where the capital asset is listed on any recognised stock exchange as on the 31st day of January, 2018, the highest price of the capital asset quoted on such exchange on the said date:
Provided that where there is no trading in such asset on such exchange on the 31st day of January, 2018, the highest price of such asset on such exchange on a date immediately preceding the 31st day of January, 2018 when such asset was traded on such exchange shall be the fair market value;
- (ii) in a case where the capital asset is a unit which is not listed on a recognised stock exchange as on the 31st day of January, 2018, the net asset value of such unit as on the said date;
- (iii) in a case where the capital asset is an equity share in a company which is—
- not listed on a recognised stock exchange as on 31.01.2018 but listed on such exchange on the date of transfer;
 - listed on a recognised stock exchange on the date of transfer and which became the property of the assessee in consideration of share which is not listed on such exchange as on the 31st day of January, 2018 by way of transaction not regarded as transfer under section 47,
- an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the financial year 2017-18 bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the first day of April, 2001, whichever is later.

Practical 3

From the following information, compute capital gain for the purpose of section 112A

Particulars	Rs. in lakhs
Actual cost of acquisition	100
Fair market value as on 31-01-2018	200
Sale Consideration	250

Solution**Computation of Capital Gain**

Particulars	Rs. in lakhs
Sale Consideration	250
Less: COA (Refer WN)	(200)
LTCG u/s. 112A	50

Working Note: Determination of cost of acquisition for the purpose of section 112A

Higher of	Rs. in lakhs	Rs. in lakhs
(i) the actual cost of acquisition of such asset		100
(ii) Lower of		
(a) the fair market value of such asset;	200	
(b) the full value of consideration received or accruing as a result of the transfer	250	200
Hence the COA is		200

Reader's Note:

Practical 4

From the following information, compute capital gain for the purpose of section 112A

Particulars	Rs. in lakhs
Actual cost of acquisition	100
Fair market value as on 31-01-2018	200
Sale Consideration	150

Solution**Computation of Capital Gain**

Particulars	Rs. in lakhs
Sale Consideration	150
Less: COA (Refer WN)	(150)
LTCG u/s. 112A	Nil

Working Note: Determination of cost of acquisition for the purpose of section 112A

Higher of	Rs. in lakhs	Rs. in lakhs
(i) the actual cost of acquisition of such asset		100
(ii) Lower of		
(a) the fair market value of such asset;	200	
(b) the full value of consideration received or accruing as a result of the transfer	150	150
Hence the COA is		150

Reader's Note:

Practical 5

From the following information, compute capital gain for the purpose of section 112A

Particulars	Rs. in lakhs
Actual cost of acquisition	100
Fair market value as on 31-01-2018	50
Sale Consideration	150

Solution**Computation of Capital Gain**

Particulars	Rs. in lakhs
Sale Consideration	150
Less: COA (Refer WN)	(100)
LTCG u/s. 112A	50

Working Note: Determination of cost of acquisition for the purpose of section 112A

Higher of	Rs. in lakhs	Rs. in lakhs
(i) the actual cost of acquisition of such asset		100
(ii) Lower of		
(a) the fair market value of such asset;	50	
(b) the full value of consideration received or accruing as a result of the transfer	150	50
Hence the COA is		100

Reader's Note:

Practical 6

From the following information, compute capital gain for the purpose of section 112A

Particulars	Rs. in lakhs
Actual cost of acquisition	100
Fair market value as on 31-01-2018	200
Sale Consideration	50

Solution**Computation of Capital Gain**

Particulars	Rs. in lakhs
Sale Consideration	50
Less: COA (Refer WN)	(100)
LTCG u/s. 112A	(50)

Working Note: Determination of cost of acquisition for the purpose of section 112A

Higher of	Rs. in lakhs	Rs. in lakhs
(i) the actual cost of acquisition of such asset		100
(ii) Lower of		
(a) the fair market value of such asset;	200	
(b) the full value of consideration received or accruing as a result of the transfer	50	50
Hence the COA is		100

Reader's Note:

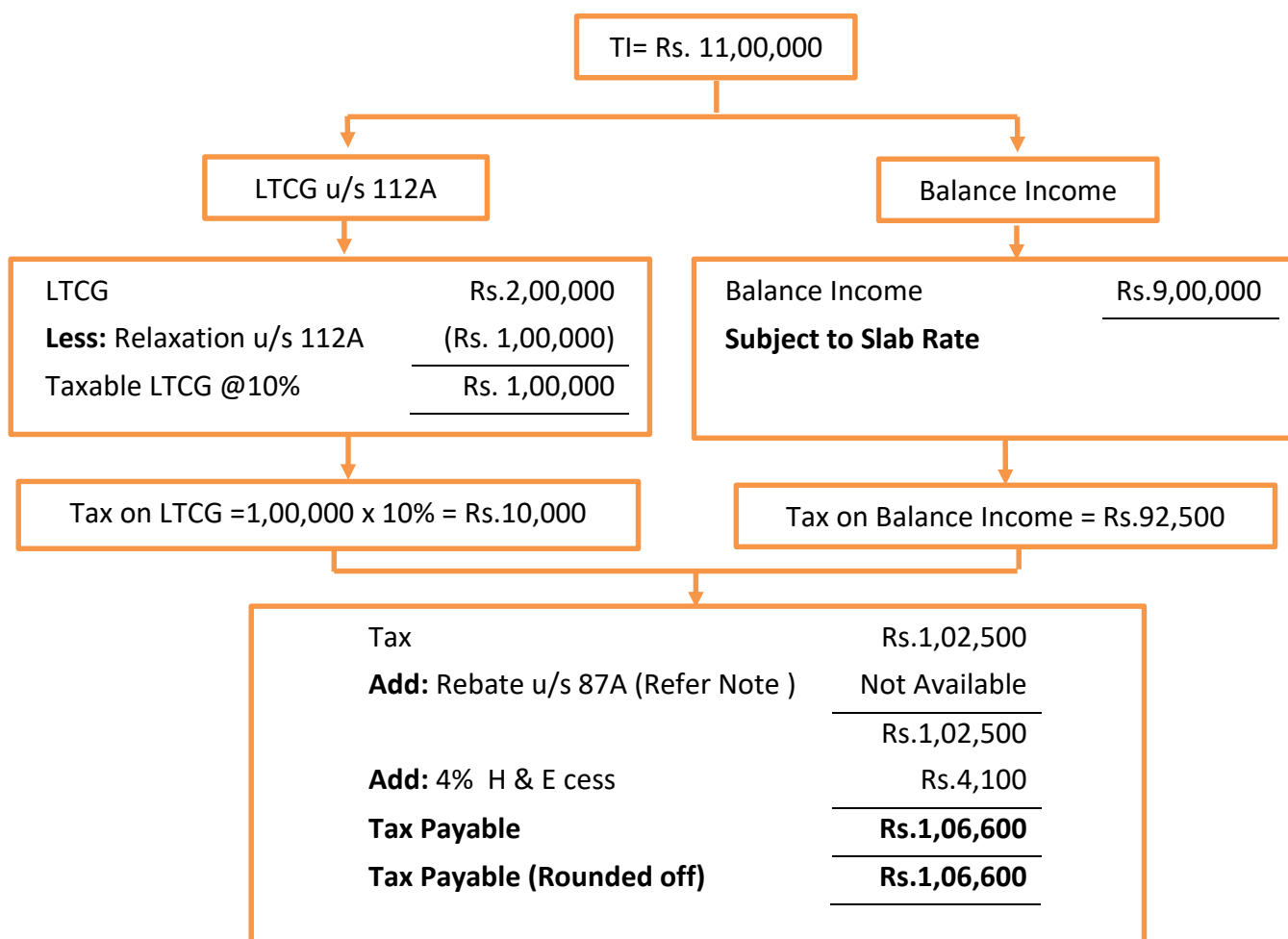
Practical 7

Mr. Mohan (35 years), resident provides the following information. Calculate his tax liability

Particulars	Rs.
Income under the head house property	3,00,000
Business Income	7,50,000
Long term capital gain u/s 112A	2,00,000
Contribution to Public Provident Fund	1,50,000

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

Particulars	Rs.
Income under the head house property	3,00,000
Business Income	7,50,000
Long term capital gain u/s 112A	2,00,000
Gross Total Income	12,50,000
Less : Deduction u/s 80C: Contribution to PPF	(1,50,000)
TOTAL INCOME	11,00,000

Computation of Tax Liability

Note: Here total income exceeded Rs.5,00,000, therefore Mr. X cannot avail rebate under section 87A.

Reader's Note:

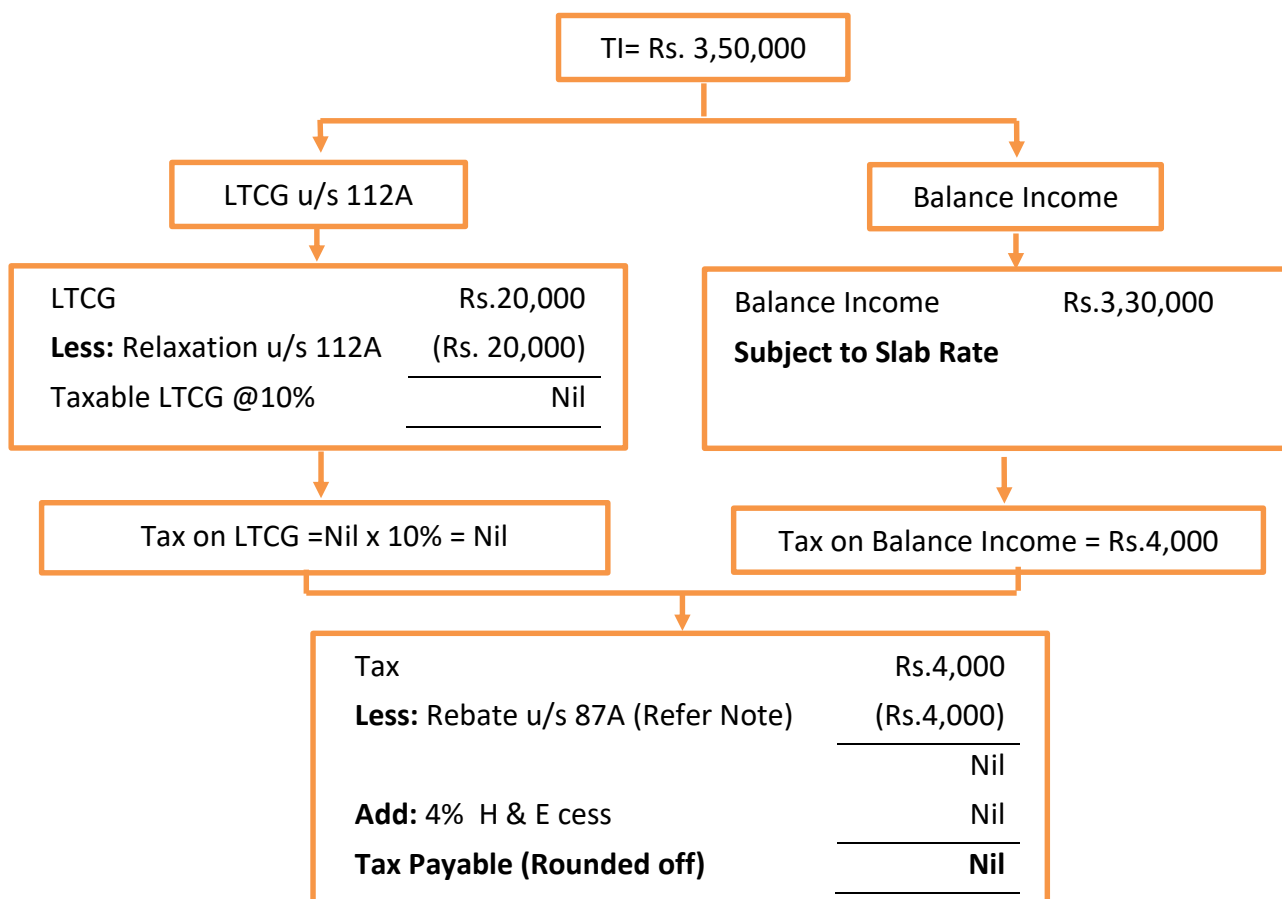
Practical 8

Mr. Mohan (25 years), resident provides the following information. Calculate his tax liability

Particulars	Rs.
Income under the head house property	3,60,000
Long term capital gain u/s 112A	20,000
Contribution to Public Provident Fund	30,000

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

Particulars	Rs.
Income under the head house property	3,60,000
Long term capital gain u/s 112A	20,000
Gross Total Income	3,80,000
Less : Deduction u/s 80C: Contribution to PPF	(30,000)
TOTAL INCOME	3,50,000

Computation of Tax Liability

Here total income doesn't exceed Rs.5,00,000 and Mr. X, being resident individual, therefore he can avail rebate under section 87A which shall be Rs. 4,000 or Rs.12,500 whichever is less.

Reader's Note:

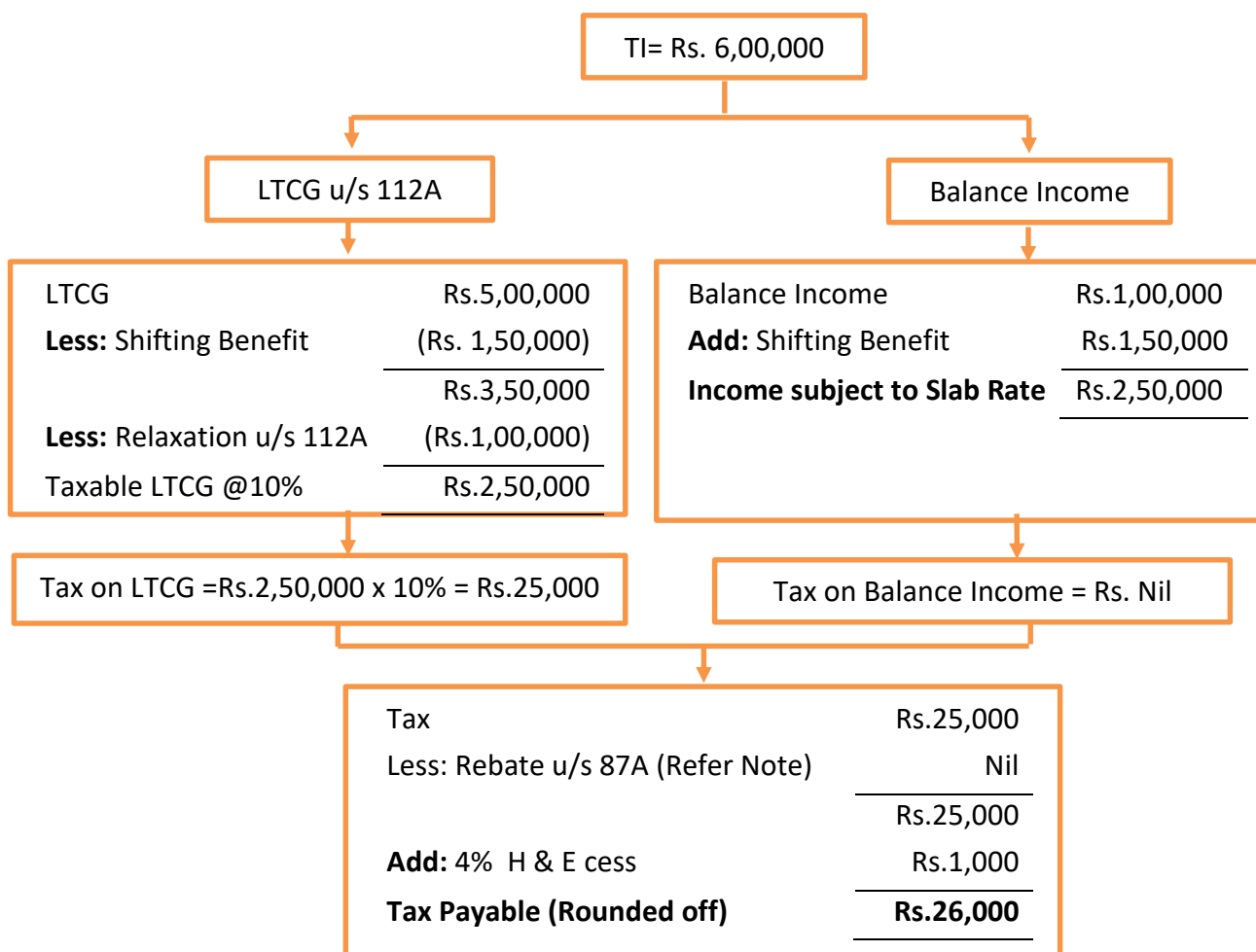
Practical 9

Mr. Mohan (55 years), resident provides the following information. Calculate his tax liability.

Particulars	Rs.
Business Income	1,30,000
Long term capital gain u/s 112A	5,00,000
Contribution to Public Provident Fund	30,000

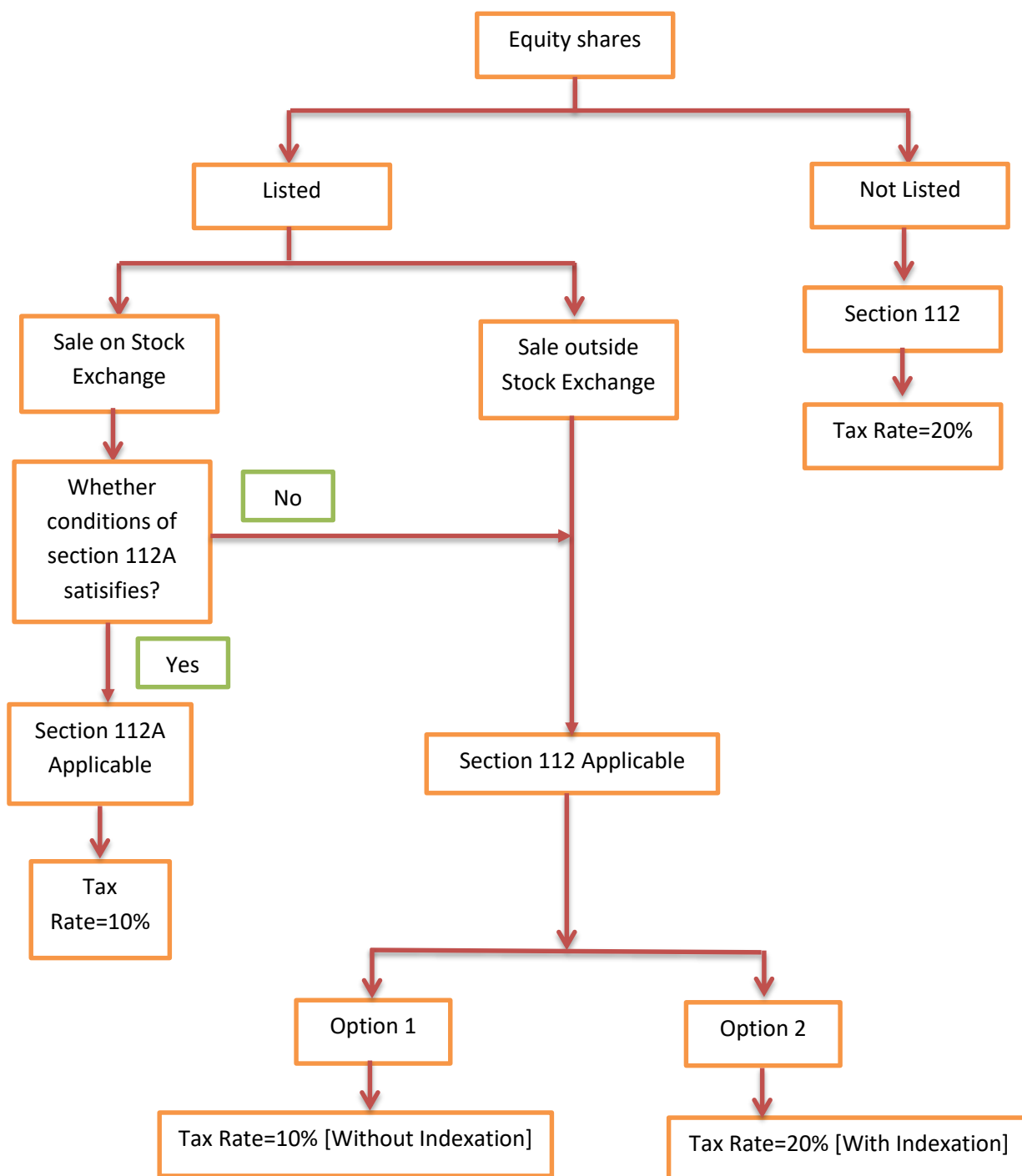
Solution**Computation of Total Income of Mr. Mohan**

Particulars	Rs.
Business Income	1,30,000
Long term capital gain u/s 112A	5,00,000
Gross Total Income	6,30,000
Less : Deduction u/s 80C: Contribution to PPF	(30,000)
TOTAL INCOME	6,00,000

Computation of Tax Liability

Note: Here total income exceeded Rs.5,00,000, therefore Mr. X cannot avail rebate under section 87A.

Reader's Note:

Taxability of Long Term Capital Gain on Sale of Equity Shares at a Glance

11.4 TAX ON INCOME REFERRED TO IN SECTION 68 OR SECTION 69 OR SECTION 69A OR SECTION 69B OR SECTION 69C OR SECTION 69D.

Section:- 115BBE

- As per section 115BBE, income from undisclosed sources (i.e. Section 68, Section 69, Section 69A, Section 69B, Section 69C or Section 69D) are chargeable to income-tax at a flat rate of 60 per cent (Plus Surcharge @ 25%). This surcharge @25% is payable by all assessee irrespective of their residential status or quantum of income.
- No expenditure or allowance can be claimed against such income.
- Benefit of set-off of loss under any head against such incomes is not available.
- Shifting benefit is also not available for such incomes.

Practical 10

Mr. X, resident, filed return for the **A.Y. 2020-21** 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:	HEC @ 4%	18,000
	Tax Liability	4,68,000

Reader's Note:

12 – ASSESSMENT OF FIRMS

12.1 DEDUCTION OF INTEREST PAID TO PARTNERS

Section:- 40(b)

In order to claim deduction of interest paid to partners, the firm shall fulfill following conditions:

- (a) Payment of interest to any partner is authorised by the partnership deed and it shall be in accordance with the terms of such deed.
- (b) Payment of interest pertains to the period on or after the date of partnership deed.
- (c) The amount of interest shall not exceed amount calculated at the rate of 12 % simple interest p.a.

When recipient of interest acts in a representative capacity

Explanations 1 and 2 to section 40(b) deal with cases where recipient of interest acts in a representative capacity.

Explanation 1 provides that where an individual is a partner in a firm on behalf, or for the benefit, of any other person, (to be called partner in a representative capacity) interest paid by the firm to such individual, otherwise than as partner in a representative capacity, is not taken into account, for the purposes of section 40(b).

Explanation 2 provides that where an individual is a partner in a firm, otherwise than in a representative capacity, interest paid by the firm to such individual will not be taken into account for the purposes of section 40(b), if such interest is received by him, on behalf, or for the benefit, of any other person.

Practical 1

X and Y are equal partners of ABC & Co. On 1st day of previous year, Mr. X contributed capital of Rs.10,00,000 @ 15% p.a. On the same day, Mr. X had given a loan of Rs. 25,00,000 to the firm @18% p.a. While Mr. Y contributed capital of Rs. 5,00,000 @ 15% p.a.

Discuss tax consequences in the hands of firm as well as partners.

Solution

Tax consequences in the hands of Firm

- While computing income under the head “PGBP”, firm will get deduction of interest paid to partners as under :

Nature of contribution	Ceiling under section 40(b)	Deductible interest
Partners' Capital		
- Mr. X	12% of Rs.10,00,000	Rs. 1,20,000
- Mr. Y	12% of Rs. 5,00,000	Rs. 60,000
Partner's Loan (given by Mr. X)	12% of Rs. 25,00,000	Rs. 3,00,000

- Firm is not required to deduct TDS on interest paid to partner in view of provisions contained in section 194A(3)(iv).

Tax consequences in the hands of partners

Name of the partner	Taxable amount of interest under the head “PGBP”
Mr. X	
- Capital contribution	Rs. 1,20,000
- Loan Contribution	Rs. 3,00,000
Mr. Y	Rs. 60,000

Readers Note:

Practical 2

What would have been the tax consequences in the hands of firm if loan is given by X-HUF instead of Mr. X?

Solution**Tax consequences in the hands of Firm if loan is given by X-HUF**

In view of explanation 2 to section 40(b), restriction contained in this section cannot be applied if loan is given by X-HUF. Therefore, the partnership firm can claim deduction of entire interest paid to the X-HUF. However, such claim of interest is subject to the conditions mentioned in:

- (a) Section 36(1) (iii);
- (b) Section 40 (a) (ia);
- (c) Section 40 A(2) and
- (d) Section 40 A(3).

As per the requirements of section 194A, partnership firm is required to deduct tax at source in respect of interest paid or payable to X-HUF.

Readers Note:**Practical 3**

Firm paid interest on partners' capital account as well on current accounts at the rate of 12%. However, interest on current account transaction was not authorized by partnership deed. Can firm claim deduction of interest on current account transactions?

Solution

Kerala High Court in case of **Novel Distributing Enterprises vs. DCIT & ANR. 251 ITR 704** held that partnership deed did not authorize payment of interest on current accounts of the partners, therefore, same cannot be allowed as deduction in view of the provisions of section 40(b) of the Act.

Readers Note:**12.2 DEDUCTION OF REMUNERATION PAID TO PARTNERS****Section:- 40(b), Explanation 1 and 2**

In order to claim deduction of salary, bonus, commission or remuneration, by whatever name called paid to partners, the firm shall fulfill following conditions:

- (1) The payment of salary, bonus, commission or remuneration, by whatever name called shall be made to a working partner.

Who is a Working Partner?

As per the Explanation 4 to section 40(b) a "working partner" means:

- a. an individual who is a partner of a firm ; and
- b. such an individual is **actively engaged** in conducting the affairs of the business/profession of the firm.

- (2) Such payment to the working partners is authorised by the partnership deed and it shall be in accordance with the terms of such deed.

Circular No. 739, dated March 25, 1996.

The Board have received representations seeking clarification regarding disallowance of remuneration paid to the working partners as provided under section 40(b)(v). In particular, the representations have referred to two types of clauses which are generally incorporated in the partnership deeds. These are:

- a. the partners have agreed that the remuneration to a working partner will be the amount of remuneration allowable under the provisions of section 40(b)(v) ; and
- b. the amount of remuneration to working partner will be as may be mutually agreed upon between partners at the end of the year.

It is clarified by the CBDT that for the assessment years subsequent to the A.Y. 1996-97, **no deduction u/s 40(b)(v) will be admissible unless the partnership deed either specifies the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration.**

- (3) Such payment to working partner pertains to the period on or after the date of partnership deed.
- (4) The maximum amount of such payment to all the partners during the previous year shall not exceed the aggregate amount computed as under:

Book Profit	Allowable remuneration
(a) On the first Rs. 3,00,000 of the book profit or in case of a loss	Rs. 1,50,000 or 90 per cent of the book profit, whichever is more
(b) On the balance of the book profit	60 per cent of the book profit

Steps for determination of “Book Profit” - Explanation 3 to section 40(b):

Step 1 - Find out the net profit of the firm as per Profit and Loss Account.

Step 2 - Perform adjustments under the head “PGBP” {i.e. sections 28 to 44DB}.

Step 3 - Add aggregate amount of remuneration paid or payable to partners if such amount has been debited to the Profit and Loss Account.

The resulting amount is “book profit”.

Practical 4

Partnership firm provides following information:

Particulars	Rs.
Net Profit as per P/L after debiting remuneration of Rs.4,50,000	80,000
Disallowance u/s 37(1) and 43B	42,000
Unabsorbed depreciation	5,00,000
Brought forward business loss	4,00,000

Find out deductible remuneration.

Solution

Calculation of Book Profit

Particulars	Rs.
Net Profit as per P/L after debiting remuneration of Rs.4,50,000	80,000
Add: Remuneration debited to P/L account	4,50,000
Add: Disallowance u/s 37(1) and 43B	42,000
Book Profit before adjustment of unabsorbed depreciation	5,72,000
Less: Permissible adjustment of unabsorbed depreciation (Working Note 1)	1,72,000
Book Profit	4,00,000

Working Note 1: Calculation of permissible adjustment of unabsorbed depreciation

Particulars	Rs.
Book Profit before adjustment of unabsorbed depreciation	5,72,000
Less: Brought forward Business Loss	4,00,000
Book Profit available for adjustment of unabsorbed depreciation (A)	1,72,000
Unabsorbed depreciation (given in the practical) (B)	5,00,000
Permissible adjustment of unabsorbed depreciation (A) or (B) whichever is lower	1,72,000

Calculation of deductible remuneration under section 40(b)

Book Profit	Remuneration (Rs.)
- On first book profit of Rs.3,00,000 (a) $3,00,000 \times 90\% = \text{Rs.}2,70,00$ Or (b) Rs.1,50,000 Whichever is higher	2,70,000
- On balance book profit $[\text{Rs.}4,00,000 - \text{Rs.}3,00,000] \times 60\%$	60,000
Maximum permissible remuneration (limit)	3,30,000
Deductible remuneration u/s 40(b) is (a) Amount debited to P/L Account i.e., Rs.4,50,000 Or (b) Rs.3,30,000(limit as computed above) whichever is lower	3,30,000

Readers Note:

12.3 CARRY FORWARD AND SET OFF OF LOSS IN THE CASE OF CHANGE IN THE CONSTITUTION OF FIRM

Section:- 78 (1)

Section 78(1) provides that where there is a change in the constitution of the firm on account of death/retirement of a partner, the firm shall not be entitled to set off and carry forward so much of the loss proportionate to the share of such partner.

Remark:

1. This provision is not applicable when there is a change in profit-sharing ratio amongst the partners or in case of admission of a partner.
2. This section is applicable to the losses and not to the unabsorbed allowances. Therefore, entire unabsorbed depreciation can be carried forward by the reconstituted firm.

Practical 5

X, Y, & Z are equal partners of XYZ & Co.

Brought forward business loss was Rs.3,00,000

Mr. X retires in after 6 months from beginning of the previous year. Find out losses which cannot be carried forward by the firm under the following alternatives.

(a) Profit for the period of first 6 months - Rs.60,000.

(b) Loss for the period of first 6 months - Rs.90,000

Solution**Alternative (a)**

	Particulars	Rs.
Step 1	Share of Mr. X (retiring partner) in brought forward loss $[\text{Rs.}3,00,000 \times 1/3^{\text{rd}}]$	1,00,000
Step 2:	Share of Mr. X (retiring partner) in current year profit $[\text{Rs.}60,000 \times 1/3^{\text{rd}}]$	(20,000)
Step 3:	Losses not allowed to be carried forward by the firm	80,000

Alternative (b)

Particulars		Rs.
Step 1	Share of Mr. X (retiring partner) in brought forward loss [Rs.3,00,000 x 1/3 rd]	1,00,000
Step 2:	Share of Mr. X (retiring partner) in current year Loss [Rs.90,000 x 1/3 rd]	30,000
Step 3:	Losses not allowed to be carried forward by the firm	1,30,000

Readers Note:

12.4 TAXABILITY OF PARTNER'S SHARE WHERE INCOME OF THE FIRM IS EXEMPT UNDER CHAPTER III / DEDUCTIBLE UNDER CHAPTER VI-A

Circular:- 8 /2014

- Section 10(2A) provides that a partner's share in the total income of a firm which is separately assessed as such shall not be included in computing the total income of the partner. In effect, a partner's share of profits in such firm is exempt from tax in his hands.
- An issue has arisen as to the amount which would be exempt in the hands of the partners of a partnership firm, in cases where the firm has claimed exemption/deduction under Chapter III or Chapter VI-A.
- The CBDT has clarified that the income of a firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of its partners. Therefore, the entire profit credited to the partners' accounts in the firm would be exempt from tax in the hands of such partners, even if the income chargeable to tax becomes Nil in the hands of the firm on account of any exemption or deduction available under the provisions of the Act.

Practical 6

During the previous year under consideration, the partnership firm consisting of three equal partners, had earned only income – i.e. dividend from Indian Company amounting to Rs.9,00,000. Such income earned by the firm was totally exempt under section 10(34) of the Act. All the three partners claimed exemption under section 10(2A) in respect of their proportionate share. The assessing officer denied exemption to partners on the ground that firm had not paid tax on Rs. 9,00,000 since such Rs.9,00,000 would not form part of total income of the firm. Whether the action of assessing officer is tenable?

Solution

Considering the last para of the above circular, it has been clarified that the income of a firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of its partners. Therefore, the entire profit credited to the partners' accounts in the firm would be exempt from tax in the hands of such partners, even if the income chargeable to tax becomes Nil in the hands of the firm on account of any exemption under the provisions of the Act.

Therefore, the action of assessing officer taxing such share in the hands of three partners is not tenable.

Readers Note:

13 – ASSESSMENT OF AOP OR BOI

13.1 HOW TO COMPUTE INCOME UNDER THE HEAD “PGBP” IN CASE OF AN AOP/BOI?

Section:- 40(ba)

- Any salary, bonus, commission or remuneration by whatever name called is paid by the AOP/BOI to its members is not deductible in computing the income under the head “PGBP”.
- Similarly, any interest paid by AOP/BOI to its members by whatever name called is not deductible in computing income under the head “PGBP”.
- Explanation 1 to section 40(ba) —Where interest is paid by an association or body to any member thereof who has also paid interest to the association or body, the amount of interest to be disallowed under this clause shall be limited to the amount by which the payment of interest by the association or body to the member exceeds the payment of interest by the member to the association or body.
- Expl 2 & 3 to sec. 40(ba) are similar to explanations 1 & 2 to sec. 40(b) under chapter “assessment of firms/LLP”.

Practical 1

From the following information, find out interest to be disallowed in the hands of Dagu Magu & Co., AOP (consisting of two members, Mr. Dagu and Mr. Magu) under section 40(ba).

- AOP paid interest to member Mr. Dagu Rs.35,000 while recovered on drawings Rs.4,000.
- AOP paid interest to member Mr. Magu Rs. 8,000 while recovered on drawings Rs. 3,000.

Solution

Name of members	Interest paid to members (A)	Interest recovered from members (B)	Net interest (A-B)
Mr. Dagu	Rs. 35,000	Rs. 4,000	Rs. 31,000
Mr. Magu	Rs. 8,000	Rs. 3,000	Rs. 5,000
Interest to be disallowed in the hands of AOP			Rs.36,000

Readers Note:

Practical 2

PQRS & Co., an AOP provides following information:

Name of Member	Interest paid to Member	Interest recovered from Member
Mr. P	Rs. 8,000	Nil
Mr. Q	Rs. 10,000	Nil
Mr. R	Rs. 13,000	Nil
Mr. S	Nil	Rs. 21,000

Find out interest to be disallowed under section 40(ba) in the hands of AOP

Solution

Name of member	Interest paid to members (A)	Interest recovered from members (B)	Net interest (A-B)
Mr. P	Rs. 8,000	Rs. Nil	Rs. 8,000
Mr. Q	Rs. 10,000	Rs. Nil	Rs. 10,000
Mr. R	Rs.13,000	Rs. Nil	Rs.13,000
Mr. S	Rs. Nil	Rs. 21,000	Rs. Nil
Interest to be disallowed in the hands of AOP			Rs. 31,000

Readers Note:

13.2 TAX RATE APPLICABLE TO AN AOP/BOI

Section:- 167B, 67A, 86

At what rate the income of AOP shall be taxed depends on following factors:

- (1) Whether shares of members are known (determinate)/ unknown (indeterminate)?
- (2) Who are the members of AOP?
- (3) What are the other incomes of members?

Considering the above factors, following possibilities may emerge:-

(A) Case 1 :

(a) Tax rate applicable to AOP/BOI under Case 1

If all the followings conditions are satisfied, then AOP shall be taxed as per the rates applicable to an individual (i.e. Slab rate)

- (1) Shares of members are determinate / known.
- (2) All members of AOP are subject to slab rate.
- (3) None of the member has a total (net) income exceeding exemption limit. (Income from AOP shall not be considered at this stage)

(b) Rules for computation tax liability of members of AOP / BOI under this case.

Once AOP shall be taxed as per slab rates, then Share from AOP (Interest, Remuneration and Profit) shall also be taxed in the hands of members.

(1) How to compute share from AOP? [Section 67A (1)]

Particulars	Member 1	Member 2	Member 3.....	Total
Interest (Net)	xxxx	xxxx	Xxxx	xxxx
Remuneration	xxxx	xxxx	Xxxx	xxxx
Profit / loss	xxxx	xxxx	Xxxx	xxxx (Balancing Figure)
TOTAL				TOTAL INCOME OF AOP

(2) Under which head “Share from AOP” shall be taxed?[Section 67A (2)]

For the purposes of assessment, the share of a member in the income or loss of the AOP/BOI, as computed under section 67A (1) is to be apportioned under the various heads of income in the same manner in which the income or loss of the AOP/BOI has been determined under each head of income [Sec. 67A (2)].

(3) Can Interest paid by member on borrowed capital be claimed? [Section 67A(3)]

In computing the income of a member chargeable under the head “Profits and gains of business or profession” in respect of his share in the income of the AOP/BOI, any interest paid by the member on capital borrowed by him for the purposes of investment in the AOP/BOI can be deducted from his share.

(4) Can member claim chapter VI-A deductions which have already been claimed by AOP? [Section 80A(3)]

In computing the total income of an AOP/BOI if any deduction is admissible under Chapter VI-A, no deduction under that chapter can be claimed while computing the total income of a member of the AOP/BOI in relation to the share of that member in the income of AOP/BOI.

(5) Rebate from tax liability [Section 86]

Due to double taxation in the hands of members, rebate shall be given to the members from their personal tax liability under section 86 as per following formula:-

$$\text{Rebate} = \text{Share from AOP} \times \frac{\text{Total Tax of Member (including education cess)}}{\text{Total Income of Member}}$$

(6) Non-availability of rebate under section 86 in certain cases

However, where no income-tax is chargeable on the total income of the AOP/BOI, the shares of a member therein shall be fully chargeable to tax as part of his total income and no rebate shall be given.

(B) Case 2 :

(a) Tax rate applicable to AOP/BOI under Case 2

If all the followings conditions are satisfied, then AOP shall be taxed at maximum marginal rate (MMR).

- (1) Shares of members are determinate / known.
- (2) All members of AOP are subject to slab rate.
- (3) But, one or more members has a total (net) income exceeding exemption limit.

(b) Rules for computation tax liability of members of AOP under this case.

Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

(C) Case 3 :

(a) Tax rate applicable to AOP/BOI under Case 3

If all the followings conditions are satisfied, then AOP shall be taxed at maximum marginal rate (MMR).

- (1) Shares of members are determinate / known.
- (2) One or more members of the firm is
 - a. an Indian company, or;
 - b. a partnership firm or;
 - c. an AOP/BOI whose income is chargeable to tax at MMR/rate higher than MMR.

(b) Rules for computation tax liability of members of AOP under this case.

Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

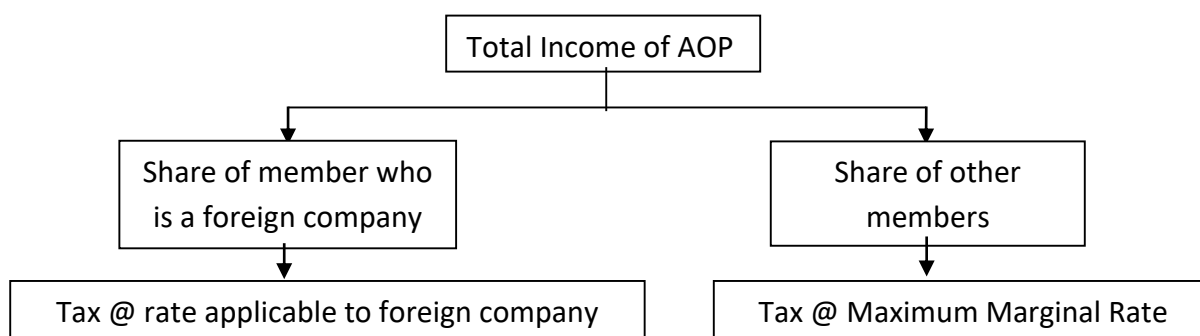
(D) Case 4 :

(a) Tax rate applicable to AOP/BOI under Case 4

If following conditions are satisfied;

- (1) Shares of members are determinate / known.
- (2) One of the members is chargeable to tax at a rate higher than Maximum Marginal Rate (MMR).
{It is possible only when one of the members is a foreign company}

Then, divide the total income as under:



(b) Rules for computation tax liability of members of AOP/ BOI under this case.

Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

(E) Case 5 :

(a) Tax rate applicable to AOP/BOI under Case 5

If all the followings conditions are satisfied, then AOP shall be taxed at maximum marginal rate (MMR).

- (1) Shares of members are indeterminate / unknown.
- (2) None of the members is a foreign company.

(b) Rules for computation tax liability of members of AOP / BOI under this case.

Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

(F) Case 6 :

(a) Tax rate applicable to AOP/BOI under Case 6

If all the followings conditions are satisfied, then entire income of AOP shall be taxed at the rate higher than maximum marginal rate.

- (1) Shares of members are indeterminate / unknown.
- (2) One of the members is chargeable to tax at a rate higher than Maximum Marginal Rate (MMR).

(b) Rules for computation tax liability of Members under this case.

Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

Practical 3

P, Q and R are individuals, who constitute an Association of Persons, sharing profit and losses in the ratio of 2:3:5. For the concerned previous year, the Profit and Loss account of the business was as under:

Particulars	Rs.	Particulars	Rs.
Cost of goods sold	47,50,000	Sales	54,00,000
Remuneration to:		Dividend from Indian companies	39,000
P	1,32,200	Capital gains: Short term	7,01,000
Q	1,72,500	Interest on Drawings:	
Employees	1,96,500	P	3,000
Interest to:		Q	1,450
P	59,400	R	3,550
Q	54,170		
R	43,000		
Other expenses	1,41,700		
Sales Tax Penalty	57,000		
Net profit	5,41,530		
	61,48,000		61,48,000

Additional information:

- (1) Other expense includes Rs. 30,000 paid in cash to an advertising agency for publicity.
- (2) Sales tax penalty was paid on 15th October of relevant assessment year. The penalty was imposed by the Sales-tax Officer for non-filing of returns by the due dates.

Compute total income and tax liability of AOP and individual members for the relevant assessment year under the following cases:

Situation 1 -Other incomes of members are given below:

Name of Members	Nature of income	Amount (Rs.)	LIC premium (Rs.)
P	Bank interest	57,200	24,000
Q	Interest on Government securities	54,400	19,000
R	Interest on company deposit	2,72,000	86,000

Situation 2 - The profit-sharing ratio of P, Q and R is 3 : 1 : 6. Other incomes of members are as follows:

Name of Members	Amount of income (Rs.)	Donation to P.M.N.R.F. (Rs.)	Contribution to PPF (Rs.)
P	26,000	6,000	1,000
Q	3,25,000	26,000	30,000
R	67,000	15,000	5,000

Situation 3 -One of the members, R is a foreign company and the profit-sharing ratio of P, Q and R Ltd is 2:3:5.

Other income of the members are given below:

Name of Members	Amount (Rs.)
P	1,65,000
Q	8,30,000
R Ltd.	2,10,000

Situation 4—Suppose in 1st situation, shares of P, Q and R are not known.

Situation 5 - Suppose in 3rd situation, shares of P, Q and R Ltd. are not known.

Solution**Computation of Total Income of AOP**

Particulars	Rs.
Income under the head PGBP	
Net Profit as per Profit and Loss account	5,41,530
Less: Dividend [Exempt income]	(39,000)
Less: Short term capital gain [to be considered separately]	(7,01,000)
Add: Adv. Expenses [Section 40A(3)]	30,000
Add: Sales tax Penalty [Section 37(1)]	57,000
Add: Remuneration to P [Section 40(ba)]	1,32,200
Add: Remuneration to Q [Section 40(ba)]	1,72,500
Add: Interest to P (59,400-3000) [Section 40(ba)]	56,400
Add: Interest to Q (54,170-1450) [Section 40(ba)]	52,720
Add: Interest to R (43000-3550) [Section 40(ba)]	39,450
Income under the head PGBP	3,41,800
Add: Short term Capital Gain	7,01,000
Gross Total Income	10,42,800
Less: Deductions under section 80C to 80U	Nil
Total Income	10,42,800

Situation 1:**(A) Computation of Tax Liability of AOP**

- (1) Shares of members are determinate /known. (i.e., 2:3:5)
- (2) All members of AOP are subject to slab rate.
- (3) None of the member has a total (net) income exceeding exemption limit. (Income from AOP shall not be considered at this stage)

Therefore, the income of AOP shall be taxed as per slab rate

Income	Tax Rate	Tax (Rs.)
0 - 2,50,000	-	-
2,50,000 to 5,00,000	5%	12,500
5,00,000 to 10,00,000	20%	1,00,000
10,00,000 to 10,42,800	30%	12,840
		1,25,340
Add: 4% Health & Education Cess		5,014
Tax Liability		1,30,354
Tax Liability (Round off)		1,30,350

(B) Computation of Share from AOP of Members and Tax Liability of Members**Calculation of Share from AOP**

Particulars	P	Q	R	Total
Interest (Net)	56,400	52,720	39,450	1,48,570
Remuneration	1,32,200	1,72,500	-	3,04,700
Profit (2:3:5)	1,17,906	1,76,859	2,94,765	5,89,530 (Balancing Figure)
TOTAL	3,06,506	4,02,079	3,34,215	10,42,800

Computation of Tax Liability of Members

Particulars	P (Rs.)	Q (Rs.)	R (Rs.)
Share from AOP	3,06,506	4,02,079	3,34,215
Income From Other Sources	57,200	54,400	2,72,000
Gross Total Income	3,63,706	4,56,479	6,06,215
Less: Section 80C	(24,000)	(19,000)	(86,000)
Total Income	3,39,706	4,37,479	5,20,215
Total Income (Rounded off)	3,39,710	4,37,480	5,20,220
Tax Calculation			
Upto 2,50,000	Nil	Nil	Nil
2,50,000 – 5,00,000 (5%)	4,485	9,374	12,500
5,00,000 – 5,20,220 (20%)	Nil	Nil	4,044
Sub-total	4,485	9,374	16,544
Less: Rebate under section 87A	(4,485)	(9,374)	Nil
Sub-total	Nil	Nil	16,544
Add: 4% Health & Education Cess	Nil	Nil	662
Sub-total	Nil	Nil	17,206
Less: Rebate under section 86 (Working Note)	Nil	Nil	(11,054)
Tax Liability	Nil	Nil	6,152
Tax Liability (Rounded off)	Nil	Nil	6,150

Working Note: Rebate under section 86

$$\text{Rebate} = \text{Share from AOP} \times \frac{\text{Total Tax of Member (including education cess)}}{\text{Total Income of Member}}$$

$$R = 3,34,215 \times \frac{17,206}{5,20,215}$$

$$= \text{Rs.} 11,054$$

Situation 2**(A) Computation of Tax Liability of AOP**

- (1) Shares of members are determinate /known.
- (2) All members of AOP are subject to slab rate.
- (3) But, total (net) income of Mr. Q exceeds exemption limit.

Therefore, AOP shall be taxed at maximum marginal rate (MMR).i.e., 41.10%.

$$\text{Tax Liability} = \text{Rs.} 10,42,800 \times 41.10\%$$

$$= \text{Rs.} 4,28,591 + 4\% \text{ Health \& Education Cess}$$

$$= \text{Rs.} 4,28,591 + \text{Rs.} 17,144$$

$$= \text{Rs.} 4,45,735$$

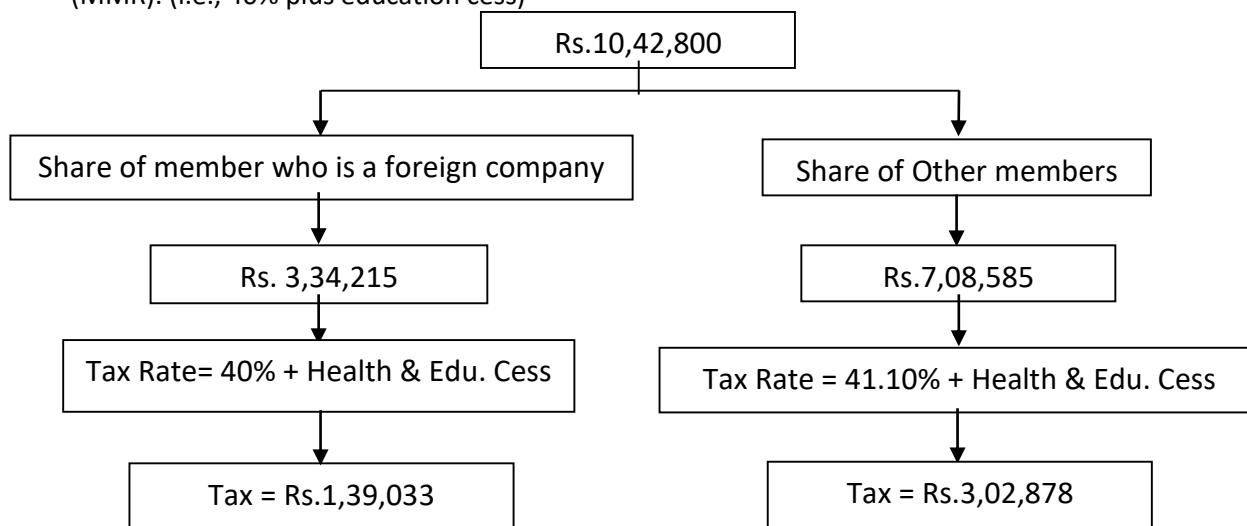
$$= \text{Rounded off to Rs. } 4,45,740$$

(B) Computation of Tax Liability of Members

Particulars	P (Rs.)	Q (Rs.)	R (Rs.)
Share from AOP [Section 86]	Not Taxable	Not Taxable	Not Taxable
Income From Other Sources	26,000	3,25,000	67,000
Gross Total Income	26,000	3,25,000	67,000
Less: Section 80C	(1,000)	(30,000)	(5,000)
Less: Section 80G	(6,000)	(26,000)	(15,000)
Total Income	20,000	2,69,000	47,000
Upto 2,50,000	Nil	Nil	Nil
2,50,000 – 5,00,000 (5%)	-	950	-
Sub-total	-	950	-
Less: Rebate 87A	-	(950)	-
Tax Liability	-	-	-

Situation 3**(A) Computation of Tax Liability of AOP**

- (1) Shares of members are determinate / known.
- (2) R Ltd. is a foreign company and chargeable to tax at a rate higher than Maximum Marginal Rate (MMR). (i.e., 40% plus education cess)



$$\begin{aligned}
 \text{Tax Liability} &= \text{Rs.1,39,033} + \text{Rs.3,02,878} \\
 &= \text{Rs.4,41,911} \\
 &= \text{Rounded off to Rs. 4,41,910}
 \end{aligned}$$

(B) Computation of Tax Liability of Members

Particulars	P (Rs.)	Q (Rs.)	R Ltd. (Rs.)
Share from AOP [Section 86]	Not Taxable	Not Taxable	Not Taxable
Other Income	1,65,000	8,30,000	2,10,000
Gross Total Income	1,65,000	8,30,000	2,10,000
Less: Deduction	-	-	-
Total Income	1,65,000	8,30,000	2,10,000
Upto 2,50,000	Nil	Nil	NA
2,50,000 – 5,00,000 (5%)	-	12,500	NA
5,00,000 – 8,30,000 (20%)	-	66,000	
Tax Rate @40%	NA	NA	84,000
Sub-total	-	78,500	84,000
Add: Health & Education Cess (4%)	-	3,140	3,360
Tax Liability	-	81,640	87,360
Tax Liability (Rounded off)	-	81,640	87,360

Situation 4**(A) Computation of Tax Liability of AOP**

- (1) Shares of members are indeterminate / unknown.
- (2) All members of AOP are subject to slab rate.

Therefore, AOP shall be taxed at maximum marginal rate [MMR i.e. 41.10%].

$$\begin{aligned}
 \text{Tax Liability} &= \text{Rs.10,42,800} \times 41.10\% \\
 &= \text{Rs.4,31,057} + 4\% \text{ Education Cess} \\
 &= \text{Rs.4,31,057} + \text{Rs.17,242} \\
 &= \text{Rs.4,48,299} \\
 &= \text{Rounded off to Rs. 4,48,300}
 \end{aligned}$$

(B) Computation of Tax Liability of Members

Particulars	P (Rs.)	Q (Rs.)	R (Rs.)
Share from AOP [Section 86]	Not Taxable	Not Taxable	Not Taxable
Income From Other Sources	57,200	54,400	2,72,000
Gross Total Income	57,200	54,400	2,72,000
Less: Section 80C	24,000	19,000	86,000
Total Income	33,200	35,400	1,86,000
Tax Liability	Nil	Nil	Nil

Situation 5**(A) Computation of Tax Liability of AOP**

- (1) Shares of members are indeterminate /unknown.
- (2) R. Ltd. a foreign company is chargeable to 40%

Therefore AOP shall be taxed @40%

$$\begin{aligned}
 \text{Tax Liability} &= \text{Rs.}10,42,800 \times 40\% \\
 &= \text{Rs.}4,17,120 + 4\% \text{ Education Cess} \\
 &= \text{Rs.}4,17,120 + \text{Rs.}16,685 \\
 &= \text{Rs.}4,33,805 \text{ rounded off to Rs. } 4,33,810
 \end{aligned}$$

(B) Computation of Tax Liability of Members

Particulars	P (Rs.)	Q (Rs.)	R Ltd. (Rs.)
Share from AOP [Section 86]	Not Taxable	Not Taxable	Not Taxable
Other Income	1,65,000	8,30,000	2,10,000
Gross Total Income	1,65,000	8,30,000	2,10,000
Less: Deduction	-	-	-
Total Income	1,65,000	8,30,000	2,10,000
Upto 2,50,000	Nil	Nil	NA
2,50,000 – 5,00,000 (5%)	-	12,500	NA
5,00,000 – 8,30,000 (10%)	-	66,000	
Tax Rate @40%	NA	NA	84,000
Total	-	78,500	84,000
Add: Health & Education Cess (4%)	-	3,140	3,360
Tax Liability	-	81,640	87,360
Tax Liability (Rounded off)	-	81,640	87,360

Readers Note:

14 – ASSESSMENT OF CO-OPERATIVE SOCIETIES

15 – ASSESSMENT OF COMPANIES

15.1 MINIMUM ALTERNATE TAX (MAT) AND ITS APPLICABILITY

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 15.1	MAT and its applicability
Para 15.1A	Book Profit – How to Determine?
Para 15.1B	Special Adjustments to arrive at book profit for IND AS Compliant companies
Para 15.1C	Special Adjustments to arrive at book profit for demerged company and resulting company
Para 15.1D & E	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 [15 with effect from A.Y. 2020-21] 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 [15 with effect from A.Y. 2020-21] per cent (plus SC+EC).**

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 **15 percent**.

Practical 1

Whether the provisions of MAT are applicable to an entrepreneur in SEZ or Developer of SEZ?

Solution

The effect of the proviso to section 115JB(6) inserted Finance Act, 2011 is that MAT provisions are applicable to the income accruing or arising from any business carried on, or services rendered by an entrepreneur in SEZ or Developer of SEZ with effect from A.Y. 2012-13 and onwards.

Readers Note:

Practical 2

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

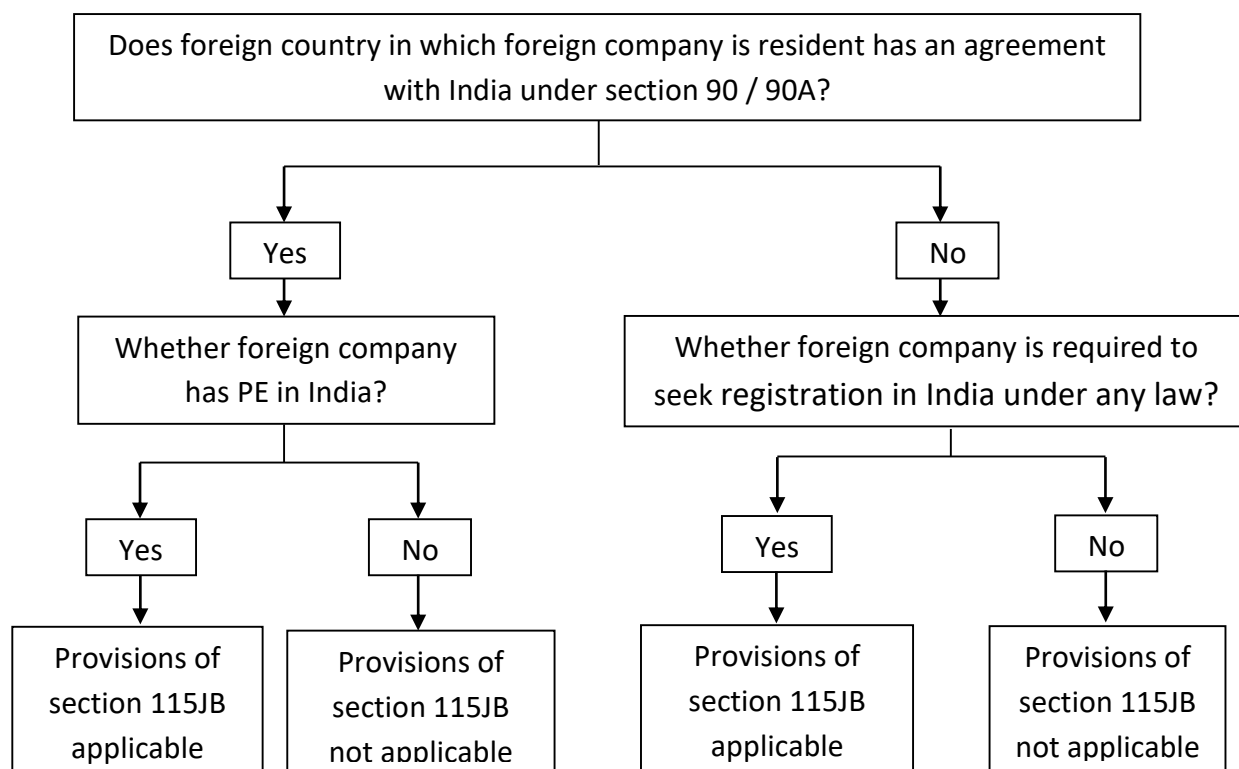
Solution

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-

- 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
- 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:

Practical 3

Singapore Airlines Inc (SAI), a foreign company derives its income solely from the operations of aircrafts in India. It seeks your advice on applicability of MAT.

Does your answer differ, if SAI also provides technical services to Indian Airlines for maintenance of aircrafts in addition to the above activity?

Solution

Income derived from the operations of aircrafts falls under section 44BBA of the Act. If it is the only income derived by (SAI) during the previous year, then MAT provisions (section 115JB) are not applicable in view of the **retrospective amendment made by Finance Act, 2018 w.e.f. A.Y. 2001-02** which reads as under: -

Explanation 4A to section 115 JB(2)—*"For the removal of doubts, it is hereby clarified that the provisions of this section shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, where its total income comprises solely of profits and gains from business referred to in section 44B or section 44BB or section 44BBA or section 44BBB and such income has been offered to tax at the rates specified in those sections.*

However, SAI is subject to MAT provisions if it derives any other income in addition to the operation of aircrafts in India.

Readers Note:

Practical 4

Are there any other companies to whom provisions of MAT are not applicable?

Solution

Amendment by Taxation Laws (Amendment) Act, 2019: with retrospective effect from A.Y. 2020-21

Section 115JB(5A) provides that that the company who has exercised option u/s 115BAA or section 115BAB are not subject to MAT provisions.

Readers Note:

15.1A | BOOK PROFIT – HOW TO DETERMINE?**Section:- 115JB(2)**

Profit as shown in statement of profit and loss (after few adjustments) is book profit.

(A) Meaning of “Profit as shown in statement of profit and loss”

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 different form of statement of profit and loss has been specified in or under the Act governing such class of company), shall be calculated on the basis of statement of profit and loss prepared in accordance with the provisions of their regulatory Acts, or
- (b) any other company, shall be calculated on the basis of statement of profit and loss prepared in accordance with Schedule III to the Companies Act, 2013.

(B) Few adjustments to Profit as shown in statement of profit and loss to convert it into Book Profit [Explanation to section 115JB (2)]**Positive Adjustments –**

Profit as shown in statement of profit and loss is to be increased by the following amounts if debited to the statement of profit and loss:

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

Explanation: Amount of income tax shall include,

- (i) any tax on distributed profits under section 115-O or on distributed income u/s 115-R
- (ii) any interest charged under this Act
- (iii) Surcharge, if any has levied by the central Acts from time to time.
- (iv) Education cess on income tax, if any has levied by the Central Acts from time to time

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

- (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
- (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

- (9) the amount representing,
 - a. notional loss on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by the trust referred to in clause (xvii) of section 47 or
 - b. the amount representing notional loss resulting from any change in carrying amount of said units or
 - c. the amount of loss on transfer of units referred to in clause (xvii) of section 47
 - (10) the amount or amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF
 - (11) the amount of depreciation
 - (12) The amount of deferred tax and the provisions therefore
 - (13) The amount or amounts set aside as provision for diminution in the value of any asset;
-
- (14) Amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset if it is not credited to the statement of profit and loss;
 - (15) the amount of gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be.

Negative Adjustments–

Profit as shown in the statement of profit and loss is to be reduced by the following amounts:

- (1) the amount withdrawn from reserves or provisions, if any such amount is credited to the statement of profit and loss; or (Provided book profits was increased in the year of creation of reserve or reserve was created by way of debit to statement of profit and loss)
- (2) the amount of income to which any of the provisions of section 10 [not being provisions contained u/s 10(38)] or 11 or 12 apply, if any such amount is credited to the statement of profit and loss; or
- (3) the amount of depreciation debited to the statement of profit and loss (excluding the depreciation on account of revaluation of assets); or
- (4) the amount withdrawn from revaluation reserve and credited to the statement of profit and loss, 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 statement of profit and loss; or
- (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
- (7) the amount representing,—
 - (A) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47; or
 - (B) notional gain resulting from any change in carrying amount of said units; or

- (C) gain on transfer of units referred to in clause (xvii) of section 47, if any, credited to the statement of profit and loss; or
- (8) the amount of loss on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be; or
- (9) the amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF; or
- (10) ~~The aggregate amount of unabsorbed depreciation and loss brought forward in case of a company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016.~~
- ~~Explanation.—For the purposes of this clause, the expression "Adjudicating Authority" shall have the meaning assigned to it in section 5(1) of the Insolvency and Bankruptcy Code, 2016 and the loss shall not include depreciation; or}~~
- ~~[Inserted by Finance Act, 2018 w.r.e.f. A.Y. 2018-19]~~

Following clause (iih) shall be substituted for the existing clause (iih) of Explanation 1 to sub-section (2) of section 115JB by the Finance (No. 2) Act, 2019, w.e.f. 1-4-2020 :

The aggregate amount of unabsorbed depreciation and loss brought forward in case of a—

(A) company, and its subsidiary and the subsidiary of such subsidiary, where, the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government under section 242 of the said Act;

(B) company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016.

Explanation.—For the purposes of this clause,—

- (i) "Adjudicating Authority" shall have the meaning assigned to it in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016;*
- (ii) "Tribunal" shall have the meaning assigned to it in clause (90) of section 2 of the Companies Act, 2013;*
- (iii) a company shall be a subsidiary of another company, if such other company holds more than half in the nominal value of equity share capital of the company;*
- (iv) "loss" shall not include depreciation; or*
- (11) 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

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

15.1B SPECIAL ADJUSTMENTS TO ARRIVE AT BOOK PROFIT FOR IND AS COMPLIANT COMPANIES IN THE YEAR OF ADOPTION AND THEREAFTER

Section:- 115JB(2A) and (2C)

The effect of sub-section (2A) of section 115JB is summarized as under:

- (i) The adjustments arising on account of transition to Ind AS from existing Indian GAAP is required to be recorded directly in Other Equity at the date of transition to Ind AS. Several of these items would subsequently never be reclassified to the statement of profit and loss / included in the computation of book profits. Accordingly, the following treatment is proposed:
- Those adjustments recorded in other comprehensive income and which would subsequently be reclassified to the profit and loss, shall be included in book profits in the year in which these are reclassified to the profit and loss;
 - Those adjustments recorded in other comprehensive income and which would never be subsequently reclassified to the profit and loss shall be included in book profits as specified hereunder-

Sl. No.	Items	Point of time
1.	Changes in revaluation surplus of Property, Plant or Equipment (PPE) and Intangible assets (Ind AS 16 and Ind AS 38)	To be included in book profits at the time of realization / disposal / retirement or otherwise transferred
2.	Gains and losses from investments in equity instruments designated at fair value through other comprehensive income (Ind AS 109).	To be included in book profits at the time of realization / disposal / retirement or otherwise transferred.
3.	Remeasurements of defined benefit plans (Ind AS 19)	To be included in book profits equally over a period of five years starting from the year of first time adoption of Ind AS
4.	Any other item	To be included in book profits equally over a period of five years starting from the year of first time adoption of Ind AS

- c) All other adjustments recorded in Reserves and Surplus (excluding Capital Reserve and Securities Premium Reserve) as referred to in Division II of Schedule III of Companies Act, 2013 and which would otherwise never subsequently be reclassified to the statement of profit and loss, shall be included in the book profits, equally over a period of five years starting from the year of first time adoption of Ind AS subject to the following—

(a) PPE and intangible assets at fair value as deemed cost

An entity may use fair value in its opening Ind AS Balance Sheet as deemed cost for an item of PPE or an intangible asset as mentioned in paragraphs D5 and D7 of Ind AS 101. In such cases the treatment shall be as under—

- The existing provisions for computation of book profits under section 115JB of the Act provide that in case of revaluation of assets, any impact on account of such revaluation shall be ignored for the purposes of computation of book profits.
Further, the adjustments in retained earnings on first time adoption with respect to items of PPE and Intangible assets shall be ignored for the purposes of computation of book profits.
- Depreciation shall be computed ignoring the amount of aforesaid retained earnings adjustment.
- Similarly, gain/loss on realisation/ disposal/ retirement of such assets shall be computed ignoring the aforesaid retained earnings adjustment.

(b) Investments in subsidiaries, joint ventures and associates at fair value as deemed cost

An entity may use fair value in its opening Ind AS Balance Sheet as deemed cost for investment in a subsidiary, joint venture or associate in its separate financial statements as mentioned in paragraph D15 of Ind AS 101. In such cases retained earnings adjustment shall be included in the book profit at the time of realisation of such investment.

(c) Cumulative translation differences

- An entity may elect a choice whereby the cumulative translation differences for all foreign operations are deemed to be zero at the date of transition to Ind AS. Further, the gain or loss on a subsequent disposal of any foreign operation shall exclude translation differences that arose before the date of transition to Ind AS and shall include only the translation differences after the date of transition.
- In such cases, to ensure that such Cumulative translation differences on the date of transition which have been transferred to retained earnings, are taken into account, these shall be included in the book profits at the time of disposal of foreign operations as mentioned in paragraph 48 of Ind AS 21.

(ii) All other adjustments to retained earnings at the time of transition (including for example, Decommissioning Liability, Asset retirement obligations, Foreign exchange capitalisation/ decapitalization, Borrowing costs adjustments etc.) shall be included in book profits, equally over a period of five years starting from the year of first time adoption of Ind AS.

(iii) Any deferred tax adjustments recorded in Reserves and Surplus on account of transition to Ind AS shall also be ignored.

‡ Circular No. 24/2017 dated 25.07.2017 ‡

Clarifications on computation of book profit for the purposes of levy of Minimum Alternate Tax (MAT) under section 115JB of the Income-Tax Act, 1961 for IND AS compliant companies

After amendment in section 115JB for computation of book profit for the purposes of levy of Minimum Alternate Tax (MAT) for Indian Accounting Standards (Ind AS) compliant companies, CBDT received representations from various stakeholders seeking clarifications on certain issues arising therefrom.

Accordingly, the CBDT has vide this circular, clarified these issues by way of the following FAQs:

Question 1: The profit for the period may include Marked to market (MTM) gains/ losses on account of fair value adjustments on various financial instruments recognised through profit or loss (FVTPL). A situation may arise where the losses on account of fair value adjustments could be added back in view of clause (i) of Explanation 1 to section 115JB(2) of the Act. Whether the losses on such instruments require any adjustment for computing book profits for the purposes of MAT?

Answer: Since MTM gains recognised through profit or loss on FVTPL classified financial instruments are included in book profits for MAT computation, it is clarified that MTM losses on such instruments recognised through profit or loss shall not require any adjustments as provided under clause (i) of Explanation 1 to section 115JB(2) of the

Act. However, in case of provision for diminution/ impairment in value of assets other than FVTPL financial instruments, the existing adjustment of clause (i) of Explanation 1 to section 115JB (2) of the Act shall apply.

It is further clarified that for financial instruments where gains and losses are recognised through Other Comprehensive income (OCI), the amended provisions of MAT shall continue to apply.

Question 2: For the purposes of section 115JB of the Act, what shall be the starting point for computing Book profits for Ind AS compliant companies? Whether Profit before other comprehensive income [Item number XIII in Part 2 (Statement of Profit and Loss) of Division II of Schedule III to the Companies Act 2013] or Total Comprehensive Income (including other comprehensive income) [Item number XV in Part 2 (Statement of Profit and Loss) of Division II of Schedule III to the Companies Act 2013] shall be the starting point?

Answer: Starting point for computing Book profits for Ind AS compliant companies shall be Profit before other comprehensive income [Item number XIII in Part 2 (Statement of Profit and Loss) of Division II of Schedule III to the Companies Act 2013]

Question 3: As per Explanation to Section 115JB(2C) of the Act, the convergence date is defined as the first day of the first Indian Accounting standards reporting period as defined in Ind AS 101. The Memorandum explaining the provisions of the Finance Bill 2017 mentions that the adjustment as on the last day of the comparative period is to be considered. It may be clarified as to what would be the appropriate manner for computation of transition amount on convergence date, 1st April i.e. at the start of the day or at the end of the day?

Answer: In the first year of adoption of Ind AS, the companies would prepare Ind AS financial statement for reporting year with a comparative financial statement for immediately preceding year. As per Ind AS 101, a company would make all Ind AS adjustments on the opening date of the comparative financial year. The entity is also required to present an equity reconciliation between previous Indian GAAP and Ind AS amounts, both on the opening date of preceding year as well as on the closing date of the preceding year. The amounts as on start of the opening date of the first year of adoption should be considered for the purposes of computation of transition amount.

For example, companies which adopt Ind AS with effect from 1st day of April 2016 are required to prepare their financial statements for the year 2016-17 as per requirements of Ind AS. Such companies are also required to prepare an opening balance sheet as of 1st day of April 2015 and restate the financial statements for the comparative period 2015-16. In such a case, the first time adoption adjustments as of 31st day of March 2016 should be considered [i.e. the start of business on 1st day of April 2016 (or, equivalently, close of business on 31st day of March 2016)] for computation of MAT liability for previous year 2016-17 (Assessment year 2017-18) and thereafter.

Question 4: As per Indian GAAP, proposed dividend was required to be recognized in the financial statements for the year for which it pertained to even though these were declared in the subsequent year. Section 115JB of the Act already provides for adjustments for dividend for computation of book profit. As per Ind AS, the amount of proposed dividend (including dividend distribution taxes) is required to be recognized in the year in which it has been declared rather than the year for which it pertains to. Accordingly, on transition to Ind AS, the amount of proposed dividend for FY 2015-16 which was recognized in profit and loss account in FY 2015-16 is required to be reversed and credited to Retained Earnings. For the computation of MAT, whether these balances would form part of the transition amount and thus be adjusted over a period of 5 years?

Answer: Adjustment of proposed dividend (including dividend distribution taxes) shall not form part of the transition amount.

Question 5: Under Ind AS, adjustments on the transition date may have a corresponding impact on deferred taxes. Should the deferred taxes on such amounts be considered for the purpose of transition amount?

Answer: Any deferred taxes adjustments recorded on the transition date shall be ignored for the purpose of computing Transition Amount.

Question 6: As mentioned in Question No.1, clause (i) of Explanation 1 to Section 115JB(2) of the Act provides for adjustments for computation of book profit for the amount or amounts set aside as provision for diminution in the value of any asset. Convergence date adjustments may include adjustment for Provision for Bad and Doubtful Debts (Expected Credit Loss adjustment) at the time of transition. Whether these adjustments would form part of the transition amount referred to in section 115JB(2C) of the Act?

Answer: Adjustments relating to provision for diminution in the value of any assets other than the ones mentioned in Question Number 1 above, shall not be considered for the purpose of computation of the Transition Amount. Therefore, adjustments relating to provision for doubtful debts shall not be considered for the purpose of computation of the transition amount.

Question 7: Under Section 115JB of the Act, transition amount has been defined as the amount or the aggregate of the amounts adjusted in the 'Other Equity' (excluding capital reserve and securities premium reserve) on the convergence date. Whether changes in share application money on reclassification to 'Other Equity' would form part of the Transition Amount?

Answer: Share application money pending allotment which is reclassified to Other Equity on transition date shall not be considered for the purpose of computing Transition Amount.

Question 8: Under Ind AS, Investments in preference share is considered to be a liability and the corresponding dividend expense is debited to Profit and loss account as interest cost. Should such interest expenses on preference shares be deducted for the purpose of MAT computation?

Answer: For the purpose of computation of MAT, profit/Transition Amount shall be increased by dividend/interest on preference share (including dividend distribution taxes) whether presented as dividend or interest.

Question 9: How do we account for items such as equity component, if any, of financial instruments like Non-Convertible debentures (NCDs), Interest free loan etc. included in other equity as per Ind AS for the computation of transition amount under MAT?

Answer: Items such as equity component of financial instruments like NCD's, Interest free loan etc. would be included in the Transition Amount.

Question 10: Where revaluation/fair value adjustments have been made to items of Property, Plant & Equipment (PPE) under Ind AS, as per section 115JB of the Act, the book profit of the previous year in which the items of PPE are retired, disposed or realised shall be increased or decreased, as the case may be, by the revaluation amount relatable to such items of PPE. Whether the revaluation amount to be considered for adjustment should be the gross amount of the revaluation or the amount after adjustment of the depreciation on the revaluation amount?

Answer: The book profit of the previous year in which the items of PPE are retired, disposed, realised or otherwise transferred shall be increased or decreased, as the case may be, by the revaluation amount after adjustment of the depreciation on the revaluation amount relatable to such asset. This has been explained by an illustration as under:

Particulars	Erstwhile Indian GAAP	Ind-AS (considering fair value / revaluation adjustment on PPE)	Fair Value/ Revaluation Adjustments and corresponding depreciation
WDV/Deemed Cost as on 1 April 2015	100	1000	900
Depreciation @10% for F.Y. 2015- 16	10	100	90
WDV as on 1 April 2016	90	900	810
Depreciation @10% for F.Y. 2016- 17	9	90	81
WDV as on 1 April 2017	81	810	729*
Sale value as on 1 April 2017	900	900	
Profit on sale credited to P & L	819	90	

Adjustment for MAT - revaluation amount after adjustment of the depreciation	0	729*
Profit on sale to be considered for MAT	819	819

Question 11: How should adjustments for service concession arrangements be treated for the purpose of computation of book profit under MAT?

Answer: Adjustments on account of Service Concession arrangements would be included in the Transition Amount and also on an ongoing basis.

Question 12: Existing clause (iii) of explanation to section 115JB(2) of the Act provides for deduction of lower of the amount of loss brought forward or unabsorbed depreciation as per books of account for computation of book profits. In case where, on adjustment of transition amount, the losses as per books of account gets wiped off, whether deduction for the said amount would be available for assessment year 2017-2018 onwards?

Answer: For assessment year 2017-2018, the deduction of lower of depreciation or losses shall be allowed based on the position as on 31 March 2016. For the subsequent periods, the position as per books of account drawn as per Ind AS shall be considered for computing lower of loss brought forward or unabsorbed depreciation.

Question 13: How Capital Reserves or Securities Premium existing as per old Indian GAAP reclassified to Retained Earnings/ Other Reserves on Convergence date be treated for MAT purpose.

Answer: The Capital Reserves or Securities Premium existing as on the convergence date as per the erstwhile Indian GAAP which are reclassified to Retained Earnings/ Other Reserves under Ind AS and vice versa, shall not be considered for the purposes of Transition Amount.

It is further clarified, that even after such reclassifications, the amount of revaluation reserve shall continue to be considered as revaluation reserve for the purposes of computation of book profit and shall also include transfer to any other reserves by whatever name called or capitalised.

Question 14: Companies which follow accounting year other than March, 2017 ending for Companies Act purposes and are required to transition to Ind AS will have to prepare financial statements for MAT purposes for FY 2016-17 partly under Indian GAAP and partly under Ind AS. How should such companies compute MAT on transition to Ind AS?

Answer: In view of second proviso to section 115JB (2) of the Act, companies will be required to follow Indian GAAP for the pre-convergence period and Ind AS for the balance period.

For example, a Company following December ending will be required to prepare, accounts for MAT purposes under Indian GAAP for 9 months upto December 2016 and under Ind AS for 3 months thereafter. The transition amount will be calculated with reference to 1st January, 2017.

15.1C SPECIAL ADJUSTMENTS TO ARRIVE AT BOOK PROFIT IN CASE OF “DEMERGED COMPANY” AND “RESULTING COMPANY”

Section:- 115JB(2A) (c) and (d), 115JB(2B)

(i) Adjustment to be made while computing book profit of “demerged company” :- clause (c) and (d) of Section 115JB(2A)

Appendix A of Ind AS 10 provides that any distributions of non-cash assets to shareholders (for example, in a demerger) shall be accounted for at fair value. The difference between the carrying value of the assets and the fair value is recorded in the statement of profit and loss. Correspondingly, the reserves are debited at fair value to record the distribution as a 'deemed dividend' to the shareholders. As there is a corresponding adjustment in retained earnings, this difference arising on demerger shall be excluded from the book profits. (i.e. amount debited to the statement of profit and loss on this account shall be increased and amount credited to the statement of profit and loss on this account shall be reduced while computing book profit in the hands of demerged company)

(ii) Adjustment to be made while computing book profit of “resulting company” :- Section 115JB(2B)

In the case of a resulting company, where the property and the liabilities of the undertaking or undertakings being received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before the demerger, any change in such value shall be ignored for the purpose of computing of book profit of the resulting company.

15.1D COMPUTATION OF TAX LIABILITY

Step 1: Book Profit	Compute Book Profit as per Section 115JB
Step 2: MAT Liability	Compute tax @ 15.00% on Book Profit + (Surcharge) + (H.E.C)
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. 15.3E.
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.

15.1E TAX RATES APPLICABLE FOR STEP 4

Section:- Annual Finance Act and section 115BA

(A) Income Tax Rates

	Domestic companies		Foreign companies
	If Total Turnover or Gross Receipts in P.Y.2017-18 <u>does not exceed</u> Rs.400 Crore	If Total Turnover or Gross Receipts in P.Y.2017-18 <u>exceeds</u> Rs.400 Crore	
	Tax rates	Tax rates	
Short Term Capital Gain u/s.111A	15% + SC+H.E.C	15% + SC+H.E.C	15%+ SC+H.E.C
Long-term capital gain u/s. 112	20%+SC+H.E.C	20% +SC+H.E.C	20%+ SC+H.E.C
Long term capital gain u/s. 112A	10% +SC+ H.E.C	10% +SC+H.E.C	10% +SC+H.E.C
Winnings from lotteries, cross word puzzles u/s 115BB	30%+ SC+H.E.C	30%+ SC+H.E.C	30%+ SC+H.E.C
Income from undisclosed sources (Section 68 / 69 / 69A / B / C / D) u/s 115BBE	60%+ SC+H.E.C	60%+ SC+H.E.C	60%+ SC+H.E.C
Income from patent meeting requirements of section 115BBF	10%+ SC+H.E.C	10%+ SC+H.E.C	10%+ SC+H.E.C
Income from transfer of carbon credit u/s 115BBG	10%+ SC+H.E.C	10%+ SC+H.E.C	10%+ SC+H.E.C
Dividend income from specified foreign companies u/s 115BBD	15%+ SC+H.E.C	15%+ SC+H.E.C	15%+ SC+H.E.C
Winnings from lotteries	30% + SC+H.E.C	30% + SC+H.E.C	30%+ SC+H.E.C
Other income	25%+ SC+H.E.C	30%+ SC+H.E.C	40%+ SC+H.E.C

(B) 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%

(C) Health and Education Cess

It is 4% of (income-tax and surcharge).

Practical 5

PQR Ltd. is engaged in manufacturing of goods. It provides following information for the previous year **2019-20**

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. 2014-15)	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 **2017-18** 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 @15 % of Book Profit (Rs. 22,65,250)	3,39,788
Add: Health & Education Cess: (4%)	13,592
MAT Liability	3,53,380

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: Differed 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. 2014-15)	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 @ 25% of Total Income	1,71,961
Add: Health & Education Cess: (4%)	6,878
Regular tax liability	1,78,839

Step 5: Final Tax Payable

Particulars	Rs.
MAT Liability as per Step 2	3,53,380
Regular Tax Liability as per Step 4	1,78,839
Whichever is higher	3,53,380

Readers Note:**Practical 6**

The net profit of ABC private limited for the concerned financial year is Rs. 50,00,000 after debiting/crediting following items:

Particulars	Rs.
Amount transferred to General Reserve	5,00,000
Dividend received from other Indian Companies	1,00,000
Municipal Tax (not paid on or before due date of filing return)	2,50,000

Further, company is engaged in developing infrastructure facility which is eligible for 100% deduction under section 80-IA. Find out tax payable by the company.

Solution**Step 1. Computation of Book Profit**

Particulars	Rs.
Net Profit as per profit and loss account	50,00,000
<u>Positive Adjustments</u>	
Amount transferred to general reserve	5,00,000
<u>Negative Adjustments</u>	
Dividend received from other Indian Companies	(1,00,000)
Book Profit	54,00,000

Step2. Computation of MAT Liability

Particulars	Rs.
MAT @15% of Book Profit (Rs. 54,00,000)	8,10,000
Add: Health & Education Cess: (4%)	32,400
MAT Liability	8,42,400

Step 3. Computation of total income

Particulars	Rs.
<u>Income Under head PGBP</u>	
Net Profit as per profit and loss account	50,00,000
Add: Amount transferred to reserve	5,00,000
Less: Dividend received from other Indian Companies	(1,00,000)
Add: Municipal Tax (section 43B)	2,50,000
Income under head PGBP cum Gross Total Income	56,50,000
Less: Deduction under section 80-IA	(56,50,000)
Total Income	Nil

Step 4: Computation of Regular Tax Liability

Particulars	Rs.
Regular tax @ 25% of Total Income (Rs. Nil)	Nil
Add: Health and Education Cess: (4%)	Nil
Regular tax liability	Nil

Step 5: Final Tax Payable

Particulars	Rs.
MAT Liability as per Step 2	8,42,400
Regular Tax Liability as per Step 4	Nil
Whichever is higher	8,42,400

Analysis: While computing book profit never make any adjustments for following sections:

- (a) Section 80 C to 80 U
- (b) Section 10AA
- (c) Section 10 (38)

Readers Note:

Practical 7

Calculate book profit from the following abstract of profit and loss account.

Particulars	Rs.	Particulars	Rs.
Depreciation	3,00,000	Amount withdrawn from General Reserve (for which book profit was increased in the year of creation of such reserve)	8,00,000
Depreciation on account of revaluation	1,30,000	Amount withdrawn from revaluation reserve	2,75,000
Others	26,00,000	Others	50,00,000
Net Profit	30,45,000		
	60,75,000		60,75,000

Solution**Computation of Book Profit**

Particulars	Rs.
Net Profit as per profit and loss account	30,45,000
<u>Positive Adjustments</u>	
Depreciation debited to profit and loss account (Rs. 3,00,000 Plus Rs. 1,30,000)	4,30,000
<u>Negative Adjustments</u>	
Amount withdrawn from General Reserve	(8,00,000)
Depreciation debited to profit and loss account (excluding depreciation on account of revaluation)	(3,00,000)
Amount withdrawn from revaluation reserve not exceeding the amount of depreciation on account of revaluation of assets	(1,30,000)
Book Profit	22,45,000

Readers Note:**Practical 8**

Suppose in the above problem, if amount withdrawn from revaluation reserve is Rs.75,000 instead of Rs.2,75,000. Find out book profit.

Solution**Computation of Book Profit**

Particulars	Rs.
Net Profit as per profit and loss account	28,45,000
<u>Positive Adjustments</u>	
Depreciation debited to profit and loss account (Rs. 3,00,000 Plus Rs. 1,30,000)	4,30,000
<u>Negative Adjustments</u>	
Amount withdrawn from General Reserve	(8,00,000)
Depreciation debited to profit and loss account (excluding depreciation on account of revaluation)	(3,00,000)
Amount withdrawn from revaluation reserve not exceeding the amount of depreciation on account of revaluation of assets	(75,000)
Book Profit	21,00,000

Readers Note:

Practical 9

From the following information, find out the amount of negative adjustment to be done during previous year **2019-20** while computing book profit under section 115JB.

Previous Year	Brought forward loss as per books (Rs. in lacs)	Unabsorbed Depreciation as per books (Rs. in lacs)
2016-17	2	5
2017-18	-	3
2018-19	10	2

Solution

Negative adjustment to be done: brought forward loss or unabsorbed depreciation whichever is less as per books of accounts.

Previous Year	Brought forward loss as per books (Rs. In lacs)	Unabsorbed depreciation as per books (Rs. In Lacs)
2016-17	2	5
2017-18	Nil	3
2018-19	10	2
Total	12	10

In the given example, total of unabsorbed depreciation is lower. Therefore, negative adjustment to be done while computing book profit for the previous year **2019-20** is Rs. 10 Lacs.

Readers Note:**Practical 10**

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:

(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 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.

Solution

Step 1. Computation of Book Profit

Particulars	Rs.
Net Profit as per profit and loss account	15,00,000
<u>Positive Adjustments</u>	
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	1,05,000
Depreciation	3,60,000
<u>Negative Adjustments</u>	
Share in income of an AOP as a member	(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 dep. or b/f business loss, whichever is less, as per the books of account. [Here, unabsorbed dep. is Rs.4,00,000 while b/f business loss Rs.6,00,000]	(4,00,000)
Book Profit	13,25,000

Step2. Computation of MAT Liability

Particulars	Rs.
MAT @15 % of Book Profit (Rs. 13,25,000)	1,98,750
Add: Health & Education Cess: (4%)	7,950
MAT Liability	2,06,700
MAT Liability (Rounded Off)	2,06,700

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 while computing book profit:
- Interest to financial institution (unpaid before filing of return) and
 - Penalty for infraction of law
 - Capital gains credited to profit and loss account even if it is exempt under section 54EC of the Act.
- [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.)]
- (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.

Readers Note:

Practical 11

The net profit of ABP Ltd. as per Profit & Loss Account for the previous year **2019-20** is Rs. 100 lacs after debiting/crediting the following items:

- (i) Provision for income-tax : Rs. 15 lacs
- (ii) Provision for deferred tax : Rs. 8 lacs
- (iii) Proposed Dividend : Rs. 20 lacs
- (iv) Depreciation debited to Profit & Loss Account is Rs. 12 lacs. This includes depreciation on revaluation of asset to the tune of Rs. 2 lacs.
- (v) Profit from unit established in Special Economic Zone : Rs. 30 lacs
- (vi) Provision for permanent diminution in value of investments : Rs. 2 lacs
- (vii) Brought forward losses & unabsorbed depreciation as per books of the company are as follows:

Previous Year	Brought Forward Loss (Rs. In lacs)	Unabsorbed Depreciation (Rs. In lacs)
2016-17	2	5
2017-18	-	3
2018-19	10	2

Compute book profit of the company under section 115JB for Assessment Year **2020-21**.

Solution**Computation of Book Profit**

Particulars	Rs. in lakhs
Net Profit as per profit and loss account	100
<u>Positive Adjustments</u>	
Provision for Income Tax	15
Provision for Deferred Tax	8
Proposed Dividend	20
Depreciation	12
Provision for diminution in value of investment	2
<u>Negative Adjustments</u>	
Depreciation other than depreciation on revaluation of assets (Rs.12 lacs – Rs.2 lacs)	(10)
Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account.	(10)
Book Profit	137

Readers Note:**Practical 12**

Zenith Formulations Ltd., an Indian Company engaged in 10 pharmaceutical formulations in Tamilnadu, started adoption of Ind AS compliance with effect from 1st April, 2016. The following particulars are furnished for the year ended 31st March, 2018:-

- (i) The book profits after adjustments of all items specified in section 115JB(2) amounted to Rs.52.26 lakhs (except the adjustment for brought forward losses), for the year ended 31.3.2018.
- (ii) Brought forward losses as per books are as under: (Rs. in lakhs)

Financial Year	Business loss	Depreciation
2014-15	4.60	4.90
2015-16	1.75	2.20

(iii) The business loss of Rs. 4.60 lakhs and Rs. 1.75 lakhs have been deducted while computing book profits under section 115JB for the assessment years 2016-17 & 2017-18 respectively.

(iv) The particulars of Other Comprehensive Income for the year ended 31.03.2018: (Rs. in lakhs)

A : Other Comprehensive Income (OCI) that may be reclassified to profit & loss :	Debit	Credit
(i) Deferred gain Cash flow hedges		5.50
(ii) Deferred costs of hedging	1.00	
(iii) Comprehensive income from discontinued operations		4.20
(iv) Exchange Differences of foreign exchange operations	2.30	
TOTAL	3.30	9.70

B : Other Comprehensive Income (OCI) that will not be re-classified to profit & loss :	Debit	Credit
(i) Changes in fair values of equity instruments	10.00	
(ii) Deferred gains on cash flow Hedges		7.25
(iii) Deferred costs of hedging	4.10	
(iv) Share of other comprehensive income of other associates		3.20
(v) Remeasurements of post-employment benefit obligations		4.45
(vi) Revaluation surplus for assets		7.50
TOTAL	14.10	22.40

(v) The transition amount as on convergence date (01-04-2016) stood at Rs. 52.50 lakhs (credit balance) including capital reserve of Rs. 8 lakhs and adjustment of Rs. 4.50 lakhs relating to transition difference in a foreign operation.

(vi) The National Company Law Tribunal (NCLT), Chennai Bench has admitted an application under section 7 of Insolvency and Bankruptcy Code, 2016(IBC) made by financial creditor against the company for initiation of Corporate Insolvency Resolution Process on 30th March, 2018.

You are required to compute book profit for the purpose of MAT, applying the provisions relating to Ind AS compliant companies.

Solution

Computation of Book Profit

Particulars	Amount in Rs.	Amount in Rs.
Book profit after adjustment of items under section 115JB(2)[except brought forward business loss and unabsorbed depreciation]		52,26,000
Less: Brought forward business loss [Rs.4,60,000 + Rs.1,75,000]	6,35,000	
Less: Unabsorbed depreciation [Rs.4,90,000 + Rs.2,20,000]	7,10,000	13,45,000
[Since Zenith Formulations Ltd. is a company against which an application for corporate insolvency resolution process has been admitted by NCLT under section 7 of the Insolvency and Bankruptcy Code, 2016, the aggregate amount of loss brought forward and unabsorbed depreciation is allowed to be reduced from the book profit for the purposes of levy of MAT u/s 115JB].		
Book profit computed in accordance with Explanation 1 to section 115JB(2)		38,81,000
Add: Items credited to OCI that will not be reclassified to profit or loss:		
Deferred gains on cash flow hedges	7,25,000	
Share of Other Comprehensive Income of Other Associates	3,20,000	

Re-measurement of post-employment benefit obligations	4,45,000	
Revaluation surplus for assets Rs. 7,50,000 [Book profit not to be increased by revaluation surplus for assets as per proviso to section 115JB(2A)]	Nil	14,90,000
Less: Items debited to OCI that will not be reclassified to profit or loss:		53,71,000
Deferred costs of hedging	4,10,000	
Changes in fair values of equity instruments Rs. 10,00,000 [Book profit not to be decreased by changes in fair values of equity instruments as per proviso to section 115JB(2A)]	Nil	4,10,000
Add: One-fifth of Transition amount [Credit Balance]		49,61,000
Transition amount	52,50,000	
Less: <u>Amounts to be excluded from above</u>		
Capital Reserve	8,00,000	
Transition difference in foreign operations	4,50,000	
	40,00,000	
One-fifth of Rs. 40,00,000		8,00,000
Book Profit for levy of MAT		57,61,000

Readers Note:**15.2 | SCHEME OF MAT CREDIT****Section:- 115JAA**

Scheme of MAT Credit, its set off and rules of carry forward is as under:-

- When company pays tax under MAT, the tax credit shall be an amount which is the difference between the amount payable under MAT and the regular tax.
However, where the amount of tax credit in respect of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, allowed against the tax payable under MAT exceeds the amount of such tax credit admissible against the regular tax payable by the assessee, then, while computing the amount of MAT credit, such excess amount shall be ignored. **(Amendment by Finance Act, 2017 effective from assessment year 2018-19)**
- MAT credit will be allowed to be carried forward for a period of ten assessment years immediately succeeding the assessment year in which MAT credit is available. However, with effect from the assessment year 2018-19, MAT credit will be allowed to be carried forward for a period of 15 assessment years. **(Amendment by Finance Act, 2017)**
- If, in any subsequent assessment year, regular tax becomes payable, then, the difference between the regular tax and tax computed under MAT for that year shall be available as set off.
- The MAT credit will not bear any interest.
- This section has been amended w.e.f A.Y. 2011-12 to provide that scheme of MAT credit shall not apply to a limited liability partnership which has been converted from private company or unlisted public company.

Practical 13

From the following information, find out the (a) MAT credit to be carried forward before the amendment by Finance Act, 2017 (b) MAT credit to be carried forward after the amendment by Finance Act, 2017.

Particulars	Rs. in Lakhs
Regular Tax Liability (ignoring MAT)	8
MAT Liability	30
Tax Credit under section 90 of the Act	28

Solution**MAT Credit to be carried forward before the amendment by Finance Act, 2017**

Sr. No.	Particulars	Rs. In lakhs
A.	Regular Tax Liability	8
B.	MAT Liability	30
C.	Tax Liability (A or B whichever is higher)	30
D.	Less: Tax credit under section 90 of the Act	(28)
E.	Tax payable	2
F.	MAT Credit to be carried forward (MAT Liability – Regular Tax Liability)	22

MAT Credit to be carried forward after the amendment by Finance Act, 2017

As per the amendment made by Finance Act, 2017, where the amount of tax credit in respect of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, allowed against the tax payable under MAT exceeds the amount of such tax credit admissible against the regular tax payable by the assessee, then, while computing the amount of MAT credit, such excess amount shall be ignored.

Sr. No.	Particulars	Rs. In lakhs
A.	MAT Credit to be carried forward before the amendment by Finance Act, 2017 (MAT Liability – Regular Tax Liability)	22
B.	Less: excess credit to be ignored as per Amendment (Refer working note)	(20)
C.	MAT Credit to be c/f after the amendment by Finance Act, 2017 (A-B)	2

Working Note: Excess Credit to be ignored as per the Amendment

Sr. No.	Particulars	Rs. In lakhs
A.	Tax Credit available under section 90 of the Act against the tax payable under MAT (Foreign Tax credit or MAT whichever is lower)	28
B.	Less: Tax Credit available under section 90 of the Act against the regular tax payable (Foreign Tax credit or Regular Tax whichever is lower)	(8)
C.	Excess credit to be ignored as per the amendment	20

Readers Note:

15.3 TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES POPULARLY KNOWN AS CORPORATE DIVIDEND TAX (CDT)

Section:- 115-O**(A) Levy**

Any amount declared, distributed or paid by a domestic company by way of dividend (whether interim or otherwise) out of current or accumulated profits shall be charged to additional income-tax (to be called dividend distribution tax/corporate dividend tax).

This levy is in addition to income tax chargeable on the total income of domestic company.

(B) Rate of dividend distribution tax for all types of dividend except dividend u/s 2(22)(e)

The rate of dividend distribution tax is 15% increased by surcharge (irrespective of amount of dividend) and H.E.C.

(C) Amount on which CDT is payable [For all types of dividend except dividend u/s 2(22)(e)]

Computation of “amount on which CDT is payable” shall be done as under:-

Particulars	Amount (Rs.)
Amount declared, distributed or paid by a domestic company (say holding company) by way of dividend	XXX
Less: (1) The amount of dividend, if any, received during the financial year from domestic subsidiary, where subsidiary has paid the tax under section 115-O	(XXX)
(2) The amount of dividend, if any, received during the financial year from foreign subsidiary, <u>where tax is payable by holding company</u> on such dividend under section 115BBD	(XXX)
(3) The amount of dividend, if any, paid to New Pension System Trust referred to in section 10 (44).	(XXX)
Net distributed profits	XXX
Add: Increase for the purpose of Grossing up of dividend $\left(\text{Net Distributed Profits} \times \frac{15}{100-15} \right)$	XXX
Amount on which Corporate Dividend tax is Payable	XXX

(D) Meaning of subsidiary company for the purpose of this section

A company shall be a subsidiary of another company, if such other company, holds more than half in nominal value of the equity share capital of the company.

(E) Rate of dividend distribution tax for deemed dividend under section 2(22)(e)

The rate of dividend distribution tax is 30% increased by surcharge (irrespective of amount of dividend) and H.E.C. in respect of deemed dividend under section 2(22)(e) i.e. loan or advance given by a closely held company. **(Proviso to section 115-O(1) - inserted by Finance Act, 2018 w.e.f. 01-04-2018)**. Rule of grossing up shall not apply to the dividend under section 2(22)(e). **(Proviso to section 115-O(1B) - inserted by Finance Act, 2018 w.e.f. 01-04-2018)**.

(F) Dividend distribution tax cannot be avoided

The domestic company is liable to pay dividend distribution tax under this section even if no income-tax is payable on its total income computed under the provisions of the Act.

(G) Who is liable to pay dividend distribution tax and when?

- The principal officer of the domestic company and the company shall be liable to pay dividend distribution tax.
- Such tax shall be paid within 14 days from the date of
 - declaration of any dividend ; or
 - distribution of any dividend ; or
 - payment of any dividend,
 whichever is the earliest.

(H) Dividend tax is the final levy and no further credit for such tax paid

- Tax on dividend paid by a domestic company shall be taken as the final tax payment in respect of the amount declared, distributed or paid as dividend.
- In respect of tax so paid, no credit is available to the company paying tax, or the recipient of dividend or to any other person.

(I) Dividend tax is not deductible

Neither domestic company nor the shareholders can claim deduction under any other provision of this Act in respect of dividend tax levied under this section.

(J) Companies not required to pay dividend distribution tax

(1) Dividend distribution tax is not applicable in respect of any amount declared, distributed or paid by the specified domestic company by way of dividends (whether interim or otherwise) to a business trust out of its current income on or after the specified date:

Above relaxation shall not apply in respect of any amount declared, distributed or paid, at any time, by the specified domestic company by way of dividends (whether interim or otherwise) out of its accumulated profits and current profits up to the specified date.

Meaning of certain terms:-

- (a) "specified domestic company" means a domestic company in which a business trust has become the holder of whole (100%) of the nominal value of equity share capital of the company (excluding the equity share capital required to be held mandatorily by any other person in accordance with any law for the time being in force or any directions of Government or any regulatory authority, or equity share capital held by any Government or Government body);
- (b) "specified date" means the date of acquisition by the business trust of such holding as is referred to in clause (a).

(2) No tax on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an 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 the 1st day of April, 2017, out of its current income *or income accumulated as a unit of International Financial Services Centre after the 1st day of April, 2017 [Amendment made by Finance Act (No. 2), 2019 w.e.f.01.09.2019]*, either in the hands of the company or the person receiving such dividend.

Meaning of certain terms:-

- (a) "International Financial Services Centre" shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005;
- (b) "unit" means a unit established in an International Financial Services Centre, on or after the 1st day of April, 2016.

(K) Interest for non-payment of tax [Sec. 115P]

If the company and the principal officer fails to pay the whole or any part of dividend distribution tax within the specified time limit discussed above, then he or it shall be liable to pay interest at the rate of 1% p.m. or a part of month

Period for which interest is payable

Interest is chargeable for the period commencing from the next date after the last date of payment and ending on the date of actual payment.

Amount on which interest is payable:

Particulars	Rs.
Dividend distribution tax payable	Xxx
Less: dividend distribution tax paid within the time limit of 14 days	(xxx)
Unpaid dividend distribution tax	Xxxx

(L) When company is deemed to be in default? [Sec. 115Q]

If principal officer of a domestic company and domestic company does not pay dividend distribution tax in accordance with the provisions of section 115-O, then he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it. Consequently, all provisions of the Act regarding collection and recovery of tax shall apply.

15.4 SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME OF DOMESTIC COMPANY FOR BUY-BACK OF SHARES

Section:- Section 115QA to 115QC**(A) Levy:**

Any amount of distributed income by the company on buy-back of shares ~~(not being shares listed on a recognised stock exchange)~~ from a shareholder shall be charged to additional income-tax.

Provided that the provisions of this sub-section shall not apply to such buy-back of shares (being the shares listed on a recognised stock exchange), in respect of which public announcement has been made before 5th day of July, 2019 in accordance with the provisions of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 made under the Securities and Exchange Board of India Act, 1992 as amended from time to time.

This levy is in addition to income tax chargeable on the total income of domestic company.

(B) Meaning of “buy back” and “distributed income”

- (a) "buy-back" means purchase by a company of its own shares in accordance with the provisions of any law for the time being in force relating to companies;
- (b) "distributed income" means the consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares, determined in the manner as may be prescribed. [It has been prescribed by way of notification 94/2016- refer point no. (K)]

(C) Rate of tax on the distributed income

The rate of tax on distributed income is 20% increased by surcharge (irrespective of amount of distributed income) and H.E.C.

(D) Tax on distributed income cannot be avoided

The domestic company is liable to pay tax on distributed income under this section even if no income-tax is payable on its total income computed under the provisions of the Act.

(E) Who is liable to pay tax on distributed income and when?

The principal officer of the domestic company and the company shall be liable to pay tax on distributed income.

Such tax shall be paid within 14 days from the date of payment of any consideration to the shareholder on buy-back of shares.

(F) Tax on distributed income is the final levy and no further credit for such tax paid

Tax on distributed income paid by a domestic company shall be taken as the final tax payment in respect of the said income.

In respect of tax so paid, no credit is available to the company paying tax, or the recipient of dividend or to any other person.

(G) Tax on distributed income is not deductible

Neither domestic company nor the shareholders can claim deduction under any other provision of this Act in respect of distributed income as well as tax on distributed income.

(H) Interest for non-payment of tax [Sec. 115QB]

If the company and the principal officer fails to pay the whole or any part of tax on distributed income within the specified time limit discussed above, then he or it shall be liable to pay interest at the rate of 1% p.m. or a part of month.

Period for which interest is payable

Interest is chargeable for the period commencing from the next date after the last date of payment and ending on the date of actual payment.

Amount on which interest is payable:

Particulars	Rs.
Tax on distributed income	Xxx
Less: Tax paid within the time limit of 14 days	(xxx)
Unpaid tax on distributed income	Xxxx

(I) When company is deemed to be in default? [Sec. 115QC]

If principal officer of a domestic company and domestic company does not pay tax on distributed income in accordance with the provisions of section 115QA, then he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it. Consequently, all provisions of the Act regarding collection and recovery of tax shall apply.

(J) Exemption in the hands of shareholders

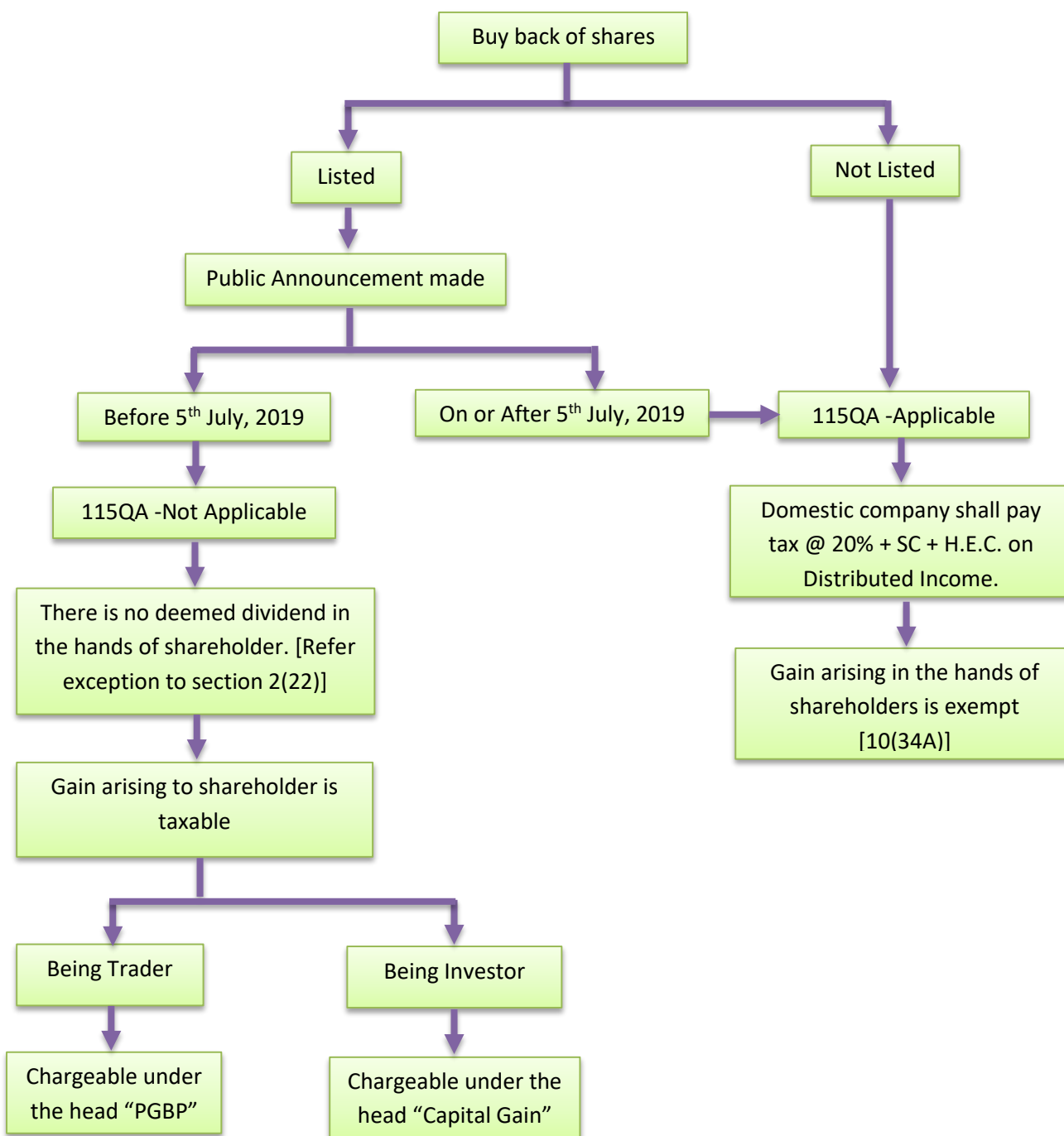
Section 10 (34A) provides that any income arising to an assessee, being a shareholder, on account of buy back of shares (not being listed on a recognised stock exchange) by the company as referred to in *section 115QA* is exempt.

**SECTION 2(22)-DEEMED DIVIDEND**

Any payment by a company on purchase of its own shares from a shareholder in accordance with the provisions of the Companies Act will not be treated as dividend in terms of section 2(22)

**SECTION 46A-CAPITAL GAIN ON PURCHASE BY COMPANY OF ITS OWN SHARES**

As per section 46A, in case of buyback of shares, the difference between the value of consideration received by the shareholder and the cost of acquisition of shares would be deemed to be capital gains arising to the shareholder in the year in which such shares were purchased by the company.

Summary**15.5 TAX ON INCOME OF CERTAIN DOMESTIC MANUFACTURING COMPANIES****Section:- 115BA**

- (1) Notwithstanding anything contained in this Act but subject to the other provisions of this Chapter, other than those mentioned under section 115BAA and section 115BAB 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:—
- the company has been set-up and registered on or after the 1st day of March, 2016;
 - the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and

- (c) the total income of the company has been computed,—
- (i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AC or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AC or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;
 - (ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and
 - (iii) depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed.
- (3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.
- (4) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act:

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

Following second proviso shall be inserted after the existing proviso to sub-section (4) of section 115BA by the Taxation Laws (Amendment) Ordinance, 2019, w.e.f. 1-4-2020:

Provided further that where the person exercises option under section 115BAA, the option under this section may be withdrawn.

15.6 TAX ON INCOME OF CERTAIN DOMESTIC COMPANIES

Section:- 115BAA – Inserted by Taxation Laws (Amendment) Ordinance, 2019 w.e.f. A.Y.2020-21

- (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, 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, 2020, shall, at the option of such person, be computed at the rate of twenty-two 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 subject to the condition that 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 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 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) by claiming the depreciation, if any, under section 32, other than clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.
- (3) The loss referred to in sub-clause (ii) 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 returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

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

15.7 TAX ON INCOME OF CERTAIN NEW DOMESTIC MANUFACTURING COMPANIES

Section:- 115BAB - Inserted by Taxation Laws (Amendment) Ordinance, 2019 w.e.f. A.Y.2020-21

- (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAA, 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, 2020, shall, at the option of such person, be computed at the rate of fifteen 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 October, 2019, and has commenced manufacturing on or before the 31st day of March, 2023, and,—

- (i) is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that 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 person of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in the said section;

- (ii) does not use any machinery or plant previously used for any purpose.

Explanation 1.—For the purposes of sub-clause (ii), any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—

- (A) such machinery or plant was not, at any time previous to the date of the installation by the person, used in India;
- (B) such machinery or plant is imported into India from any country outside India; and
- (C) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

Explanation 2.—Where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed twenty per cent of the total value of the machinery or plant used by the company, then, for the purposes of sub-clause (ii) of this clause, the condition specified therein shall be deemed to have been complied with;

- (iii) does not use any building previously used as a hotel or a convention centre, as the case may be.

Explanation.—For the purposes of this sub-clause, the expressions "convention centre" and "hotel" shall have the meanings respectively assigned to them in clause (a) and clause (b) of sub-section (6) of section 80-ID;

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

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

(4) Where it appears to the Assessing Officer that, owing to the close connection between the company and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the company more than the ordinary profits which might be expected to arise, the Assessing Officer shall, in computing the profits and gains of such company for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F.

(5) 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 for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

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.

15.8 VARIOUS DEDUCTION AND EXEMPTIONS WHICH A COMPANY OPTING FOR SECTION 115BA, 115BAA OR SECTION 115BAB CANNOT CLAIM

The various deduction and exemptions which a company opting for section 115BA, 115BAA or section 115BAB cannot claim are as follows:

Section	Deduction
Section 10AA	Deduction for units established in Special Economic Zones (SEZ)
Section 32AD	Deduction for investment in new plant and machinery in notified backward areas
Section 33AB	Deduction in respect of tea, coffee or rubber business
Section 33ABA	Deduction in respect of business consisting of prospecting or extraction or production of petroleum or natural gas in India
Section 35(1)(ii)	Deduction for donation made to approved scientific research association, university college or other institutes for doing scientific research which may or may not be related to business
Section 35(1)(iia)	Deduction for payment made to an Indian company for doing scientific research which may or may not be related to business
Section 35(1)(iii)	Deduction for donation made to university, college, or other institution for doing research in social science or statistical research

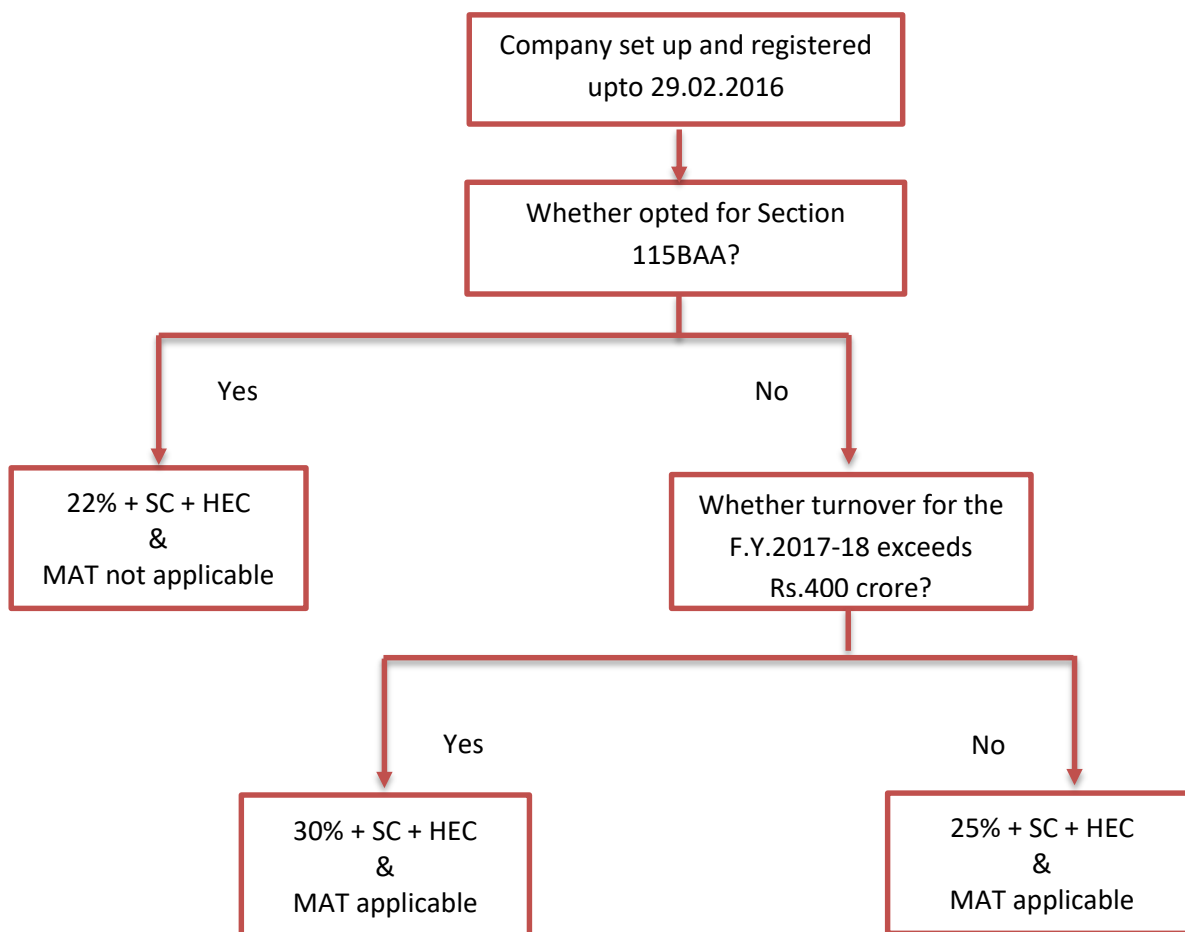
Section 35(2AA)	Deduction for donation made to National Laboratory or IITs, etc. for doing scientific research which may or may not be related to business
Section 35(2AB)	Deduction for capital expenditure (excluding cost of land and building) on scientific research relating to business of bio-technology or manufacturing any article or thing
Section 35AD	Deduction in respect of capital expenditure incurred in respect of certain specified businesses, i.e., cold chain facility, warehousing facility, etc.
Section 35CCC	Deduction for expenditure on agriculture extension project
Section 35CCD	Deduction for expenditure on skill development project
Part C of Chapter VI-A	Deduction in respect of certain incomes other than specified under Section 80JJAA

15.9 CLARIFICATIONS IN RESPECT OF OPTION EXERCISED UNDER SECTION 115BAA OF THE INCOME-TAX ACT, 1961 INSERTED THROUGH THE TAXATION LAWS (AMENDMENT) ORDINANCE, 2019- REG.

Section:- Circular No. 29/2019 dated 2nd October, 2019

- (1) The Taxation Laws (Amendment) Ordinance, 2019 (the Ordinance) has been promulgated by the President of India on September 20, 2019. The Ordinance, inter alia, inserted a new section 115BAA in the Income-tax Act, 1961 (the Act) with effect from April 1, 2020,
- (2) Section 115BAA so inserted, inter alia, provides that. -
 - (a) a domestic company shall, at its option, pay tax at a lower rate of 22 per cent for any previous year relevant to the Assessment Year beginning on or after 1st April 2020, subject to certain conditions, including that the total income should be computed without claiming any deduction or exemption;
 - (b) the option is required to be exercised by the company before the due date of furnishing return of income; and
 - (c) the option, once exercised, cannot be subsequently withdrawn and shall apply to all subsequent assessment years.
- (3) The Ordinance also amended section 115JB of the Act relating to 'Minimum Alternate Tax (MAT)' so as to, inter alia, provide that the provisions of said section shall not apply to a person who has exercised the option referred to under newly inserted section 115BAA.
- (4) Representations have been received from the stakeholders seeking clarification on following issues relating to exercise of option under section 115BAA:**
 - (a)** Allowability of brought forward loss on account of additional depreciation; and
 - (b)** Allowability of brought forward MAT credit.
- (5) These issues have been examined in the Board and in order to provide clarity in the matter, the clarifications are issued in following paras.
- (6) As regards allowability or brought Forward loss on account of additional depreciation, it may be noted that clause (1) of sub-section (2) of the newly inserted section 115BAA, inter provides that the total income shall be computed without claiming any deduction under clause (iia) of sub-section (1) of section 32 (additional depreciation): and clause (ii) of the said sub-section provides that the total income shall be computed without claiming set off of any loss carried forward from any earlier assessment year if the same is attributable, inter alia to additional depreciation.
- (7) Therefore, a domestic company which would exercise option for availing benefit of lower tax rate under section 115BAA shall not be allowed to claim set off of any brought forward loss on account of additional depreciation for an Assessment Year for which the option has been exercised and for any subsequent Assessment Year.**
- (8) Further, as there is no time line within which option under section 115 BAA can be exercised, it may be noted that a domestic company having brought forward losses on account of additional depreciation may, if it so desires, exercise the option after set off of the losses so accumulated.**

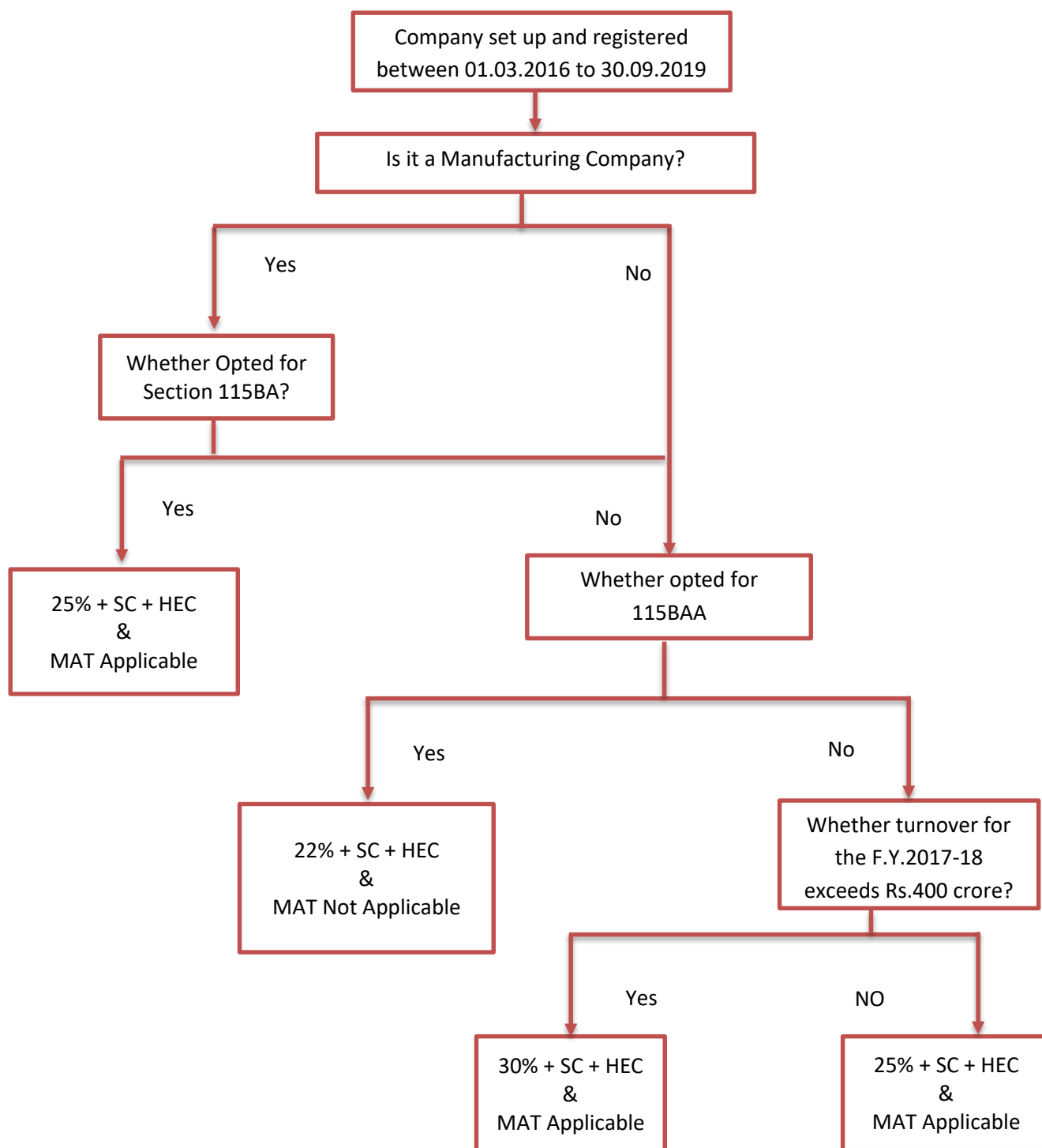
- (9) As regards allowability or brought forward MAT credit, it may be noted that as the provisions of section 115JB relating to MAT itself shall not be applicable to the domestic company which exercises option under section 115BAA, it is clarified that the tax credit of MAT paid by the domestic company exercising option under section 115BAA of the Act shall not be available consequent to exercising of such option.
- (10) Further, as there is no time line within which option under section 115BAA can be exercised, it may be noted that a domestic company having credit of MAT may, if it so desires, exercise the option after utilising the said credit against the regular tax payable under the taxation regime existing prior to promulgation of the Ordinance.



Surcharge

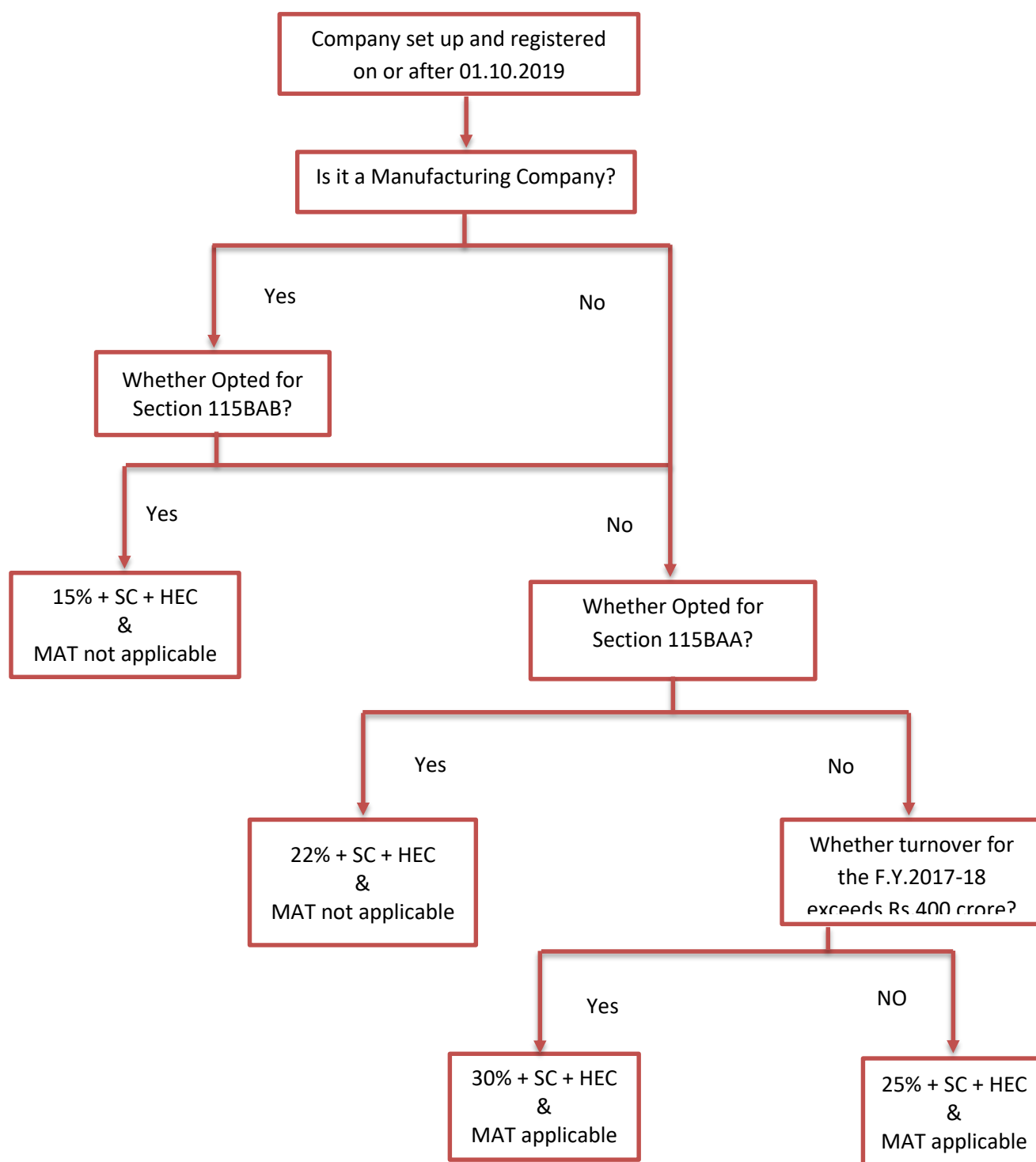
Company	Range of Total Income		
	Up to Rs. 1 crore	Above Rs. 1 crore but up to Rs. 10 crore	More than Rs. 10 crore
Domestic Company opting for section 115BAA / 115BAB	10%	10%	10%
Any other company	Nil	7%	12%

Health and Education Cess:- 4%

**Surcharge**

Company	Range of Total Income		
	Up to Rs. 1 crore	Above Rs. 1 crore but up to Rs. 10 crore	More than Rs. 10 crore
Domestic Company opting for section 115BAA / 115BAB	10%	10%	10%
Any other company	Nil	7%	12%

Health and Education Cess:- 4%

**Surcharge**

Company	Range of Total Income		
	Up to Rs. 1 crore	Above Rs. 1 crore but up to Rs. 10 crore	More than Rs. 10 crore
Domestic Company opting for section 115BAA / 115BAB	10%	10%	10%
Any other company	Nil	7%	12%

Health and Education Cess:- 4%

15.10 CARRY FORWARD AND SET OFF OF LOSSES IN THE CASES OF CERTAIN COMPANIES**Section:- 79**

Following section 79 shall be substituted for the existing section 79 by the Finance Act 2019, w.e.f. 1-4-2020

In the case of companies in which the public are not substantially interested, loss will not be carried forward and set off unless the shares of the company carrying not less than 51 per cent of the voting power were beneficially held by the same person(s) both on the last day of the previous year in which loss occurred and on the last day of the previous year in which brought forward loss is sought to be set off.

Even if the above-mentioned condition is not satisfied in case of an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,—

- (i) continue to hold those shares on the last day of such previous year; and
- (ii) such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.

Exceptions - The aforesaid restriction contained in section 79 shall not be applicable:

1. to a case, where a change in voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making the gift.
2. to a case, where any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.
3. to a company, where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
4. to a company, and its subsidiary and the subsidiary of such subsidiary, where,—
 - (i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government, under section 242 of the said Act; and
 - (ii) a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Explanation.—For the purposes of this section,—

- (i) a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company;
 - (ii) "Tribunal" shall have the meaning assigned to it in clause (90) of section 2 of the Companies Act, 2013.
5. This section is applicable to the losses and not to the unabsorbed allowances. Therefore, entire unabsorbed depreciation can be carried forward by closely held company irrespective of the change in shareholding pattern.- **CIT v. Shri Subhulaxmi Mills Ltd. [2001] 249 ITR 795(SC).**

16 – ALTERNATE MINIMUM TAX

16.1 SPECIAL PROVISIONS FOR PAYMENT OF TAX BY CERTAIN PERSONS OTHER THAN A COMPANY.

Section:- 115JC, CHAPTER- XII BA

(A) Sub-Section (1)

Where the **regular income-tax payable** for a previous year **by a person, other than a company**, is less than the **alternate minimum tax payable** for such previous year, the **adjusted total income** shall **be deemed to be the total income** of that person for such previous year **and he shall be liable to pay income-tax on such total income at the rate of eighteen and one-half percent.**

(B) Sub-Section (2)

Adjusted total income shall **be the total income before giving effect to** this Chapter as increased by—

- (i) **deductions claimed**, if any, **under any section (other than section 80P)** included in Chapter VI-A under the heading "C.—Deductions in respect of certain incomes"; and
- (ii) **deduction claimed**, if any, **under section 10AA**; and
- (iii) **deduction claimed**, if any, **under section 35AD** as reduced by the amount of depreciation allowable in accordance with the provisions of **section 32** as if no deduction under **section 35AD** was allowed in respect of the assets on which the deduction under that section is claimed.

(C) Sub-Section (3)

Every person to whom this section applies shall obtain a report, in prescribed form, from an accountant, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report on or before the due date of furnishing of return of income under section 139(1).

(D) Sub-Section (4)

Notwithstanding anything contained in sub-section (1), where the person referred to therein, is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange, the provisions of sub-section (1) shall have effect as if for the words "eighteen and one-half per cent", the words "nine per cent" had been substituted. **[Inserted by Finance Act, 2018 w.e.f A.Y. 2019-20].**

Practical 1

Ding Dong LLP is a unit located in International Financial Service and derives its income solely in convertible foreign exchange. For the relevant previous year, it earned following incomes:

Sr. No.	Particulars	Rs.
(1)	Income under the head PGBP (Eligible for deduction u/s 10AA- ET/TT 90%)	22,20,000
(2)	Income from other sources	1,30,000
(3)	Contribution to Prime Minister National Relief Fund by cheque	10,000

You are required to compute tax liability.

Solution**Step 1:- Compute Total income ignoring AMT provisions**

Particulars	Rs.
Income under head PGBP	22,20,000
Add: Income from other sources	1,30,000
Gross Total Income	23,50,000
Less: Deduction under section 80G	(10,000)
Total Income before giving effect to Section 10AA	23,40,000
Less: Deduction under Section 10AA which is lower of	
— Total Income before giving effect to Section 10AA (Rs.23,40,000)	
— POB X ET / TT (Rs. 22,20,000 X 90%= Rs.19,98,000)	(19,98,000)
Total Income	3,42,000

Step 2:- Compute Regular Tax payable by LLP on Step 1 income

Particulars	Amount (Rs.)
Total Income	3,42,000
Tax Rate @30%	1,02,600
Add: Health & Education Cess 4%	4,104
Regular Tax Liability	1,06,704

Step 3:- Compute Adjusted total income as per section 115JC

Particulars	Amount (Rs.)
Total Income (as per Step 1)	3,42,000
<i>Add:</i> Deduction under section 80H to 80RRB	Nil
<i>Add:</i> Deduction under section 10AA	19,98,000
<i>Add:</i> Deduction under section 35AD (-) Depreciation	Nil
Adjusted Total Income	23,40,000

Step 4:- Compute AMT @ 9 % on step 3

Particulars	Amount (Rs.)
Adjusted Total Income	23,40,000
Tax Rate @9%	2,10,600
Add: Health & Education Cess 4%	8,424
Alternate Minimum Tax (AMT)	2,19,024

Step 5:- Final tax liability of LLP [Higher of Step 2 or Step 4]

Final Tax Liability = Higher of Rs.1,06,704 or Rs.2,19,024
= Rs. 2,19,024

Note: Ding Dong LLP is eligible to carry forward AMT Credit of Rs. 1,12,320 (Rs. 2,19,024-1,06,704) for next 15 assessment years.

Readers Note:

17 – ASSESSMENT OF HINDU UNDIVIDED FAMILY (HUF)

18 – TAXATION OF BUSINESS TRUST

18.1 SCHEME OF TAXATION OF INVESTMENT FUNDS AND ITS STAKEHOLDERS

Section:- 10(23FBA), 10(23FBB), 115UB, 139 & 194LBB

(A) **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.**

- 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)].~~
- **With effect from A.Y. 2020-21, Section 115UB(2) has been substituted as under:**

If in any year, the net result of computation of total income of the investment fund [without giving effect to the provisions of section 10(23FBA)] is a loss under any head of income and such loss cannot be or is not wholly set-off against income under any other head of income of the said previous year, then,—

- (i) *out of such loss, the **loss under the head "Profits and gains of business or profession", if any, shall be,—***
 - (a) *allowed to be carried forward and it shall be set off at the investment fund level in accordance with the provisions of Chapter VI; and*
 - (b) *same shall not be allowed to be passed through to the investors.*
- (ii) *the **non-business loss**, if any, shall be split into two portions:*
 - (a) *Non-business loss in respect of a unit which has not been held by the unit holder for a period of at least twelve months → This loss shall continue to be carried forward and it shall be allowed to be set off at the investment fund level in accordance with the provisions of Chapter VI and the same shall not be allowed to be passed through to the investors.*
 - (b) *Other non-business loss → This loss shall be allocated amongst unit holders, who in turn can claim benefit set-off against their income, as well as carry forward, if not fully set-off, in accordance with the provisions of Chapter VI.*

- **Section 115UB(2A) has been inserted by the Finance Act, 2019 which provides as under:**

The accumulated non-business loss upto assessment year 2019-20 shall be allocated amongst unit holders, who can *claim set-off against their income, as well as carry forward, if not fully set-off, in accordance with the provisions of Chapter VI. However, any time limit for carry forward of such loss shall be calculated from the year in which such loss had incurred by the Investment Fund for the first time taking that year as first year.*

- 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).

(B) 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. [Section 115 UB(1)]
- 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 1

PQR Private Limited is an Investment Fund as per explanation to section 115UB. There are 50 shareholders each having equal share. For previous year **2018-19**, 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 (31.20%)	18,72,000

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

Readers Note:

Practical 2

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. 2018-19	P.Y. 2019-20
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. 2018-19	
	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 10(23FBA)
Total Income		Nil

Particulars	P.Y.2019-20	
	Rs.	Rs.
Business Income		8,00,000
Long Term Capital Gain	35,00,000	Nil
Less: Brought forward Long Term Capital Loss	N.A.	
	35,00,000	Exempt u/s 10(23FBA)
Income from other sources	30,00,000	Exempt u/s 10(23FBA)
Total Income		8,00,000

Computation of Income of each Unit Holder from ABC Trust

Particulars	P.Y.2018-19	P.Y.2019-20
Business Income (If any)	Exempt u/s 10(23FBB)	Exempt u/s 10(23FBB)
Long Term Capital Gains	Nil	1,75,000
		[35,00,000 ÷ 20]
Income from other sources	2,00,000	1,50,000
	[40,00,000 ÷ 20]	[30,00,000 ÷ 20]

Note: As per Section 115UB(2A), Long-term capital loss of Rs. 25,00,000 carried forward at fund level, now be distributed amongst unit holders and therefore each unit holder will get proportionate loss of Rs. 1,25,000 who in turn will get set-off against their long-term gain of Rs. 1,75,000.

Readers Note:

Practical 3

XYZ Trust is an Investment Fund as per explanation to section 115UB. There are 40 unit holders each having equal share. XYZ Trust reports following incomes for the previous year 2019-20.

Particulars	Rs.
Business Income	22,00,000
Long Term Capital Gain	(5,00,000)
Short Term Capital loss	(1,00,000)
Income From Other Sources	2,00,000

Compute the total income of the XYZ Trust.

Also compute income of each unit holders from the said investment fund.

Solution

Computation of Total Income of ABC Trust

Particulars	P.Y.2019-20 Amount Rs.
Business Income	22,00,000
In view of the amendment made by Finance Act, 2019 under section 115UB(2), Long Term Capital loss of Rs.5,00,000 to be distributed amongst unit holders .	Nil
In view of the amendment made by Finance Act, 2019 under section 115UB(2), Short Term Capital loss of Rs. 1,00,000 to be carried forward at Fund Level and same shall be carried forward and set off in accordance with the provisions of Chapter VI of the Act.	Nil
Income from other sources	Exempt u/s 10(23FBA)
Total Income	22,00,000

Computation of Income of each Unit Holder from XYZ Trust

Particulars	P.Y.2019-20
Business Income (If any)	Exempt u/s 10(23FBB)
Long Term Capital loss	12,500
	[5,00,000 ÷ 40]
Income from other sources	5,000
	[2,00,000 ÷ 40]

Note: As per amendment under Section 115UB(2), unit holder can claim set-off of Long-term capital loss of Rs. 12,500 against his long-term capital gain, if any. And if such loss not fully set off, then the same shall be carried forward in his hand, in accordance with the provisions of Chapter VI.

Readers Note:

18.2 SPECIAL TAXATION REGIME FOR BUSINESS TRUSTS

Section:- 115UA, 10(23FCA), 10(38), 111A, 194LBA(3) & 194-I

(A) Tax Treatment in the hands of REIT

(a) Under section 10(23FC), following incomes are exempt in the hands of REIT.

- Interest income from SPV.
- Dividend income from SPV in which Business Trust has become the holder of the whole of the nominal value of equity share capital of such SPV. (In Short, dividend from SPV in which Business trust holds 100% equity) even if SPV had not paid corporate dividend tax due to section 115-O (7). (Amendment by Finance Act, 2016)

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

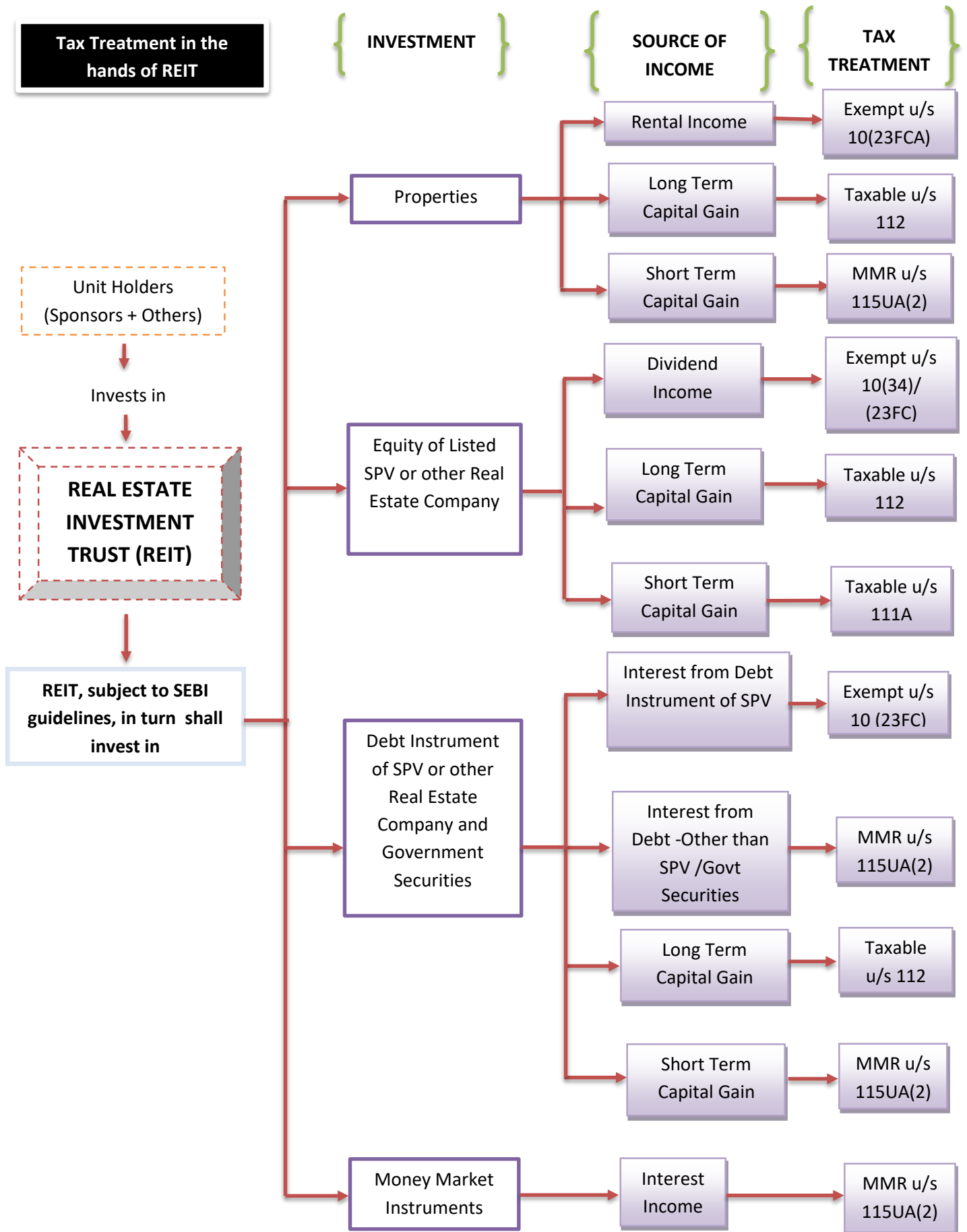
(c) As per section 115UA(2),

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

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

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

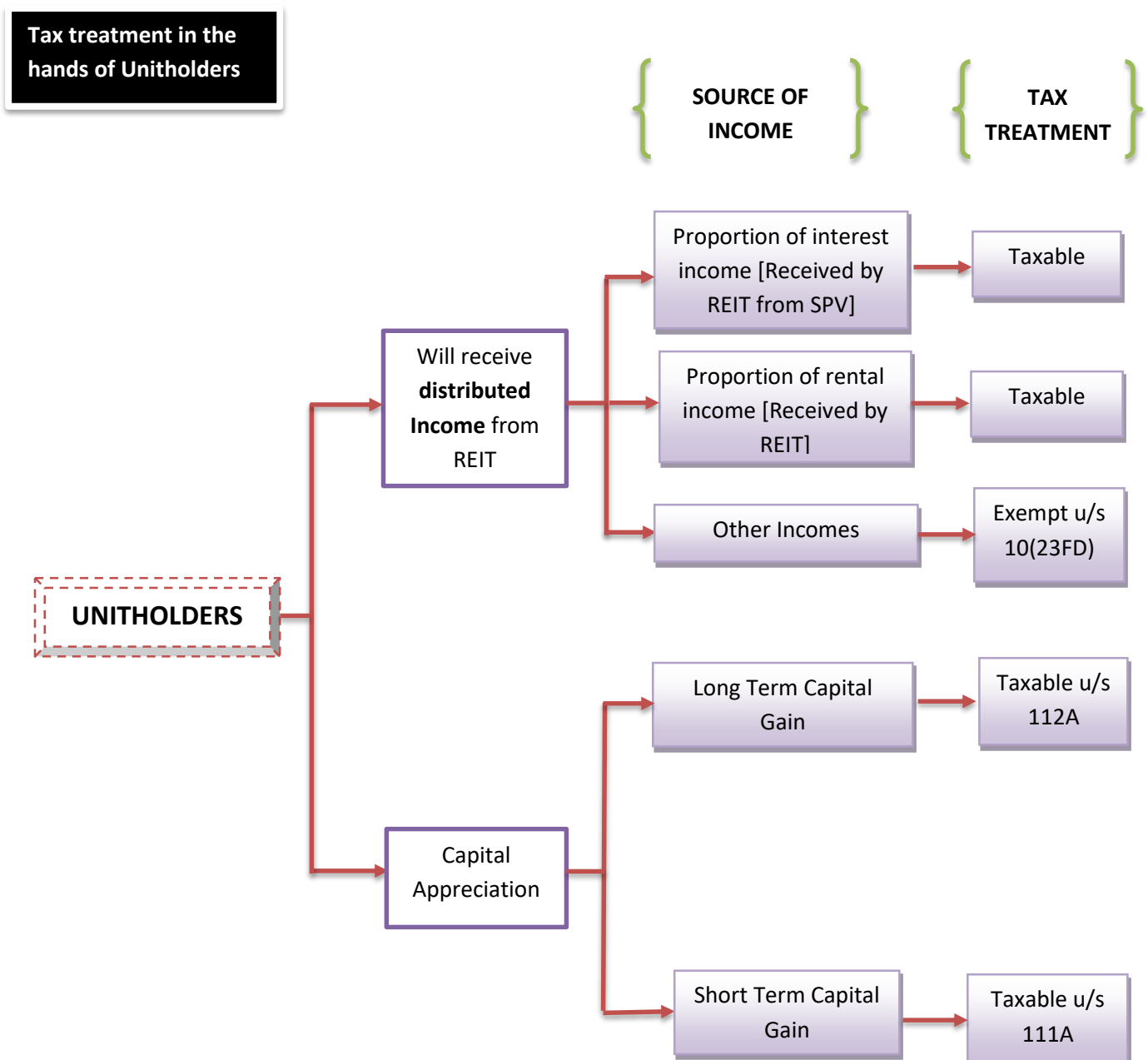
Readers are advised to go through following diagram covering possible sources of income in the hands of REIT and its tax treatment.



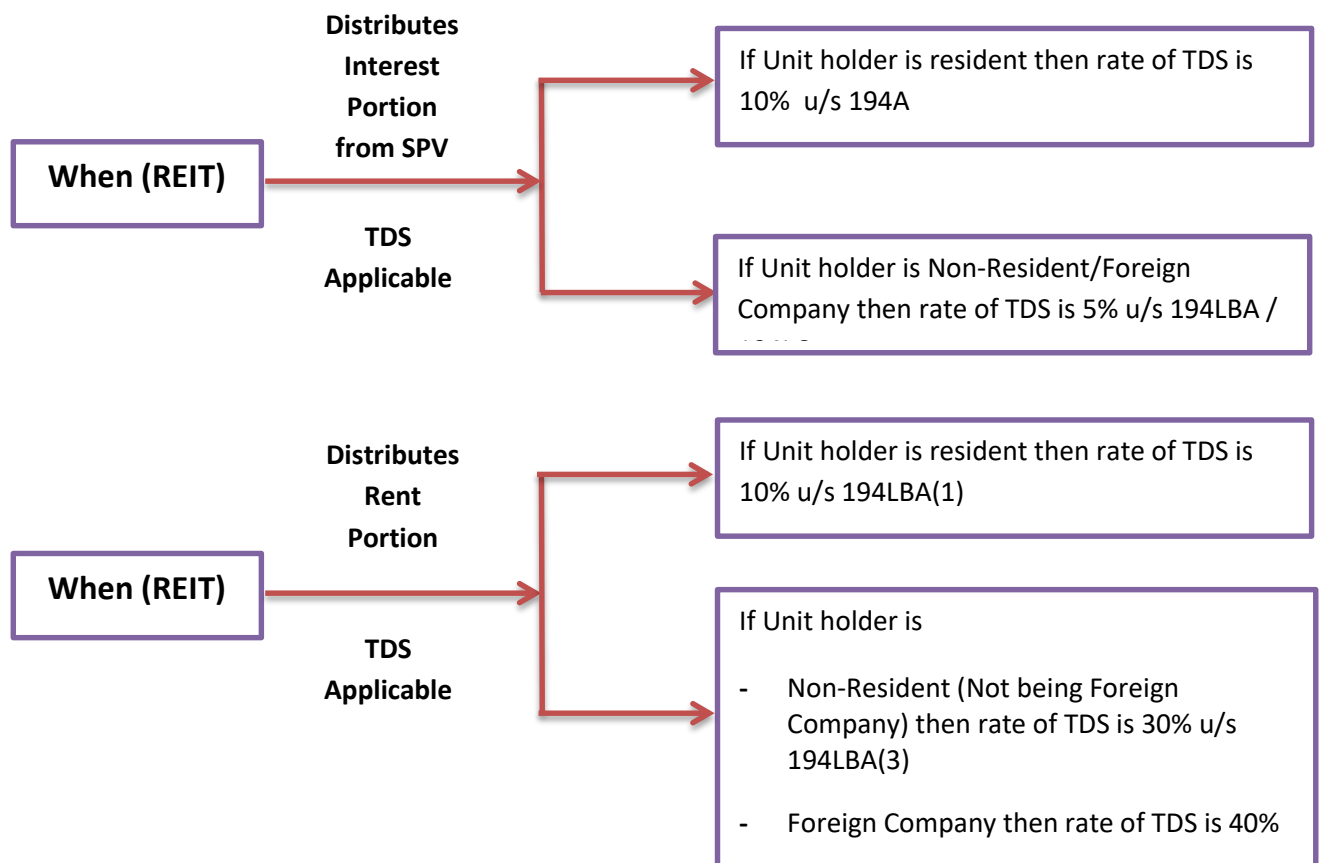
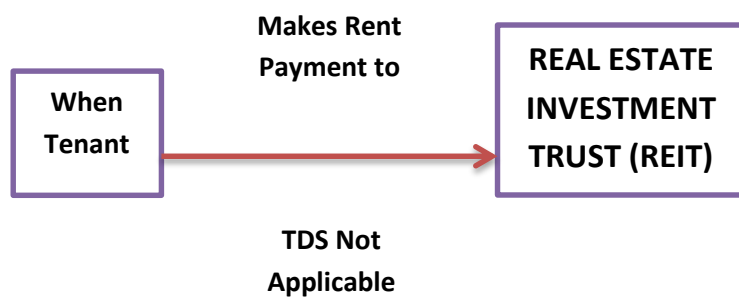
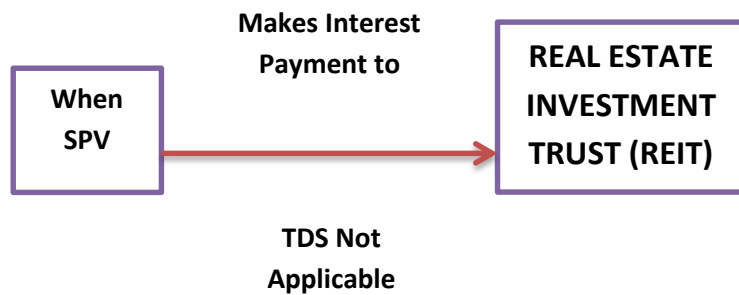
(B) Tax Treatment in the hands of Unit-holders

- (i) As per section 115 UA (1), any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by, or accrued to, the business trust.
- (ii) As per section 115 UA(3), the distributed income or any part thereof, received by a unit holder from the business trust being interest from SPV or income by way of renting or leasing or letting out any real estate asset owned directly by such REIT shall be charged to tax in the hands of unit holder.
- (iii) As per section 10(23FD), other distributed income received by unit holder from business trust is exempt

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



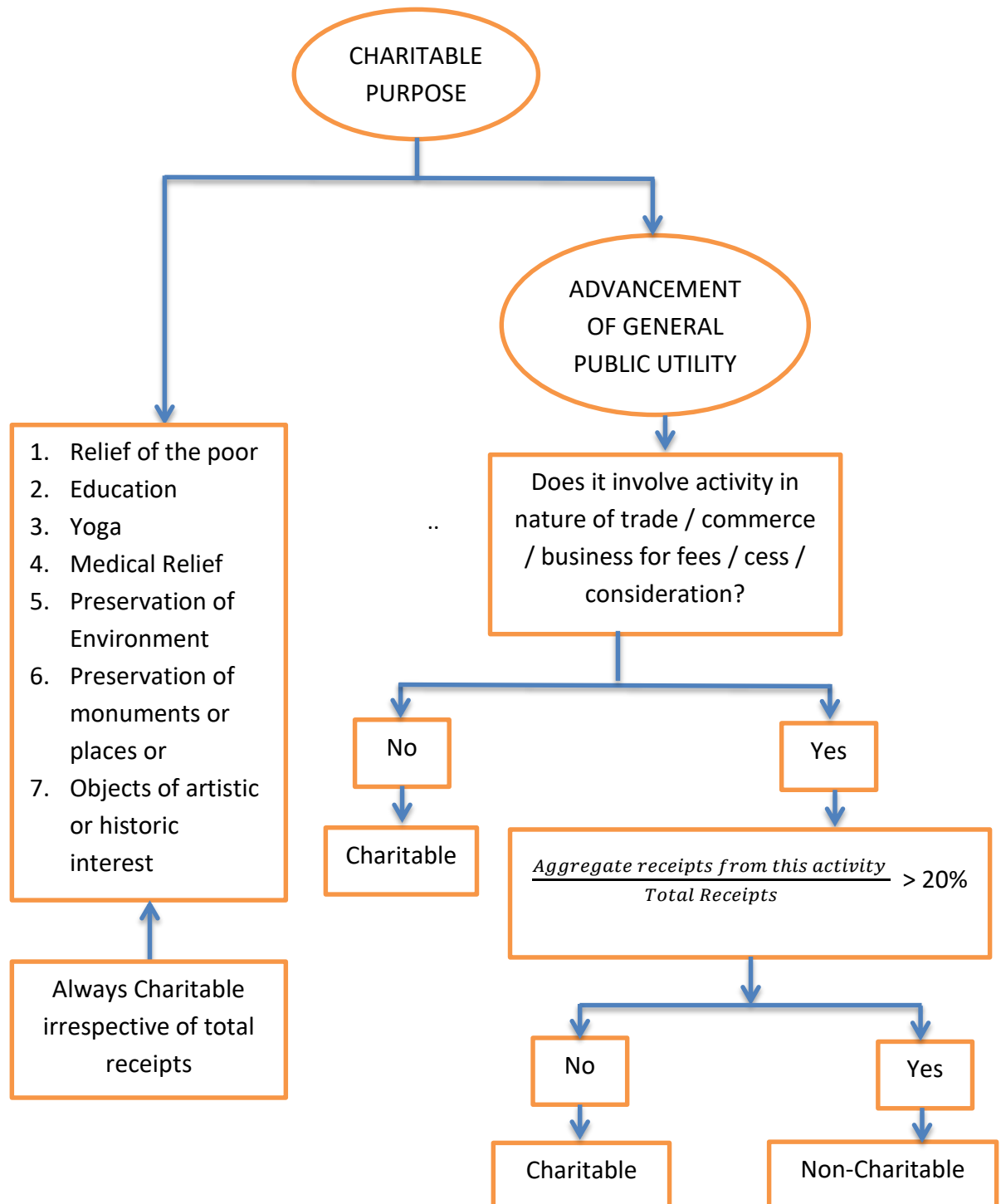
TDS Mechanism



19 – TAXATION OF TRUST/INSTITUTIONS AND POLITICAL PARTIES

19.1 CHARITABLE PURPOSE

Section:- 2(15)



19.2 | CONDITIONS FOR CLAIMING EXEMPTION

Section:- 12A(1)

The income derived from property held under trust wholly for charitable or religious purposes is exempt from tax under section 11 subject to fulfillment of certain conditions.

The conditions are:

- (i) The trust or institution shall be registered under section 12AA.
- (ii) In a case, trust or institution has been granted registration under section 12AA, and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, then it shall be required to make an application, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and thereupon obtain fresh registration. **(Inserted by Finance Act, 2017 w.e.f. assessment year 2018-9)**
- (iii) The accounts of the trust or institution for the previous year shall be audited if the total income before claiming exemption under section 11 and 12 exceeds exemption limit.
- (iv) Trust or institution has furnished the return in accordance with the provisions of Section 139(4A), within the time allowed under that section. Referring the same, the conclusion is that the trust or institution shall furnish the return of income within the time limit given under section 139(1) of the Act. **(Inserted by Finance Act, 2017 w.e.f. assessment year 2018-19)**

19.3 | PROCEDURE FOR REGISTRATION OF TRUST

Section:- 12AA(1)

- Every trust or institution shall submit an application for registration in the prescribed form as required u/s 12AA (1) to the Principal Commissioner or Commissioner of Income-tax.
- ~~On receipt of the application, the Principal Commissioner or Commissioner shall call for such documents or information as he thinks necessary to satisfy himself about the genuineness of activities of the trust or institution. For this purpose, he can also make such inquiries as he may deem necessary.~~

Substituted by the Finance Act, 2019 w.e.f. 01.09.2019

On receipt of the application, the Principal Commissioner or Commissioner shall call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about—

- (i) the genuineness of activities of the trust or institution; and
- (ii) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects.

For this purpose, he may make such inquiries as he may deem necessary.

- After being satisfied about the objects and the genuineness of activities as required under (i) above and compliance of the requirements under (ii) above **[Inserted by the Finance Act, 2019 w.e.f. 01.09.2019]**, an order shall be passed in writing, registering the trust or institution.
- If not so satisfied, an order shall be passed in writing, refusing to register. Before refusing registration, reasonable opportunity of being heard shall be given.
- Copy of any such order shall be sent to the applicant.
- The maximum time limit for passing an order u/s.12AA is six months from the end of the month in which the application was received.
- **Similar Amendment has been carried out under section 10(23C)**

Practical 1

Educare, a trust created with the objective of promoting primary education in rural areas, filed an application for registration under section 12A on **30th April, 2019**. Since the application was not disposed of by the Commissioner on or before **31st October, 2019** as required under section 12AA(2), the trust contended that it was deemed to be registered as per the provisions of section 12AA(1). Examine the correctness of contention of the trust.

Solution

- As per the provisions of section 12AA(2), every order granting or refusing registration under section 12AA, shall be passed by the registering authority before the expiry of six months from the end of the month in which the application was received.
- The Supreme Court, in **CIT v. Society for Promotion of Education (2016) 382 ITR 6**, held that once an application under section 12AA was made and the same was not responded to within six months, the trust would be deemed as registered with effect from the date following the expiry of the six month period.
- Applying the rationale of the above Supreme Court ruling in this case, the trust would be deemed as registered with effect from **01.11.2019**. The contention that the trust is deemed to be registered, since its application for registration has not been disposed of within six months is, therefore, correct.

Reader's Note:**19.4 EXEMPTION TO THE CHARITABLE TRUST OR INSTITUTION**

Section:- 11

Para No.	Section	Particulars
19.4A	11(1)	Exemption based on application of income
19.4B	11(2), 11(3) & 11(5)	Exemption based on accumulation of income
19.4C	11(1A)	Exemption on transfer of capital asset
19.4D	11(4), (4A)	Exemption in respect of income from business undertaking held by trust
19.4E	11(6)	Restriction on allowability of depreciation or deduction of asset in certain circumstances
19.4F	11(7)	Restriction on claiming benefit of exemption under various clauses of section 10 of the Act

19.4A EXEMPTION BASED ON APPLICATION OF INCOME**Section :- 11(1) and Explanation 1 to 3 to section 11(1)**

- Section 11(1) provides that if income of charitable or religious trust has been applied for the objects in India, then amount set apart or accumulated upto 15% of income shall not be included in total income of the trust. (The outcome of the exemption is that trust shall apply remaining 85% of its income for the objects of trust.)
- Thus, exemption under section 11 is 15 per cent of income derived from property held under charitable purpose without being spent—**CIT v. Programme for Community Organisation [2001] 116 Taxman 608 (SC)**.
- Critical Provisions / Judicial pronouncements / Circulars relevant for computation of income of the charitable trust or institution.**

(a) Voluntary contributions (donations) received by a trust are treated as income - **Explanation to section 11 (1)**

- (b) Corpus donations received by a trust are not treated as income. For this purpose, corpus donations means the donations received with a specific direction from the donor that they shall form part of corpus of the trust.- **Section 12**
- (c) It would be incorrect to assign to the word “income” used in section 11(1) (a), the same meaning as has been specifically assigned to the expression “total income” vide section 2(45).– **Circular no. 5-P(LXX-6) of 1968, dated 19-6-1968.**
- (d) Considering the language of section 11(1)(a), concept of classifying the incomes of trust under different heads of income have no relevance. Not only that trust is not entitled for statutory deductions under section 80 C to 80 U.- **Director of Income Tax Vs. Girdharilal Shewanarain Tantia Trust (1993) 199 ITR 215 (Cal).**
- (e) Income has to be understood in the popular or general sense. Therefore, while measuring the income of the trust for the purpose of section 11, deduction in respect of expenditure incurred for earning income and depreciation debited to profit and loss account has to be given- **CIT v. Seth Manilal Ranchhoddas Vishram Bhavan Trust [1992] 105 CTR (Guj.) 303**
- (f) The trust is entitled to set off the amount of excess application of the last year against the deficiency of the current year —**CIT v. Matriseva Trust [2000] 242 ITR 20 (Mad.).**
- (g) In case of **S. RM. M. CT. M. Tiruppani Trust vs. CIT [1998] 96 Taxman 635 (SC)**, trust has applied Rs. 8,00,000 for charitable purposes in India by purchasing a building which is to be utilized as a hospital. This was allowed as application of income for the purpose of section 11(1). That means, application of income under section 11(1) can be either towards revenue expenditure or capital expenditure provided the same shall be for the objects of the trust.
- (h) Donation of income to another charitable trust is also treated as application of income for the purpose of s. 11(1) - **CIT v. Sarladevi Sarabhai Trust (No. 2) [1988] 172 ITR 698 (Guj.)**

However, with effect from Assessment Year 2018-19, any donation (contribution) given to a trust or institution with a specific direction that they shall form part of the corpus of recipient trust or institution, then it shall not be treated as application of income for the donor trust or institution. - Vide explanation 2 to section 11(1). [Amendment by Finance Act, 2017]

- (i) Repayment of loans originally taken to fulfill one of the objects of trust is treated as an application of income for charitable purposes.-Vide circular No. 100, 24-01-1973 and **CIT v. Janmabhoomi Press Trust [2000] 242 ITR 703 (Kar.).**
- (j) **In case of CIT v. Trustees of H.E.H The Nizam’s Charitable Trust [1981] 131 ITR 497 (AP)**, the high court observed the facts of the case and held as under:

“From the facts it is clear that the donees concerned make a request for a grant from the trust and the trustees after considering the request, sanction certain amounts in deserving cases. As soon as the resolution is passed, the secretary informs the institution that such and such amounts have been sanctioned by the trustees at a meeting held on a particular date and also intimates the purposes for which they are sanctioned. In cases where the amounts are not disbursed during the accounting year, the amounts are debited to the income and expenditure account and credited to the outstanding payment account, which contains the amount due to the various donees as per the resolutions passed by the board. When the payment is made, this amount is debited. The amounts debited to the income and expenditure

account but which are not actually disbursed are shown as liabilities in the balance-sheet. These facts and circumstances would constitute application of the funds for charitable purposes within the meaning of s. 11(1)(a). It is not correct to equate the word "applied" with the word "spent".

- (k) For the purposes of determining the amount of application under section 11(1)(a)/(b), the provisions of section 40(a)(ia) and sections 40(3)/(3A), shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession" - **Explanation 3 to section 11(1)–Inserted by Finance Act, 2018 w.e.f. A.Y.2019-20**

- **Tax treatment, if in any previous year, the income applied to the objects of the trust falls short of 85% of the income derived during that year. There may be two possibilities for deficiency in application upto 85% of the income. They are:-**

Possibility 1

If shortfall is due to the reason that the whole or any part of the income has not been received during that year, then such income can be applied during the previous year in which the income is received or in the immediately following previous year.

The option to apply the income in the other year as mentioned above shall be exercised before the expiry of the time allowed u/s.139 (1) for furnishing the return of income.

Practical 2

A charitable Trust provides the following information for the previous year **2019-20**,

Particulars	Rs.
Income from property held under trust	5,20,000
Voluntary contribution (Donations)	9,45,250
Amount spent for the objects of trust	57,000

Additional information:

- (a) Out of Rs.5,20,000 Rs.2,75,000 received in cash and the remaining balance is to be received in the year **2021-22**.
- (b) Out of Rs.9,45,250 Rs.3,45,250 is with specific direction that it shall form part of corpus of the trust.
- (c) The trust has obtained extension for applying the unrealised income of Rs.2,45,000 in the year of receipt, i.e., **2021-22**, whereas it actually spends Rs.16,145 in the year **2021-22** and Rs.28,855 in the year **2022-23**.

Determine its taxable income of the trust for the previous year **2019-20** and **2022-23**.

Solution

For Previous Year 2019-20

Particulars	Rs.
Income from property under held trust	5,20,000
Add: Donation (Excluding corpus donation)	6,00,000
	11,20,000
Less: 15% Set apart	(1,68,000)
	9,52,000
Less: Applied for the objects of trust	(57,000)
	8,95,000
Less: Income not received for which extension has been obtained	(2,45,000)
Total Income	6,50,000

For Previous Year 2022-23

Particulars	Rs.
Amount to be spent	2,45,000
Less: Spent in Previous Year 2021-22	(16,145)
Less: Spent in Previous Year 2022-23	(28,855)
Taxable Income	2,00,000

Reader's Note:**Possibility 2**

If shortfall is due to any other reason, then such income can be applied during the previous year immediately following the previous year in which the income was derived.

The option to apply the income in the other year as mentioned above shall be exercised before the expiry of the time allowed u/s.139 (1) for furnishing the return of income.

Practical 3

A charitable Trust provides the following information for the previous year **2019-20**,

Particulars	Rs.
Income from the property held under trust	8,77,900
Amount spent for the objects of trust	3,76,215

Additional Information:

- (a) The trust has applied for extension under clause (2) of the Explanation to section 11(1) for applying the unutilised portion of income during the next previous year.
- (b) However it actually spent Rs. 1,70,000 during previous year **2020-21**

Determine the taxable income of the trust for the previous year **2019-20** and **2020-21**.

Solution**For Previous Year 2019-20**

Particulars	Rs.
Income from property held under trust	8,77,900
Less: 15% Set apart	(1,31,685)
	7,46,215
Less: Applied for the objects of Trust	(3,76,215)
	3,70,000
Less: Applied for Extension	(3,70,000)
Total Income	Nil

For Previous Year 2020-21

Particulars	Rs.
Amount to be spent in previous year 2020-21	3,70,000
Less: Amount actually spent	(1,70,000)
Taxable Income	2,00,000

Reader's Note:**Practical 4**

A Charitable Public Trust provides following information:

- (a) It received voluntary contribution of Rs.20,00,000 during the previous year.
- (b) It also received contribution of Rs.5,00,000 with a specific direction that it shall form part of corpus of the trust.
- (c) It accumulates Rs.7,00,000 for purchase of five Ambulances and informed the Assessing Officer accordingly.
- (d) It spent Rs.2,30,000 for the objects of the Trust. The break-up of which is as under:
- Rs. 22,000 cash payment for purchase of medicines on a single day.
 - Rs. 1,08,000 paid to visiting doctor by an account payee cheque but failed to deduct tax at source.
 - Rs. 1,00,000 rent, taxes, electricity and other office expenses by an account payee cheque
- (e) It also donated Rs. 40,000 was to PQR charitable trust having similar objects but payment was made by bearer cheque.
- (f) Another Rs. 20,000 was donated to XYZ charitable trust (by an account payee cheque) with a direction that it will form part of corpus of XYZ charitable trust.

Determine total income of the trust.

Solution

Computation of Total Income of the Trust

Particulars	Rs.
Voluntary Contribution (excluding corpus donations)	20,00,000
Less: 15% Set apart	(3,00,000)
Balance	17,00,000
Less: Application of income for the objects of trust {section 11(1)} – See Working Note	(1,75,600)
Balance	15,24,400
Less: Accumulation of income for Ambulances {Section 11(2)}	(7,00,000)
Total Income	8,24,400

Working Note: Application of income for the objects of trust

Application of Income	Rs.
Cash payment for purchase of medicines – not allowed in view of provisions of section 40A (3)	Nil
Add: 70% of Rs. 1,08,000 shall be allowed- 30% not allowed in view of the provisions of section 40(a)(ia)	75,600
Add: Rent, taxes, electricity and other office expenses by an account payee cheque	1,00,000
Add: Donation to PQR Charitable Trust by bearer cheque – not allowed in view of provisions of section 40A(3)	Nil
Add: Donation to XYZ Charitable Trust- not allowed in view of the explanation 2 to Section 11(1) which provides that any donation to another charitable trust with a direction that it shall form part of corpus of the recipient trust shall not be treated as application of income in the hands of donor trust.	Nil
Total	1,75,600

Reader's Note:

19.4B | EXEMPTION BASED ON ACCUMULATION OF INCOME**Section:- 11(2), 11(3) and 11(5)**

- (1) Where 85 per cent of income is not applied to charitable or religious purposes, the trust can accumulate or set apart its income for a specified purpose by informing the concerned Assessing Officer.
- (2) Such income so accumulated or set apart will not be included in the total income of the trust or institution in the year of receipt of income, provided such trust or institution furnishes a statement in the prescribe form [At present, Form no. 10] and in the prescribed manner to the Assessing Officer, the purposes and period for which the income is accumulated or set apart.
- (3) However the period for which the funds can be accumulated shall not exceed 5 years.
- (4) In computing the period of five years, the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.
- (5) Further, the money so set apart or accumulated should be invested/ deposited in any one or more of modes or forms specified in section 11(5).
- (6) The prescribed form [At present, Form No. 10] shall be furnished before the expiry of time allowed u/s 139(1).
- (7) Consequences in case of default:
 - a. If in any year the income which is accumulated for the specified purpose or purposes of the trust is applied to the purposes other than charitable or religious purposes or ceases to be accumulated or set apart for application to such purposes, it will become chargeable to tax as the income of that year.
 - b. If in any year, the accumulations cease to remain invested in any of the forms or modes specified in section 11(5) then also the income so accumulated will become chargeable to tax as the income of that year.
 - c. If the income accumulated is not utilised for the specified purpose during the specified period or in the immediately following year, it will be deemed to be the income of the trust for the previous year immediately following the expiry of the specified period.
 - d. If in any year, the accumulated income is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or any university or educational institutions or any hospital or other medical institutions referred to in section 10(23C) then income so credited or paid will become chargeable to tax as the income of that year.
- (8) If the trust is unable to apply the accumulated funds for the purpose for which it was accumulated due to circumstances beyond control, the Assessing Officer may allow the application of such funds for other charitable or religious purpose requested for by the assessee in conformity with the objects of the trust.
- (9) However, in cases where the trust or institution is dissolved, the Assessing Officer may allow application of such accumulated income towards contribution to other trusts or institutions registered u/s. 12AA or to any fund or institution or any university or educational institution or any hospital or other medical institution referred u/s. 10(23C) in the year in which such dissolution takes place.
- (10) As per section 11(5), the funds of a charitable trust or institution which got accumulated under section 11(2) shall be invested or deposited in the followings:
 - (a) Investment in Government Savings Certificates and any other securities or certificates issued by the Central Government under the Small Savings Schemes;
 - (b) Deposit with Post office savings bank account;
 - (c) Deposits with any scheduled bank or a co-operative society engaged in carrying on banking business;
 - (d) Investment in Central Government or State Government securities;
 - (e) Investment in units of the Unit Trust of India;
 - (f) Deposits with or investments made in shares of public sector company; (where the public sector company ceases to be a public sector company, the shares are required to be transferred within a period of 3 years and other investments or deposits should be withdrawn on maturity).

- (g) Deposits with or investment in any bonds issued by a financial corporation engaged in providing long-term funds for industrial development in India;
- (h) Deposits with or investment in any bonds issued by any public company carrying on the business of providing long-term finance for construction or purchase of residential houses in India;
- (i) Deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance (repayment in not less than 5 years) for urban infrastructure (project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers for urban transport) in India;
- (j) Investment in Immovable property;
- (k) Deposits with Industrial Development Bank of India;
- (l) Any other form or mode of investment or deposit as may be prescribed.

Practical 5

A Charitable Public Trust derives income from voluntary contribution of Rs.25,00,000 (out of Rs.8,00,000 is for specific direction that is shall form part of corpus of the trust) for the year ending **31.3.2020**. It invests the entire corpus donations in Bank Deposits and does not spend at all. It accumulates Rs.10,00,000 out of Rs.25,00,000/- for construction of trust hospital and informs the Assessing Officer accordingly. Out of the balance, a sum of Rs.2,50,000 is spent for the objects of the Trust. Further, Rs. 50,000 was donated to PQR charitable trust having similar objects. Another Rs. 25,000 was donated to XYZ charitable trust with a direction that it will form part of corpus of XYZ charitable trust. Determine the taxable income of the Trust for the A.Y. **2020-21**. What will be the tax implication if the trust could spend only Rs.7,50,000 of the amount of accumulated upto **31.3.2025** and Rs.1,00,000 during the previous year **2025-26**.

Solution

Previous Year 2019-20

Particulars	Rs.
Voluntary Contribution (excluding corpus donations)	17,00,000
Less: 15% Set apart	(2,55,000)
Balance	14,45,000
Less: Applied for the objects of trust {section 11(1)--> { Rs. 2,50,000 + Rs.50,000 donated to PQR charitable Trust} (Refer Note)	(3,00,000)
Balance	11,45,000
Less: Accumulation of income for construction of hospital {Section 11(2)}	(10,00,000)
Total Income	1,45,000

Previous Year 2024-25

Particulars	Rs.
Amount to be spent for construction of hospital	10,00,000
Less: Amount actually spent during previous year 2024-25 {fifth year}	(7,50,000)
	2,50,000
Less: Amount actually spend during previous year 2025-26 {sixth year}	(1,00,000)
Taxable Income	1,50,000

Reader's Note: As per Explanation 2 to Section 11(1), any donation to another charitable trust with a direction that it shall form part of corpus of trust shall not be treated as application of income in the hands of donor trust. As a result, donation given to XYZ charitable trust amounting to Rs. 25,000 shall not be considered as application of income.

Practical 6

Will your answer differ if charitable trust, out of accumulation donated Rs.1,50,000 to another trust during previous year **2025-26**?

Solution

As per explanation to section 11(2), donation to other trusts out of accumulation shall not be taken to meet the requirements of section 11(2) and therefore same shall not be given credit. Therefore, answer will not differ.

Reader's Note:**Practical 7**

Ramji Charitable Trust, registered u/s 12AA and recognized u/s 80G of the Income-tax Act, 1961, was created for providing relief to disabled persons. It filed the return of income for the year ended **31/03/2020**, declaring 'Nil' income. While completing the assessment, the Assessing Officer found that a large sum was donated to the corpus of another trust by the assessee i.e., Ramji Charitable Trust. The contention of the assessee was that such donation was made out of the permissible accumulation of income of past years upto 15% u/s 11(1)(a) of the Act. The Assessing Officer added the donation so made and by invoking the Explanation to section 11(2), computed the taxable income of the assessee. Discuss the validity of the action of the Assessing Officer, in this case.

Solution

Significant observations of Delhi High Court in case of **DIT (Exemption) v. Bagri Foundation (2012) 344 ITR 193** on the above issue are as under:-

- If the assessee trust donates its income to any other charitable trust, such income is exempt from inclusion in the total income of the assessee trust for the relevant year.
- Explanation appended to s. 11(2) is nothing but an additional condition attached to accumulation in excess of 15 per cent permitted under s. 11(2).
- Even after the insertion of the Explanation, if a trust donates its entire income for a year to another charitable trust, it would still be entitled to exemption under s. 11(1)(a).
- Restriction as contained in the Explanation applies to accumulations in excess of 15 per cent only and not to accumulations upto 15 per cent under s. 11(1)(a).

Consequently, if the donations made by Ramji Charitable Trust to another charitable trust were out of past accumulations upto 15% u/s 11(1)(a), the same would not be liable to be included in the total income.

The action of the Assessing Officer in invoking the Explanation to section 11(2), to add such donations while computing the total income of the trust is, therefore, not valid.

However, **in view of the amendment made by Finance Act, 2017- vide explanation 2 to section 11(1)**, the assessing officer is justified in making addition of such donations while computing the total income of the trust.

Reader's Note:**Practical 8**

A charitable institution registered under section 12A of the Income-tax Act, 1961 filled in Form No.10 for seeking permission to accumulate unapplied income under Section 11(2) of the Act for the objects of the institution and submitted it to the Assessing Officer along with the resolution for accumulation. The Assessing Officer found that the objects for which accumulation was sought were not particularised in as much as they covered the entire range of objects of the institution. Can the Assessing Officer deny the benefit of accumulation in such a case?

Solution

In the given case, the assessee institution sought the permission of the Assessing Officer to accumulate unapplied income for the objects of the institution. The institution had not stated any objects in particular for which the unspent income was sought to be accumulated or set apart.

In Bharat Krishak Samaj vs. Deputy Director of Income-tax (Exemption) (2008) 306 ITR 153 (Del.) / DIT v. Eternal Science of Man's S.155 Taxman 42 (Del.), it was held that it is not necessary for a charitable trust to particularise each and every object for which accumulation is sought. It is enough if the assessee seeks permission for accumulation for the objects of the trust. Therefore, the Assessing Officer cannot deny the benefit of accumulation in such a case

Reader's Note:**Practical 9**

Gangaram Public Charitable Trust runs a hospital. The gross receipts from its operational activities is Rs. 250 Lacs and expenses incurred are Rs. 55.20 Lacs. Out of expenses of Rs.55.20 lakhs, Rs.20,000 was incurred in respect of repairing work done, the payment of which was made in cash to the labour contractor. 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 [Note 4]	(55)
Less: Depreciation on used assets	(15)
Business Income	180
Less: 15% to be set apart (15% of Rs.180)	(27)
Balance	153
Less: Income not received during the year [Note 3]	(20)
	133
Less: Non-application of income resulting from non-signing lease agreement[Note 1]	(30)
Available amount	103
Less: Development and installation expenses of ERP package [Note 2]	(85)
Less: Purchase of desktop and laptop computers [Note 2]	(12)
Taxable income	6

Notes:

1. In **CIT v. Trustees of H.E.H The Nizam's Charitable Trust [1981] 131 ITR 497 (AP)**, it was held that in order to secure exemption under section 11, it is sufficient if the assessee provides or sets apart the funds for a charitable purpose and it is not necessary that the assessee must have spent the amount during the relevant assessment year.

2. In **S.R.M.M.C.T.M. Tirupaani Trust v. CIT [1998] 230 ITR 636 (SC)**, it was held that for the purpose of claiming exemption u/s 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.
4. In view of the explanation 3 to section 11(1), Rs. 20,000 shall not allowed as deduction while computing income of the trust.

Reader's Note:

19.4C | EXEMPTION ON TRANSFER OF ASSET

Section:- 11(1A)

(a) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

- (i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;
- (ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

In nutshell, the amount deemed to be utilized for the objects of the trust for clause (ii) above =
 [Amount utilized in acquiring the new capital asset – cost of transferred asset.]

(b) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

- (i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;
- (ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

The “appropriate fraction” in this context means the fraction obtained by dividing the amount of the income which, under the terms of the trust, is applicable to charitable or religious purposes, by the whole of the income derived from property held under trust in part only for such purposes.

Remarks:

- (a) Investment in fixed deposit of a bank is considered as acquisition of a capital asset for the purpose of section 11(1A) - **Hindustan Welfare Trust 206 ITR 138 (Cal)**.
- (b) Acquisition of English Mortgage is regarded as acquisition of capital asset for the purpose of section 11(1A).- **Bafna Charitable Trust V. CIT (1998) 230 ITR 864**.

Practical 10

Work out from the following particulars, the amount of capital gain which shall be deemed to have been applied for charitable or religious purpose arising out of sale of a capital asset utilized for the purposes of trust.

Particulars	Rs.
Cost of transferred asset	2,40,000
Sale consideration	3,80,000
Cost of new asset purchased	3,00,000
Expenses in connection with transfer	20,000

Solution

As discussed above u/s 11(1A), the amount deemed to be utilized for the objects of the trust

= Amount utilized in acquiring the new capital asset – cost of transferred asset.

=Rs. 3,00,000 less Rs. 240,000

=Rs. 60,000

Reader's Note:

Practical 11

Suppose in the above problem, capital asset utilized for the purposes of the trust in part and the appropriate fraction is 60%, what shall be the amount of capital gain which shall be deemed to have been applied for the objects of the trust.

Solution

In the given case, appropriate fraction is 60%, therefore, the amount of capital gain deemed to be utilized for the object of trust is 60% of Rs.60,000= Rs.36,000.

Reader's Note:

19.4D EXEMPTION IN RESPECT OF INCOME FROM BUSINESS UNDERTAKING HELD BY A TRUST

Section:- 11(4) and 11(4A)

(A) A business undertaking held by a trust shall be treated as a “property held under a trust”. [Section 11(4)]

Where a claim is made that the income of any business shall not be included in the total income, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of the Act relating to assessment. Where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

(B) Section 11(4A)

In the case of a trust or institution, income from business shall be eligible for exemption under section 11(1) or 11(2) subject to following conditions—

- The business is incidental to the attainment of the objects of the trust or institution.
- Separate books of accounts are maintained in respect of such business.

19.4E RESTRICTION ON ALLOWABILITY OF DEPRECIATION OR DEDUCTION OF ASSET IN CERTAIN CIRCUMSTANCES—

Section:- 11(6)

This section provides that where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

That means, while determining total income of the trust, no depreciation or deduction shall be allowed in respect of an asset, cost of which has been claimed as an application of income, in the same or any other previous year.

19.4F RESTRICTION ON CLAIMING BENEFIT OF EXEMPTION UNDER VARIOUS CLAUSES OF SECTION 10 OF THE ACT

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(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 12

During previous year, a public charitable trust registered under section 12AA of I.T. Act, 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 buy back of unlisted shares	3,00,000
6.	Income from agriculture operations	2,00,000

During the previous year under consideration, the trust had spent Rs. 11,60,000 towards charitable purposes. Further, trust has purchased small office on the beginning of the previous year 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 the 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)	1,00,000
Add: LTCG on buy back of unlisted shares (Exemption u/s 10(34A) not available)	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)	1,00,000
Add: LTCG on buy back of unlisted shares (Exemption u/s 10(34A) not available)	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:**19.5 CANCELLATION OF REGISTRATION****Section:- 12AA(3) and 12AA(4)****(A) Cancellation of registration under Section 12AA (3)**

Where a Trust or an Institution has been granted registration and subsequently the Commissioner is satisfied that the activities of such trust or Institution are not genuine or in contravention of the objects, then the Commissioner has the power to pass an order in writing canceling the registration after giving a reasonable opportunity of being heard.

(B) Cancellation of registration under Section 12AA (4)

Without prejudice to the provisions of sub-section (3),

where

a trust or an institution has been granted registration under section 12AA/ 12A

and
 subsequently it is noticed that ~~the activities of the trust or the institution are being carried out in a manner~~
~~that~~
~~the provisions of sections 11 and 12 do not apply due to operation of sub-section (1) of section 13,~~
~~then,~~
~~the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such~~
~~trust or institution:~~

Amendment made by Finance Act, 2019 w.e.f. 01.09.2019

- (a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or
- (b) the trust or institution has not complied with the requirement of any other law, as referred to in sub-clause (ii) of clause (a) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality, then, the Principal Commissioner or the Commissioner may, by an order in writing, cancel the registration of such trust or institution:]

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.

Similar Amendment has been carried out under section 10(23C)

Practical 13

Ram-Lakhan Charitable trust is a registered trust under Income Tax Act. During the course of assessment proceedings for the relevant assessment year, the assessing officer found that activities of trust are genuine and not in contravention of the objects of trust but made following observations:

- (i) Remuneration paid to trustees is more than what shall be reasonably paid for such services.
- (ii) Property of the trust was made available to trustee without charging rent.

As a result, the assessing officer had given show cause notice that why exemption of trust shall not be withdrawn applying section 13(1)(c) and why trust shall not be taxed at maximum marginal rate? Trustees of the trust failed to give explanation and therefore, assessing officer forfeited exemption of trust while passing order u/s 143(3).

Based on the above assessment order, Commissioner issued notice to Ram Lakhan Charitable trust that why registration of trust shall not be cancelled?

The contention of trustees was that the activities carried out by the trust are genuine and same fact has also been noted by the assessing officer while passing order under section 143(3), therefore in view of provisions of section 12AA(3), Commissioner is not justified in cancelling registration of trust.

Examine the validity of stand taken by trustees

Solution

On reading section 12AA(3), Commissioner has power to cancel registration only if activities of trust are not genuine or in contravention of the objects but with effect from 1st October, 2014, Commissioner is empowered to cancel registration of trust under section 12AA(4) if activities of trust are carried out in a manner that exemption under section 11 is not available in view of section 13(1) of the Act.

In the present case, assessing officer forfeited exemption under section 11 applying section 13(1)(c) because remuneration paid to trustees was unreasonable and property of trust is made available without charging adequate rent. And therefore, considering the provisions of section 12AA(4), Commissioner is justified in cancelling registration of trust.

Hence, the contention raised by trustees does not find legal support but trustees, alternatively, may plea to CIT that there was a reasonable cause for paying higher remuneration or making property available without charging rent

Reader's Note:

Practical 14

A Trust has an object of “advancement of general public utility” and registered under the Income Tax Act for last 5 years. During the relevant previous year, ratio of receipts from this activity to total receipts exceeded 20%. Trust seeks your advice on following issues:

- (a) Can Commissioner of Income Tax cancel the registration of trust on the ground that the object of the trust is no more charitable?
- (b) Can trust claim exemption under section 11 for the year under consideration?

Solution

- (a) In view of **CBDT circular No. 21/2016 dated 27th May, 2016**, it would not be mandatory to cancel registration unless such cancellation becomes necessary on the other grounds prescribed under the Act.
- (b) Considering the provisions of section 13(8) as well as the clarification given in the above-mentioned circular, trust cannot claim exemption under section 11 for the year under consideration.

Reader's Note:

19.6 TAX RATES APPLICABLE TO CHARITABLE OR RELIGIOUS TRUST

Section:- 164(2)

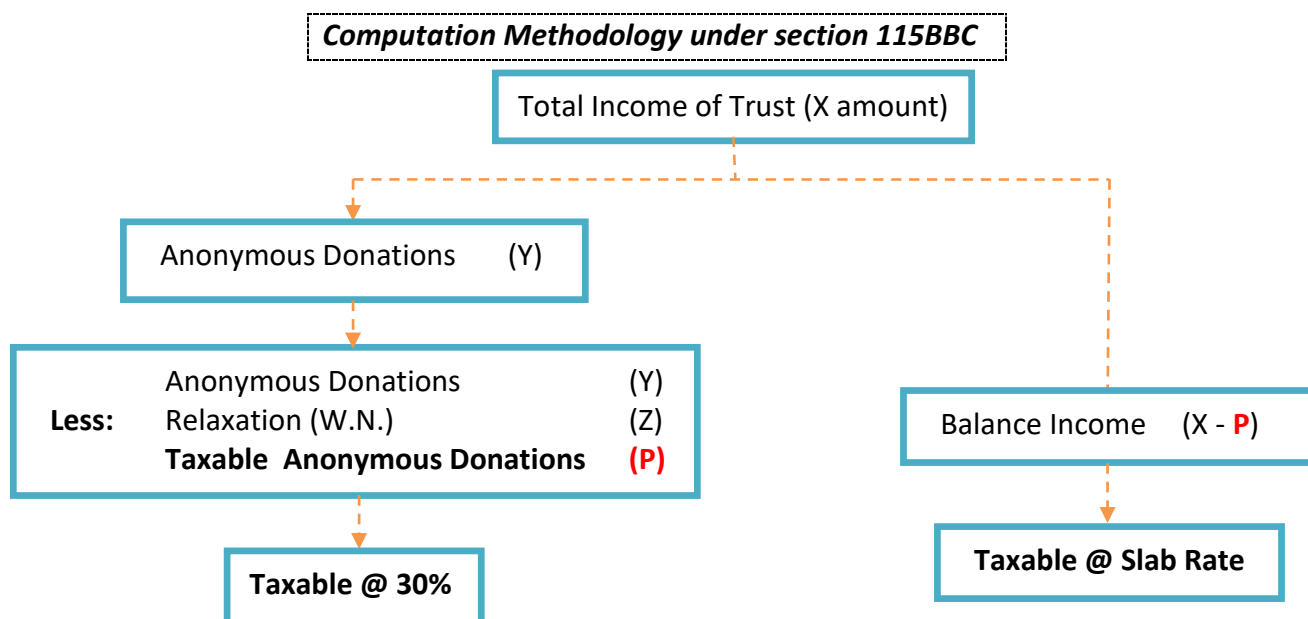
Particulars	Tax Treatment
Income of Public Charitable Trust / Religious Trust after claiming Exemption under Section 11	Taxable as an AOP (i.e. slab rates)
If exemption is forfeited due to contravention u/s. 13(1) (c) or 13(1)(d)	Such income is taxable at maximum marginal rate.

Judicial Rulings A trust will attract the maximum marginal rate of tax only that part of income which has forfeited exemption under section 13 (1) (c) or 13 (1) (d) and not on the entire income. –**Director of Income-tax (Exemption) v. Sheth Mafatlal Gagalbhai Foundation Trust**

19.7 TAXABILITY OF ANONYMOUS DONATIONS

Section:- 115BBC

Sr. No.	Institution receiving anonymous donations	Tax Treatment
1.	Wholly religious entities	Section 115BBC is not applicable
2.	Partly religious and partly charitable entities	If anonymous donation is made to an educational or medical institution run by such an entity, such anonymous donation is taxable at the rate of 30 per cent. Any other anonymous donation is not subject to tax.
3.	Wholly charitable entities	All anonymous donations are taxed at the rate of 30 per cent under section 115BBC.



Working Note:

Relaxation given under section 115BBC shall be higher of the followings

- (a) 5% of TOTAL DONATIONS
- (b) Rs. 1,00,000

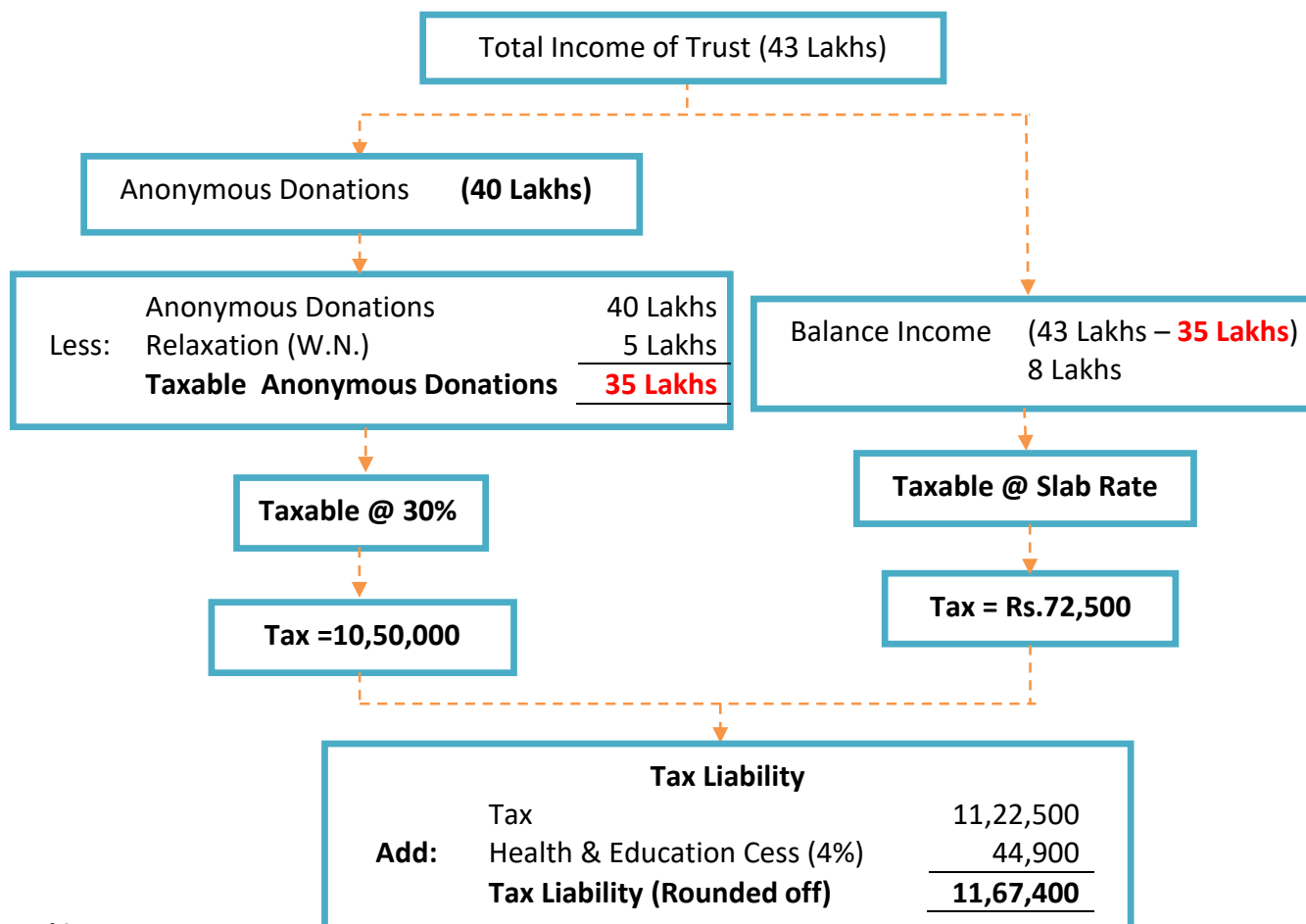
Practical 15

A trust, established wholly for charitable purpose, received voluntary contributions of Rs.100 lakh during the previous year, out of which Rs.40 lakh were anonymous donations. It applied Rs.48 lakh for the purposes of the trust during the year. Compute the tax payable by trust.

Solution

Computation of total income of trust

Particulars	Amount Rs.
Voluntary contributions (excluding anonyms donations)	60,00,000
Less: 15% set apart for future	(9,00,000)
Balance	51,00,000
Less: Applied for the object of the trust	48,00,000
Balance	3,00,000
Add: Anonyms donation	40,00,000
Total Income of the trust	43,00,000

**Working Note:**

Relaxation given under section 115BBC shall be higher of the followings

(a) 5% of TOTAL DONATIONS

5% of 100 Lakhs

Rs. 5,00,000

(b) Rs. 1,00,000

Reader's Note:

20 – RETURN, ASSESSMENT, REASSESSMENT AND RECTIFICATION

20.1 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, 54, 54B, 54D, 54EC, 54F, 54G, 54GA, 54GB [Inserted by Finance Act (No.2), 2019 w.e.f. 01.04.2020] 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) Following seventh proviso shall be inserted after the sixth proviso to sub-section (1) of section 139 by the Finance Act, 2019, w.e.f. 1-4-2020 :

Provided also that a person other than a company or firm, who is not required to furnish a return under this sub-section, and who during the previous year—

- (i) has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current accounts maintained with a banking company or a co-operative bank; or
- (ii) has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or
- (iii) has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or
- (iv) fulfils such other conditions as may be prescribed,

shall furnish a return of his income on or before the due date in such form and verified in such manner and setting forth such other particulars, as may be prescribed.

Following Explanation 6 shall be inserted after Explanation 5 to sub-section (1) of section 139 by the Finance Act, 2019, w.e.f. 1-4-2020 :

Explanation 6.—For the purposes of this sub-section,—

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

(b) "co-operative bank" shall have the meaning assigned to it in clause (ii) of the Explanation to section 269SS.

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

Practical 1

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)** M/s. N.R.K & Co., a firm, which has incurred a loss.
- (c)** Mr. Madhav, an Individual, whose total income after claiming exemption of Rs. 34,32,000 under section 54 is Rs. 2,31,000.

Solution

- (a)** As per sixth 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, 54, 54B, 54D, 54EC, 54F, 54G, 54GA, 54GB 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)** 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.
- (c)** As per sixth 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, 54, 54B, 54D, 54EC, 54F, 54G, 54GA, 54GB and sections 80C to 80U.
In the present case, the total income before giving effect to the provisions of section 54 exceeds basic exemption limit of Rs.2,50,000. Therefore, Mr. Madhav is required to furnish return of income.

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

- (vii) **Section 234F** provides that “Without prejudice to the provisions of this Act, where a person required to furnish a return of income under section 139, fails to file the same within the time prescribed under section 139(1), then he shall pay fee of, —
- five thousand rupees, if the return is furnished on or before the 31st day of December of the assessment year
 - ten thousand rupees in any other case:

However, if the total income of the person does not exceed five lakh rupees, the fee payable under this section shall not exceed one thousand rupees.

The provisions of this section shall apply in respect of return of income required to be furnished for the assessment year commencing on or after the 1st day of April, 2018.”

Summary of Late fee for the A.Y. 2019-20

Date of Filing return	Total income does not exceed Rs. 5,00,000	Total income exceeds Rs.5,00,000
After due date under section 139(1) but on or before 31.12.2019	1000	5000
Between 01.01.2020 to 31.03.2020	1000	10000

This fee is in addition to the interest payable under section 234A.

20.2 RETURN OF LOSS

Section:- 139(3)

- A loss sustained by the assessee in any previous year under the
 - Section 72(1) - Profits and Gains of business or profession
 - Section 73(2) - Speculation business
 - Section 73A(2)-Specified business
 - Section 74A(3) - Owning and maintaining of horse races
 - 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:
 - Unabsorbed depreciation u/s 32(2)
 - 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** ‡

The assessee shall be eligible to carry forward the losses 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. shall obtain the prior approval of CCIT. Where loss exceeds Rs. 50,00,000 then prior approval of Board is required.

Practical 2

Rajesh regularly files his return of income electronically. While he was trying to upload his return of income for assessment year **2020-21** on **31st July, 2020**, 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, 2020**. 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, 2020** 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 impact of 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:**20.3 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.

20.4 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.

20.5 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.

20.6 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) Funds established for welfare of employees or their dependents notified by the Board under section 10(23AAA)**
- (v) Fund or Institution, University or other educational institution or hospital or other medical Institution referred to under section 10(23C) (iiib)/ (iiic)/ (iiid)/(iiie)/(iv)/(v)/(vi)/(via)
- (vi) *Mutual Fund referred to in section 10(23D)*
- (vii) *Securitisation trust referred to in section 10(23DA)*
- (viii) Investor protection fund set up by commodity exchange - Section 1023(EC)**
- (ix) Investor protection fund set up by depository - 1023(ED)**
- (x) Core Settlement Guarantee fund set up by Clearing Corporation - Section 1023(EE)**
- (xi) Various Boards (Tea Board/ Coffee Board..) and Certain Authorities referred to in Section 10(29A)**
- (xii) *Venture capital company or venture capital fund referred to in section 10(23FB)*
- (xiii) Trade Union or association covered under section 10(24).
- (xiv) Section 10(29A)
- (xv) Any body or authority or board or trust referred to in section 10 (46)
- (xvi) Infrastructure debt fund referred to in section 10(47)

Practical 3

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:

20.7 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).

20.8 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).

20.9 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).

20.10 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 end of the relevant assessment year or before the 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.)**]

Solution:

- (a) Can (b) original (c) bonafide (d) Can (e) Rs. 11,50,000

Practical 4

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:

20.11 DEFECTIVE RETURN

Section:- 139(9)

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

Rectification of Defect:-

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

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

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

REMARKS:

(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. (b) above.

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

- (i) In case of a defective return, the Commissioner shall intimate this to the person through e-mail or by placing a suitable communication on the e-filing website.
- (ii) A person shall comply with the notice regarding defective return by uploading the rectified return within the period of time mentioned in the notice.
- (iii) The Commissioner may, in order to avoid hardship to the person, condone the delay in uploading of rectified return.
- (iv) In case no response is received from the person in reply to the notice of defective return, the Commissioner may declare a return as not having been uploaded at all or process the return on the basis of information available



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

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

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

Fill in the blanks:

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

Solution: (a) illustrative (b) Invalid

20.12 | PERMANENT ACCOUNT NUMBER

Section:- 139A

(1) Every person,—

- (i) if his total income or the total income of any other person in respect of which he is assessable under this Act during any previous year exceeded the exemption limit; or
 - (ii) carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed five lakh rupees in any previous year; or
 - (iii) who is required to furnish a return of income under sub-section (4A) of section 139; or
 - (iv) being an employer, who is required to furnish a return of fringe benefits under section 115WD; or
 - (v) being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year.
 - (vi) who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in clause (v) or any person competent to act on behalf of the person referred to in clause (v).
 - (vii) *who intends to enter into such transaction as may be prescribed by the Board in the interest of revenue [Amendment made by Finance Act, 2019 w.e.f. 1-9-2019]*
- and who has not been allotted a permanent account number shall, within such time, as may be prescribed, apply to the Assessing Officer for the allotment of a permanent account number.

(1A) Further, the Central Government may, by notification in the Official Gazette, specify, any class or classes of persons by whom tax is payable under this Act or any tax or duty is payable under any other law for the time being in force including importers and exporters whether any tax is payable by them or not and such persons shall, within such time as mentioned in that notification, apply to the Assessing Officer for the allotment of a permanent account number.

(1B) Further, the Central Government may, for the purpose of collecting any information which may be useful for or relevant to the purposes of this Act, by notification in the Official Gazette, specify, any class or classes of persons who shall apply to the Assessing Officer for the allotment of the permanent account number and

such persons shall, within such time as mentioned in that notification, apply to the Assessing Officer for the allotment of a permanent account number.

- (2)** The Assessing Officer, having regard to the nature of the transactions as may be prescribed, may also allot a permanent account number, to any other person (whether any tax is payable by him or not), in the manner and in accordance with the procedure as may be prescribed.
- (3)** Any person, not falling under sub-section (1) or sub-section (2), may apply to the Assessing Officer for the allotment of a permanent account number and, thereupon, the Assessing Officer shall allot a permanent account number to such person forthwith.
- (5)** Every person shall—
 - (a) quote such number in all his returns to, or correspondence with, any income-tax authority;
 - (b) quote such number in all challans for the payment of any sum due under this Act;
 - (c) quote such number in all documents pertaining to such transactions as may be prescribed by the Board in the interests of the revenue, and entered into by him;
 - (d) intimate the Assessing Officer any change in his address or in the name and nature of his business on the basis of which the permanent account number was allotted to him.
- (5A)** Every person receiving any sum or income or amount from which tax has been deducted under the provisions of Chapter XVIIIB, shall intimate his permanent account number to the person responsible for deducting such tax under that Chapter.
- (5B)** Where any sum or income or amount has been paid after deducting tax under Chapter XVIIIB, every person deducting tax under that Chapter shall quote the permanent account number of the person to whom such sum or income or amount has been paid by him—
 - (i) in the statement furnished in accordance with the provisions of sub-section (2C) of section 192;
 - (ii) in all certificates furnished in accordance with the provisions of section 203;
 - (iii) in all returns prepared and delivered or caused to be delivered in accordance with the provisions of section 206 to any income-tax authority;
 - (iv) in all statements prepared and delivered or caused to be delivered in accordance with the provisions of section 200(3):

However, provisions contained in sub-sections (5A) and (5B) shall not apply in case of a person whose total income is not chargeable to income-tax or who is not required to obtain permanent account number under any provision of this Act if such person furnishes to the person responsible for deducting tax, a declaration referred to in section 197A in the form and manner prescribed thereunder to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*.
- (5C)** Every buyer or licensee or lessee referred to in section 206C shall intimate his permanent account number to the person responsible for collecting tax referred to in that section.
- (5D)** Every person collecting tax in accordance with the provisions of section 206C shall quote the permanent account number of every buyer or licensee or lessee referred to in that section—
 - (i) in all certificates furnished in accordance with the provisions of sub-section (5) of section 206C;
 - (ii) in all returns prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (5A) or sub-section (5B) of section 206C to an income-tax authority;

- (iii) in all statements prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 206C.

Amendment made by Finance Act, 2019 w.e.f.01.09.2019

- (5E)** Notwithstanding anything contained in this Act, every person who is required to furnish or intimate or quote his permanent account number under this Act, and who,—
- (a)** has not been allotted a permanent account number but possesses the Aadhaar number, may furnish or intimate or quote his Aadhaar number in lieu of the permanent account number, and such person shall be allotted a permanent account number in such manner as may be prescribed;
 - (b)** has been allotted a permanent account number, and who has intimated his Aadhaar number in accordance with provisions of sub-section (2) of section 139AA, may furnish or intimate or quote his Aadhaar number in lieu of the permanent account number.
- (6)** Every person receiving any document relating to a transaction prescribed under clause (c) of sub-section (5) shall ensure that the Permanent Account Number or the General Index Register Number *or the Aadhaar number, as the case may be, has been duly quoted in the document.*[Amendment made by Finance Act, 2019 w.e.f.01.09.2019]
- (6A)** Every person entering into such transaction, as may be prescribed, shall quote his permanent account number or Aadhaar number, as the case may be, in the documents pertaining to such transactions and also authenticate such permanent account number or Aadhaar number, in such manner as may be prescribed. [Amendment made by Finance Act, 2019 w.e.f.01.09.2019]
- (6B)** Every person receiving any document relating to the transactions referred to in sub-section (6A), shall ensure that permanent account number or Aadhaar number, as the case may be, has been duly quoted in such document and also ensure that such permanent account number or Aadhaar number is so authenticated. [Amendment made by Finance Act, 2019 w.e.f.01.09.2019]
- (7)** No person who has already been allotted a permanent account number under the new series shall apply, obtain or possess another permanent account number.

Explanation.—For the purposes of this section,—

- (a)** "Aadhaar number" shall have the meaning assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016);
- (aa)** "Assessing Officer" includes an income-tax authority who is assigned the duty of allotting permanent account numbers;
- (ab)** "authentication" means the process by which the permanent account number or Aadhaar number alongwith demographic information or biometric information of an individual is submitted to the income-tax authority or such other authority or agency as may be prescribed for its verification and such authority or agency verifies the correctness, or the lack thereof, on the basis of information available with it;]
- (b)** "permanent account number" means a number which the Assessing Officer may allot to any person for the purpose of identification and includes a permanent account number allotted under the new series;
- (c)** "permanent account number under the new series" means a permanent account number having ten alphanumeric characters.
- (d)** "General Index Register Number" means a number given by an Assessing Officer to an assessee in the General Index Register maintained by him and containing the designation and particulars of the ward or circle or range of the Assessing Officer.

20.13 | QUOTING OF AADHAAR NUMBER**Section:- 139AA**

- (1) Every person who is eligible to obtain Aadhaar number shall, on or after the 1st day of July, 2017, quote Aadhaar number—
- in the application form for allotment of permanent account number;
 - in the return of income:
- (2) However, where the person does not possess the Aadhaar Number, the Enrolment ID of Aadhaar application form issued to him at the time of enrolment shall be quoted in the application for permanent account number or, as the case may be, in the return of income furnished by him.
- (3) Every person who has been allotted permanent account number as on the 1st day of July, 2017, and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to such authority in such form and manner as may be prescribed, on or before a date to be notified by the Central Government in the Official Gazette:
- In case of failure to intimate the Aadhaar number, the permanent account number allotted to the person shall be ~~deemed to be invalid and the other provisions of this Act shall apply, as if the person had not applied for allotment of permanent account number~~ **made inoperative after the date so notified in such manner as may be prescribed [Amendment made by Finance Act, 2019 w.e.f. 01.09.2019.**
- (4) The provisions of this section shall not apply to such person or class or classes of persons or any State or part of any State, as may be notified by the Central Government in this behalf, in the Official Gazette.

20.14 | RETURN UNDER SECTION 139 BY WHOM TO BE VERIFIED**Section:- 140**

ASSESSEE	VERIFICATION TO BE DONE BY
Individual When he is absent from India or mentally incapacitated or for any other reason he is not able to verify	Individual himself His guardian or any other person competent to act on his behalf duly authorized by him
H. U. F Karta is absent from India or he is mentally incapacitated	Karta Any other adult member of the family
Company Managing Director is unable to verify or there is no M.D. Company is not resident in India Company is in Liquidation Company's management is taken over by the government An application has been admitted by the Adjudicating Authority in respect of company under section 7, 9, or 10 of the Insolvency and Bankruptcy Code, 2016.	Managing Director Any other director Holder of a valid Power of Attorney The Liquidator The Principal Officer Insolvency professional appointed by Adjudicating Authority [Inserted by Finance Act, 2018, w.e.f. A.Y.2019-20]
Partnership Firm	Managing Partner or any other partner not being a minor
Limited liability partnership firm Where for any unavoidable reason such designated partner is not able to verify Where there is no designated partner	Designated partner Any Partner Any partner

Local authority	Principal Officer
Political Party	Chief executive officer
Association of Persons	Any member or principal officer
Any other person	That person or some other person who is competent to verify on his behalf.

20.15 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 <i>section 89 [Amendment made by Finance Act, 2019 w.e.f.01.09.2019]</i> , 90, 91, 90A/Tax credit under sec.115JAA / Tax credit under section 115JD (AMT)	XXX
Add: Interest u/s 234A/ 234B/ 234C	XXX
Add: Late Fee u/s 234F	XXX
Self-Assessment tax payable (Amount Refundable)	XXX

- The return of income is to be accompanied by proof of payment of tax together with interest and fee.
- Where the amount paid by the assessee falls short of the aggregate of tax, interest and fee (fee under section 234F of the Act), the amount so paid shall first be adjusted towards the fee payable and thereafter 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, interest or fee 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.

20.16 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.

20.17 INQUIRIES**Section:- 142(2)**

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

20.18 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.
- (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).***

20.19 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 5

Mr. X had not filed return for A.Y. **2020-21** though due date was **30/09/2020**. He was in receipt of notice u/s 142(1) requiring him to file return on or before **15/12/2020**. Mr. X didn't respond. A.O. issued another notice u/s 142(1) requiring him to file return on or before **31/12/2020**. He filed return on **15/02/2021**. On **19/02/2021** he received an assessment order u/s 144 and order was signed by A.O. on **13/02/2021**. 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. **(31/3/2021)**.

Or

before completion of assessment. **(13/2/2021)**.{*whichever is earlier*}

However, Mr. X submitted return on **15/2/2021**. Therefore, return submitted by Mr. X is not valid.

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

Readers Note:
20.20 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 6

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:

20.21 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;
- any arithmetical error in the return or
 - any incorrect claim, if such incorrect claim is apparent from any information in the return;
 - 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;
 - disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
 - 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
 - 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.

Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;

- (b) the tax, interest and fee shall be computed on the basis of the total income computed under clause (a) above;
- (c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and fee, if any, computed under clause (b) above by any tax deducted at source, any tax collected at source, any advance tax paid, **any relief allowable under section 89 [Amendment made by Finance Act, 2019 w.e.f.01.09.2019]**, any relief allowable under an agreement under 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax, interest and fee;
- (d) 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;
- (e) 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, interest or fee 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-

- of an item, which is inconsistent with another entry of the same or some other item in such return;
- in respect of which, information required to be furnished to substantiate such entry, has not been furnished;
- 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) Notwithstanding anything contained in section 143(1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under section 143(2).

Provided that the provisions of this sub-section shall not apply to any return furnished for the assessment year commencing on or after the 1st day of April, 2017.

Practical 7

The assessee submitted the income tax return for A.Y. 2018-19 declaring total income at Rs. 8,02,000. This return was submitted u/s 139(4) of the Act. The CPC, Bangalore, while processing the said return found following issues:

Sr. No.	Particulars
(a)	While computing income under head “PGBP”, interest income of Rs. 33,000 was reduced declaring that it shall be offered under the head “IFOS”, however, assessee failed to include such income under the head “IFOS”.
(b)	Depreciation on computers were claimed at 60% instead of 40%. Depreciation claimed on computers was Rs. 30,000.
(c)	Claimed set off of business loss brought forward Rs. 1,02,000 pertaining to A.Y. 2017-18. The income tax return for the said A.Y. was submitted under section 139(4) of the Act.
(d)	His case was subject to audit under section 44AB(a). The auditor, in tax audit report, has made a remark that cash payment of Rs. 34,000 has been made for repairing of machine on a single day to Brahmani Engineering. However, assessee failed to add back while computing income under the head “PGBP”
(e)	Claimed deduction of Rs. 13,05,000 under section 80-IAC of the Act
(f)	Bank interest income of Rs. 88,000 appearing in Form no. 26AS on which tax has been deducted but assessee failed to include the same in the income tax return.

You are required to compute total income to be processed by CPC, Bangalore.

Solution

Sr. No.	Particulars	Rs.	Rs.
	Returned Income		8,02,000
(a)	Interest Income	33,000	
(b)	Excess depreciation	10,000	
(c)	Set off of brought forward business loss pertaining to A.Y.2017-18	1,02,000	
(d)	Disallowance under section 40(A)(3) - Cash Payment	34,000	
(e)	Claimed deduction of Rs. 13,05,000 under section 80-IAC of the Act	Nil	
(f)	Bank interest income of Rs. 88,000 appearing in Form no. 26AS on which tax has been deducted but assessee failed to include the same in the income tax return.	Nil	1,79,000
	Total Income processed by CPC		9,81,000

Reader's Note:

20.22 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.

20.23 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.

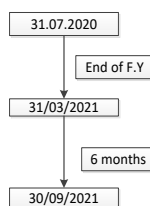
Practical 8

Mr. Joy filed return for the **A.Y. 2020-21** on **31.07.2020**, A.O. served a notice u/s 143(2) requiring him to produce evidence. The notice was dated **30/09/2021** but served to Mr. Joy on **10/10/2021**. 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 **30/9/2021**, while in present case, it has been served on **10/10/2021**. Therefore, the 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. 2020-21** shall be considered as null and void.

Readers Note:**Practical 9 Section 143(1) – section 143(2)**

Mr. X filed return for **A.Y.2020-21** on **15/07/2020** declaring total income of Rs.3,51,000. A.O. issued intimation u/s 143(1) determining total income at Rs. 3,61,000 and raised a notice of demand of Rs.1,200. Intimation was served to assessee on **10/12/2020**. Assessee met demand in full on **12/12/2020**. A.O. thereafter served notice u/s 143(2) on **15/09/2021** 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 10 **SECTION 143(1)–Section 143(1D)–Section 143(3)–GEB's Case**

Mr. X, filed return for **A.Y. 2020-21** on **31/08/20**. He received notice for scrutiny on **31/12/20** requiring him to produce books of accounts on **15/01/21**. 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). Advise assessing officer.

Solution**Position before amendment made by Finance Act, 2017**

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, 2017

Section 143(1D), however has been amended and it states that the return shall be processed under section 143(1) even though notice under section 143(2) has been issued.

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

Readers Note:
20.24 | **SPECIAL PROCEDURE FOR ASSESSMENT IN CASE OF**
Section:- 143(3)

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

20.25 REASONS ENABLING E-ASSESSMENT

Section:- 143(3A) to 143(3C)

Section 143(3A)

The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) so as to impart greater efficiency, transparency and accountability by—

- (a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing a team-based assessment with dynamic jurisdiction.

Section 143(3B)

The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2020.

Section 143(3C)

Every notification issued under sub-section (3A) and sub-section (3B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

20.26 BEST JUDGMENT ASSESSMENT

Section:- 144

When Best Judgment assessment can be made?

Under Section 144	Under Section 145(2)
<i>Where a person <u>fails to</u></i> (i) <u>Furnish</u> a return <u>u/s. 139</u> or (ii) Comply with all the terms of <u>notice</u> issued <u>u/s. 142(1)</u> or (iii) Comply with a <u>direction</u> issued u/s. 142(2A) i.e. <u>Audit</u> of accounts (iv) Comply with all the terms of a <u>notice</u> issued <u>u/s. 143(2)</u>	(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.**

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

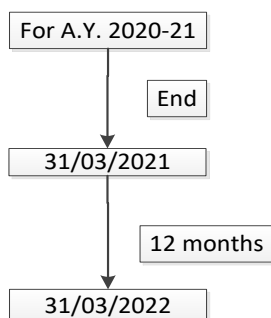
Section:- 153(1), 153(4) and Explanation 1 to Section 153

1. Time limit for completion of assessment under section 143(3)/ 144

Within 12 months **from** the end of relevant assessment year.

- 2. Time limit mentioned at Sr. No. 1 and 2 shall be extended by further twelve months, in case where reference is made to TPO under section u/s 92CA (1).

Let's take an illustration that for the assessment year **2020-21**, 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 11

For the **A.Y. 2020-21**, the case of Good Better Best Private Ltd. was selected under scrutiny. During scrutiny proceedings, the Assessing Officer, on **15-03-2022**, 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 **30-04-2022**. 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
 12 months from the end of Assessment Year
 End of the Assessment year + 12 months
 31.3.2021 + 12 months
 31.03.2022

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.)

31.03.2022 + 46 days

16.05.2022

Step 3: Minimum Time Limit

Day on which authority can reassume jurisdiction + 60 days

30.04.2022 + 60 days

29.06.2022

Step 4: Effective Time Limit

Step 2 or Step 3 whichever is later

29.06.2022

Readers Note:**20.28 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**

20.29 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 u/s 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 section 139).
(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 u/s 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 section 147.
(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).

20.30 PROTECTIVE ASSESSMENT

- There is no specific provision in the Indian Income-tax Act for such a thing as protective assessment.
- But it is permissible to make a protective assessment, where owing to litigations it is not possible to establish finally as to who is the proper assessee.
- The reason for protective assessment is that if the income-tax authorities are precluded from making an alternative assessment, then, by the time the disputes are over, the real assessment would be barred.
- But while a protective assessment is permissible, **protective recovery of tax cannot be allowed.**

Practical 12

There is a dispute with regard to ownership of house property between Mr. A and Mr. B. Dispute is pending before ordinary court. What are the courses of action available with A.O. for assessing income from disputed property?

Solution

- Alternative-1

A.O. can assess house property income in the hands of Mr. A as well as Mr. B on protective basis. However he cannot collect tax pertaining to income under the head house property.

- Alternative-2

Notice for income escaping assessment u/s 148 can be issued at any time in order to give effect to a finding given by any court in any proceedings under any law.

Readers Note:

20.31 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,

- amend any order passed by it under the provisions of this Act ;
- amend any intimation or deemed intimation under sub-section (1) of section 143.
- amend any intimation issued under sub-section (1) of section 200A
- 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,

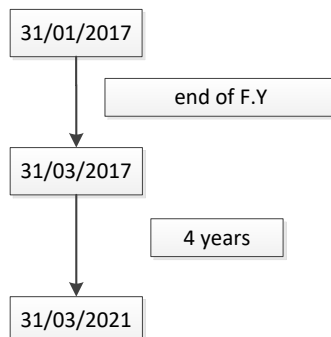
- (a) making the amendment; or
- (b) refusing to allow the claim.

Practical 13

For **A.Y. 2015-16**, Assessing Officer passed the order u/s 143(3) on **31/01/2017**. 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

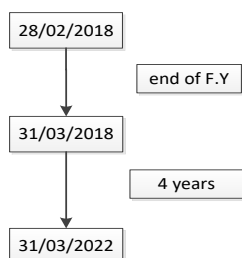
**Readers Note:****Practical 14**

For **A.Y. 2016-17**, Assessing Officer completed the assessment under u/s 143(3) on **28/02/2018**. 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.

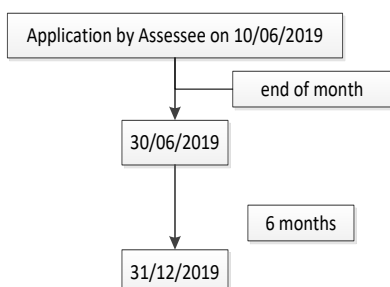
Assuming that the assessee submitted application for rectification on **10/06/2019**, what shall be the maximum time limit by which the assessing officer shall dispose of this application?

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**, assessee 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 **31/03/2022**.

(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 **31/12/2019**.

Readers Note:

Practical 15

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 16

In an order of assessment for the **A.Y. 2014-15**, the assessee noticed a mistake for which application u/s 154 was moved and the order was rectified. Subsequently, the assessee moved further application for rectification u/s 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:

21 – APPEALS

21.1 APPELLATE TRIBUNAL

Section:- 252

- The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal.
- A judicial member shall be a person-
 1. who has held a judicial office in the territory of India at least for ten years; or
 2. who has been a member of the Indian Legal Service and has held a post in Grade II of that service or any equivalent or higher post for at least three years; or
 3. who has been an advocate for at least 10 years.
- An accountant member shall be a person -
 1. who has been in the practice of accountancy as a Chartered Accountant at least for ten years; or
 2. who has been a member of the Indian Income-tax Service. Group A and has held the post of Additional Commissioner of Income Tax or any equivalent or higher post for at least three years.
- The Central Government shall appoint—
 - (a) a person who is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court; or
 - (b) one of the Vice-Presidents of the Appellate Tribunal, to be the President thereof.

21.2 APPEALS TO TRIBUNAL

Section:- 253

- **Appealable Orders**
 - (A) **Appeal by assessee [Section 253(1)]**
 - An order passed by a Commissioner (Appeals) u/s 154, section 250, section 271, section 271A, section 271J or section 272A or
 - An order passed by a Commissioner under section 12AA or u/c (vi) of section 80G(5) or under section 263 [or section 271 (w.e.f. 1-6-2002)] or under sections 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A
 - An order passed by Assessing Officer under section 115VZC(1)-Expulsion from Tonnage Taxation Scheme.
 - An order passed by an Assessing Officer under section 143(3) or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order.
 - An order passed by the prescribed authority under Section 10(23C) (iv) or (v) or (vi) or (via).
 - (B) **Appeal by Commissioner[Section 253(2)]**
Order passed by Commissioner (Appeals) under section 154 or 250.
- **Time limit for presenting appeal [Section 253(3)]**
Within 60 days of the date on which order sought to be appealed against is communicated to the assessee/Commissioner.

- **Form of Appeal, Filing Fees, Signing of Form and Documents to be submitted [Section 253(6)]**
 - The appeal shall be presented in Form No. 36.
 - 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. 36- 2 copies
 - (b) Order appealed against – 2 copies (including one certified copy)
 - (c) Order of Assessing Officer – 2 copies
 - (d) Grounds of appeal before first appellate authority – 2 copies
 - (e) Statement of facts filed before first appellate authority – 2 copies
 - (f) In case of appeal against penalty order -2 copies of relevant assessment order.
 - (g) In case of appeal against order under section 143(3), read with section 144A - 2 copies of the directions of the Deputy Commissioner under section 144A.
 - (h) In case of appeal against order under section 143(3), read with section 144B - 2 copies of the draft assessment of the Deputy Commissioner under section 144B.
 - (i) In case of appeal against order u/s 143(3), read with section 147-2 copies of original assessment order, if any.
 - (j) Triplicate copy of challan for payment of fee.
 - Above documents shall be accompanied by a prescribed fee as follows:

Particulars	Rs.
(1) Assessed total income of Rs.1 lakh or less	500
(2) Assessed total income is more than Rs. 1 lakh but less than Rs.2 lakh	1,500
(3) Appeals involving total income more than Rs.2 lakh	1% of the assessed income subject to a maximum of Rs.10,000
(4) Miscellaneous applications under 254(2)	50
(5) Stay petitions [Section 253(7)]	500
(6) Any other matter	500

- **Time limit for filing of cross-objections [Section 253(4)]**

On receipt of notice from the Registrar of Tribunal intimating that an appeal against the order of CIT (A) has been preferred under section 253(1) or 253(2) by the other party, the Assessing Officer or the assessee may file a memorandum of cross-objections within 30 days from the date of receipt of such notice.

It shall be in Form No. 36A. No fee is required to be paid for filing such memorandum of cross objection.

Once memorandum of cross-objection is filed within the time limit, it shall be disposed of by the Tribunal as if it were an appeal.

- **Condonation of delay in filing appeal [Section 253(5)]**

The Tribunal may admit an appeal / memorandum of cross-objection after the expiration of the prescribed period, if it is satisfied that there was sufficient cause for not presenting it within that period.

21.3 ORDERS OF APPELLATE TRIBUNAL

Section:- 254

- The Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit.
- The Tribunal shall send a copy of any order passed to the assessee and to the Principal Commissioner or Commissioner.

- Cost of appeal shall be at discretion of Tribunal.
- The appeal, where it is possible, shall be disposed within a period of four years from end of financial year in which appeal is filed. – **Section 254(2A)**
 - Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under section 253(1), for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order: **-First Proviso to Sec. 254(2A)**
 - Where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed: **-Second Proviso to Section 254(2A)**
 - Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee. – **Third Proviso to Section 254(2A)**

Practical 1

A petition for stay of demand was filed before ITAT by XYZ Ltd. in respect of a disputed demand for which appeal was pending before it, on which stay was granted by the ITAT vide order dated **01.01.2018**. The bench could not function thereafter till **01.02.2019** and therefore, the disputed matter could not be disposed off. The Assessing Officer attached the bank account on **16.02.2019** and recovered the amount of Rs.15 lacs against the arrear demand of Rs.25 lacs. The assessee requested the Assessing Officer to refund back the amount as it holds stay over it. The Assessing Officer rejected the contention of the assessee. Now the assessee seeks your opinion.

Solution

As mentioned in the first, second and third proviso to section 254(2A), the stay granted by the Appellate Tribunal shall stand vacated after the period of 365 days, inspite of the delay is not due to assessee.

In the present case, the period of 365 days has expired on **31.12.2018**, after which date the order of stay stands vacated. Accordingly, the recovery of Rs.15 lacs against the arrear demand of Rs. 25 lacs made by the Assessing Officer is a valid action.

Readers Note:

21.4 FEW CASE STUDIES WITH REGARD TO RESTRICTION ON POWER OF TRIBUNAL

Section:-

The Tribunal cannot grant relief larger than what was prayed for in the appeal—**CIT v. Krishna Mining Co. (AP)**.
Tribunal is not authorised to take back the benefit granted to the assessee by the Assessing Officer -
Hukumchand Mills Ltd. v. CIT 63 ITR 232 (SC).

21.5 RECTIFICATION OF MISTAKES BY TRIBUNAL

Section:- 254(2)

- The Tribunal may, at any time within 4 years from the date of the order (with effect from 1st June, 2016, six months from the end of the month in which the order was passed), with a view to rectifying any mistake apparent from the record, amend any order passed by it and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer.
- If, however, an amendment has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, it shall not be made unless the Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

Practical 2

Give few examples of “Mistake apparent from record” which can be rectified by Tribunal?

Solution

- Arithmetical error
- Subsequent Supreme Court decision
- Retrospective Amendment
- Non-consideration of Judgment cited before it
- Non-disposal of grounds of appeal
- Procedural lapse on the part of Tribunal like failure to refer matter to president when there is a disagreement between Accountant Member and Judicial Member
- Overlooking the material facts on record

Readers Note:

Practical 3

Can Tribunal Review its own order? Or Can Tribunal Re-decide / recall the matter?

Solution

On the analysis of various judgments of High Courts and the Supreme Court, the following principles emerge with regard to the powers of the Tribunal to rectify and review its own order:

1. The power of the Tribunal under section 254(2) is confined to rectifying any mistake apparent from the record.
2. If the error or mistake is one, which could be established only by long-drawn arguments or by way of process of investigation and research, it is not a mistake apparent from the record.
3. The Tribunal cannot re-decide the matter and it has no power to review its order.
4. Where the Tribunal has over-looked the relevant material on record, there would be an error apparent from record, which can be rectified by setting aside the order for fresh consideration.

Readers Note:

21.6 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. 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 4

Mahakuteshwar Oil Industries was a manufacturer of edible oil. For the **A.Y. 1998-99**, 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.50 lakhs, even though the same has been enhanced by the Commissioner (Appeals) in excess of 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:**21.7 | PRODUCTION OF ADDITIONAL EVIDENCE BEFORE INCOME TAX APPELLATE TRIBUNAL**

Rule:- Rule 29 of Appellate Tribunal Rules, 1963

The parties to the appeal shall not be entitled to produce additional evidence, either oral or documentary, before the Tribunal. However, the following are the exceptions to this rule –

- (a) where the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause; or
- (b) where the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by the them.

In case of (a) above, the Tribunal may allow such document to be produced or witness to be examined or affidavit to be filed.

In case of (b) above, the Tribunal may allow such evidence to be adduced.

However, in both cases, the Tribunal should record its reasons in writing.

21.8 | APPEAL TO HIGH COURT**Section:- 260A**

Who can file appeal	Assessee or Chief Commissioner / Commissioner
Order against which appeal to High Court is possible	Any order passed in appeal by the Appellate Tribunal, if the High court is satisfied that the case involves a substantial question of law .
Time limit for filing appeal	120 days from the date on which order of Tribunal is received by the assessee or the Chief Commissioner or Commissioner. Further, the High Court may admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within 120 days.
Other important issues	• The appeal shall be in form of a memorandum of appeal, precisely stating the substantial question of law involved in the appeal. • Where the High Court is satisfied that a substantial question of law is involved, it should formulate the question. • Where the High Court delivers a judgement, effect shall be given to order passed by AO on basis of certified copy of judgement. • The appeal to be heard only on the question to be formulated (however, the Court has the power to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulate by it, if it is satisfied that the case involves such question). • High Court can award such costs as it deems fit. • The High Court may determine any issue which- ➤ has not been determined by the Appellate Tribunal; or ➤ has been wrongly determined by the Appellate Tribunal. • The appeal is to be heard by a bench of not less than 2 judges of the High Court and decision will be in accordance with opinion of majority of judges. • Where judges are equally divided in their opinions, the case on the point on which they differ shall be heard by one or more other judges of the High Court. • The section 260A(7) provides that the provisions of the Code of Civil Procedure, 1908 relating to appeals to the High Court shall apply in the case of appeals under this Act.

Practical 5

An appeal may lie before High Court only when “Substantial question of law” is involved in the matter. In this context, explain the meaning of term “Substantial question of law”.

Solution

The expression ‘substantial question of law’ has not been defined anywhere in the statute.

But it has acquired a definite meaning through various Court decisions. As per these decisions, five tests to be carried out.

The tests are:

- (1) Whether directly or indirectly it affects substantial rights of the parties,
- (2) the question is of general public importance,
- (3) whether it is an open question in the sense that issue is not settled by the pronouncement of the Supreme Court or Privy Council or by the Federal Court,

- (4) the issue is not free from difficulty, and
- (5) it calls for a discussion for alternative view.

Readers Note:

Practical 6

"The High Court cannot interfere with the factual finding recorded by the lower authorities and the tribunal, without any valid reasons"-Comment.

Solution

- The Income-tax Appellate Tribunal is a final fact finding authority. Such finding of fact cannot be disturbed by the High Court in exercise of its powers under section 260A.
- However, in following cases, finding of fact recorded by Tribunal can be interfered with by the High Court under section 260A.
 - If such finding were without evidence or material, or
 - If the finding is contrary to the evidence, or is perverse or
 - If there is no direct nexus between conclusion of fact and the primary fact upon which that conclusion is based.
- In **CIT vs. P. Mohanakala (2007) 291 ITR 278** and **Commissioner of Agricultural income-tax vs. M.N.Moni (2007) 291 ITR 387**, the Supreme Court observed that the High Court had set aside the factual findings of the lower authorities and the Tribunal without any valid reason. The Apex Court further held that the findings of fact could not be interfered with by the High Court without carefully considering the facts on record, the surrounding circumstances and the material evidence.

Readers Note:

Practical 7

Does the High Court have the inherent power under the Income-tax Act, 1961 to review its own order on merits?

Solution

- The Supreme Court in case of **CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112** concurred with the assessee's submission that High Courts being courts of record under article 215 of the Constitution of India, the power of review would inhere in them.
- Further, while dealing with power of review of writ petitions filed under article 226, the Supreme Court, in another case, had observed that there is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.
- The Supreme Court further observed that it is clear on a cursory reading of section 260A(7), that it does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

Readers Note:

21.9 THE IMPACT OF SUPREME COURT DECISION IN CASE OF SATISH SHAH, MONETARY LIMITS FOR NOT FILING APPEAL AND THE PROVISIONS OF SECTION 268A.

Section:- 268A

Department accepted decision rendered by High Court in one case and didn't file an appeal to Supreme Court. Later, the high court rendered similar decision in another case following earlier decision. Supreme Court in case of **UOI vs. Satish Shah 249 ITR 221** held that the department having accepted earlier judgment is not entitled to challenge the decision in later case before Supreme Court.

The Central Board of Direct Taxes have issued instructions from time-to-time directing departmental officers not to file an appeal if the tax effect is less than the monetary limit prescribed by it. At present following monetary limits are in force:-

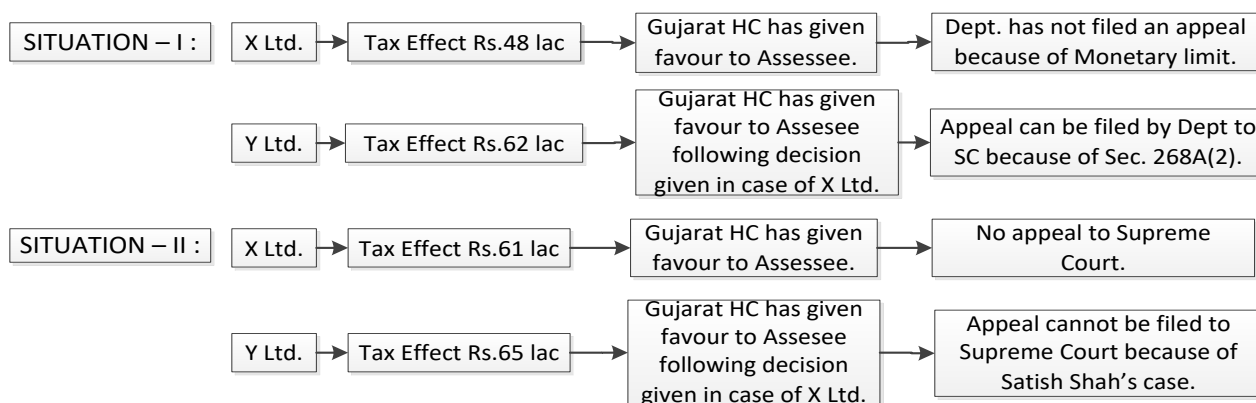
Limit

1. Appeal to Tribunal	-	Rs. 20,00,000
2. Appeal to High Court	-	Rs. 50,00,000
3. Appeal to Supreme Court	-	Rs. 1,00,00,000

With a view to protecting revenue's right to file an appeal, a new section 268A has been inserted with retrospective effect from April 1, 1999 which reads as under:

- (1) The Board may issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit. Such fixing monetary limit is to be for the purpose of regulating filing of an appeal or an application for reference by any income-tax authority under the provisions of the Act.
- (2) Where an income-tax authority has not filed an appeal or application for reference on any issue in the case of an assessee for any assessment year, due to above-mentioned order/instructions / direction of the Board, such authority shall not be precluded from filing an appeal or an application for reference on the same issue in the case of-
 - a. The same assessee for any other assessment year or
 - b. Any other assessee for the same year or any other assessment year
- (3) Where no appeal or application for reference has been filed by an income-tax authority pursuant to abovementioned orders / instructions / directions of the Board, it shall not be lawful for an assessee to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or an application for reference in respect of any case.
- (4) The Appellate Tribunal or Court shall have regard to the above-mentioned orders / instructions / directions of the Board and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

Combined effect of monetary limit, Section 268A and Satish Shah's Case.



Circular No. 3/2018, Dated 11-7-2018 and F. No. 279/Misc. 142/2007-ITJ (Pt), Dated 20-8-2018**Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court -**

Circular No. 21/2015 dated 10.12.2015 specified monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court.

In supersession of the above Circular, it has been decided by the CBDT that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

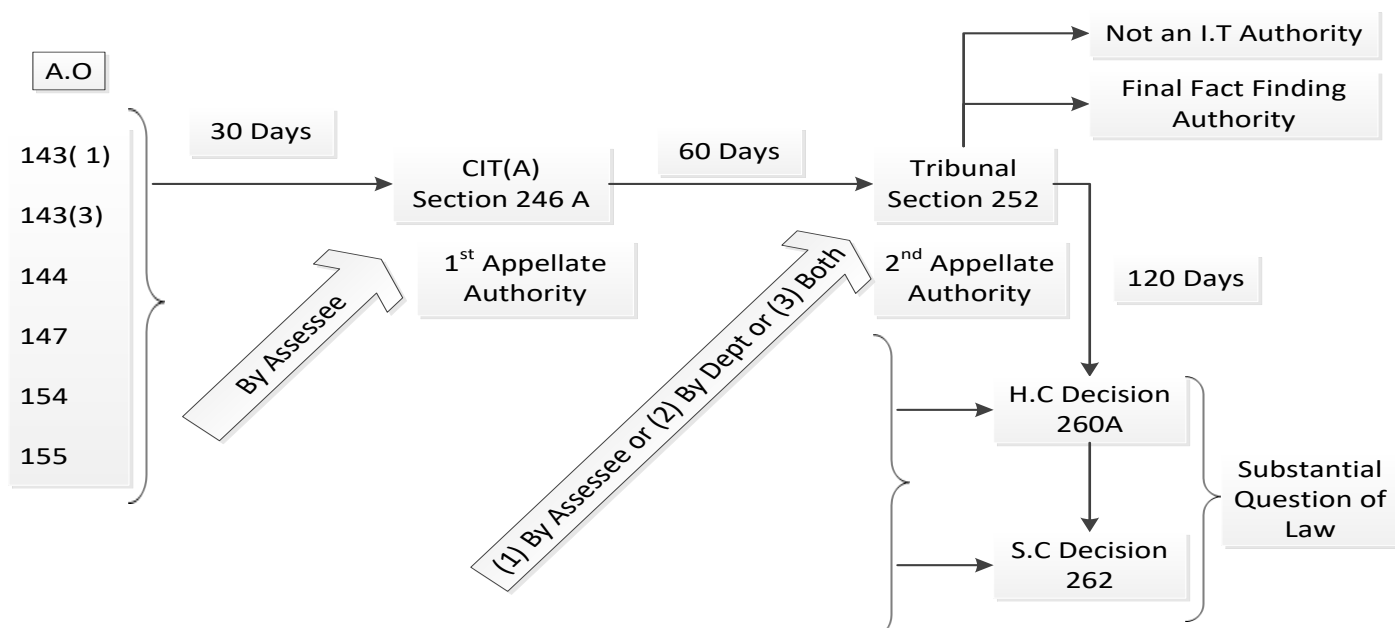
Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

Sr. No.	Appeals/ SLPs in Income-tax matters	Monetary Limit (Rs.)
1)	Before Appellate Tribunal	20,00,000
2)	Before High Court	50,00,000
3)	Before Supreme Court	1,00,00,000

Cases where adverse judgments should be contested on merits even if tax effect is less than the specified monetary limits

Adverse judgments relating to the issues enumerated hereunder should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect:

- Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
- Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- Where Revenue Audit objection in the case has been accepted by the Department, or
- Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.
- Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).
- Cases where prosecution has been filed by the Department and is pending in the Court.

Summary Chart of provisions relating to Appeals

22 – REVISION BY PRINCIPLE COMMISSIONER OR COMMISSIONER

22.1 REVISION OF ORDERS PREJUDICIAL TO THE INTEREST OF REVENUE

Section:- 263

Orders which may be revised	Any order passed by the Assessing Officer which the Principal Commissioner or Commissioner considers erroneous in so far as it is prejudicial to the interests of the revenue.
Explanation 1(a) to Section 263	For the purpose of this section, order passed by the Assessing Officer shall include: (i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A; (ii) an order made by Jt. CIT in the capacity of A.O.
Explanation 1(b) to Section 263	For the purpose of this section, "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner.
Can order which are the subject-matter of appeal be revised? -Explanation 1(c) to section 263	In the case of orders which have been the subject-matter of appeal, the Commissioner can use his power under this section and revise the orders in relation to such matters as had not been considered and decided in such appeal.
Explanation 2 to section 263 [Inserted by FA 2015 with effect from 01.06.2015]	For the purposes of section 263, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,— (a) the order is passed without making inquiries or verification which should have been made; (b) the order is passed allowing any relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.
Procedure to be followed	- First, the Commissioner may call for and examine the record of any proceeding under the Act. - If the Commissioner finds any order passed by the Assessing Officer to be erroneous and prejudicial to the interests of the revenue, he must give an opportunity to the assessee of being heard. - He must also make or cause to be made such enquiry as he deems necessary - Thereafter he may pass such revision order as the circumstances of the case justify (including an order enhancing or modifying the assessment, or canceling the assessment and directing a fresh assessment)
Time limit for passing revision order	Two years from the end of the financial year in which the order sought to be revised was passed (however, there is no time limit for passing an order to give effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court).

22.2 REVISION IN FAVOUR OF ASSESSEE**Section:- 264**

Orders which may be revised	Orders other than orders to which section 263 applies passed by an authority subordinate to the Commissioner
On whose motion is revision possible	Either on the Commissioner's own motion or on an application by the assessee for revision
Procedure to be followed	- Once revision proceedings have been initiated, the Commissioner may call for and examine the record of any proceeding under the Act in which the order to be revised has been passed. - He must then make or cause to be made such enquiry as he deems necessary. - Thereafter, he may pass such revision order as the circumstances of the case justify. However, the order passed should not be prejudicial to the assessee.
Time Limit	- Commissioner while acting on his motion: One year from the date of original order. - Where revision has been initiated by assessee, the application must be made within one year from the date on which the order in question was communicated to the assessee or the date on which he otherwise came to know of it, whichever is earlier. However, the Commissioner can admit a belated application if the assessee was prevented by sufficient cause from making the application within time. - Where the application is made by the assessee, the Commissioner is required to pass an order within one year from the end of the financial year in which the application is made.
Cases where orders cannot be revised. Section 264(4)	- Where an appeal lies to the First or Second appellate authority but has not been made and the time within which the appeal may be made has not expired, or in the case of an appeal to the Commissioner (Appeals) or the ITAT, the assessee has not waived his right of appeal; or - Where the order is an appeal before the Commissioner (Appeals) or the ITAT.

22.3 DOCTRINE OF PARTIAL MERGER VS. TOTAL MERGER

- Doctrine of partial merger:**

This doctrine holds good for the following sections:

Section	Relevant Provision
Third proviso to Section 147	Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.
Section 154(1A)	Similar restriction like third proviso to section 147, while carrying out rectification of mistake apparent from record.
Explanation 1(c) to Section 263(1)	Where any order passed by the Assessing Officer had been the subject matter of any appeal, the powers of the Principal Commissioner or Commissioner u/s 263(1) shall extend to such matters as had not been considered and decided in such appeal.

- Doctrine of complete merger:**

This doctrine is relevant for section 264 of the Act.

As per the provisions of section 264(4) of the Act, the Principal Commissioner or Commissioner shall not revise the order passed by the subordinate authority, where such order has been made the subject of an appeal to CIT(A) or to the Appellate Tribunal.

23 – ASSESSMENT ON REMAND

24 – INCOME TAX AUTHORITIES AND THEIR POWERS

24.1 POWER REGARDING DISCOVERY, PRODUCTION OF EVIDENCE

Section:- 131

Assessing Officer, Joint Commissioner of Income Tax, Commissioner of Income Tax (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel shall have the following powers as are vested in a Court under the Code of Civil Procedure, 1908

- Discovery and inspection;
- Enforcing attendance of any person, including any officer of a banking company and examining him on oath;
- Compelling production of books of accounts and other documents; and
- Issuing commissions

The authority mentioned above may impound and retain books and documents in its custody for such period as it thinks fit.

However, the Assessing Officer/ Assistant director/ Deputy Director shall not retain books/ documents

- without recording reasons for doing so, or
- for a period exceeding 15 days (exclusive of holidays) without prior permission of Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director of Income Tax.

24.2 POWER TO CALL FOR INFORMATION

Section:- 133

The Assessing Officer, Joint Commissioner, Commissioner (Appeals) may require to furnish the following details:

Sub- Section	Assessee	Information
(1)	Firm	Names, addresses of the partners of the firms and their respective shares.
(2)	HUF	Names, addresses of the manager and the members of the family
(3)	Trustee, guardian, agent	Names of the persons for or of whom he is trustee, guardian or agents and their addresses
(4)	Any assessee	Name and addresses of persons to whom the following payments are made exceeding Rs. 1,000 or such higher amount as may be prescribed - Rent, - interest, - commission, - royalty, - brokerage, - annuity not being taxable under the head "Salaries"
(5)	Broker, agent or any person concerned in the management of stock or commodity exchange	Names and addresses of all persons to whom any sum has been paid or received for transfer by way of sale, exchange or otherwise of assets together with particulars of all such payments and receipts.
(6)	Any person, including a banking company or any officer thereof.	Statements of accounts and affairs verified in a specified manner in relation to such matters or points as, in the opinion of the authority will be useful for or relevant to any enquiry or proceedings under the Act.

However, the powers referred to in section 133(6) may also be exercised by the Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director and the Principal Commissioner or Commissioner or **the Joint Director or Deputy Director or Assistant Director** (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017).

Provided further that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner **other than the Joint Director or Deputy Director or Assistant Director** (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017) without the prior approval of the Principal Director or Director or, as the case may be, the Principal Commissioner or Commissioner.

24.3 POWER TO SURVEY

Section:- 133A

- Income Tax authority who has been empowered to conduct survey**

Principal Commissioner, Commissioner, Joint Commissioner, Principal Director, Director, Joint Director, Assistant Director, Deputy Director and Assessing Officer and Tax Recovery Officer.

Three types of survey abovementioned authority can conduct

1. Survey in connection with business or profession
2. Survey in relation to TDS / TCS
3. Survey in connection with function, ceremony or event.

- Type -1 :- Survey in connection with business or profession [Section 133A(1)]**

(i) Place of survey:

- (a) Any place within the limits of the area assigned to the income tax authority,
 - (b) Any place occupied by any person in respect of whom the income tax authority exercises jurisdiction,
 - (c) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,
- at which a business or profession or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or profession or **of such activity for charitable purpose** (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017)

Explanation.—For the purposes of this sub-section, a place where a business or profession or activity for charitable purpose is carried on shall also include any other place, whether any business or profession or **activity for charitable purpose** is carried on therein or not, in which the person carrying on the business or profession or **activity for charitable purpose** states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession or **activity for charitable purpose** are or is kept. (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017)

(ii) Time to enter the place of survey:-

Place of Survey	Time of Survey
Place of business or profession	During the hours at which such place is open for the conduct of business or profession
At any other place	Only after sunrise and before sunset.

(iii) Rights of the Income tax Authority

- (a) Inspect books of accounts or other documents available at such place and impound and retain in his custody books of account or other documents inspected by him after recording his reasons for so doing. However, such books of account or other documents shall not be retained for more than 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner of Income-tax or the Principal Director General or Director-General or Principal Commissioner or the Commissioner or the Principal Director or the Director.
- (b) make inventory of the cash, stock, or other valuable article or thing found therein.
- (c) Record statement of any person, which may be useful or relevant to any proceedings under this Act.
- (d) Place marks of identification on books of accounts/ other documents inspected by the I. T. Authority

(iv) Duties of the proprietor, employee or any other person available at the time of survey:

Afford necessary facility to the surveying official:

- (a) To inspect such books of accounts and other documents as they require and which may be available at such place.
- (b) To check or verify cash, stock or other valuable article or thing which may be found therein.
- (c) Furnish such information as he may require which may be helpful for or relevant to any proceeding under the Act.

Practical 4

The Assessing Officer within his jurisdiction surveyed a popular Cyber Cafe at 12 o'clock in night for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. The Cyber Cafe is kept open for business every day between 2 p.m. and 2 a.m. The owner of the Cyber Cafe claims that the Assessing Officer could not enter the cafe in late night.

Solution

The Assessing Officer is empowered under section 133A to enter any place of business of the assessee within his jurisdiction only during the hours at which such place is open for the conduct of business.

In the case given, the cyber cafe is open from 2.00 p.m. to 2.00 a.m. for the conduct of business. The Assessing Officer entered the cyber cafe at 12 o'clock in the night which falls within the working hours of the cyber cafe. Therefore, the claim made by the owner to the effect that the Assessing Officer could not enter the cyber cafe at late night is not in accordance with law.

Readers Note:

Practical 5

Can survey proceedings be continued after business hours?

Solution

Where survey is conducted at business premises, entry into the business premises must be during business hours but survey operations can continue after business hours. - **N.K. Mohnot Vs. Dy. CIT (Mad) 215 ITR 275.**

Readers Note:

Practical 6

Examine whether the following action initiated / taken by the Income-tax Authorities are proper and valid under the provisions of the Act.

The Assessing Officer, within his jurisdiction, surveyed the residential house of an assessee who is engaged in money lending business therefrom on 10.5.2016 (working day) at 4.30 p.m.

Solution

The Assessing Officer, under section 133A, is empowered to conduct a survey on the business premises of an assessee within his jurisdiction on any working day after sunrise but before sunset. In the present case, the assessee was engaged in money lending business from his residence which shall be construed as business premises and therefore, the action of the Assessing Officer to conduct survey on residential premises on a working day at 4.30 p.m. is correct.

Readers Note:

- **Type -2 :- Survey in relation to TDS / TCS [Section 133A (2A)]**

- (i) **Purpose of Survey**

- For verifying that tax has been deducted or collected at source in accordance with the provisions of Income Tax Act.

- (ii) **Place of survey:**

- (a) any office, or any other place where business or profession is carried on, within the limits of the area assigned to income tax authority or
 - (b) any place in respect of which income tax authority is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept.

- (iii) **Time to enter the place of survey**

- Only after sunrise and before sunset.

- (iv) **Rights of the Income tax Authority**

- (a) Record statement of any person, which may be useful or relevant to any proceedings under this Act.
 - (b) Place marks of identification on books of accounts/ other documents inspected by the I. T. Authority

- (v) **Duties of the deductor, the collector or any other person who may at that time and place be attending in any manner to such work**

- (a) to afford income tax authority the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and
 - (b) to furnish such information as income tax authority may require in relation to such matter.

- **Type-3 :- Survey in connection with function, ceremony or event. [Section 133A (5)]**

Where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event,

the income-tax authority is of the opinion that it is necessary or expedient so to do,

he may, at any time after such function, ceremony or event,

require the assessee by whom such expenditure has been incurred or any person who, in the opinion of the income-tax authority, is likely to possess information as respects the expenditure incurred,

to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act

and may have the statements of the assessee or any other person recorded

and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

• **Common Points**

- (a) The I. T. Authority has no right to remove from the place of survey any cash, stock or other valuable article or thing.
- (b) If the assessee refuses or evades, the I.T. Authority shall have all powers u/s. 131(1) to enforce compliance.

Practical 7

TDS survey was carried out at the business place of Bhambhani Industries Limited. During survey, discrepancies were noticed by the surveying official (Income Tax authority) and therefore, he

- (i) Recorded statements of director and chief accountant who were present at the time of survey;
- (ii) Placed marks of identification on books / documents wherever required;
- (iii) Passed an order to impound books of accounts/ documents for a period of 25 days.

(a) Discuss the legality of survey carried out by income tax department.

(b) Does your answer differ, if survey is in connection with verification of stock, cash and valuable article?

Solution

(a) As per provisions of section 133A(2A), action of income tax authority

- (i) is correct in recording statements of director and chief accountant
- (ii) is correct in placing marks of identification of books/ documents
- (iii) is not correct in impounding books (Readers must not that this right is not available at the time of TDS survey)

(b) If survey is in connection with verification of stock, cash etc. then income tax authority, in addition to recording statements and placing marks of identification, has right to impound books of accounts / documents. However, such books of account or other documents shall not be retained for more than 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner of Income-tax or the Principal Director General or Director-General or Principal Commissioner or the Commissioner or the Principal Director or the Director.

Therefore, action of survey official retaining books for a period of 25 days is not in accordance with law.

Readers Note:

24.4 | INQUIRY BY PRESCRIBED INCOME-TAX AUTHORITY

Section:- 133C

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.

For this purpose, the Board may make a scheme for centralised issuance of notice and for processing of information or documents and making available the outcome of the processing to the Assessing Officer. **(inserted by Finance Act, 2017 w.e.f. 1-4-2017)**



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.

25 – ASSESSMENT IN CASE OF SEARCH OR REQUISITION

25.1 ASSESSMENT IN CASE OF SEARCH OR REQUISITION

Section:- 153A (1)

1. This section has an overriding effect over section 139, 147, section 148, section 149, section 151 and section 153 of the Act.
2. In the case of any person, a search is initiated u/s 132 or requisition is made u/s 132A, the Assessing Officer shall issue a notice to such person requiring him to furnish a return of income in respect of each of the assessment years falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such **search is conducted or requisition is made**.
3. The assessee shall furnish return of income in response to the above notice within the time period specified in the notice and the provisions of the Act shall apply as if such were a return required to be furnished under section 139 of the Act.
4. The assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years.
5. Any assessment or reassessment relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search u/s 132 or making of requisition u/s 132A shall abate.
6. The income determined under this section shall be taxed at the rates or rates applicable to each of the relevant assessment years.
7. However the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.

‡ Notification No. 42/2012 dated 4.10.2012 ‡

In exercise of the powers conferred by section 153A and 153C, the Central Government has, through this notification, inserted a new Rule 112F which shall come into force from the 1st July, 2012.

The said Rule provides that the Assessing Officer is not required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, in the following cases:

- (i) where as a result of a search under section 132(1) or a requisition made under section 132A, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, whether or not he is the actual owner of the same, and
- (ii) where, such search is **conducted or such requisition is made in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30 read with section 56 of the Representation of the People Act, 1951, or where the assets so seized or requisitioned are connected in any manner to the ongoing election** in an assembly or parliamentary constituency.

However, this Rule is not applicable to cases where such search under section 132 or such requisition under section 132A has taken place after the hours of poll so notified

1. In respect of the search initiated under section 132 or the requisition made under section 132A on or after the 1st day April, 2017, the assessing officer is empowered to issue notice under section 153A and further empowered to assess or reassess total income for the aforementioned six assessment years and “for the relevant assessment year or years” (i.e. beyond six years).

The expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

However, for this purpose, following conditions must be satisfied:

- (i) Assessing officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant 4 assessment years (which are falling beyond sixth assessment years);
- (ii) the abovementioned income has escaped assessment for such year or years;
- (iii) the abovementioned income is represented in the form of asset. For this purpose, asset shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

25.2 TIME LIMIT FOR COMPLETION OF ASSESSMENT U/S 153A

Section:- 153B

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. The time limit mentioned at Sr. No. 1 and Sr. No. 2 has been modified by the Finance Act, 2017, the summary of which is as under:

Date where the last authorization for search under section 132 or for requisition under section 132A was executed	Abovementioned time limit of 21 months shall be substituted by:
During financial year 2018-19	18 months
During financial year commencing on or after 1 st April, 2019	11 onths

4. 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) **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) **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.

5. The time limit mentioned at Sr. No. 4 has been modified by the Finance Act, 2017, the summary of which is as under:

Date where the last authorization for search under section 132 or for requisition under section 132A was executed	Abovementioned time limit of 21 months at Sr. No. 4(a) shall be substituted by:	Abovementioned time limit of 9 months at Sr. No. 4(b) shall be substituted by:
During financial year 2018-19	18 months	12 months
During financial year commencing on or after 1 st April, 2019	12 months	12 months

6. The above time limit at Sr. No. 1, 2, 3 and 4 shall be extended by further twelve months when reference is made to TPO under section 92CA (1) during the course of proceedings under this chapter.
7. For the purpose of this section, the search shall be construed to have been executed only on the conclusion of the search as recorded in the last panchanama drawn. In the case of requisition u/s 132A, the requisition shall be construed as executed only on the actual receipt of the books of account or other documents or assets by the authorised officer.
8. In computing the period of limitation as above, the following shall be excluded:
 - (i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or
 - (ii) 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
 - (iii) 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
 - (iv) the time taken in re-opening the whole or any part of the proceeding or in giving an opportunity to the assessee of being re-heard under the proviso to section 129; or
 - (v) 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
 - (vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of section 245R; or
 - (vii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R; or
 - (viii) the period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in sub-section (2) of section 153A, till the date of the receipt of the order setting aside the order of such annulment, by the Principal Commissioner or Commissioner; or
 - (ix) 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

- (x) 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.

If after extending the time, the period available to the assessing officer for making an order is less than 60 days, then the remaining period shall be extended to 60 days.

Practical 1

A search was carried out at the business premises of Ms. Mansi on **10.12.2018** and it was concluded on the same day. On conclusion of search, following documents revealed representing undisclosed income/assets pertaining to various previous years, detailed as under:

Particulars of Undisclosed Income/Assets	Amount	Relevant Previous year
Unaccounted value of investment in flat	Rs.23 lakhs	2010-11
Unaccounted value of Jewellery	Rs.28 lakhs	2009-10
Loan given to a Friend in cash represented by a promissory note	Rs.15 lakhs	2011-12
Unaccounted FDRs in various banks aggregating	Rs.12 lakhs	2013-14
Unaccounted investment in shares and securities	Rs.22 lakhs	2014-15

- Mention the six assessment years for which the Assessing Officer shall issue notice under section 153 A requiring the Mansi to file the returns.
- Can A.O. issue notice under section 153A requiring Mansi to file the returns for the A.Y. **2010-11, 2011-12** and **2012-13**?
- What will be the status of assessment proceeding of A.Y. **2017-18** which is pending on the date of search?
- For the Assessment year **2016-17**, the assessment has already been completed under section 143(3) of the I.T. Act. However, appeal is pending before the CIT(A). Discuss the impact of search on appellate proceedings which are pending on the date of search.
- What is time limit for the completion of above assessments?
- The assessing officer would like to complete the assessment of **A.Y. 2019-20** on or before **31.03.2021**. Advise the Assessing Officer.
- Ms. Mansi is unwilling to file the return. What shall be the serious consequence?

Solution

(a)	P.Y.	A.Y.
(1)	12-13	13-14
(2)	13-14	14-15
(3)	14-15	15-16
(4)	15-16	16-17
(5)	16-17	17-18
(6)	<u>17-18</u>	18-19

10/12/18 → Search Date

- (b) In respect of the search initiated under section 132 on or after the 1st day April, 2017, the assessing officer is empowered to issue notice under section 153A for the assessment year(s) which fall(s) beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.
- However, for this purpose, following conditions must be satisfied:

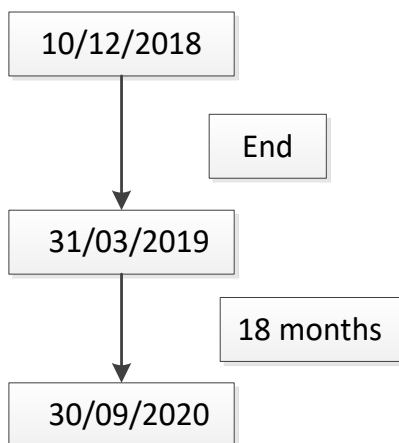
- (i) Assessing officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant 4 assessment years (which are falling beyond sixth assessment years);
- (ii) the abovementioned income has escaped assessment for such year or years;
- (iii) the abovementioned income is represented in the form of asset. For this purpose, asset shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

In the present case, four assessment years falling beyond six assessment years and corresponding escaped incomes are under:

A.Y.	Particulars of Undisclosed Income/Assets	Amount
2009-10	NO DOCUMENTS / EVIDENCE found	NIL
2010-11	Unaccounted value of Jewellery	Rs.28 lakh
2011-12	Unaccounted value of investment in flat	Rs.23 lakh
2012-13	Loan given to a Friend in cash represented by a promissory note	Rs.15 lakh
	Aggregate	Rs. 66 Lakh

Since aggregate of undisclosed income for all the four years (falling beyond six assessment years) likely to exceed Rs. 50 Lakhs, the assessing officer is empowered to issue notice under section 153A requiring Mansi to file the returns for the A.Y. **2010-11, 2011-12 and 2012-13.**

- (c) As per the provisions of section 153A, any assessment or reassessment falling within six assessment years pending on the date of search shall abate (stop). As a result thereof, the assessment proceedings for the **A.Y. 2017-18** shall abate.
- (d) As per the provisions of section 153A, only assessment or reassessment proceedings pending on the date of search shall abate and not the appellate proceeding. Therefore, CIT(A) can continue with appellate proceeding despite of search operations.
- (e) As per the provisions of section 153B, the time available for completion of assessment or reassessment in respect of each assessment year falling within six assessment years shall be **18 months** from the end of the financial year in which the last of the authorizations for **search u/s 132 was executed.**



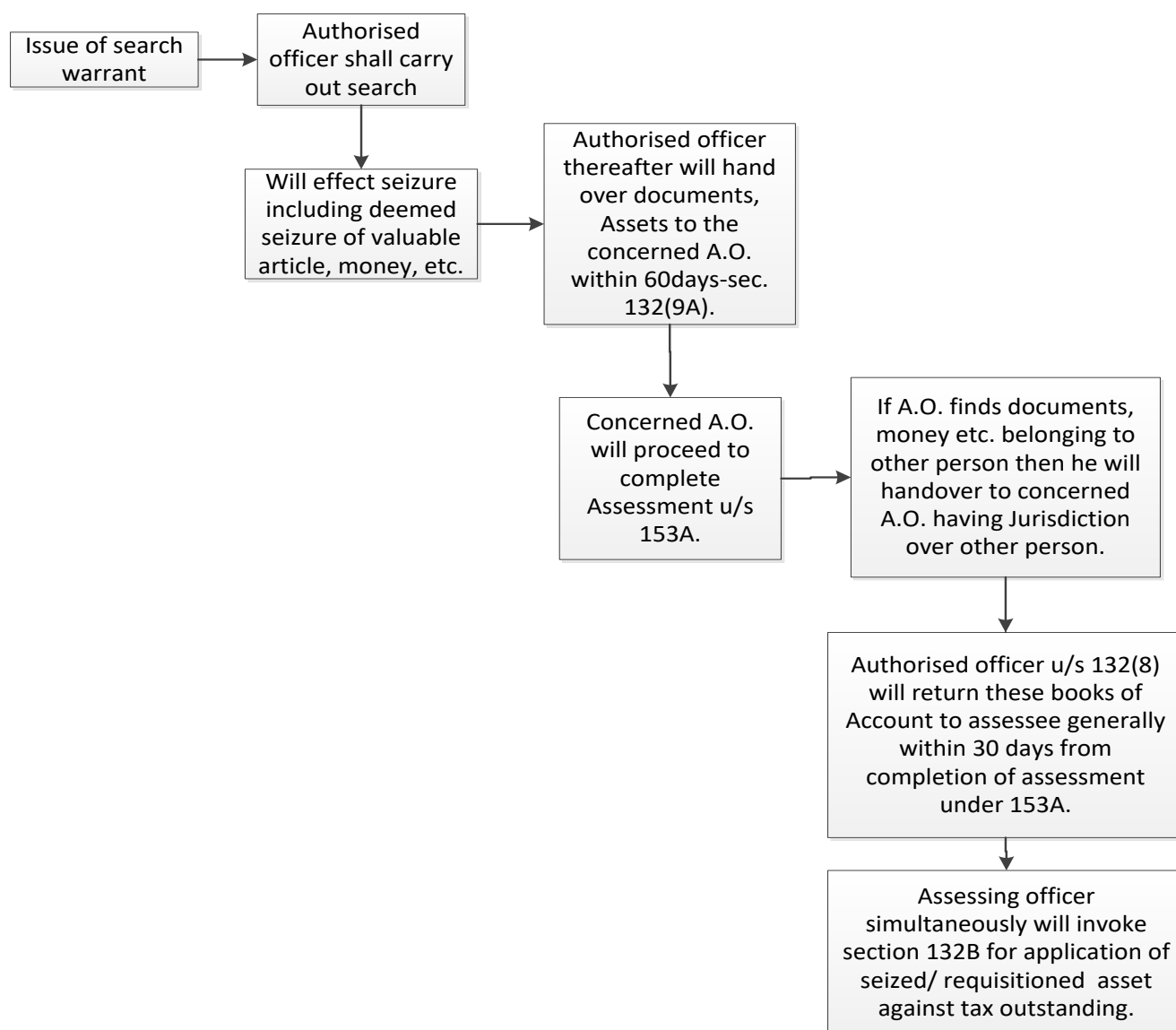
Therefore, the assessing officer shall complete the assessments in the hands of Ms. Mansi on or before **30/09/2020.**

- (f) As per the provisions of section 153B, time limit for completion of assessment for 7th A.Y. [i.e. assessment year relevant to previous year in which search is conducted] is also the same as applicable to earlier six assessment years– i.e. – **30/09/2020.** Therefore, the assessing officer is advised to adhere this time limit for completion of assessment for the **A.Y. 2019-20.**

- (g) In view of sec. 276CC, Ms. Mansi may be liable for prosecution as under
 "If a person wilfully fails to furnish in due time the return which he is required to furnish under section 153A, he shall be punishable,—
- (i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds Rs. 25 lacs, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
 - (ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine".

Readers Note:

Flow of Search and Seizure



26 - COLLECTION AND RECOVERY OF TAX

27 – TAX DEDUCTION AND COLLECTION AT SOURCE

27.1 | DEDUCTION OF TAX AT SOURCE FROM INTEREST ON SECURITIES

Section:- 193

- (A) Person liable to deduct tax at source:** - Any person responsible for paying any interest on securities to a resident is required to deduct tax at source.
- (B) Time of deduction:-** Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.
For this purpose, credit to “Interest payable account” or “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee.
For this purpose, “payment” can be in cash or by issue of a cheque or draft or by any other mode.
- (C) Rate of TDS:-** 10%
- (D) Meaning of interest on securities:** Section 2(28B) defines interest on securities. It means:
- interest on any security of Central Government or State Government
 - interest on debentures or
 - interest on other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.
- (E) No tax is deductible in respect of interest payable on the following:**
- Debentures issued by any institution or authority or any public sector company or co – operative society (including a co – operative land mortgage bank or a co – operative land development bank) notified by the Central Government.
 - Any security of the Central / State Government. However, TDS shall be made in respect of interest exceeding Rs. 10,000 during the year on 8% Savings (Taxable) Bonds, 2003 **or 7.75% Savings (Taxable) Bonds, 2018. [Inserted by the Finance Act, 2018 w.e.f. 01-04-2018]**
 - Any listed security in dematerialized form.
 - Debentures (whether listed or not) issued by a company in which the public are substantially interested subject to following conditions:-
 - such interest is payable to an individual or Hindu Undivided family;
 - the interest is paid by the company by an account payee cheque; and
 - the aggregate amount of interest paid or likely to be paid by the company during the financial year **does not exceed Rs.5,000.**
 - Securities beneficially owned by LIC or the GIC or any other insurer.
 - Securities owned by the fund established for the benefit of armed forces. Circular No.735, 30-01-1996.
 - Securities owned by the provident fund whose income is exempt under section 10(25)(ii):- Circular No. 741, 18-04-1996.

Practical 1

Discuss whether tax is liable to be deducted at source in the following circumstances. If so, compute the amount of tax to be deducted.

- (i)** Interest of Rs. 4,000 paid by ABC Ltd. to Mr. Mohan and Rs. 4,800 to Mohan’s HUF by way of account payee cheque on account of debentures of the company held by them separately. ABC Ltd. is a company in which public are substantially interested. Debentures of ABC Ltd. are listed.

- (ii) Interest of Rs.4,800 paid by BBC Ltd. to Ms. Mohini by way of account payee cheque on account of debentures of the company held by her. BBC Ltd. is a company in which public are substantially interested. However, its debentures are not listed.

Solution

- (i) As per the proviso to section 193, the company shall not be liable to deduct tax at source on the interest not exceeding Rs.5,000 paid to a resident individual in respect of debentures by way of account payee cheque. Therefore, no tax shall be deducted at source on the interest paid to Mr. Mohan and Mohan's HUF provided Mr. Mohan and his HUF are resident.
- (ii) BBC Ltd. is not liable to deduct tax at source on the interest paid to Ms. Mohini on account of debentures under section 193, since the payment does not exceed Rs.5,000.

Reader's Note:

(F) Notification No. 27 & 28/2018, dated 18-06-2018

No tax is required to be deducted at source on interest payable on "Power Finance Corporation Limited 54EC Capital Gains Bond" and "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond"

Section 193 (Interest on securities) provides that the person responsible for paying to a resident any income by way of interest on securities shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax @ 10%, being the rates in force on the amount of the interest payable.

As per clause (iib) of the proviso to section 193, no tax is required to be deducted at source from any interest payable on such debentures, issued by any institution or authority, or any public sector company, or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Accordingly, the Central Government has, vide this notification, specified -

- (i) "Power Finance Corporation Limited 54EC Capital Gains Bond" issued by Power Finance Corporation Limited {PFCL} and
- (ii) "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond" issued by Indian Railway Finance Corporation Limited {IRFCL}
- (iii) The benefit of this exemption would, however, be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs PFCL/IRFCL by registered post within a period of sixty days of such transfer.

27.2 DEDUCTION OF TAX AT SOURCE FROM INTEREST OTHER THAN INTEREST ON SECURITIES

Section:- 194A

- (A) Person liable to deduct tax at source:-** Any person, not being an individual or a HUF, who is responsible for paying to a resident any income by way of interest other than income chargeable as interest on securities, is required to deduct tax at source.

However, an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under section 44AB (a)/(b) during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.

- (B) Time of deduction:-** Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, credit to “Interest payable account” or “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee.

For this purpose, “payment” can be in cash or by issue of a cheque or draft or any other mode.

(C) Rate of TDS:- 10%

(D) By virtue of section 194A(3), tax is not deductible in the following cases:

- (1) where the aggregate amount of interest credited or paid or likely to be credited or paid during the financial year **does not exceed**
 - a. ~~Rs.10,000~~ **[Rs.40,000 w.e.f 01.04.2019 – Amended by Finance Act, 2019]** where the payer is a banking company;
 - b. ~~Rs.10,000~~ **[Rs.40,000 w.e.f 01.04.2019 – Amended by Finance Act, 2019]** where the payer is a co-operative society engaged in business of banking;
 - c. ~~Rs.10,000~~ **[Rs.40,000 w.e.f 01.04.2019 – Amended by Finance Act, 2019]** where the payer is a post office;
 - d. Rs.5,000 in any other case.
 - e. Provided also that in case of payee being a senior citizen, the limit of ~~Rs.10,000~~ **[Rs.40,000 w.e.f 01.04.2019 – Amended by Finance Act, 2019]** at clause (a), clause (b) and clause (c) shall be substituted for Rs. 50,000 **w.e.f. 01.04.2018 [Amendment by Finance Act, 2018]**

The aforesaid limit of Rs.40,000/Rs.50,000 shall be computed with reference to the income credited or paid by a branch of the banking company or the co – operative society, as the case may be. The benefit of branch wise limit of Rs.40,000/Rs.50,000 shall not be available w.e.f. 01-06-2015 where such banking company or the co-operative society, as the case may be has adopted core banking solutions.

- (2) where interest is credited or paid to
 - a. any banking company,
 - b. any co – operative society engaged in business of banking,
 - c. any financial corporation established by or under Central, State or Provincial Act,
 - d. the Life Insurance Corporation of India,
 - e. the Unit Trust of India,
 - f. any company or a co – operative society carrying on the business of insurance, or
 - g. such other institution, association or body which Central Government may notify.
- (3) where interest is credited or paid by the firm to its partner;
- (4) where interest is credited or paid by a co – operative society (Other than Co-operative Bank) to its members ;
- (5) where interest is credited or paid by co-operative society to any other co – operative society;
- (6) where interest is credited or paid in respect of deposits under the schemes of Post Office. However, Senior Citizen Savings Scheme, 2004 is subject to tax deduction at source;
- (7) where interest is credited or paid in respect of deposits with a banking company or with a co – operative society engaged in carrying on the business of banking. However, interest paid on time deposits is subject to tax deduction at source;

The expression “time deposits” has been defined to mean deposits, including recurring deposits, repayable on the expiry of fixed period.

- (8) where interest is credited or paid in respect of deposits with a primary agricultural credit society or primary credit society or co – operative land mortgage bank or co – operative land development bank; and
- (9) where interest is credited or paid by the Central Government under any provision of the Direct Taxes.
- (10) Where the interest is paid on compensation awarded by the Motor Accidents Claims Tribunal if the amount or the aggregate amount of such income paid during financial year does not exceed Rs. 50,000;
- (11) Income paid or payable by an infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank in relation to zero coupon bonds issued by them.
- (E) The person responsible for paying interest may, at the time of deducting tax at source, increase or decrease the amount to be deducted for the purpose of adjusting any previous deficiency or excess deduction.

Practical 2

Maya Bank credited Rs. 75,00,000 towards interest on deposits in a separate account for macro-monitoring only by using Core-branch Banking Solution(CBS) Software. No tax was deducted at source in respect of interest on deposits so credited even where the interest in respect of some deposits exceeded the limit of **Rs 40,000**.

The Assessing Officer disallowed 30% of interest expenditure where the interest on time deposits credited exceeded the limit of **Rs 40,000** and also levied penalty under section 271C.

Decide the correctness of action of the Assessing Officer.

Solution

- The Explanation to section 194A(1) provides that for the purpose of tax deduction under this section, credit to “Interest payable account” or “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee and the provisions of section 194A shall apply accordingly.
- The CBDT vide **circular No.3/2010, dated 02.03.2010** has clarified that above explanation will not apply in cases of banks where credit is made to provisioning account on daily or monthly basis for the purpose of macro monitoring only by the use of CBS software.
- Since no constructive credit to the depositor’s or payee’s accounts takes place while calculating interest on daily or monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purpose of macro monitoring only.
- In such cases, tax shall be deducted at source on accrual of interest at the end of the financial year or at periodic intervals as per practice of the bank or as per the depositor’s or payee’s requirement or on maturity or on encashment of time deposit, whichever event takes place earlier, whenever the aggregate amount of interest credited or paid or likely to be credited or paid during the financial year by banks exceeding the limit specified in section 194A.
- In view of the above, the action of the Assessing Officer in disallowing the interest expenditure credited in a separate account of macro monitoring purpose is not valid and consequent penalty proceeding are also not tenable in law.

Reader’s Note:

Practical 3

Mr. Intelligent has made following fixed deposits with different branches of Bank.

- (a) **Rs. 5,00,000** @ 7.5% with Nariman Point Branch
- (b) **Rs. 5,00,000** @ 7% with Prabha Devi Branch
- (c) **Rs. 5,00,000** @ 7.25% with Matunga Branch

Advise Bank with regard to TDS obligation under following alternatives:-

Alternative I: Bank has not adopted core banking solutions.

Alternative II: Bank has adopted core banking solutions.

Solution

Alternative I :- Bank has not adopted core banking solutions.

Bank is not required to deduct TDS since the interest amount with each branch does not exceed **Rs. 40,000**.

Alternative II :- Bank has adopted core banking solutions.

Since aggregate interest payable to Mr. Intelligent by the Bank exceeds **Rs. 40,000**, bank is under an obligation to deduct TDS.

Reader's Note:

Practical 4

Examine the TDS obligation in respect of followings:

- (a) On **31st March, 2020**, Jay Ambe credit co-operative society credited **Rs. 42,000** interest on fixed deposit made by Ms. Gita, a member of such society.
- (b) On **31st March, 2020**, Jay Ambe credit Co-operative society credited **Rs. 43,000** interest on fixed deposit made by Jay Madi Farmer's Co-operative society, a member of former society.
- (c) On **31st March, 2020**, Kalupur Co-operative Bank credited **Rs. 44,000** interest on fixed deposit made by Mr. Bablu, a member of such bank.

Solution

- (a) Jay Ambe Credit Co-operative Society is not required to deduct tax at source since it has been credited to the account of Ms. Gita, being member of such society.
- (b) Jay Ambe Credit Co-operative Society is not required to deduct tax at source since it has been credited to the account of Jay Madi Farmers' Co-operative Society, being member of former society.
- (c) Kalupur Co-operative Bank is required to deduct tax at source while crediting interest to the account of Mr. Bablu even though he is a member of this Bank.

Reader's Note:

Practical 5

Mr. Ramesh opened recurring deposit account with State Bank of India. Manager, SBI wants to deduct tax at source under section 194A on interest component **Rs. 42,000**. Mr. Ramesh objected tax deduction on the ground that recurring deposit is not covered within the meaning of "Time deposit" for the purpose of section 194A. Discuss the validity of objection raised by Mr. Ramesh.

Solution

Considering the definition of time deposit, tax is required to be deducted on interest on recurring deposits by the Manager, SBI, if aggregate of interest payable exceeds **Rs. 40,000**. Therefore, the contention raised by Mr. Ramesh objecting tax deduction at source is not valid.

Reader's Note:

27.3 | TAX TO BE DEDUCTED ON NON-EXEMPT PAYMENTS MADE UNDER LIFE INSURANCE POLICY

Section:- 194DA

(A) Person liable to deduct tax at source: - Any person responsible for paying **to a resident** any sum under a life insurance policy, including the sum allocated by way of bonus on such policy, other than the amount not includible in the total income under section 10(10D), shall deduct income-tax thereon.

(B) Time of tax deduction:- Tax shall be deducted at **the time of payment** thereof.

(C) Threshold Limit:- No deduction under this section shall be made where the amount of such payment or, as the case may be, the aggregate amount of such payments to the payee during the financial year is **less than Rs.1,00,000**.

(D) Tax rates:- 1% [5% on the amount of income comprised therein. w.e.f 01.09.2019 – Amendment made by Finance Act (No.2), 2019]

SECTION 10(10D)

Any amount received by an Individual under life insurance policy including any bonus allowed on such policy is exempt from tax under section 10 (10 D).

However, following amount received shall not be exempt from tax

(1) Any sum received u/s 80DD(3)

(2) Any sum received under keyman insurance policy

(3) Any sum received under following insurance policy where insurance Premium *exceeds the maximum ceiling given below:-*

<i>In respect of policies issued</i>	<i>Where the insurance is on the life of a person with disability or severe disability as referred to in section 80U or a person suffering from disease or ailment as specified u/s 80DDB.</i>	<i>Where the insurance is on the life of any other person</i>
<i>Between 1.4.2003 and 31.3.2012</i>	<i>20% of sum assured*</i>	<i>20% of sum assured*</i>
<i>On or after 1.4.2012 but before 1.4.2013</i>	<i>10% of sum assured*</i>	<i>10% of sum assured*</i>
<i>On or after 1.4.2013</i>	<i>15% of sum assured*</i>	<i>10% of sum assured*</i>

**Sum assured means minimum amount assured under the policy without including any premium agreed to be returned and/or any benefit by way of bonus.*

(4) However, any sum received under point (3) above, on death of a person, is exempt.

Practical 6

From the following information, find out tax to be deducted by Life Insurance Company.

Sr. No.	Policy Holder	Date of issue of Policy	Sum Assured (Rs.)	Annual Premium (Rs.)	Maturity Date	Maturity Amount (Rs.)	Income Component (Rs.)
(i)	Naresh	01.06.2015	10,00,000	2,40,000	31.05.2019	11,00,000	1,40,000
(ii)	Ramesh	05.02.2012	3,00,000	35,000	04.02.2020	3,85,000	1,05,000
(iii)	Mahesh	08.03.2017	80,000	18,000	07.03.2020	87,000	26,000
(iv)	Suresh	05.04.2012	3,00,000	36,000	04.02.2020	3,85,000	97,000

Solution

(i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken on or after 1.4.2012, the maturity proceeds of Rs. 11,00,000 are not exempt under section 10(10D) in the hands of policy holder. Therefore, tax is required to be deducted @1% under section 194DA on the maturity proceeds of Rs. 5,50,000.

- (ii) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the sum of Rs. 3,85,000 would be exempt under section 10(10D) in the hand of policy holder. Hence, no tax is required to be deducted at source under section 194DA.
- (iii) Even though the annual premium exceeds 10% of sum assured in respect of a policy taken on or after 1.4.2012, and consequently, the maturity proceeds of Rs. 87,000 would not be exempt under section 10(10D) in the hands of policy holder. However, the tax deduction under section 194DA is not required since the maturity proceeds are less than Rs. 1,00,000.
- (iv) Since the annual premium exceeds 10% of sum assured in respect of a policy taken on or after 1.4.2012, the maturity proceeds of Rs. 3,85,000 are not exempt under section 10(10D) in the hands of policy holder. Not only that maturity proceeds exceeds Rs. 1,00,000 and therefore, tax is required to be deducted @5% under section 194DA on the income component of Rs. 97,000.

Reader's Note:**27.4 | PAYMENT TO NON – RESIDENT SPORTSMAN OR SPORTS ASSOCIATION OR ENTERTAINER****Section:- 194E**

(A) Person liable to deduct tax at source:- Any person responsible for making following payment shall deduct tax at source.

Payee	Nature of income
(a) Non – resident foreign citizen sportsman (including an athlete)	Income is by way of- a. participation in India in any game (other than card game or gambling, etc); or b. advertisement; or c. contribution of articles relating to any game or sport in India in newspapers, magazines or journals
(b) Non – resident sports association or institution	Any amount guaranteed to be paid or payable in relation of any game (other than card game, etc.) or sport played in India.
(c) Non- resident foreign citizen entertainer	Income is from his performance in India.

(B) Time of deduction:- Tax is 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.

For this purpose, “payment” can be in cash or by issue of a cheque or draft or by any other mode.

(C) Tax rate:- 20% (Plus SC & EC)

27.5 | DEDUCTION OF TAX AT SOURCE FROM INCOME BY WAY OF RENT**Section:- 194I**

(A) Person liable to deduct tax at source:- Any person, not being an individual or a HUF, who is responsible for paying rent to a resident is required to deduct tax at source under the provisions of section 194 – I .

An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such rent is credited or paid, shall be liable to deduct income-tax under this section.

(B) Time of deduction: - Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, credit to “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee.

For this purpose, “payment” can be in cash or by issue of a cheque or draft or by any other mode.

(C) Tax rates: -

Particulars	Rate of Tax
For the use of any machinery or plant or equipment	2%
For the use of any land or building (including factory building) or furniture or fittings	10%

(D) Threshold limit: No deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of the payee, **does not exceed Rs. 1,80,000. [Rs. 2,40,000 w.e.f 01.04.2019 - Amended by Finance Act, 2019]**

(E) Definition of Rent:

“Rent” means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—

- (a) land; or
- (b) building (including factory building); or
- (c) land appurtenant to a building (including factory building); or
- (d) machinery; or
- (e) plant; or
- (f) equipment; or
- (g) furniture; or
- (h) fittings,

whether or not any or all of the above are owned by the payee.

(F) Other points: - No deduction shall be made under this section, where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in section 10(23FCA), owned directly by such business trust.

Practical 7

Ramesh gave a building on sub-lease to Mac Ltd. with effect from **01-07-2019** on a rent of Rs. 25,000 per month. The company also took on hire machinery from Ramesh with effect from **01-11-2019** on hire charges of Rs. 10,000 per month. The rent of building and hire charges of machinery for the year **2019-20** were credited by the company to the account of Ramesh in its books of account on **31-3-2020**. Discuss the liability for tax deduction.

Solution

- Tax is deductible on rent under section 194-I, if the aggregate amount of rent paid or credited to a person exceeds Rs. 2,40,000. As discussed above, definition of rent includes payment for use of land, building, machinery and furniture under lease, sublease or any arrangement.
- In the present case, the aggregate payment made by Mac Ltd. to Ramesh towards rent in **P.Y.2019-20** is Rs. 2,75,000 (i.e., Rs. 2,25,000 for building and Rs. 50,000 for machinery) which is exceeding Rs. 2,40,000. Hence, Mac Ltd. is required to deduct tax under section 194I @10% on rent paid for building and tax @ 2% on rent paid for machinery.

Reader's Note:

Practical 8

AB Ltd. had taken residential house property on rent for its General Manager from Mr. Nipur. AB Ltd. is required to make following payments to Mr. Nipur.

Particulars	Amount (Rs.)
Annual rent	2,40,000
One month Advance Rent	20,000
Non-refundable Deposit	20,000

Advise AB Ltd. with regard to its obligation to deduct tax at source while making payment to Mr. Nipur.

Solution

CBDT in its **circular No. 718 dated 22nd August, 1995** clarified as under:

- If advance rent is paid, it is subject to tax deduction under section 194-I at the time of payment.
- In cases where the tenant makes a non – refundable deposit tax would have to be deducted at source as such deposit represents the consideration for the use of the land or the building, etc., and therefore, partakes the nature of rent as defined in section 194– I. If, however, the deposit is refundable, no tax is deductible at source.
- Considering the effect of above circular, AB Ltd. is required to deduct tax at source under section 194 I on payment of **Rs. 2,60,000** to be made to Mr. Nipur.

Reader's Note:**Practical 9**

Ramesh, Mahesh and Naresh are the equal co-owners of commercial premise which was given on rent to Jack Ltd. on annual rent of **Rs. 6,90,000**. Discuss the liability for tax deduction.

Solution

CBDT in its **circular no. 715 dated 8th August, 1995** clarified as under:

- Under section 194 I, the tax is deductible from payment by way of rent, if such payment to the payee during the year is likely to be **Rs. 2,40,000** or more. If there are a number of payees, each having definite and ascertainable share in the property, the limit of **Rs.2,40,000** will apply to each of the payee / co – owner separately. The payers and payees are, however, advised not to enter into sham agreements to avoid tax deduction provisions.
- Considering the effect of above circular, Jack Ltd. is not required to deduct tax at source while making payment to Ramesh, Mahesh and Naresh since rent payable to each payee does not exceed **Rs. 2,40,000**.

Reader's Note:**27.6 TAX DEDUCTION AT SOURCE ON PURCHASE OF IMMOVABLE PROPERTY****Section:- 194–IA**

- (A) Person liable to deduct tax at source:** - Any person, being a transferee responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), is liable to deduct tax at source under this section.
- (B) Time of deduction:** - Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.
For this purpose, “payment” can be in cash or by issue of a cheque or draft or by any other mode.
- (C) Threshold Limit:** - No tax is deductible where the consideration paid or payable for the transfer of an immovable property is **less than Rs.50,00,000**.

(D) Tax rate: - 1% of consideration

(E) Other points: -

- (a) Provisions of section 203A (pertaining to TAN) shall not apply to a person required to deduct tax under this section.
- (b) As discussed above, the provisions of section 194-IA shall not apply if a person acquires agricultural land in India. For this purpose, the definition of section 2(14) shall be relevant.

Section 2(14) defines capital asset which excludes agricultural land in India.

Agricultural land means the land falling outside urban area.

Meaning of Urban area

- (1) Urban area means any area which is situated within the jurisdiction of a municipality or cantonment board having a population of 10,000 or more.
- (2) Urban area also includes an area which is situated outside the local limits of such municipality/cantonment board but within distance given below –

Population of municipality / cantonment board	Distance measured aerially
More than 10,000 but not exceeding 1 lakh	2 kilometers
More than 1 lakh but not exceeding 10 lakh	6 kilometers
More than 10 lakhs	8 kilometers

For the above purpose, "population" means the population according to the last preceding census of which the relevant figures have been published before the date of valuation.

- (c) For deduction of tax at source under this section, location of immovable property is not relevant. Such property may or may not be situated in India. The main requirement to attract this section is that transferor shall be resident in India.

(d) Insertion of Explanation (aa) by Finance Act (No.), 2019 w.e.f. 01.09.2019.

"Consideration for transfer of any immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

Practical 10

On 10th December, 2019, Mr. Vasu entered into an agreement to purchase three BHK flat from Narayan Buildcon Pvt. Ltd. Under the agreement, Mr. Vasu is required to make following payments.

Particulars	Amount (Rs.)
Cost of 3 BHK Unit	45,00,000
Car Parking fee	2,00,000
Electricity Connection Fee	1,60,000
3 years Advance Maintenance	1,44,000

Advise Mr. Vasu with regard to his obligation to deduct tax at source, if any?

Solution

Since the **consideration** for purchase of three BHK unit exceeds Rs. 50 lakhs, Mr. Vasu, being the transferee, is required to deduct tax @1% u/s 194-IA on Rs. 50.04 lakhs, being the amount of consideration for transfer of property.

It is important to bear in mind that the **Finance Act (No.2), 2019 w.e.f. 01.09.2019** inserted the explanation whereby the term "Consideration for transfer of any immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

Determination of consideration for the purpose of section 194-IA.

Particulars	Amount (in INR)
Cost of 3 BHK Unit	45,00,000
Car Parking fee	2,00,000
Electricity Connection Fee	1,60,000
3 years Advance Maintenance	1,44,000
Total	50,04,000

Reader's Note:

27.7 TAX DEDUCTION AT SOURCE ON PURCHASE OF IMMOVABLE PROPERTY

Section:- 194-IA

- (A) **Person liable to deduct tax at source:** - Any person, being a transferee responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), is liable to deduct tax at source under this section.
- (B) **Time of deduction:** - Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.
For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode.
- (C) **Threshold Limit:** - No tax is deductible where the consideration paid or payable for the transfer of an immovable property is **less than Rs.50,00,000**.
- (D) **Tax rate:** - 1% of consideration
- (E) **Other points:** -
- (e) Provisions of section 203A (pertaining to TAN) shall not apply to a person required to deduct tax under this section.
 - (f) As discussed above, the provisions of section 194-IA shall not apply if a person acquires agricultural land in India. For this purpose, the definition of section 2(14) shall be relevant.

Section 2(14) defines capital asset which excludes agricultural land in India.

Agricultural land means the land falling outside urban area.

Meaning of Urban area

- (1) Urban area means any area which is situated within the jurisdiction of a municipality or cantonment board having a population of 10,000 or more.
- (2) Urban area also includes an area which is situated outside the local limits of such municipality/cantonment board but within distance given below –

Population of municipality / cantonment board	Distance measured aerially
More than 10,000 but not exceeding 1 lakh	2 kilometers
More than 1 lakh but not exceeding 10 lakh	6 kilometers
More than 10 lakhs	8 kilometers

For the above purpose, "population" means the population according to the last preceding census of which the relevant figures have been published before the date of valuation.

- (g) For deduction of tax at source under this section, location of immovable property is not relevant. Such property may or may not be situated in India. The main requirement to attract this section is that transferor shall be resident in India.

(h) Insertion of Explanation (aa) by Finance Act (No.), 2019 w.e.f. 01.09.2019.

"Consideration for transfer of any immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

Practical 11

One fine day, Mr. X, a resident, acquired a house property at Mumbai from Mr. Y for a consideration of Rs. 90 lakhs (stamp duty value Rs. 98 lakhs). On the same day, Mr. X made two separate transactions, thereby acquiring an urban plot in Kolkata from Mr. C for a sum of Rs. 49.50 lakhs (stamp duty value Rs. 54 lakhs) and rural agricultural land from Mr. D for a consideration of Rs. 60 lakhs.

Discuss the obligation of Mr. X to deduct tax at source and also find out the amount of TDS assuming that Mr. Y, Mr. C and Mr. D are residents.

Solution

Particulars	Rs.
Since the consideration for transfer of house property at Mumbai exceeds Rs. 50 lakhs, Mr. X, being the transferee, is required to deduct tax @1% u/s 194-IA on Rs. 90 lakhs, being the amount of consideration for transfer of property. It is important to bear in mind that the threshold limit and rate of tax deduction at source are prescribed with reference to the amount of consideration and not with reference to the stamp duty valuation.	90,000
Mr. X is not required to deduct tax as source u/s 194-IA from the consideration of Rs.49,50,000 paid to Mr. C for transfer of urban plot, since the consideration is less than Rs.50 lakhs.	Nil
Mr. X is also not required to deduct tax at source u/s 194-IA from the consideration of Rs. 60 lakhs paid to Mr. D for transfer of rural agricultural land, since the same is specifically excluded from the scope of immovable property for the purpose of tax deduction u/s 194-IA.	Nil

Reader's Note:

Practical 12

On 10th December, 2019, Mr. Vasu entered into an agreement to purchase three BHK flat from Narayan Buildcon Pvt. Ltd. Under the agreement, Mr. Vasu is required to make following payments.

Particulars	Amount (Rs.)
Cost of 3 BHK Unit	45,00,000
Car Parking fee	2,00,000
Electricity Connection Fee	1,60,000
3 years Advance Maintenance	1,44,000

Advise Mr. Vasu with regard to his obligation to deduct tax at source, if any?

Solution

Since the **consideration** for purchase of three BHK unit exceeds Rs. 50 lakhs, Mr. Vasu, being the transferee, is required to deduct tax @1% u/s 194-IA on Rs. 50.04 lakhs, being the amount of consideration for transfer of property.

It is important to bear in mind that the **Finance Act (No.2), 2019 w.e.f. 01.09.2019** inserted the explanation whereby the term "Consideration for transfer of any immovable property" shall include all charges of the nature

of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

Determination of consideration for the purpose of section 194-IA.

Particulars	Amount (in INR)
Cost of 3 BHK Unit	45,00,000
Car Parking fee	2,00,000
Electricity Connection Fee	1,60,000
3 years Advance Maintenance	1,44,000
Total	50,04,000

Reader's Note:

27.8 PAYMENT OF RENT BY CERTAIN INDIVIDUALS / HUFs

Section:- 194 – IB

- (A) Person liable to deduct tax at source:-** Any person, being an individual or a Hindu undivided family (other than those who are covered under section 194-I) , responsible for paying to a resident any income by way of rent, shall deduct an amount equal to five per cent of such income as income-tax thereon.
- The provisions of this section shall not be applicable to the individual or Hindu undivided family who are liable to deduct tax at source under section 194-I.
- (B) Time of tax deduction –** Tax is deductible at the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.
- (C) Threshold limit –** Tax is deductible if rent is exceeding fifty thousand rupees for a month or part of a month during the previous year.
- (D) Rate of TDS-** Tax is deductible at the rate of 5 per cent of Rent
- (E) Ceiling on TDS :-** In a case where the tax is required to be deducted as per the provisions of section 206AA (i.e. if payee does not provide PAN), such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.
- (F) Meaning of Rent:-** For the purposes of this section, "rent" means 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 both.

Practical 13

Mr. Madhukant is an employee of M/s. PQR Ltd. He had taken property on rent from Mr. Suresh, resident, for his residential purpose for the monthly rent of Rs. 70,000 w.e.f. **1st February, 2020**. He claims that he is not required to deduct tax at source since (i) he is not an assessee covered by tax audit under section 44AB(a)/(b) (ii) rent for the financial year **2018-19** does not exceed Rs. 1,80,000 (limit prescribed under section 194-I). Advise him with regard to his TDS obligation.

Solution

- The contention of Mr. Madhukant is true with regard to provisions of Section 194-I. However, with effect from 1st June, 2017, section 194-IB has been inserted by Finance Act, 2017 requiring individual or a Hindu undivided family (other than those referred to in the second proviso to section 194-I), to deduct tax at source at the rate of five percent if he or it is responsible for paying rent to a resident any income by way of rent exceeding fifty thousand rupees for a month or part of a month during the previous year.

- Therefore, Mr. Madhukant is required to deduct tax at source u/s 194IB in the month of **March, 2020** on Rs.1,40,000 at the rate of 5%.

Reader's Note:**Practical 14**

Mr. Ramakant, senior Chief Financial officer of M/s. DANGAR Ltd. He had taken property on rent from Mr. Ganesh, resident, for his residential purpose for the monthly rent of Rs. 1,50,000 w.e.f. **1st July, 2020**. Advise Mr. Ramakant for deduction of tax under section 194-IB with regard to the time of deduction and the amount, assuming that Mr. Ganesh does not provide PAN.

Solution

- With regard to the time of deduction, Mr. Ramakant shall deduct tax at source annually in the last month of the financial year (**i.e. March, 2020**) on total rent of Rs. 13,50,000 (i.e. 1,50,000 X 9 months). However, rate of TDS shall be 20% since Mr. Ganesh has not provided PAN.
- With regard to amount of TDS, it shall be ideally Rs. 2,70,000 (20% of Rs.13,50,000). But the rent of last month is only Rs. 1,50,000. Therefore, as per the ceiling suggested under section 194 IB, Mr. Ramakant shall not exceed tax more than the rent of last month i.e. Rs. 1,50,000.

Reader's Note:**Practical 15**

Mr. Jaykant runs proprietorship in the name and style M/s. MASIKOTAR TRADING. He pays shop rent to Mr. Shrenik, resident Rs. 20,000 p.m. with effect from **1st April 2019**. Advise him with regard to TDS obligation under following alternatives:

(a) Total turnover of M/s. MASIKOTAR TRADING for the previous year **2018-19** was Rs. 2.5 Cr.

(b) Total turnover of M/s. MASIKOTAR TRADING for the previous year **2018-19** was Rs. 95 Lakhs.

Solution**Alternative (a):**

- Since turnover for the previous year **2018-19** exceeded monetary limit for tax audit under section 44AB(a), Mr. Jaykant is subject to Section 194-I. Under this section, he is not required to deduct tax at source on rent, if rent paid during the financial year does not exceed Rs. 1,80,000.
- In the present case, annual rent is Rs. 2,40,000, (it exceeded limit of Rs. 1,80,000). Therefore, Mr. Jaykant shall deduct tax at source at 10% under section 194-I, at the time of credit to Mr. Shrenik or at the time of payment whichever is earlier.

Alternative (b):

- Since turnover for the previous year **2018-19** has not exceeded monetary limit for tax audit under section 44AB(a), Mr. Jaykant is not governed by the provisions of Section 194-I but his case falls under the provisions of section 194-IB.
- However, provision of section 194-IB is made applicable only when rent is exceeding fifty thousand rupees for a month or part of a month during the previous year.
- In the present case, monthly rent is Rs. 20,000 (not exceeding Rs. 50,000), Mr. Jaykant is not required to deduct tax at source under section 194-IB also.

Reader's Note:**27.9 TAX DEDUCTION AT SOURCE ON PURCHASE OF IMMOVABLE PROPERTY****Section:- 194 – IC**

(A) Person liable to deduct tax at source:- Any person responsible for paying to a resident any sum by way of consideration under the specified agreement u/s 45(5A), shall deduct tax at source.

(B) Time of tax deduction – Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, “payment” can be in cash or by issue of a cheque or draft of by any other mode.

(C) Threshold limit – Nil

(D) Rate of TDS - 10 per cent

(E) No Tax is deductible:- Tax deduction at source shall not be made in respect of that part of consideration which is in kind under the specified agreement.

(F) Meaning of “Specified agreement”:- “Specified agreement” means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.

Practical 16

In terms of agreement between A (the Owner of Land) and B (Developer and Builder) the Developer, B agrees to allot 5 apartments to the owner in part consideration for providing his land and also agreed to pay a sum of Rs.25,00,000. In terms of the agreement, Mr. B issued a cheque for Rs.15,00,000 towards part of consideration on **30.03.2020**. Whether B is responsible to deduct tax at source?

Solution

The agreement entered into between A (the owner of land) and B (developer and builder) is a “specified agreement” in terms of section 45(5A) of the Act. Therefore, B is required to deduct tax at source under section 194-IC of the Act.

In view of the provisions of section 194-IC of the Act, tax deduction at source shall not be made in respect of that part of consideration which is in kind under the specified agreement.

Therefore, B is required to deduct tax at source @ 10% on Rs. 15,00,000 assuming that no amount has been credited to A’s account in his books of accounts.

Reader’s Note:

27.10 TAX DEDUCTION AT SOURCE ON FEES FOR PROFESSIONAL OR TECHNICAL SERVICES

Section:- 194 J

(A) Person liable to deduct tax at source: - Any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of -

- (a) fees for professional services, or
- (b) fees for technical services or
- (c) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company or
- (d) royalty or
- (e) any sum referred to in section 28 (va) ;

shall deduct tax at source under this section.

An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which abovementioned sum is credited or paid, shall be liable to deduct income-tax under this section.

However, no tax deduction under this section is required on sum by way of fees for professional services in case such sum is exclusively for personal purposes of such individual or any member of Hindu Undivided Family.

(B) Time of deduction: - Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, credit to “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee.

For this purpose, “payment” can be in cash or by issue of a cheque or draft or by any other mode.

(C) Threshold limit: - No tax is deductible if the amount credited or paid or likely to be credited or paid during the financial year to the account of the payee does not exceed-

Nature of Payment	Separate Threshold Limit (in Rs.)
Professional services	30,000
Fees for Technical Services	30,000
Royalty	30,000
Sum referred to in a section 28(va)	30,000

(D) Tax rate:- 10%. (2% in case of payee engaged only in the business of operations of call centre- Amendment with effect from 1st June, 2017)

Practical 17

BCD Ltd. credited Rs. 28,000 towards fees for professional services and Rs.27,000 towards fees for technical services to the account of HG in its books of account on **06.10.2019**. The total sum of Rs. 55,000 was paid by cheque to HG on **18.12.2019**. Examine the obligation of BCD Ltd. in respect of tax deduction at source.

Solution

As discussed above, the threshold limit of Rs.30,000 for non-deduction of tax under section 194J would apply separately for fees for professional services and fees for technical services. That means if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed Rs. 30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceeded Rs. 30,000. Therefore, BCD Ltd. is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

Reader's Note:

Practical 18

KD, an independent director of DAF Pvt. Ltd. was paid an amount of Rs. 22,500 sitting fees for attending the various meetings held during the financial year. Examine the obligation of DAF Pvt Ltd. in respect of tax deduction at source.

Solution

- Section 194J provides for deduction of tax at source @10% on any remuneration or fees or commission, by whatever name called, paid to a director, which is not in the nature of salary in respect of which tax is deductible at source u/s 192. Further, no threshold limit has been prescribed for tax deduction in such cases.
- Hence, tax is required to be deducted at source under section 194J @10% by DAF Pvt. Ltd. on the sitting fees of Rs. 22,500 paid to KD, an independent director. The tax deductible under section 194J would be Rs. 2,250 being 10% of Rs. 22,500.

Reader's Note:

(E) Meaning of professional services:- It means services rendered by a person in the course of carrying on-

- (a) legal,
- (b) medical,

- (c) engineering,
- (d) architectural profession,
- (e) the profession of accountancy,
- (f) technical consultancy,
- (g) interior decoration,
- (h) advertising (i.e., models, artists, photographers providing services to an advertising agency),
- (i) such other profession as is notified by the Board for the purpose of section 44AA or of this section.

Notification No. 88/2008 / F.No. 275/43/2008-IT(B), DATED 21-8-08

SECTION 194J OF THE INCOME-TAX ACT, 1961 DEDUCTION AT SOURCE OF TAX NOTIFIED PROFESSIONAL SERVICES

In exercise of the powers conferred by clause (a) of the Explanation to section 194J of the Income Tax Act, 1961, Central Board of Direct Taxes hereby notifies the services rendered by following persons in relation to the sports activities as Professional Services for the purpose of the said section, namely:

- (a) Sports Persons,
- (b) Umpires and Referees,
- (c) Coaches and Trainers,
- (d) Team Physicians and Physiotherapists,
- (e) Event Managers,
- (f) Commentators,
- (g) Anchors and
- (h) Sports Columnists.

Practical 19

East Bengal Club, a renowned football club, has engaged Raghu, a resident in India, as its coach at a remuneration of Rs. 6 lacs per annum. The club wants to know from you whether it is liable to deduct tax at source from such remuneration.

Solution

- The CBDT has, vide **Notification No.88 dated 21.8.2008**, in exercise of the powers conferred by clause (a) of the Explanation to section 194J has notified the services rendered by coaches and trainers in relation to the sports activities as professional services for the purposes of section 194J.
- Therefore, the club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Raghu.

Reader's Note:

Practical 20

Explain in the context of provisions contained in Chapter XVII of the Act and also work out the amount of tax to be deducted by the payer of income in the following cases:.

- (i) Payment of Rs.5 lacs made by JCP & Co. to Mr. Pushpendrasingh for organizing a debate competition on the subject "Preservation of Rural Heritage of Rajasthan".
- (ii) A company operating a television channel makes payment of Rs. 5 lacs to a former cricketer for making running commentary of a one-day cricket match.

Solution

- (i) The services of Event Managers in relation to sports activities alone have been notified by the CBDT as "professional services" for the purpose of section 194J. In this case, payment of Rs. 5 lacs was made to Mr.

Pushpendrasingh for organization of a debate competition. Hence, the provisions of section 194J are not attracted.

However, TDS provisions under section 194C would be attracted and consequently, tax has to be deducted @ 1% under section 194C.

The tax deductible under section 194C would be Rs.5,000, being 1% of Rs.5 lacs.

- (ii) The service rendered by a commentator in relation to sports activities has been notified by the CBDT as a professional service for the purposes of section 194J vide its Notification No. 88 dated 21st August, 2008. Therefore, tax is required to be deducted @ 10% from the fee of Rs.5 lacs payable to the former cricketer.

Reader's Note:

Practical 21

Siddharth Hospitals Pvt. Ltd., has recently been accorded recognition by several insurance companies to admit and treat patients on cashless hospitalization basis. Payment to the assessee hospital will be made by Third Party Administrators (TPA) who will process the claims of the patients admitted and make payments to the various hospitals including the assessee. All TPAs are corporate entities. The assessee wants to know whether the TPAs are bound to deduct tax at source u/s 194J or u/s 194C?

Solution

- As per provisions of section 194J(1), any person, who is responsible for paying to a resident any sum by way of fees for professional services, shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to 10% of such sum as TDS.
- Further, as per *Explanation (a)* to section 194J “professional services” includes services rendered by a person in the course of carrying on medical profession.
- This issue has been clarified by the CBDT **Circular No.8/2009 dated 24.11.2009** as under:
The services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable on payments made by TPAs to hospitals etc. Further, for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore, TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including Cashless Schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.
- In view of the above, TPAs are bound to deduct tax at source u/s 194J and not u/s 194C.

Reader's Note:

(F) Meaning of fees for technical services: It shall have same meaning as given in explanation 2 to section 9(1)(vii).

Practical 22

P Ltd. is engaged in manufacturing of a product. It paid a lump-sum deposit and obtained 50 mobile phone services so that the employees of the assessee can be contacted immediately. The company paid Rs. 45,000 every month towards the service and call charges to the mobile phone franchise. On these facts :

- Whether P Ltd has to deduct tax at source on the payment?
- If so, under which provisions of the Act?

Solution

In this case, the assessee pays the service and call charges every month to a mobile phone franchise. Explanation 2 to section 9(1)(vii) provides that “fees for technical services “ means any consideration (including any lump sum

consideration) for the rendering of any managerial ,technical, or consultancy services (including the provision of services of technical and other personnel).

Therefore, mere collection of fee by mobile phone franchise from the customers for use of mobile phone services will not amount to receipt of fees towards technical services. The payment made is for the use of airtime. Installation of technical equipment to ensure connectivity to subscriber cannot make it technical services. Therefore, P Ltd. does not have to deduct tax at source under section 194J on the payments made to the mobile phone franchisee towards the service and call charges. This view was upheld by Madras High Court in **Skycell Communications Ltd. V Dy. CIT (2001) 251 ITR 53.**

Reader's Note:

(G) Meaning of royalty: It shall have same meaning as given in explanation 2 to section 9(1)(vi).

Practical 23

Treat- Treat Limited purchased animation software from Gajanan Agency for Rs. 12,00,000. It seeks your advice about applicability of TDS provisions / relaxation if any.

Solution

- The Central Government has, vide **Notification No.21/2012 dated 13.6.2012** to be effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction under section 194J. Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the provisions of section 194J would not be attracted if –
 - (1) the software is acquired in a subsequent transfer without any modification by the transferor;
 - (2) tax has been deducted either under section 194J or under section 195 on payment for any previous transfer of such software; and
 - (3) the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.
- Considering the impact of above notification, Treat-Treat limited is not required to deduct tax at source from the payment on account of software subject to:
 - (1) Such software is acquired in a subsequent transfer without any modification by Gajanan Agency.
 - (2) Tax has been deducted either under section 194 J or under section 195 on payment for such software in previous transfer (either by Gajanan Agency or previous transferor).
 - (3) It shall obtain declaration from Gajanan Agency that tax has been so deducted.
 - (4) It shall also obtain the PAN of Gajanan Agency.

Reader's Note:

27.11 DEDUCTION OF TAX AT SOURCE ON PAYMENT OF CERTAIN SUMS BY CERTAIN INDIVIDUALS OR HINDU UNDIVIDED FAMILY

Section:- 194M –Inserted by Finance Act (No.2), 2019 – w.e.f 01.09.2019

- (1) Any person, being an individual or a Hindu undivided family (other than those who are required to deduct income-tax as per the provisions of section 194C, section 194H or section 194J) responsible for paying any sum to any resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract, by way of commission (not being insurance commission referred to in section 194D) or brokerage or by way of fees for professional services during the financial year, shall, at the time of credit of such sum or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to five per cent of such sum as income-tax thereon:

Provided that no such deduction under this section shall be made if such sum or, as the case may be, aggregate of such sums, credited or paid to a resident during a financial year does not exceed fifty lakh rupees.

(2) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Explanation.—For the purposes of this section,—

- (a) "contract" shall have the meaning assigned to it in clause (iii) of the Explanation to section 194C;
- (b) "commission or brokerage" shall have the meaning assigned to it in clause (i) of the Explanation to section 194H;
- (c) "professional services" shall have the meaning assigned to it in clause (a) of the Explanation to section 194J;
- (d) "work" shall have the meaning assigned to it in clause (iv) of the Explanation to section 194C.

Practical 24

Examine the applicability of TDS provisions in the following cases and also specify the rate of TDS applicable, if any. Assume that all payments are made to residents.

Sr. No.	Particulars of the payer	Nature of payment	Various payments made in the F.Y.2019-20
1.	Mr. Ganesh, an individual is engaged in trading. His total sales in trading business during the year ended on 31.03.2019 was Rs. 2.4 crores.	Contract Payment for construction of residential house	Rs. 20,00,000 in January, 2020, Rs.20,00,000 in Feb 2020 and Rs.20,00,000 in March 2020.
2.	Mahesh HUF is engaged in transportation. For the financial year 2018-19, Mahesh HUF has declared lower income than the income required to be declared under section 44AE and therefore the books of Mahesh HUF got audited under section 44AB of the Act.	Contract Payment for construction of office building	Rs. 20,00,000 in January, 2020, Rs.20,00,000 in Feb 2020 and Rs.20,00,000 in March 2020.
3.	Mr. Ramesh Patel, a retired businessman	Payment of advocate fees for divorce	Rs.51,00,000

Solution

Sr. No.	Particulars of the payer	Nature of payment and Aggregate of payments made in the F.Y.2019-20	Whether provisions of section 194C / 194 H / 194 J applicable?	Whether provisions of Section 194M get attracted?
1.	Mr. Ganesh, an individual is engaged in trading. His total sales in trading business during the year ended on 31.03.2019 was Rs. 2.4 crores.	Contract Payment for Construction of residential house Rs. 60,00,000	Provisions of 194C is not attracted since the payment is for personal purpose.	The provisions of section 194M get attracted as aggregate of contract payment to the payee exceeded Rs. 50,00,000. Therefore, Mr. Ganesh shall deduct TDS @ 5% under section 194 M

2.	Mahesh HUF is engaged in transportation. For the financial year 2018-19, Mahesh HUF has declared lower income than the income required to be declared under section 44AE and therefore the books of Mahesh HUF got audited under section 44AB of the Act.	Contract Payment for construction of office building Rs. 60,00,000	Provisions of 194C is not attracted since Mahesh HUF got his accounts audited under section 44AB(c) of the Act and not under section 44AB(a)/(b) of the Act.	The provisions of section 194M get attracted as aggregate of contract payment to the payee exceeded Rs. 50,00,000. Therefore, Mr. Mahesh HUF shall deduct TDS @ 5% under section 194 M
3.	Mr. Ramesh Patel, a retired businessman	Payment of advocate fees for divorce Rs.51,00,000	Provisions of 194J is not attracted since Ramesh is a retired businessman and not subject to audit under section 44AB(a)/(b) of the Act.	The provisions of section 194M get attracted as aggregate of contract payment to the payee exceeded Rs. 50,00,000. Therefore, Mr. Ramesh shall deduct TDS @ 5% under section 194 M

Reader's Note:

27.12 DEDUCTION OF TAX AT SOURCE ON PAYMENT OF CERTAIN AMOUNTS IN CASH

Section:- 194N –Inserted by Finance Act (No.2), 2019 – w.e.f 01.09.2019

Every person, being,—

- (i) a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);
- (ii) a co-operative society engaged in carrying on the business of banking; or
- (iii) a post office,

who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deducts an amount equal to two per cent of sum exceeding one crore rupees, as income-tax:

Provided that nothing contained in this sub-section shall apply to any payment made to,—

- (i) the Government;
- (ii) any banking company or co-operative society engaged in carrying on the business of banking or a post office;
- (iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934;

- (iv) any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007;
- (v) such other person or class of persons, which the Central Government may, by notification in the Official Gazette, specify in consultation with the Reserve Bank of India.

Person to whom credit is to be given for tax deducted and paid

Rule 37BA provides the manner of giving credit for tax deducted and remitted to the Central Government i.e., it specifies the person to whom credit for tax deducted is to be given and also the assessment year for which the credit may be given. Accordingly, sub-rule (3A) has been inserted in Rule 37BA, to provide that, for the purposes of section 194N, credit for tax deducted at source shall be given to the person from whose account tax is deducted and paid to the Central Government account for the assessment year relevant to the previous year in which such tax deduction is made.

Press Release dated 30.8.2019

Clarification as to the applicability of section 194N and manner of computing the threshold limit of Rs.1 crore thereunder, where cash withdrawals have taken place prior to 1.9.2019

The Finance (No. 2) Act, 2019 has inserted section 194N, with effect from 1.9.2019 to require every person, being a banking company, a co-operative society engaged in carrying on the business of banking or a post office who is responsible for paying, in cash, any sum or aggregate of sums exceeding Rs. 1 crore during the previous year to any person from one or more accounts maintained by such recipient-person with it, to deduct tax at source @2% of sum exceeding Rs. 1 crore. The deduction is to be made at the time of payment of such sum.

The CBDT has, vide Press Release dated 30.8.2019, clarified that section 194N is to come into effect from 1st September, 2019. Hence, any cash withdrawal prior to 1st September, 2019 will not be subjected to the TDS under section 194N. However, since the threshold of Rs. 1 crore is with respect to the previous year 2019-20, calculation of amount of cash withdrawal for triggering deduction under section 194N shall be counted from 1st April, 2019. Hence, if a person has already withdrawn Rs. 1 crore or more in cash upto 31st August, 2019 from one or more accounts maintained with a banking company or a cooperative bank or a post office, TDS@2% shall apply on all subsequent cash withdrawals.

Notifications

(1) Notification No. 68/2019/F. No. 370142/12/2019-TPL

Cash Replenishment Agencies (CRAs) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's)

For availing exemption from applicability of TDS u/s 194N, CRAs and franchise agents of WLATMOs should maintain a separate bank account from which withdrawal is made only for the purposes of replenishing cash in the Automated Teller Machines (ATMs) operated by such WLATMOs.

Further, the WLATMO should furnish a certificate every month to the bank certifying that the bank account of the CRAs and the franchise agents of the WLATMOs have been examined and the amounts being withdrawn from their bank accounts has been reconciled with the amount of cash deposited in the ATM's of the WLATMO's.

(2) Notification No. 70/2019/F. No. 370142/12/2019-TPL (Part-1)

Commission agent or trader, operating under Agriculture Produce Market Committee (APMC), and registered under any law relating to Agriculture Produce Market of the concerned State

For availing exemption from the applicability of TDS u/s 194N, the commission agent/trader should intimate to the banking company or co-operative society or post office, his account number through which he wishes to withdraw cash in excess of Rs. 1 crore in the previous year along with his Permanent Account Number (PAN) and the details of the previous year.

Also, he should certify to the banking company or co-operative society or post office that the withdrawal of cash from the account in excess of Rs. 1 crore during the previous year is for the purpose of making payments to the farmers on account of purchase of agriculture produce.

Further, the banking company or co-operative society or post office has to ensure that the PAN quoted is correct and the commission agent or trader is registered with the APMC, and for this purpose, collect necessary evidences and place the same on record.

(3) Notification No. 80/2019, dated 15.10.2019

No tax is required to be deducted at source under section 194N on cash withdrawals by persons or class of persons as notified by the Central Government

The proviso to section 194N provides that no tax is, however, required to be deducted at source on payments made to inter alia such other person or class of persons as notified by the Central Government.

Accordingly, the Central Government has, vide this notification, after consultation with the Reserve Bank of India (RBI), specified -

- (a)** the authorised dealer and its franchise agent and sub-agent; and
- (b)** Full-Fledged Money Changer (FFMC) licensed by the RBI and its franchise agent;

Such persons should maintain a separate bank account from which withdrawal is made only for the purposes of -

- (i) purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by RBI; or
- (ii) disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the RBI;

The exemption from the requirement to deduct tax u/s 194N would be available only if a certificate is furnished by the authorised dealers and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the RBI have been adhered to.

“Authorised dealer” means any person who is authorised by the RBI as an authorised dealer to deal in foreign exchange [Section 10(1) of the Foreign Exchange Management Act, 1999].

27.13 DEDUCTION OF TAX AT SOURCE FROM OTHER SUMS**Section:- 195****(A)**

Person liable to deduct tax at source	Any person responsible for making payment
Payee	Non-resident or Foreign company
Nature of Payment	(a) Any interest (not being interest referred to in section 194LB, 194LC and 194LD) (b) Any other sum chargeable under the provision of this Act (not being income chargeable under the head “Salaries”)
Time of tax deduction	At the time of credit of such income to the account of payee or at the time of payment, whichever is earlier. For this purpose credit to “Interest payable account” or “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee. For this purpose, “payment” can be in cash or by issue of a cheque or draft or by any other mode. If interest is payable by the Government or a public sector bank or a public financial institution, then tax deduction shall be made only at the time of payment thereof in cash or by cheque or draft or any other mode.
Threshold limit	No threshold limit. However, tax shall be deducted on sum chargeable to tax. Therefore, if no sum is chargeable to tax in India, then no tax is required to be deducted.

(B) Rate of tax deduction

Payment / Credit of other sum to a non-resident

Sr. No.	Nature of Income	Rate of Tax
(a)	Income of foreign exchange assets payable to an Indian citizen	20% (+ SC + EC)
(b)	Income by way of long-term capital gains referred to in section 115E or section 112(1)(c)(iii)	10% (+ SC + EC)
(c)	Short-Term Capital Gains u/s 111A	15% (+ SC + EC)
(d)	Any other Long-Term Capital Gains [not being covered by section 10(33), 10(36) and 10(38)]	20% (+ SC + EC)
(e)	Income by way of interest payable by Government /Indian concern on money borrowed or debt incurred by Government or India concern in foreign currency (not being interest referred to in section 194LB or 194LC)	20% (+ SC + EC)
(f)	Royalty/Fees for Technical Services	10% (+ SC + EC)
(g)	Any Other Income	30% (+ SC + EC) 40% (+ SC+EC) if payee is foreign company

(C) Other Points**(1) Liability to deduct tax at source irrespective of residential status and location**

For the removal of doubts, it is hereby clarified that the obligation to deduct tax under this section applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has—

- (i) a residence or place of business or business connection in India; or
- (ii) any other presence in any manner whatsoever in India.

(2) Procedure to be adopted by the person responsible for making payment when whole sum payable to non-resident is not chargeable.

Where the person responsible for paying any such sum chargeable under this Act (other than salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application *[in such form and manner to the Assessing Officer, as may be prescribed – [Amendment made by Finance Act (No.2), 2019 w.e.f. 01.11.2019]* for determination of appropriate proportion of sum so chargeable.

Thereafter, assessing officer shall determine the appropriate proportion of such sum so chargeable, ~~by general or special order~~ *in such manner as may be prescribed. – [Amendment made by Finance Act (No.2), 2019 w.e.f. 01.11.2019]*

Upon such determination, tax shall be deducted under this section only on that proportion of the sum which is so chargeable.

(3) Payee is entitled to obtain certificate from assessing officer for receiving interest or other sum without deduction of tax.

Subject to rules made in this behalf, any person entitled to receive any interest or other sum on which income-tax has to be deducted under this section, may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax.

Where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon.

(4) Furnishing information by the person responsible for making payment

The person responsible for paying to a non-resident or to a foreign company, any sum shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.

Such information has to be furnished whether or not any sum is chargeable under the provisions of this Act.

(5) Mandatory application to the assessing officer by the person responsible for making payment to non-resident or foreign company:

The Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application *[in such form and manner to the Assessing Officer, as may be prescribed – [Amendment made by Finance Act (No.2), 2019 w.e.f. 01.11.2019]* for determination of appropriate proportion of sum so chargeable.

Thereafter, assessing officer shall determine the appropriate proportion of such sum so chargeable, ~~by general or special order~~ *in such manner as may be prescribed. – [Amendment made by Finance Act (No.2), 2019 w.e.f. 01.11.2019]*

Upon such determination, tax shall be deducted under this section only on that proportion of the sum which is so chargeable.

Objective behind amending section 195

Section 195(2) and section 195(7) are being used by a person making payment to non-resident to obtain certificate / order from the assessing officer for lower or nil withholding tax. However, the process is currently manual. In order to use technology to streamline the process and to monitor such payments, the amendments were made under section 195(2) and 195(7).

27.14 PAYMENT WITHOUT TAX DEDUCTION OR WITH DEDUCTION AT LOWER RATE**Section:- 197****Section 197:- Obtaining a certificate of lower rate from the Assessing Officer**

- The assessee's tax is deductible under section 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC, **194M [Inserted by Amendment made by Finance Act (No.2), 2019 w.e.f. 01.09.2019]** and 195.
- He can apply in Form No. 13 to the Assessing officer to give him a certificate authorizing the payer not to deduct tax or deduct tax at lower rate, as may be appropriate.
- On being satisfied that total income of assessee justifies deduction of tax at lower rates or no deduction, the assessing officer shall issue a certificate to that effect. Such certificate shall be issued directly to the person responsible for paying income, under an advice to the applicant.

27.15 TAX DEDUCTED AT SOURCE SHALL BE DEEMED TO BE INCOME RECEIVED**Section:- 198 & 199**

- Tax deducted at source shall be deemed to be income received. Accordingly, it shall be considered for the purpose of computing the income of assessee. [Sec. 198]
- **Provided further that the sum deducted in accordance with the provisions of section 194N for the purpose of computing the income of an assessee, shall not be deemed to be income received. [Proviso to Section 198-Inserted by Finance Act (No.2), 2019 w.e.f. 01.09.2019]**
- In pursuance of rules framed under section 199 of the Income Tax act, credit for tax deducted at source shall be given to the deductee for the assessment year for which such income is assessable.
- Where tax has been deducted at source and paid to the Central Government, and the income is assessable over a number of years, credit for tax deducted at source shall be allowed in the same proportion in which such income is offered for taxation.
- If the income on which tax has been deducted is assessable in the hands of a person other than the deductee, then tax credit will be given to such other person if deductee files a declaration with the deductor to that effect. Such declaration shall contain the name, address, PAN of the person to whom credit is to be given and reasons for giving credit to such person.

27.16 BRAIN STORMING PRACTICALS**Section:- Various Sections****Practical 25**

Discuss whether tax has to be deducted at source under the provisions of the Income-tax Act, 1961 in the following situations, which have taken place during the previous year.

- M/s. Jiva & Co., a partnership firm, pays a sum of Rs.43,000 as interest on loan borrowed from an State Bank of India.
- Above firm has paid Rs.12,000 as interest on capital to partner Mr. A, a resident in India, and Rs. 24,000 as interest on capital to partner Mr. B, a non-resident.
- The above firm paid Rs.50,000 being share of profit of partner Mr.B, a non-resident

Solution

- Section 194A requires deduction of tax on any income by way of interest, other than interest on securities, credited or paid to a resident, at the rates in force.

However, it specifically excludes from its scope, income credited or paid to any banking company to which the Banking Regulation Act, 1949 applies. Therefore, interest payment to such bank will not attract tax deduction u/s 194A. Consequently, no tax is required to be deducted at source under section 194A on interest of Rs. 43,000 paid by M/s. Jiva & Co., a partnership firm.

- (ii) Section 194A requiring deduction of tax at source on any income by way of interest, other than interest on securities, credited or paid to a resident, excludes from its scope, income credited or paid by a firm to its partner. Therefore, no tax is required to be deducted at source under section 194A on interest on capital of Rs.12,000 paid by the firm to Mr. A, a resident partner.

On the other hand, section 195, which requires tax deduction at source on payments to non-residents, does not provide for any exclusion in respect of payment of interest by a firm to its non-resident partner. Therefore, tax has to be deducted under section 195 at the rates in force in respect of interest on capital of Rs.24,000 paid to partner Mr. B, a non-resident.

- (iii) U/s 195, if no sum is chargeable to tax in India, then there is no liability on payer to deduct tax at source. As per sect. 10(2A), share of profit received by a partner from the total income of the firm is exempt from tax. Therefore, the share of profit paid to non-resident partner is not subject to tax deduction at source. However, section 195(6) provides that the person responsible for paying any sum, whether or not chargeable to tax, to a non-corporate non-resident or to a foreign company, shall be required to furnish the information relating to payment of such sum in the prescribed form and manner.

Reader's Note:

Practical 26

IPL Organisers Ltd would like to make payment to following persons in relation to IPL cricket matches played in India. Advise IPL Organisers Ltd. regarding appropriate section under which tax deduction is to be made?

- (i) Resident Cricketer
- (ii) Non-Resident Cricketer
- (iii) Resident Umpire
- (iv) Non-Resident Umpire
- (v) Non-Resident Cheer Girls
- (vi) Resident Physiotherapists
- (vii) Non-resident Coach
- (viii) Resident Event Manager, Mr. Mohan
- (ix) Resident Event Manager, Gilli & Co., Partnership Firm

Solution

IPL Organisers Ltd. is advised to deduct tax at source as under:

Payee	Appropriate Section
Resident Cricketer	Section 194 J
Non-Resident Cricketer	Section 194 E
Resident Umpire	Section 194 J
Non-Resident Umpire	Section 195
Non-Resident Cheer Girls	Section 194 E
Resident Physiotherapists	Section 194 J
Non-resident Coach	Section 195
Resident Event Manager, Mr. Mohan	Section 194J
Resident Event Manager, Gilli & Co., Partnership Firm	Section 194 C

Reader's Note:

Practical 27

Mahanadi Limited has taken a 3,000 sq. ft. flat on rent from Yamuna Limited to set up its Branch Office. The rent payable to Yamuna Limited for the flat is Rs. 60,000 per month plus applicable GST. Mahanadi Limited wishes to know whether tax is required to be deducted at source under section 194-I from gross amount of rent including service tax. Give your advice.

Solution

The CBDT, has, vide Circular No. 23/2017 dated 19.07.2017 clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component.

GST shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.

Considering the abovementioned circular, Mahanadi Limited is required to deduct tax at source under section 194-I from gross amount of rent without including applicable GST.

Reader's Note:**Practical 28**

Mention the section no. under which TDS to be made and the rate of TDS.

- (i) Interest paid to FII in respect of rupee denominated bond of an Indian company
- (ii) Interest paid to FII in respect of debenture of an Indian company
- (iii) Payment to FII resulting into Long term capital gain on transfer of security
- (iv) Payment to FII resulting into Short term capital gain on transfer of security
- (v) Interest paid to non-resident by infrastructure debt fund referred to in section 10(47) (Non-resident does not have PAN)
- (vi) Interest paid to non-resident on long term infrastructure bond issued by an Indian company (Non-resident does not have PAN)

Solution

Sr. No.	Particulars	Section No.	TDS Rate
(i)	Interest paid to FII in respect of rupee denominated bond of an Indian company		
(ii)	Interest paid to FII in respect of debenture of an Indian company		
(iii)	Payment to FII resulting into Long term capital gain on transfer of security		
(iv)	Payment to FII resulting into Short term capital gain on transfer of security		
(v)	Interest paid to non-resident by infrastructure debt fund referred to in section 10(47) (Non-resident does not have PAN)		
(vi)	Interest paid to non-resident on long term infrastructure bond issued by an Indian company (Non-resident does not have PAN)		

Reader's Note:

27.17 | CONSEQUENCES OF FAILURE TO DEDUCTE OR PAY**Section:- 201**

Section 201(1): Where any person, including the principal officer of a company, —

- (a) who is required to deduct any sum in accordance with the provisions of this Act; or
- (b) referred to in sub-section (1A) of [section 192](#), being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Inserted from 1st July, 2012 :- *Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a ~~resident~~ [Payee – Amended by Finance Act, (No.2), 2019 w.e.f. 01.09.2019] or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such ~~resident~~ [Payee – Amended by Finance Act, (No.2), 2019 w.e.f. 01.09.2019] —*

- (i) *has furnished his return of income under [section 139](#);*
- (ii) *has taken into account such sum 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 that no penalty shall be charged under [section 221](#) from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

Section 201 (1A):- Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

- (i) *at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and*
- (ii) *at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,*

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of [section 200](#).]

(Inserted from 1st July, 2012 :- *Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a ~~resident~~ [Payee – Amended by Finance Act, (No.2), 2019 w.e.f. 01.09.2019] or on the sum credited to the account of a ~~resident~~ [Payee – Amended by Finance Act, (No.2), 2019 w.e.f. 01.09.2019] but is not deemed to be an assessee in default under the first proviso of sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such ~~resident~~ [Payee – Amended by Finance Act, (No.2), 2019 w.e.f. 01.09.2019].*

Section 201(2):- Where the tax has not been paid as aforesaid after it is deducted, [the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A)] shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

Section 201(3): No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person **resident** in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given **[or two years from the end of the financial year in which the correction statement is delivered under the proviso to sub-section (3) of section 200, whichever is later – Amended by Finance Act, (No.2), 2019 w.e.f. 01.09.2019]**.

Section 201 (4):- The provisions of sub-clause (ii) of sub-section (3) of section 153 and of *Explanation 1* to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).

'Explanation.—For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the *Explanations to sub-section (2) of section 288*.

Practical 29

Examine critically in the context of provisions contained in Income-tax Act, 1961 as to the correctness of the submission of the company.

M/s Soft Drinks Limited entered into an agreement for the warehousing of its products with XYZ Warehousing and deducted tax at source as per provisions of section 194C out of warehousing charges paid during the year ended on **31.03.2019**. The Assessing Officer, while completing the assessment for **A.Y. 2019-20** of Soft Drinks Limited in **March 2020**, treated the warehousing charges as rent as defined in section 194-I and asked the company to make payment of difference amount of TDS with interest. It was submitted by the company that the recipient had already paid tax on the entire amount of warehousing charges and therefore, now the difference amount of TDS cannot be recovered. However, it will make the payment of due interest on the difference amount of TDS.

Solution

- Section 201 provides that the payer (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee-in-default in respect of such tax if such resident payee—
 - (1) has furnished his return of income under section 139;
 - (2) has taken into account such sum for computing income in such return of income; and
 - (3) has paid the tax due on the income declared by him in such return of income,
 and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.
- The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the resident payee.
- However, where the payer fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident and is not deemed to be an assessee-in-default under section 201(1) as mentioned above, interest under section 201(1A)(i) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.
- Therefore, M/s Soft Drinks Limited shall not be required to pay the difference tax in case the above-mentioned conditions are fulfilled. However, the assessee shall be liable to make payment of interest from the date on which such tax was deductible to the date of furnishing of return of income by XYZ Warehousing.
- Therefore, the submission of the assessee company, in this case, is correct

Reader's Note:

Practical 30

A sum of Rs.60,000 was paid to Mr. Dastur, an advocate, on **1st July, 2019** towards fees for his professional services without deducting tax at source. Later on, a further sum of Rs.70,000 was due to him on **28th February, 2020** from which tax of Rs. 13,000 was deducted at source. The tax so deducted was deposited on **25th June, 2020**. Compute interest payable by the deductor under section 201(1A).

Solution

- In this case, tax is deductible@10% under section 194J in respect of fees for professional services. Since there has been a delay in deduction and deposit of tax, interest under section 201(1A) is attracted.
- As per the provisions of section 201(1A), if a person who is liable to deduct tax at source fails to deduct tax at source or after deducting such tax, fails to pay the tax as required by the Act, then he is liable to pay interest as follows -
 - 1% for every month or part of month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually deducted.
 - 1½% for every month or part of month on the amount of such tax from the date on which such tax was deducted to the date on which tax is actually paid.
- Therefore, in the given case, interest under section 201(1A) would be computed as follows –

Particulars	Rs.
1% on tax deductible but not deducted i.e., 1% on Rs.6,000 for 8 months	480
1½% on tax deducted but not deposited i.e. 1½% on Rs. 13,000 for 4 months	780
Total interest payable under section 201(1A)	1,260

Reader's Note:**Practical 31**

A foreign company seconded some employees to the assessee, an Indian collaborator. These employees worked with the Indian collaborator throughout the financial year. The employees were in receipt of salary from the Indian collaborator. They were also in receipt of special allowance directly from the foreign company in foreign currency outside India. The Indian collaborator deducted tax under section 192, on the component of salary paid by it, without taking into account the special allowance paid abroad by the foreign company in foreign currency to these employees. For this reason, the Revenue authorities treated the Indian collaborator as an 'assessee-in-default' under section 201 for non-deduction of tax at source on the "special allowance" component of salary paid by the foreign company.

Is such treatment by the Revenue Authorities and the consequent levy of interest and penalty justified?

Solution

- Section 9(1)(ii) provides that any income which falls under the head "salaries" is deemed to accrue or arise in India, if it is earned in India. The *Explanation* thereto further clarifies that income payable for services rendered in India shall be regarded as income earned in India.
- Section 192(1) requires the person responsible for paying any income chargeable under the head "Salaries" to deduct income-tax, at the time of payment, at the average rate of income-tax computed on the basis of the rates in force for the financial year on the amount payable.
- Since the TDS provisions relating to payment of income chargeable under the head "Salaries" form an integrated code along with the charging and computation provisions under the Act, section 192(1) has to be read with section 9(1)(ii) and the *Explanation* thereto. Therefore, if any payment under the head "Salaries" falls within section 9(1)(ii), then TDS provisions under section 192 gets attracted. Consequently, the Indian tax deductor assessee is duty bound to deduct, from the portion of salary paid by it, tax at source under

section 192(1) on the entire salary paid to the employee, including special allowance paid abroad to the employee by the foreign company.

- It was so held by the Apex Court in **CIT, New Delhi v. Eli Lilly & Co. (India) P. Ltd. (2009) 312 ITR 225**. In this case, all the employees are resident in India, since they have worked with the Indian collaborator throughout the financial year. If the tax due on special allowance received from the foreign company is paid by the recipient-employees, then, the Indian collaborator would not be treated as an assessee-in-default under section 201(1), if these resident-employees have furnished a return of income under section 139, disclosing such income, and have also furnished a certificate to this effect from an accountant in the prescribed form. However, interest under section 201(1A)@1% per month or part of month shall be payable by the Indian collaborator from the date on which such tax was deductible to the date of furnishing of return by such resident employee.
- In cases where the tax has not been paid by the recipient employee, the Assessing Officer can proceed under section 201(1) to recover the shortfall in payment of tax and interest thereon u/s 201(1A).
- However, no penalty under section 271C would be attracted, if the Indian collaborator was under the genuine and *bona fide* belief that it was not under any obligation to deduct tax at source from the special allowance paid by the foreign company. This is provided for under section 273B.

Reader's Note:

Practical 32

Syed & Co., a dealer in motor cycles conducted motor cycle race on the occasion of its' 25th year anniversary. The prize was given to first 3 winners by way of a luxury motor cycle which was worth Rs.2 lakhs each. The assessee did not deduct tax at source on the prize given to the winners. The Assessing Officer treated the assessee as an assessee in default and passed order under sections 201(1). The assessee seeks your advice on the validity of the order and other legal consequences. Advise.

Solution

Provision applicable:

Section 194 B: The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle, card game and any other game of any sort in an amount exceeding ` 10,000 shall deduct tax at source @ 30%.

However, where the winnings are wholly in kind, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings. **(Proviso to Section 194B)**

Section 201(1): Where any person, who is required to deduct any sum in accordance with the provisions of this Act, does not deduct, or does not pay, or after so deducting fails to pay such tax, then, such person, without prejudice to any other consequence which he may incur, be deemed to be an assessee in default.

Analysis: Hon'ble Karnataka High Court in CIT v. Hindustan Lever Ltd. (2014) 361 ITR 1 had made following observations:

"We have already perused Section 194-B, in particular, the proviso thereto, it is clear that there could be winnings wholly in kind and in which case, the duty casts on the person responsible for paying is to ensure that tax has been paid in respect of the winnings before releasing it to the winner. The proviso makes it further clear that no duty of deduction of tax in respect of the winnings is cast on the person who is responsible for paying, where the winnings is wholly in kind. Undoubtedly, in that eventuality such person should ensure that the tax has been paid in respect of the winnings before releasing it to the winner.

The combined reading of Section 194B and Section 201 would show that if any such person fails to "deduct" the whole or any part of the tax or after deducting, fails to pay the tax or required by or under this Act, without prejudice to any other consequences, which he may incur, be deemed to be an assessee in default in respect of

the tax. In other words, the provisions contained in these sections do not cast any duty/responsibility to deduct the tax at source where the winnings is wholly in kind. If the winnings is wholly in kind, as a matter of fact, there cannot be any deduction of tax at source.

The word "deduction" employed in this provision postulates a reduction or subtraction of an amount from a gross sum to be paid and payment of the net amount thereafter. Where the winnings are wholly in kind the question of deduction of any sum therefrom does not arise and in that eventuality, the only responsibility, as cast under the provisions of the Act, is to ensure that tax is paid by the winner of the prize before the prize or winnings is released."

Conclusion: Applying the rationale of the Karnataka High Court to the facts of the present case, order passed under section 201(1) treating the dealer as an assessee-in-default is not tenable in law.

Other legal consequences:

Section 271C deals with "Penalty for failure to deduct tax at source." which reads as under:

271C. (1)

If any person fails to—

- (a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or
- (b) pay the whole or any part of the tax as required by or under—
 - (i) sub-section (2) of section 115-O; or
 - (ii) the **proviso to section 194B**,

then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.

271C (2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Section 276B deals with "Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B." which reads as under:

If a person fails to pay to the credit of the Central Government,—

- (a) the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or
- (b) the tax payable by him, as required by or under—
 - (i) sub-section (2) of section 115-O; or
 - (ii) the **proviso to section 194B**,

he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

On plain reading of the section 271C and 276B, the dealer would be liable for penalty equal to the sum of tax deductible and prosecution by way of imprisonment and fine for failing to ensure that tax is paid by the winner of the prize before the winnings are released in his favour.

Reader's Note:

Practical 33

Raghav Infrastructure, a partnership firm, has been held to be an assessee in default under section 201(1) of the Act for the non-deduction of TDS of Rs. 20,00,000 and interest thereon under section 201(1A)(i). The argument was made by the Raghav Infrastructure that no-deduction is due to the fact that necessary documents for deduction of tax at source were seized by the Income Tax Department and the copies thereof was not made available in time. Raghav Infrastructure is ready to pay demand of Rs. 20,00,000, being principal amount. However, it seeks your advice for any possibility of waiver or reduction of interest levied under section 201(1A)(i).

Solution

CBDT vide Circular No. 11/2017, dated 24.03.2017 issued guidelines for waiver of interest under section 201(1A) (i) which reads as under:

In exercise of the powers conferred under section 119(2)(a), the CBDT has directed that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 201(1A) (i) in the classes of cases specified below for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax may deem fit. However, no reduction or waiver of such interest shall be ordered unless the principal demand under sections 200A, 201(1) or 234E, as the case may be, stands fully paid or satisfactory arrangements for payment of the principal demand under these sections have been made. The Chief Commissioner of Income-tax or Director General of Income-tax may also impose any other condition as deemed fit for the said reduction or waiver of interest.

The class of cases in which the reduction or waiver of interest under section 201(1A)(i) can be considered, are as follows:

- (i) Where during the course of proceedings for search and seizure under section 132, or otherwise, the books of account and other documents necessary for making deduction under Chapter XVIIB of the Act were seized and the assessee was not able to, within the time specified, deduct tax at source from any sum credited to any account (whether called "suspense account" or by any other name) in his books of account
- (ii) Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct tax at source in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India or a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such financial year was found to be less than the tax deductible on such sums paid or payable.
- (iii) Where the default under section 201 relates to non-deduction or a lower deduction of tax under section 195 in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into an agreement referred to in section 90 or 90A of the Act, and where —
 - (a) a dispute regarding the tax payable in India in respect of the said payment had been referred to the Competent Authority in India mentioned in Rule 44H of the Income-tax Rules, 1962 under the said agreement under section 90 or 90A of the Act;
 - (b) such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default under section 201;
 - (c) the dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the said agreement; and
 - (d) the person in default under section 201 has given his acceptance to the resolution and has withdrawn his appeal(s) pending on the issue, within the meaning of Rule 44H (4) of the Income-tax Rules, within a period of one month of the date on which the resolution is communicated to him

Even if the interest under section 201(1A) (i) has already been paid by the deductor, the same can be considered for waiver, subject to the conditions above and a refund may be given to the deductor, if waiver is ordered.

The Chief Commissioner of Income-tax or Director General of Income-tax examining an application for waiver of interest under this order shall pass a speaking order after providing adequate opportunity of being heard to the applicant.

Reader's Note:

Practical 34

Brown Drinks Limited (BDL) entered into an agreement with DATA Link Limited (DLL) for obtaining technical services. However, BDL failed to deduct tax at source as per provisions of section 194J of the Act out of charges paid Rs. 5,00,000 for technical services on **10.12.2019**. The DLL has furnished its return of income for the **P.Y. 2019-20** on **25.09.2020** incorporating the amount received for technical services from BDL and duly paid tax on its returned income. Answer the following questions:

- Whether BDL is deemed to be in default in view of the provisions of section 201(1) of the Act?
- Whether BDL is required to pay interest under section 201(1A) of the Act?
- Whether BDL will suffer disallowance under section 40(a)(i)/40(a)(ia) for the **P.Y. 2019-20**?

Solution

- Proviso to Section 201(1) provides that the payer (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee-in-default in respect of such tax if such payee–
 - has furnished his return of income under section 139;
 - has taken into account such sum for computing income in such return of income; and
 - has paid the tax due on the income declared by him in such return of income,
 and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed. In the present issue, DLL has furnished its return of income for the **P.Y. 2019-20** on **30.09.2020** incorporating the amount received for technical services from BDL and duly paid tax on its returned income. Therefore, BDL would not be deemed to be in default provided it furnishes a certificate to this effect from an accountant.
- Proviso to section 201(1A) provides that where the payer fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident and is not deemed to be an assessee-in-default under section 201(1) as mentioned above, interest under section 201(1A)(i) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee. In the present issue, BDL is required to pay interest @ 1% p.m. or part of month for the period **10.12.2019 to 30.09.2020**
- For the **P.Y. 2019-20**, BDL will suffer disallowance of 100% or 30% of Rs.5,00,000 under section 40(a)(i)/40(a)(ia) depending upon the residential status of DLL. However, in view of the last proviso to section 40(a)(i)/40(a)(ia), the date of deduction and payment of taxes by the payer(BDL) shall be deemed to be the date on which return of income has been furnished by the payee (DLL) [**ROI date : 25-09-2020**] and therefore the amount so disallowed in the hands of BDL for **P.Y. 2019-20** shall be allowed in **P.Y. 2020-21**.

Reader's Note:**Practical 35**

ABC Business Idea Pvt. Ltd. made the payment of warehousing charges Rs. 5,00,000 to Apna Warehousing on **10-09-2011**, a partnership firm without deduction of tax at source. The Assessing officer treated ABC Business Idea Pvt. Ltd. as assessee in default under section 201(1) of the Act by passing order on **31.12.2019**. Verify whether the order passed by assessing officer is barred by limitation or not.

Solution

Time limit prescribed for passing order under section 201(1) is as under:

Section 201(3) provides that “no order shall be made under section 201(1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given .

Considering the above, the maximum time limit for passing order under section 201(1) shall be **31.03.2019** while the assessing officer passed order on **31.12.2019**. Therefore, the order passed by the assessing officer treating ABC Business Idea Pvt. Ltd. is barred by limitation.

Reader's Note:

Practical 36

DEF Nexgen Pvt. Ltd. made the payment of warehousing charges Rs. 10,00,000 to Paraya Warehousing Pvt. Ltd. on **10-09-2011**, a partnership firm after deducting tax at source and reported the same in TDS statement (Return) under section 194I. Later on, TDS statement (Return) was corrected on **15-09-2017** under section 200(3) of the Act by DEF Nexgen Pvt. Ltd. treating the above payment under section 194C of the Act. The Assessing officer treated DEF Nexgen Pvt. Ltd. as assessee in default under section 201(1) of the Act by passing order on **31.12.2019**. Verify whether the order passed by assessing officer is barred by limitation or not.

Solution

Time limit prescribed for passing order under section 201(1) is as under:

Section 201(3) provides that “no order shall be made under section 201(1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time

(a) after the expiry of seven years from the end of the financial year in which payment is made or credit is given
or

(b) *two years from the end of the financial year in which the correction statement is delivered under the proviso to sub-section (3) of section 200, whichever is later.*”

Considering the above, the maximum time limit for passing order under section 201(1) shall be

(a) **31.03.2019** or

(b) **31.03.2020**

Whichever is later.

Considering the above, the maximum time limit for passing order under section 201(1) shall be **31.03.2020** while the assessing officer passed order on **31.12.2019**. Therefore, the order passed by the assessing officer treating DEF Nexgen Idea Pvt. Ltd. is not barred by limitation.

Reader's Note:

Practical 37

Gujarat Giant Ltd., Indian Company made payment of Rs.8,50,000, on **15-10-2013** to Mr. Jackson, non-resident, for technical services rendered in India. However, it failed to deduct tax at source under section 195 of the Act. This fact was noticed by the assessing officer during the course of re-assessment proceedings under section 147 of the Act. The Assessing officer, later on, treated Gujarat Giant Ltd., as assessee in default under section 201(1) of the Act by passing order on **31.12.2019**. Verify whether the order passed by assessing officer is barred by limitation or not.

Solution

Time limit prescribed for passing order under section 201(1) is as under:

Section 201(3) provides that “no order shall be made under section 201(1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax **from a person resident in India**, at any time

(a) after the expiry of seven years from the end of the financial year in which payment is made or credit is given
or

(b) *two years from the end of the financial year in which the correction statement is delivered under the proviso to sub-section (3) of section 200, whichever is later.*”

However, the above time limit is applicable only when the payee is resident in India. In the absence of any specific provision regarding time limit for treating assessee in default under section 201(1) when payee is non-resident, the courts have held that, 4 years be considered as a reasonable time. – Refer DIT(IT) v. Mahindra & Mahindra Ltd. [2014] 225 Taxman 306 (TDS).

Considering the above, the order passed by the assessing officer treating Gujarat Giant Ltd. is barred by limitation.

Reader's Note:

27.18	FURNISHING OF STATEMENT IN RESPECT OF PAYMENT OF ANY INCOME TO RESIDENTS WITHOUT DEDUCTION OF TAX.

Section:- 206A – Substituted by Finance Act, 2019 w.e.f.

Sub-section (1)

Following persons are required to prepare a statement under section 206A(1).

- (a) Any banking company or co-operative society responsible for paying to a resident any income by way of interest (other than interest on securities) not exceeding forty thousand rupees;
- (b) Any housing finance company responsible for paying to a resident any income by way of interest (other than interest on securities) not exceeding five thousand rupees;

Such statement shall be prepared in such form, containing such particulars, for such period, verified in such manner and within such time, as may be prescribed.

Such statement shall be furnished to the prescribed income-tax authority or to the person authorised by such authority.

Sub-section (2)

The Board may require any person, other than a person mentioned in sub-section (1), responsible for paying to a resident any income liable for deduction of tax at source under Chapter XVII, to prepare and furnish such statement.

Sub-section (3)

The above persons may also furnish a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under Sub-section (1)/(2), in such form and verified in such manner, as may be prescribed.

Objective behind substitution of Section 206A

As per the memorandum, the basic object of the amendment is to facilitate online filing of statement of transactions on which tax has not been deducted.

28 – ADVANCE TAX

29 – INTEREST U/S 234A, 234B, 234C & 234D

29.1 INTEREST FOR DEFAULTS IN FURNISHING RETURN OF INCOME

Section:- 234A

(1) Calculation of interest at the time of Self-Assessment

(a) Period for which interest is payable

It shall commence from the date immediately following due date of filing of return u/s 139(1) and it shall end on the date of furnishing the return of income.

(b) Amount on which interest is payable

Particulars	Rs.
Tax on returned income	xxx
Less: TDS or TCS/ Relief u/s 89 [Amendment made by Finance Act, 2019 w.r.e.f.A.Y.2007-08], 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Less: Advance Tax paid, if any	(xxx)
Amount on which interest is payable	xxxx

(2) Calculation of interest at the time of intimation under section 143(1) or regular assessment

(a) Period for which interest is payable

It shall commence from the date immediately following due date of filing of return u/s 139(1) and it shall end on the date of furnishing the return of income.

(b) Amount on which interest is payable

Particulars	Rs.
Tax on income determined /assessed under 143(1) / 143(3) / 144	Xxx
Less: TDS or TCS/ Relief u/s 89 [Amendment made by Finance Act, 2019 w.r.e.f.A.Y.2007-08], 90, 90A, 91/MAT credit u/s 115JAA/AMT credit u/s 115JD	(xxx)
Less: Advance Tax paid, if any.	(xxx)
Amount on which interest is payable	Xxxx

(3) Calculation of interest when assessee had not furnished the return and assessment got completed under section 144 of the Act.

(a) Period for which interest is payable

It shall commence from the date immediately following due date of filing of return u/s 139(1) and it shall end on the date of completion of assessment u/s144.

(b) Amount on which interest is payable

articulars	Rs.
Tax on income assessed under section 144 of the Act	xxx
Less: TDS or TCS/ Relief u/s 89 [Amendment made by Finance Act, 2019 w.r.e.f.A.Y.2007-08], 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Less: Advance Tax paid, if any.	(xxx)
Amount on which interest is payable	xxxx

(4) Calculation of interest when assessment got completed under section 147 or 153A of the Act.**(a) Period for which interest is payable**

It shall commence on the day immediately following the expiry of time allowed to file return under section 148 or 153A, as the case may be, and it shall end on the date of furnishing return.

If assessee had not furnished the return at all, then, period for computation of interest shall end on date of completion of assessment under section 147 or section 153A, as the case may be.

(b) Amount on which interest is payable

Particulars	Rs.
Tax on income assessed u/s 147 or 153A, as the case may be.	xxx
Less: Tax on income determined u/s 143(1)/143(3)/144/147 / 153A, as the case may be.	(xxx)
Amount on which interest is payable	<u>xxxx</u>

(5) Increase or reduction of interest payable under section 234A as a result of order under section 154, 155, 250 etc.

Where as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under section 245D(4), the amount of tax on which interest was payable under above paras has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

- (i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;
- (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

29.2 INTEREST FOR DEFAULTS IN PAYMENT OF ADVANCE TAX.**Section:- 234B****(1) Calculation of interest at the time of Self-Assessment**

- Check provision: Verify 90% of (Tax on returned income – TDS/TCS/ relief u/s. 90, 90A & 91, MAT credit / AMT credit) had been paid by way of advance tax or not.
- If answer is yes, then no interest u/s 234B shall be levied
- If answer is no, then calculate interest under this section.

(a) Period for which interest is payable

It shall commence from the 1st day of assessment year and it shall end on the date of payment of self-assessment tax.

(b) Amount on which Interest is Payable

Particulars	Rs.
Tax on returned income	xxx
Less: TDS or TCS/ Relief u/s <i>89 [Amendment made by Finance Act, 2019 w.r.e.f.A.Y.2007-08]</i> , 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Less: Advance Tax	(xxx)
Amount on which Interest is Payable	<u>xxxx</u>

(2) Calculation of interest at the time of intimation under section 143(1) or regular assessment

- Check provision: Verify 90% of (Tax on income determined/assessed under section 143(1)/ 143(3)/ 144, as the case may be – TDS/TCS/ relief u/s. 90, 90A & 91, MAT credit / AMT credit) had been paid by way of advance tax or not.
- If answer is yes, then no interest u/s 234B shall be levied
- If answer is no, then calculate interest under this section.

(a) Period for which interest is payable

It shall commence from the 1st day of assessment year and it shall end on the date of determination of total income under 143(1) / 143(3) / 144, as the case may be.

If tax has been paid by assessee under section 140 A (self- assessment), then

The abovementioned period is required to be bifurcated into two parts:-

— **PART (I)****Period**

It shall commence from the 1st day of assessment year and it shall end on the date of payment of tax under section 140A.

Amount on which interest is payable

Particulars	Rs.
Tax on income determined /assessed under 143(1) / 143(3) / 144	Xxx
Less: TDS or TCS/ Relief u/s <i>89 [Amendment made by Finance Act, 2019 w.r.e.f.A.Y.2007-08]</i> , 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Less: Advance Tax paid, if any.	(xxx)
Amount on which interest is payable	Xxxx

— **PART (II)****Period**

It shall commence from the 1st day of month immediately following after the month in which self-assessment tax has been paid and it shall end on the date of determination of total income under 143(1) / 143(3) / 144, as the case may be.

Amount on which interest is payable

Particulars	Rs.
Tax on income determined /assessed under 143(1) / 143(3) / 144	xxx
Less: TDS or TCS/ Relief u/s <i>89 [Amendment made by Finance Act, 2019 w.r.e.f.A.Y.2007-08]</i> , 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Less: Advance Tax	(xxx)
Less: self – assessment tax {only principal (towards tax) portion}	(xxx)
Amount on which interest is payable	xxxx

(b) Interest payable at the time of intimation or regular assessment

= Sum total of interest amount determined at Part (I) and Part (II)

(3) Calculation of interest when assessment got completed under section 147 or 153A of the Act.**(a) Period for which interest is payable**

It shall commence from the 1st day of assessment year and it shall end on the date of re-assessment under 147 or section 153A, as the case may be.

(b) Amount on which interest is payable

Particulars	Rs.
Tax on income assessed u/s 147 or 153A, as the case may be.	Xxx
Less: Tax on income determined u/s 143(1)/143(3)/144/147 / 153A, as the case may be.	<u>(xxx)</u>
Amount on which interest is payable	<u>Xxxx</u>

(4) Computation of interest at time of application made to Settlement Commission**(a) Period for which interest is payable**

It shall commence from the 1st day of assessment year and it shall end on the date of making an application to the settlement commission.

(b) Amount on which interest is payable

Additional Tax calculated as per the provisions of Chapter “Settlement Commission “.

(5) Computation of interest at time of final order passed by Settlement Commission**(a) Period for which interest is payable**

It shall commence from the 1st day of assessment year and it shall end on the date of order of settlement commission.

(b) Amount on which interest is payable

Particulars	Rs.
Tax on total income determined by the Settlement Commission	xxxx
Less: Tax on total income disclosed in the application	<u>(xxx)</u>
Amount on which interest is payable	<u>xxxx</u>

(6) Increase or reduction of interest payable under section 234B as a result of order u/s 154, 155, 250 etc.

Where as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264, the amount of tax on which interest was payable under above paras has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

- (i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;
- (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

Practical 1

X Ltd. filed its return for the **A.Y. 2017-18** declaring income of Rs. 10,00,000. On **10-10-2019**, the assessee was in receipt of notice under section 148 for the **A.Y. 2017-18**, whereby X Ltd. was required to file return on or before **15-11-2019**. X Ltd. filed an application to settlement commission on **31-10-2019** declaring additional income of Rs. 60,00,000. Whether the application filed by X Ltd. to settlement commission is maintainable? Assume tax rate 30% for the **A.Y. 2017-18** and ignore education cess and surcharge for sake of simplicity.

Also find out interest under section 234B which shall be payable at the time of application.

Solution

In order to file an application before settlement commission following conditions must be satisfied:-

There should be a case:- It means proceeding of assessment or reassessment is pending before the assessing officer on date of application and

The additional tax exceeds Rs. 10 lakh (Rs. 50 lakh in search case)

Since proceeding under section 147 is pending before A.O., the condition at point (a) above is satisfied.

For condition (b), the Computation of additional tax is given as under:

$$\begin{aligned}
 \text{Additional Tax} &= \text{Tax on \{Income returned + Income disclosed in Application\}} \text{ less Tax on income returned} \\
 &= \text{Tax on \{Rs. 10,00,000 + Rs. 60,00,000\}} \text{ less Tax on Rs. 10,00,000} \\
 &= \text{Tax on Rs. 70,00,000 less tax on Rs. 10,00,000} \\
 &= \text{Rs. 21,00,000 less Rs. 3,00,000} \\
 &= \text{Rs. 18,00,000}
 \end{aligned}$$

Since condition (b) is also satisfied, the application made by X Ltd before settlement commission is primarily maintainable.

Calculation of Interest Payable under section 234B at the time of application

(a) **Period of Interest:** 31 months [i.e., from 01.04.2017 to 31.10.2019]

(b) **Amount on which Interest is payable**

Particulars	Rs.
Additional tax payable to Settlement commission	18,00,000
<i>Amount on which Interest is payable</i>	18,00,000

(c) **Interest under section 234B** [Rs.18,00,000 x 31 months x 1%]= Rs. 5,58,000

Readers Note:

Practical 2

Continuing above problem, the Settlement Commission passed the order on **17-08-2020** and made an addition of Rs. 5,00,000 over and above the income disclosed in application thereby determined total income at Rs. 75,00,000. Find out further interest payable under section 234B by X Ltd.

Solution**Calculation of Interest Payable under section 234B at the time of final order passed by Settlement Commission**

(a) **Period of Interest:** 41 months [i.e., from 01.04.2017 to 31.08.2020]

(b) **Amount on which Interest is payable**

Particulars	Rs.
Tax on total income determined by Settlement commission	22,50,000

Less: Tax on total income disclosed in the application	(21,00,000)
Amount on which Interest is payable	1,50,000

(c) Interest under section 234B [Rs.1,50,000 x 41 months x 1%]= Rs. 61,500.

Readers Note:

29.3 INTEREST FOR DEFERMENT OF ADVANCE TAX.

Section:- 234C

(1) Period for which and amount on which interest is payable

(A) Eligible assessee under section 44AD or 44ADA of the Act

<i>Dates of Installment</i>	<i>Advance Tax Paid Till Date</i>	<i>Advance Tax Payable</i>	<i>Amount on which interest is payable [(3)-(2)]</i>	<i>Period for which interest is payable</i>
(1)	(2)	(3)	(4)	(5)
15.03.20		100%		1 month

(B) Other assessee

<i>Dates of Installment</i>	<i>Advance Tax Paid Till Date</i>	<i>% of "tax due on returned income"</i>	<i>Amount on which interest is payable [(3)-(2)]</i>	<i>Period for which interest is payable</i>
(1)	(2)	(3)	(4)	(5)
15.06.19		15%		3 months
15.09.19		45%		3 months
15.12.19		75%		3 months
15.03.20		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.

(2) 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 89 [Amendment made by Finance Act, 2019 w.r.e.f.A.Y.2007-08], 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.

(3) 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
- (d) income of the nature referred to in section 115BBDA (i.e. dividends received from domestic companies in excess of Rs. 10 lakhs during the year),

and the assessee has paid the whole of the amount of tax payable in respect of such income, as part of the remaining instalments of advance tax which are due or if no such instalments are due, then such tax is paid by the 31st day of March of the financial year.

Practical 3

Zandu & Co, a partnership firm submits the following information for the previous year **2019-20**.

Income under the head “PGBP”	5,00,000
LTCG on sale of land dated 1st November, 2019	99,515

You are required to compute the minimum amount of advance tax payable by Zandu & Co. for each of the instalments 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 {15.06.20178} [upto 12%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 <u>x 12%</u>	18,540
2nd Instalment of advance tax payable { 15.09.2018} [upto 36%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 <u>x 36%</u>	37,080 [55,620-18,540]
3rd Instalment of advance tax payable {15.12.2018} [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 <u>x 75%</u>	75,630 [1,31,250-18,540-37,080]
4th Instalment of advance tax payable {15.03.2019} [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.1,75,00 <u>x 100%</u>	43,750 [1,75,000-18,540-37,080-75,630]

Readers Note:

29.4 INTEREST ON EXCESS REFUND

Section:- 234D

- (1) No refund is due on regular assessment

Rate of interest	½ per cent per month or part of a month.
Period for which interest is payable	From the date of grant of refund under section 143 (1) to date of regular assessment.
Amount on which interest is payable	Whole of the amount refunded.

- (2) **Refund is granted under section 143(1) but refund so granted exceeds the amount refundable on regular assessment.**

Rate of interest	½ per cent per month or part of a month.
Period for which interest is payable	From the date of grant of refund under section 143 (1) to date of regular assessment.
Amount on which interest is payable	Amount refundable on regular assessment Less amount refunded under section 143(1).

- (3) **Reduction of interest payable under section 234D as a result of order under section 154, 155, 250 etc.**

Where, as a result of an order under section 154 or 155 or 250 or 254 or 260 or 262 or 263 or 264 or an order of the Settlement Commission under section 245D(4) the amount of refund granted under section 143(1) is held to be correctly allowed, either in whole or in part, as the case may be, then the interest chargeable in above para, shall be reduced accordingly.

Practical 4

Mr. X filed return of income for assessment year **2019-20** claiming a refund of Rs.45,000. The said refund was granted and paid to the assessee on **March 1, 2020** after processing the return under section 143(1). Later on, the case was taken up for regular assessment by issue of notice under section 143(2) and the said assessment was completed on **August 17, 2020** resulting in demand of Rs.2,500. Is the assessee liable to interest on the amount of refund already granted to him and if so, what is the amount of such interest?

Solution

The assessee is liable to interest on the amount of refund already granted to him under section 234D of the Act. The computation of interest under section 234D is as under:

Period of Interest: 6 Months [i.e., 01.03.2020 to 31.08.2020]

Interest under section 234D is Rs.1,350 (i.e., 45,000 x ½ % x 6).

Readers Note:

Practical 5

Suppose in the above problem A.O determined amount refundable Rs.21,000 instead of demand Rs.2,500. Calculate interest under section 234D.

Solution

Period of Interest: 6 Months [i.e., 01.03.2020 to 31.08.2020]

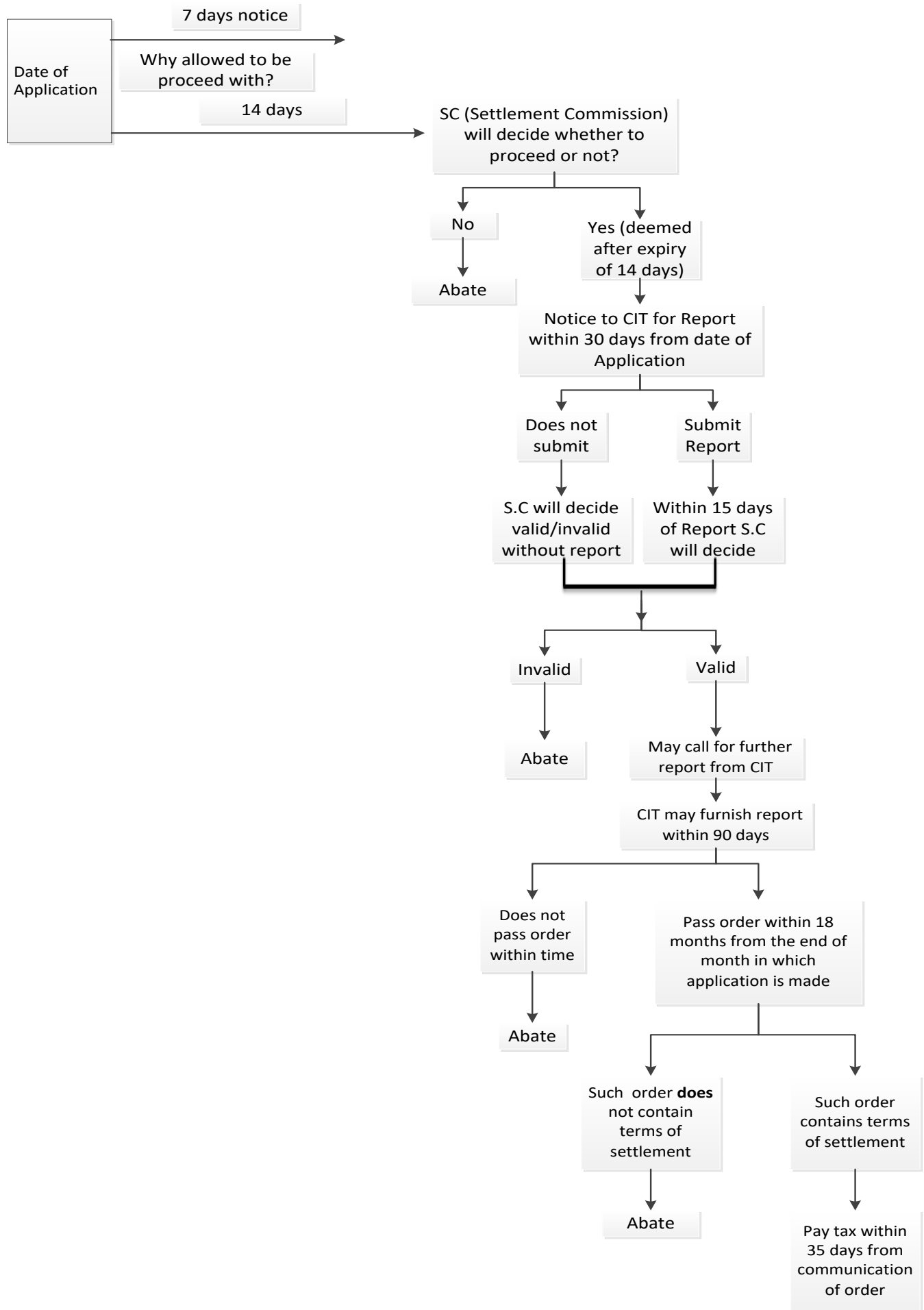
Interest under section 234D is Rs.720 (i.e., 24,000 x ½ % x 6).

Readers Note:

30 – SETTLEMENT OF CASES

30.1 SETTLEMENT COMMISSION AT A GLANCE

1. There shall be a “case”.
2. An application in a prescribed form shall be made to Settlement Commission.
3. Such application shall be accompanied by the prescribed fees. (At present Rs. 500)
4. The application shall not be allowed to be withdrawn by the applicant.
5. The applicant shall make full and true disclosure to the Settlement Commission.
6. The application once made cannot be revised like “Revised return”. – **CIT v. Om Prakash Mital [2005] 143 Taxman 373 (SC)**
7. The application cannot be admitted unless “additional amount of income tax payable” exceeds specified amount.
8. Such “additional amount of tax payable” and interest thereon must be paid on or before making the application.
9. The proof of such payment is attached with the application.
10. The applicant must, on the date of making the application to the Settlement Commission, also intimate the Assessing Officer in prescribed manner, about having made an application to the Settlement Commission.



30.2 SETTLEMENT COMMISSION**Section:- 245B**

- The Central Government shall constitute a Commission to be called the Income-tax Settlement Commission for the settlement of cases.
- The Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other members as the Central Government thinks fit.
- The Chairman, Vice-Chairman and other members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, problems relating to direct taxes and business accounts.
- Where a member of the Board is appointed as the Chairman, Vice-Chairman or as a member of the Settlement Commission, he shall cease to be a member of the Board.

30.3 MEANING OF CASE**Section:- 245A(b)**

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

Sr. No.	Proceedings for	Date of commencement of proceedings	Date of conclusion of proceedings
1.	Assessment or reassessment or re-computation under section 147	From the date on which a notice u/s 148 is issued	No mention under the Act
2.	Any other assessment year or years for which a notice under section 148 has not been issued, but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished u/s 139 or in response to a notice u/s 142	From the date on which a notice under section 148 is issued in Case No. 1 above.	No mention under the Act
3.	Search Cases (i.e. Section 153A or 153C)	From the date of issue of notice requiring assessee to file returns for six assessment years	The date on which assessment is made. *
4.	Making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment	From the date on which order under section 254 or 263 or 264, setting aside or cancelling the assessment is passed	No mention under the Act
5.	Other cases – if assessment is made	from the date on which return of income is furnished under section 139 or in response to a notice under section 142	The date on which assessment is made.*

Other Cases – If assessment is not made	from the date on which return of income is furnished under section 139 or in response to a notice under section 142	Time specified for completion of assessment under section 153(1)-Substituted by Finance Act, 2017 w.e.f. 1-4-2017

* The assessment proceedings shall be deemed to have been completed only on the date of service of assessment order to the applicant. – Circular No. 3/ 2008, dated 12th March, 2008.

Practical 1

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

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

Solution

Considering the definition of case discussed above,

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

Readers Note:

31 – ADVANCE RULINGS

32 – REQUIREMENT AS TO MODE OF ACCEPTANCE PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX

32.1 | MODE OF TAKING OR ACCEPTING CERTAIN LOANS, DEPOSITS AND SPECIFIED SUM

Section:- 269SS

No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account *or through such other electronic mode as may be prescribed - Amendment made by Finance Act (No.2), 2019 w.e.f.01.11.2019*, if,—

- (a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or
- (b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
- (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,—

- (a) the Government;
- (b) any banking company, post office savings bank or co-operative bank;
- (c) any corporation established by a Central, State or Provincial Act;
- (d) any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);
- (e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

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

Explanation.—For the purposes of this section,—

- (i) "banking company" means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;
- (ii) "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949) ;
- (iii) "loan or deposit" means loan or deposit of money;
- (iv) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

Objective behind introducing this provision:

The object of introducing Sec.269SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he makes some false entries, he shall not escape by giving false explanation for the same. During search and seizures, unaccounted money is unearthed and the taxpayer would usually give the

explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also 'to manipulate his records to suit the plea of the taxpayer. The main object of Sec.269SS was to curb menace of making false entries in the account books and later giving an explanation for the same. The undue hardship of the provisions of Sec.271D is substantially mitigated by the inclusion of Sec.273B providing that if there was a genuine and bonafide transaction and the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some bonafide reason, the authority vested with the power to impose penalty has a discretionary power not to levy the penalty. Section 269SS is within the legislative competence and not violative of Article 14 of the Constitution of India -**ADI vs. Kum. A.B. Shanthi (2002) (SC)**.

32.2 | MODE OF REPAYMENT OF CERTAIN LOANS OR DEPOSITS

Section:- 269T

No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account *or through such other electronic mode as may be prescribed – Amendment made by Finance Act (No.2), 2019 w.e.f.01.11.2019* if—

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

is twenty thousand rupees or more:

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

Provided further that nothing contained in this section shall apply to repayment of any loan or deposit or specified advance taken or accepted from—

- (i) Government;
- (ii) any banking company, post office savings bank or co-operative bank;
- (iii) any corporation established by a Central, State or Provincial Act;
- (iv) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

Explanation.—For the purposes of this section,—

- (a) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature;
- (b) "specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.

32.3 | MODE OF UNDERTAKING TRANSACTIONS

Section:- 269ST

No person shall receive an amount of two lakh rupees or more—

- (a) in aggregate from a person in a day; or
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account *or through such other electronic mode as may be prescribed* **Amendment made by Finance Act (No.2), 2019 w.e.f.01.11.2019:**

Provided that the provisions of this section shall not apply to—

- (i) any receipt by—
 - (a) Government;
 - (b) any banking company, post office savings bank or co-operative bank;
- (ii) transactions of the nature referred to in section 269SS;
- (iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.

32.4 | ACCEPTANCE OF PAYMENT THROUGH PRESCRIBED ELECTRONIC MODES.

Section:- 269SU – Inserted by Finance (No.2), Act w.e.f. 01.11.2019

Every person, carrying on business, shall provide facility for accepting payment through prescribed electronic modes, in addition to the facility for other electronic modes, of payment, if any, being provided by such person, if his total sales, turnover or gross receipts, as the case may be, in business exceeds fifty crore rupees during the immediately preceding previous year.

32.5 | PRESS RELEASE, CIRCULARS AND NOTIFICATIONS

1. Press Release

Press release dated 5th April 2017 / Notification No.28/2017 dated 05.04.2017

The CBDT has issued a press release dated 5th April 2017 by which it has provided important clarification regarding the restriction imposed on cash transaction by sections 269ST & 271DA inserted by the Finance Act 2017 to the Income-tax Act. These sections provide that no person (other than those specified therein) shall receive an amount of two lakh rupees or more (a) in aggregate from a person in a day; (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account. **The CBDT has clarified that the said cash transaction limit of Rs 2 lakh will not apply to withdrawal from banks, cooperative bank and post offices.**

2. Circulars

Circular No. 22 of 2017 Dated 03rd July, 2017

Clarifications in respect of section 269ST of the Income-tax Act, 1961

- (a) Representations have been received from non-banking financial companies (NBFCs) and housing finance companies (HFCs) as to whether the provisions of section 269ST of the Act shall apply to one instalment of loan repayment or the whole amount of such repayment.
- (b) **In this context, it is clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.**

3. Notifications

Notification No.57/2017 dated 03.07.2017

In exercise of the powers conferred by clause (iii) of the proviso to section 269ST of the Income-tax Act, 1961, the Central Government hereby specifies that the provision of section 269ST shall not apply to the following, namely:-

- (a) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India;
- (b) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 ;
- (c) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007;
- (d) receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards;
- (e) receipt which is not includible in the total income under clause (17A) of section 10 of the Income-tax Act, 1961.
- (f) The notification shall be deemed to have come into force with effect from the 1st day of April, 2017

33 – PENALTIES

33.1 VARIOUS PENALTIES

Section:- Various

Section	Nature of default	Penalty leviable	Competent IT Authority to levy penalty
271DB	Person fails to provide facility for accepting payment through prescribed electronic modes of payment referred to in Section 269SU [Amendment made by Finance (No.2) Act, 2019 w.e.f.01.11.2019]	Sum of 5,000 rupees for every day during which such failure continues	Joint Commissioner
272B(2)	Failure to quote / intimate PAN / Aadhaar No. in any document referred to in section 139(5)(c) or to intimate such no. as required u/s 139A(5A) or 139A(5C) or quoting /intimating false PAN / Aadhaar No. [Amendment made by Finance (No.2) Act, 2019 w.e.f.01.11.2019]	Rs.10,000 for each such default	Assessing Officer
272B(2A)	Failure to quote / authenticate PAN / Aadhaar No. in documents referred to in section 139A(6A) [Amendment made by Finance (No.2) Act, 2019 w.e.f.01.11.2019]	Rs.10,000 for each such default	Assessing Officer
272B(2B)	Failure to ensure that PAN / Aadhaar No. has been duly quoted in documents relating to transactions referred to in section 139A(5)(c) or 139A(6A); or-duly authenticated in respect of transactions referred to u/s 139A(6A). [Amendment made by Finance (No.2) Act, 2019 w.e.f. 01.11.2019]	Rs.10,000 for each such default	Assessing Officer

33.2 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.

Step 1: 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 or *where return has been furnished for the first time under section 148 [Amendment made by Finance Act, 2019 w.r.e.f 01.04.2017];*

- (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.

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;

Where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB.

Step 2: 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:

Remark: 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.

Step 3: 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]

Step 4: Computation of penalty under section 270A:

The rate of penalty shall be 50 percent of the tax payable on under-reported income. (Step 3)

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.

33.3 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 and interest payable as per the order of assessment/reassessment order under section 143(3)/147 within the period specified in such notice of demand and does not prefer an appeal against such assessment order and
 - (b) The assessee makes such application in a prescribed form within 1 month from the end of the month in which the order of assessment or reassessment is received.
- The Assessing Officer shall, on fulfilment of the above conditions and after the expiry of the period of filing the appeal as specified in section 249(2), grant immunity from penalty proceedings under section 270A and initiation of proceedings under section 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 17

ABC & Co., a partnership firm was subject to assessment / reassessment for the **A.Y.2018-19**. Following are the details of income determined at various stages of assessment / reassessment proceedings:

Sr. No.	Particulars of Income	Rs.
1.	As per the return of income furnished u/s 139(1)	10,00,000
2.	Determined under section 143(1)(a)	20,00,000
3.	Assessed under section 143(3)	35,00,000
4.	Reassessed under section 147	55,00,000

Compute the penalty leviable u/s 270A, if any assuming that under-reporting is not on account of misreporting.

Solution

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)	35,00,000	
(-) Total income determined u/s 143(1)(a)	20,00,000	
	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. 20 lakhs determined u/s 143(1)(a) [30% of Rs. 35 lakh + EC & SHEC@3%]	10,81,500	2,31,750
Less: Tax on total income determined u/s 143(1)(a) [30% of Rs. 20 lakh + EC & SHEC@3%]	6,18,000	
	4,63,500	
Penalty leviable@50% of tax payable		
<u>Reassessment under section 147</u>		
<u>Under-reported income:</u>		
Total income reassessed under section 147	55,00,000	
(-) Total income assessed under section 143(3)	35,00,000	
	20,00,000	
<u>Tax payable on under-reported income:</u>		
Tax on under-reported income of Rs. 20 lakhs plus tax on total income of Rs. 35 lakhs assessed u/s 143(3) [30% of Rs. 95 lakh + EC & SHEC@3%]	16,99,500	
Less: Tax on total income assessed u/s 143(3) [30% of Rs. 35 lakh + EC & SHEC@3%]	10,81,500	
	6,18,000	3,09,000
Penalty leviable@50% of tax payable		

Readers Note:**Practical 18**

Find out penalty leviable, if any, under section 270A of the Act in the hands of Mr. Rahim (35 years) who was assessed under section 144 of the Act since he had not filed the return of income for the **A.Y. 2018-19** and also suppressed the facts relating to his income. The assessing officer determined total income at Rs. 10 lakh.

Solution**Computation of penalty leviable under section 270A**

Particulars	Rs.	Rs.
<u>Assessment under section 143(3)</u>		
<u>Under-reported income:</u>		
Total income assessed under section 144	10,00,000	
(-) Basic exemption limit	2,50,000	
	7,50,000	
Tax payable on under-reported income as increased by the basic exemption limit [i.e. tax on (Rs. 7.5 lakh Plus Rs. 2.5 Lakh]	1,12,500	
Add: EC & SHEC@3%	3,375	
	1,15,875	
Penalty leviable@200% of tax payable		2,31,750

Readers Note:

Practical 19

DEF Ltd. was subject to various assessment / re-assessment for the **A.Y. 2018-19**. Following are the details of income determined at various stages of assessment / reassessment proceedings.

Sr. No.	Particulars of Income	Rs.
1.	As per the return of income furnished u/s 139(1)	(6,00,000)
2.	Determined under section 143(1)(a)	(3,00,000)
3.	Assessed under section 143(3)	(1,00,000)
4.	Reassessed under section 147	4,00,000

Compute the penalty leviable u/s 270A, if any assuming that under-reporting is not on account of misreporting and tax rate applicable to the company is 30%.

Solution**Computation of penalty leviable under section 270A**

Particulars	Rs.	Rs.
<u>Assessment under section 143(3)</u>		
<u>Under-reported income:</u>		
Loss assessed u/s 143(3)	(1,00,000)	
(-) Loss determined under section 143(1)(a)	(3,00,000)	
	2,00,000	
Tax payable on under-reported income@30%	60,000	
Add: EC & SHEC@3%	1,800	
	61,800	
Penalty leviable@50% of tax payable		30,900
<u>Reassessment under section 147</u>		
<u>Under-reported income:</u>		
Total income reassessed under section 147	4,00,000	
(-) Loss assessed under section 143(3)	(1,00,000)	
	5,00,000	
Tax payable on under-reported income@30%	1,50,000	
Add: EC & SHEC@3%	4,500	
	1,54,500	
Penalty leviable@50% of tax payable		77,250

Readers Note:

33.4 POWERS OF PRINCIPAL COMMISSIONER OR COMMISSIONER TO WAIVE OR REDUCE PENALTY FOR UNDERREPORTING AND MISREPORTING OF INCOME

Section:- 273A(1)

- The Principal Commissioner or Commissioner may in his discretion, either on his own motion or otherwise (i.e., on an application made by the assessee), reduce or waive the amount of penalty imposed or imposable for underreporting and misreporting of income, if he is satisfied that
 - (a) the person liable to penalty has, prior to the detection by the Assessing Officer, of the concealment of particulars, of income or inaccuracy of particulars furnished in respect of such income voluntarily and in good faith, made full and true disclosure of such particulars, and
 - (b) has also co-operated in any enquiry relating to the assessment of his income
 - (c) and has either paid or made satisfactory arrangement for the payment of any tax or interest payable in consequence of an order passed in respect of the relevant assessment year. [Section 273A (1)]
- Prior approval of Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General is required in case of amount of income in respect of which penalty imposed or imposable for the assessment year (aggregate basis if it relates to more than one assessment year) exceeds Rs. 5 lac.
- Where an order has been made under section 273A(1) in favour of any person, he shall not be entitled to any relief under this section (means entire section 273A) in relation to any other assessment year at any time after the making of such order.

33.5 POWERS OF COMMISSIONER TO WAIVE OR REDUCE PENALTY IN CASE OF GENUINE HARDSHIP

Section:- 273A(4)

- The Commissioner may, on an application made in this behalf by an assessee, and after recording his reasons for doing so, reduce or waive the amount of any penalty payable by the assessee, or stay or compound any proceeding for the recovery of any such amount, if he is satisfied that
 - (a) to do otherwise, would cause genuine hardship to the assessee, having regard to the circumstances of the case, and
 - (b) the assessee has co-operated in any inquiry relating to the assessment and any proceeding for the recovery of any amount due from him. [Section 273A (4)]
- Prior approval of Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General is required in case of amount of penalty imposed or imposable for the assessment year (aggregate basis if it relates to more than one assessment year) exceeds Rs. 1 lac.
- The above order under section 273 A(1) or section 273 A(4), as the case may be, 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 1st day of June, 2016, the order shall be passed on or before the 31st day of May, 2017.
- Andhra Pradesh High Court in case of K.S.N. Murthy v. Chairman, CBDT (2001) 252 ITR 269, held that, if the above two conditions are satisfied, the Commissioner has no discretion to refuse to exercise his powers.

34 – PROSECUTIONS

34.1 OFFENCES AND PROSECUTIONS

Section:- Various

Section	Nature of default	Punishment (rigorous imprisonment)
276CC	Wilful failure to furnish in due time a return of income u/s 139(1) or u/s 142(1)(i) or u/s 148 or u/s 153A.	
	where tax sought to be evaded exceeds Rs.25 lakh	6 months to 7 years
	in other cases	3 months to 2 years

Notes:

The person shall not be proceeded against under section 276CC in a case where the return of income is not filed within the due date under section 139(1), if

- (a) The return is furnished by him before the expiry of the assessment year; or
- (b) the tax payable by the assessee, **not being a company**, on the total income determined on regular assessment, as reduced by the advance tax or **self-assessment tax [Rs.10,000 substituted by the Finance Act, 2019 w.e.f. 01-04-2020]**, if any, paid and any tax deducted at source, does not exceed ~~Rs.3,000~~ **[Rs.10,000 substituted by the Finance Act, 2019 w.e.f. 01-04-2020]**

Practical 1

The Assessing Officer lodged a complaint against M/s. KLM, a firm, u/s 276CC of the Income-tax Act, 1961 for failure to furnish its return of income for the A.Y.2020-21 within the due date u/s 139(1). The tax payable on the assessed income, as reduced by the advance tax paid and tax deducted at source, was Rs. 60,000. The appeal filed by the firm against the order of assessment was allowed by the Commissioner (Appeals). The Assessing Officer passed an order giving effect to the order of the Commissioner (Appeals). The tax payable by the firm as per the said order of the Assessing Officer was Rs. 9,000. The Assessing Officer has accepted the order of the Commissioner (Appeals) and has not preferred an appeal against it to the Income Tax Appellate Tribunal. The firm desires to know of the maintainability of the prosecution proceedings in the facts and circumstances of the case

Solution

- Section 276CC provides for prosecution for wilful failure to furnish a return of income within the prescribed time, in a case where tax would have been evaded had the failure not been discovered. Since the amount of tax which would have been evaded does not exceed Rs. 25 lakh, the imprisonment would be for a term of 3 months to 2 years. In addition, fine would also be attracted.
- However, in a case where the return of income is not filed within the due date, prosecution proceedings will not be attracted if the tax payable by the assessee on the total income determined on regular assessment, as reduced by the advance tax, if any, paid and any tax deducted at source, does not exceed Rs. 10,000.
- In this case, even though the tax liability of the firm as per the original order of assessment exceeded Rs. 10,000, however, as a result of the order of the Commissioner (Appeals), it got reduced to Rs. 9,000, which is less than Rs. 10,000. Therefore, since the tax liability of the firm on final assessment was determined at Rs. 9,000, the prosecution proceedings are not maintainable.
- In **Guru Nanak Enterprises v. ITO (2005) 279 ITR 30**, where the facts were similar, the **Supreme Court** held that prosecution was unwarranted.

Readers Note:

35 – CONVERSION OF FIRM INTO COMPANY

No Amendment

36 – CONVERSION OF SOLE PROPRIETARY BUSINESS INTO COMPANY

No Amendment

37 – AMALGAMATION

No Amendment

38 – SET-OFF OF LOSSES OF A BANKING COMPANY AGAINST THE PROFIT OF A BANKING INSTITUTION UNDER A SCHEME OF AMALGAMATION

No Amendment

39 – DEMERGER

39.1 | DEFINITION OF DEMERGER

Section:- 2(19AA)

Demerger in relation to companies means transfer pursuant to Section 391 to 394 of the Companies Act by demerged company of its one or more undertaking to a resulting company in such a manner that : -

- (i) all the properties of the undertaking immediately before demerger becomes the property of resulting company.
- (ii) all liabilities relating to undertaking become liabilities of resulting company
- (iii) all properties and liabilities shall be transferred at values appearing in books of accounts immediately before demerger

Relaxation Inserted by Finance Act, 2019 w.e.f. 1-4-2020:

Provided that the provisions of this sub-clause shall not apply where the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger, in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015;

- (iv) resulting company issues shares to the shareholders of demerged company on proportionate basis except where the resulting company itself is a shareholder of the demerged company.
- (v) shareholders holding not less than 3/4 in value of shares in demerged company become the shareholder of resulting company
- (vi) the transfer of undertaking is on a going concern basis.
- (vii) Demerger should be subject to certain conditions notified under section 72A(5) by Central Government.

40 – AMALGAMATION OR DEMERGER OF CO-OPERATIVE BANK

41 – CORPORATISATION AND DEMUTUALISATION OF STOCK EXCHANGE

42 – CONVERSION OF UNLISTED COMPANY INTO LIMITED LIABILITY PARTNERSHIP

43 – TRANSFER OF ASSETS BETWEEN HOLDING AND SUBSIDIARY COMPANY

44 – SLUMP SALE

44.1 DEFINITION

Section:- 2(42C)

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

44.2 TAX CONSEQUENCES UNDER THE HEAD "CAPITAL GAINS"

Section:- 50B

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

- (a) Any profits or gains arising from the slump sale affected in the previous year shall be chargeable as long-term capital gains and shall be deemed to be the income of the previous year in which the transfer took place. Where, however, any capital asset being one or more undertakings owned and held by the assessee for not more than 36 months is transferred under the slump sale, then capital gain shall be deemed to be short-term capital gain.
- (b) In the case of slump sale of the capital asset being one or more undertaking, the "net worth" of the undertaking shall be taken as cost of acquisition and cost of improvement. "Net worth" for this purpose is the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in the books of account.

Computation of net worth shall be as under—

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

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

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

Practical 1

Mr. A is a proprietor of Akash Enterprise having 2 units. He transferred on 1.04.2017 his Unit 1 by way of slump sale for a total consideration of Rs. 25 lakhs. The expenses incurred for this transfer were Rs. 28,000. His balance sheet as on 31.03.2017 is as under:

(Rs.)

Liabilities	Total	Assets	Unit 1	Unit 2	Total
Own Capital	15,00,000	Building	12,00,000	2,00,000	14,00,000
Revaluation reserve (for building of Unit 1)	3,00,000	Machinery	3,00,000	1,00,000	4,00,000
Bank Loan (70% for unit 1)	2,00,000	Debtors	1,00,000	40,000	1,40,000
Trade creditors (25% for unit 1)	1,50,000	Other Assets	1,50,000	60,000	2,10,000
Total	21,50,000	Total	17,50,000	4,00,000	21,50,000

Other information:

- (i) Revaluation reserve is created by revising upward the value of the building of unit 1.
- (ii) No individual value of any asset is considered in the transfer deed.
- (iii) Other assets of Unit 1 include patents acquired on 1.07.2015 for Rs. 50,000 on which no depreciation has been charged.

Solution

Computation of capital gain on slump sale of Unit 1 as per section 50B:-

Particulars	Rs.
Full Value consideration	25,00,000
Less: Expenses on sale	28,000
Net consideration	24,72,000
Less: Net worth [WN 1]	12,50,625
LTCG(assumed more than 36 months)	12,21,375

Working Notes:**WN 1: Computation of net worth of Unit 1 of Akash Enterprises:-**

	Base of Valuation	(Rs.)
Building (Rs. 12 lakhs-Rs 3 lakhs on account of revaluation)	WDV	9,00,000
Machinery	WDV	3,00,000
Debtors	BV	1,00,000
Other assets (Rs 1,50,000-Rs 50,000 for patents considered separately)	BV	1,00,000
Patents (WN 2)	WDV	28,125
		14,28,125
(Less): Liabilities (WN 3)	BV	(1,77,500)
Net worth		12,50,625

WN 2: Patents

Particulars	(Rs.)
Opening WDV as on 01.04.2015	Nil
Add: Actual cost of assets acquired during the previous year 2015-16	50,000
Less: Moneys received in respect of asset sold	Nil
Written down value for the previous year 2015-16	50,000

Less: Depreciation actually allowed during the P.Y. 2015-16 @ 25%	(12,500)
Opening WDV as on 01.04.2016	37,500
Add: Actual cost of assets acquired during the previous year 2016-17	Nil
Less: Moneys received in respect of asset sold	Nil
Written down value for the previous year 2016-17	37,500
Less: Depreciation for P.Y. 2016-17 @ 25%	9,375
WDV of patents as on 31.03.2017	28,125

WN 3:Liabilities:

Particulars	(Rs.)
Bank Loan (2,00,000*70%)	1,40,000
Creditors (150,000*25%)	37,500
Total Liabilities	1,77,500

Readers Note:

44.3 STEPS TO FIND OUT WRITTEN DOWN VALUE IN THE HANDS OF TRANSFEROR AFTER SLUMP SALE

Sections:- 43(6)(c)(i)

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

45 – DEPRECIATION

45.1 | MEANING OF ACTUAL COST

Section:- 43(1)

“Actual cost” means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

Provided that where the actual cost of an asset, being a motor car which is acquired by the assessee after the 31st day of March, 1967, but before the 1st day of March, 1975, and is used otherwise than in a business of running it on hire for tourists, exceeds twenty-five thousand rupees, the excess of the actual cost over such amount shall be ignored, and the actual cost thereof shall be taken to be twenty-five thousand rupees.

Provided further that where the assessee incurs any expenditure for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or *through such other electronic mode as may be prescribed [Inserted by Finance Act, 2019 w.e.f. A.Y.2020-21]*, exceeds ten thousand rupees, such expenditure shall be ignored for the purposes of determination of actual cost.

46 – TAX PLANNING, TAX AVOIDANCE AND TAX EVASION

47 – TONNAGE TAXATION SCHEME

47.1 HOW TO COMPUTE TONNAGE INCOME UNDER “TTS”?

Section:- 115VE, 115VF and 115G

- **Computation of TTS income:-** Income taxable under the TTS shall be the aggregate of the tonnage income ('TI') computed for each qualifying ship as follows:
- **TI for each qualifying ship**

$$\text{TI for each qualifying ship} = \text{Daily TI based on net tonnage of the qualifying ship} \times \text{the number of days in the previous year or the number of days for which the ship operates as a qualifying ship during the previous year if the ship is so operated for part of the year (as the case may be)}$$
- The daily TI based on the net tonnage for each qualifying ship is as follows:

Net tonnage	Amount of daily TI
Up to 1,000	Rs. 70 for each 100 tons
1,001 - 10,000	Rs. 700 plus Rs. 53 for each additional 100 tons
10,001 - 25,000	Rs. 5,470 plus Rs. 42 for each additional 100 tons
Above 25,000	Rs. 11,770 plus Rs. 29 for each additional 100 tons

Notes:

(1) The tonnage shall be rounded off to the nearest multiple of 100 tons and for this purpose:

(a) any tonnage consisting of kilograms shall be ignored and thereafter

(b) if such tonnage is not a multiple of 100 and if the last figure in that amount is:-

- **50 tons or more**, the tonnage shall be increased to **the next higher tonnage** which is a multiple of 100; and
- if the last figure is **less than 50 tons**, the tonnage shall **be reduced to the previous lower tonnage** which is a multiple of hundred.

(2) **Tonnage Means** tonnage of the ship as per valid certificate *plus* **Deemed tonnage**.

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.

(3) **Joint operation [Section 115VH]** - In case of joint operation of a qualifying ship by two or more companies, where the **respective shares are definite** and ascertainable, then the tonnage income of each such company shall be determined in proportion to their share.

(4) If **shares are not ascertainable**, then tonnage income shall be computed as if each had been the only operator.

Practical 1

Find out Tonnage income of the ABC LTD. on the basis of following information:

Qualifying Ships	A1	A2	A3	A4
Valid tonnage	930	9951	15568	25862
No. days for which ship was operated during the previous year	30	300	150	125

Solution

Qualifying Ships	A1	A2	A3	A4
(a) Valid tonnage (r/off)	900	10,000	15,600	25,900
(b) Daily tonnage income	Rs. 630	Rs. 5,470	Rs. 7,822	Rs. 12,031
(c) No. days for which ship was operated during the previous year	30	300	150	125
(d)= (b) × (c)	18,900	16,41,000	11,73,300	15,03,875

Total Tonnage Income of ABCD Limited= Rs. 43,37,075

Readers Note:**47.2 WHAT DO YOU MEAN BY RELEVANT SHIPPING INCOME? IS IT CHARGEABLE TO TAX?****Section:- 115VI**

- Section 115VI provides that **Relevant Shipping Income** is a sum total of Profits from Core Activities and Profits from Incidental Activities.

Remarks:

- (1) In case the income from incidental activities exceeds 0.25% of the turnover from core activities, the excess shall not be regarded as relevant shipping income and shall be taxed as per the general provisions of the Act.
- (2) **The actual shipping income (termed as the relevant shipping income) shall not be chargeable to tax and shall also not be liable to MAT. (Section 115VF and Section 115VO).**
- (3) In case relevant shipping income is a loss, then, such loss shall be ignored for the purpose of computing tonnage income.

- Profits from Core Activities**

This would include activities from:-

- (a) Operating qualifying ships,
and
 - (b) Other ship related activities namely, shipping contracts in respect of pooling arrangements and contracts of affreightment; and specific shipping trades.
- "**Pooling arrangement**" means an agreement between two or more persons for providing services through a pool or operating one or more ships and sharing earnings or operating profits on the basis of mutually agreed terms;
 - "**Contract of affreightment**" means a service contract under which a tonnage tax company agrees to transport a specified quantity of specified products at a specified rate, between designated loading and discharging ports over a specified period.
 - Specific shipping trades are:**
 - (i) on-board or on-shore activities of passenger ships comprising of fares and food and beverages consumed on board;
 - (ii) slot charters, space charters, joint charters, feeder services, container box leasing of container shipping.

However, the Central Government has power to exclude any activity from the other ship related activities or prescribe the limit up to which such activities shall be included in the core activities.

• **Profits From Incidental Activities**

These are prescribed activities which are incidental to core activities.

Computation of income from non-qualifying ships - In case a company which has opted for the TTS, operates any non-qualifying ship, the income attributable to such non-qualifying ship shall be computed in accordance with the general provisions of the Act.

Inter Unit transfer:- Where any goods or services held for the purpose of tonnage tax business are transferred to any other business carried on by tonnage tax company or vice-a-versa and, Consideration for such transfer as recorded in accounts of tonnage tax business does not correspond to the market value of such goods or services as on the date of transfer then, Relevant shipping income shall be computed as if the transfer had been made at the market value of such goods or services as on that date.

Practical 2

Tarun Shipping Co. Ltd., having its registered office in Mumbai, plies two ocean-going vessels which it owns. The registered tonnage of the two vessels are 47,516 tonnes and 200 kgs and 25,759 tonnes and 400 kgs respectively. In the accounting year 2018-19, the first vessel was operated for 360 days and the second for 200 days.

The accounts of the company reveal the following results:

- (i) Profit from core shipping activity Rs.90.50 Lac
- (ii) Profit from incidental activity Rs.15,000

Compute the tax payable by the company for the assessment year 2019-20, taking note of the provisions of the law relating to taxation of income of shipping companies. Also indicate the specified conditions for the applicability of the procedure. Ignore MAT

Solution

Computation of tax payable by Tarun Shipping Company Ltd. for the A.Y.2019-20

Particulars	Rs.
Tonnage income (See Working Note below)	89,86,600
Tax @ 30%	26,95,980
Add: Surcharge (Not applicable as the income is below Rs. 100 Lacs)	Nil
	26,95,980
Add: Education cess and SHEC @ 4%	1,07,839
Total tax payable	28,03,819

Working Note

Since the income under tonnage tax scheme is lower than the normal income of Rs. 90.50 Lacs, the tonnage tax scheme is taken for computing tax payable.

Computation of Tonnage Income [Section 115VG]

Particulars	Ship 1 (Rs.)	Ship 2 (Rs.)
First 1,000 tons (1000 x 70/100)	700	700
Next 9,000 tons (9,000 x 53/100)	4,770	4,770
Next 15,000 tons (15,000 x 42/100)	6,300	6,300
Balance [(22,500/800) x 29/100]	6,525	232
	18,295	12,002

Tonnage income	Rs.
Ship 1 (18,295 x 360)	65,86,200
Ship 2 (12,002 x 200)	24,00,400
	89,86,600

Note: Tonnage is to be rounded off to the nearest multiple of 100 tons. Hence, the first vessel will pay for 47,500 tons and the second for 25,800 tons.

As per section 115VF, the tonnage income computed under section 115VG would be deemed to be the profits chargeable under the head “Profits and gains of business or profession”. This is, however, subject to fulfillment of the conditions mentioned below in the next paragraph. Then, the relevant shipping income referred to in section 115-VI(1), which includes the profit from core shipping activity (i.e. Rs. 90.50 Lacs) and the profit from incidental activity (Rs.15,000), shall not be chargeable to tax.

The following are the conditions to be fulfilled by the company for applicability of the tonnage tax scheme-

- (i) An option to get assessed under Chapter XII-G has to be filed by the company.
- (ii) The company is required to credit to a reserve account called Tonnage Tax Reserve Account, at least 20% of the book profits derived from its core and incidental activities to be utilized before the expiry of a period of 8 years for acquisition of a new ship for the purposes of the business of the company. Until the acquisition of a new ship, the amount can be utilized for the purposes of the business of operating qualifying ships. However, the amount should not be used for distribution of dividends or profits or for remittance outside India as profit or for creation of assets outside India.

Readers Note:

48 – INCOME COMPUTATION AND DISCLOSURE SCHEME (ICDS)

48.1 | METHOD OF ACCOUNTING IN CERTAIN CASES

Section:- 145A

For the purpose of determining the income chargeable under the head "Profits and gains of business or profession", the following valuation rules will apply—

1. The valuation of inventory shall be made at lower of actual cost or net realisable value computed in the manner provided in ICDS.
2. The valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.
3. The inventory (being securities not listed on a recognised stock exchange, or listed but not quoted on a recognised stock exchange) shall be valued at cost actual cost initially recognized in the manner provided in ICDS.
4. Inventory (being securities held by a scheduled bank or financial institution) shall be valued in accordance with ICDS after taking into account extant guidelines issued by RBI.
5. The inventory (being listed securities), shall be valued at lower of actual cost or net realisable value in the manner provided in ICDS and for this purpose the comparison of actual cost and net realizable value shall be done category-wise.
6. Any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment for the purpose of the said section.

48.2 | TAXABILITY OF CERTAIN INCOME

Section:- 145B

Section 145 provides mode of taxation of the following incomes-

- (1) Interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.
- (2) The claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.
- (3) Assistance in the form of subsidy (or grant or cash incentive or duty drawback or waiver or concession or reimbursement) as referred to in section 2(24)(xviii) shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.

49 – LIABILITY IN SPECIAL CASES

50 – REFUND

51 – TAXATION OF MUTUAL CONCERNS

51.1 | CONCEPT OF MUTUALITY AND ITS TAXATION

Observation of Calcutta High Court in case of General family Pension Fund Vs. Commissioner of Income Tax 14 ITR 488

- Mutual dealings arise out of a mutual association.
- To constitute a mutual association, a number of persons associate together to subscribe money for a fund for the purpose of it being spent upon a particular object, and the balance, if any, being returned to the subscribers and proportionately distributed amongst them. This balance is that part of the fund which is not absorbed by the particular object of the subscriptions. Those transactions are mutual dealings and the unrequired balance is the surplus.
- This surplus is not assessable to income-tax since it arises out of mutual dealings.

51.2 | INCORPORATION OF A COMPANY TO CARRY ON THE ACTIVITIES OF CLUB MAY NOT AFFECT THE CLAIM OF EXEMPTION ON GROUND OF MUTUALITY

The Supreme Court in CIT vs. vs. Royal Western India Turf Club Ltd. (1953) 24 ITR 551, 560 (SC) laid down the principle as follows:

"Where a company collects money from its members and applies it for their benefit not as shareholders but as person who put up the fund the company makes no profit. In such cases, where there is identity the character of those who contribute and of those who participate in the surplus, the fact of incorporation may be immaterial and the incorporated company may well be regarded as a mere instrument, a convenient agent for carrying out what the members might more laboriously for themselves."

51.3 | CONCEPT OF MUTUALITY EXTENDS TO THE INCOME FALLING UNDER HEAD HOUSE PROPERTY

Supreme Court in CHELMSFORD CLUB vs. COMMISSIONER OF INCOME TAX 243 ITR 89 (SC) made following observation:

"It is not only the surplus from the activities of the business of the club that is excluded from the levy of income-tax even the annual value of the club house, as contemplated in s. 22, will be outside the purview of the levy of income-tax. The business of the appellant is thus governed by the principle of mutuality even the deemed income from its property is governed by the said principle of mutuality. The Tribunal was legally correct in holding that the principle of mutuality applies to the property income and accordingly it is not taxable income of the assessee."

51.4 | CONCEPT OF MUTUALITY FAILS FOR TAXING RENTAL INCOME WHEN MARRIAGE HALL LET OUT TO NON-MEMBERS

Kerala High Court in CIT V. Trivandrum Club 282 ITR 505 made following observation

Real contributors of income by availing of the facilities of the marriage hall are not the members but non-members. In order to enable them to avail of the facilities of the club, non-members are to be given temporary membership

only for the purpose of availing of this benefit. Marriage hall was admittedly being rented out to nonmembers making them as temporary members only for the purpose of letting out the marriage hall and the amounts received from non-members are provided at the hands of the assessee. Principle of mutuality therefore, would not apply in such facts situation.

51.5 TRANSFER FEES RECEIVED BY A CO-OPERATIVE HOUSING SOCIETY FROM ITS INCOMING AND OUTGOING MEMBERS - EXEMPT ON THE GROUND OF PRINCIPLE OF MUTUALITY

Bombay High Court in case of SIND CO-OPERATIVE HOUSING SOCIETY vs. INCOME TAX OFFICER 317 ITR 47 made following observation:

The transfer fee can be appropriated only if the transferee is admitted to membership. The fact that a proposed transferee may make payment in advance by itself is not relevant. The amount can only be appropriated on the transferee being admitted as a member. As it is a transfer fee, if the transferee is not admitted as a member, the amount received will have to be refunded, as the amount is payable only on a transfer of rights of the transferor in the transferee.

Considering the bye-laws, the society is registered with the object principally of looking after the property including building thereon. There is no trading or business transactions. The members by adopting the bye-laws agree amongst themselves that a fee for transfer of flat / tenement when it is sold would be paid to the society. It may be that both incoming or outgoing members have to contribute to the common fund of the society. The amount paid however, is to be exclusively used for the benefits of the members as a class. There is no legal bar for the assessee to earn profits but the profit must come from a commercial activity in the nature of trade, business or the like in which event the assessee then will have to pay tax on such profits. Charging of transfer fees as per bye-laws has no element of trading or commerciality. Therefore, such transfer fee is not liable to tax.

51.6 CONCEPT OF MUTUALITY ENDS MOMENT THE CLUB DEPOSITS AMOUNT WITH ITS CORPORATE MEMBERS, BEING BANKS AND FINANCIAL INSTITUTIONS, WITH THE SOLE AIM OF EARNING INTEREST ON DEPOSITS.

The Andhra Pradesh High Court in case of **CIT v. Secunderabad Club Picket (2012) 340 ITR 121**, following the judgement of the Supreme Court in **Bankipur Club Ltd (1997) 226 ITR 97**, concluded that certain factors need to be considered to arrive at a conclusion as to what point the relationship of mutuality ends and that of trading begins. If the object of the assessee claiming to be a 'mutual concern' is to carry on a business and the same consideration is realized both from the members and from non-members by giving similar facilities to them, then, the resultant surplus would be an income liable to tax.

The High Court further held that the principle of mutuality ends the moment the club deposits the amount with its corporate members, being banks and financial institutions, with the sole aim of earning interest on the deposits. Also, the corporate members, i.e the banks and financial institutions, have treated the club as a regular customer, accepting deposits in the normal course of business. There is nothing to show that the interest on fixed deposits have been provided as a facility to the club. The social relationship and social activities of the club have nothing to do with its deposits with corporate members.

Therefore, the interest earned on deposits made with its corporate members, being banks and financial institutions, is not exempt on the principle of mutuality. – This view is confirmed by the **Supreme Court in case of Bangalore Club vs. Commissioner of Income Tax 350 ITR 509 (2013)**

51.7 EXPRESS PROVISION FOR TAXING MUTUAL CONCERNS**Section:- 2(24)**

- (1) **Section 2(24)(v)** : Income received by a trade or professional or similar association from specific services rendered to members.
- (2) **Section 2(24)(vii)** : The profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule.
- (3) **Section 2(24)(viii)** : The profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members.

51.8 SPECIAL DEDUCTIONS IN CASE OF TRADE PROFESSIONAL OR SIMILAR ASSOCIATION**Section:- 44A**

- (a) As per the definition of income and the provisions of section 28, where the mutual concern is a trade, professional or similar association, the income derived from specific services performed for its members, is chargeable to tax.
- (b) Therefore, surplus of such mutual concerns from other activities is not chargeable to tax.
- (c) As per the various judicial pronouncements, if source is exempt from tax, then loss from this source cannot be set-off against any other taxable income.
- (d) However, section 44A is an exception to the above rule. As per this section, if assessee is a trade, professional or similar association, then lowest of the following shall be allowed as deduction
- loss from non-taxable activities
 - 50% of total income of such association before claiming deduction under this section.
- (e) The benefit of deduction under this section is not available to the institutions or associations whose income is exempt under section 10 (23A).

Practical 1

Andhra Chamber of Commerce provides following information:

Particulars	Situation 1 (Rs.)	Situation 2 (Rs.)	Situation 3 (Rs.)
Income derived from providing specific services to members.	1,25,000	1,00,000	1,12,000
Surplus (Deficit) from other activities	75,000	(-) 1,40,000	(-) 30,000

Find out total Income.

Solution**Computation of Total Income of Andhra Chamber of Commerce.**

Particulars	Situation 1 (Rs.)	Situation 2 (Rs.)	Situation 3 (Rs.)
Income derived from providing specific services to members.	1,25,000	1,00,000	1,12,000
Less: Deduction under section 44A	NA	50,000	(-) 30,000
Total Income	1,25,000	50,000	82,000

Reader's Note:

52 – TAXATION OF SUBSIDIES/GRANT

53 – MISCELLANEOUS

53.1 OBLIGATION TO FURNISH STATEMENT OF FINANCIAL TRANSACTION OR REPORTABLE ACCOUNT

Section:- 285BA

As per Section 285BA of the Income Tax Act, 1961, specified entities are required to furnish a statement of financial transaction or reportable account (hereinafter referred to as 'statement') in respect of specified financial transactions or any reportable account registered/recorded/maintained by them during the financial year to the income-tax authority or such other prescribed authority.

(1) Persons required to file statement of financial transaction or reportable account

Following persons shall be required to furnish statement of financial transactions or reportable accounts registered or recorded or maintained by them during a financial year to the prescribed authority:

- (a) an assessee;
- (b) the prescribed person in the case of an office of Government;
- (c) a local authority or other public body or association;
- (d) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908;
- (e) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988);
- (f) the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898);
- (g) the Collector referred to in clause (g) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;
- (h) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- (i) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934;
- (j) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
- (k) a prescribed reporting financial institutions; or
- (l) a person, other than those referred to in clauses (a) to (k), as may be prescribed [Amendment by Finance Act, 2019 w.e.f. 01-09-2019]

(2) The periodicity and due date of furnishing statement of financial transaction or reportable account

The statement of financial transactions shall be furnished on or before the 31st May, immediately following the financial year in which the transaction is registered or recorded in Form 61A:

Provided the statement of financial transaction in respect of the transactions listed at serial number (12) and serial number (13) in the Table under sub-rule (2), shall be furnished on or before the 31st day of January, 2017 in Form 61A.

However, section 285BA(5) empower the tax authorities to issue a notice to the person who had not filed the statement within prescribed time. In such a case, the tax authorities may serve upon such person a notice requiring him to furnish the statement within a period not exceeding 30 days from the date of service of such notice and in such a case the person shall furnish the statement within the time as specified in the notice.

(3) Consequences of not furnishing statement of financial transaction or reportable account

Non-furnishing of statement of financial transaction or reportable account will attract penalty under section 271FA. Penalty can be levied of Rs. 100 per day of default.

However, section 285BA(5) (as discussed earlier) empower the tax authorities to issue a notice to the person directing him to file the statement within a period not exceeding 30 days from the date of service of such notice and in such a case person shall furnish the statement within the time specified in the notice.

If person fails to file the statement within the specified time, then a penalty of Rs. 500 per day will be levied from the day immediately following the day on which the time specified in such notice for furnishing the statement expires.

The penal provisions under section 271FA are summarized below –

Non-compliance of section	Penalty under section 271FA	Period
285BA(1)	Rs. 500 per day of continuing default	1st June immediately following the financial year in which the transaction is registered or recorded till the date of furnishing the AIR or the date of expiry of the time specified in the notice u/s 285BA(5), whichever is earlier.
285BA(5)	Rs. 1000 per day of continuing default.	The day immediately following the day on which the time specified in notice u/s 285BA(5) for furnishing the AIR expires till the date of furnishing of AIR.

(4) Inaccurate or defective statement of financial transaction or reportable account

If any person, after filing the statement, comes to know or discovers any inaccuracy in the information provided in the statement, he shall inform such inaccuracy to the prescribed income-tax authority within a period of ten days and furnish the correct information in such manner as may be prescribed.

On the other hand, the prescribed income-tax authority may also intimate the defect to the person and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such extended period as may be allowed by prescribed income-tax authority. However, if a person fails to rectify the defect within the said period than such statement shall be treated as an invalid statement and the provisions of this Act shall apply as if such person had ~~failed to furnish the statement~~. **Furnished inaccurate information in the statement. [substituted by Finance (No.2) Act, 2019 w.e.f. 01-09-2019]**

(5) Consequences of filing inaccurate or defective statement of financial transaction or reportable account

As per section 271FAA of the Income-tax Act, if a person required to file statement of financial transaction or reportable account as referred to in Section 285BA(1) ~~(k)~~ **[substituted by Finance (No.2) Act, 2019 w.e.f. 01-09-2019]**, provides inaccurate information in the statement, and where:

- the inaccuracy is due to a failure to comply with the due diligence requirement prescribed under section 285BA(7) or is deliberate on the part of that person;
- the person knows of the inaccuracy at the time of furnishing the statement but does not inform the prescribed income-tax authority or such other authority or agency;
- the person discovers the inaccuracy after the statement is furnished and fails to inform and furnish correct information within a period of 10 days as specified under section 285BA(6),

then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of fifty thousand rupees.

Notes:

- (i) The Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transactions. ~~However, the aggregate value of such transactions during a financial year shall not be less than Rs. 50,000.-[removed by Finance (No.2) Act, 2019 w.e.f. 01-09-2019]~~

- (ii) Notification is as under:

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 amount or value aggregating to Rs. 10 lakh or more in a financial year	A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013.
(8)	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.
(9)	Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount aggregating to 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 09 th November, 2016 to 30 th 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 1 st of April, 2016 to 9 th 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,-

- 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;
- 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;
- 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;
- 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.

Practical 1

A private bank has not filed its statement of financial transaction (SFT) in relation to the specified financial transactions for the financial year 2018-19. A notice was issued by the prescribed income-tax authority on 1st July, 2019 requiring the bank to furnish the return by 31st July, 2019. The bank, however, furnished the SFT only on 2nd September, 2019. What would be the penalty leviable u/s 271FA?

Solution

Non-compliance of section	Penalty under section 271FA	Period	Quantum of penalty under section 271FA	
(1)	(2)	(3)	(2) X (3)	(Rs.)
285BA(1)	Rs.500 per day of continuing default	1.06.2019 to 31.07.2019	61 days × Rs. 500	30,500
285BA(5)	Rs.1000 per day of continuing default	1.08.2019 to 02.09.2019	33 days × Rs. 1000	33,000
				63,500

Reader's Note:

54 – TAXATION OF NON-RESIDENT

UNIT A - BASIC CONCEPTS

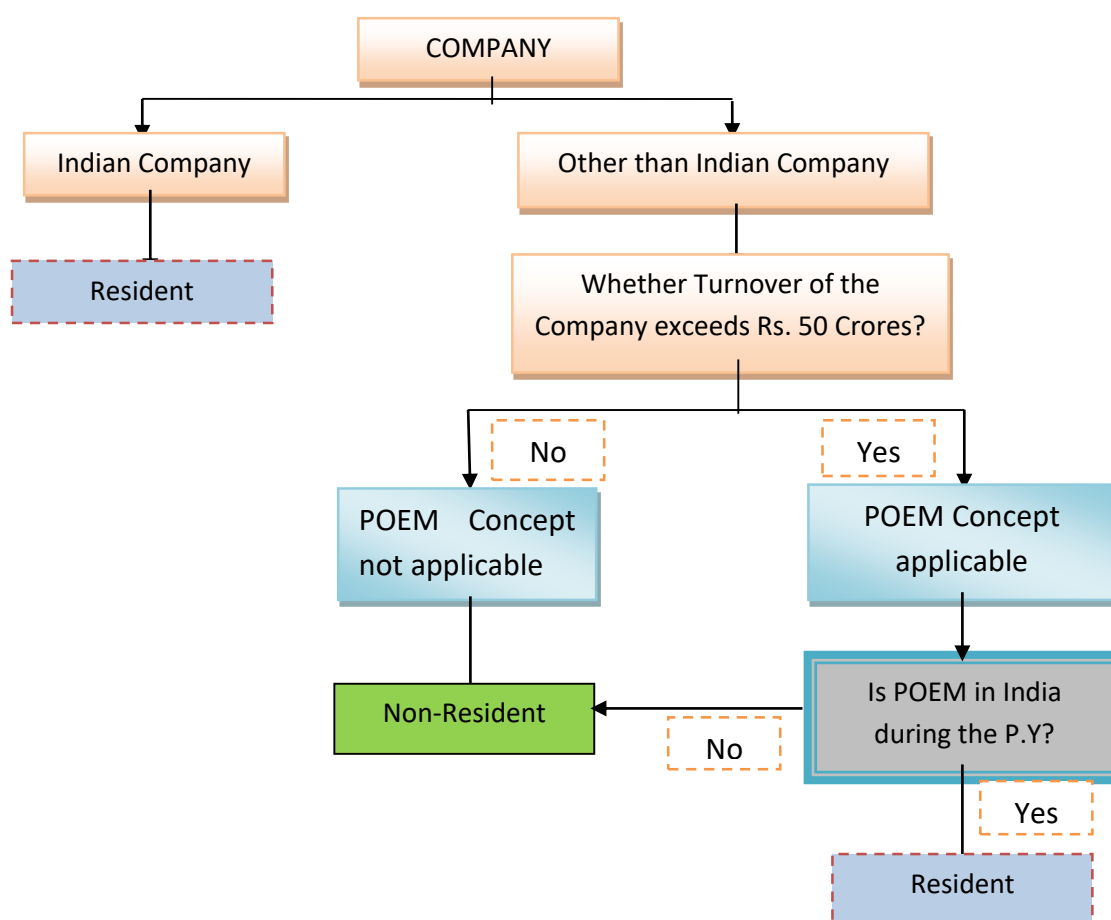
54.1 HOW TO DETERMINE RESIDENTIAL STATUS OF A COMPANY?

Section:- 6(3)

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.



GUIDING PRINCIPLES ON POEM

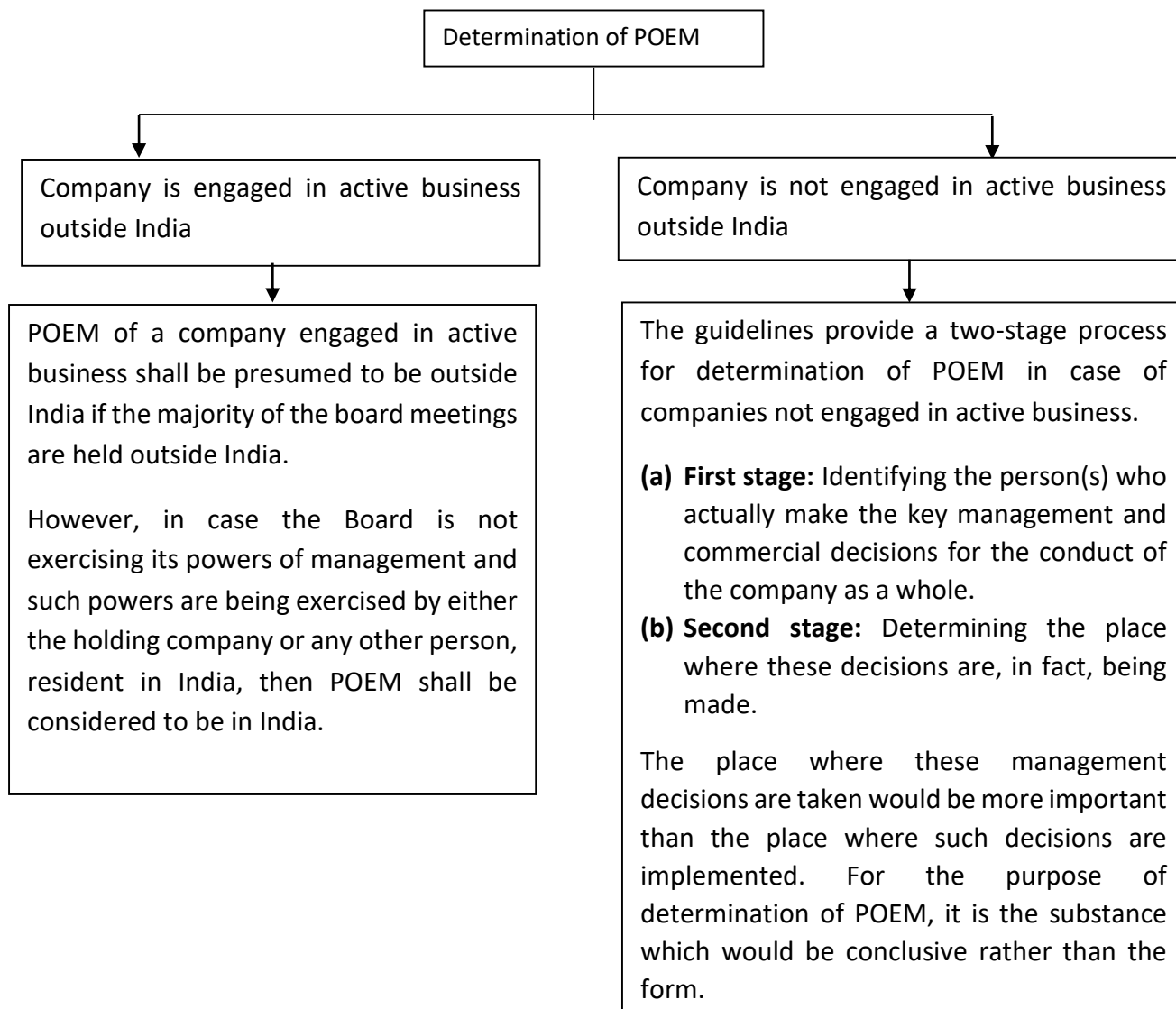
Circular No. 6/2017, dated 24.01.2017 & Circular No. 8/2017, dated 23-02-2017

Fundamental Points to be noted.

- 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.
- 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 "residential status" is to be determined for each year, POEM will also be required to be determined on year to year basis.

Process of determination of POEM

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**.



When company shall be said to be 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.

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.

Meaning of certain terms:

Term	Meaning		
Income	(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		
Value of assets	(a)	In case of an individually depreciable asset	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;
	(b)	In case of pool of fixed asset, being treated as a block for depreciation	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;
	(c)	In case of any other asset	Value as per books of account
Number of employees	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.		
Pay roll	This term includes the cost of salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer		
Passive income	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.		

Examples on determination of POEM

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 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 3: The facts are same as in Example 2 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 4: 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 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.

List of some of the guiding principles which may be taken into account for determining the POEM for the companies not engaged in active business outside India

- The location where a company's Board regularly meets and makes decisions
- Location of Executive Committee, in case powers are delegated by the board may be the company's place of effective management
- Location of head office
- Use of modern technology

- (e) Decisions via circular resolution or round robin voting
- (f) Decisions made by Shareholders are not relevant factor in determination of POEM
- (g) Day to day routine operational decisions are not relevant for determination of POEM

List of secondary factors which may be taken into account for determining the POEM for the companies not engaged in active business outside India

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.

Determination of POEM is to be based on all the relevant facts and not on the basis of isolated facts

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.

While determining POEM, “Snapshot” approach should not be adopted

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.

Duty of the assessing officer to obtain prior approval of the Principal Commissioner or Commissioner before concluding that POEM of a particular company in India

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.

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

- 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.

Practical 1

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, 2019** 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.2020-21**.

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.2020-21**, since its place of effective management is outside India in the **P.Y.2019-20**.
- **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, **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.** [As per notification no. 5/2012 dated 6-2-2012, form no. 49C shall be submitted in electronic form]

Readers Note:

54.1 MEANING OF BUSINESS CONNECTION

Section:- 9(1)(viii) –Amendment made by Finance Act, 2019 w.e.f. 01.04.2020

The following incomes shall be deemed to accrue or arise in India:

(1) Business connection

Income accruing or arising through or from any business connection in India is taxable irrespective of residential status of a person. Examples of business connection are:-

- Opening subsidiary company in India.
- Opening branch in India
- Appointing agent in India

Business connection includes Professional Connection also.

(2) House property or other source

Income through or from any property, any asset or source of income in India shall be deemed to accrue or arise in India.

(3) Capital Gain

Income through the transfer of a capital asset situated in India shall be deemed to accrue or arise in India.

(4) Salary [Section 9(1)(ii)]

Income which falls under the head 'Salaries' shall be deemed to accrue or arise in India if services are rendered in India. Further, salary for the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment shall also be deemed to accrue or arise in India.

(5) Salary paid by the Government to a citizen of India [Section 9(1)(iii)]

Salary paid by the Government to a citizen of India for service outside India shall be deemed to accrue or arise in India. It may be noted that allowances and perquisites paid outside India by the Government is exempt by virtue of section 10(7).

(6) Dividend paid by an Indian company [Section 9(1)(iv)]

Dividend paid by an Indian company is always deemed to accrue or arise in India

(7) Interest [Section 9(1)(v)]

Interest are deemed to accrue or arise in India if payable by:-

Nature of Income	Payable by Government	Payable by Resident	Payable by Non Resident
Interest on monies borrowed	Deemed to accrue or arise in India	Deemed to accrue or arise in India if borrowed funds are used for :- (a) business or profession carried on in India or (b) for any source of income in India	Deemed to accrue or arise in India only when borrowed funds are used for the purposes of business or profession carried on in India.

(8) Royalty and fees for technical services

Royalty and fees for technical services are deemed to accrue or arise in India if payable by:-

Nature of Income	Payable by Government	Payable by Resident	Payable by Non Resident
Royalty / Fees for technical services	Deemed to accrue or arise in India	Deemed to accrue or arise in India if borrowed funds are used for:- (a) business or profession carried on in India or (b) for any source of income in India.	Deemed to accrue or arise in India only when used for (a) business or profession carried in India or (b) for any other source of income in India

(9) Following clause (viii) shall be inserted after clause (vii) of sub-section (1) of section 9 by the Finance Act, 2019, w.e.f. 1-4-2020:

Income arising outside India, being any sum of money paid without consideration, on or after the 5th day of July, 2019, by a person resident in India to a non-resident, not being a company, or to a foreign company, where aggregate of such sum exceeds Rs. 50,000.

UNIT B – SPECIAL PROVISIONS UNDER CHAPTER 'CAPITAL GAIN'

54.2 CERTAIN TRANSACTIONS NOT TREATED AS TRANSFER

Section:- 47

(1) Section 47(viia)

Any transfer of a capital asset, being bonds or Global Depository Receipts referred to in section 115AC(1), made by a non-resident to another non-resident is not treated as transfer provided that transfer is made outside India.

(2) Section 47(viiaa)

Any transfer of a capital asset, being rupee denominated bond of an Indian company issued outside India, made by a non-resident to another non-resident is not treated as transfer provided that transfer is made outside India.

(3) Section 47(viiab) [Inserted by Finance Act, 2018 w.e.f. A.Y. 2019-20]

Any transfer of a capital asset, being—

- (a) bond or Global Depository Receipt referred to in sub-section (1) of section 115AC; or
- (b) rupee denominated bond of an Indian company; or
- (c) ~~derivative,~~

Substituted for sub-clause (c) of clause (viiab) of section 47 by the Finance Act, 2019, w.e.f. 1-4-2020:

(c) derivative; or

(d) such other securities as may be notified by the Central Government in this behalf,

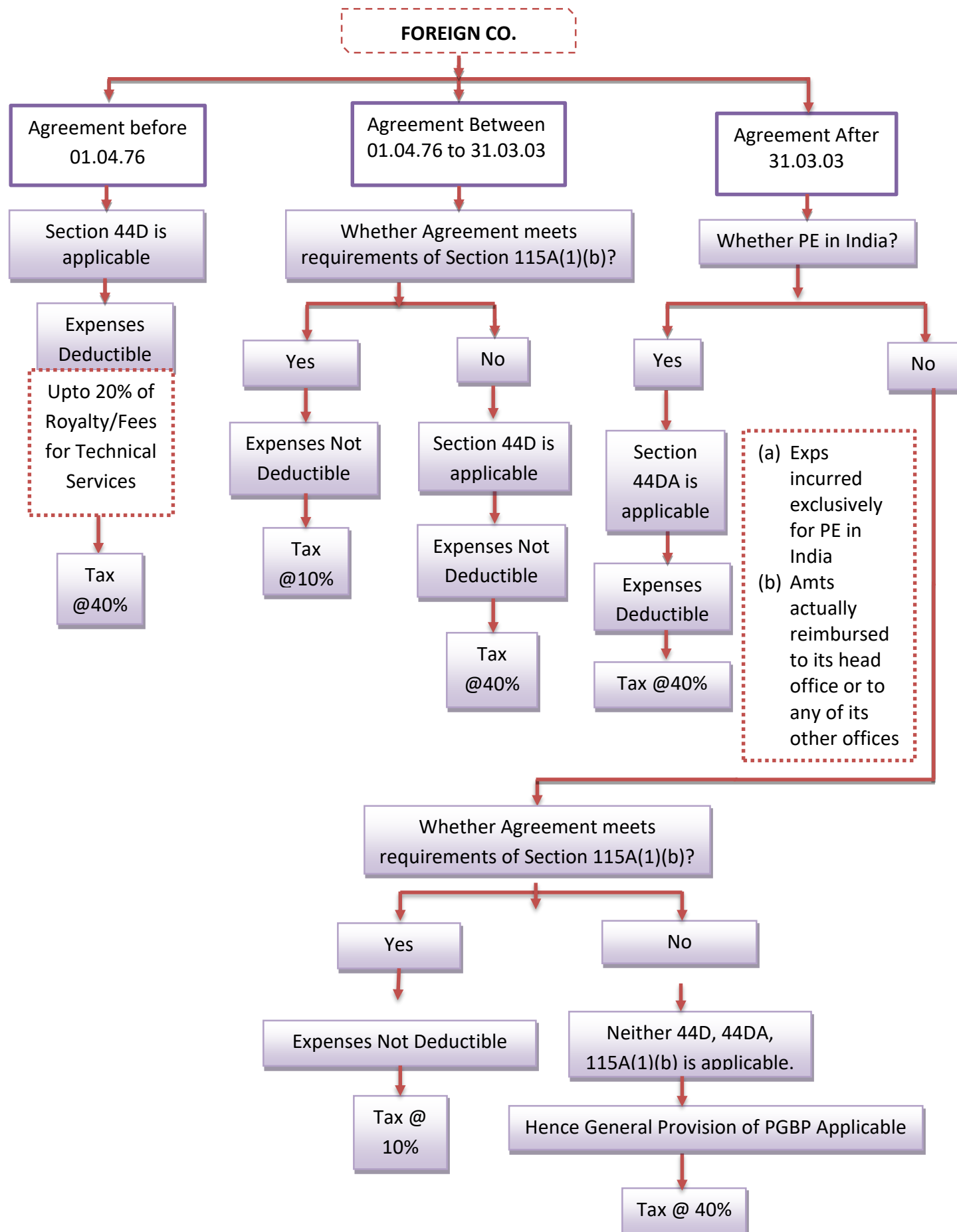
made by a non-resident on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.

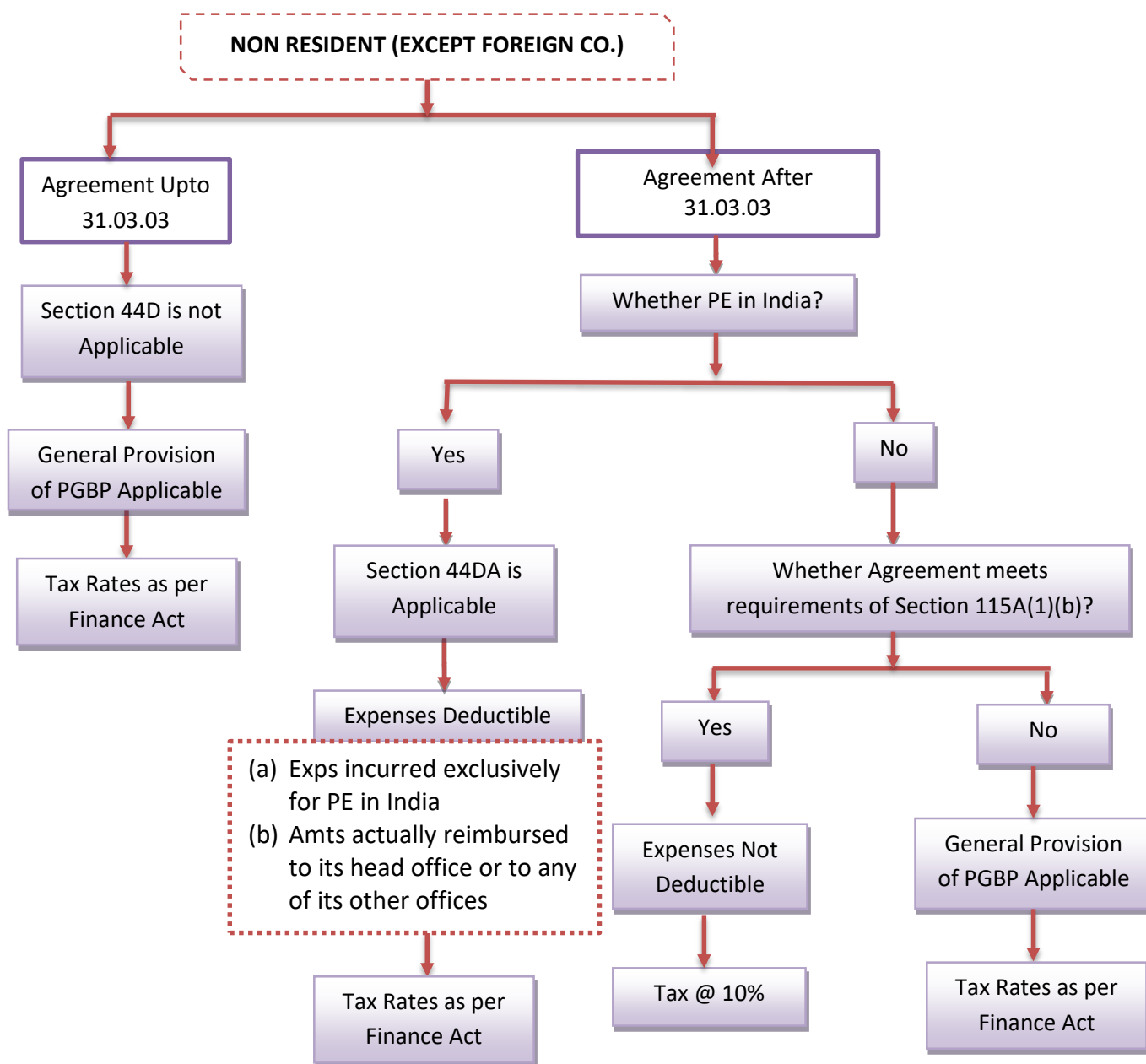
(4) Section 47(viib)

Any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India by a non-resident to another non-resident is not treated as transfer if made through an intermediary dealing in settlement of securities.

UNIT C – SPECIAL PROVISIONS UNDER THE HEAD 'PGBP'

DIAGRAMMATICAL PRESENTATION SECTION 44D, 44DA & 115A(1)(b)





UNIT D – CHAPTER XII

54.3 CHAPTER XII - SPECIAL PROVISIONS APPLICABLE TO NON-RESIDENTS

Section:- 115 A to 115BBA

General points on Chapter XII

1. Incomes falling under Chapter XII shall be taxed at the special rates mentioned under this chapter.
2. No deduction shall be claimed under the head "PGBP" as well as "IFOS" while computing the incomes covered by this Chapter.
3. ~~No deduction shall be claimed under section 80 C to 80 U from the incomes covered by this chapter. However, there is one exception i.e. royalty income and fees for technical services falling under this chapter qualify for deduction under section 80 C to 80 U.~~

Amendment made by Finance Act, 2019 w.e.f. 01.04.2020

3. No deduction shall be allowed under section 80C to 80 U from the various incomes covered by this chapter. However, there are two exceptions:

(a) Royalty income and fees for technical services falling under this chapter qualify for deduction under section 80 C to 80 U

(b) Unit of International Financial Service Centre shall qualify for deduction under section 80 LA

4. While computing capital gain covered by chapter XII, benefit of “Conversion rule” as well as “Benefit of indexation is not available.
5. Where the Central Government has entered into “double taxation avoidance agreement” (DTAA) with the Government of any country or specified territory, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee [Section 90(2)]. In short, DTAA and the provisions of Income Tax Act, whichever is most beneficial, shall apply to assessee.
6. Shifting benefit is not available for such incomes.

54.4 SPECIAL PROVISIONS APPLICABLE TO FOREIGN INSTITUTIONAL INVESTORS (FIIS)

Section:- 115AD

(a) Eligible Assessee: Foreign Institutional Investors (FIIs)

(b) Nature of Income and Tax Rate:

Sr. No.	NATURE OF INCOME	TAX RATE
1.	Long term capital gains on transfer of securities (other than units covered by section 115AB)	10%
2.	Income in respect of securities (<i>except covered by 115A</i>)	20%
3.	Any short-term capital gain on transfer of securities (except covered by section 111A)	30%

Practical 2

SOL INC., a notified Foreign Institutional Investor (FII) derived the following incomes from various sources for financial year 2018-19:-

- (1) Income in respect of securities : Rs. 28,50,000
 Expenses incurred in respect thereof: Rs. 50,000
 (The above income includes an interest of Rs.16,00,000 received from an Indian Company on the investment of rupee denomination bonds and dividend income of Rs.3,50,000 from a domestic company referred to in section 115-O).
- (2) Capital Gains:
 - (i) Long Term:

Sale proceeds on sale of securities on 15.01.2019:	Rs.52,00,000
Purchase cost of securities on 25.05.2015:	Rs.28,00,000
Cost Inflation Index:	
2015-16: 254	
2018-19: 280	
 - (ii) Short Term:

Sale proceeds of equity shares of Company A (Jan., 19); [STT paid on Company A shares]	Rs.13,50,000
Cost of acquisition (Aug., 2018):	Rs.5,50,000
Sale proceeds of equity shares of Company B (Dec., 18)	Rs.9,25,000
Cost of acquisition (April 2018):	Rs.4,85,000
[STT not paid on Company B shares]	

Compute the taxable income of SOL Inc and tax liability for the assessment year 2019-20. Ignore MAT.

Solution**Calculation of Total Income**

Sr. No.	Particulars	Rs.	Rs.
(1)	Capital Gain (Working Note 1)		36,40,000
(2)	Income from Other sources		
	Income in respect of securities falling under section 115AD [Rs.28,50,000 – Rs.16,00,000 – Rs.3,50,000]	9,00,000	
	Interest Income in received from an Indian Company on the investment of rupee denomination bonds (It falls u/s 115A)	16,00,000	
	Dividend Income from a domestic company referred to in section 115-O	Exempt	25,00,000
	Gross Total Income		61,40,000
	Less: Deduction under section 80 C to 80 U, if any		Nil
	Total Income		61,40,000

Working Note 1:- Computation of Capital Gain

Units of Mutual Fund	Nature of Capital Gain	Sale Consideration	Cost of Acquisition	Capital Gain
Sale of Securities	Long Term	52,00,000	(28,00,000)	24,00,000
Equity shares of Company A	Short Term u/s 111A	13,50,000	(5,50,000)	8,00,000
Equity shares of Company B	Short Term	9,25,000	(4,85,000)	4,40,000
Total				36,40,000

Computation of Tax Liability

Particulars	Section Applicable	Income (Rs.)	Tax Rate	Tax Liability
Income in respect of securities	Section 115AD	9,00,000	20%	1,80,000
Interest Income in received from an Indian Company on the investment of rupee denomination bonds	Section 115A	16,00,000	5%	80,000
Long Term Capital Gain from securities	Section 115AD	24,00,000	10%	2,40,000
Short Term Capital Gain –Equity shares of Company A	Section 111A	8,00,000	15%	1,20,000
Short Term Capital Gain – Equity shares of Company B	Section 115AD	4,40,000	30%	1,32,000
Dividend Income from a domestic company	Section 10(34)	Exempt		
Total		61,40,000		7,52,000
Add: Health & Education Cess@4%				30,080
Tax Liability				7,82,080

Readers Note:

UNIT E – CHAPTER XII A

54.5 CHAPTER XIIA - SPECIAL PROVISIONS APPLICABLE TO NON-RESIDENTS INDIANS

Section:- 115C to 115I

(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%

(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.

(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.

(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).

$$\frac{\text{Amount invested}}{\text{Net consideration}} \times \text{Long Term Capital Gain}$$

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.

(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.

(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.

(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 3

Ajay, a non-resident Indian, has the following sources of income in India during the previous year **2019-20**:

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 2019-20	6,00,000	
		2,00,000	
	Less: Commission to brokers	(6,000)	1,94,000
	Cost Inflation Index: F.Y. 2004-05 - 113; F.Y.2019-20 – 289.		

Compute the tax payable by Ajay for **A.Y 2020-21**, 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. 2020-21 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: Health and Education cess @ 4%		1,576
Total tax liability		40,976
Total tax liability (rounded off)		40,980

Notes:**(1) Computation of total income of Mr. Ajay for the A.Y. 2020-21 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	
Less: 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		4,74,000

- (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, 2020 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:

UNIT F – EXEMPTION IN CASE OF NON-RESIDENTS

54.6 ANY INCOME BY WAY OF INTEREST PAYABLE TO NON-RESIDENT / FOREIGN COMPANY

Section:- 10(4C) - Inserted by Finance Act (No.2) Act, 2019

In case of non-resident, not being a company, or to a foreign company any income by way of interest payable by any Indian company or business trust in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond, as referred to in clause (ia) of sub-section (2) of section 194LC, during the period beginning from the 17th day of September, 2018 and ending on the 31st day of March, 2019

54.7 ANY INCOME BY WAY OF TRANSFER OF CAPITAL ASSET ON A RECOGNIZED STOCK EXCHANGE LOCATED IN ANY INTERNATIONAL FINANCIAL SERVICES CENTRE UNDER SECTION 47(viiab) OF SPECIFIED FUND

Section:- 10(4D) – Inserted by Finance Act (No.2) Act, 2019

Any income accrued or arisen to, or received by a specified fund as a result of transfer of capital asset referred to in clause (viiab) of section 47, on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in convertible foreign exchange, to the extent such income accrued or arisen to, or is received in respect of units held by a non-resident.

Explanation.—For the purposes of this clause, the expression—

- (a) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999 (42 of 1999) and the rules made thereunder;
- (b) "manager" shall have the meaning assigned to it in clause (q) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

- (c) "specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate,—
- (i) which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (ii) which is located in any International Financial Services Centre;
 - (iii) of which all the units are held by non-residents other than units held by a sponsor or manager;
- (d) "sponsor" shall have the meaning assigned to it in clause (w) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (e) "trust" means a trust established under the Indian Trusts Act, 1882 (2 of 1882) or under any other law for the time being in force;
- (f) "unit" means beneficial interest of an investor in the fund and shall include shares or partnership interests;

54.8 ANY INCOME BY WAY OF TRANSFER OF CAPITAL ASSET ON A RECOGNIZED STOCK EXCHANGE LOCATED IN ANY INTERNATIONAL FINANCIAL SERVICES CENTRE UNDER SECTION 47(viiab) OF SPECIFIED FUND

Section:- 10(15)(ix) – Inserted by Finance Act (No.2) Act, 2019

Any income by way of interest payable to a non-resident by a unit located in an International Financial Services Centre in respect of monies borrowed by it on or after the 1st day of September, 2019.

Explanation.—For the purposes of this sub-clause,—

- (a) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);
- (b) "unit" shall have the meaning assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

UNIT G – SECTION 9

54.9 MEANING OF BUSINESS CONNECTION

Section:- Explanation 2 and 3 to section 9(1)(i)

Business connection as defined by Supreme Court in case of CIT vs. R.D. Aggarwal & Co.[1965]56 ITR 20

The expression "business connection" undoubtedly means something more than "business". A business connection involves a relation between a business carried on by a non-resident which yields profits or gains and some activity in the taxable territories which contributes directly or indirectly to the earning of those profits or gains.

Business connection as defined in Explanation 2 to section 9(1)(i)

As per Explanation 2 to section 9(1) (i), "business connection" shall include any business activity carried out through a person who, acting on behalf of the non-resident,—

- ~~(a) who has and who habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or~~

Following clause (a) shall be substituted for the existing clause (a) of Explanation 2 to clause (i) of sub-section (1) of section 9 by the Finance Act, 2018, w.e.f. A.Y. 2019-20:

- (a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are—
 - (i) in the name of the non-resident; or
 - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or

(iii) for the provision of services by the non-resident; or

[This amendment in the definition of “business connection” is for the purpose of alignment with the provisions of the Double Taxation Avoidance Agreement (DTAA) as modified by Multilateral Instrument (MLI) so as to make the provisions in the treaty effective.]

- (b) who has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
- (c) habitually secures orders in India, mainly or wholly for the non-resident.

Further, there may be situations when the person acting on behalf of the non-resident secure order for other non-residents. In such situation, business connection for other non-residents is established if,

- (i) such other non-resident controls the non-resident or
- (ii) such other non-resident is controlled by the non-resident or
- (iii) such other non-resident is subject to same control as that of non-resident

In all the three situations, business connection is established, where a person habitually secures orders in India, mainly or wholly for such non-residents.

Provided that such business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent having an independent status is acting in the ordinary course of his business:

Provided further that where such broker, general commission agent or any other agent works mainly or wholly on behalf of a non-resident (referred to as the principal non-resident) or on behalf of such non-resident and other non-residents which are controlled by the principal non-resident or have a controlling interest in the principal non-resident or are subject to the same common control as the principal non-resident, he shall not be deemed to be a broker, general commission agent or an agent of an independent status.

Explanation 3

Where a business is carried on in India through a person referred to in clause (a) or clause (b) or clause (c) of *Explanation 2*, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

Practical 4

Examine in the context of provisions contained under the Income-tax Act, 1961 each of the following independent cases and state in brief whether there exists business connection in each of the cases in India so as to bring the income earned, if any to tax net in India:-

- (i) ABC Ltd, a company resident in Dubai had setup a liaison office at Mumbai to receive trade inquiries from customers in India. The work of the liaison office is not only restricted to forwarding of the trade inquiries to ABC Ltd. but the liaison office also negotiates and enters into the contracts on behalf of ABC Ltd. with the customers in India.
- (ii) XYZ Inc. a resident of USA has set up a branch at Hyderabad for the purpose of purchase of raw materials for manufacturing its products. The branch office is also engaged in selling the products manufactured by XYZ Inc. and in providing sales related services to customers in India on behalf of XYZ Inc.
- (iii) Mr. Rajesh, a resident in India and based at Delhi is appointed as an agent by PQR Inc. a company incorporated in UK for tracking the Indian markets. He was canvassing the orders and then communicating to PQR Inc. in UK. He had no authority to accept the orders. All the orders were directly received, accepted and after receipt of the price/value, the delivery of goods was given by PQR Inc. outside India. No purchase of raw material or manufacturing of finished goods took place in India. The agent is entitled to receive the commission on the sales so concluded by PQR Inc.

Solution

- (i) Generally, opening of liaison office and its functioning in accordance with the directives of RBI, would not give rise to a “business connection” because liaison office is not allowed to undertake any business activity in India and cannot earn any income in India.

However, in the present case, liaison office has stepped further and entered into the contracts on behalf of ABC Ltd. with customers in India. This activity undertaken by liaison office squarely falls under clause (c) of explanation 2 to section 9(1)(i) and therefore, it gives rise to a “business connection” in India so far as ABC Ltd. is concerned.

- (ii) The opening of branch office and its functioning in accordance with directives of RBI, does give rise to a “business connection” under section 9 of the Act and it also constitutes Permanent Establishment (PE) in India under DTAA.

However, in view of clause (b) of explanation 1 to Section 9(1) (i), no income shall be deemed to accrue or arise in India to XYZ Inc. through or from operations which are confined to the purchase of goods in India for the purpose of export.

- (iii) In the present case, neither Mr. Rajesh has an authority to conclude contracts on behalf of PQR Inc. nor habitually secures order in India on behalf of PQR Inc., therefore, it does not give rise to a “business connection” in view of the explanation 2 to section 9(1)(i).

Not only that the activity carried out through Rajesh is in ordinary course of his business as a broker, general commission agent or any other agent having an independent status and therefore, in view of first proviso to explanation 2 to section 9(1)(i), it does not give rise to a “business connection” also.

Readers Note:**Practical 5**

What would have been your answer in sr. no. (iii) of above practical, if Mr. Rajesh habitually plays principle role leading to conclusion of contract entered into by PQR Inc.?

Solution

In view of the amendment made by Finance Act, 2018 in clause (a) of explanation 2 to section 9(1)(i), the activity undertaken by Rajesh on behalf of PQR Inc. (i.e. principle role leading to conclusion of contract entered into by PQR Inc.) would give rise to a “business connection” in India.

Readers Note:**Practical 6**

Mr. Nayan habitually secures orders in India on behalf of Mr. Karlos, Non-resident. Discuss whether Mr. Karlos is said to have business connection in India under following alternatives:

Alternative 1: Mr. Nayan also secures orders for various non-residents across the globe.

Alternative 2: Mr. Nayan works mainly for Mr. Karlos and his group companies in US, controlled by Karlos.

Solution

Alternative 1: Mr. Nayan under this alternative is nothing but an agent of independent status and therefore, it will not give rise to business connection in India for Mr. Karlos.

Alternative 2: Since Mr. Nayan works mainly for Mr. Karlos and his group companies, he cannot be said to be an agent of independent status. Therefore, dealing through Mr. Nayan in India give rise to business connection in India for Mr. Karlos.

Readers Note:

Practical 7

A firm of solicitors in Mumbai engaged a barrister in UK for arguing a case before Supreme Court of India. A payment of 5000 pounds was made as per terms of professional engagement. Whether this transaction attract income-tax in India in the hands of barrister in UK under section 9?

Solution

- As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India. In this case, there was a professional connection between the firm of solicitors in Mumbai and the barrister in UK.
- The expression “business” includes not only trade and manufacture; it includes, within its scope, “profession” as well. Therefore, the existence of professional connection amounts to existence of “business connection” under section 9(1)(i). It was so held by the **Supreme Court in Barendra Prasad Roy v. ITO (1981) 129 ITR 295.**
- Hence, the amount of 5,000 pounds paid to the barrister in UK as per the terms of the professional engagement constitutes income which is deemed to accrue or arise in India under section 9(1)(i). Hence, it is taxable in India.

Readers Note:

Following Explanation 2A shall be inserted after Explanation 2 to clause (i) of sub-section (1) of section 9 by the Finance Act, 2018, w.e.f. A.Y. 2019-20:

Explanation 2A.—For the removal of doubts, it is hereby clarified that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—

- (a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
- (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means:

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not,—

- (i) the agreement for such transactions or activities is entered in India; or
- (ii) the non-resident has a residence or place of business in India; or
- (iii) the non-resident renders services in India:

Provided further that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.

[This explanation has been inserted to take care of new business models such as digitized businesses, which do not require physical presence of itself or any agent in India. Such businesses can now be covered within the scope of section 9(1)(i).]

Practical 8

MEGA Mart Inc., a non-resident, regularly sells goods to its Indian Customers. It does not have any PE/Agent in India. Nor does it have any other physical presence in India. It would like to know the impact of the amendment carried out by Finance Act, 2018 more particularly when the goods dealt by it are not in a digitized form / software.

Solution

In view of the amendment made by Finance Act, 2018 by way of explanation 2A to section 9(1)(i), the activity undertaken by MEGA Mart Inc. may give rise to a “significant economic presence in India” if the aggregate of payments arising from transactions undertaken by it during the previous year exceeds the threshold prescribed in this regard and thereby leading to a “business connection” in India.

A close reading of the above explanation suggests that for it does not make any distinction between the goods in a digitized form or not.

Readers Note:**Explanation 1 to section 9(1)(i) provides that for the purpose of this clause-**

- (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.*

54.10	PRESENCE OF ELIGIBLE FUND MANAGER IN INDIA NOT TO CONSTITUTE BUSINESS CONNECTION IN INDIA OF SUCH ELIGIBLE INVESTMENT FUND ON BEHALF OF WHICH HE UNDERTAKES FUND MANAGEMENT ACTIVITY

Section:- 9A

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

As per this provision,

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

Business connection [Section 9A(1)]

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

Residential Status [Section 9A(2)]

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

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

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

- (a) the fund is not a person resident in India;
- (b) the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into *[or is established or incorporated or registered in a country or a specified territory notified by the Central Government in this behalf]*;— bracket inserted by Finance Act, 2016
- (c) the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund;
- (d) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;
- (e) the fund has a minimum of twenty-five members who are, directly or indirectly, not connected persons;
- (f) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten per cent;
- (g) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty per cent;
- (h) the fund shall not invest more than twenty per cent of its corpus in any entity;
- (i) the fund shall not make any investment in its associate entity;
- (j) the monthly average of the corpus of the fund shall not be less than one hundred crore rupees:

Provided that if the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than one hundred crore rupees ~~at the end of such previous year~~ **at the end of a period of six months from the last day of the month of its establishment or incorporation, or at the end of such previous year, whichever is later [Amendment made by Finance Act, 2019 w.r.e.f. 01.04.2019];**

Provided further that nothing contained in this clause shall apply to a fund which has been wound up in the previous year; **[w.r.e.f. A.Y.2016-17-Amendment made by Finance Act, 2017]**

- (k) the fund shall not carry on or control and manage, directly or indirectly, any business in India or ~~from India~~; Words omitted by Finance Act, 2016
- (l) the fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf;
- (m) the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than ~~the arm's length price of the said activity~~ **the amount calculated in such manner as may be prescribed [Amendment made by Finance Act, 2019 w.r.e.f. 01.04.2019]**

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

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

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

- (a) the person is not an employee of the eligible investment fund or a connected person of the fund;
- (b) the person is registered as a fund manager or an investment advisor in accordance with the specified regulations;
- (c) the person is acting in the ordinary course of his business as a fund manager;
- (d) the person along with his connected persons shall not be entitled, directly or indirectly, to more than twenty per cent of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through the fund manager.

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

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

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

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

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

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

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

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

Interpretation [Section 9A(9)]

For the purposes of this section,—

- (a) **"associate"** means an entity in which a director or a trustee or a partner or a member or a fund manager of the investment fund or a director or a trustee or a partner or a member of the fund manager of such fund, holds, either individually or collectively, share or interest, being more than fifteen per cent of its share capital or interest, as the case may be;
- (b) **"connected person"** shall have the meaning assigned to it in clause (4) of section 102 which reads as under:-
 "connected person" means any person who is connected directly or indirectly to another person and includes,—
 - (a) *any relative of the person, if such person is an individual;*
 - (b) *any director of the company or any relative of such director, if the person is a company;*

- (c) *any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member, if the person is a firm or association of persons or body of individuals;*
- (d) *any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;*
- (e) *any individual who has a substantial interest in the business of the person or any relative of such individual;*
- (f) *a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member;*
- (g) *a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member has a substantial interest in the business of the person, or family or any relative of such director, partner or member;*
- (h) *any other person who carries on a business, if—*
 - (i) *the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or*
 - (ii) *the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person;*
- (c) **"corpus"** *means the total amount of funds raised for the purpose of investment by the eligible investment fund as on a particular date;*
- (d) **"entity"** *means any entity in which an eligible investment fund makes an investment;*
- (e) **"specified regulations"** *means the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 or the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, or such other regulations made under the Securities and Exchange Board of India Act, 1992 which may be notified by the Central Government under this clause.*

UNIT H – FOREIGN COMPANY AND MINIMUM ALTERNATE TAX (MAT)

54.11 | APPLICABILITY OF MAT PROVISIONS TO FOREIGN COMPANIES

Section:- 115JB

Practical 9

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

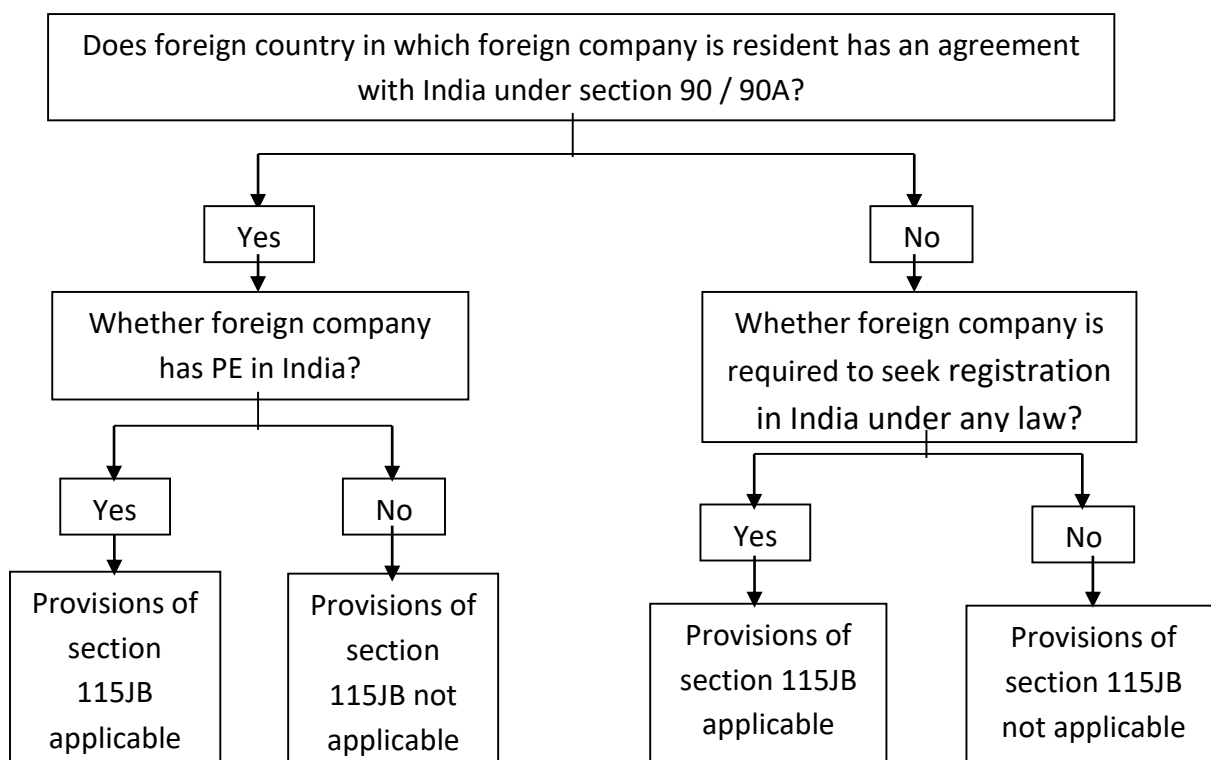
Solution

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:

Practical 10

Singapore Airlines Inc (SAI), a foreign company derives its income solely from the operations of aircrafts in India. It seeks your advice on applicability of MAT.

Does your answer differ, if SAI also provides technical services to Indian Airlines for maintenance of aircrafts in addition to the above activity?

Solution

Income derived from the operations of aircrafts falls under section 44BBA of the Act. If it is the only income derived by (SAI) during the previous year, then MAT provisions (section 115JB) are not applicable in view of the **retrospective amendment made by Finance Act, 2018 w.e.f. A.Y. 2001-02** which reads as under: -

Explanation 4A to section 115 JB(2)—*"For the removal of doubts, it is hereby clarified that the provisions of this section shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, where its total income comprises solely of profits and gains from business referred to in section 44B or section 44BB or section 44BBA or section 44BBB and such income has been offered to tax at the rates specified in those sections.*

However, SAI is subject to MAT provisions if it derives any other income in addition to the operation of aircrafts in India.

Readers Note:

54.12 SPECIAL ADJUSTMENTS TO ARRIVE AT BOOK PROFIT IN THE HANDS OF FOREIGN COMPANY

Section:- 115JB(2)

Positive Adjustment –

Profit as shown in statement of profit and loss is to be increased by the following amounts if debited to the statement of profit and loss:

- 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%.

Negative Adjustment—

Profit as shown in the statement of profit and loss is to be reduced by the following amounts:

- 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%.

Practical 11

Arnold Ltd. (incorporated in UK) has a branch office (PE) in India. The Net Profit of the Branch as per the statement of profit and loss for the year ended **31.03.2020** was Rs.83 lakhs. It includes the following:

- (i) Dividend from Indian companies (listed) Rs. 8,00,000.
- (ii) Dividend from Indian companies (unlisted) Rs. 4,00,000.
- (iii) Interest received from MMS Ltd. of Mumbai Rs. 7,00,000. The amount was received by the Indian company MMS Ltd. in foreign currency as per loan agreement dated **01.04.2014** (section 194LC applicable).
- (iv) Fee for technical services received from Barun Co. Ltd., Kolkata Rs. 25,00,000. The agreement was made on **10.08.2007** and was approved by Central Government. Expenditure incurred for providing technical service amounts to Rs. 6,00,000.

Additional information:

Total income chargeable to tax as per regular provisions of the Income-tax Act, 1961 (Act) is Rs.20,00,000 (without considering the items (i) to (iv) above).

You are required to compute the book profit tax under section 115JB of the Act for the assessment year **2020-21** and also the total income-tax liability of the assessee.

Your working should be supported by notes. Ignore DTAA with UK.

Solution

Step 1: Computation of “Book Profit”

Particulars	Rs.	Rs.
Net Profit as per Statement of Profit and Loss		83,00,000
Less: Net profit to be decreased by the following amounts as per Explanation 1 to section 115JB:		
- Dividend income from listed and unlisted Indian companies, credited to statement of profit and loss [Dividend income from listed and unlisted Indian companies is exempt u/s 10(34) read with section 115BBDA to the extent of Rs.10 lakhs, in the hands of a foreign company. To this extent it can be reduced from net profit to arrive at book profit]	10,00,000	

- Interest income received from an Indian company as per loan agreement dated 1.4.2014, where the loan is given in foreign currency [Since income by way of interest chargeable to tax@5% under section 115A, being a rate lower than 15%, has been credited to statement of profit and loss, the same has to be reduced to arrive at book profit]	7,00,000	
- Fees for technical services under an agreement approved by the Central Government [No adjustment is required since the foreign company carries on business through a permanent establishment i.e., a branch in India. Such income, being effectively connected with the branch in India, is taxable@40% under section 44DA. Since the income is not taxable at a rate less than 15% it should not be reduced for determining book profit]	Nil	17,00,000
Book Profit		66,00,000

Step 2: Computation of MAT Liability

Particulars	Rs.
MAT @15% of Book Profit (Rs. 66,00,000)	9,90,000
Add: Health & Education Cess: (4%)	39,600
MAT Liability	10,29,600

Step 3: Computation of Total Income

Sr. No.	Particulars	Rs.	Rs.
(1)	Total Income [Before adjustment of (i) to (iv) adjustments of additional information]		20,00,000
	Income from Other sources		
	(i) Dividend Income from Indian Companies [Listed]	8,00,000	
	(ii) Dividend Income from Indian Companies [Unlisted]	4,00,000	
		12,00,000	
	Less: Exemption under section 10(34)	10,00,000	2,00,000
	(iii) Interest of received from MMS Ltd. as per loan agreement dated 1.4.2014, the loan being given in foreign currency		7,00,000
	(iv) Fees for technical services	25,00,000	
	Less: Expenditure incurred for providing technical service (deductible due to provisions of Section 44DA)	6,00,000	19,00,000
	Total Income		48,00,000

Step 4: Computation of Regular Tax Liability

Particulars	Section Applicable	Income (Rs.)	Tax Rate	Tax Liability
Dividend from Indian Companies	Section 115BBDA	2,00,000	10%	20,000
Interest of received from MMS Ltd.	Section 115A	7,00,000	5%	35,000
Fees for technical services	Finance Act	19,00,000	40%	7,60,000
Other Business Income	Finance Act	20,00,000	40%	8,00,000
Sub-total				16,15,000
Add: Health & Education Cess@4%				64,600
Tax Liability				16,79,600

Step 5. Tax Liability shall be higher of the step 2 or step 4

Particulars	Rs.
MAT Liability as per Step 2	10,29,600
Regular Tax Liability as per Step 4	16,79,600
Regular Tax Liability	16,79,600

Readers Note:

55 - DOUBLE TAXATION RELIEF

55.1 WHERE THERE IS AGREEMENT WITH FOREIGN COUNTRIES [BILATERAL RELIEF]

Section:- 90

(1) Section 90(1)

The Central Government may enter into an agreement with the Government of any country outside India to provide

(a) for grant of double taxation relief, for avoidance of double taxation by way of following methods:

- i. Exemption method: - Under this method, the relief is provided to the assessee by taxing a particular income in only one of the two countries, which would otherwise have been taxed in both the countries.
- ii. Tax credit method: - Under this method, the income of the assessee is taxable in both countries in accordance with their respective tax laws/DTAAs. However, the country of which the tax payer is a resident, allows him credit for the tax charged on the doubly taxed income in the other country.

(b) for exchange of information for the prevention of evasion or avoidance of Income Tax;

(c) for recovery of income-tax.

Explanation 1.—For the removal of doubts, it is hereby declared that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company.

Explanation 4 has been inserted by the Finance Act, 2017, w.e.f. A.Y. 2018-19:

For the removal of doubts, it is hereby declared that where any term used in an agreement entered into under sub-section (1) is defined under the said agreement, the said term shall have the same meaning as assigned to it in the agreement; and where the term is not defined in the said agreement, but defined in the Act, it shall have the same meaning as assigned to it in the Act and explanation, if any, given to it by the Central Government.

(2) Section 90(2)

Where the Central Government has entered into DTAA with the Government of any country outside India or specified territory outside India, then, in relation to the assessee to whom such agreement applies, **the provisions of this Act shall apply to the extent they are more beneficial to that assessee.**

(3) Section 90(4)

An assessee, not being a resident, to whom DTAA applies, shall not be entitled to claim any relief under such agreement unless a **certificate of his being a resident in any country outside India or specified territory outside India**, as the case may be, is obtained by him from the Government of that country or specified territory.

(4) Section 90(5)

The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed. (see notification given below)

- **Notification No. 39/2012 dated 17.09.2012**

Tax Residence Certificate – **Form & Contents prescribed**

The Central Board of Direct Taxes has, through this notification, inserted **new Rule 21AB** which shall come into force on 1.4.2013. The said Rule provides that the Certificate for claiming relief by a non-

resident under an agreement referred to in sections 90 and 90A should contain the following particulars in form no. 10F :

- (i) Name of the assessee;
- (ii) Status (individual, company, firm etc.) of the assessee;
- (iii) Nationality (in case of individual);
- (iv) Country or specified territory of incorporation or registration (in case of others);
- (v) Assessee's tax identification number in the country or specified territory of residence or in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory;
- (vi) Residential status for the purposes of tax;
- (vii) Period for which the certificate is applicable; and
- (viii) Address of the applicant for the period for which the certificate is applicable;

Such certificate should be duly verified by the Government of the country or the specified territory of which the person claims to be a resident for the purposes of tax.

In addition, the CBDT has also prescribed the form for an assessee, who is a resident in India, to make an application to the Assessing Officer for obtaining a certificate of residence for the purposes of an agreement referred to in section 90 and 90A. It has also prescribed the form in which the Assessing Officer, on receipt of such an application by the assessee and on being satisfied in this regard, shall issue a certificate of residence to such an assessee.

Note:- The **submission of TRC containing prescribed particulars shall be a necessary but not sufficient condition for availing benefits of the agreements** referred to in these sections. In effect, further conditions can be stipulated for claiming treaty benefits, in addition to the requirement of submission of TRC.

Practical 1

The Income-tax Act, 1961 provides for taxation of a certain income earned by Mr. X. The Double Taxation Avoidance Agreement, which applies to Mr. X, excludes the income earned by Mr. X from the purview of tax. Is Mr. X liable to pay tax on the income earned by him? Discuss.

Solution

- Section 90(2) makes it clear that where the Central Government has entered into a Double Taxation Avoidance Agreement with a country outside India, then in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. This means that where tax liability is imposed by the Act, the Double Taxation Avoidance Agreement (DTAA) may be resorted to for reducing or avoiding the tax liability.
- However, as per section 90(4), the assessee, in order to claim relief under the agreement, has to obtain a certificate [Tax Residence Certificate (TRC)] from the Government of that country, declaring the residence of the country outside India. Further, he also has to provide prescribed information (as discussed in above notification) Form No. 10F.
- The Supreme Court has held, in CIT v. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654, that in case of any conflict between the provisions of the Double Taxation Avoidance Agreement and the Income-tax Act, 1961, the provisions of the DTAA would prevail over those of the Income-tax Act, 1961.
- Mr. X is, therefore, not liable to pay tax on the income earned by him provided he submits the Tax Residence Certificate obtained from the government of the other country, and provides such other documents and information as may be prescribed.

Readers Note:

Practical 2

Examine the correctness or otherwise of the following statement with reference to the provisions of Income-tax Act, 1961.

The double taxation avoidance treaties entered into by the Government of India override the domestic law.

Solution

The statement is correct.

Circular No. 333 dated April 2, 1982, issued by CBDT provides that a specific provision of the DTAA will prevail over the general provisions of the Income-tax Act, 1961. Therefore, where a DTAA provides for a particular mode of computation of income, this mode will take precedence over the Income-tax Act, 1961. However, where there is no specific provision in the treaty, then the Income-tax Act will apply.

Supreme Court in case of CIT v. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654 held that in case of any conflict between the provisions of the double taxation avoidance agreement and the Income-tax Act, 1961, the provisions of the DTAA would prevail over the Act.

Section 90(2) provides that where a double taxation avoidance treaty is entered into by the Government, the provisions of the Income-tax Act, 1961 would apply to the extent they are more beneficial to the assessee.

Readers Note:**Practical 3**

Cosmos Limited, a company incorporated in Mauritius, has a branch office in Hyderabad opened in April, 2015. The Indian branch has filed return of income for assessment year 2017-18 disclosing income of Rs. 50 lacs. It paid tax at the rate applicable to domestic company i.e. 30% plus education cess on the basis of paragraph 2 of Article 24 (Non-Discrimination) of the Double Taxation Avoidance Agreement between India and Mauritius, which reads as follows:

"The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances."

However, the Assessing Officer computed tax on the Indian branch at the rate applicable to a foreign company i.e. 40% plus education cess.

Is the action of the Assessing Officer in accordance with law?

Solution

- Under section 90(2), where the Central Government has entered into an agreement for avoidance of double taxation with the Government of any country outside India or specified territory outside India, as the case may be, then, in relation to the assessee to whom such agreement applies, the provisions of the Income-tax Act, 1961 shall apply to the extent they are more beneficial to the assessee. Thus, in view of paragraph 2 of the Article 24 (Non-discrimination of the Double Taxation Avoidance Agreement (DTAA)), it appears that the Indian branch of Cosmos Limited, incorporated in Mauritius, is liable to tax in India at the rate applicable to domestic company (30%), which is lower than the rate of tax applicable to a foreign company (40%).
- However, Explanation 1 to section 90 clarifies that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company. Therefore, in view of this Explanation, the action of the Assessing Officer in levying tax@40% on the Indian branch of Cosmos Ltd. is in accordance with law.

Readers Note:**Practical 4**

Arif is a resident of both India and another foreign country in the previous year **2019-20**. He owns immovable properties (including residential house) in both the countries. He earned income of Rs. 50 lacs from rubber

estates in the foreign country during the financial year **2019-20**. He also sold some house property situated in foreign country resulting in short-term capital gain of Rs. 10 lacs during the year. Arif has no permanent establishment of business in India. However, he has derived rental income of Rs. 6 lacs from property let out in India and he has a house in Lucknow where he stays during his visit to India.

Article 4 of the Double Taxation Avoidance Agreement between India and the foreign country where Arif is a resident, provides that “where an individual is a resident of both the Contracting States, then he shall be deemed to be resident of the Contracting State in which he has permanent home available to him. If he has permanent home in both the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests)”.

You are required to state with reasons whether the business income of Arif arising in foreign country and the capital gains in respect of sale of the property situated in foreign country can be taxed in India.

Solution

- Section 90(1) of the Income-tax Act, 1961 empowers the Central Government to enter into an agreement with the Government of any country outside India for avoidance of double taxation of income under the Indian law and the corresponding law of that country. Section 90(2) provides that where the Central Government has entered into an agreement with the Government of any other country for granting relief of tax or for avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of the Income-tax Act, 1961 shall apply to the extent they are more beneficial to that assessee.
- Arif has residential houses both in India and foreign country. Thus, he has a permanent home in both the countries. However, he has no permanent establishment of business in India. The Double Taxation Avoidance Agreement (DTAA) with foreign country provides that where an individual is a resident of both the countries, he shall be deemed to be resident of that country in which he has a permanent home and if he has a permanent home in both the countries, he shall be deemed to be resident of that country, which is the centre of his vital interests i.e. the country with which he has closer personal and economic relations. Arif owns rubber estates in a foreign country from which he derives business income. However, Arif has no permanent establishment of his business in India. Therefore his personal and economic relations with foreign country are closer, since foreign country is the place where –
 - (a) the property is located and
 - (b) the permanent establishment (PE) has been set-up
 Therefore, he shall be deemed to be resident of the foreign country for **A.Y. 2020-21**.
- The fact of the case and issues arising therefrom are similar to that of CIT vs. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654, where the Supreme Court held that if an assessee is deemed to be a resident of a contracting State where his personal and economic relations are closer, then in such a case, the fact that he is a resident in India to be taxed in terms of sections 4 and 5 would become irrelevant, since the DTAA prevails over sections 4 and 5.
- However, as per section 90(4), in order to claim relief under the agreement, Arif has to obtain a certificate [Tax Residency Certificate (TRC)] declaring his residence of the country outside India from the Government of that country. Further, he also has to provide such other documents and information, as may be prescribed.
- Therefore, in this case, Arif is not liable to income tax in India for **A.Y. 2020-21** in respect of business income and capital gains arising in the foreign country provided he furnishes the Tax Residency Certificate and provides such other documents and information as may be prescribed.

Readers Note:

Question 5

The concept of Permanent Establishment is one of the most important concepts in determining the tax implications of cross border transactions. Explain the significance thereof, when such transactions are governed by Double Taxation Avoidance Agreements (DTAA).

Answer

Double Taxation Avoidance Agreements (DTAAs) generally contain an Article providing that business income is taxable in the country of residence, unless the enterprise has a permanent establishment in the country of source, and such income can be attributed to the permanent establishment.

That means, if permanent establishment is in other country, then income attributed to that PE shall be taxed in that source country.

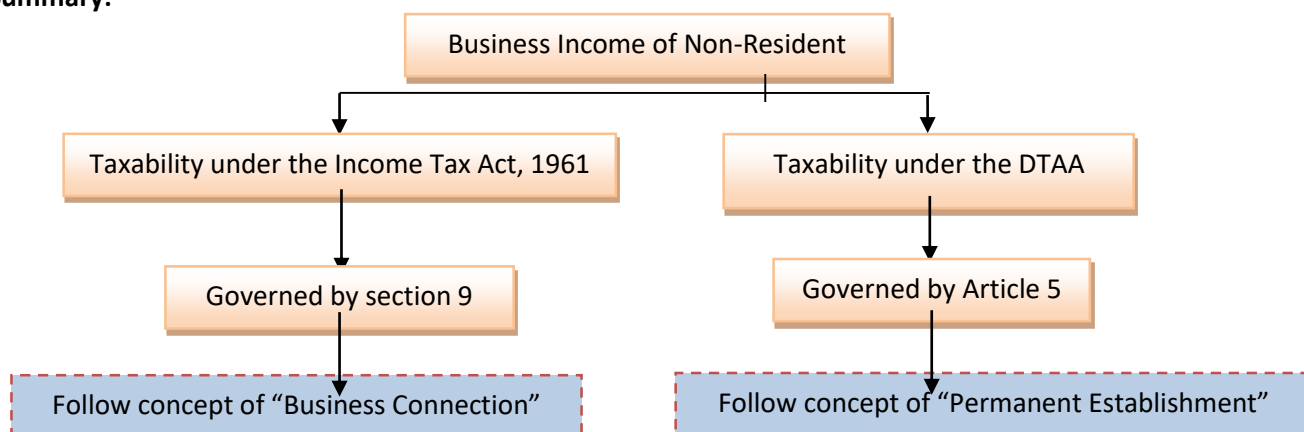
As per section 92F(iia), the term “Permanent Establishment” includes a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Section 9(1)(i) requires existence of business connection for deeming business income to accrue or arise in India.

DTAAs however provide that business income is taxable only if there is a permanent establishment in India.

Therefore, in cases covered by DTAAs, where there is no permanent establishment in India, business income cannot be brought to tax due to existence of business connection as per section 9(1)(i).

However, in cases not covered by DTAAs, business income attributable to business connection is taxable.

Summary:**Readers Note:****55.2 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 6

Mr. Kamesh, an individual resident in India aged 52 years, furnishes you the following particulars of income earned in India, Country "X" and Country "Y" for the previous year **2019-20**. India has not entered into double taxation avoidance agreement with these two countries.

Particulars	Rs.
Income from profession carried on in India	7,50,000
Agricultural income in Country "X" (gross)	50,000
Dividend received from a company incorporated in Country "Y" (gross)	1,50,000
Royalty income from a literary book from Country "X" (gross)	6,00,000
Expenses incurred for earning royalty	50,000
Business loss in Country "Y" (Proprietary business)	65,000
Rent from a house situated in Country "Y" (gross)	2,40,000
Municipal tax in respect of the above house (not allowed as deduction in country "Y")	10,000

Note: Business loss in Country "Y" not eligible for set off against other incomes as per law of that country.

The rates of tax in Country "X" and Country "Y" are 10% and 20%, respectively.

Compute total income and tax payable by Mr. Kamesh in India for Assessment Year 2020-21.

Solution

Computation of total income of Mr. Kamesh for A.Y.2020-21

Particulars	Rs.	Rs.
Income from House Property [House situated in country Y]		
Gross Annual Value	2,40,000	
Less: Municipal taxes (assumed as paid in that country)	10,000	
Net Annual Value	2,30,000	
Less: Deduction under section 24 – 30% of NAV	69,000	
Income from House Property [A]		1,61,000
Profits and Gains of Business or Profession		
Income from profession carried on in India	7,50,000	
Royalty income from a literary book from Country X (after deducting expenses of Rs. 50,000)	5,50,000	
Less: Business loss in country Y set-off	65,000	
Profits and Gains of Business or Profession [B]		12,35,000
Income from Other Sources		
Agricultural income in country X	50,000	

Dividend received from a company in country Y	1,50,000	
Income from Other Sources [C]		2,00,000
Gross Total Income [A + B + C]		15,96,000
Less: Deduction under Chapter VIA		
Under section 80QQB – Royalty income of a resident from literary work		3,00,000
Total Income		12,96,000

Computation of tax liability of Mr. Kamesh for A.Y.2020-21

Particulars	Rs.
Tax on total income [30% of Rs. 2,96,000 + Rs.1,12,000]	2,01,300
Health and Education cess @ 4%	8,052
	2,09,352
Less: Rebate under section 91 (See Working Note below)	69,739
Tax Payable	1,39,613
Tax payable (rounded off)	1,39,610

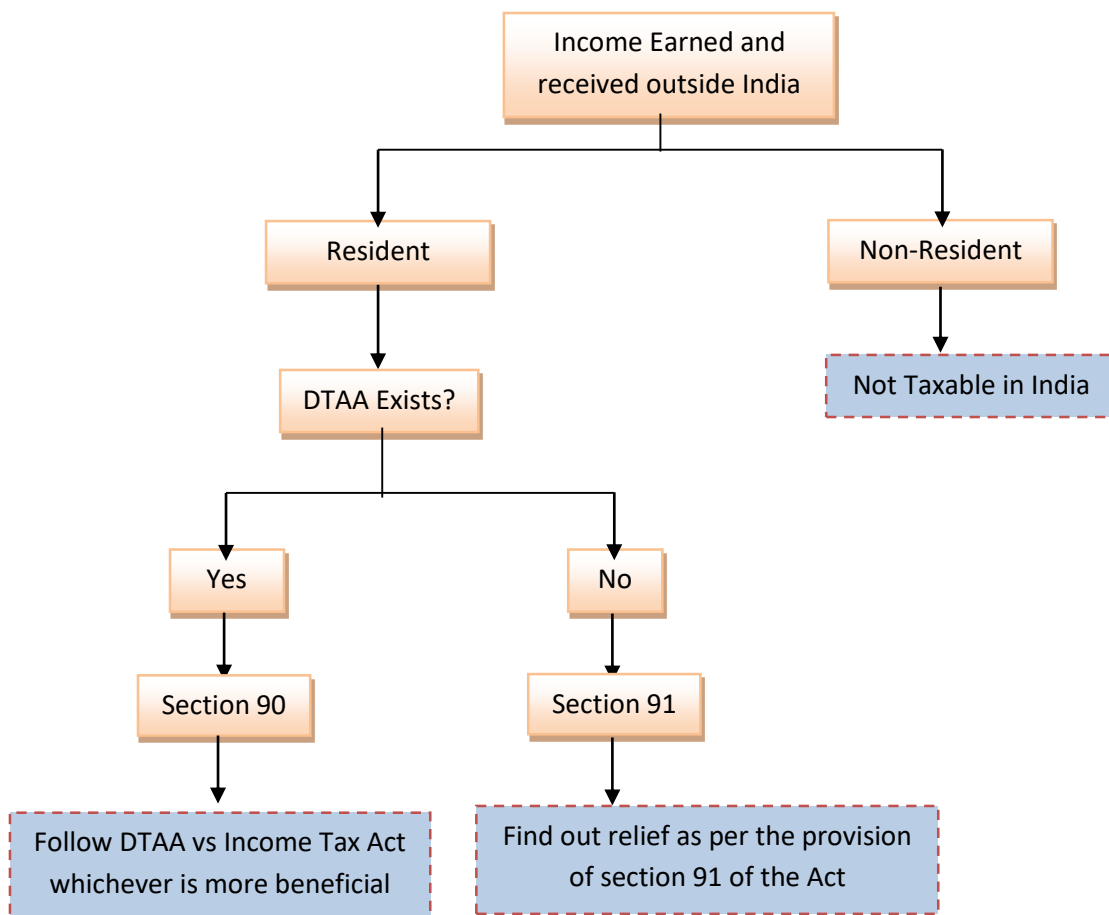
Working Note: Calculation of Rebate under section 91

Particulars	Rs.	Rs.
Average rate of tax in India [i.e., Rs. 2,09,352 / Rs. 12,96,000 x 100]	16.15%	
Average rate of tax in country X	10%	
Doubly taxed income pertaining to country X		
Agricultural Income	50,000	
Royalty Income [Rs. 6,00,000 – Rs. 50,000 (Expenses) – Rs. 3,00,000 (deduction under section 80QQB)]	2,50,000	
	3,00,000	
Rebate under section 91 on Rs. 3,00,000 @10% [being the lower of average Indian tax rate (16.15%) and foreign tax rate (10%)]		30,000
Average rate of tax in country Y	20%	
Doubly taxed income pertaining to country Y		
Income from house property	1,61,000	
Dividend	1,50,000	
	3,11,000	
Less: Business loss set-off	65,000	
	2,46,000	
Rebate under section 91 on Rs. 2,46,000 @16.154% (being the lower of average Indian tax rate (16.15%) and foreign tax rate (25%)]		39,739
Total rebate under section 91 (Country X + Country Y)		69,739

Notes:

- (1) Rental Income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.
- (2) Doubly taxed income includes only that part of income which is included in the assessee's total income.– CIT v. Dr. R.N. Jhanji (1990) 185 ITR 586 (Raj.).
- (3) 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.)]

Readers Note:

Summary – Taxability of income earned and received outside India

56 - ADVANCE RULINGS - REFER CHAPTER 31

57 - TRANSFER PRICING AND OTHER ANTI-AVOIDANCE MEASURES

UNIT A – INTERNATIONAL TRANSACTIONS

57.1 OBJECTIVE OF INTRODUCING CHAPTER-X:- KNOWN AS: "TRANSFER PRICING"

- There is a possibility that two or more entities belonging to the same multinational group can fix up their prices for goods and services and allocate profits among the enterprises within the group in such a way that there may be either no profit or negligible profit in the jurisdiction which taxes such profits and substantial profit in the jurisdiction which is tax haven or where the tax liability is minimum. This may adversely affect a country's share of due revenue.
- The increasing participation of multinational groups in economic activities in India has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multinational group. The profits derived by such enterprises carrying on business in India can be controlled by the multinational group, by manipulating the prices charged and paid in such intra-group transactions, which may lead to erosion of tax revenue.
- As a result, Government set up an Expert Group to examine the issues relating to transfer pricing. As an outcome, transfer pricing provisions have been brought in by the Finance Act, 2001 with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises.
- W.e.f A.Y. 2013-14, section 92BA has been inserted to extend applicability of transfer pricing to specified domestic transactions also.

57.2 CONDITIONS FOR APPLICABILITY OF ARM'S LENGTH PRICE IN THE INTERNATIONAL TRANSACTION

Section:- 92A, 92B and 92F (iii)

(1) Condition 1: There must be two or more enterprise.

Meaning of Enterprise [Section 92F(iii)]

Enterprise means a person (including permanent establishment) who engages or has been engaged or proposed to engage in the following activities:

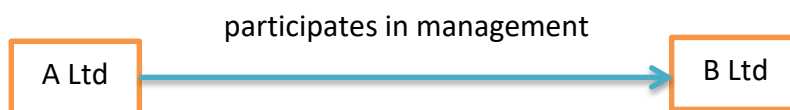
- (a) Any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods:
- (b) Know-how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature or any data, documentation, drawing or specification 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 irrespective of the fact that it carries on the abovementioned activity or business directly or through one or more of its units or divisions or subsidiaries.

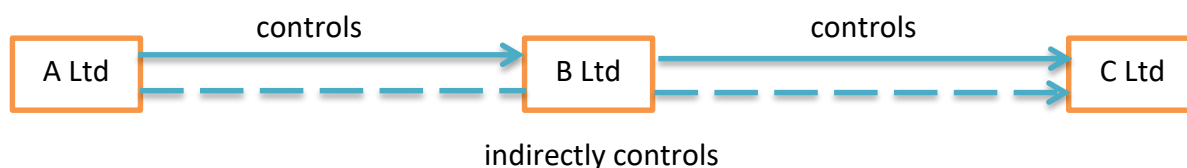
(2) Condition 2: Enterprises must be an Associated Enterprises [Section 92A]

- One enterprise would be regarded an associated enterprise of another, 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

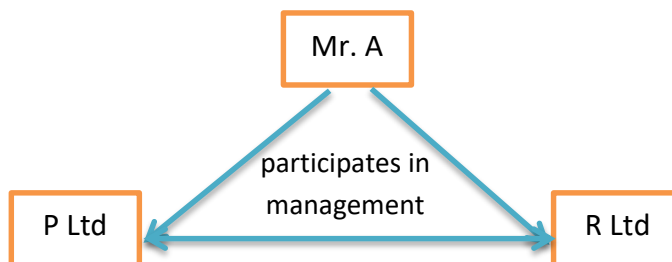
Example of "Direct Participation"



Example of "Indirect Participation"



- 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.



• Deemed Associated Enterprises

For the purpose of this section, two enterprises shall be deemed to be associated enterprises if, at any time during the previous year:-

(i) Voting power criteria

One enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise.

E.g.: PQR INC. holds 26% voting power in ABC Private Ltd., then PQR INC. and ABC Private Ltd. are deemed to be associated enterprise.

(ii) Voting power by common person criteria

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.

E.g.: Mr. A holds 26% of shareholding in both Kharate Software Private Ltd. and Milan Softech INC., then Kharate Software and Milan Softech INC. are deemed to be associated enterprise.

(iii) Loan criteria

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.

E.g.: Book value of total assets of Indian Company is Rs.100 crores. The loan given by Foreign Company to such Indian Company is Rs. 55 crores, then Indian Company and Foreign Company are deemed to be associated enterprise.

(iv) Guarantor criteria

One enterprise guarantees not less than ten percent of the total borrowings of the other enterprise.

E.g.: Indian company raised borrowing from various Banks. Total borrowing raised by the Indian company was Rs. 50 crores, of which Rs. 12 crore (from SBI) was guaranteed by Foreign Company, then Indian Company and Foreign Company are deemed to be associated enterprise.

(v) Appointment in board of directors by other enterprise

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.

E.g.: Foreign Company has seven directors on its Board. Out of that, Indian company has appointed 4 directors. In such case, Foreign Company and Indian Company are deemed to be associated enterprise.

(vi) Appointment in board of directors of two different enterprises by common person

More than half of the board of 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.

E.g. Mr. A appointed 4 directors out of 7 directors of ABC Ltd. and appointed one executive director on the board of PQR Ltd. In such case, ABC Ltd. and PQR Ltd. are deemed to be associated enterprise since a common person i.e. Mr. A appointed more than half of the directors in ABC Ltd. and appointed one executive director in PQR Ltd.

(vii) Dependence on Intangibles

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.

(viii) Dependence on raw material supply in manufacturing process

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.

There are two situations dealt with in this clause and they are as follows:

90% or more of the raw materials and consumables required for manufacturing or processing of goods or articles carried out by one enterprise (say enterprise, A) are supplied

(i) by the other enterprise (say enterprise B),

(ii) by the person (say enterprise C) specified by the enterprise B,

and

the prices and other conditions relating to supply are influenced by the enterprise B, then enterprise A and enterprise B shall be deemed to be the associated enterprise.

(ix) Dependence on sale

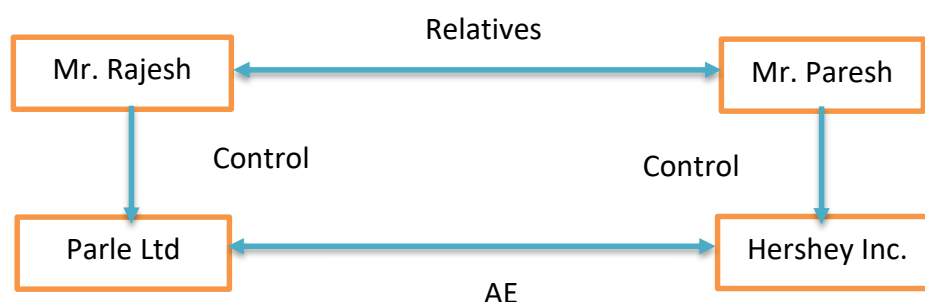
The goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise and the prices and other conditions relating thereto are influenced by such other enterprise.

While in clause (viii), a minimum criteria of 90% has been mentioned, no such quantification has been done in clause (ix). This clause covers only sale of goods manufactured or processed and not the sale of traded goods.

(x) Individual Control:

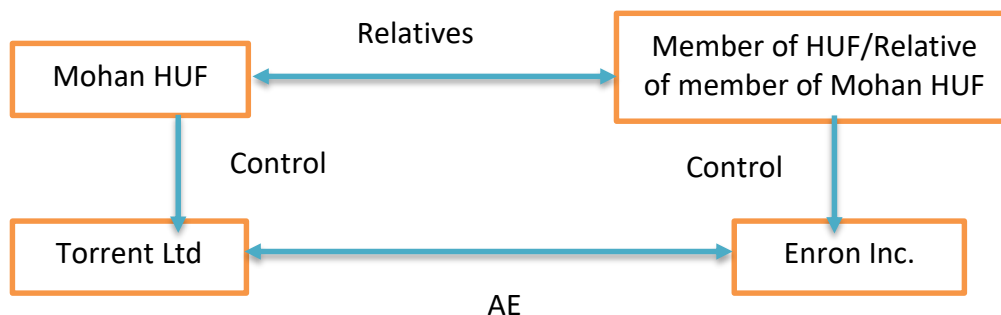
Where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual.

E.g. Mr. Rajesh has 36% voting power in Parle Ltd. while his brother Mr. Paresh has 40% voting power in Hershey Inc. Then, Parle Ltd. and Hershey Inc. shall be deemed to be associated enterprise.



(xi) Control by Hindu Undivided Family, etc.,

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.



(xii) Holding in a firm, association of persons or body of individuals

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.

(xiii) Mutual interest relationship

There exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

(3) Condition 3: International Transaction should be carried out by the Associated Enterprises [Section 92B]

• **Meaning of International Transaction**

An international transaction means following transaction(s) between two or more associated enterprises where, either or both of whom are non-residents:-

1. A transaction 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 having a bearing on the profits, income, losses or assets of such associated enterprises.
3. A transaction having 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 International Transaction**

Section 92B(2) provides that a transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be deemed to be a transaction entered into between two associated enterprises subject to fulfilment of certain conditions. Refer following practical for detailed understanding of “Deemed international transaction”.

Practical 1

On 10/06/2016, 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.

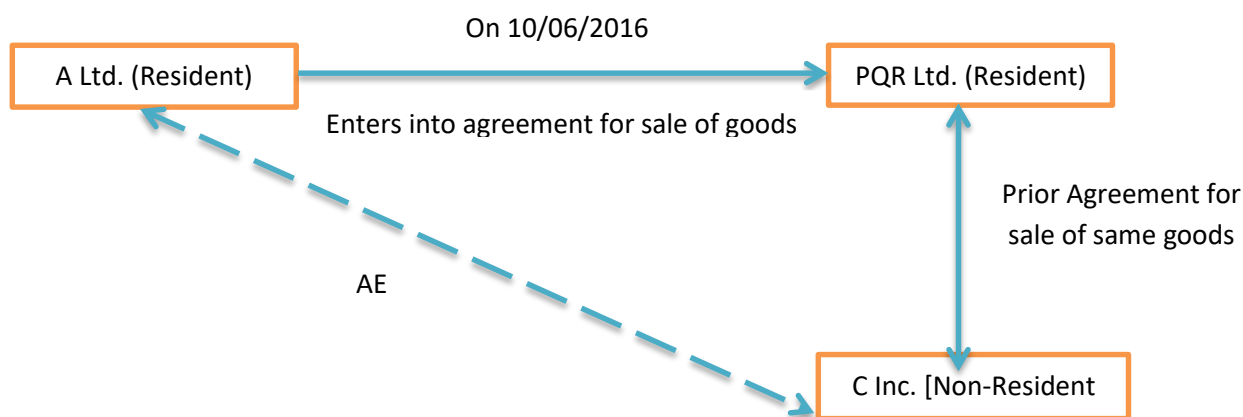
For the purpose of chapter “Transfer Pricing”, C Inc. and A Ltd. are associated enterprises.

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, 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 PQR Ltd 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;

- **Meaning of Intangible property**

Further, the expression “intangible property” shall include for the aforesaid purpose the following:-

- (a) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;
- (b) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;
- (c) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;
- (d) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;
- (e) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schema-tics, blueprints, proprietary documentation;
- (f) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;
- (g) contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;
- (h) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;
- (i) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;
- (j) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;
- (k) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;
- (l) any other similar item that derives its value from its intellectual content rather than its physical attributes.

57.3 DETERMINATION OF THE ARM'S LENGTH PRICE

Section:- 92C and 92F(iii)

- **If conditions mentioned in Para 2 are satisfied, then**
 - (a) any income arising from an international transaction shall be computed having regard to arm's length price.
 - (b) Allowance for any expense or interest arising from international transaction shall also be determined having regard to arm's length price.
- **Meaning of Arm's length price [section 92 F(iii)]**

Arm's length price is the price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.

Therefore, following three elements of arm's length price are:

 - (a) The price which is applied or proposed to be applied in a transaction;
 - (b) The transaction is taking place between persons other than associated enterprises; and
 - (c) The transaction is taking place in an uncontrolled conditions.
- **Methods relevant for determination of Arm's Length Price [Section 92 C(1)]**

The arm's length price shall be determined by any of the following methods, being the most appropriate method, having regard to (a) nature of transactions (b) class of associated persons (c) functions performed by associated persons (d) other factors as the Board may prescribe.

 1. Comparable uncontrolled price method
 2. Resale Price Method
 3. Cost Plus Method
 4. Profit split Method
 5. Transaction Net Margin Method
 6. Such other Method as may be prescribed
- **Comparability of the international transaction with an uncontrolled transaction:- First step towards determination of Arm's Length Price**

The comparability of one transaction with another shall be judged with reference to the following factors namely –

 - (a) The specific characteristics of the property or services transferred in either transaction
 - (b) The functions performed taking into account assets employed or to be employed and the risks assumed by the respective parties to the transactions
 - (c) The contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities risks and benefits are to be divided between the respective parties to the transactions
 - (d) Conditions prevailing in the markets in which the respective parties to the transactions operate including the geographical location and size of the markets costs of labour and capital in the markets overall economic development and level of competition and whether the markets are wholesale or retail.

When two transactions are deemed to be comparable

An uncontrolled transaction shall be comparable to an international transactions, if –

- (a) None of the differences (if any) between the transactions being compared or between the enterprises entering into such transaction are likely to materially affect the price or cost charged or paid in or the profit arising from such transactions in the open market or
- (b) Reasonable accurate adjustments can be made to eliminate the material effects of such differences.

Data to be used for comparison

In case, the most appropriate method for determination of ALP of a transaction entered into on or after 1.4.2014, is the resale price method or cost plus method or the transactional net margin method, then, then the data to be used for analyzing the comparability of an uncontrolled transaction with an international transaction shall be –

- (a) the data relating to the current year; or
- (b) the data relating to the financial year immediately preceding the current year, if the data relating to the current year is not available at the time of furnishing the return of income by the assessee, for the assessment year relevant to the current year.

However, where the data relating to the current year is subsequently available at the time of determination of arm's length price of an international transaction or a specified domestic transaction during the course of any assessment proceeding for the assessment year relevant to the current year, then, such data shall be used for such determination irrespective of the fact that the data was not available at the time of furnishing the return of income of the relevant assessment year.

- **Most appropriate method : Second Step towards determination of Arm's Length Price**

The most appropriate method shall be the method which provides the most reliable measure of an arm's length price in relation to an international transaction.

For the purpose of selecting the most appropriate method, the following factors shall be taken into account, namely-

- (a) The nature and class of the international transaction
- (b) The class or classes of associated enterprises entering into the transaction and the functions performed by them taking into consideration assets employed or risk assumed
- (c) The availability coverage and reliability of data necessary for application of the method
- (d) The degree of comparability existing between the international transaction and the uncontrolled transaction and between the enterprises entering into such transactions.
- (e) The extent to which reliable and accurate adjustments can be made to account for differences if any between the transactions being compared and the enterprises entering into such transactions.
- (f) The nature extent and reliability of assumptions required to be made in application of a method.

- **Where more than one price is determined by the most appropriate method [Third proviso to section 92C(2)]**

In respect of 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, then the ALP shall be computed in the prescribed manner (based on "range concept" to be specified by way of Rules).

- **Non-applicability of provisions of "transfer pricing" [Section 92(3)]**

Section 92 (3) provides that the provisions of transfer pricing shall not be applicable in a case where the application of arm's length price has the effect of reducing income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account of the previous year in which the international transaction or specified domestic transaction was entered into.

57.4 MAINTENANCE AND KEEPING OF INFORMATION AND DOCUMENT BY PERSONS ENTERING INTO AN INTERNATIONAL TRANSACTION OR SPECIFIED DOMESTIC TRANSACTION

Section:- 92D

Substituted for the existing section 92D by the Finance Act, 2019, w.e.f. 1-4-2020 :

(1) *Every person,—*

- (i) *who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof as may be prescribed;*

- (ii) *being a constituent entity of an international group, shall keep and maintain such information and document in respect of an international group as may be prescribed.*

Explanation.—For the purposes of this clause,—

(A) *"constituent entity" shall have the meaning assigned to it in clause (d) of sub-section (9) of section 286;*

(B) *"international group" shall have the meaning assigned to it in clause (g) of sub-section (9) of section 286.*

- (2) *Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under the said sub-section.*

- (3) *The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person referred to in clause (i) of sub-section (1) to furnish any information or document referred therein, within a period of thirty days from the date of receipt of a notice issued in this regard:*

Provided *that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.*

- (4) *The person referred to in clause (ii) of sub-section (1) shall furnish the information and document referred therein to the authority prescribed under sub-section (1) of section 286, in such manner, on or before such date, as may be prescribed.*

Rule 10DA has been amended vide Notification No. 03/2020 dated 06.01.2020 to be in line with Section 92D.

57.5 | REPORT FROM ACCOUNTANT

Section:- 92E

Every person who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date (30th November of assessment year) in the prescribed form [Form No. 3CEB] duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed.

57.6 | DETERMINATION OF ARM'S LENGTH PRICE BY ASSESSING OFFICER IN CERTAIN CASES AND COMPUTATION OF TOTAL INCOME

Section:- 92C(3) and 92C(4)

• Determination of arm's length price by the Assessing officer

Subject to following, the Assessing officer may proceed to determine the arm's length in relation to international transaction or specified domestic transaction:

- (1)** The proceeding for assessment of income is pending before him.
- (2)** The Assessing Officer has material or information or document in his possession.
- (3)** On the basis of such material or information or document, the Assessing Officer is of the 'opinion' that the-
 - (a)** Arm's length price charged or paid in an international transaction or specified domestic transaction has not been determined in accordance with the section 92C(1) and 92 C(2); or
 - (b)** Assessee has not kept and maintained information and document related to an international transaction or specified domestic transaction in accordance with the provisions contained in Section 92 D(1) and rules made in this behalf;
 - (c)** Information or data used for consulting the arm's length price is not reliable or correct; or
 - (d)** Assessee has failed to furnish within the time specified any information or document which was required to be furnished under section 92 D(3).

- **Opportunity of being heard must be given before determination of ALP by the assessing officer**
However, opportunity of being heard shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the AO.
- **Computation of total income by the assessing officer after determination of arm's length price**
The Assessing Officer may compute the total income of the assessee having regard to arm's length price determined above.
- **No deduction under section 10AA or Chapter VIA on enhancement made by the assessing officer**
If the total income is enhanced by the assessing officer as mentioned above, then no deduction u/s 10AA or under Chapter VIA shall be allowed in respect of the increased quantum of total income.
- **Computation of total income of payee associated enterprise not required in certain circumstances**
Computation of total income of payee associated enterprise is not required if –
 - (a) Total income of payer associated enterprise has been computed by the assessing officer and
 - (b) Tax has been deducted or deductible at source by the payer enterprise.

57.7 | REFERENCE TO TRANSFER PRICING OFFICER

Section:- 92CA

- Section 92CA provides that the Assessing Officer (if he considers it necessary or expedient to do so) may, with the previous approval of the Commissioner, refer the matter of determination of arm's length price (ALP) in respect of an international transaction or specified domestic transaction to the Transfer Pricing Officer (TPO). For the purposes of this section, "Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons.
- The TPO is further empowered to determine ALP of an international transaction or specified domestic transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the Assessing Officer, provided that such international transaction or specified domestic transaction was not reported by the taxpayer as per the requirement cast upon him under section 92E.
- The Transfer Pricing Officer, thereafter, shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction or specified domestic transaction.
- After hearing the assessee and the evidence the assessee may produce, including any information or documents referred to in section 92D(3) and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction or specified domestic transaction and send a copy of his order to the Assessing Officer and to the assessee.
- **On receipt of the order from TPO, the Assessing Officer shall proceed to compute the total income of the assessee in conformity with the arm's length price as so determined by the Transfer Pricing Officer.**
- With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him, and the provisions of section 154 shall apply accordingly.
- The Transfer Pricing Officer may, for the purposes of determining the arm's length price under this section, exercise all or any of the powers specified in
 - Section 131(1) – clause (a) to (d)
 - Section 133(6)
 - Section 133A

UNIT B – DOMESTIC TRANSACTIONS

57.8 SPECIFIED DOMESTIC TRANSACTIONS

Section:- 92BA

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

- (a) ~~any expenditure in respect of which payment has been made or is to be made to a person referred to in section 40A(2)(b);~~ **Omitted w.e.f. A.Y. 2017-18**
- (b) any transaction referred to in section 80A;
- (c) any transfer of goods or services referred to in section 80-IA(8) [**Refer example given below**];
- (d) any business transacted between the assessee and other person as referred to in section 80-IA(10);
- (e) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions section 80-IA(8)/(10) are applicable; or
- (f) any other transaction as may be prescribed,

Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the above domestic transactions shall be computed having regard to the arm’s length price.

For this purpose, arm’s length price shall be determined within the parameters of sections 92 to 92F.

Example: Profit shifting from ineligible unit to eligible unit for section 80-IA

Actual Scenario before altering prices

Particulars	Unit A - eligible for section 80 IA	Unit B – Ineligible Unit
Tax Rate	-	30%
Revenue from related party	150	
Other Income	300	250
Expenses in relation to related party	-	(150)
Other Expenses	(200)	(30)
Profit / (Loss)	250	70
Tax	0	21

Shifting of Profits by altering prices

Particulars	Unit A – eligible for 80 IA	Unit B – Ineligible Unit
Tax Rate	-	30%
Revenue from related party	220	
Other Income	300	250
Expenses in relation to related party	-	(220)
Other Expenses	(200)	(30)
Profit / (Loss)	320	0
Tax	0	0

Practical 2

Ganga Ltd., a domestic company, has two units Chambal and Damodar. The Chambal unit, which commenced business two years back, is engaged in the business of developing an irrigation project. The Damodar unit is carrying on the business of trading in water pumps. During the previous year 2017-18, the Damodar unit transferred water pumps amounting to Rs. 19.5 crores to the Chambal unit.

Further, Ganga Ltd hires vehicles owned by Mr. Krishna's daughter and paid hiring charges of Rs. 1.5 crores during the previous year **2019-20**. Mr. Krishna, a resident Indian, holds 30% equity share capital in Ganga Ltd.

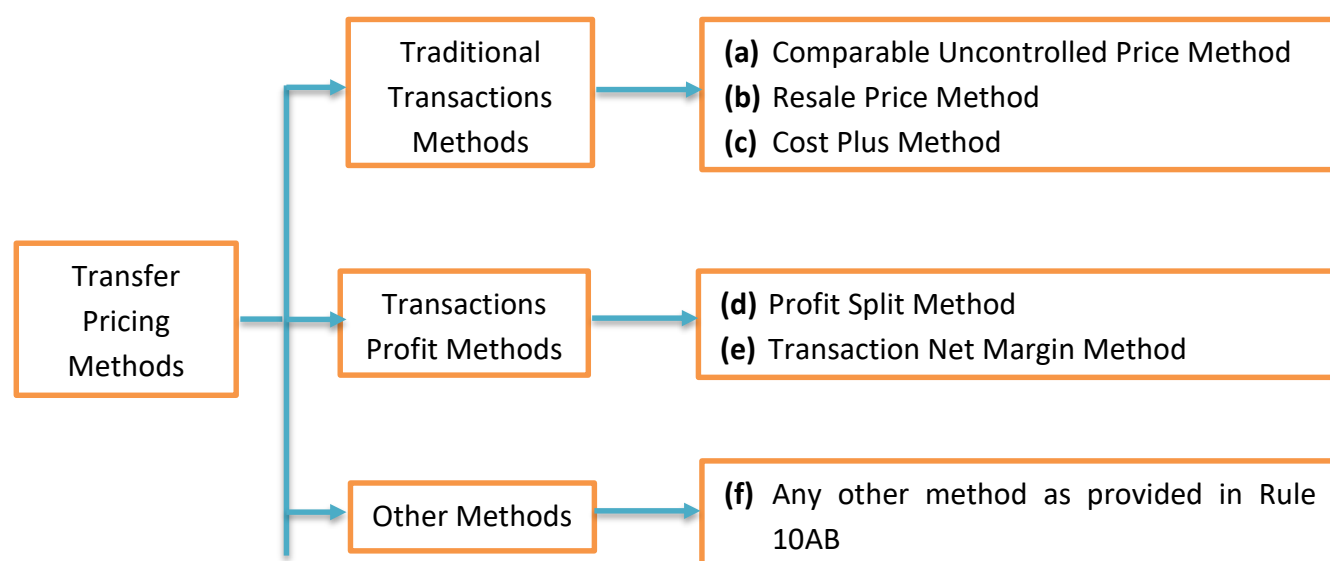
Discuss whether the above transactions fall within the meaning of "specified domestic transaction"?

Solution

The Chambal Unit is eligible for deduction@100% of the profits derived from its eligible business (i.e., the business of developing an infrastructure facility, being an irrigation project) under section 80-IA. However, the Damodar Unit is not engaged in any "eligible business". Since the Damodar Unit has transferred water pumps to the Chambal Unit, it is an inter-Unit transfer of goods between eligible business and other business. Therefore, this transaction falls within the meaning of "specified domestic transaction" to attract transfer pricing provisions. The payment of hiring charges has been made to a related person referred to in section 40A(2)(b) i.e., relative (i.e., daughter) of Mr. Krishna, who has substantial interest in the business of Ganga Ltd. **However, due to amendment made by Finance Act, 2017, this transaction does not fall within the meaning of "specified domestic transaction" under section 92BA.**

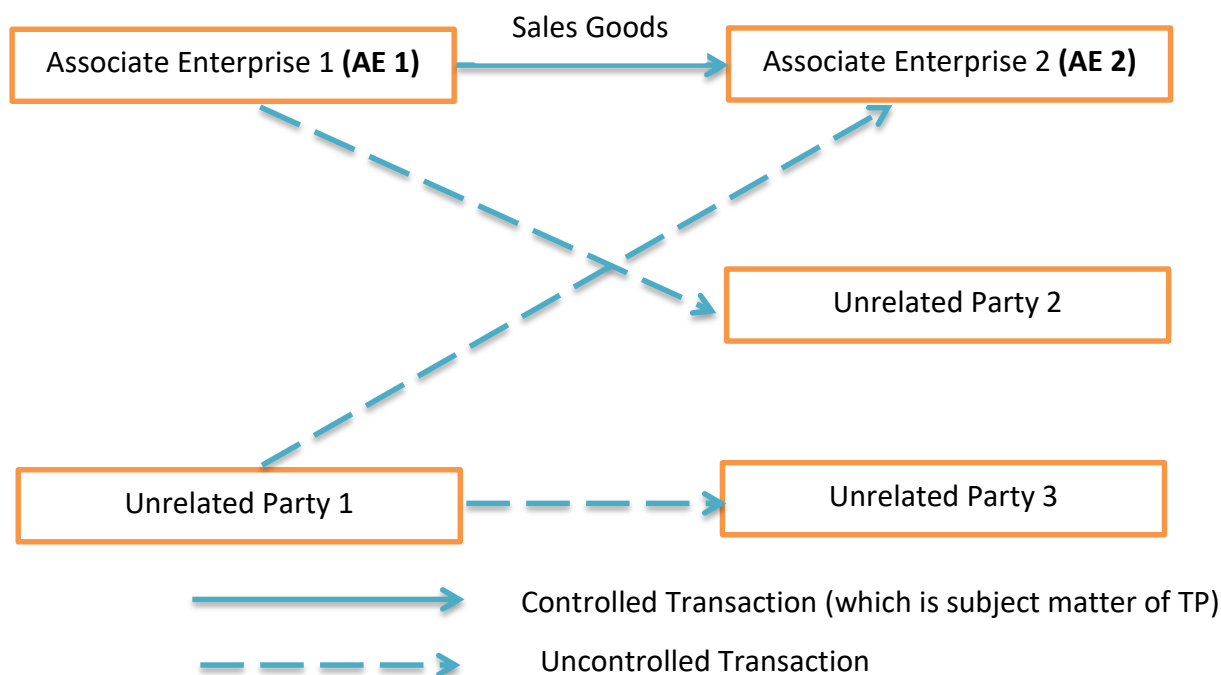
It is imperative to note here that; abovementioned transactions would be treated as a "specified domestic transaction" to attract transfer pricing provisions only if the aggregate of such transactions as specified in section 92BA during the year by Ganga Ltd. exceeds a sum of Rs. 20 crore.

Since aggregate of these transactions is Rs. 19.5 crore which is not exceeding Rs. 20 crore. Therefore, the said transactions are outside the purview of "specified domestic transaction".

Readers Note:**UNIT C – METHODS FOR DETERMINATION OF ARM'S LENGTH PRICE****57.9 | TRANSFER PRICING METHODS – SIX METHODS (a) to (f)****57.10 | COMPARABLE UNCONTROLLED PRICE METHOD [CUP]**

- A.** The price charged or paid for property transferred or services provided in a comparable uncontrolled transaction or a number of such transactions, is identified;

- B.** Such price is adjusted to account for differences, if any, between the international transaction or (the specified domestic transaction) and the comparable uncontrolled transactions or between the enterprises entering into such transactions which could materially affect the price in the open market;
- C.** The adjusted price arrived at under (b) *above* is taken to be an arm's length price in respect of the property transferred or services provided in the international transaction or the specified domestic transaction.



Practical 3

Kio, a company based at Japan and AB Ltd, an Indian Company are Associated Enterprises. AB Ltd manufactures Cellular Phones and sells them to Kio, Japan and also to Geel, a Company based at Beijing. During the year AB Ltd supplied 2,50,000 Cellular Phones to Kio, Japan at a price of Rs. 3,000 per unit and 35,000 units to Geel at a price of Rs. 4,800 per unit. The transactions of AB Ltd with Kio and Geel are comparable subject to the following considerations -

- (a) Sales to Kio is on FOB basis, sales to Geel are CIF basis. Freight and Insurance paid by Kio for each unit is Rs. 700.
- (b) Sales to Geel are under a free warranty for Two Years whereas sales to Kio are without any such warranty. The estimated cost of executing such warranty is Rs. 500.
- (c) Since Kio's order was huge in volume, quantity discount of Rs. 200 per unit was offered to it.
- Compute Arm's Length Price and amount of increase in Total Income of AB Ltd, if any, due to such Arm's Length Price

Solution

Computation of Arm's Length Price of Products sold to Kio Japan by AB Ltd

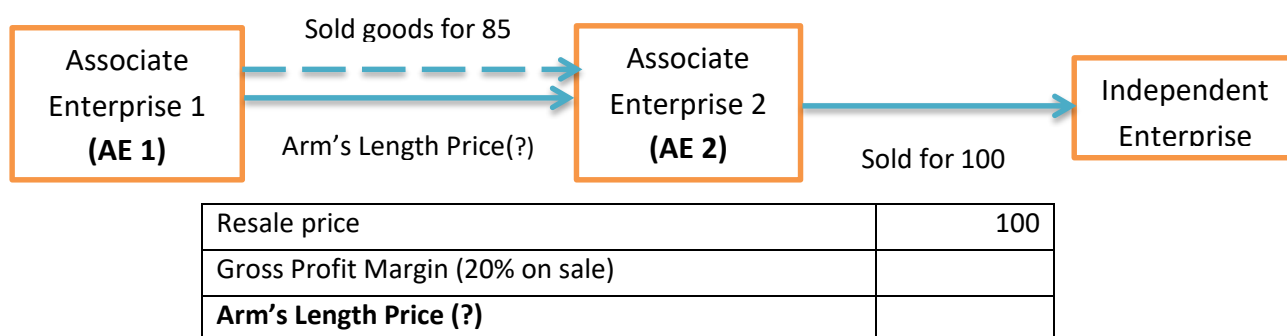
Particulars	Rs.	Rs.
Price per Unit in a Comparable Uncontrolled Transaction		4,800
Less: Adjustment for Differences -		
(a) Freight and Insurance Charges	(700)	
(b) Estimated Warranty Costs	(500)	
(c) Discount for Voluminous Purchase	(200)	(1,400)
Arm's Length Price for Cellular Phone sold to Kio Japan		3,400

Computation of Increase in Total Income of AB Ltd.

Particulars	Rs.	Rs.
Arm's Length Price per Unit		3,400
Less: Price at which actually sold to Kio Japan		(3,000)
Increase in Price per Unit		400
No. of Units sold to Kio Japan		2,50,000
Therefore, increase in Total Income of AB Ltd (2,50,000 × Rs.400)		10 Crores

Readers Note:**57.11 RESALE PRICE METHOD [RPM]**

- 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;
- 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;
- 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;
- 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 or (specified domestic 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;
- The adjusted price arrived at under (d) above 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 4**

MNO Ltd. and Roxy Inc. of U.S.A are associated enterprises. MNO Ltd. imports 3,000 motor bikes from Roxy Inc. at Rs.50,000 per bike. These are sold in India at Rs.55,000 per bike. Also, MNO Ltd. imported exactly similar motor bikes from Hold Inc. of Japan (unrelated party) and sold outside at a Gross Profit of 20% on Sales.

Roxy Ltd, offered a quantity discount of Rs. 1,500 per motor vehicle. Hold Inc., however, offered only Rs.500 per bike as quantity discount. The freight and insurance from Roxy USA cost MNO Ltd. Rs.1,500 per bike whereas in respect of purchase from Hold Inc. MNO Ltd. had to pay Rs.500 as freight charges and there was no insurance cost to the assessee.

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 MNO Ltd.**

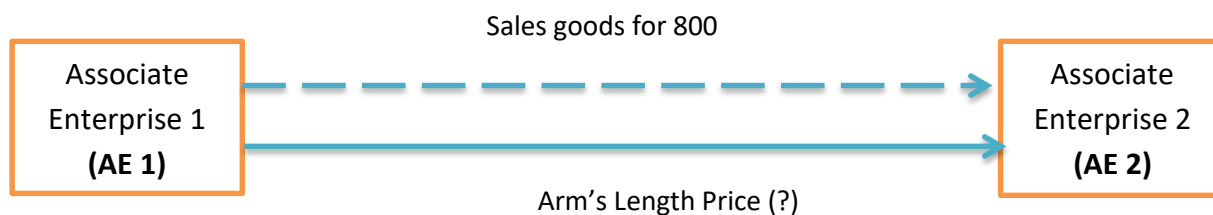
Particulars	Rs.
Resale Price of Goods Purchased from MNO Ltd.	55,000
Less: Adjustment for differences	
(a) Normal gross profit margin @ 20% of sale price [20% × Rs. 55,000]	(11,000)
(b) Incremental Quantity Discount by MNO Ltd. [Rs. 1,500 – Rs. 500]	(1,000)
(c) Difference in Purchase related Expenses [Rs. 1,500 – Rs. 500]	(1,000)
Arms Length Price	42,000

B. Computation of Increase in Total Income of Rani Ltd

Particulars	Rs.
Price at which actually bought	50,000
Less : Arm's Length Price per unit under Resale Price Method	(42,000)
Decrease in Purchase Price per bike	8,000
No. of Units purchased	3,000
Increase in Total Income of Rani Ltd [3,000 Units × Rs. 8000]	2,40,00,000

Readers Note:**57.12 COST PLUS METHOD [CPM]**

- The direct and indirect costs of production incurred by the enterprise in respect of property transferred or services provided to an associated enterprise, are determined;
- The amount of a normal gross profit mark-up to such costs (computed according to the same accounting norms) arising from the transfer or provision of the same or similar property or services by the enterprise or by an unrelated enterprise in a comparable uncontrolled transaction or a number of such transactions is determined;
- The normal gross profit mark-up referred to in (b) above is adjusted to take into account the functional and other differences if any between the international transaction or (the specified domestic transaction) and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect such profit mark-up in the open market;
- The costs referred to in (a) above are increased by the adjusted profit mark-up arrived at under (c) above;
- The sum so arrived at is taken to be an arm's length price in relation to the supply of the property or provision of services by the enterprise.



Cost of Associate Enterprise (AE 1)	500
+ Gross Profit Mark-up (50%)	
Arm's Length Price	

Practical 5

NANO Inc., a German Company, holds 45% of equity in Hitech Ltd., an Indian Company. Hitech Ltd. is engaged in development of software and maintenance of the same for customers across the globe. Its clientele includes NANO Inc.

During the financial year 2015-16, Hitech Ltd. had spent 2400 man hours for developing and maintaining software for NANO Inc. with each hour being billed at Rs. 1,300. Cost incurred by Hitech Ltd. for executing work for NANO Inc. amounts to Rs. 20 lakhs.

Hitech Ltd. had also undertaken developing software for Modi Industries, for which Hitech Ltd. had billed at Rs. 2,700 per man hour. The persons working for Modi Industries and NANO Inc. were part of the same team and were of matching credentials and calibre. Hitech Ltd. made a gross profit of 60% on Modi Industries work. Hitech Ltd.'s transactions with NANO Inc. are comparable to transactions with Modi Industries, subject to the following differences:

- (i) NANO Inc. gives technical knowhow support to Hitech Ltd., which can be valued at 8% of the normal gross profit. Modi Industries does not provide any such support.
- (ii) Since the work for NANO Inc. involved huge number of man hours, a quantity discount of 14% of normal gross profits was given.
- (iii) Hitech Ltd. had offered 90 days credit to NANO Inc., the cost of which is measured at 2% of the normal billing rate. No such credit was offered to Modi Industries.

Compute arm's length price as per cost plus method and the amount of increase in total income of Hitech Ltd.

Solution**Computation of Arm's Length Price as per Cost Plus Method**

Particulars	(%)
Gross Profit Mark up in case of Modi Industries [an unrelated party]	60.00
Less: Differences to be adjusted	
Value of technical know-how (8% of 60%)	(4.80)
Quantity discount to Nano Inc. (14% of 60%)	(8.40)
	46.80
Add: Cost of credit to Nano Inc., an associated enterprise (2% of 100%)	2.00
Arm's length gross profit mark up	48.80

Computation of Increase in Total Income of Hitech Ltd

Particulars	Rs.
Cost incurred by Hitech Ltd. for executing Nano Inc's work. [100% - 48.8%=51.2%]	20,00,000
Add: Adjusted gross profit (Rs. 20,00,000 x 48.8/51.2)	19,06,250
Arm's length billed value	39,06,250
Less: Actual Billed Income in the case of Nano Inc (Rs. 1300 x 2400 man hours)	31,20,000
Total Income of Hitech Ltd to be increased by	7,86,250

Readers Note:**57.13 PROFIT SPLIT METHOD [PSM]**

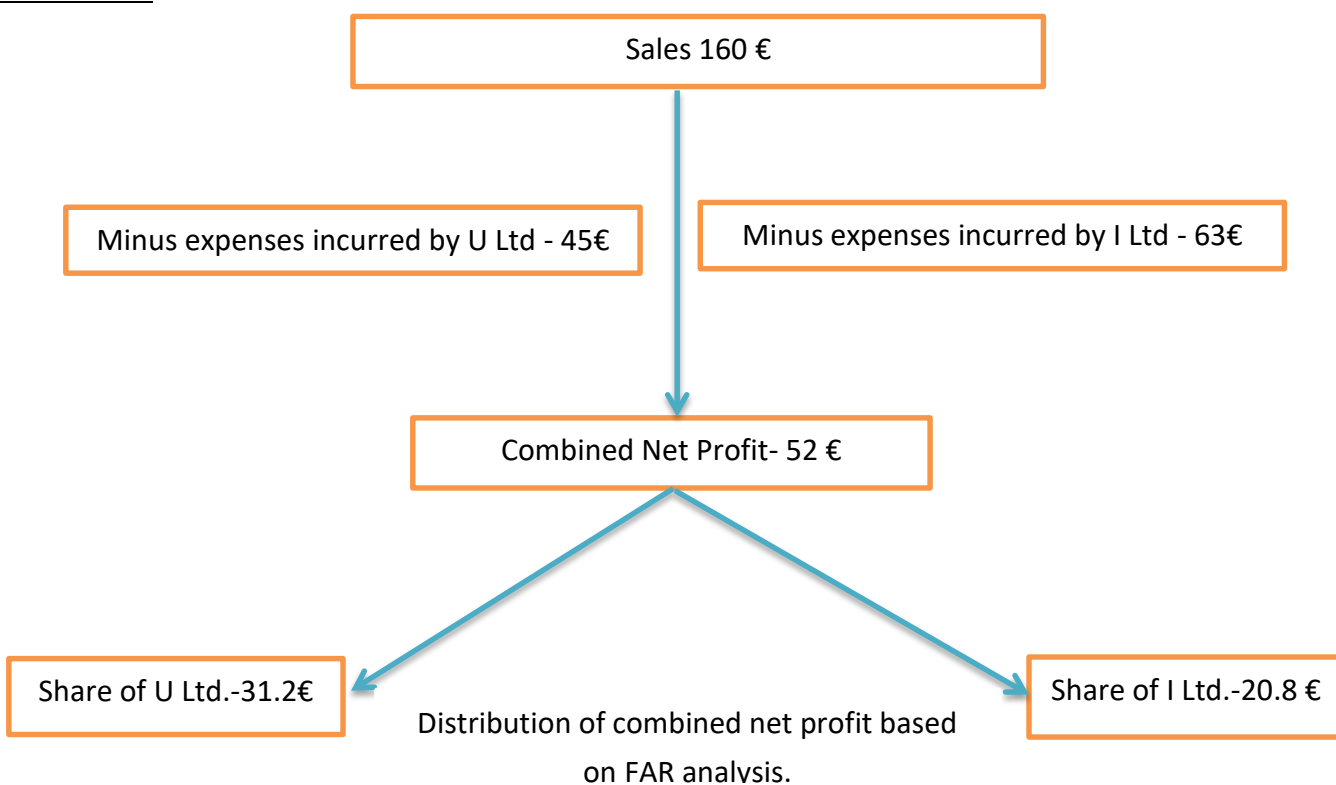
This method may be applicable mainly in international transactions (or specified domestic transactions) involving transfer of unique intangibles or in multiple international transactions (or specified domestic transactions) which are so interrelated that they cannot be evaluated separately for the purpose of determining the arm's length price of any one transaction.

- A. The combined net profit of the associated enterprises arising from the international transactions (or specified domestic transactions) 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) above;
- 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 (or the specified domestic transaction)

Practical 6

U Ltd. - Foreign co. holds 40% equity of I Ltd., Indian co. I Ltd. purchased goods from U Ltd. at 90 € per piece. Thereafter, I Ltd. sell these goods in India at 160 € per piece to unrelated parties. Cost/expenses incurred by U Ltd. is 45 € per piece, while cost incurred by I Ltd. in India is 63 € per piece. Considering asset employed, risk assumed and function performed, factor for distribution of profit between U Ltd. and I Ltd. is 60:40. Decide whether transaction between U Ltd. & I Ltd. is at arm's length price.

Solution



The Arm's length shall be :- 45€ plus 31.2€ = 76.2€

Readers Note:

Practical 7

HUM Medical Equipments Inc. (HUM) 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 2,50,000 Euros.

To execute the order, HUM joined hands with its subsidiary CARE Components Inc. (CCI) of USA and Bioinformatics India Ltd (BIL), an Indian Company. CCI holds 40% of BIL. HUM paid to CCI and BIL Euro 70,000

and Euro 80,000 respectively and kept the balance for itself. In the entire transaction, a profit of Euro 80,000 is earned. Bioinformatics India Ltd incurred a Total Cost of Euro 75,000 in execution of its work in the above contract. The Relative Contribution of HUM, CCI and BIL may be taken at 35%, 25% and 40% respectively. Compute the Arm's Length Price and the incremental Total Income of Bioinformatics India Ltd, if any due to adopting Arm's Length Price determined in this case.

Solution

Particulars	Euros.
(A) Share of each of the Associates in the Combined Net Profit of 80,000 Euros	
Share of BIL [Contribution of 40% x 80,000]	32,000
Share of CCI [Contribution of 25% x 80,000]	20,000
Share of HUM [Contribution of 35% x 80,000]	28,000
(B) Computation of Incremental Total Income of BIL	
Total Cost to Bioinformatics India Ltd	75,000
Add: Share in the Profit to BIL (from above)	32,000
Revenue of BIL on the basis of Arm's Length Price	1,07,000
Less: Revenue Actually received by BIL	(80,000)
Increase in Total Income of BIL	27,000

Readers Note:

57.14 TRANSNATIONAL NET MARGIN METHOD [TNMM]

- The net profit margin realized by the enterprise from an international transaction (or specified domestic transaction) entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;
- The net profit margin realized by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;
- The net profit margin referred to in (b) (supra) arising in comparable uncontrolled transactions is adjusted to take into account the differences if any between the international transaction (or the specified domestic transaction) and the comparable uncontrolled transactions, or between the enterprises entering into such transactions which could materially affect the amount of net profit margin in the open market;
- The net profit margin realized by the enterprise and referred to in (a) above is established to be the same as the net profit margin referred to in (c) above;
- The net profit margin thus established is then taken into account to arrive at an arm's length price in relation to the international transaction.

Given Price	USD 10,000
Cost of Goods Sold	?
Gross Profit	?
Operating Expenses	USD 2000
Net Profit (5% of Price)	USD 400

The AE1 has purchased raw materials from its AE2 and manufactures goods for sale to third parties. The similar transaction is entered into by unrelated parties with net margin of 5% of sale price. Thus, if AE1 earns net margin of 5% of sale price, then its transaction of purchase of raw materials from AE2 will be at arm's length

57.15 OTHER METHOD AS MAY BE PRESCRIBED BY THE BOARD**Notification No. 18/2012 dated 23.05.2012****Rule 10AB inserted to provide for “Other method of determination of arm’s length price”**

Accordingly, Rule 10AB has been inserted in the Income-tax Rules, 1962 to provide that for the purposes of section 92C(1)(f), the **other method** for determination of the arms' length price in relation to an international transaction **shall be any method which takes into account the price which has been charged** or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between **non-associated enterprises**, under similar circumstances, considering all the relevant facts.

57.16 HOW TO DETERMINE ALP WHEN MORE THAN ONE PRICE IS DETERMINED? – RANGE CONCEPT**Third proviso to Section 92 C (2) and Notification:- 83/2015, dated 19.10.2015 (Rule : 10CA)**

- Where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction undertaken on or after the 1st day of April, 2014, shall be computed in such manner as may be prescribed.
- Accordingly, Central Board of Direct Taxes (CBDT) has, vide Notification No. 83/2015 dated 19th October, 2015, issued the final rules (*Rule 10CA*) to give effect to 'range concept' which were introduced by Finance Act, 2014.
- Rule 10 CA (4) provides that, the 'range concept' shall be applicable when:**
 - the MAM is either Comparable Uncontrolled Price (CUP) Method, RPM, CPM, or TNMM; and
 - there are at least 6 comparables.

Where these conditions are not fulfilled, 'arithmetic mean' shall apply, along with the tolerance range benefit (3% or 1%) as discussed below : vide notification no. 50/ 2017 dated 09.06.2017

“Where the variation between the arm’s length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one percent of the latter in respect of wholesale trading and three percent of the latter in all other cases, 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 for Assessment Year 2017-2018 and Assessment Year 2018-19”

- 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.
- 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
35 th	Total no. of data points in dataset x 35%=[7 x 35%]	2.45	3 rd Value*
65 th	Total no. of data points in dataset x 65% = [7 x 65%]	4.55	5 th Value*
Median	Total no. of data points in datasets x 50% = [7 x 0.5]	3.50	4 th 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
35 th	Total no. of data points in dataset x 35% = [20 x 35%]	7	Mean of 7 th & 8 th Value
65 th	Total no. of data points in dataset x 65% = [20 x 65%]	13	Mean of 13 th & 14 th Value
Median	Total no. of data points in datasets x 50% = [20 x 0.5]	10	Mean of 10 th & 11 th Value

Practical 8

In a given case the dataset of 20 prices arranged in ascending order is as under :

Sl. No.	Prices (in Rs. Thousand)	Sl. No.	Prices (in Rs. Thousand)
1	42.00	11	48.45
2	43.00	12	48.48
3	44.00	13	48.50
4	44.50	14	49.00
5	45.00	15	49.10
6	45.25	16	49.35
7	47.00	17	49.50
8	48.00	18	49.75
9	48.15	19	50.00
10	48.35	20	50.15

You are required to find out whether following transactions have been carried out Arm's Length Price? If not, then what shall be the Arm's Length Price?

Transaction 1 : Rs. 48,000

Transaction 2 : Rs. 46,500

Solution

The data place of the thirty-fifth and sixty-fifth percentile is determined as follows:

Thirty-fifth percentile place = $20 * (35/100) = 7$.

Sixty-fifth percentile place = $20 * (65/100) = 13$.

Since the thirty-fifth percentile place is a whole number, it shall be the average of the prices at the seventh and next higher, i.e.; eighth place. This is $(47+48)/2 = \text{Rs.}47,500$.

Similarly, the sixty-fifth percentile will be average of thirteenth and fourteenth place prices. This is $(48.5+49)/2 = \text{Rs.}48,750$

Thus, the arm's length range in this case shall be from Rs.47,500 to Rs.48,750.

The median of the range (the fiftieth percentile place) = $20 * (50/100) = 10$

Since the fiftieth percentile place is a whole number, it shall be the average of the prices at the tenth and next higher, i.e.; eleventh place. This is $(48.35+48.45)/2 = \text{Rs.}48,400$.

Considering the above,

Particulars	Has it been carried out at ALP?	What shall be the ALP?
Transaction 1		
Transaction 2		

Readers Note:

Practical 9

Tiku Private Ltd., an Indian company, provides software support services to XYZ Inc.(U.S.A), for a consideration of Rs. 50 lakhs. It charges Rs. 51 lakhs and Rs. 53 lakhs for similar services rendered to PQR Inc. and MNO Inc., respectively. XYZ Inc. and Tiku Pvt. Ltd are associated enterprises. Whether the transfer price charged by Tiku Private Ltd. shall be accepted?

Solution

Following Comparable Uncontrolled Price (CUP) Method and considering the Rule 10CA(7), $ALP = (\text{Rs. } 51 \text{ lakhs} + 53 \text{ lakhs}) / 2 = \text{Rs. } 52 \text{ Lakh}$

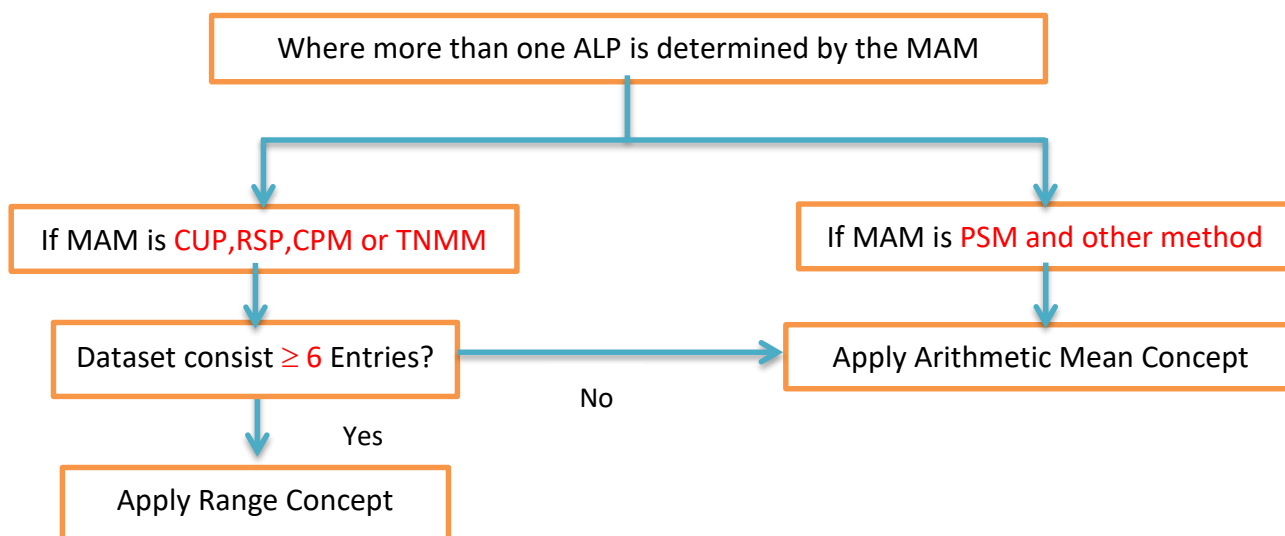
On the other hand Transfer price = Rs. 50,00,000

Permissible variation is 3% of transfer price being Rs.1.5 lac resulting into a range of [48.5 lac to 51.5 lac]

Since the ALP being Rs. 52 Lac does not fall within the range, transfer price charged by Tiku Pvt. Ltd. shall not be accepted.

Readers Note:

Summary of Range Concept



57.17 USE OF MULTIPLE YEAR DATA AND RANGE CONCEPT

Notification:- 83/2015, dated 19.10.2015

- 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.

- If a comparable is selected on the basis of preceding year data, but is not found to be comparable for the current year 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.
- The weighted average of the prices of such transactions shall be computed in the following manner, namely:-

Sr. No.	Method used to determine 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

Practical 10

The data for the current year of the comparable uncontrolled transactions or the entities undertaking such transactions is available at the time of furnishing return of income by the assessee and based on the same, seven enterprises have been identified to have undertaken the comparable uncontrolled transaction in the current year. All the identified comparable enterprises have also undertaken comparable uncontrolled transactions in a period of two years preceding the current year. The Profit level Indicator (PLI) used in applying the most appropriate method is operating profit as compared to operating cost (OP/OC). The weighted average shall be based upon the weight of OC as computed below :

Sl. No.	Name	Year 1	Year 2	Year 3 [Current Year]	Aggregation of OC and OP	Weighted Average
1	2	3	4	5	6	7
1	A	OC = 100 OP = 12	OC = 150 OP = 10	OC = 225 OP = 35	Total OC = 475 Total OP = 57	OP/OC = 12%
2	B	OC = 80 OP = 10	OC = 125 OP = 5	OC = 100 OP = 10	Total OC = 305 Total OP = 25	OP/OC = 8.2%
3	C	OC = 250 OP = 22	OC = 230 OP = 26	OC = 250 OP = 18	Total OC = 730 Total OP = 66	OP/OC = 9%
4	D	OC = 180 OP = (-)9	OC = 220 OP = 22	OC = 150 OP = 20	Total OC = 550 Total OP = 33	OP/OC = 6%
5	E	OC = 140 OP = 21	OC = 100 OP = (-)8	OC = 125 OP = (-)5	Total OC = 365 Total OP = 8	OP/OC = 2.2%
6	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = 11.9%
7	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = 10.57%

Solution

From the above, the dataset will be constructed as follows :

Sr. No.	1	2	3	4	5	6	7
Values	2.2%	6%	8.2%	9%	10.57%	11.9%	12%

For construction of the arm's length range the data place of thirty-fifth and sixty-fifth percentile shall be computed in the following manner, namely:

Total no. of data points in dataset $\times (35/100)$

Total no. of data points in dataset $\times (65/100)$

Thus, the data place of the thirty-fifth percentile = $7 \times 0.35 = 2.45$.

Since this is not a whole number, the next higher data place, i.e. the value at the third place would have at least thirty five per cent of the values below it. The thirty-fifth percentile is therefore value at the third place, i.e. 8.2%.

The data place of the sixty-fifth percentile is = $7 \times 0.65 = 4.55$.

Since this is not a whole number, the next higher data place, i.e. the value at the fifth place would have at least sixty five per cent of the values below it. The sixty-fifth percentile is therefore value at fifth place, i.e. 10.57%.

The arm's length range will be beginning at 8.2% and ending at 10.57%.

Therefore, if the transaction price of the international transaction or the specified domestic transaction has OP/OC percentage which is equal to or more than 8.2% and less than or equal to 10.57%, it is within the range.

The transaction price in such cases will be deemed to be the arm's length price and no adjustment shall be required. However, if the transaction price is outside the arm's length range, say 6.2%, then for the purpose of determining the arm's length price the median of the dataset shall be first determined in the following manner:

The data place of median is calculated by first computing the total number of data point in the dataset $\times (50/100)$. In this case it is $7 \times 0.5 = 3.5$.

Since this is not a whole number, the next higher data place, i.e. the value at the fourth place would have at least fifty per cent of the values below it (median).

The median is the value at fourth place, i.e., 9%. Therefore, the arm's length price shall be considered as 9% and adjustment shall accordingly be made.

Readers Note:**Practical 11**

The data of the current year is available in respect of enterprises A, C, E, F and G at the time of furnishing the return of income by the assessee and the data of the financial year preceding the current year has been used to identify comparable uncontrolled transactions undertaken by enterprises B and D. Further, if the enterprises have also undertaken comparable uncontrolled transactions in earlier years as detailed in the table, the weighted average and dataset shall be computed as below:

Sl. No.	Name	Year 1	Year 2	Year 3 [Current Year]	Aggregation of OC and OP	Weighted Average
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	A	OC = 100 OP = 12	OC = 150 OP = 10	OC = 225 OP = 35	Total OC = 475 Total OP = 57	OP/OC = 12%
2	B	OC = 80 OP = 10	OC = 125 OP = 5		Total OC = 205 Total OP = 15	OP/OC = 7.31%
3	C	OC = 250 OP = 22	OC = 230 OP = 26	OC = 250 OP = 18	Total OC = 730 Total OP = 66	OP/OC = 9%

4	D		OC = 220 OP = 22		Total OC = 220 Total OP = 22	OP/OC = 10%
5	E			OC = 100 OP = (-)5	Total OC = 100 Total OP = (-)5	OP/OC = (-)5%
6	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = 11.9%
7	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = 10.57%

Solution

From the above, the dataset will be constructed as follows :

Sl. No.	1	2	3	4	5	6	7
Values	(-)5%	7.31%	9%	10%	10.57%	11.9%	12%

If during the course of assessment proceedings, the data of the current year is available and the use of such data indicates that B has failed to pass any qualitative or quantitative filter or for any other reason the transaction undertaken is not a comparable uncontrolled transaction, then, B shall not be considered for inclusion in the dataset. Further, if the data available at this stage indicates a new comparable uncontrolled transaction undertaken by enterprise H, then, it shall be included. The weighted average and dataset shall be recomputed as under :

Sl. No.	Name	Year 1	Year 2	Year 3 [Current Year]	Aggregation of OC and OP	Weighted Average
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	A	OC = 100 OP = 12	OC = 150 OP = 10	OC = 225 OP = 35	Total OC = 475 Total OP = 57	OP/OC = 12%
2	C	OC = 250 OP = 22	OC = 230 OP = 26	OC = 250 OP = 18	Total OC = 730 Total OP = 66	OP/OC = 9%
3	D		OC = 220 OP = 22	OC = 150 OP = 20	Total OC = 370 Total OP = 42	OP/OC = 11.35%
4	E			OC = 100 OP = (-)5	Total OC = 100 Total OP = (-)5	OP/OC = (-)5%
5	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = 11.9%
6	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = 10.57%
7	H	OC = 150 OP = 12		OC = 80 OP = 10	Total OC = 230 Total OP = 22	OP/OC = 9.56%

From the above, the dataset will be constructed as follows :

Sl. No.	1	2	3	4	5	6	7
Values	(-)5%	9%	9.56%	10.57%	11.35%	11.9%	12%

Readers Note:

Question

What are the difficulties arises in applying the arm's length principle?

Answer

The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are difficulties in applying this principle in a number of situations.

- (a) The most serious problem is the need to find transactions between independent parties which can be said to be exact compared to the controlled transaction.
- (b) It is important to appreciate that in an MNE system, a group first identifies the goal and then goes on to create the associated enterprise and finally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises.
- (c) Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefits of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.
- (d) The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).
- (e) Arm's length principle involves a lot of cost to the group.

Readers Note:**57.18 EXTRA PRACTICALS****Practical 12**

X Inc., a company in U.S.A. sells gift articles to its Indian subsidiary A Ltd. @\$5 per gift article. The assessing officer notice that X Inc. sells same gift articles to another company B Ltd. in India @\$4.5 per gift article. Total income of A Ltd. for the relevant assessment year is Rs.15,00,000 after making payment for 1000 gift articles @\$5. Compute the total income of A Ltd to be determined by the assessing officer. Assume 1 US \$=Rs. 65 for the sake of simplicity. Will computation of total income of X Inc. is required by the assessing officer under chapter transfer pricing?

Solution

Arm's length price in respect of gift article shall be \$4.5 per gift article following CUP method.

Computation of total income in the hands of A Ltd. by the assessing officer

Particulars	Rs.
Total Income reported by A Ltd.	15,00,000
Add: Amount paid to X Inc. (\$5 X 1000 X Rs. 65)	3,25,000
Less: Purchase to be recorded at Arm's length price (\$4.5 X 1000 X 65)	2,92,500
Total Income	15,32,500

Computation of total income of X Inc.

As discussed earlier, computation of payee associated enterprise (X Inc) is not required if-

- (a) Total income of payer associated enterprise (A Ltd.) has been computed by the A.O and
- (b) Tax has been deducted or deductible at source by the payer enterprise.

Readers Note:

Practical 13

Suppose in the above problem X Inc. sells gift article @ \$6 to B Ltd. in India, find out the total income of A Ltd. to be determined by the assessing officer.

Solution

Arm's length price in respect of gift article shall be \$ 6 per gift article following CUP method.

Computation of total income in the hands of A Ltd. by the assessing officer

Particulars	Rs.
Total Income reported by A Ltd.	15,00,000
Add: Amount paid to X Inc. (\$5 X 1000 X Rs. 65)	3,25,000
Less: Purchase to be recorded at Arm's length price (\$6 X 1000 X 65)	3,90,000
Total Income	14,35,000

By virtue of section 92(3) one cannot reduce taxable income by applying arm's length price.

Therefore income of A Ltd. will be Rs. 15,00,000.

Readers Note:**Practical 14**

EF Limited, an Indian company, is engaged in manufacturing electronic components. 74% of shares of the company are held by EF Inc., incorporated in USA. EF Limited has borrowed funds from EF Inc. at LIBOR plus 150 points. The LIBOR prevalent at the time of borrowing is 4% for US \$. The borrowings allowed under the External Commercial Borrowings guidelines issued under Foreign Exchange Management Act are LIBOR plus 200 basis points. Discuss whether the borrowing made by EF Limited is at arm's length ('LIBOR' means London Inter-Bank Offer Rate).

Solution

EF Inc., USA and EF Limited, the Indian company are associated enterprises since the former holds 74% shares in the latter.

The arm's length rate of interest can be determined by using CUP method having regard to the rate of interest on external commercial borrowing permissible as per guidelines issued under FEMA Act.

The interest rate permissible is LIBOR plus 200 basis points i.e., 4% + 2% = 6%, which can be taken as the arm's length rate. The interest rate applicable on the borrowing by EF Limited, India from EF Inc., USA, is LIBOR plus 150 basis points i.e., 4% + 1.5% = 5.5%. Since the rate of interest, i.e. 5.5% is less than the arm's length rate of 6%, the borrowing made by the EF Ltd. is not at arm's length.

However, in this case, the taxable income of EF Ltd., India, would be lower if the arm's length rate is applied. Hence, no adjustment is required since the law of transfer pricing will not apply if there is a negative impact on the existing profits.

Readers Note:**Practical 15**

Anush Motors Ltd., an Indian company declared income of Rs. 300 crores computed in accordance with Chapter IV-D but before making any adjustments in respect of the following transactions for the year ended on 31.3.2017:

- 10,000 cars sold to Rida Ltd. which holds 30% shares in Anush Motors Ltd. at a price which is less by \$ 200 each car than the price charged from Shingto Ltd.
- Royalty of \$ 1,20,00,000 was paid to Kyoto Ltd. for use of technical know-how in the manufacturing of car. However, Kyoto Ltd. had provided the same know-how to another Indian company for \$ 90,00,000.
- Loan of Euro 1000 crores carrying interest @ 10% p.a. advanced by Dorf Ltd., a German company, was outstanding on 31.3.2017. The total book value of assets of Anush Motors Ltd. on the date was Rs. 90,000

crores. The said German company had also advanced a loan of similar amount to another Indian company @ 9% p.a. Total interest paid for the year was EURO 100 crores.

Explain in brief the provisions of the Act affecting all these transactions and compute the income of the company chargeable to tax for A.Y.2017-18 keeping in mind that the value of 1\$ and of 1 EURO was Rs.63 and Rs.84, respectively, throughout the year.

Solution

Any income arising from an international transaction, where two or more “associated enterprises” enter into a mutual agreement or arrangement, shall be computed having regard to arm’s length price as per the provisions of Chapter X of the Act.

Section 92A defines an “associated enterprise” and more particularly section 92A(2) speaks of thirteen situations when the two enterprises shall be deemed to associated enterprises. Applying the provisions of section 92A(2) to the given facts, “Anush Motors Ltd.” and the followings are the “associated enterprises”:-

Rida Ltd., because this company holds shares carrying more than 26% of the voting power in Anush Motors Ltd.; Kyoto Ltd., since this company is the sole owner of the technology used by Anush Motors Ltd. in its manufacturing process;

Dorf Ltd., since this company has granted loans which is more than 51% of the book value of total assets of Anush Motors Ltd.

The transactions entered into by Anush Motors Ltd. with different companies are, therefore, to be adjusted as under so as to find out total income for the A.Y. 2017-18.

Particulars	(Rs.in crores)
Income of Anush Motors Ltd. as computed under Chapter IV-D, prior to adjustments as per Chapter X	300.00
Add: Difference on account of adjustment in the value of international transactions	
(i) Difference in price of car @ \$ 200 each for 10,000 cars (\$ 200 x 10,000 x 63)	12.60
(ii) Difference for excess payment of royalty of \$ 30,00,000 (\$ 30,00,000 x 63)	18.90
(iii) Difference for excess interest paid on loan of EURO 1000 crores(84*1000*1/100)	840.00
Total Income	1,171.50

Readers Note:

Practical 16

‘Examine the correctness or otherwise of the following with reference to the provisions of the Income-tax Act, 1961.

“Transfer pricing rules shall have no implication where income is computed on the basis of book profits under section 115JB of the Income Tax Act.”

Solution

The statement is correct.

Reason: For the purpose of computing book profit for levy of minimum alternate tax, the net profit shown in the profit and loss account prepared in accordance with the Companies Act can be increased/decreased only by the additions and deductions specified in Explanation 1 to section 115JB.

No other adjustments can be made to arrive at the book profit for levy of MAT, except where, it is discovered that the profit and loss account is not drawn up in accordance with the relevant Schedule of the Companies Act. Therefore, transfer pricing adjustments cannot be made while computing book profit for levy of MAT.

Readers Note:

UNIT D – SAFE HARBOUR RULES**UNIT E – ADVANCE PRICING AGREEMENTS****57.19 | ADVANCE PRICING AGREEMENT (APA)****Section:-** 92CC, 92CD and Notification No:- 36/2012 dated 30-08-2012

- (1) Advance Pricing Agreement is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future. The APA offers better assurance on transfer pricing methods and are conducive in providing certainty and unanimity of approach.
- (2) Types of APA-
- (a) Unilateral APAs - Unilateral APA is an arrangement between the tax payer and the Indian tax administration (CBDT)
 - (b) Bi-lateral/ multilateral APAs- Bilateral / multilateral APA involves not only the taxpayer and the Indian tax administration but also the taxpayer's affiliates (with whom he transacts) and their tax administration.
- (3) Sections 92CC and 92CD have been inserted by the Finance Act, 2012 with effect from July 1, 2012 to provide a framework for advance pricing agreement under the Act.

Consider the following FAQ on APA.**Question 17****What is Advance Pricing Agreement (APA)?****Answer**

Advance Pricing Agreement (APA) is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future.

Readers Note:**Question 18****State the purpose of APA (Advance Pricing Agreement)?****Answer**

APA shall include determination of the arm's length price or specify the manner in which arm's length price shall be determined, in relation to an international transactions to be entered into, by that person.

Readers Note:**Question 19****Who can apply for advance pricing agreement and state the time limit for its withdrawal?****Answer**

Any person who has undertaken an international transaction or who is contemplating to undertake an international transaction is eligible to apply for Advance Pricing Agreement (APA). The applicant may withdraw the application for agreement in Form No.3CEE at any time before the finalisation of the terms of the agreement. The fee paid shall not be refunded on withdrawal of application by the applicant.

Readers Note:**Question 20****What is the maximum period for which advance pricing agreement shall remain valid?**

Answer

An advance pricing agreement shall remain valid for such period not exceeding 5 consecutive previous years as may be specified in the agreement

Readers Note:**Question 21**

Shall APA be made applicable to the international transactions carried out in previous year(s) prior to the date of application?

Answer

With effect from 1st October, 2014, as per provisions of section 92CC (9A), the APA may, subject to such prescribed conditions, procedure and manner, provide for determining the ALP or for specifying the manner in which ALP is to be determined in relation to an international transaction entered into by a person during any period not exceeding four previous years preceding the first of the previous years for which the APA applies in respect of the international transaction to be undertaken.

E.g. If ABCD Ltd. has entered into an APA for a period of five years starting from previous year 2014-15, then subject to prescribed conditions, it can avail benefit of APA for the following financial years

Previous Years for which benefit available	Comment
2010-11	Preceding four previous years for which Roll Back Provision is applicable
2011-12	
2012-13	
2013-14	
2014-15 (Year in respect of which APA was entered)	Five consecutive Previous years for which APA has been entered into
2015-16	
2016-17	
2017-18	
2018-19	

Readers Note:**Question 22**

How determination of ALP shall be made when taxpayer has entered into APA?

Answer

The manner of determination of arm's length price in a case where APA has been entered into, shall be by any method including those already provided in section 92C(1), with necessary adjustments or variations mentioned in APA.

Readers Note:**Question 23**

Discuss the effectiveness of APA.

Answer

The APA shall be binding only on the person and the Commissioner (including income-tax authorities subordinate to him) in respect of the transaction in relation to which the agreement has been entered into. The APA shall not be binding if there is any change, in law, or facts having bearing on such APA.

Readers Note:

Question 24

Under what circumstance may, an advance pricing agreement, be declared to be void ab initio?

Answer

An advance pricing agreement can be declared by the CBDT as void ab initio with the approval of the Central Government, if it has been obtained by fraud or misrepresentation of facts.

Readers Note:

Question 25

In case an advance pricing agreement is entered into, does it have any effect on the return of income of the assessee?

Answer

As per section 92CD (1), where any person has entered into advance pricing agreement, and he has already furnished return of income under section 139 for any assessment year to which such agreement applies, such person shall furnish a modified return of income within a period of 3 months from the end of the month in which the said agreement was entered into in accordance with and limited to the agreement.

Readers Note:

Question 26

How such modified return be dealt with for further proceedings under the Act?

Answer

As per section 92CD(2), all the provisions of the Act shall apply as if modified return has been furnished u/s 139. Section 92CD(3) further provides that

If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under 92CD(1), the Assessing Officer shall, in a case where modified return is filed, ~~proceed to assess or reassess or recompute total income of the relevant assessment year~~ *pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, as the case may be [Substituted by Finance Act, 2019 w.e.f. 01-09-2019]* having regard to and in accordance with the agreement.

Readers Note:

Question 27

Narrate the procedures relating to pre-filing consultation of advance pricing agreement.

Answer

Every person proposing to enter into APA must file an application in writing making a request for pre-filing consultation. On the receipt of request in Form No.3CEC, the team shall hold consultation with the person referred to in rule 10G (i.e. a person who has undertaken or contemplating to undertake international transaction).

The competent authority in India or his representative shall be associated in pre-filing consultation involving bilateral or multilateral agreement.

The pre-filing consultation shall include - (a) determining the scope of agreement; (b) identify transfer pricing issues; (c) determine the suitability of international transaction for the agreement; and (d) discuss the broad terms of the agreement.

The pre-consultation agreement will not bind the Board or the person to enter into an agreement or initiate the agreement process. It shall not be deemed to mean that the person has applied for entering into an agreement.

Readers Note:

Question 28

What are the terms of APA?

Answer

Terms of APA include –

- (i) the international transactions covered by the agreement;
- (ii) the agreed transfer pricing methodology, if any;
- (iii) determination of arm's length price, if any;
- (iv) definition of any relevant term to be used in item (ii) or (iii);
- (v) critical assumptions i.e. the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed ;

Readers Note:

Question 29

Narrate the procedure for furnishing Annual Compliance Report by the assessee, where advance pricing agreement has been entered into.

Answer

The assessee shall furnish an annual compliance report in quadruplicate to DGIT (International Taxation) for each year covered in the agreement. Annual compliance report shall be furnished within 30 days of the due date for filing return of income for that year or within 90 days of entering into an agreement, whichever is later.

The DGIT (International Taxation) shall send one copy of annual compliance report to the competent authority, one copy to Commissioner of Income Tax having jurisdiction of the assessee and one copy to the Transfer Pricing Officer having jurisdiction over the assessee.

Readers Note:

Question 30

Write a note on Compliance Audit of Advance Pricing Agreement.

Answer**Compliance Audit of Advance Pricing Agreement (Rule 10P):**

- (1) The Transfer Pricing Officer having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement.
- (2) For the purposes of sub-rule(1), the Transfer Pricing Officer may require –
 - (i) the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method;
 - (ii) the assessee to submit any information, or document, to establish that the terms of the agreement has been complied with.
- (3) The Transfer Pricing Officer shall submit the compliance audit report, for each year covered in the agreement, to the Director General of Income Tax (International Taxation) in case of unilateral agreement and to the competent authority in India, in case of bilateral or multilateral agreement, mentioning therein his findings as regards compliance by the assessee with terms of the agreement.

- (4) The Director General of Income Tax (International Taxation) shall forward the report to the Board in a case where there is finding of failure on part of assessee to comply with terms of agreement and cancellation of the agreement is required.
- (5) The compliance audit report shall be furnished by the Transfer Pricing Officer within six months from the end of the month in which the Annual Compliance Report referred to in rule 10 O is received by the Transfer Pricing Officer.
- (6) The regular audit of the covered transactions shall not be undertaken by the Transfer Pricing Officer if an agreement has been entered into under rule 10L except where the agreement has been cancelled under rule 10R.

Readers Note:**Question 31**

Can the application for advance pricing agreement be amended? If so, state the conditions.

Answer

Yes. The applicant may request in writing for an amendment to the application at any stage before the finalization of the terms of the agreement.

The DGIT for unilateral agreement or the competent authority in India for bilateral or multilateral agreement may allow the amendment if it does not have the effect of altering the nature of application originally filed.

An amendment is possible only if it is accompanied by the additional fee, if any, necessitated by such amendment in accordance with rule 10 - I.

Readers Note:**Question 32**

State the reasons for cancellation of advance pricing agreement.

Answer

An agreement shall be cancelled by the Board for any of the following reasons:

- (i) the compliance audit has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement;
- (ii) the assessee has failed to file the annual compliance report in time;
- (iii) the annual compliance report furnished by the assessee contains material errors; or
- (iv) the assessee is not in agreement with the revision proposed in the agreement.

Readers Note:**57.20 NOTIFICATION – RULES FOR ROLLBACK OF APA – AN OVERVIEW**

Notification No:- 23/2015 dated 14-03-2015

As discussed earlier, the roll back provision was brought into the Act vide Finance (No. 2) Act 2014, with effect from 1 October, 2014.

The Board has announced detailed rules explaining the roll back provisions and the procedure for giving effect to them. Apart from that, the Board has made another key amendment, wherein pre-filing consultation has been made optional for the taxpayer. Following are the key observation of these Rules.

- Form 3CEDA for the relevant roll back years have been filed before due date.
- Roll back application should cover all the roll back years (i.e., the years falling with the block of four years) in which the international transaction has taken place.
- Roll back provisions shall not be provided, in respect of an international transaction, if the Income-tax Appellate Tribunal has passed an order disposing off an appeal relating to determination of ALP of the

international transaction, at any time before signing of the APA agreement; or application of roll back has the effect of reducing total income or increasing the total loss.

- The manner of determining ALP in the roll back years with respect to any particular international transaction will be same as the manner agreed in the regular APA.

UNIT F – CONCEPT OF SECONDARY ADJUSTMENT AND THIN CAPITALISATION

57.21 | SECONDARY ADJUSTMENT IN CERTAIN CASES

Section:- 92CE – Effective from A.Y. 2018-19

(1) Meaning

"primary adjustment" to a transfer price, means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;

"secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

(2) Applicability of secondary adjustment :- [Section 92CE(1)]

Where a primary adjustment to transfer price, —

- has been made suo motu by the assessee in his return of income;
 - made by the Assessing Officer has been accepted by the assessee;
 - is determined by an advance pricing agreement entered into by the assessee under section 92CC; **on or after the 1st day of April, 2017 [Amendment made by Finance Act (No.2), 2019 w.r.e.f. 01.04.2018]**
 - is made as per the safe harbour rules framed under section 92CB; or
 - is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation,
- the assessee shall make a secondary adjustment:

(3) When Secondary adjustment not required [Proviso to section 92CE(1)]

Secondary adjustment not required if, —

- the amount of primary adjustment made in any previous year does not exceed one crore rupees; and
- the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.

(4) Quantification of Secondary Adjustment [Section 92 CE(2)]

Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money **or part thereof, as the case may be [Amendment made by Finance Act, 2019 w.r.e.f. 01.04.2019]** which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

Explanation.—For the removal of doubts, it is hereby clarified that the excess money or part thereof may be repatriated from any of the associated enterprises of the assessee which is not a resident in India. **[Amendment made by Finance Act, 2019, w.r.e.f. 01.04.2018]**

(5) Time limit for repatriation of excess money or part thereof

Rule 10CB(1) prescribes the time limit for repatriation of excess money i.e., on or before 90 days from the date given in column (3) in the cases mentioned in column (2) of the table below:

Sr. No.	Case	Date
(i)	Where primary adjustments to transfer price has been made suo-moto by the assessee in his return of income	the due date of filing of return u/s 139(1)
(ii)	If primary adjustments to transfer price as determined in the order of the Assessing Officer or the appellate authority has been accepted by the assessee	the date of the said order
(iii)	Where agreement for advance pricing has been entered into by the assessee under section 92CD	the due date of filing of return u/s 139(1)
(iv)	Where option has been exercised by the assessee as per the safe harbour rules under section 92CB	the due date of filing of return u/s 139(1)
(v)	Where agreement under the Mutual agreement procedure under a DTAA has been entered into u/s 90 or 90A	the due date of filing of return u/s 139(1)

(6) Rate of interest for the purpose of computation on interest on excess money or part thereof, if not repatriated within the prescribed time

Rule 10CB(2) prescribes the rate at which the per annum interest income shall be computed in case of failure to repatriate the excess money within the above time limit. The interest would be computed at the rates mentioned in column (3) in respect of the cases mentioned in column (2) of the table below:

Sr. No.	Case	Date
(i)	Where the international transaction is denominated in Indian rupee	At the one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year + 3.25%
(ii)	Where the international transaction is denominated in foreign currency	At six month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant previous year + 3.00%

(7) Option to pay additional income-tax, if excess money not repatriated. [Section 92CE(2A to 2D)]

Section 92CE (2A to 2D) inserted with effect from 01-09-2019 provides as under:

“Where the excess money or part thereof has not been repatriated within the prescribed time as mentioned above, the assessee may, at his option, pay additional income-tax at the rate of eighteen per cent on such excess money or part thereof, as the case may be. “

The additional income- tax on so paid by the assessee shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated and no further credit therefor shall be claimed by the assessee or by any other person in respect of the amount of tax so paid.

No deduction under any other provision of this Act shall be allowed to the assessee in respect of the amount on which additional income-tax has been paid.

Where the additional income-tax is paid by the assessee, he shall not be required to make secondary adjustment in the books of account and also not required to compute interest (as discussed above) from the date of payment of such tax.

For the purpose of this section, "excess money" means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken.

Practical 33

Infyvim Private Limited (IPL) is an Indian company in which Moon Inc.(Foreign Company) holds 26% equity. IPL provides following information:

(a) IPL provides system support services to Moon Inc.

(b) During the year 2017-18, IPL provided services to the tune of Rs. 12 crore.

(c) However, assessing officer determines arm's length price at Rs.15.25 Crore and the same is accepted by IPL. You are required to discuss the concept of "Primary adjustment" and "Secondary adjustment" assuming that excess money is not repatriated to India by Moon Inc.

Solution

The addition made by assessing officer to the total income of IPL is Rs. 3.25 crore – It is called primary adjustment. Since this excess Rs. 3.25 crore has not been repatriated by Moon Inc. to IPL, it would be termed as deemed advance (a secondary adjustment) made by IPL to Moon Inc. Thereafter, interest shall be charged on such deemed advance in such manner as may be prescribed.

Reader's Note:**57.22 | LIMITATION ON INTEREST DEDUCTIBLE****Section:- 94B – Effective from A.Y. 2018-19****(1) Preference of debt over equity as a measure to finance businesses**

Debt and equity are the instruments through which a company is generally financed or capitalized. The manner in which a company is capitalized has a major impact on the amount of taxable profit as the tax laws of countries generally provide for a deduction in respect of interest paid or payable while arriving at the taxable profit. However, the dividend paid on equity contribution is not deductible. Therefore, the higher the level of debt in a company, and thus, the amount of interest it pays, the lower will be its taxable income. Due to this reason, debt is considered a more tax efficient method of finance than equity. Multinational groups are often able to structure their financing arrangements to maximize tax benefits.

(2) Tax Rules to prevent shifting of profits through excessive interest payments

In order to address this issue, tax rules are in place in each country to fix a ceiling limit on the amount of interest deductible in computing a company's profit for tax purposes. Such rules are designed to counter cross-border shifting of profit through excessive interest payments, with the objective of protecting a country's tax base.

(3) Relevant Action Plan of BEPS

Under the initiative of the G-20 countries, the Organization for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) project had taken up the issue of base erosion and profit shifting by way of excess interest deductions by the MNEs in Action Plan 4 and recommended certain measures in its final report.

(4) Insertion of provision in the Income-tax Act, 1961 in line with BEPS Action Plan 4

Section 94B has, accordingly, been inserted in the Income-tax Act, 1961, in line with the recommendations of OECD BEPS Action Plan 4, to provide that interest expenses claimed by an entity to its associated enterprises shall not be deductible in computation of income under the "Profits and gains of business or profession" to the extent that it arises from excess interest

Sub - Section (1):- Excess Interest shall not be deductible

Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India,
being the borrower,

incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower,

the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :

Sub - Section (2):- Determination of Excess Interest

For the purposes of sub-section (1), the excess interest shall mean

- (a) an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or
- (b) interest paid or payable to associated enterprises for that previous year,

whichever is less.

Sub - Section (3):- Non- applicability of section 94B(1)

Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.

Sub - Section (4):- Carry forward of the excess interest

Where for any assessment year,

the interest expenditure is not wholly deducted against income under the head "PGBP",

so much of the interest expenditure as has not been so deducted,

shall be carried forward to the following assessment year or assessment years,

and

it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in

accordance with sub-section (2):

Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

Sub - Section (5):- Meaning of certain terms

"Debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession";

Deemed debt as per proviso to section 94B(1) : Where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

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

Practical 34

TATU MFG Ltd. is an Indian subsidiary of JAGUAR Limited, UK based Company. TATU MFG Ltd. has borrowed from JAGUAR Limited. From the following information, find out disallowance to be made under section 94B of the Income Tax Act for the assessment years 2018-19.

Particulars	Rs. (in crore)
Earnings before interest, taxes, depreciation and amortisation	20
Interest to associated enterprise	5
Interest to others	2

Solution**Computation of Excess Interest (disallowance) under section 94 B of the Act for the A.Y. 2018-19**

Sr. No.	Lower of	Amount (Rs. in crore)
(a)	Total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year (Refer working Note)	1
(b)	Interest paid or payable to associated enterprises for that previous year	5
(c)	Excess Interest to be disallowed [Lower of (a) or (b)]	1

Working Note:

Sr. No.	Particulars	Amount (Rs. in crore)
(a)	Total Interest (i.e. Interest to associated enterprise plus Interest to others)	7
(b)	30% of Earnings before interest, taxes, depreciation and amortization	6
(c)	Total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year (a-b)	1

Note:- Such excess interest of Rs. 1 Cr. shall be carried forward to the following assessment year or assessment years (maximum 8 years), and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with section 94B (2).

Reader's Note:**UNIT G – COUNTRY BY COUNTRY REPORTING**

57.23	FURNISHING OF REPORT IN RESPECT OF INTERNATIONAL GROUP IN LINE WITH BEPS ACTION PLAN – COUNTRY BY COUNTRY REPORT AND MASTER FILE

Section:-**(1) Requirements as per OECD report on Action 13 of BEPS Action Plan**

The report provides for:

- (a) revised standards for transfer pricing documentation; and
- (b) a template for country-by-country reporting of income, earnings, taxes paid and certain measure of economic activity.

(2) Three-tier structure mandated by BEPS

The BEPS report recommends that countries adopt a standardised approach to transfer pricing documentation; it mandates the following three-tier structure:-

Sr. No.	Document	Information
(a)	Master File	Standardised information relevant for all multinational enterprises (MNE) group members
(b)	Local File	Specific reference to material transactions of the local taxpayer
(c)	Country – by – Country report	Information relating to the global allocation of the MNE's income and taxes paid; and Indicators of the location of economic activity within the MNE group.

(3) Advantages of the three tier structure [as per BEPS Report]:

- (a) Taxpayers will be required to articulate consistent transfer pricing positions;
- (b) Tax administrations would get useful information to assess transfer pricing risks;
- (c) Tax administrations would be able to make determinations about where their resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries.

57.24 FURNISHING OF REPORT IN RESPECT OF INTERNATIONAL GROUP in INDIA**Section:- 286**

- (1)** Every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority (herein referred to as prescribed authority) in the form and manner, on or before such date, as may be prescribed,—
- (a) whether it is the alternate reporting entity of the international group; or
 - (b) the details of the parent entity or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.
- (2)** Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority ~~on or before the due date specified under sub-section (1) of section 139,~~ within a period of twelve months from the end of the said reporting accounting year **[Substituted by Finance Act, 2018 w.r.e.f. A.Y. 2017-18]** for furnishing the return of income for the relevant accounting year, in the form and manner as may be prescribed.
- (3)** For the purposes of sub-section (2) **and sub-section (4) [Inserted by Finance Act, 2018 w.r.e.f. A.Y. 2017-18]**, the report in respect of an international group shall include,—
- (a) the aggregate information in respect of the amount of revenue, profit or loss before income-tax, amount of income-tax paid, amount of income-tax accrued, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates;
 - (b) the details of each constituent entity of the group including the country or territory in which such constituent entity is incorporated or organised or established and the country or territory where it is resident;
 - (c) the nature and details of the main business activity or activities of each constituent entity; and
 - (d) any other information as may be prescribed.
- (4)** A constituent entity of an international group, resident in India, other than the entity referred to in sub-section (2), shall furnish the report referred to in the said sub-section, in respect of the international group for a reporting accounting year within the period as may be prescribed **[Inserted by Finance Act, 2018 w.r.e.f. A.Y. 2017-18]**, if the parent entity is resident of a country or territory,—
- (a) Where the parent entity is not obliged to file the report of nature referred to in sub-section (2); **[Inserted by Finance Act, 2018 w.r.e.f. A.Y. 2017-18]**
 - (b) with which India does not have an agreement providing for exchange of the report of the nature referred to in sub-section (2); or
 - (c) there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity:

Provided that where there are more than one such constituent entities of the group, resident in India, the report shall be furnished by any one constituent entity, if,—

- (a) the international group has designated such entity to furnish the report in accordance with the provisions of sub-section (2) on behalf of all the constituent entities resident in India; and
 - (b) the information has been conveyed in writing on behalf of the group to the prescribed authority.
- (5) Nothing contained in sub-section (4) shall apply, if, an alternate reporting entity of the international group has furnished a report of the nature referred to in sub-section (2), with the tax authority of the country or territory in which such entity is resident, on or before the date specified ~~in the said sub-section by that country or territory~~ **[Substituted by Finance Act, 2018 w.r.e.f. A.Y. 2017-18]** and the following conditions are satisfied, namely:—
- (a) the report is required to be furnished under the law for the time being in force in the said country or territory;
 - (b) the said country or territory has entered into an agreement with India providing for exchange of the said report;
 - (c) the prescribed authority has not conveyed any systemic failure in respect of the said country or territory to any constituent entity of the group that is resident in India;
 - (d) the said country or territory has been informed in writing by the constituent entity that it is the alternate reporting entity on behalf of the international group; and
 - (e) the prescribed authority has been informed by the entity referred to in sub-section (4) in accordance with sub-section (1).
- (6) The prescribed authority may, for the purposes of determining the accuracy of the report furnished by any reporting entity, by issue of a notice in writing, require the entity to produce such information and document as may be specified in the notice within thirty days of the date of receipt of the notice:
- Provided** that the prescribed authority may, on an application made by such entity, extend the period of thirty days by a further period not exceeding thirty days.
- (7) The provisions of this section shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed the amount, as may be prescribed.
- (8) The provisions of this section shall be applied in accordance with such guidelines and subject to such conditions, as may be prescribed.
- (9) For the purposes of this section,—

(a) "accounting year" means,—

- (i) a previous year, in a case where the parent entity ~~"or alternate reporting entity"~~ **[Omitted by Finance Act, 2019, w.r.e.f. 1-4-2017]** is resident in India; or
- (ii) an annual accounting period, with respect to which the parent entity of the international group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is resident, in any other case;

(b) "agreement" means a combination of all of the following agreements, namely:—

- (i) an agreement entered into under sub-section (1) of section 90 or sub-section (1) of section 90A; and

- (ii) an agreement for exchange of the report referred to in sub-section (2) and notified by the Central Government;]
- (c) "alternate reporting entity" means any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the report of the nature referred to in sub-section (2) in the country or territory in which the said constituent entity is resident on behalf of such group;
- (d) "constituent entity" means,—
 - (i) any separate entity of an international group that is included in the consolidated financial statement of the said group for financial reporting purposes, or may be so included for the said purpose, if the equity share of any entity of the international group were to be listed on a stock exchange;
 - (ii) any such entity that is excluded from the consolidated financial statement of the international group solely on the basis of size or materiality; or
 - (iii) any permanent establishment of any separate business entity of the international group included in [sub-clause (i) or sub-clause (ii)], if such business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;
- (e) "group" includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a consolidated financial statement for financial reporting purposes,—
 - (i) is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or
 - (ii) would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the parent entity is resident;
- (f) "consolidated financial statement" means the financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity;
- (g) "international group" means any group that includes,—
 - (i) two or more enterprises which are resident of different countries or territories; or
 - (ii) an enterprise, being a resident of one country or territory, which carries on any business through a permanent establishment in other countries or territories;
- (h) "parent entity" means a constituent entity, of an international group holding, directly or indirectly, an interest in one or more of the other constituent entities of the international group, such that,—
 - (i) it is required to prepare a consolidated financial statement under any law for the time being in force or the accounting standards of the country or territory of which the entity is resident; or
 - (ii) it would have been required to prepare a consolidated financial statement had the equity shares of any of the enterprises were listed on a stock exchange,

and, there is no other constituent entity of such group which, due to ownership of any interest, directly or indirectly, in the first mentioned constituent entity, is required to prepare a

consolidated financial statement, under the circumstances referred to in [sub-clause (i) or sub-clause (ii)], that includes the separate financial statement of the first mentioned constituent entity;

- (i) "permanent establishment" shall have the meaning assigned to it in clause (iiia) of section 92F;
- (j) "reporting accounting year" means the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in 96[sub-sections (2) and (4)];
- (k) "reporting entity" means the constituent entity including the parent entity or the alternate reporting entity, that is required to furnish a report of the nature referred to in sub-section (2);
- (l) "systemic failure" with respect to a country or territory means that the country or territory has an agreement with India providing for exchange of report of the nature referred to in sub-section (2), but—
 - (i) in violation of the said agreement, it has suspended automatic exchange; or
 - (ii) has persistently failed to automatically provide to India the report in its possession in respect of any international group having a constituent entity resident in India.

57.25 PENALTIES FOR NOT COMPLYING CBC REPORTING

Section:- 271 GB

Section	Nature of default	Penalty leviable	Competent IT Authority to levy penalty
271GB(1)	Failure to furnish report u/s 286(2)	Rs. 5,000 per day upto 30 days and Rs. 15,000 per day beyond 30 days	Prescribed Income-tax Authority
271GB(2)	Failure to produce the information and documents within the period allowed u/s 271GB(6)	Rs. 5,000 for every day during which the failure continues.	Prescribed Income-tax Authority
271GB(3)	Failure to furnish report or failure to produce information/documents under section 286 even after serving order u/s 271GB(1) or 271GB(2)	Rs.50,000 for every day for which such failure continues beginning from the date of serving such order.	Prescribed Income-tax Authority
271GB(4)	Failure to inform about inaccuracy in report furnish u/s 286(2) Or furnishing of inaccurate information or document in response to notice issued u/s 286(6).	Rs. 5,00,000	Prescribed Income-tax Authority

UNIT H – PENALTIES

57.26 VARIOUS PENALTIES

Section:- 271AA(1), 271BA and 271G

Section	Nature Of Default	Penalty Leviable
271AA(1)	(1) Failure to keep and maintain information and documents required by section 92D(1) or 92D(2) (2) Failure to report such transaction (3) Maintaining or furnishing incorrect information or document	2% of value of each international transaction / or specified domestic transaction entered into
271BA	Failure to furnish a report from an accountant as required by section 92E	Rs. 1,00,000
271G	Failure to furnish any information or document as required by section 92D(3)	2% of the value of the international transaction / specified domestic transaction for each failure

Practical 35

X Ltd., operating in India, is the dealer for the goods manufactured by Yen Ltd. of Japan. Yen Ltd. owns 55% shares of X Ltd. and out of 7 directors of the company, 4 were appointed by them. The Assessing Officer, after verification of transactions of Rs. 300 lacs of X Ltd. for the relevant year and by noticing that the company had failed to maintain the requisite records and had also not obtained the accountants report, adjusted its income by making an addition of Rs. 30,00,000 to the declared income and also issued a show cause notice to levy various penalties. X Ltd seeks your expert opinion.

Note: It is assumed that X Ltd. has not entered into an APA and has also not opted to be subject to Safe Harbour Rules.

Solution

The facts of the case indicate that X Ltd. and Yen Ltd. of Japan are associated enterprises since Yen Ltd. holds 55% shares of X Ltd. and has appointed more than half of the board of directors of X Ltd. Since Yen Ltd. is a non-resident, any transaction between X Ltd. and Yen Ltd. would fall within the meaning of “international transaction” under section 92B. Therefore, the income arising from such transactions have to be computed having regard to the arm’s length price.

The action of the Assessing Officer in making addition to the declared income and issuing show cause notice for levy of various penalties is correct since X Ltd. had committed defaults, as listed hereunder, in respect of which penalty, as briefed hereunder, is imposable -

- (i) 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 applies would attract penalty @ 200% of the amount of tax payable since it is a case of misreporting of income referred under section 270A(9) read with section 270A(8).
- (ii) Failure to maintain the requisite records as required under section 92D in relation to international transaction makes it liable for penalty under section 271AA which will be 2% of the value of each international transaction.
- (iii) Failure to furnish report from an accountant as required under section 92E makes it liable for penalty under section 271BA i.e., a fixed penalty of Rs. 1 Lac.

The Assessing Officer shall give an opportunity of hearing to the assessee with a notice as to why the arm's length price should not be determined on the basis of material or information or document in the possession of the Assessing Officer.

Readers Note:

UNIT I – NOTIFIED JURISDICTIONAL AREA

57.27 SPECIAL MEASURES IN RESPECT OF TRANSACTIONS WITH PERSONS LOCATED IN NOTIFIED JURISDICTIONAL AREA.

Section:- 94A

Section 94A (1): The Central Government may, having regard to the lack of effective exchange of information with any country or territory outside India, specify by notification in the Official Gazette such country or territory as a notified jurisdictional area in relation to transactions entered into by any assessee.

Section 94A (2): Notwithstanding anything to the contrary contained in this Act, if an assessee enters into a transaction where one of the parties to the transaction is a person located in a notified jurisdictional area, then—

- (i) **all the parties** to the transaction **shall be deemed to be associated enterprises** within the meaning of section 92A;
- (ii) **any transaction** in the nature of purchase, sale or lease of tangible or intangible property or provision of service or lending or borrowing money or any other transaction having a bearing on the profits, income, losses or assets of the assessee including a mutual agreement or arrangement for allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided by or to the assessee **shall be deemed to be an international transaction** within the meaning of section 92B,

and the **provisions of sections 92, 92A, 92B, 92C [except the second proviso to sub-section (2)], 92CA, 92CB, 92D, 92E and 92F shall apply accordingly.**

Section 94A (3): Notwithstanding anything to the contrary contained in this Act, **no deduction,—**

- (a) in respect of any payment made to any financial institution** located in a notified jurisdictional area **shall be allowed** under this Act, **unless the assessee furnishes an authorisation in the prescribed form authorising the Board or any other income-tax authority acting on its behalf to seek relevant information from the said financial institution on behalf of such assessee;** and
- (b) in respect of any other expenditure or allowance (including depreciation)** arising from the transaction with a person located in a notified jurisdictional area **shall be allowed** under any other provision of this Act, **unless the assessee maintains such other documents and furnishes such information as may be prescribed,** in this behalf.

Section 94A (4): Notwithstanding anything to the contrary contained in this Act, where, in any previous year, the assessee has **received or credited any sum** from any person located in a notified jurisdictional area **and the assessee does not offer any explanation about the source of the said sum** in the hands of such person or in the hands of the beneficial owner (if such person is not the beneficial owner of the said sum) **or the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory, then, such sum shall be deemed to be the income of the assessee** for that previous year.

Section 94A (5): Notwithstanding anything contained in any other provisions of this Act, **where any person located in a notified jurisdictional area is entitled to receive any sum or income or amount** on which tax is deductible under Chapter XVII-B, **the tax shall be deducted at the highest of the following rates, namely:—**

- (a) at the rate or rates in force;**
- (b) at the rate specified in the relevant provisions of this Act;**
- (c) at the rate of thirty per cent.**

Section 94A (6): In this section,—

- (i) “person located in a notified jurisdictional area” shall include,—
 - (a) a person who is resident of the notified jurisdictional area;
 - (b) a person, not being an individual, which is established in the notified jurisdictional area; or
 - (c) a permanent establishment of a person not falling in sub-clause (a) or sub-clause (b), in the notified jurisdictional area;
- (ii) “permanent establishment” shall have the same meaning as defined in clause (iia) of section 92F;
- (iii) “transaction” shall have the same meaning as defined in clause (v) of section 92F.

Practical 36

Mr. Robert, a non-resident has invested Rs. 6 crore in notified infrastructure debt fund and therefore he is in receipt of interest income Rs. 50 lakhs during the concerned previous year. Further, he incurred bank charges Rs. 12,000 for realizing such income. Assuming that Mr. Robert is a resident of a NJA, discuss the tax implications of this transaction under Income Tax Act, 1961.

Solution

As per section 115A of the Income Tax Act, 1961, gross interest income from a notified infrastructure debt fund shall be taxed at 5% (plus 3% EC). Therefore, the tax liability of Mr. Robert in respect of such income would be Rs. 2,57,500.

Generally, as per section 194LB, TDS shall be made @5% on interest paid by infrastructure debt fund.

However, since Robert is a resident of a NJA and therefore, considering the overriding effect of section 94 A (5), TDS shall be made at @30%.

Readers Note:

58 - TAXATION OF EQUALISATION LEVY

Practical 1

The contents of a business transaction done through e-commerce are not different from that of a business transaction carried out through traditional means. Which are the distinct means/methods of doing for e-business?

Solution

E-commerce is not the business transaction but it is a method of conducting business transaction. Following are the three means of doing business in e-commerce.

- (1) **Electronic Advertising:-** Advertising is done through website. Potential Customer accesses the website and obtains the information regarding the products. Thereafter, rest of transaction which lead to purchase of the product may be completed in the traditional way i.e. by giving the order in writing or by the way of telephone or email and making the payment by cheque and getting the goods through carrier.
- (2) **Electronic sales:-** In this system, the web site allows the potential customer to place an order on internet as well as facilitate the payment through credit cards or internet itself.
- (3) **Electronic Delivery:-** Now a days, Texts, visual material, audio material, computer software (relating to design, drawing, games etc.) are available in the digitized form. The potential buyer can place an order on the internet to purchase any of the above products available in digitized form, make the payment through credit cards on internet in the digitized form.

Readers Note:

Practical 2

Explain the core reasons for difference between the e-commerce transactions and the traditional business transactions causing difficulty to tax the income of e-commerce transactions.

Solution

The core reasons for difference between e-commerce transactions and traditional business transactions causing difficulty to tax the income from e-commerce transactions under the Income-tax Act, 1961 are

- (a) Transactions are completed in cyber-space;
- (b) absence of national boundaries;
- (c) no requirement of physical delivery (in certain cases).

All the above causing difficulty in implementing source rule of taxation.

Readers Note:

Practical 3

E-commerce transactions have replaced concepts generally associated with international transactions traditionally. Discuss briefly the issues involving such transactions.

Solution

The typical taxation issues relating to e-commerce are:

- (1) the difficulty in characterizing the nature of payment and establishing a nexus or link between taxable transaction, activity and a taxing jurisdiction;
- (2) the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes;
- (3) And thereby the difficulty in identifying Permanent Establishment.

Readers Note:

Practical 4

Nikanu Ltd. is an Indian Company involved in manufacturing and trading in cotton garments under the brand name "PCOTT". In order to expand its exports sale, it launched a massive publicity campaign in overseas market. For the purpose of online advertising, it hired the Sky Inc., a New York based company which has no permanent establishment in India and paid Rs. 10 lakhs for its services in the concerned previous year.

Discuss the tax and TDS implications of such transaction both in the hands of Nikanu Ltd. and Sky Inc., respectively, if-

- (i) SKY Inc. has no permanent establishment in India
- (ii) SKY Inc. has a permanent establishment in India, and the service is effectively connected to the permanent establishment in India.

Solution**(i) Where SKY Inc. has no permanent establishment in India**

In the present case, equalisation levy @6% is chargeable on the amount of Rs.10,00,000 received by SKY Inc., a non-resident not having a PE in India from Nikanu Ltd., an Indian company. Accordingly, Nikanu Ltd. is required to deduct equalisation levy of Rs. 60,000 i.e., @6% of Rs. 10 lakhs, being the amount paid towards online advertisement services provided by SKY Inc., a non-resident having no permanent establishment in India. Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income.

(ii) Where SKY Inc. has permanent establishment in India and the service is effectively connected to the permanent establishment in India

Equalisation levy would not be attracted where the non-resident service provider (SKY Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India. Therefore, the Nikanu Ltd. is not required to deduct equalisation levy on Rs.10 lakhs, being the amount paid towards online advertisement services to SKY Inc, in this case.

However, tax has to be deducted by Nikanu Ltd. at the rates in force under section 195 in respect of such payment to SKY Inc. Non-deduction of tax at source under section 195 would attract disallowance under section 40(a)(i) of 100% of the amount paid while computing business income.

Readers Note:

PART – II

IMPORTANT PRACTICAL

RTP MAY 2020

Practical 1

Gamma (P) Ltd., an Indian company established in the year 2007, reports total income of Rs. 22 lakh for the previous year ended 31st March, 2020. Tax deducted at source by different payers amounted to Rs. 1,68,000 and tax paid in Country A on a doubly taxed income amounted to Rs. 30,000 for which the company is entitled to relief under section 90 as per the double taxation avoidance agreement.

During the year, the company paid advance tax as under:

Date of payment	Advance tax paid (Rs.)
13-06-2019	45,000
14-09-2019	90,000
13-12-2019	1,00,000
14-03-2020	1,05,000

The company filed its return of income for the A.Y. 2020-21 on 3rd November, 2020.

Compute interest, if any, payable by the company u/s 234A, 234B & 234C and fee payable u/s 234F. Assume that transfer pricing provisions are not applicable & that the company has not opted for the provisions of Sec.115BAA

Note – Turnover of Gamma (P) Ltd. for P.Y. 2017-18 is Rs. 251 crore.

Solution

Interest under section 234A: Since the return of income has been furnished by Gamma (P) Ltd. on 3rd November, 2020 i.e., after the due date for filing return of income (30.9.2020), interest u/s 234A will be payable for 2 months @ 1% p.m. on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes.

Particulars	Rs.
Tax on total income (Rs. 22,00,000 x 26%) [Since turnover of P.Y. 2017-18 does not exceed Rs. 400 crore, the rate of tax would be 26% (i.e., 25% + HEC@4%)]	5,72,000
Less: Advance tax paid	3,40,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	30,000
Tax payable on self-assessment	34,000
Interest under section 234A = Rs. 34,000 x 1% x 2 months = Rs. 680	

Interest under section 234B: Where the advance tax paid by the assessee is less than 90% of the assessed tax, the assessee would be liable to pay interest under section 234B.

Particulars	Rs.
Tax on total income (Rs. 22,00,000 x 26%)	5,72,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	30,000
Assessed Tax	3,74,000
90% of assessed tax = Rs. 3,74,000 x 90% = Rs. 3,36,600	

Since the advance tax paid by Gamma (P) Ltd. (Rs. 3,40,000) is more than Rs. 3,36,600, being 90% of the assessed tax (Rs. 3,74,000), it is not liable to pay interest under section 234B.

Interest under section 234C:

Particulars	Rs.
Tax on total income (Rs. 22,00,000 x 26%)	5,72,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	30,000
Tax due on returned income/Total advance tax payable	3,74,000

Calculation of interest payable under section 234C:

Due Date for payment of advance tax	Advance tax paid till date (Rs.)	Advance tax payable till date %	Minimum % of tax due on returned income to be paid till date to avoid interest u/s 234C (c)		Shortfall	Interest
			%	Rs.		
15.06.2019	45,000	15%	12%	44,880	-	Nil (See Note below)
15.09.2019	1,35,000	45%	36%	1,34,640	-	Nil (See Note below)
15.12.2019	2,35,000	75%	75%	2,80,500	45,500	45,500 x 1% x 3 months = 1,365
15.02.2020	3,40,000	100%	100%	3,74,000	34,000	34,000 x 1% = 340
Interest payable under section 234C (Nil + Nil + Rs. 1,365 + Rs. 340)						Rs. 1,705

Note: Since the advance tax paid by Gamma (P) Ltd. on 13th June, 2019 is more than 12% of the tax due on returned income (i.e., Rs. 3,74,000) and the advance tax paid on 14th September, 2019 is more than 36% of the tax due on returned income, it is not liable to pay any interest under section 234C in respect of these two quarters.

Fee under section 234F

Rs. 5,000 is payable under section 234F by way of fee, since the return was filed after the due date but before 31.12.2020.

Readers Note:**Practical 2**

Helpage is a charitable trust set up on 01.04.2010 with the object of providing relief of the poor. Later on, in April, 2012, it changed its object to medical relief. It applied for registration on the basis of its new object, i.e., medical relief, on 01.09.2012 and was granted registration on 01.02.2013.

On 01.04.2019, Helpage got merged with M/s. Medicare (P) Ltd, a pharmaceutical company not entitled for registration under section 12AA. All the assets and liabilities of the erstwhile trust became the assets and liabilities of M/s. Medicare (P) Ltd. The trust appointed a registered valuer for the valuation of its assets and liabilities. From the following particulars (including the valuation report), calculate the tax liability in the hands of the trust arising as a result of such merger:

(i) Land

Location	Date of purchase	Stamp duty value on 01.04.2019 (Rs.)	Value which the land would fetch, if sold in the open market on 01.04.2019 (Rs.)	Book Value on 01.04.2019 (Rs.)
Noida	01.09.2010	55 lakhs	58 lakhs	50 lakhs
Gurgaon	01.09.2013	100 lakhs	120 lakhs	110 lakhs

(ii) Shares

Type of shares	Date of purchase	Face value of each share (Rs.)	Purchase price of each share (Rs.)	Price at which each share is quoted on BSE as on 01.04.2019 (Rs.)		Open market value as on 01.04.2019 (Rs.) *
				Highest price	Lowest price	
5000 Quoted equity shares of A Ltd.	01.05.2014	100	110	320	300	
2000 Preference shares of B Ltd.	01.09.2015	100	100	-	-	180

*on the basis of report of Merchant Banker

(iii) Liabilities

Book value of liabilities on 01.04.2019 = Rs. 120 lakhs. This includes –

- (a) Corpus fund Rs. 12 Lakhs.
- (b) Provision for taxation Rs. 8 lakhs; and
- (c) Reserves and Surplus Rs. 18 lakhs

Solution

As per section 115TD, the accreted income of “Helpage”, a charitable trust, registered under section 12AA which is merged with M/s Medicare (P) Ltd., an entity not entitled for registration under section 12AA, would be chargeable to tax at the rate of 34.944% [30% plus surcharge @12% plus cess@4%].

Computation of accreted income and tax liability in the hands of the Helpage trust arising as a result of merger with M/s. Medicare (P) Ltd.

Particulars	Amount (Rs.)
Aggregate FMV of total assets as on 1.4.2019, being the specified date (date of merger) [See Working Note 1]	1,39,10,000
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	82,00,000
Accreted Income	57,10,000
Tax Liability @ 34.944% of Rs. 57,10,000 (rounded off)	19,95,300

Particulars	Amount (Rs.)
Working Notes:	
(1) Aggregate fair market value of total assets on the date of merger	
- Land at Noida, being immovable property, purchased on 1.9.2010 Since the trust was registered only on 1.2.2013 and benefit of section 11 and 12 was available to the trust only from A.Y.2013-14, relevant to P.Y.2012-13, being the previous year in which the application for registration is made, the value of land purchased in P.Y.2010-11, in respect of which benefit u/s 11 and 12 was not availed, has to be ignored for computing accreted income	-
- Land at Gurgaon, being an immovable property, purchased on 1.9.2013 [The fair market value of land would be higher of Rs. 120 lakhs i.e., price that the land would ordinarily fetch if sold in the open market and Rs. 100 lakhs, being stamp duty value as on the specified date, i.e., 1.4.2019]	1,20,00,000
- Quoted equity shares of A Ltd. [5,000 x Rs. 310 per share] [Rs. 310 per share, being the average of the lowest (Rs. 300) and highest price (Rs. 320) of such shares on the specified date]	15,50,000

- Preference shares of B Ltd. [2,000 x Rs. 180 per share] [The fair market value which it would fetch if sold in the open market on the specified date i.e. FM V on 1.4.2019]	3,60,000
	1,39,10,000
(2) Total liability	
- Reserves and Surplus Rs. 18 lakhs [not includible]	-
- Corpus Fund of Rs. 12 lakhs [not includible]	-
- Provision for taxation Rs. 8 lakhs [not includible]	-
- Other Liabilities [Rs. 120 lakhs - Rs. 18 lakhs - Rs. 12 lakhs - Rs. 8 lakhs]	82,00,000
	82,00,000

Readers Note:**Practical 3**

Examine with reasons whether the two enterprises referred to in the independent situations given below can be deemed to be associated enterprises under the Indian transfer pricing regulations:

- Kingston Inc, a US company having its place of effective management also in the USA, has advanced a loan equivalent to Rs. 130 crores to Ganga Ltd., an Indian company on 10-04-2019. The total book value of assets of Ganga Ltd. is Rs. 250 crores. The market value of the assets, however, is Rs. 300 crores. Ganga Ltd. repaid Rs. 22 crores before 31-03-2020.
- Charles plc., a UK company having its place of effective management also in the UK, has the power to appoint 4 of the directors of Andes Ltd, an Indian company, whose total number of directors in the Board is 9.
- Total value of raw materials and consumables of Kaveri Ltd., an Indian company, is Rs. 720 crores. Of this, supplies to the tune of Rs. 650 crores are by Aurubis GmbH, a German company having its place of effective management in Germany, at prices and terms decided by the German company.

Solution

- Kingston Inc, a foreign company, has advanced loan of Rs. 130 crores to Ganga Ltd., an Indian company, which amounts to 52% of book value of assets of Ganga Ltd. Since the loan advanced by Kingston Inc. is 51% or more of the book value of assets of Ganga Ltd., Kingston Inc. and Ganga Ltd. Are deemed to be associated enterprises under the Indian transfer pricing regulations.

The deeming provisions would be attracted even if there is a repayment of loan during the same previous year which brings down the said percentage below 51%.

- Charles plc, a foreign company has the power to appoint 44.44% (4 out of 9) of the directors of an Indian company, Andes Ltd.

Two enterprises would be deemed to be associated enterprises if more than half of the board of directors of one enterprise are appointed by the other enterprise.

In this case, since Charles plc has the power to appoint only 44.44% (which is less than half) of the directors of an Indian company, Andes Ltd., Charles plc and Andes Ltd. are not deemed to be associated enterprises.

- Since Aurubis GmbH, a German company, supplies 90.27% of the raw materials and consumables required by Kaveri Ltd., an Indian company, which is more than the specified threshold of 90%; and the prices and terms of supply are decided by the German company, the two companies are deemed to be associated enterprises.

Readers Note:

Practical 4

Singtel Ltd. is a company incorporated in Singapore and 55% of its shares are held by Godavari (P) Ltd., an Indian company. Singtel Ltd. has its presence in India also. The details relating to Singtel Ltd. for the P.Y.2019-20, are as under:

Particulars	India	Singapore
Fixed assets at depreciated values for tax purposes (Rs. in crores)	120	80
Intangible assets (Rs. in crores)	50	200
Other assets (value as per books of account) (Rs. in crores)	40	120
Income from trading operations (Rs. in crores)	25	50
The above figure includes:		
(i) Income from transactions where purchases are from associated enterprises	2	4
(ii) Income from transactions where sales are to associated enterprises	3	5
(iii) Income from transactions where both purchases and sales are from/to associated enterprises	5	10
Interest and dividend from investments (Rs. in crores)	20	15
Number of employees (Residents in respective countries)	70	90
Payroll expenses on employees (Rs. in crores)	8	12

Determine the residential status of Singtel Ltd. for A.Y.2020-21, if during the F.Y.2019-20, seven board meetings were held –3 in India and 4 in Singapore.

Solution

The residential status of a foreign company is determined on the basis of place of effective management (POEM) of the company.

For determining the POEM of a foreign company, the important criteria is whether the company is engaged in active business outside India or not.

A company shall be said to be engaged in “**Active Business Outside India**” (ABOI) for POEM, 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.

Singtel Ltd. shall be regarded as a company engaged in active business outside India for P.Y.2019-20 for POEM purpose only if it satisfies all the four conditions cumulatively.

Condition 1: The passive income of Singtel Ltd. should not be more than 50% of its total income

Total income of Singtel Ltd. during the P.Y. 2019 2019-20 is Rs. 110 crores [(Rs. 25 crores + Rs. 50 crores) + (Rs. 20 crores + Rs. 15 crores)]

Passive income 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;

Passive Income of Singtel Ltd. is Rs. 50 crores, being sum total of :

- (i) Rs. 15 crores, income from transactions where both purchases and sales are from/to associated enterprises (Rs. 5 crores in India and Rs. 10 crores in Singapore)
- (ii) Rs. 35 crores, being interest and dividend from investment (Rs. 20 crores in India and Rs. 15 crores in Singapore)

Percentage of passive income to total income = Rs. 50 crore/ Rs. 110 crore x 100 = 45.45%

Since passive income of Singtel Ltd. is **45.45%, which is not more than 50%** of its total income, the first condition is satisfied.

Condition 2: Singtel Ltd. should have less than 50% of its total assets situated in India

Value of total assets of Singtel Ltd. during the P.Y. 2019 2019-20 is Rs. 610 crores [[Rs. 210 crores, in India + Rs. 400 crores, in Singapore]

Value of total assets of Singtel Ltd. in India during the P.Y. 2019 2019-20 is Rs. 210 crores

Percentage of assets situated in India to total assets = Rs. 210 crores/ crores/Rs. 610 crores x 100 = 34.43%

Since the value of assets of Singtel Ltd. **situated in India is less than 50%** of its total assets, the second condition for ABOI test is satisfied.

Condition 3: Less than 50% of the total number of employees of Singtel Ltd. should be situated in India or should be resident in India

Number of employees situated in India or are resident in India is 70

Total number of employees of Singtel Ltd. is 160 [70 + 90]

Percentage of employees situated in India or are resident in India to total number of employees is 70/160 x 100 = **43.75%**

Since employees situated in India or are residents in India of Singtel Ltd. **are less than 50%** of its total employees, the third condition for ABOI test is satisfied.

Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure

Payroll exp enses on employees employed in and resident of India = Rs. 8 crores.

Total payroll expenses = Rs. 20 crores (Rs. 8 crores + Rs. 12 crores)

Percentage of payroll expenses of employees situated in India or are resident in India to the total payroll expenses = **8 x 100/20 = 40%.**

Since the payroll expenses incurred on employees situated in India or resident in India is **less than 50% of its total payroll expenditure**, the fourth condition for ABOI test is also satisfied.

Thus, since Singtel Ltd. has satisfied all the four conditions, the company would be said to be engaged in “active business outside India” during the P.Y.2019 2019-20.

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

Since Singtel Ltd. is engaged in active business outside India in P.Y. 2019--20 and majority of its board meetings i.e., 4 out of 7, were held outside India, POEM of Singtel Ltd. would be outside India.

Therefore, Singtel Ltd. would be non-resident in India for the P.Y. 2019-20.

Readers Note:

PART – III

IMPORTANT JUDICIAL UPDATE

1. CIT v. Laxman Das Khandelwal (2019) 417 ITR 325 (SC)

Section

Issue: The issue under consideration is whether the Assessing Officer's omission to issue notice under section 143(2) is a defect not curable under section 292BB in spite of participation by the assessee in assessment proceedings.

Relevant Provisions of the Act

Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—

- (a) not served upon him; or
- (b) not served upon him in time; or
- (c) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.

Supreme Court's Observations: The law on the point as regards applicability of the requirement of issue of notice under section 143(2) is quite clear. According to section 292BB, if the assessee had participated in the proceedings, by way of legal fiction, notice issued would be deemed to be valid even if there be infractions as detailed in the said section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on the part of the assessee. It is, however, to be noted that the section does not save complete absence of issue of notice. **For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself.**

Supreme Court's Decision: The Supreme Court held that non-issuance of notice under section 143(2) is not a curable defect under section 292BB inspite of participation by the assessee in assessment proceedings.

2. Pr. CIT v. Maruti Suzuki India Ltd. [2019] 416 ITR 613 (SC)

Section

Facts of the case: The assessee-company, S, filed its return of income on November 28, 2012 (when no amalgamation has taken place). On January 29, 2013, the High Court approved the Scheme for Amalgamation of S (amalgamating company) with M (amalgamated company) w.e.f. April 1, 2012. On April 2, 2013, the amalgamated company, M, intimated the Assessing Officer of the amalgamation. Notice under section 143(2) was issued to S on September 26, 2013, followed by a notice under section 142(1). The Transfer Pricing Officer (TPO) passed an order making an adjustment in respect of royalty. A draft assessment order was passed in the name of the amalgamating company, S. The amalgamated company, M, participated in the assessment proceedings and also filed an appeal before the Dispute Resolution Panel (DRP) as successor in interest of S. No objection was taken by M before the DRP that the draft assessment order was passed in the name of S. The DRP issued its final assessment order on October 31, 2016 in the name of S. In appeal before the Tribunal, the assessee, M, raised the objection that the assessment proceedings were continued in the name of the non-existent entity S and that the final assessment order which was also made in the name of a non-existent entity would be invalid. The Tribunal set aside the final assessment order on the ground that it was void ab initio, having been passed in the name of a non-existent entity. The High Court affirmed the decision of the Tribunal.

Issue: Whether issue of notice by the Assessing Officer in the name of the amalgamating company (S, in this case), after such company has amalgamated with another company (M, in this case) and after he has been so informed of such amalgamation, is a defect curable under section 292B? Would participation of the amalgamated company, M, in the assessment proceedings operate as an estoppel against law?

Relevant provision of the Income-tax Act, 1961: Section 292B allows for curing of defects of a technical nature. The rationale behind this section is that the return of income, assessment, notice, summons or other proceedings should not be held to be invalid due to technical mistakes, which otherwise do not have much impact touching its legality, provided such return, assessment, notice, summons or other proceedings, etc., are otherwise in conformity with the purpose of the Income-tax Act, 1961.

Supreme Court's Decision: In the present case, despite the fact that the Assessing Officer was informed of the amalgamating-company (S) having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued in the name of S, the amalgamating company. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. The Supreme Court, accordingly, held that the initiation of assessment proceedings on a non-existent entity (S, in this case) was void-ab-initio and participation in the proceedings by the appellant-amalgamated company (M, in this case) in the circumstances cannot operate as an estoppel against law.

3. CIT v. A. A. Estate Pvt. Ltd. [2019] 413 ITR 438 (SC)

Section

Facts of the case: The High Court, without itself framing the substantial question of law at the time of admission of appeal, issued notices, heard both the parties and decided the appeal affirming the order of the Tribunal based on the questions raised by the appellant.

Relevant provision of the Income-tax Act, 1961: Section 260A provides that an appeal lies to the High Court from every order passed by the Tribunal, if the High Court is satisfied that the case involves a substantial question of law. In this regard, section 260A(2)(c) requires the appellant to file an appeal before the High Court in the form of a memorandum of appeal precisely stating therein the substantial question of law involved. If the High Court is satisfied that the case involves a substantial question of law, section 260A(3) requires the High Court to formulate such question. Thereafter, section 260A(4) provides that the appeal shall be heard only on the question so formulated; and section 260A(5) provides that the High Court shall decide the question of law so formulated.

Issue: While deciding an appeal, is it mandatory for the High Court to frame a substantial question of law or can it decide the case on the basis of the question of law urged by the appellant under section 260A(2)(c)?

Supreme Court's Decision: The appeal is heard only on the questions formulated by the High Court and not on the questions proposed by the appellant.

In case if the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so as to attract the rigour of section 260A for its admission and accordingly, should have dismissed the appeal in limine.

However, this was not done in this case. Instead, the appeal was heard only on the questions urged by the appellant u/s 260A(2)(c).

The High Court, therefore, did not decide the appeal in conformity with the mandatory procedure prescribed in section 260A. The Supreme Court, therefore, considered it just and proper to remand the case to the High Court for deciding the appeal afresh, on merits of the case in accordance with procedure prescribed in section 260A.

4. Pr. CIT v. Aarham Softronics [2019] 412 ITR 623 (SC)

Section

Facts of the case and issue under consideration: The assessee had started availing exemption under section 80-IC on setting up of new industrial unit in Himachal Pradesh. The assessee had availed deduction of 100% of profits for a period of 5 years. From sixth year, in normal course, deduction is admissible at 25% of the profits and gains, for next five years.

However, the assessee, after the expiry of five years, carried out substantial expansion of its existing unit. This substantial expansion is in accordance with the provisions of section 80-IC and there is no dispute about the same. From the year of such substantial expansion, the assessee claimed deduction at 100% of profits, instead of 25% for the period remaining out of ten years. Whether assessee is justified in claiming deduction at 100% again once substantial expansion is carried out?

Relevant provision of the Income-tax Act, 1961: Section 80-IC applies to an undertaking or enterprise which has begun or begins to manufacture any specified article or thing therein by setting up a new factory in special category States, which includes the State of Himachal Pradesh. As per section 80-IC(3), the category of undertakings or enterprises to which the assessee belongs, is entitled to deduction@100% of profits and gains for 5 assessment years commencing from the "initial assessment year" and, thereafter, deduction@25% of profits and gains for the next 5 assessment years.

As per section 80-IC(6), the total period of deduction is, however, capped at 10 assessment years.

As per sub-clause (v) of section 80-IC(8), "initial assessment year" means the assessment year relevant to the previous year in which the undertaking or the enterprise:

- (1) begins to manufacture or produce articles or things, or
- (2) commences operation or
- (3) completes substantial expansion.

As per sub-clause (ix) of section 80-IC(8), "Substantial expansion" means increase in the investment in the plant and machinery by at least 50% of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken.

Supreme Court's Decision: The Apex Court held that an undertaking or an enterprise which had set up a new unit of the nature mentioned in section 80-IC(2)(a)(ii), would be entitled to deduction at the rate of 100% of the profits and gains for five assessment years commencing with the "initial assessment year". For the next five years, the admissible deduction would be 25% or 30%, as the case may be, of the profits and gains. However, in case substantial expansion is carried out as defined in section 80-IC(8)(ix) by such an undertaking or enterprise, within the aforesaid period of 10 years, the said previous year in which the substantial expansion is undertaken would become "initial assessment year", and from that assessment year the assessee shall be entitled to 100% deductions of the profits and gains. Such deduction, however, would be for the period remaining out of 10 years, as provided in section 80-IC(6).

Notes –

- (1) The crux of the Supreme Court ruling is explained in the following example. If the substantial expansion is carried out in the 8th year, deduction would be 100% for the first 5 years, deduction at 25% for the next 2 years and at 100% again from the 8th year as this year becomes "initial assessment year" once again. This 100% deduction would be for the remaining 3 years only, i.e., 8th, 9th and 10th assessment years.
- (2) Consequent to the above Supreme Court judgement, students are advised to ignore case law no. 10 [CIT v. Classic Binding Industries [2018] 407 ITR 429 (SC)], reported under "Significant Select Cases" in pages no. 11.106-11.107 in Chapter 11: Deductions from Gross Total Income in the printed copy of Module 2 of the October 2019 edition of the Study Material.

5.	CIT (Exemptions) v. Reham Foundation [2019] 418 ITR 205 (All [FB])

Section

Facts of the case: An appeal was preferred by Revenue to challenge the order of the Appellate Tribunal directing registration of the trust, where registration under section 12AA has been denied by the Commissioner of Income-tax (CIT).

Relevant provision of the Income-tax Act, 1961: Section 12AA sets out the procedure for registration of trusts or institutions. Registration of a trust requires satisfaction of the Principal CIT/CIT. In case the Principal CIT/CIT is not satisfied or refuses registration, then, the appeal lies to the Appellate Tribunal under section 254.

Section 254 empowers the Tribunal to pass such orders "as it thinks fit" after giving both the parties an opportunity of being heard.

Issue: The issue under consideration is whether the Appellate Tribunal has the power under section 254(1) to pass an order directing CIT to grant registration under section 12AA or should it remand the case to the CIT for deciding the matter afresh.

High Court's Observations: A perusal of section 254 shows that the Appellate Tribunal has the power to pass such orders, as it thinks fit. The powers under section 254 is to be read along with other provisions of the Act. Section 12AA requires satisfaction about the genuineness of the activities and the object(s) of a trust by the CIT before its registration.

Case where the Appellate Tribunal can direct registration of the trust without remand to the CIT

The High Court opined that the Tribunal can pass an order directing the CIT to grant registration, considering the specific facts of the case, where –

- the CIT has refused to accept the application for registration of trust after recording its finding, on the basis of the material on record before him, that the activities and object(s) of the trust are not genuine; and
- the Appellate Tribunal, on the basis of the same material on record, comes to the conclusion that the order of the CIT is perverse since it has been passed ignoring, misconstruing or misinterpreting such evidence.

In such a case, the Appellate Tribunal can direct registration of the trust without remanding the matter to the CIT, since such remand would be an empty formality as the CIT cannot go against the conclusion arrived at and recorded by the Appellate Tribunal.

In view of the unfettered power of the Appellate Tribunal in terms of section 254(1), the Tribunal can very well record its satisfaction on the genuineness of the activities and object(s) of the trust and direct registration of the trust without remand of case to the CIT, in case such satisfaction is recorded on the basis of documents and material already available on record at the stage of examination by the CIT.

Cases where the Appellate Tribunal has to remand the case to the CIT :

In the following cases, however, the Appellate Tribunal has to remand the case to the CIT -

- (i) Where the Appellate Tribunal records such satisfaction on the basis of material or documentary evidence which was not available before the CIT while exercising his powers under section 12AA; and
- (ii) Where the CIT rejects the application on a technical ground without recording its opinion on facts or genuineness of the activities and object(s) of the trust and such decision is overturned by the Appellate Tribunal, the case has to be remanded to the CIT for recording satisfaction in terms of section 12AA.

The onus on the Appellate Tribunal to remand the matter in cases indicated hereinabove is in view of the strict interpretation of the powers of the CIT under section 12AA; if the Appellate Tribunal is given wide powers to direct registration of trust in all or any circumstance, it would render the provisions of section 12AA ineffective, which again cannot be the intention of the Legislature

6. Smt. Ritha Sabapathy v. DCIT [2019] 416 ITR 191 (Mad)

Section

Facts of the case: The assessee filed an appeal under section 260A before the High Court against the order of the Appellate Tribunal dismissing the appeal due to non-appearance of the assessee on the appointed date of hearing.

Relevant provision of the Income-tax Act, 1961: Section 254 empowers the Tribunal to pass such orders "as it thinks fit" after giving both the parties an opportunity of being heard.

Rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963 provides for hearing of appeal ex parte in case of the appellant's failure to appear in person or through an authorised representative when the appeal is fixed for hearing. In such a case, the Tribunal may dispose of the appeal on merits after hearing the respondent.

High Court's Observations and decision : The High Court noted the provisions of section 254, Rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963 and decisions of the Apex Court on the said issue. Accordingly, the High Court opined that even if the assessee could not appear, the Tribunal could have decided the appeal only on merits, ex parte, after hearing the Revenue's contentions. It reiterates that the fact finding Appellate Tribunal should not shirk its responsibility to decide a case on its merits. Cryptic orders, not touching the merits of the case, would not give rise to any substantial question of law for consideration by the High Court under section 260A. The assessee's valuable right of getting the issues decided on merits by the final fact finding body, viz., the Tribunal cannot be given short shrift in this manner. **A legal and binding responsibility, therefore, lies upon the Tribunal to decide the appeal on merits, irrespective of the appearance or otherwise of the assessee or his counsel before it.**

7. Valsad District Central Co-operative Bank Ltd. v. ACIT [2019] 414 ITR 616 (Guj)**Section**

Facts of the case: For the relevant assessment year, the assessee-co-operative bank claimed deduction under section 36(1)(v) in respect of its contribution towards gratuity fund for the benefit of its employees. No disallowance was made in respect of such contribution in assessment order passed under section 143(3). After four years, however, the Assessing Officer issued a notice under section 148, recording reasons to believe that the assessee has not disclosed fully and truly all material facts necessary for assessment, since it failed to produce Commissioner's order of approval of the gratuity fund for the purpose of claiming deduction under section 36(1)(v). Thus, he came to a conclusion that the income of the assessee to the extent of contribution towards gratuity fund has escaped assessment under section 147.

Assessee's Objections: The assessee raised objections against the notice issued under section 148 pointing out that the gratuity scheme is being managed by the LIC, pursuant to an agreement between LIC and the trustees of the gratuity scheme. The LIC had accepted the responsibility to manage the fund only after verifying that the scheme was duly approved by the Commissioner of Income-tax. During the course of original assessment, assessee had produced the documents pertaining to the contribution made towards the fund and the agreement with LIC to manage the fund. It was only after examining these documents, that the assessee's claim of deduction was accepted.

As the scheme was framed in 1976, the assessee, at this point of time, did not have the Commissioner's approval order (as there has been a long passage of time since the year 1976). Nevertheless, it was on the basis of such approval that the assessee had been, year after year, claiming the deduction which was also granted, in all assessment years, some of them after scrutiny. The assessee, therefore, contended that there was no failure on its part to disclose truly and fully all material facts and that the reopening of the assessment amounted to change of opinion by the Assessing Officer.

Issue: The issue under consideration is whether, in this case, re-opening the assessment under section 148 was merely on account of a change of opinion of the Assessing Officer, there being no failure on the part of the assessee to disclose truly and fully all material facts.

High Court's Observations and decision: The High Court noted that during the course of original assessment, the Assessing Officer has not pointedly examined this aspect of gratuity, nor raised any queries thereto. The question of change of opinion may, therefore, not arise.

The High Court held that merely because the assessee is unable to produce a copy of the order of approval of the Gratuity Scheme by the Commissioner after long gap of time, it cannot tantamount to failure on the part of the assessee to disclose truly and fully all material facts, since the assessee had produced a copy of the agreement with LIC and the trustees of the gratuity scheme in the course of original assessment, in line with the documents produced in the course of assessment in the earlier years. Therefore, in the absence of failure on the part of the assessee to disclose truly and fully all material facts, reopening of assessment by issue of notice under section 148 is not valid.

8. CIT (TDS) v. Eurotech Maritime Academy Pvt. Ltd. [2019] 415 ITR 463 (Ker)**Section**

Facts of the case: The assessee, a trust registered under section 12AA, ran an educational institution. It paid rent for the building occupied by it. The Assessing Officer found that the tax deducted at source by the assessee was deposited belatedly and imposed a penalty under section 271C equal to the amount of tax payable. The explanation offered by the assessee for the delay is that the clerk failed to discharge her duties properly. It was also noticed that the assessee had been making the payments piecemeal throughout the year and not deducting the tax on its payment in the respective months. The assessee contended that it is a trust registered under section 12AA, and therefore, not obliged to carry out an audit as provided under section 44AB. Only those persons covered under section 44AB would have to deduct tax at source under section 194-I. The first appellate authority, however, rejected the trust's contentions and confirmed the penalty order passed by the Assessing Officer. The Tribunal deleted the penalty on the ground that the assessee had reasonable cause within the meaning of section 273B and reversed the order.

Relevant provision of the Income-tax Act, 1961: Section 194-I requires any person, not being an individual or a Hindu undivided family, to deduct tax at source from any amount paid or credited as rent to a resident. The second proviso to 194-I provides that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax thereunder. Section 271C imposes penalty where the assessee is liable to deduct tax at source and fails to do so.

Section 271C provides that if any person fails to

- (a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or
- (b) pay the whole or any part of the tax as required by or under –
 - (i) sub-section (2) of section 115-O; or
 - (ii) the second proviso to section 194B,

then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay.

High Court's Observations and decision: The second proviso to section 194-I cannot be applicable to the assessee, because a trust cannot be included within the definition of "an individual or a Hindu undivided family" and therefore, the monetary limits specified in clause (a) or (b) of section 44AB is not relevant in this case. There is no exemption as such for other persons not covered under section 44AB. Hence, the trust is liable to deduct tax at source, irrespective of whether or not it was covered under section 44AB.

Regarding the delay in deposit, the Court took note of the decision of the Kerala High Court in US Technologies International (P.) Ltd. v. CIT [2010] 195 Taxman 323 case, which held that penalty under section 271C would be attracted for failure to deduct or failure to remit recovered tax. Further, it also noted another decision of the same High Court in case of Classic Concepts Home India Pvt. Ltd. v. CIT [2016] 383 ITR 626 (Ker) which held that so far as failure on the part of the assessee to remit the tax recovered at source is concerned, there cannot be any justifying circumstance for delay in remittance because the assessee cannot divert tax recovered for the Government towards working capital or any other purpose. Thus, the defence available under section 273B does not cover failure in payment of recovered tax.

Accordingly, the High Court held that, assessee is liable to pay penalty under section 271C for both non-deduction of tax at source and non-remittance of tax deducted at source.

9. Sunil Vasudeva & Others v. Sundar Gupta & Others [2019] 415 ITR 281 (SC)

Section

Does the High Court have the inherent power to review its own order to correct a mistake apparent from the record?

Supreme Court's Observations: The effect of section 293 of the Income-tax Act, 1961 had been mistakenly omitted by the High Court while passing an order directing pursuance of a civil suit. Accordingly, the said order was recalled for review and error apparent was corrected.

On the issue of whether the High Court can review its own order, the Supreme Court referred to its ruling in Kamlesh Verma v. Mayawati (2013) 8 SCC 320, wherein the basic principles for entertaining a review application had been eloquently examined.

As per the said decision, **the High Court can review its own order**, where the grounds for review were:

- (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) mistake or error apparent on the face of the record;
- (iii) any other sufficient reason.

A review will, however, not be maintainable in the following cases:

- (i) repetition of old and overruled argument;
- (ii) minor mistakes of inconsequential import.
- (iii) The mere possibility of two views on the subject cannot be a ground for review.

Supreme Court's Decision:

The effect of section 293 of the Income-tax Act, 1961 had been mistakenly omitted by the High Court while passing an order directing pursuance of a civil suit and therefore, there was no error committed by the High Court in exercising its review jurisdiction calling for interference.

10. CIT v. Metal and Chromium Plater (P) Ltd. [2019] 415 ITR 123 (Mad)

Section

Facts of the case: The assessee invested long-term capital gains in eligible redeemable bonds and claimed exemption under section 54EC. The Assessing Officer did not question the eligibility of the assessee to such exemption in regular computation but for purposes of computation of "book profit" for determination of minimum alternate tax (MAT) under section 115JB, the Assessing Officer denied relief under section 54EC by placing reliance on the judgment of the Supreme Court in the case of Apollo Tyres Ltd. v. CIT [2002] 255 ITR 273 and the Bombay High Court in the case of CIT v. Veekaylal Investment Co. (P.) Ltd. [2001] 249 ITR 597.

Issue: The issue under consideration is, whether, while determining the "book profit" for purposes of section 115JB, can long-term capital gains included in the statement of profit and loss be excluded since the same is eligible for exemption under section 54EC under the regular provisions of the Income-tax Act, 1961.

High Court's Observations and decision: Sub-section (5) of section 115JB allows for application of all other provisions contained in Income-tax Act, 1961 except if specifically barred by that section itself. Thus, the "book profit" would be further eligible to the benefits set out in the other provisions of the Act. Both the judgments relied upon by the Assessing Officer were rendered in the context of erstwhile section 115J which does not contain a provision analogous to sub-section (4) of erstwhile section 115JA and sub-section (5) of section 115JB of the Act. Assessment under erstwhile section 115J would be concluded exclusively on the basis of the book profit i.e., the net profit as adjusted by the items set out in the Explanation thereunder. However, in an assessment in terms of section 115JB, the book profit would be further subjected to the effect of other provisions of the Act that are specifically brought into play by virtue of sub-section (5) of section 115JB.

The High Court held that capital gains which forms part of the net profit in the statement of profit and loss of the assessee-company, in respect of which exemption under section 54EC is available while computing total income under the regular provisions of the Income-tax Act, 1961, should not be taken into account for calculation of minimum alternate tax on book profits under section 115JB.

Note – The following is an extract of Circular No.13/2001 dated 9.11.2001, issued by the CBDT at the time of insertion of section 115JB in the Income-tax Act, 1961 –

"It may be emphasised that the new provision of section 115JB is a self-contained code. Sub-section (1) lays down the manner in which income-tax payable is to be computed. Sub-section (2) provides for computation of "book profit". Sub-section (5) specifies that save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company mentioned in that section. ***In other words, except for substitution of tax payable under the provision and the manner of computation of book profit, all the provisions of the tax including the provision relating to charge, definitions, recoveries, payment, assessment, etc., would apply in respect of the provisions of this section.***"

The CBDT Circular clarifies that **except for substitution of tax payable under the provision and manner of computation of book profit**, all other provisions relating to charge, definitions, recoveries, payment, assessment, etc., would apply in respect of section 115JB. Therefore, "book profit" for levy of MAT has to be computed in the manner laid down under section 115JB i.e., by making the adjustments as specified in the Explanations contained therein to the net profit as per the statement of profit and loss. This implies that exemptions and deductions available under the regular provisions of the Act would not be available unless expressly provided for in the Explanations to section 115JB [For example, income exempt under section 10, 11 and 12 of the Income-tax Act, 1961 have to be deducted while computing book profit for levy of MAT, if credited to the statement of profit and loss, by virtue of specific provision in clause (ii) of Explanation 1 below section 115JB(2)]. Therefore, it appears that the intent of sub-section (5) is to make applicable other provisions like payment of advance tax, interest under sections 234B and 234C, return filing, penal and prosecution provisions under the Income-tax Act, 1961 etc. to a case where tax is computed under section 115JB.

The Madras High Court has, however, in this case interpreted sub-section (5) of section 115JB to also permit adjustment for exemption under section 54EC while computing MAT, even though the same is not expressly provided for in the Explanations to section 115JB