

DIRECT TAX

MODULE II

Relevant for May 2018 / Nov 2018 Exam

CA MEHUL THAKKER



Subscribe to webcast

<https://www.youtube.com/channel/UCbmK3daYbl-6unKnzthWFLQ>

ASSESSMENT YEAR 2018-19

Special Thanks to CA Chetan V Chaudhary

Law stated in this book is as amended by the Finance Act, 2017

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.

MASTER INDEX

CHAPTER NO.	TOPICS	NO. OF PRACTICALS	PAGE NO.
DIVISION C – ASSESSMENT OF VARIOUS ENTITIES			
12	Assessment of Firms	11	1 to 12
13	Assessment of AOP or BOI	09	1 to 15
14	Assessment of Co-operative Societies	08	1 to 08
15	Assessment of Companies	21	1 to 43
16	Alternative Minimum Tax [CHAPTER XII-BA]	03	1 to 07
17	Hindu Undivided Family [HUF]	10	1 to 06
18	Business Trust	06	1 to 14
19	Taxation of Trusts or Institutions	22	1 to 31
DIVISION D – RETURNS, ASSESSMENT, REASSESSMENT AND RECTIFICATION, APPEALS, REVISION, ASSESSMENT ON REMAND			
20	Returns, Assessment, Reassessment and Rectification	35	1 to 58
21	Appeals	08	1 to 20
22	Revision by Principle Commissioner or Commissioner	19	1 to 13
23	Assessment on Remand	03	1 to 5

DIVISION E – INCOMT TAX AUTHORITIES AND THEIR POWERS, ASSESSMENT IN CASE OF SEARCH OR REQUISITION AND COLLECTION AND RECOVERY OF TAX

24	Income Tax Authorities and their Powers	17	1 to 27
25	Assessment in case of Search or Requisition	04	1 to 10
26	Collection and Recovery of Tax	02	1 to 11

DIVISION F – TAX DEDUCTION AND COLLECTION AT SOURCE

27	Tax Deduction and Collection at Source	68	1 to 77

DIVISION G – ADVANCE TAX AND INTEREST PAYABLE

28	Advance Tax	01	1 to 03
29	Interest Payable	14	1 to 21

DIVISION H – SETTLEMENT OF CASES AND ADVANCE RULING

30	Settlement of Cases	09	1 to 18
31	Advance Ruling	07	1 to 08

DIVISION C

ASSESSMENT OF VARIOUS ENTITIES

INDEX

CHAPTER NO.	TOPICS	NO. OF PRACTICALS	PAGE NO.
12	Assessment of Firms	11	1 to 12
13	Assessment of AOP or BOI	09	1 to 15
14	Assessment of Co-operative Societies	08	1 to 08
15	Assessment of Companies	21	1 to 43
16	Alternative Minimum Tax [CHAPTER XII-BA]	03	1 to 07
17	Hindu Undivided Family [HUF]	10	1 to 06
18	Business Trust	06	1 to 14
19	Taxation of Trusts or Institutions	22	1 to 31

12 - ASSESSMENT OF FIRMS / LLP

12.1 MEANING OF FIRM, PARTNER AND PARTNERSHIP

Section:- 2(23)

- **"Firm"** shall have the meaning assigned to it in the Indian Partnership Act, 1932, and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;
- **"Partner"** shall have the meaning assigned to it in the Indian Partnership Act, 1932, and shall include,-
 - (a) any person who, being a minor, has been admitted to the benefits of partnership; and
 - (b) a partner of a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;
- **"Partnership"** shall have the meaning assigned to it in the Indian Partnership Act, 1932, and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008.

12.2 SCHEME OF TAXATION OF FIRMS

- The firm is taxed as a separate entity.
- The firm can claim deduction in respect of payment of interest, salary, bonus, commission or remuneration to partners subject to certain restrictions mentioned in section 40(b) of the Act.
- Various incomes of the firm shall be taxed as under:

Nature of income	Applicable tax rates
Short term capital gain u/s. 111A	15%
Long term capital gain u/s. 112	20%
Winning from lotteries, cross word puzzle etc.	30%
Other incomes	30%

- Surcharge is applicable @12% if total income of firm exceeds Rs. 1 crore. The surcharge is subject to marginal relief. Further, (tax + surcharge) is increased by education cess @ 2% and secondary and higher education cess @ 1%.

12.3 SCHEME OF TAXATION IN THE HANDS OF PARTNERS

Section:- 10(2A) , 28(v)

- As per section 10(2A) of the Act, the share of the partner in the total income of the firm is exempt in the hands of partner. Such exempt share shall be worked out as under:

Total Income of Firm $\times \frac{\text{Partner's share in the profits of the firm as per partnership deed}}{\text{Total profits of the firm}}$

- As per section 28(v) of the Act, any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm, to the extent firm claimed deduction, shall be taxable in the hands of partners under the head "Profits and Gains from Business or Profession".

12.4 ASSESSMENT AS A FIRM

Section:- 184

- A firm shall be assessed as a firm, if—
 - the partnership is evidenced by an instrument; and
 - the individual shares of the partners are specified in that instrument.
 - A certified copy of the instrument of partnership shall accompany the first return of income of the firm.
 - In case of any change in the constitution of the firm or profit-sharing ratio during any previous year, a certified copy of the revised instrument of partnership shall be furnished along with the return of income for the assessment year relevant to previous year in which change took place.
- Over and above, there shall not be a failure on the part of firm as is mentioned in section 144. If there will be any failure as is mentioned in section 144, the firm shall not be allowed deduction on account of remuneration and interest.

12.5 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:

- Payment of interest to any partner is authorised by the partnership deed and it shall be in accordance with the terms of such deed.
- Payment of interest pertains to the period on or after the date of partnership deed.
- 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:

- Section 36(1) (iii);
- Section 40 (a) (ia);
- 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:

12.6 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 assessment year 1996-97, **no deduction under section 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:

12.7 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 [$\text{Rs.}3,00,000 \times 1/3^{\text{rd}}$]	1,00,000
Step 2: Share of Mr. X (retiring partner) in current year Loss [$\text{Rs.}90,000 \times 1/3^{\text{rd}}$]	30,000
Step 3: Losses not allowed to be carried forward by the firm	1,30,000

Readers Note:**12.8 ASSESSMENT WHEN SEC.184 IS NOT COMPLIED WITH****Section:- 185**

- Where a firm does not comply with any of the provisions of sec.184 for any assessment year, the firm shall be continued to be assessed as firm for that assessment year.
- However, no deduction shall be allowed in respect of payment of any interest, salary, bonus, commission or remuneration, by whatever name called to partners.
- The amount of interest or salary etc. so disallowed in the hands of the firm shall not be chargeable to tax in the case of respective partners.

12.9 CHANGE IN CONSTITUTION**Section:- 187**

- (a) Where at the time of assessment, it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment.

(b) For the purpose of this section, “change” in constitution of firm would mean the following:

- (i) if one or more of the partners cease to be partners or one or more new partners are admitted, provided that at least one of the partners of the firm before the change continues as partner after the change ; or
- (ii) where all the partners continue with a change in their respective shares or a change in the shares of some of them.

Remark:

Provision of this section shall not apply to a case where a firm is dissolved on the death of any of its partners.

Practical 6

A, B, C are the partners in XYZ & Co. During the previous year, Mr. A retired and Mr. D was admitted to the partnership firm. They continued to carry on business in the same firm name i.e., XYZ & Co. How many assessments shall be done under Income Tax Act, 1961?

Solution

Mr. A retired and Mr. D was admitted to partnership firm. Mr. B and Mr. C (partners before the change) continue to be the partners of the firm after the change in the constitution. Therefore, only one assessment shall be done under the Income Tax Act, 1961.

Readers Note:

Practical 7

Ratan Lal Garib Das was a partnership firm. There were 19 partners in the firm and one of them Shri Sundar Lal retired. As per the terms of partnership deed, the firm would stand dissolved on the death or retirement of a partner. Hence, the assessee firm had filed two returns for the previous year in which Shri Sundar Lal retired. However, the assessing officer made only one assessment. Whether the action taken by the assessing officer is correct?

Solution

In CITv. Ratan Lal Garib Das[2003] 131 Taxman 227 (All.), High Court held as under:

“A perusal of s. 187(2)(a) of the IT Act shows that by legal fiction for the purposes of the IT Act, even if one of the partners continues to remain in the firm then the firm will not be deemed to be dissolved. Hence, even if the partnership deed says that the firm will stand dissolved on the retirement of a partner, for the purposes of the IT Act, it will not be deemed to be dissolved in view of s. 187(2)(a) of the Act.”

The assessing officer is, therefore, legally correct in making one assessment on the firm as constituted at the time of assessment.

Readers Note:

12.10 | SUCCESSION OF A FIRM**Section:- 188**

Where a firm carrying on a business or profession is succeeded by another firm and the case is not covered by sec.187 (i.e. not a change in constitution) then the separate assessments shall be made on the predecessor firm and successor firm in the following manner:

- (a) The predecessor shall be assessed in respect of income of previous year in which the succession took place up to the date of succession.
- (b) The successor firm shall be assessed in respect of the income of previous year after the date of succession.
- (c) Liability of successor firm shall be governed by the provisions of 170 of the Act.

Practical 8

The assessee firm consisting of five partners. One of the partners died in between the year. Remaining partners continued the business. The assessing officer made one assessment and clubbed the income of old and new firm. Whether the action of assessing officer is correct?

Solution

Supreme Court in case of CIT vs. Ayyanarappan and Co. (1996) 236 ITR 410 and CIT vs. Empire Estate 218 ITR 355 (SC) had drawn following conclusions:

- The provisions of section 187 shall not apply when firm is dissolved on death of a partner.
- When surviving partners continue the business in partnership, section 188 is attracted and therefore, two separate assessments shall be made, one on old firm and another on reconstituted firm.

Considering the above ratio, the assessing officer is not justified in making one assessment.

Readers Note:**12.11 | JOINT AND SEVERAL LIABILITIES OF PARTNERS FOR THE TAX PAYABLE BY THE FIRM****Section:- 188A**

Every person who was a partner of the firm during the previous year and the legal representative of any such person who is deceased shall be jointly and severally liable in respect of any tax, penalty or any other sum payable by the firm for such relevant previous year.

12.12 | FIRM DISSOLVED OR BUSINESS DISCONTINUED.**Section:- 189**

- (a) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no

such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty, shall apply, so far as may be, to such assessment.

- (b) Without prejudice to the above, if the Assessing Officer or the Commissioner (Appeals) in the course of any proceeding under this Act in respect of any such firm is satisfied that the firm was guilty of any of the acts attracting penalty, he may impose or direct the imposition of a penalty.
- (c) Every person who was at the time of such discontinuance or dissolution, a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.
- (d) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the partners from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

Practical 9

Vijay Agencies, a partnership firm constituted by three partners with equal shares was dissolved on **1-04-2017** after a search. The liability to tax finally decided against the firm outstanding to be paid was Rs.15 Lacs. Out of three partners, one was declared insolvent on **18-03-2018** by the Court. The Assessing Officer, for recovering the demand, attached the Bank Accounts of other two partners and could recover an amount of Rs.6Lacs from the Account of one such partner. You are asked by the partners of dissolved firm:

- (i) About the liability of each of them to pay outstanding demand.
- (ii) Whether the action of Assessing Officer to attach the Bank Account of partners against demand of dissolved firm is justified?

Solution

- (i) As per section 189(3), every person who was at the time of such discontinuance or dissolution, a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable. As a result, three partners are jointly and severally liable for tax due of Rs. 15 Lacs.
- (ii) In view of the above provision, the action of assessing officer to attach the bank account of one of the partners against demand of dissolved firm, is justified.

Readers Note:

Practical 10

The partners of the firm recovered the bad debts of the firm after dissolution. The assessing officer taxed the same in the hands of firm in view of provisions of section 189. Whether the action of assessing officer is correct?

Solution

Gujarat high Court in case of Banyan and Berry vs. CIT (1995) 222 ITR 831 had drawn following inferences:-

- Section 189 is not a charging section.

- It is a machinery section deeming the dissolved firm to be in existence for the purposes of making assessment, continuing the pending proceedings and initiating the proceedings for the business carried on by the firm till the dissolution.
- Fiction created under s. 189 does not project into the future transactions. It does not extend to the incomes which accrue after the dissolution of the firm.
- On the other hand, section 176(3A) is a charging section which provides that where any business is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt.

Considering the provisions of section 176(3A) and the purpose for which section 189 was enacted, the assessing officer is not correct in taxing bad debt recovery in the hands of firm. But, the same shall be taxed in the hands of partners in the year of recovery.

Readers Note:

12.13 LIABILITIES OF PARTNERS OF LLP IN LIQUIDATION

Section:- 167C

- (1) Where **any tax due from a** limited liability partnership firm in respect of income of any previous year **cannot be recovered**, then, every person who was a partner of such LLP at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax.
- (2) However, no such partner shall be liable if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP.
- (3) Section 167C has an overriding effect over the provisions of Limited Liability Partnership Act, 2008.
- (4) For the purpose of this section, "tax due" includes penalty, interest or any other sum payable under this Act.

12.14 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 11

During the previous year under consideration, the partnership firm consisting of three equal partners, had earned only income – i.e. long term capital on sale of equity shares amounting to Rs. 90,00,000. Such income earned by the firm was totally exempt under section 10(38) 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. 90,00,000 since such Rs.90,00,000 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 MEANING OF AOP: DIFFERENCE BETWEEN AOP AND BOI

- The Supreme Court in **CIT vs. Indira Balkrishna (1960) 39 ITR 546**, defines an AOP to mean two or more persons join in a common purpose or common action with an object to produce income, profits or gains.
- However, the Supreme Court further cautioned that there is no formula of universal application of the above definition. A conclusion can be drawn about AOP only on the basis of the facts and circumstances of each case.
- Thus, it can be safely concluded that an association of two or more persons having common action with an object to produce income and which in law do not constitute partnership firm shall be regarded as Association of Persons.

(A) Difference between AOP and BOI

1. Any person can be a member in an AOP whereas only individuals can be the members in "BOI".
2. There is common will and desire amongst the members of "AOP" and they voluntarily join together to carry on the activities. In the case of a body of individuals such common will and desire may be lacking.
3. Body of individuals may be formed by operation of law where members receive income jointly.

Practical 1

Mr. P set up business in the name of M & Co. and ran this business in proprietary capacity till death. He died intestate leaving behind his mother, widow and three minor sons. Mother relinquished her interest in the business against a lump sum payment. The business thereafter was carried on by widow as a single unit in the same name on her own behalf and on behalf of all the three minor children. In whose hand such business income shall be assessed- whether widow and three minors in their "Individual capacity" or as "Body of Individuals"?

Solution

Supreme Court while dealing with the similar situation in case of **Meera & Company vs. CIT 224 ITR 635** had made following observation:

"In the background of definition of person under section 2(31), when several individuals are found to have joined together for the purpose of making profit, the group of individuals may be conveniently described as "a BOI". "An AOP" or "a BOI", whether incorporated or not, has been brought within the net of taxation. The intention of the legislature is clearly to hit combination of individuals or other persons who were engaged together in some joint enterprise. The combination may or may not be incorporated. A profit-yielding joint venture has to be taxed as a single unit".

Considering the above ratio, income generated in the business shall be assessed in the status of "BOI".

Readers Note:

Practical 2

Three brothers inherited a property (land) from their father. A part of this land was acquired by the State Government and compensation was paid. In whose hand, capital gain arising on compulsory acquisition shall be assessed- whether brothers in their “Individual capacity” or as an “association of persons”?

Solution

Supreme Court while dealing with the similar situation in case of **CIT vs. Govindbhai Mamaiya 367 ITR 498** had made following observation:

“The Property in question which was acquired by the Government, came to three brothers on inheritance from their father i.e. by the operation of law. Furthermore, even the income which was earned was not because of any business venture of the three assesseees but it was the result of the act of the Government in compulsorily acquiring the said land. In these circumstances, the case was squarely covered by the ratio of the judgment laid down in Meera & Company inasmuch as it is not a case where any “Association of Persons” was formed by volition of the parties for the purpose of generation of income. This basic test was to determine the status of AOP was absent in the present case.”

Considering the above ratio, capital gain arising on compulsory acquisition shall be assessed in the hands of brothers in their “Individual capacity”.

Readers Note:

13.2 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.
- Explanation 2 and 3 to section 40(ba) are similar to explanations 1 and 2 to section 40(b) under chapter “assessment of firms/LLP”.

Practical 3

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 4**

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:**13.3 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)-30% plus surcharge. [i.e. 34.50% for **A.Y. 2018-19**]

- (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)- 30% plus surcharge. [i.e. 34.50% for **A.Y. 2018-19**]

- (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.

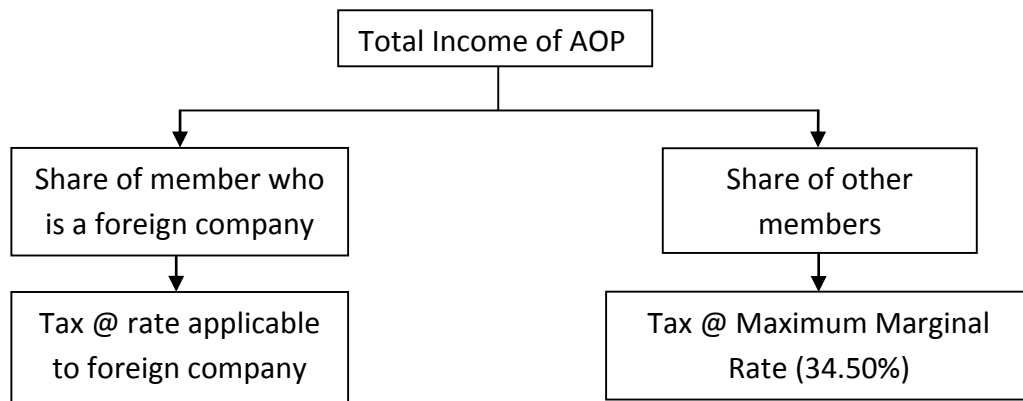
Once AOP shall be taxed at maximum marginal rate or any higher rate, share from AOP shall not be taxed in the hands of members- Section 86.

(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)- 30% plus surcharge. [i.e. 34.50% for **A.Y. 2018-19**]

- (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 i.e. 40%.

- (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.

13.4 ASSOCIATION DISSOLVED OR BUSINESS DISCONTINUED**Section:- 177**

- (1) Where any business or profession carried on by an association of persons has been discontinued or where an association of persons is dissolved, the Assessing Officer shall make an assessment of the total income of the association of persons as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act shall apply, so far as may be, to such assessment.
- (2) Without prejudice to the generality of the foregoing sub-section, if the Assessing Officer or the Commissioner (Appeals)] in the course of any proceeding under this Act in respect of any such association of persons as is referred to in that sub-section is satisfied that the association of persons was guilty of any of the acts attracting penalty, he may impose or direct the imposition of a penalty in accordance with the provisions of penalty chapter.
- (3) Every person who was at the time of such discontinuance or dissolution a member of the association of persons, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.
- (4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against members of AOP from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

Practical 5

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 40ba]	1,32,200
Add: Remuneration to Q [Section 40ba]	1,72,500
Add: Interest to P (59,400-3000) [Section 40ba]	56,400
Add: Interest to Q (54,170-1450) [Section 40ba]	52,720
Add: Interest to R (43000-3550) [Section 40ba]	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: 3% Education Cess		3,760
Tax Liability		1,29,100

(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	(2,500)	Nil	Nil
Sub-total	1,985	9,374	16,544
Add: 3% Education Cess	60	281	496
Sub-total	2,045	9,655	17,040
Less: Rebate under section 86 (Working Note)	(1,845)	(8,874)	(10,947)
Tax Liability	200	781	6,093
Tax Liability (Rounded off)	200	780	6,090

Working Note: Rebate under section 86

$$\text{Rebate} = \text{Share from AOP} \times \frac{\text{Total Tax of Member (including education cess)}}{\text{Total Income of Member}}$$

$$P = 3,06,506 \times \frac{2,045}{3,39,706}$$

$$= \text{Rs.} 1,845$$

$$Q = 4,02,079 \times \frac{9,655}{4,37,479}$$

$$= \text{Rs.} 8,874$$

$$R = 3,34,215 \times \frac{17,040}{5,20,215}$$

$$= \text{Rs.} 10,947$$

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., 34.50%.

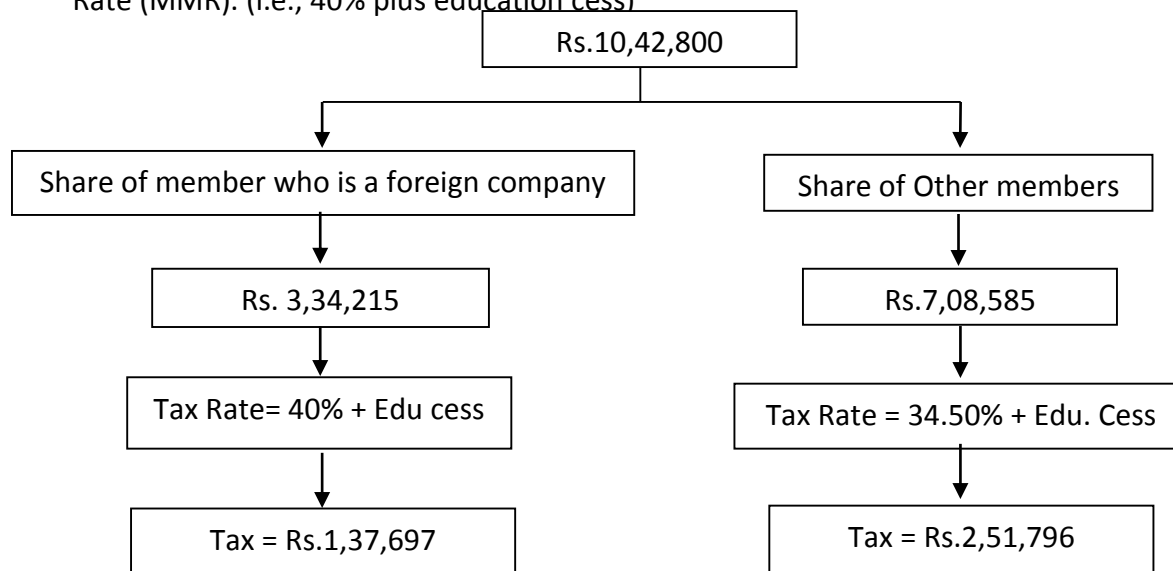
$$\begin{aligned}
 \text{Tax Liability} &= \text{Rs.}10,42,800 \times 34.50\% \\
 &= \text{Rs.}3,59,766 + 3\% \text{ Education Cess} \\
 &= \text{Rs.}3,59,766 + \text{Rs.}10,793 \\
 &= \text{Rs.}3,70,559 \\
 &= \text{Rounded off to Rs. } \mathbf{3,70,560}
 \end{aligned}$$

(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	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)



$$\begin{aligned}
 \text{Tax Liability} &= \text{Rs.}1,37,697 + \text{Rs.}2,51,796 \\
 &= \text{Rs.}3,89,493 \\
 &= \text{Rounded off to Rs. } 3,89,490
 \end{aligned}$$

(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: Education Cess(3%)	-	2,355	2,520
Tax Liability	-	80,855	86,520
Tax Liability (Rounded off)	-	80,860	86,520

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. 33.60%].

$$\begin{aligned}
 \text{Tax Liability} &= \text{Rs.}10,42,800 \times 34.50\% \\
 &= \text{Rs.}3,59,766 + 3\% \text{ Education Cess} \\
 &= \text{Rs.}3,59,766 + \text{Rs.}10,793 \\
 &= \text{Rs.}3,70,559 \\
 &= \text{Rounded off to Rs. } 3,70,560
 \end{aligned}$$

(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%

$$\begin{aligned}
 \text{Tax Liability} &= \text{Rs.}10,42,800 \times 40\% \\
 &= \text{Rs.}4,17,120 + 3\% \text{ Education Cess} \\
 &= \text{Rs.}4,17,120 + \text{Rs.}12,514 \\
 &= \text{Rs.}4,29,634 \text{ rounded off to Rs.}4,29,630
 \end{aligned}$$

(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: Education Cess(3%)	-	2,350	2,520
Tax Liability	-	80,855	86,520
Tax Liability (Rounded off)	-	80,860	86,520

Readers Note:

Practical 6

Suppose in the above Practical 5 – Situation 1, all the members are senior citizens, find out tax liability of AOP.

Solution

Tax liability of AOP will remain same as per Situation 1, even if all the members are senior citizens.

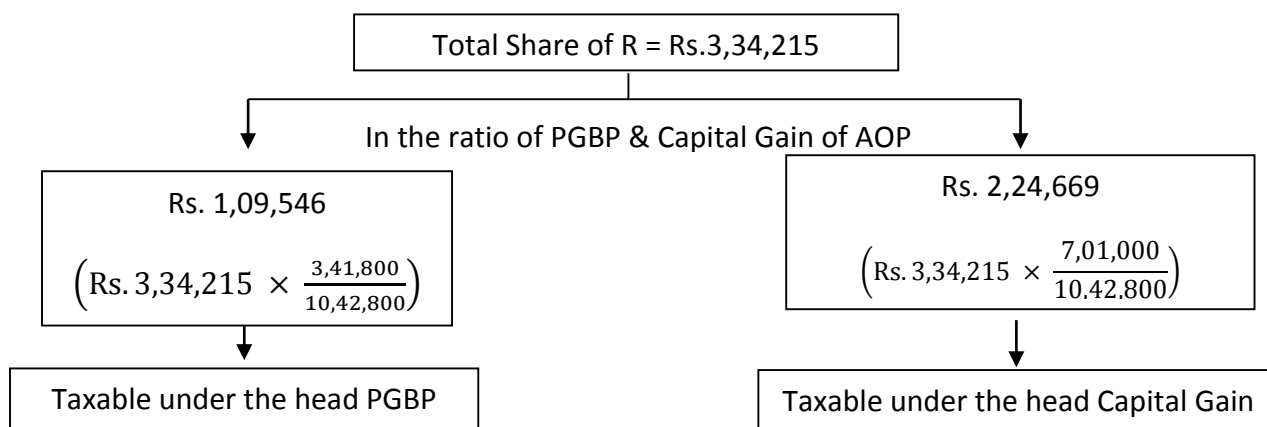
Readers Note:

Practical 7

Suppose in above Practical 5– Situation 1, R has brought forward business loss of Rs.1,18,000. Find out total income of R.

Solution**Computation of Total Income of R**

Particulars	Rs.	Rs.
Business Income (Refer working note)	1,09,546	
Less: Brought forward Business loss (to the extent set-off)	1,09,546	Nil
Capital Gain (Refer working note)		2,24,669
Income From Other Sources		2,72,000
Gross Total Income		4,96,669
Less: Deduction u/s 80C		(86,000)
Total Income		4,10,669
Total Income (Rounded off)		4,10,670
Business Loss to be carried forward		70,454

Working note**Readers Note:****Practical 8**

Mr. A, Mr. B and Mr. C are equal members of AOP. Total income of AOP is Rs.2,43,000. No remuneration and interest have been debited to profit and loss account of of AOP. The other income of members are:-

Mr. A	Rs.2,41,000
Mr. B	Rs.2,45,000
Mr. C	Rs.2,49,000

Find out tax liability of Mr. C

Solution**(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) None of the member has a total (net) income exceeding exemption limit. (Income from AOP shall not be considered at this stage)

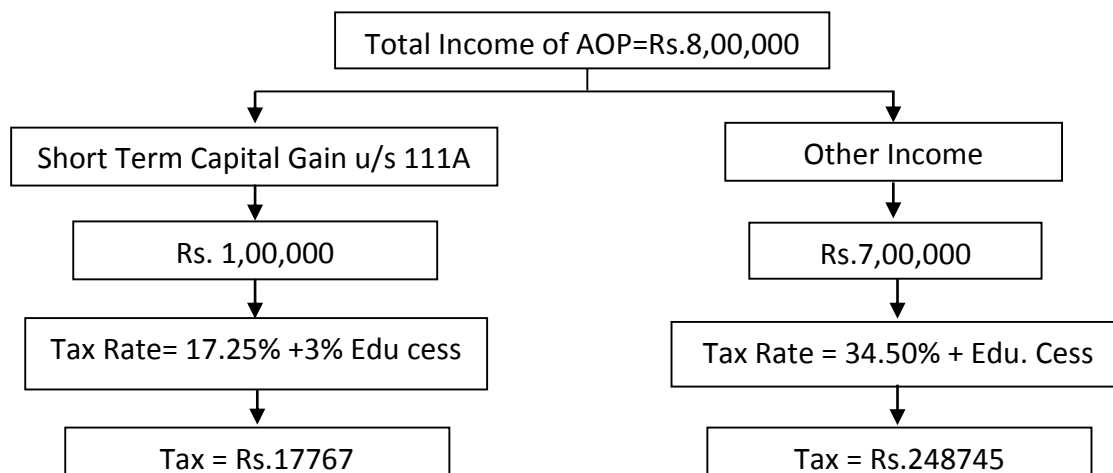
Therefore, total income of AOP shall be taxed as per slab rate. Since, total of income of AOP is Rs. 2,43,000 which is below the exemption limit, tax payable by the AOP is Rs. Nil.

(B) Computation of Tax Liability of Mr. C

Particulars	Rs.
Share from AOP (1/3 rd of Rs. 2,43,000)	81,000
Other income	2,49,000
Gross Total Income	3,30,000
Less: Section 80C to 80 U	Nil
Total Income	3,30,000
Tax Calculation	
Upto Rs.2,50,000 and From Rs.2,50,000 – 3,30,000 (5%)	4,000
Sub-total	4,000
Less: Rebate u/s 87A	(2,500)
Sub-total	1,500
Add: 3% Education Cess	45
Sub-total	1,545
Less: Rebate u/s.86 (Working Note)	
Tax Liability	
Tax Liability (Rounded off)	

Working Note: Rebate under section 86**Readers Note:****Practical 9**

A Ltd, a Indian company, Mr. X and Mr. Y are three members of an AOP sharing profit in ratio of 4 : 3: 3. Total income of the AOP for the relevant assessment year is Rs. 8,00,000, out of which, Rs. 1,00,000 is short term capital gains u/s 111A. Find out tax liability of A.O.P.

Solution**Computation of tax liability of A.OP.**

Tax Liability = Rs.17,767 + Rs.2,48,745
 = Rs.2,66,512 rounded off to Rs.2,66,510

Readers Note:

14 - ASSESSMENT OF CO-OPERATIVE SOCIETIES

14.1 DEFINITION

Section:- 2(19)

“Co-operative society means a society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any state for the registration of co-operative societies.

14.2 DEDUCTION IN RESPECT OF INCOME OF CO-OPERATIVE SOCIETIES

Section:- 80P

In case of co-operative societies, the gross total income includes any income mentioned in following paras, then,

(1) Section 80P(2)(a)

Co-operative society engaged in-

- (i) carrying on the business of banking or providing credit facilities to its members; or
- (ii) a cottage industry; or
- (iii) the marketing of the agricultural produce grown by its members; or
- (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; or
- (v) the processing, without the aid of power, of the agricultural produce of its members; or
- (vi) the collective disposal of the labour of its members; or
- (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,

whole (100%) of the amount of profits and gains of business attributable to any one or more of such activities is deductible..

However, in case of co-operative societies falling under clauses (vi) and (vii) above, the deduction, is available subject to the condition that the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:-

- (i) the individuals who contribute their labour or ,as the case may be, carry on the fishing or allied activities;
- (ii) the co-operative credit societies which provide financial assistance to the society;
- (iii) the State Government.

(2) Section 80P(2)(b)

Co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or given by its members to -

- (i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits or vegetables, as the case may be; or
- (ii) the Government or a local authority; or
- (iii) a Government company as defined in section 617 of the Companies Act, 1956 or a statutory corporation (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables as the case may be, to the public);

whole (100%) of the amount of profits and gains of business such business is deductible..

(3) Section 80P(2)(c)

Co-operative society engaged in activities other than those specified in Para No. 19.1 and Para No. 19.2 above, either independently of, or in addition to, all or any of the activities so specified, so much of its profits and gains attributable to such activities as does not exceed -

- (i) where such co-operative society is a consumers' co-operative society Rs.1,00,000;
 - (ii) in case of any other co-operative society Rs.50,000;
- is deductible.

(4) Section 80P(2)(d)

Any income by way of interest or dividends derived by the co-operative society from its investments in any other co-operative society is deductible.

(5) Section 80P(2)(e)

Any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities is deductible.

(6) Section 80P(2)(f)

Any income by way of interest on securities and income from house property is deductible provided gross total income of the society does not exceed Rs. 20,000.

However, deduction under this clause is not available to the following societies:

- (a) a housing society or
- (b) an urban consumers' society or
- (c) a society carrying on transport business or
- (d) a society engaged in the performance of any manufacturing operations with the aid of power.

14.3 DOUBLE DEDUCTION NOT PERMISSIBLE

Section:- 80P(3)

Where an assessee is also entitled to deduction u/s 80-IA, deduction u/s 80P shall be allowed with reference to such profits and gains as reduced by the deduction allowed under section 80-IA.

14.4 PROVISIONS OF SECTION 80P SHALL NOT APPLY TO ANY CO-OPERATIVE BANK**Section:- 80P(4)**

The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation

For the purposes of this sub-section,-

- (a) “Co-operative Bank” and “Primary agricultural credit society” shall have the meanings respectively assigned to them in part V of the Banking Regulation Act, 1949;
- (b) “Primary Co-operative agricultural and rural development bank” means a society having its area of operation confined to taluka and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

14.5 RATES OF TAX

Total Income	Rate of Income Tax
Upto Rs.10,000	10%
Next Rs.10,000	20%
Balance Income	30%

Surcharge: Surcharge is 12% of income-tax if total income exceeds Rs.1 crore.

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

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

Practical 1

XYZ Co-operative Society manufactures wafers without the aid of power, furnishes following information:

Particulars	Rs.
Income From Manufacturing Operations	12,000
House Property Income	5,000
Interest On Security	2,000

Determine total income.

Solution

Particulars	Rs.
Income From Manufacturing Operations	12,000
House Property Income	5,000
Interest On Security	2,000
Gross Total Income	19,000
Less: Deduction under section 80 P(2)(f)	(7,000)
Less: Deduction under section 80 P(2)(c)	(12,000)
Total Income	Nil

Readers Note:

Practical 2

In the above case, if it manufactures wafers with the aid of power, determine total income.

Solution

Particulars	Rs.
Income From Manufacturing Operations	12,000
House Property Income	5,000
Interest On Security	2,000
Gross Total Income	19,000
Less: Deduction under section 80 P(2)(f)	NIL
Less: Deduction under section 80 P(2)(c)	(12,000)
Total Income	(7,000)

Readers Note:

Practical 3

Suppose in the **Practical 1**, house property income would have been Rs. 7,000 instead of Rs. 5,000. Determine total income.

Solution

Particulars	Rs.
Income From Manufacturing Operations	12,000
House Property Income	7,000
Interest On Security	2,000
Gross Total Income	21,000
Less: Deduction under section 80 P(2)(f)	NIL
Less: Deduction under section 80 P(2)(c)	(12,000)
Total Income	9,000

Readers Note:

Practical 4

XYZ Co-operative Society provides following information:

Particulars	Rs.
Surplus from Marketing of agricultural produce grown by its members	1,20,000
B/f business loss from Marketing of agricultural produce bought and supplied by its members	25,000

Society claimed deduction u/s 80P–Rs.1,20,000. Discuss the correctness of the claim made by the society.

Solution

Deduction under section 80P should be allowed after set off of unabsorbed loss and unabsorbed depreciation of earlier years - **CIT v. Kotagiri Industrial Co-operative Tea Factory Ltd. 224 ITR 604.**

Considering the above, claim made by society is not correct. It can claim deduction under section 80 P amounting to Rs. 95,000 only.

Readers Note:

Practical 5

X Cooperative Society Ltd., markets agricultural produce supplied to it by its members. Its profit and loss Account showed a profit of Rs.10 lakhs on sales of Rs.100 lakhs. (It can be assumed that profits accrued uniformly on sales). The Society's claim for exemption of income from the tax was examined by the Assessing Officer who found that the sales composed of:

Rs.70 lakhs of produce raised by the Society's own members in their agricultural fields; and Rs.30 lakhs of produce bought by the members from the open market and supplied to the Society.

The Assessing Officer wants to deny exemption under section 80P(1) in regard to profits on bought out goods supplied by members to the Society. Is the assessing officer's view correct in law? Discuss.

Solution

As per section 80P, 100% deduction is allowed to the co-operative Society if it earns any income from the activity of marketing of the agricultural produce grown by its members. In the present case, the view of the Assessing Officer for denying exemption on income earned on the sale composed of Rs.30 lakhs of produce bought by the members from the open market and supplied to the society is correct.

Readers Note:**Practical 6**

Kheda Agriculturists Co- operative Society furnishes the following particulars, determine its total income:

- (a) Income from processing of agricultural produce without aid of power: Rs.18,000;
- (b) Income from marketing agricultural produce grown by its members: Rs.5,000;
- (c) Dividends from another co – operative society; Rs.60,000;
- (d) Income from letting of godown: Rs.12,000; and
- (e) Income from agency business: Rs.1,25,000.

Solution

Particulars	Rs.	Rs.
Income from letting of godowns	12,000	
Business income:		
- From processing	18,000	
- From marketing	5,000	
- From agency	1,25,000	1,60,000
Dividend Income		60,000
Gross Total Income		2,20,000
Less: Deductions in respect of income from		
(a) processing of agricultural produce [Sec. 80P(2)(a)]	18,000	
(b) marketing of agricultural produce [Sec.80P(2)(a)]	5,000	
(c) agency business [sec. 80P(2)(c)]	50,000	
(d) dividend [sec. 80P(2)(d)]	60,000	
(e) letting of godowns [sec. 80P(2)(e)]	12,000	1,45,000
Total Income		75,000

Readers Note:

Practical 7

The Totgars Co-operative Sale Society Ltd. was a credit society. It also markets the agricultural produce of its members whose sale proceeds at times were retained by it. This fund was not required immediately for business purposes, it was invested in short term deposits with banks and in Government securities. The assessee claimed deduction of such interest income under section 80P(2)(a)(i) treating it as business income.

The Assessing Officer held that the interest income which the assessee had disclosed under the head 'Income from business' was liable to be taxed under the head 'Income from other sources'. According to the Assessing Officer, the assessee-society had invested the surplus funds as and by way of investment by an ordinary investor, hence, interest on such investment has got to be taxed under the head 'Income from other sources'.

Before the Assessing Officer, it was argued by the assessee that it had invested the funds on short-term basis as the funds were not required immediately for business purposes and, consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed u/s.28 and not u/s.56 of the Act, and, consequently, the assessee was entitled to deduction u/s.80P(2)(a)(i) of the Act.

Whether the claim made by assessee-society is acceptable?

Solution

Supreme Court while dealing with the above issue in case of **The Totgars Co-operative Sale Society Ltd. vs. ITO 322 ITR 283** had drawn following conclusions:

The Supreme Court held that assessee markets the produce of its members whose sale proceeds at times were retained by it. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. Interest on such investments, therefore, could not fall within the meaning of the expression 'profits and gains of business'. Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. The Supreme Court was of the view that such interest income would come in the category of 'Income from other sources', hence, such interest income would be taxed u/s.56 of the Act.

The Supreme Court further held that to say that the source of income is not relevant for deciding the applicability of S. 80P of the Act would not be correct because weightage need to be given to the words 'the whole of the amount of profits and gains of business' attributable to one of the activities specified in S. 80P(2)(a) of the Act. The words 'the whole of the amount of profits and gains of business' emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. In this particular case, the evidence showed that the assessee-society earned interest on funds which were not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, the Supreme Court was of the view, such interest income fell in the category of 'Other Income' which had been rightly taxed by the Department u/s.56 of the Act without giving deduction under section 80P(2)(a)(i).

Considering the above ratio, the claim of assessee society is not acceptable.

Readers Note:

Practical 8

Udaipur Sahakari Upbhokta Thok Bhandar Ltd., a co-operative society registered under the Rajasthan Co-operative Societies Act, 1965, was running a consumer co-operative store at Udaipur since 1963. It had 30 branches. It was dealing in non-controlled commodities through its branches. In addition, the society was also doing the work of distribution of controlled commodities such as wheat, sugar, rice and cloth on behalf of the government under the public distribution scheme (PDS) for which it was getting commission. The distribution of the controlled commodities was regulated by the District Supply Officer (DSO –Authorized Officer) under the Rajasthan Foodgrains and other Essential Articles (Regulation of Distribution) Order, 1976 (for short, "the 1976 Order"). The society claimed to be stockist/distributor of controlled commodities. It took delivery from the Food Corporation of India (FCI) and the Rajasthan Rajya Upbhokta Sangh, as per the directives of the state government. The price, quantity and the person from whom the delivery was to be taken was fixed by the state government under the said 1976 Order. After taking the delivery, the society stored these goods in its godowns, both owned and rented. The storage godowns were open to checking by the concerned officers of the state government. The stocks stored by the appellant were delivered to fair price shops (FPS-retailers), as per the directives of the state government. The quantity price and the FPS to whom the delivery was to be given, were fixed by the state government. According to the society, therefore, the above modus operandi indicated that the state government exercised total control over the stock of controlled commodities stored in the godowns of the assessee society.

On August 31, 1990, the society filed its returns for the assessment year 1989-90, claiming deduction under section 80P(2)(e) of the 1961 Act on the income of commission received by it from the government for storage of controlled commodities. The assessee – society later filed its returns of income for the subsequent assessment years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, inter alia, claiming deduction on the income of commission received by it from the state government for storage of controlled commodities.

Vide order dated March 26, 1992, the AO (Assessing Officer) disallowed the claim on the ground that the appellant-society was a wholesaler of foodgrains and it was not a mere stockist as claimed, and consequently, it was not entitled to deduction under section 80P(2)(e) of the 1961 Act.

Whether the rejection of claim under section 80P(2)(e) is correct?

Solution

Supreme Court while dealing with the above issue in case of **Udaipur Sahkari Upbhokta Thok Bhandar Ltd. Vs. CIT 315 ITR 21** had drawn following conclusions:

The Supreme Court, at the outset, noted that the appellant had composite business. The appellant was a dealer in non-controlled commodities and it was an authorization holder in respect of controlled commodities under the 1976 Order. It owned godowns and it also hired godowns on rent. It earned commission during the relevant assessment years at the rate of 2.25 per quintal (e.g. for rice). Under clause 20 of the 1976 Order, every authorization holder had to comply with general or special directions given in writing from time to time by the Collector in regard to purchase, sale, storage for sale, distribution and disposal of controlled commodities. **The Supreme Court further noted that the appellant earned commission on the principle of "netting". In other words, the appellant set off "issue price" against "sale price" and retained commission fixed at Rs.2.25 per**

quintal.

The Supreme Court, referring to the rate fixation mechanism indicated by one of the orders issued on 12th March, 1987, w.e.f. 1st May, 1987 and adverting to the working given therein, observed that the said working indicated that Rs.247.82 (issue price) was treated by the appellant as expense and it was set off against the sale price of Rs.251.07. In other words, the working indicated cost plus mechanism, i.e. Rs.247.82 was the cost plus profit margin which included Rs.2.25 as commission. Therefore, Rs.2.25 was part of the profit margin. The Supreme Court, referring to the written submissions filed by the appellant, observed that the appellant had taken into its books of account the consolidated value of the closing stock. According to the Supreme Court, the circumstances reinforced that the appellant was storing the commodities in its godowns as a part of its own trading stock.

Applying its judgement in the case of *A. Venkata Subbarao Etc. vs. State of Andhra Pradesh Etc.* AIR 1965 SC 1773, the Supreme Court held that the High Court was right in coming to the conclusion that the assessee was storing the commodities in question in its godowns as part of its own trading stock, hence, it was not entitled to claim deduction for such margin under Section 80P(2)(e) of the 1961 Act.

Considering the above ratio, the claim of assessee- society under section 80 P(2) (e) was rightly rejected.

Readers Note:

15 - ASSESSMENT OF COMPANIES

15.1 MEANING OF COMPANIES

Section:- 2(17)

- Under the Income-tax Act, 1961, the term —company has a wider meaning than we understand under the Companies Act.
- As per section 2(17) of the Income-tax Act, 1961 company means:
 - (1) any Indian company or
 - (2) any body corporate, incorporated by or under the laws outside India or
 - (3) any institution, association or body assessable as a company either under the Indian Income-tax Act, 1922 or for any assessment year commencing on or before 1st April, 1970, or
 - (4) any institution, association, or body, whether incorporated or not and whether Indian or non-Indian which is declared by general or special order of the CBDT to be a company.

15.2 TYPES OF COMPANIES

Section:- 2(26), 2(22A), 2(23A)

(A) Indian Company [Section 2(26)]

An Indian company means a company formed and registered under the Companies Act, 1956 and includes:

- (a) a company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu and Kashmir and the Union territories specified in (c) below:)
- (b) in the case of the State of Jammu and Kashmir a company formed and registered under any law for the time being in force in that State;
- (c) in the case of any of the Union Territories of Dadra and Nagar Haveli, under any law for the time being in force in that Union Territory;
- (d) any corporation established by or under a Central, State or Provincial Act; and
- (e) any institution, association or body which is declared by the Board to be a company under section 2(17).

Provided that in all the above-mentioned cases the registered, or as the case may be, the principal office of the company, corporation, institution, association or body must be in India.

(B) Domestic and Foreign

(1) Domestic company [Section 2(22A)]

Domestic company is one which is an **Indian company** or any other company, which, in respect of its income liable to tax under the Income-tax Act, 1961 has made the prescribed arrangements for the declaration and payment within India of the dividends out of such income.

(2) Foreign company [Section 2(23A)]

It means a company which is not a domestic company.

(C) Widely-held and Closely-held Companies**(a) Companies in which public are substantially interested (Also known as Widely – held companies)**

To determine whether a company is one in which the public are substantially interested, one has to apply the tests laid down in section 2(18). Briefly, the following companies fall under this category:

- I. *Owned by Government/RBI* - A company owned by the Government or the Reserve Bank or in which not less than 40 per cent shares are held by the Government or the Reserve Bank or a corporation owned by the Reserve Bank. (whether singly or taken together)
- II. *Section 25 companies* - A company registered under section 25 of the Companies Act, 1956, namely, companies for promotion of commerce, art, science, religion, charity and prohibiting the payment of any dividends to its members.
- III. *A company without share capital* - A company having no share capital but declared by the Central Board of Direct Taxes to be a company in which the public are substantially interested.
- IV. *Nidhi or Mutual Benefit Society* - A company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under section 620A of the Companies Act to be a Nidhi or Mutual Benefit Society.
- V. *Company owned by a co-operative society* - A company in which shares carrying not less than 50 per cent of the voting power having been allotted unconditionally to or acquired unconditionally by, and are throughout the relevant previous year held by one or more co-operative societies.
- VI. *Listed companies* - A company which is not a private company and its equity shares are, as on the last day of the previous year, listed in a recognised stock exchange in India.
- VII. *Public limited company owned by Government and/or a widely-held company* - A company which is not a private company [as defined in section 3(1)(iii) of the Companies Act, 1956] and its shares carrying 50 per cent of voting power (40 per cent in the case of shipping / mining / manufacturing/ generating or distributing power companies) have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by —
 - a. the Government ; or
 - b. a statutory corporation ; or
 - c. a company in which the public are substantially interested or any wholly-owned subsidiary company.

(b) Closely held companies

The companies in which public are not substantially interested is known as closely held companies.



Section 2(22) (e), Section 56(2), Section 68, Section 79.

15.3 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 15.3	MAT and its applicability
Para 15.3A	Book Profit – How to Determine?
Para 15.3B	Special Adjustments to arrive at book profit for IND AS Compliant companies
Para 15.3C	Special Adjustments to arrive at book profit for demerged company and resulting company
Para 15.3D & 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 per cent of the book profit, **such book profit shall be deemed to be the 'total income', chargeable to tax at the rate of 18.5 per cent (plus SC+EC).**

Amendment by Finance Act, 2016

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

Practical 1

Whether the provisions of MAT are applicable to Life Insurance Company?

Solution

Amendment by Finance Act, 2012: with retrospective effect from A.Y. 2001-02

Section 115JB(5A) provides that any income accruing or arising to a company from life insurance business referred to in section 115B would not be subject to MAT.

Readers Note:

Practical 2

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 3**

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

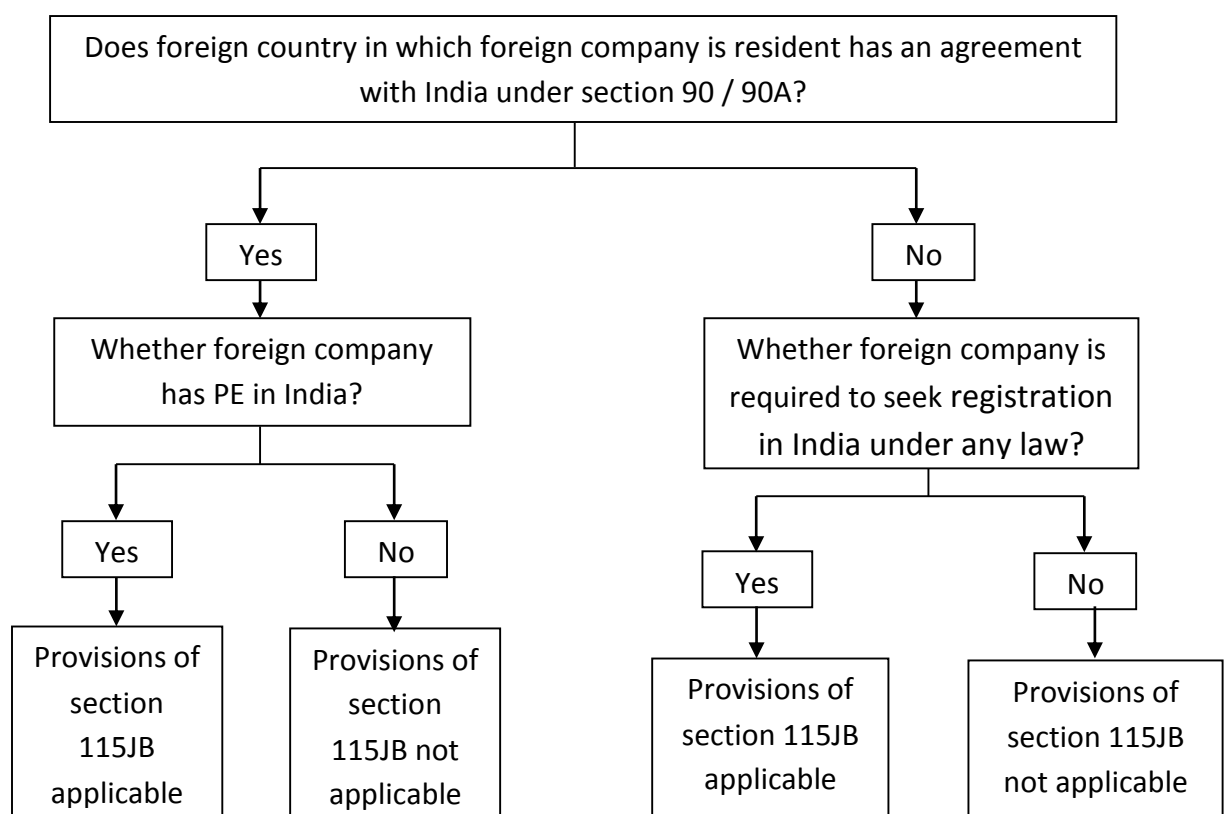
Solution

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:**

15.3A | BOOK PROFIT – HOW TO DETERMINE?**Section:- 115JB(2)**

Profit as shown in statement of profit and loss (after 27 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) Twenty Seven adjustments to Profit as shown in statement of profit and loss to convert it into Book Profit [Explanation to section 115JB (2)]**Fifteen 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
- (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,
- 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
 - the amount representing notional loss resulting from any change in carrying amount of said units or
 - 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 (Inserted by FA 2016, effective from A.Y. 2017-18)
- (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.
- Explanation: Amount of income tax shall include,*
- any tax on distributed profits under section 115-O or on distributed income u/s 115-R
 - any interest charged under this Act
 - Surcharge, if any has levied by the central Acts from time to time.
 - 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.

Twelve Negative Adjustments—

Profit as shown in the statement of profit and loss is to be reduced by the following amounts:

- 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)
- 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
- the amount of depreciation debited to the statement of profit and loss (excluding the depreciation on account of revaluation of assets); or
- 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 (Inserted by FA 2015, effective from A.Y. 2016-17)
- (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; (Inserted by FA 2015, effective from A.Y. 2016-17)
- (9) the amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF; (Inserted by FA 2016, effective from A.Y. 2017-18) or
- (10) 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
- (11) 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;
- (12) Amount of deferred tax, if any such amount is credited to statement of profit and loss.

15.3B 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 realisation/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 realisation/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

- 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.

Reference year for first time adoption adjustments

- 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. It is proposed that for the purposes of computation of book profits of the year of adoption and the proposed adjustments, the amounts adjusted as of the opening date of the first year of adoption shall be considered. For example, companies which adopt Ind AS with effect from 1 April 2016 are required 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 1 April 2015 and restate the financial statements for the comparative period 2015-16. In such a case, the first time adoption adjustments as of 31 March 2016 shall be considered for computation of MAT liability for previous year 2016-17 (Assessment year 2017-18) and thereafter. Further, in this case, the period of five years proposed above shall be previous years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21.

- As the Ind-AS is required to be adopted by certain companies for financial year 2016-17 mandatorily, these amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

15.3C 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.

15.3D COMPUTATION OF TAX LIABILITY

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

REMARK:

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

15.3E 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.2015-16 <u>does not exceed</u> Rs.50 Crore	If Total Turnover or Gross Receipts in P.Y.2015-16 <u>exceeds</u> Rs.50 Crore	
	Tax rates	Tax rates	Tax rates
Short Term Capital Gain u/s.111A	15% + SC+EC	15% + SC+EC	15%+ SC+EC
Long-term capital gain	20% +SC+EC	20% +SC+EC	20%+ SC+EC
Winnings from lotteries	30% + SC+EC	30% + SC+EC	30%+ SC+EC
Other income	25%+ SC+EC	30%+ SC+EC	40%+ SC+EC

(B) Tax on income of certain domestic companies.[Section 115BA]

- (1) Notwithstanding anything contained in this Act but subject to the provisions of section 111A and section 112, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent, if the conditions contained in sub-section (2) are satisfied.
- (2) For the purposes of sub-section (1), the following conditions shall apply, namely:—
- 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
 - the total income of the company has been computed,—
 - without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AC or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AC or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the

heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

- (ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and
- (iii) depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed. [By notification no. 103/2016, depreciation claim has been restricted to 40% in case of block of assets where the prescribed rate of depreciation is more than 40%].

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

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

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

(C) 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%

(D) Education Cess

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

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

Practical 4

PQR Ltd. is engaged in manufacturing of goods. It provides following information for the previous year 2017-18.

Profit & Loss Account

Particulars	Rs.	Particulars	Rs.
Cost of Goods sold	7,02,52,000	Sales	7,36,19,350
Entertainment Expenses	19,500	Interest on Fixed Deposit	1,54,900

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

Additional Information

- (1) Depreciation of Rs.5,17,000 includes depreciation of Rs.17,000 on account of upward revaluation of fixed asset.
- (2) Brought forward loss and unabsorbed depreciation as per books of accounts is Rs.2,10,000 and Rs.6,000 respectively.
- (3) Depreciation allowable under section 32 of Income Tax Act was Rs. 5,36,000
- (4) Brought forward business loss for tax purpose Rs. 13,52,000
- (5) Brought forward unabsorbed depreciation for tax purpose Rs. 13,000
- (6) Company is eligible for deduction under section 80-IC @ 30%
- (7) Total turnover of the company for the previous year 2015-16 was Rs. 56.05 Cr.

Compute tax liability.

Solution**Step 1: Computation of Book Profit**

Particulars	Rs.	Rs.
Net Profit as per Profit & Loss Account		19,99,000
Add: Positive Adjustments		
Depreciation	5,17,000	
Provision for Bad and doubtful Debts	16,000	
Interest for late filing of income tax return	2,000	
Provision for unascertained liabilities	75,000	
Loss of subsidiary company	39,000	
Provision for Income Tax	2,25,000	
Proposed Dividend and CDT	64,350	9,38,350

Less: Negative Adjustments		
Dividend from Indian Companies	(1,00,000)	
Deferred Tax	(25,000)	
Income by way of share in income of AOP (which is not subject to tax)	(41,100)	
Depreciation (excluding depreciation on account of revaluation)	(5,00,000)	
Brought forward loss or unabsorbed depreciation whichever is lower [as per books of accounts]	(6,000)	(6,72,100)
Book Profit		22,65,250

Step 2: Computation of MAT Liability

Particulars	Rs.
MAT @18.5% of Book Profit (Rs. 22,65,250)	4,19,071
Add: education Cess: (3%)	12,572
MAT Liability	4,31,643

Step 3. Computation of total income

Particulars	Rs.)
<u>Income Under head PGBP</u>	
Net Profit as per profit and loss account	19,99,000
Less: Interest on Fixed Deposit (to be considered under "IFOS")	(1,54,900)
Less: Dividend from Indian Companies (Exempt)	(1,00,000)
Less: 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. 2013-14)	15,000
Add: Custom Duty (Assuming that it has not paid before due date of filing return)	21,000
Add: Provision for unascertained liability	75,000
Add: Losses of subsidiary	39,000
Add: Provision for Income Tax	2,25,000
Add: Proposed Dividend and CDT	64,350
Sub-total	26,62,350
Less: Depreciation as per Income Tax	(5,36,000)
Balance	21,26,350
Less: brought forward Business Loss	(13,52,000)

Balance	7,74,350
Less: unabsorbed depreciation	(13,000)
Income Under the head PGBP	7,61,350
Add: Income from Other Sources (FD Interest)	1,54,900
Gross total income	9,16,250
Less: Deduction under section 80IB (30% of PGBP)	2,28,405
Total Income	6,87,845

Step 4: Computation of Regular Tax Liability

Particulars	Rs.
Regular tax @ 30% of Total Income	2,06,354
Add: education Cess: (3%)	6191
Regular tax liability	2,12,545

Step 5: Final Tax Payable

Particulars	Rs.
MAT Liability as per Step 2	4,31,643
Regular Tax Liability as per Step 4	2,12,545
Whichever is higher	4,31,643

Readers Note:**Practical 5**

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 @18.5% of Book Profit (Rs. 54,00,000)	9,99,000
Add: education Cess: (3%)	29,970
MAT Liability	10,28,970

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 @ 30% of Total Income (Rs. Nil)	Nil
Add: education Cess: (3%)	Nil
Regular tax liability	Nil

Step 5: Final Tax Payable

Particulars	Rs.
MAT Liability as per Step 2	10,28,970
Regular Tax Liability as per Step 4	Nil
Whichever is higher	10,28,970

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 6

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 7**

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 8**

From the following information, find out the amount of negative adjustment to be done during previous year **2017-18** 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)
2014-15	2	5
2015-16	-	3
2016-17	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)
2014-15	2	5
2015-16	Nil	3
2016-17	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 **2017-18** is Rs. 10 Lacs.

Readers Note:**Practical 9**

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

Step 2. Computation of MAT Liability

Particulars	Rs.
MAT @ 18.5% of Book Profit (Rs. 13,25,000)	2,45,125
Add: education Cess: (3%)	7,354
MAT Liability	2,52,479
MAT Liability (Rounded Off)	2,52,480

Notes:

(1) It is only the specific items mentioned under Explanation 1 to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted 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 10**

The net profit of ABP Ltd. as per Profit & Loss Account for the previous year **2017-18** is Rs. 100 lacs after debiting/crediting the following items:

- Provision for income-tax : Rs. 15 lacs
- Provision for deferred tax : Rs. 8 lacs
- Proposed Dividend : Rs. 20 lacs
- Depreciation debited to Profit & Loss Account is Rs. 12 lacs. This includes depreciation on revaluation of asset to the tune of Rs. 2 lacs.
- Profit from unit established in Special Economic Zone : Rs. 30 lacs
- Provision for permanent diminution in value of investments : Rs. 2 lacs

Brought forward losses and unabsorbed depreciation as per books of the company are as follows:

Previous Year	Brought Forward Loss (Rs. In lacs)	Unabsorbed Depreciation (Rs. In lacs)
2014-15	2	5
2015-16	-	3
2016-17	10	2

Compute book profit of the company under section 115JB for Assessment Year **2018-19**.

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:

15.4 POWER OF ASSESSING OFFICER TO ALTER NET PROFIT OF THE COMPANY.

Section:- Proviso to section 115JB(2)

It shall be ensured while preparing the annual accounts including profit and loss account that —

- (i) the accounting policies;
- (ii) the accounting standards adopted for preparing such accounts including profit and loss account;
- (iii) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including statement of profit and loss and laid before the company at its annual general meeting in accordance with the provisions of section 129 of the Companies Act, 2013.

Practical 11

Discuss the power of assessing officer to go behind the net profit shown by a company in light of Supreme Court decision in case of **Apollo Tyres Ltd. v. CIT** [2002] 255 ITR 273.

Solution

Following are the key observation of Supreme Court while dealing with the above issue for erstwhile provisions of Section 115J (now section 115JB).

- The assessing officer while computing the book profit under section 115JB, has only power of examining whether books of accounts certified by the chartered accountant under the Companies Act as having been properly maintained in accordance with the requirements under the said Act.
- The assessing officer, thereafter, has the limited power of making positive and negative adjustments as provided in explanation to section 115JB(2).
- The provisions of section 115JB does not empower the assessing officer to embark upon a fresh enquiry in regard to the entries made in the books of account of the company.
- The assessing officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent mentioned in section 115JB.

Readers Note:

15.5 OTHER MISCELLANEOUS PROVISIONS**Section:- 115JB(3), 115JB(4) AND 115JB(5)****(A) Loss which can be carried forward [Section 115JB(3)]**

In respect of the relevant previous year, the amounts determined under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A, shall be allowed to be carried forward to the subsequent year or years, even though tax liability of the company falls under MAT.

(B) Report from a chartered accountant [Section 115JB(4)]

Every company to which section 115JB applies, shall furnish a report in the prescribed form (Form No. 29B) from a chartered accountant certifying that the book profit has been computed in accordance with the provisions of section 115JB, along with the return of income filed under section 139(1) or along with the return of income furnished in response to a notice u/s 142(1)(i).

(C) Applicability of other provisions of the Income Tax Act [Section 115JB(5)]

Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company.

Practical 12

BYE BYE Limited provides following information:

- (a) Book Profit for the relevant previous year was Rs. 10 lacs.
- (b) It earned Rs.38 lacs under the head "PGBP" and Rs. 2 lacs under the head "IFOS". These incomes are before set off.
- (c) It has brought forward loss of Rs. 28 lacs and unabsorbed depreciation amounting to Rs. 42 lacs.

Find out tax liability of BYE BYE Limited.

Solution**Step 1: Computation of Book Profit (Given) - Rs.10 lakhs****Step2. Computation of MAT Liability**

Particulars	Rs. In lakhs
MAT @18.5% of Book Profit (Rs. 10 lakhs)	1.850
Add: education Cess: (3%)	0.055
MAT Liability	1.905

Step 3. Computation of total income

Particulars	Rs. In lakhs	Rs. In lakhs
Income Under head PGBP	38	
Less: Brought forward business loss	(28)	10
Income Under head "Other Sources"		2
Total Income before unabsorbed depreciation		12
Less: Set off of unabsorbed depreciation		(12)
Total Income		Nil
Note: Unabsorbed Depreciation carried forward (Rs. 42 lakhs - Rs.12 lakhs)		30

Step 4: Computation of Regular Tax Liability

Particulars	Rs. In lakhs
Regular tax @ 30% of Total Income (Rs. Nil)	Nil
Add: education Cess: (3%)	Nil
Regular tax liability	Nil

Step 5: Final Tax Payable

Particulars	Rs. In lakhs
MAT Liability as per Step 2	1.905
Regular Tax Liability as per Step 4	Nil
Whichever is higher	1.905

Readers Note:**Practical 13**

In the above practical, BYE BYE Limited would like to carry forward entire business loss of Rs. 28 lacs and unabsorbed depreciation of Rs. 42 Lacs on the ground that its liability falls under MAT. Whether claim made by BYE BYE Limited is tenable?

Solution

Supreme Court, while dealing with the similar issue, in case of *Karnataka Small Scale Industries Development Corporation Ltd. Vs. CIT (2002) 258 ITR 770 (SC)* observed that if set-off under normal provisions would not have been allowed, then assessee would not have been assessable under section 115JB of the Act. It also observed that set-off claimed is not a fictional or notional but actual set-off. According to Supreme Court, section 115JB(3) just preserve right to carry forward the balance losses and unabsorbed depreciation to the next year.

Considering the above observations of Supreme Court, BYE BYE Ltd. is advised to carry forward unabsorbed depreciation of Rs.30 lakhs only.

Readers Note:

15.6 | SCHEME OF MAT CREDIT**Section:- 115JAA**

Scheme of MAT Credit, its set off and rules of carry forward is as under:-

1. 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)**
2. 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)**
3. 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.
4. The MAT credit will not bear any interest.
5. This section has been amended with effect from assessment year 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 14

From the following information, compute tax liability, MAT credit to be carried forward if any and tax payable after MAT credit set off, if any.

(Rs. In lakhs)

Particulars	1 st Year	2 nd Year	3 rd Year	4 th Year
Regular Tax Liability	20	22	32	12
MAT liability	25	24	29.50	11.75

Solution

1 st Year		
Sr. No.	Particulars	Rs. In lakhs
A.	Regular Tax Liability	20
B.	MAT Liability	25
C.	Tax Liability (A or B whichever is higher)	25
D.	Tax Payable	25
E.	MAT Credit arose in this year (MAT Liability – Regular Tax Liability)	5
F.	No. of years MAT Credit can be carried forward	Next 15 Years

2 nd Year		
Sr. No.	Particulars	Rs. In lakhs
A.	Regular Tax Liability	22
B.	MAT Liability	24
C.	Tax Liability (A or B whichever is higher)	24
D.	Tax Payable	
E.	MAT Credit arose in this year (MAT Liability – Regular Tax Liability)	2
F.	Total MAT Credit to be carried forward	
	- Relating 1 st Year (next 14 Years)	5
	- Relating 2 nd Year (next 15 Years)	2

3 rd Year		
Sr. No.	Particulars	Rs. In lakhs
A.	Regular Tax Liability	32
B.	MAT Liability	29.50
C.	Tax Liability (A or B whichever is higher)	32
D.	Tax Payable	32.00 lakhs
	Less: MAT Credit Set off (to the extent of difference between Regular Tax Liability and MAT Liability: Rs.32 lakhs-29.50 lakhs)	(2.50 lakhs)
E.	Total MAT Credit to be carried forward	29.50
	- Relating to 1 st Year – (5 lakhs -2.5 lakhs) [for next 13 years]	2.5
	- Relating to 2 nd Year [for next 14 years]	2

4 th Year		
Sr. No.	Particulars	Rs. In lakhs
A.	Regular Tax Liability	12
B.	MAT Liability	11.75
C.	Tax Liability (A or B whichever is higher)	12
D.	Tax Payable	12.00 lakhs
	Less: MAT Credit Set off (to the extent of difference between Regular Tax Liability and MAT Liability: Rs.12 lakhs-11.75 lakhs)	(0.25 lakhs)
E.	Total MAT Credit to be carried forward	11.75
	- Relating to 1 st Year –(2.50 lakhs-0.25 lakhs) [for next 12 years]	2.25
	- Relating to 2 nd Year [for next 13 years]	2

Readers Note:

Practical 15

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:

15.7 CONCESSIONAL RATE OF TAX ON DIVIDEND RECEIVED FROM SPECIFIED FOREIGN COMPANY

Section:- 115BBD

- (i) Dividends received by Indian companies from specified foreign companies to be subject to a concessional rate of 15%.
- (ii) This concessional rate of 15% shall be subject to the condition that no expenditure or allowance shall be allowed against such dividend income.
- (iii) For the purpose of this section,
- (a) “dividends” shall have the same meaning as is given to “dividend” in clause (22) of section 2 but shall not include sub-clause (e) thereof;
- (b) “specified foreign company” means a foreign company in which the Indian company holds twenty-six per cent or more in nominal value of the equity share capital of the company.

Practical 16

From the following information, compute tax liability of Agra Fruit-Vegetable Ltd. Ignore MAT effect and assume that there are no other incomes for the concerned previous year.

Dividend income from Equity investment (Gross) (Rs.)	Dividend received from	% of shareholding	Expenditure for realizing dividend (Rs.)
1,80,000	Agra US INC, foreign company	26% of nominal value of equity share capital	5,000
52,000	Agra UK Ltd., Foreign company	24 % of nominal value of equity share capital	2,000
55,000	Agra Telecom Ltd, Indian Company	30% of nominal value of equity share capital	200

Solution

Dividend received from-	% of Holding in Equity Share Capital of the company	Whether Specified foreign company?	Whether Section 115BBD is applicable ?	Tax Rate Applicable	Dividend income from Equity investment (Gross) (Rs.)	Expenditure for realizing dividend	Net Income (Rs.)	Tax liability (Rs.)
Agra US INC, foreign company	26%	Yes	Yes	15%	1,80,000	As per section 115BBD, no deduction is allowed	1,80,000	27,000
Agra UK Ltd., Foreign company	24%	No	No	30%	52,000	Deduction is available u/s Section 57(i) of Rs.2,000	50,000	15,000

Agra Telecom Ltd, Indian Company	30%	No	No	Exempt u/s 10(34)	Exempt	Deduction not allowed because income is exempt u/s 10(34)	Exempt	NIL
TOTAL								42,000
Add: 3% Education Cess								1260
Tax Liability								43,260

Readers Note:

15.8 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) Meaning of “dividend” for the purpose of this section.

For the purpose of section 115-O the expression “dividend” shall have the same meaning as is given to under section 2(22), but it shall not include sub-clause (e) of section 2(22).

(C) Rate of dividend distribution tax

The rate of dividend distribution tax is 15% increased by surcharge (irrespective of amount of dividend) and E.C. Therefore, effective rate of CDT is 17.304%.

(D) Amount on which CDT is payable

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, where tax is payable by holding company 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 $\left(\text{Net Distributed Profits} \times \frac{15}{100-15} \right)$ [as per amendment made by Finance Act, 2014]	XXX
Amount on which Corporate Dividend tax is Payable	XXX

(E) 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.

Practical 17

A Ltd. holds 60% share capital of B Ltd. On 10th August, **2017**, B Ltd. declared dividend of Rs.5,00,000 on which B Ltd. had paid corporate dividend tax. On 1st October, **2017**, A Ltd. wants to declare dividend of Rs.12,00,000. Find out corporate dividend tax payable by A Ltd assuming that A Ltd. and B Ltd. both are Indian companies.

Solution

Computation of Corporate Dividend Tax Payable by A Ltd.

Particulars	Rs.
Amount declared, distributed or paid by a domestic company by way of dividend	12,00,000
Less: (1) The amount of dividend, if any, received [60% of 5,00,000] during the financial year from domestic subsidiary [B. Ltd.] , where subsidiary has paid the tax under section 115-O.	(3,00,000)
(2) The amount of dividend, if any, received during the financial year from foreign subsidiary, where tax is payable by holding company on such dividend under section 115BBD	(Nil)
(3) The amount of dividend, if any, paid to New Pension System Trust referred to in section 10 (44).	(Nil)
Net Distributed Profits	9,00,000
Add: Grossing up of dividend $\left(9,00,000 \times \frac{15}{85} \right)$	1,58,824
Amount on which CDT is payable	10,58,824
Corporate Dividend Tax [10,58,824 x 17.304%]	1,83,219

Readers Note:

Practical 18

A Ltd. holds 60% equity of B Ltd. B Ltd. holds 70% equity of C Ltd. On 1st April **2017**, C Ltd. declared dividend Rs.2,00,000. On 1st June, **2017**, B Ltd. declared dividend of Rs.3,00,000. On 1st September, **2017**, A Ltd. declared dividend of Rs.5,00,000. Find out amount on which corporate dividend tax is payable by the respective companies assuming that all are Indian companies.

Solution**C Ltd.**

Particulars	Rs.
Amount declared, distributed or paid by a domestic company by way of dividend	2,00,000
Net Distributed Profits	2,00,000
Add: Grossing up of dividend $\left(2,00,000 \times \frac{15}{85}\right)$	35,294
Amount on which CDT is payable	2,35,294

B Ltd.

Particulars	Rs.
Amount declared, distributed or paid by a domestic company by way of dividend	3,00,000
Less: (1) The amount of dividend, if any, received [70% of Rs. 2,00,000= Rs. 1,40,000] during the financial year from domestic subsidiary [C. Ltd.] , where subsidiary has paid the tax under section 115-O.	(1,40,000)
Net Distributed Profits	1,60,000
Add: Grossing up of dividend $\left(1,60,000 \times \frac{15}{85}\right)$	28,235
Amount on which CDT is payable	1,88,235

A Ltd.

Particulars	Rs.
Amount declared, distributed or paid by a domestic company by way of dividend	5,00,000
Less: (1) The amount of dividend, if any, received [60% of Rs. 3,00,000= Rs. 1,80,000] during the financial year from domestic subsidiary [B. Ltd.] , where subsidiary has paid the tax under section 115-O- [Here, B Ltd paid tax under 115 O on Rs. 1,60,000- See Calculation of B Ltd. above].	(1,60,000)
Net Distributed Profits	3,40,000
Add: Grossing up of dividend $\left(3,40,000 \times \frac{15}{85}\right)$	60,000
Amount on which CDT is payable	4,00,000

Readers Note:

Practical 19

A Ltd. an Indian company wants to declare dividend of Rs.9,00,000 on **31st July, 2017**. It received dividend from the following companies:-

- (a) Rs.1,00,000 received from X Ltd., an Indian company (in which A Ltd. holds 40% equity).
- (b) Rs.50,000 received from Y Ltd., an Indian company (in which A Ltd. holds 51% equity).
- (c) Rs.1,25,000 received from Z Ltd., a Foreign company (in which A Ltd. holds 26% equity).
- (d) Rs.2,00,000 received from Q Ltd., a Foreign company (in which A Ltd. holds 60% equity).

Calculate amount on which CDT is payable by A Ltd.

Solution**Amount on which CDT is payable by A Ltd.**

Particulars	Rs.
Amount declared, distributed or paid by a domestic company by way of dividend –A Ltd.	9,00,000
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-Y. Ltd.	(50,000)
(2) The amount of dividend, if any, received during the financial year from foreign subsidiary, where tax is payable by holding company on such dividend under section 115BBD-Q Ltd.	(2,00,000)
(3) The amount of dividend, if any, paid to New Pension System Trust referred to in section 10 (44).	(----
Net Distributed Profits	6,50,000
Add: Grossing up of dividend $\left(6,50,000 \times \frac{15}{85}\right)$	1,14,706
Amount on which CDT is payable	7,64,706
Corporate Dividend Tax [7,64,706x 17.304%]	1,32,325

NOTES:

- 1) Since X Ltd is not a subsidiary of A Ltd therefore, dividend received from X Ltd is not eligible for deduction.
- 2) Since Z Ltd is not a subsidiary of A Ltd therefore, dividend received from Z Ltd is not eligible for deduction even though dividend received from Z Ltd is subject to section 115BBD

Readers Note:**(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
 - a. declaration of any dividend ; or
 - b. distribution of any dividend ; or
 - c. 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, 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	<u>(xxx)</u>
Unpaid dividend distribution tax	<u>Xxxx</u>

(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.

15.9 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.

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 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	<u>(xxx)</u>
Unpaid tax on distributed income	<u>Xxxx</u>

(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.

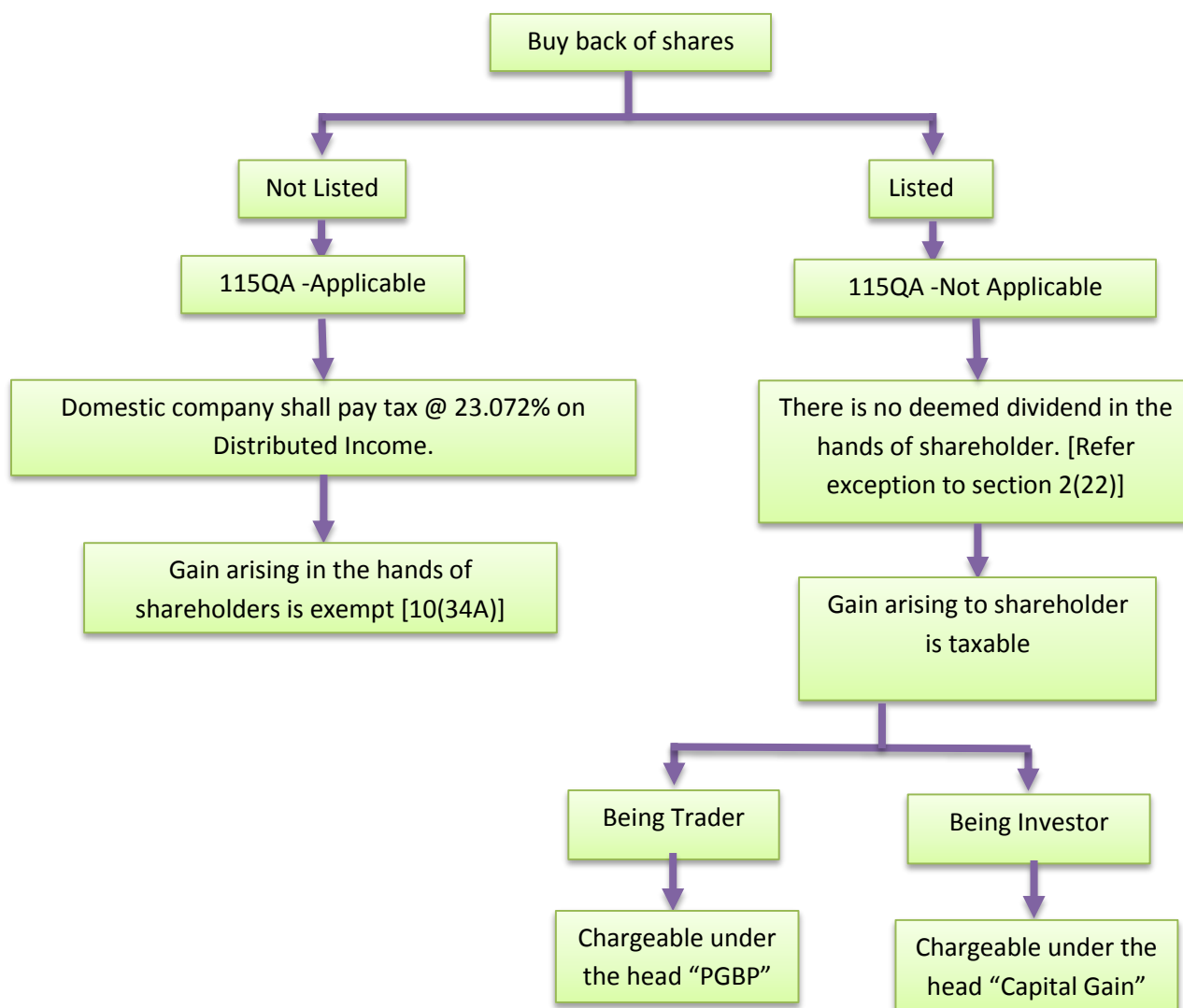
(K) Notification 94/2016

The CBDT has, vide this notification, inserted Rule 40BB to provide the manner of determination of the amount received by the company for issue of shares being bought back in various circumstances including shares being issued under tax neutral reorganisations and in different tranches as follows:

Sub Rule No.	Circumstance	Manner of determination of amount received by the company in respect of issue of shares being bought back
2	Where shares have been issued by a company to any person way of subscription	Amount actually received by the company in respect of such share including any amount actually received by way of premium.
3	Where the company had at any time, prior to the buy-back of the share, returned any sum out of the amount received in respect of such share	The amount actually received in respect of such shares as reduced by the sum so returned However, if the sum or any part of it so returned was chargeable to additional income-tax under section 115-O and the company has paid such additional income tax, then, such sum or part thereof, as the case may be, shall not be reduced.
4	Where the share has been issued by a company under any plan or scheme under which an employees' stock option has been granted or as part of sweat equity shares	The fair market value of the share as computed in accordance of Rule 3(8), to the extent credited to the share capital and share premium account by the company shall be deemed to be the amount received by the company for issue of said share. “Sweat equity shares” means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called [Clause (b) of <i>Explanation</i> to section 17(2)(vi)].
5	Where the share has been issued by a company being an amalgamated company, under a scheme of amalgamation, in lieu of the share or shares of an amalgamating company	The amount received by the amalgamating company in respect of such share or shares determined in accordance with this rule, shall be deemed to be the amount received by the amalgamated company in respect of the share so issued by it.
6	Where the Shares are issued by resulting company under a scheme of demerger	Amount received by the resulting company in respect of shares issued by it under a scheme of demerger: $\left(\begin{array}{l} \text{Amount received by the demerged} \\ \text{co. in respect of the original shares} \\ \text{(determined as per this Rule)} \end{array} \right) \times \frac{\text{Net book value of assets transferred in a demerger}}{\text{Networth of the demerged co. immediately before demerger}}$
7		Amount received in respect of the original shares issued by the demerged company post demerger:

		$\left(\frac{\text{The amount received by the demerged company in respect of the original shares}}{\text{(the amount as so arrived under sub – rule (6))}} \right) -$						
8	Where the share has been issued or allotted by the company as part of consideration for acquisition of any asset or settlement of any liability	The amount received by the company for issue of such share shall be determined in accordance with the following formula- Amount received = A/B Where, A = an amount being lower of the following amounts- <table><tr><td>(a)</td><td>$\left(\frac{\text{FMV of the asset or liability as determined by a Merchant Banker}}{\frac{\text{The part consideration being paid by issue of shares}}{\text{the total consideration}}} \right) \times$</td></tr><tr><td>(b)</td><td>the amount of consideration for acquisition of the asset or settlement of the liability to be paid in the form of shares, to the extent credited to the share capital and share premium account by the company;</td></tr><tr><td>(c)</td><td></td></tr></table> B = the number of shares issued by the company as part of consideration:	(a)	$\left(\frac{\text{FMV of the asset or liability as determined by a Merchant Banker}}{\frac{\text{The part consideration being paid by issue of shares}}{\text{the total consideration}}} \right) \times$	(b)	the amount of consideration for acquisition of the asset or settlement of the liability to be paid in the form of shares, to the extent credited to the share capital and share premium account by the company;	(c)	
(a)	$\left(\frac{\text{FMV of the asset or liability as determined by a Merchant Banker}}{\frac{\text{The part consideration being paid by issue of shares}}{\text{the total consideration}}} \right) \times$							
(b)	the amount of consideration for acquisition of the asset or settlement of the liability to be paid in the form of shares, to the extent credited to the share capital and share premium account by the company;							
(c)								
9	Where the shares have been issued or allotted by a company on succession or conversion, as the case may be, of a firm into the company or succession of sole proprietary concern by the company	The amount received by the company for issue of shares shall be determined in accordance with the following formula- Amount received = (A-B)/C A= book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset; For determining book value of the assets, any change in the value of the assets consequent to their revaluation shall be ignored. B = book value of liabilities shown in the balance-sheet, but does not include the following amounts, namely:-						

		(a) capital, by whatever name called, of the proprietor or partners of the firm, as the case may be; (b) reserves and surpluses, by whatever name called, including balance in profit and loss account; (c) any amount representing provision for taxation, other than amount of tax paid, as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, 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; (d) any amount representing provisions made for meeting liabilities, other than ascertained liabilities; and (e) any amount representing contingent liabilities, C = number of shares issued on conversion or succession.
10	Where the share has been issued or allotted, without any consideration, on the basis of existing shareholding in the company	The consideration in respect of such share shall be deemed to be "Nil"
11	Where the shares have been issued on conversion of preference shares or bond or debenture, debenture-stock or deposit certificate in any form or warrants or any other security issued by the company	The amount received by the company in respect of such instrument as so converted
12	Where the share being bought back is held in dematerialized form and the same cannot be distinctly identified	The amount received by the company in respect of such share shall be the amount received for the issue of share determined in accordance with this rule on the basis of the first-in-first-out method.
13	In any other case	The face value of the share shall be deemed to be the amount received by the company for issue of the share

Summary

15.10 CARRY FORWARD AND SET OFF OF LOSSES IN THE CASES OF CERTAIN COMPANIES

Section:- 79

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.

Exceptions - The aforesaid restriction contained in section 79 shall not be applicable if change in voting power takes place in following two cases:

1. 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. 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.

Remark:

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.

Practical 20

Seven Nine Ltd., a closely held company provides the following information.

(1) Brought forward business loss

Previous Year	Amount Rs.
2014-15	(5,00,000)
2015-16	(3,00,000)
2016-17	(1,00,000)

(2) Shareholders and its holding (in percentage) as on the last day of respective previous year.

Previous Years	(%) Shareholding					
	X	Y	Z	A	B	C
2014-15	33	33	34	-	-	-
2015-16	33	33	-	34	-	-
2016-17	33	20	-	34	13	-
2017-18	33	-	-	34	13	20

Calculate total income for the previous year 2017-18 assuming that income under the head “PGBP” before set off is Rs. 9,00,000.

Solution**Computation of total income of Seven Nine Ltd for the previous year 2017-18.**

Particulars	Amount (Rs.)	Remarks
Income under the head “PGBP” before set-off	9,00,000	
Less: Business Loss of P.Y. 2014-15	Nil	Only 33% (X) was maintained.
Less: Business Loss of P.Y. 2015-16	(3,00,000)	33% (X) plus 34% (Y) exceeding required 51%
Less: Business Loss of P.Y. 2016-17	(1,00,000)	33% (X) plus 34% (Y) plus 13% (B) exceeding required 51%
Total Income	5,00,000	

Readers Note:

15.11 COMPANY IN LIQUIDATION**Section:- 178**

- (1) Every person who is a liquidator of any company which is being wound up or who has been appointed the receiver of any assets of a company shall within 30 days of such appointment give notice of his appointment to the concerned Assessing Officer.
- (2) The Assessing Officer shall, after making enquiries and calling for information notify to the liquidator within 3 months from the date of receipt of notice of the appointment of liquidator, the amount which in his opinion would be sufficient to provide for any tax which is likely to be payable by the company.
- (3) The liquidator shall not part with any of the assets of the company until so notified without permission of the Chief Commissioner or Commissioner of Income Tax.
- (4) On being so notified, the liquidator shall set aside an amount equal to the amount notified before parting with any asset of the company.
- (5) However, he can part with the assets for the purpose of :- (i) payment of tax (ii) payment of secured creditors having priority over debts due to Government and (iii) meeting such costs and expenses of winding up as may be reasonable in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
- (6) If the liquidator fails to give notice of his appointment or fails to set aside the amount as required above or parts with any assets of the company in contravention of the abovementioned provision, he shall be personally liable.
- (7) Where there are more liquidators than one, then they shall be jointly and severally liable.
- (8) The provisions of this section has an overriding effect over all the provisions of the act as well as over the provisions under any law for the time being in force except the provisions of the Insolvency and Bankruptcy Code, 2016.

Remark:

Considering the overriding impact of the section 178 of Income Tax Act over the provisions prevailing under any law (including Companies Act), the **SUPREME COURT** in the case of **Imperial Chit Funds (P) Ltd. V. ITO 219 ITR 498** was of the considered opinion that that income tax liability gets priority over the other debts of the company, in the same way, as a secured creditor.

15.12 LIABILITY OF DIRECTORS OF PRIVATE COMPANY IN LIQUIDATION**Section:- 179**

- (1) Where **any tax due from a private** company in respect of income of any previous year **cannot be recovered**, then, every person who was a director of such company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax.

- (2) However, no such director shall be liable if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.
- (3) Section 179 has an overriding effect over the provisions of Companies Act.
- (4) Further, this section has been amended w.e.f. 1st June, 2013 to clarify that “tax due” includes penalty, interest or any other sum payable under this Act.

Remark:

Before taking action against the director under this section, it is necessary for the revenue to establish that recovery cannot be made from the company - *Indubhai T. Vasa (HUF) v. ITO, 196 CTR 15 (Guj)*

Practical 21

The Income tax department failed to recover tax due amounting to Rs. 1 crore from ABC Pvt Limited. Further, interest and penalty to be recovered were Rs. 52 lacs. Income tax department issued notice to the directors of this company to pay all the dues. Directors paid tax Rs. 1 crore but denied liability towards interest and penalty. Whether denial by directors is valid in the eyes of law?

Solution

Considering the amendment in section 179, that “tax due” includes penalty, interest or any other sum payable under the Income Tax Act, , directors cannot deny the liability to interest and penalty when company failed to pay the same.

Readers Note:

15.13 LIABILITY OF COMPANY TO PAY ADVANCE TAX WHEN ITS LIABILITY IS GOVERNED BY PROVISIONS OF SECTION 115JB

Section:- 207

- The Supreme Court, in *Joint CIT v. Rolta India Ltd. (2011) 330 ITR 470*, observed that there is a specific provision in section 115JB(5) providing that all other provisions of the Income-tax Act, 1961 shall apply to every assessee, being a company, mentioned in that section. Section 115JB is a self-contained code pertaining to MAT, and by virtue of sub-section (5) thereof, the liability for payment of advance tax would be attracted.
- According to section 207, tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year.
- Under section 115JB(1), where the tax payable on total income is less than 18.5% of “book profit” of a company, the “book profit” would be deemed to be the total income and tax would be payable at the rate of 18.5%.

- Since in such cases, the book profit is deemed to be the total income, therefore, as per the provisions of section 207, tax shall be payable in advance in respect of such book profit (which is deemed to be the total income) also.
- Therefore, all companies who are liable to pay tax u/s. 115 JB are also liable to pay advance tax and as a result in case of default in payment of advance tax, they are also liable for interest under sections 234 B or 234 C also-**Circular No. 13/2001.**

16 - ALTERNATIVE MINIMUM TAX [CHAPTER XII-BA]

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).

16.2 | TAX CREDIT FOR ALTERNATE MINIMUM TAX

Section:- 115JD

(A) Sub – Section (1)

The credit for tax paid by a person under section 115JC shall be allowed to him in accordance with the provisions of this section.

(B) Sub – Section (2)

The tax credit of an assessment year to be allowed under sub-section (1) shall be the excess of alternate minimum tax paid over the regular income-tax payable of that year.

Provided that 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 alternate minimum tax payable, exceeds the amount of the tax credit admissible against the regular income-tax payable by the assessee, then, while computing the amount of credit under this sub-section, such excess amount shall be ignored.

(C) Sub – Section (3)

No interest shall be payable on tax credit allowed under sub-section (1).

(D) Sub – Section (4)

The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (5) and (6) but such carry forward shall not be allowed beyond the tenth assessment year immediately succeeding the assessment year for which tax credit becomes allowable under sub-section (1).

(E) Sub – Section (5)

In any assessment year in which the regular income-tax exceeds the alternate minimum tax, the tax credit shall be allowed to be set off to the extent of the excess of regular income-tax over the alternate minimum tax and the balance of the tax credit, if any, shall be carried forward.

(F) Sub – Section (6)

If the amount of regular income-tax or the alternate minimum tax is reduced or increased as a result of any order passed under this Act, the amount of tax credit allowed under this section shall also be varied accordingly.

16.3 | INTERPRETATION IN THIS CHAPTER**Section:- 115JF**

In this Chapter—

- (a)** "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;
- (b)** "alternate minimum tax" means the amount of tax computed on adjusted total income at a rate of eighteen and one-half per cent;

- (c) "regular income-tax" means the income-tax payable for a previous year by a person on his total income in accordance with the provisions of this Act other than the provisions of this Chapter.

16.4 | APPLICABILITY OF OTHER PROVISIONS OF THIS ACT

Section:- 115JE

Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to a person referred to in this Chapter.

16.5 | APPLICATION OF THIS CHAPTER TO CERTAIN PERSONS

Section:- 115JEE

(A) Sub-Section (1)

The provisions of this Chapter shall apply to a person who has claimed any deduction under—

- (a) any section (other than section 80P) included in Chapter VI-A under the heading "C.— Deductions in respect of certain incomes"; or
- (b) section 10AA;
- (c) section 35AD.

(B) Sub-Section (2)

The provisions of this Chapter shall not apply to an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, if the adjusted total income of such person does not exceed twenty lakh rupees.

(C) Sub-Section (3)

Notwithstanding anything contained in sub-section (1) or sub-section (2), the credit for tax paid under section 115JC shall be allowed in accordance with the provisions of section 115JD.

SUMMARY: APPLICABILITY OF AMT

Person	Deductions u/s 10AA, 80H to 80RRB, 35AD	
	Not Claimed	Claimed
Firm/ Limited Liability Partnership	Not Applicable	Applicable
Individual/HUF/ AOP/BOI or artificial juridical person whose adjusted total income exceeding Rs.20 lakhs (> 20 lakhs)	Not Applicable	Applicable

Practical 1

From the following information of Ding Dong LLP, compute tax liability.

Sr. No.	Particulars	Rs.
(1)	Income from business A under head PGBP (Eligible for 100% deduction under section 80IC)	22,20,300
(2)	Loss from business B (Set up on 10.04.2017) under head PGBP (After claiming deduction of Rs. 50 lac for building under section 35AD)	(18,18,000)
(3)	Income from business C under the head PGBP	12,15,000
(4)	Loss under the head “Income from other sources”	(10,000)
(5)	Contribution to Prime Minister National Relief Fund by cheque	10,000

Solution**Step 1:- Compute Total income ignoring AMT provisions**

Particulars	Rs.
Income from business A under head PGBP (Eligible for 100% deduction under section 80IC)	22,20,300
Loss from business B (Set up on 10.04.2017) under head PGBP (After claiming deduction of Rs. 50 lac for building under section 35AD) [NOTE]	(18,18,000)
Income from business C under the head PGBP	12,15,000
Income under head “PGBP”	34,35,300
Less: Income under the head “Income from other sources”	(10,000)
Gross Total Income	34,25,300
Less: Deduction under 80C to 80U	
— Under Section 80G	(10,000)
— Under Section 80IC	(22,20,300)
Total Income	11,95,000

Note: Business “B” is a specified business under section 35AD therefore, loss of Business “B” cannot be set off against profits of non-specified business. Such loss of Rs. 18,18,000 shall be carried forward for indefinite period.

Step 2:- Compute Regular Tax payable by LLP on Step 1 income

Particulars	Amount (Rs.)
Total Income	11,95,000
Tax Rate @30%	3,58,500
Add: Education Cess 3%	10,755
Regular Tax Liability	3,69,255

Step 3:- Compute Adjusted total income as per section 115JC

Particulars	Amount (Rs.)
Total Income (as per Step 1)	11,95,000
Add: Deduction under section 80IC	22,20,300
Add: Deduction under section 10AA	Nil
Add: <u>Deduction under section 35AD</u>	
Cost of Building	50,00,000
Less: Depreciation	<u>5,00,000</u>
	45,00,000
Adjusted Total Income	79,15,300

Step 4:- Compute AMT @ 18.5 % on step 3

Particulars	Amount (Rs.)
Adjusted Total Income	79,15,300
Tax Rate @18.5%	14,64,330
Add: Education Cess 3%	43,930
Alternate Minimum Tax (AMT)	15,08,260

Step 5:- Final tax liability of LLP [Higher of Step 2 or Step 4]

Final Tax Liability = Higher of Rs.3,69,255 or Rs.15,08,260
= Rs. 15,08,260

Note: Ding Dong LLP is eligible to carry forward AMT Credit of Rs. 11,39,005 (Rs.15,08,260-3,69,255) for next 10 assessment years.

Readers Note:**Practical 2**

Suppose in the Practical 1 above, instead of LLP, Dinku individual is given, find out tax liability.

Solution**Step 1:- Compute Total income ignoring AMT provisions**

Particulars	Rs.
Income from business A under head PGBP (Eligible for 100% deduction u/s 80IC)	22,20,300
Loss from business B (Set up on 10.04.2017) under head PGBP (After claiming deduction of Rs. 50 lac for building under section 35AD) [NOTE]	(18,18,000)
Income from business C under the head PGBP	12,15,000
Income under head "PGBP"	34,35,300
Less: Income under the head "Income from other sources"	(10,000)
Gross Total Income	34,25,300
Less: Deduction under 80C to 80U	
— Under Section 80G	(10,000)
— Under Section 80IC	(22,20,300)
Total Income	11,95,000

Note: Business “B” is a specified business under section 35AD therefore, loss of Business “B” cannot be set off against profits of non-specified business. Such loss of Rs. 18,18,000 shall be carried forward for indefinite period.

Step 2:- Compute Regular Tax Liability of Dinku on Step 1 income

Particulars	Amount (Rs.)
Total Income	11,95,000
Slab Rate	
Upto Rs.2,50,000	Nil
From Rs.2,50,000 to Rs.5,00,000 @ 5%	12,500
From Rs.5,00,001 to Rs.10,00,000 @ 20%	1,00,000
From Rs.10,00,001 to Rs.11,95,000 @ 30%	58,500
	1,71,000
Add: Education Cess 3%	5,130
Regular Tax Liability	1,76,130

Step 3:- Compute Adjusted total income as per section 115JC

Particulars	Amount (Rs.)
Total Income (as per Step 1)	11,95,000
Add: Deduction under section 80IC	22,20,300
Add: Deduction under section 10AA	Nil
Add: <u>Deduction under section 35AD</u>	
Cost of Building 50,00,000	
Less: Depreciation <u>5,00,000</u>	45,00,000
Adjusted Total Income	79,15,300

Step 4:- Compute AMT @ 18.5 % on step 3

Particulars	Amount (Rs.)
Adjusted Total Income	79,15,300
Tax Rate @18.5%	14,64,330
Add: Education Cess 3%	43,930
Alternate Minimum Tax (AMT)	15,08,260

Step 5:- Final tax liability of LLP [Higher of Step 2 or Step 4]

Final Tax Liability = Higher of Rs. 1,76,130 or Rs.15,08,260
= Rs. 15,08,260

Note: Dinku is eligible to carry forward AMT Credit of Rs. 13,32,130 (Rs.15,08,260-1,76,130) for next 10 assessment years.

Readers Note:

Practical 3

Mr. X is claiming tax holiday under section 80IC of the Income Tax Act, 1961. Previous year 2016-17 was the last year (10th Year) of tax holiday. Since past three years, he was subject to Alternate Minimum Tax (AMT) and therefore has an accumulated AMT credit of Rs. 12,50,000. For the previous year 2017-18, his regular tax liability comes to Rs. 18,00,000. Since tax holiday is over, he is not subject to AMT (Chapter XII-BA) for the previous year 2017-18. He seeks your advice for set off of brought forward AMT Credit against tax liability of previous year 2017-18.

Solution**Readers Note:**

17 - ASSESSMENT OF HINDU UNDIVIDED FAMILY [HUF]

17.1 CONCEPT OF HINDU UNDIVIDED FAMILY

- A Hindu undivided family is treated as a separate person under section 2(31) of the Act. The term HUF has not been defined anywhere under the Income Tax Act.
- The expression is, however defined under the Hindu Law as a family which consists of all persons lineally descended from a common ancestor including their wives and unmarried daughters.
- Thus, HUF arises as a result of status and not as a result of contract.

Remarks:

- (a) Under taxation laws, Jain and Sikh Undivided families are also assessed as HUF. **CWT vs. Champa Kumari Singhi 83 ITR 720 (SC).**
- (b) The concept of “HUF” has been abolished in the State of Kerala by special enactment “The Kerala Joint Hindu Family System (Abolition) Act, 1975”. As a result thereof, there exist no joint family in the State of Kerala on or after 1st December, 1976.

17.2 CONCEPT OF HINDU CO-PARCENERS

- Only male members who acquire by birth an interest in joint family property; being sons, grandsons and great grandsons are called co-parceners, who can seek partition. However, with effect from 6th September, 2005, daughters have also been accorded coparcenary status.
- Other female members like wife of Karta, daughter-in-law of Karta are not coparceners, they cannot demand partition. As a result, a wife of Karta cannot demand a partition of the HUF property, but if a partition takes place between her husband and children, she is entitled to receive share equal to that of a child.

17.3 TWO SCHOOLS OF HINDU LAW: DAYABHAGA AND MITAKSHARA

Sr. No.	Dayabhaga	Mitakshara
(1)	It prevails in the State of West Bengal and Assam.	It is followed by the whole of India except West Bengal and Assam.
(2)	A child does not acquire right in the ancestral property by birth. As a result, there are no co-parceners.	A child acquires right in the ancestral property by birth. As a result, child becomes co-parcener.
(3)	During the life time of father, child cannot seek partition.	During the life time of father, child can seek partition.

17.4 | PARTITION OF HUF**Section:- 171****(A) Meaning of Partition**

- (i) A partition has been defined under the Explanation to Section 171 as under:
 - a. Where the property admits of a physical division, a physical division
 - b. Where it does not admit of such a division, then such division as it admits of.
- (ii) A physical division of income without a physical division of property producing all income shall not be deemed to be a partition.
- (iii) A mere severance in status shall also not be deemed to be a partition.

(B) Procedure to be conducted by the assessing officer when partition of HUF takes place:**(i) Enquiry**

Where a claim for partition has been made at the time of assessment, the Assessing Office shall make an enquiry into it after giving notice of inquiry to all members of the family.

(ii) Record findings

On completion of the inquiry, the Assessing Officer shall record a finding as to

- a. whether there has been a partition, partial or total of the joint family property and
- b. if there has been a partition, the date on which it has taken place.

(iii) Manner of Assessment:

Finding	Assessment
Total partition has taken place in the previous year	The total income of the family up to the date of partition shall be assessed in the hands of HUF subsequently in the hands of members.
Total partition has not taken place in the previous year	The total income of the previous year shall be assessed in the hands of HUF as if no partition has taken place.

(C) Liability of the members on partition whether total or partial.

- Each member of the HUF before partition shall be jointly and severally liable for tax, penalty, interest, fine or other sum payable under this Act by the family (HUF).
- The several liability of any member shall be computed according to the portion of joint family property allotted to him.

17.5 TAX TREATMENT IN THE HANDS OF MEMBERS

Section:- 10(2)

Any sum received by an individual as a member of HUF out of the income of the family or out of the income of the estate belonging to the family is exempt from tax.

Case Study 1

Whether an unmarried male Hindu on partition of a joint family can be assessed in the status of HUF?

Solution

Key observations of Supreme Court in case of C. Krishna Prasad v. CIT (1974) 97 ITR 493(SC):

- "Family" connotes a group of people related by blood or marriage. The word "family" always signifies a group. Plurality of persons is an essential attribute of a family.
- A single person, male or female, does not constitute a Hindu undivided family. He or she would remain an individual till he or she finds a mate.

Readers Note:

Case Study 2

Whether the sole male member of the Hindu Joint Family, his widowed mother and sisters constitute an HUF within the meaning of the Income Tax Act?

Solution

Key observations of **Supreme Court in case of Gowli Buddanna v. CIT [1966] 60 ITR 293 (SC):**

- The expression "Hindu undivided family" in the Act is used in the sense in which a Hindu undivided family is understood under the personal law of Hindus.
- Under the Hindu system of law, a joint family may consist of single male member and widows of deceased male members and the Income-tax Act does not indicate that a Hindu undivided family as an assessable entity must consist of at least two male members.
- Property of a joint family, therefore, does not cease to belong to the family merely because the family is represented by a single coparcener.

Following are the few examples of "HUF" for tax purpose:

[<http://www.incometaxindia.gov.in/Pages/i-am/huf.aspx>]

- A family of widow mother and sons (may be minor or major) ;
- Family of husband and wife, having no child ;
- Family of two or more brothers ;
- Family of uncle and nephew ;
- Family of mother, son and son's wife ;
- Family of a male and his late brother's wife.

Readers Note:

Case Study 3

N.V. Narendranath obtained property on partition of Father's HUF. At that time, he was married and has two daughters but he does not have any son. Can the property received on partition be treated as joint family property of N.V. Narendranath (HUF)?

Solution

Key observations of **Supreme Court in case of N.V. Narendranath v. CWT [1969] 74 ITR 190 (SC)**:

- There is no warrant that there must be at least two male members to form a Hindu undivided family as taxable unit.
- The expression "Hindu undivided family" in the Act is used in the sense in which a Hindu joint family is understood in personal laws of Hindus.
- Under the Hindu system of law, a joint family may consist of a single male member and his wife and daughters and there is nothing in the scheme of the Act to suggest that a Hindu undivided family as an assessable unit must consist of at least two male members.

Readers Note:

Case Study 4

Ms. Shanti made a gift to Mr. Mahesh with a clear intention in the declaration that she is making gift for the benefit of family of Mahesh consisting of his wife and son as other members. Such gifted amount was deposited with Bank and it yielded interest income. Can such interest income be assessed in the hands of Mahesh (HUF) particularly when Mahesh (HUF) has no ancestral nucleus?

Solution

Supreme Court in case of **CIT vs. K. Satyendra Kumar 232 ITR 360** while approving the High Court decision, was of considered opinion that if gift is made with a clear intention by the donor that the gift is for the benefit of FAMILY then such gifted property shall become the property of HUF.

Following the above ratio, interest income earned out of gifted amount shall be assessed in the hands of Mahesh (HUF) despite of the fact that Mahesh (HUF) has no ancestral nucleus.

Readers Note:

Case Study 5

Mr. Rahul received share on partition of HUF. At that time he was minor. Till minority, income earned from share on partition was clubbed with parent's income. On attaining majority, income from said share was assessed in his individual capacity. After marriage, Rahul claimed that income from the share received on partition of HUF shall be assessed in the status of RAHUL (HUF). Examine the validity of contention raised by Mr. Rahul.

Solution

Gujarat High Court while dealing with the similar facts in case of **CIT vs. Parshottamdas K. Panchal 257 ITR 96** held that on marriage of the assessee, his wife became a member of his family with a right to claim maintenance charged on the property held by the assessee which he had obtained earlier under partition. The family of the assessee is a joint family and the property is held by him as the karta of such HUF.

Therefore, the contention of Mr. Rahul, after marriage to be assessed in the status of HUF is justified.

Readers Note:

Case Study 6

Mr. Har Govind Dutta, a Hindu governed by the Dayabhaga School, dies intestate leaving behind his widow named Sandhya Rani Dutta and two daughters. Mrs. Sandhya Rani Dutta and two received one-third share each in the self-acquired properties of deceased. Thereafter, they entered into agreement to form an HUF throwing their respective share in property. Whether formation of such HUF is legally correct?

Solution

Supreme Court in case of **CIT v. Sandhya Rani Dutta [2001] 115 Taxman 369 (SC)** made following observations:

- There is no authority which can lead to the conclusion that the assessee and her two daughters are capable of forming a joint Hindu family or of throwing the interest of any one of them in the inherited property therein.
- The concept of Hindu females forming a joint Hindu family agreement amongst themselves appears to be contrary to a basic tenet of the Hindu personal law.

Considering the above, formation of HUF by Hindu females is not correct.

Readers Note:

Case Study 7

Where HUF is a partner in a firm through its Karta / member, in whose hand remuneration shall be chargeable?

Solution

Ratio laid down by **Supreme Court in case of CIT v. Trilok Nath Mehrotra [1998] 98 Taxman 462** is as under:

“Where a member of HUF joins a partnership firm and gets salary for managing it or rendering services, salary will be his individual income and where his salary is really a part of return of investment made by HUF in partnership firm, then salary will be added to the income of HUF.”

Readers Note:

Case Study 8

Sheel Chandra, the karta of a Hindu undivided family consisting of himself and his brother, was appointed as the treasurer of bank on his furnishing security of the HUF property valued at Rs. 75,000. Discuss whether the remuneration received by Sheel Chandra is taxable as the income of the Hindu undivided family?

Solution

Supreme Court in case of Piyare Lal Adishwar Lal v. CIT [1960] 40 ITR 17 held that -

There is nothing to show that Sheel Chandra received any particular training at the expense of the family funds or that his appointment was the result of any outlay or expenditure of the family or

detrimental to the family property.

Treasurership is an employment of responsibility, trust and fidelity and personal integrity and ability, and mere ability to furnish a substantial security is not the sole or even the main reason for being appointed to such a responsible post in a bank.

Therefore, Salary drawn by Sheel Chandra is not taxable as income of the family.

Readers Note:

Case Study 9

Mr. X, a Hindu by religion, owns property in his individual capacity (self-acquired). He died intestate. This property devolved on his legal heirs in accordance with Class I of the Schedule under section 8 of Hindu Succession Act. Discuss the tax treatment of income earned out of such property in the hands of legal heirs.

Solution

After the coming into force of the Hindu Succession Act, income derived by the legal heirs from the self-acquired property of deceased who died intestate, is assessable in their hands as their individual income.

- CIT v. S.R. Kirloskar (Ind.) [1999] 106 Taxman 350/239 ITR 382 (Bom.)
- CWT vs. Chander Sen (1986) 161 ITR 370 (SC)

Readers Note:

Case Study 10

Mr. Lala Murlidhar as a Karta of a Hindu undivided Family consisting of his wife and two sons. He died in an air crash and compensation was received Rs. 5 lac from the insurance company under personal accident cum death policy. The assessee, L. Bansidhar, son of Mr. Lala Murlidhar received Rs. 2,50,000. The same amount was invested and interest was earned. The assessee, L. Bansidhar (son) claimed that the interest income shall be assessable in the hands of H.U.F. composed of himself and his other family members. Discuss the validity of such claim.

Solution

Delhi high court in case of **L. Bansidhar vs. CIT 123 ITR 58 (Del.)**, after referring the terms of accident policy and exhaustive analysis came to the conclusion that the amount of compensation was not in existence during the lifetime of Lala Murlidhar (father). It came into existence only when he died. Therefore, it is not an ancestral property. Since ancestral property comes into existence only when the ancestor owned it. But this compensation amount was not owned by Lala Murlidhar, therefore, this property is in individual capacity of Mr. Lala Murlidhar.

Any individual property of a person shall pass on to the legal heirs only in their individual capacity and not in the H.U.F. capacity. Therefore, interest income earned by Mr. L. Bansidhar (son) shall be taxed in his individual capacity only.

Readers Note:

18 - BUSINESS TRUST

18.1	SCHEME OF TAXATION OF VCC/VCF REGISTERED BEFORE 21ST DAY OF MAY, 2012 UNDER SEBI REGULATIONS/ VENTURES CAPITAL SCHEME OF UTI AND THEIR STAKEHOLDERS

Section:- 10(23FB) & 115U

(A) Tax Treatment in the hands of

(a) Venture Capital Company / Venture Capital Fund registered before 21st day of May, 2012 under SEBI Regulations

(b) Venture Capital Scheme of UTI

- Tax treatment is governed by section 10(23FB).
- As per this section, any income derived by VCC/VCF (before 21st day of May, 2012) / Venture Capital Scheme of UTI from investment in a venture capital undertaking is exempt from tax.
- The provisions of Chapter XII-D or Chapter XII-E or Chapter XVII-B shall not apply to the income paid by a venture capital company or venture capital fund. (That means, VCC/VCF/ Venture Capital Scheme of UTI are not subject to dividend distribution tax or tax on distributed income as well as not required to deduct TDS while making payment to unitholders / shareholders)

(B) Tax Treatment in the hands of Unitholders / Shareholders of VCC/VCF/Venture Scheme of UTI mentioned above

- Under section 115U, any income received by a person out of investments made in a VCC / VCF / Venture capital scheme of UTI shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly.
- The income paid by the VCC/ VCF / Venture capital scheme of UTI shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by, or had accrued to, the venture capital company or the venture capital fund, as the case may be, during the previous year.
- The income accruing or arising to the VCC / VCF/ Venture capital scheme of UTI during a previous year, if not paid or credited to the person, shall be deemed to have been credited to the account of the person 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.
- However, where income has been so included on accrual basis in the total income of the person in the previous year, then it shall not be included again at the time such income is actually paid to him by the VCC / VCF/ UTI Scheme.

Practical 1

A Venture Capital Fund registered before 21-05-2012 derived income of Rs.17 lakh comprising dividend of Rs.4 lakh from shares from a Venture Capital Undertaking and interest of Rs.13 lakh on loan granted to such undertaking. G receives income of Rs.2 lakh from such fund. Examine the taxability of the sum of Rs.2 lakh received by G.

Solution**Tax Treatment in the hands of G**

Taxable portion pertaining to Dividend: Rs.47,059 (i.e., Rs. 2 lakh x Rs.4 lakh ÷ Rs. 17 lakh).

Taxable portion pertaining to Interest: Rs.1,52,941 (i.e., Rs. 2 lakh x Rs.13 lakh ÷ Rs. 17 lakh).

Readers Note:**18.2 | 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)].
- 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.
- 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 2

PQR Private Limited is an Investment Fund as per explanation to section 115UB. There are 50 shareholders each having equal share. For previous year **2017-18**, PQR Private Limited reports following incomes.

Particulars	Company (Rs.)
Business Income	60,00,000
Capital Gains	1,00,00,000
Income from other sources	20,00,000
Total	1,80,00,000

Compute the total income and tax liability of the PQR Private Limited.

Also compute income of each shareholders from the said investment fund.

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

Particulars	Company (Rs.)
Business Income	60,00,000
Capital Gains	Exempt u/s 10(23FBA)
Income from other sources	Exempt u/s 10(23FBA)
Total Income	60,00,000
Tax Liability (30.90%)	18,54,000

Computation of Income of each shareholder from PQR Private Limited

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

Readers Note:**Practical 3**

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. 2017-18	P.Y. 2018-19
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.2017-18	
	Rs.	Rs.
Business Income (Adjusted against Income from other sources)		Nil
Long Term Capital Loss (Rs. 25 lakhs carried forward)		Nil
Income from other sources	60,00,000	
Less: Business Loss to be set-off	(20,00,000)	
	40,00,000	Exempt u/s 23(FBA)
Total Income		Nil

Particulars	P.Y.2018-19	
	Rs.	Rs.
Business Income		8,00,000
Long Term Capital Gain	35,00,000	Nil
Less: Brought forward Long Term Capital Loss	(25,00,000)	
	10,00,000	Exempt u/s 23(FBA)
Income from other sources	30,00,000	Exempt u/s 23(FBA)
Total Income		8,00,000

Computation of Income of each Unit Holder from ABC Trust

Particulars	P.Y.2017-18	P.Y.2018-19
Business Income (If any)	Exempt u/s 10(23FBB)	Exempt u/s 10(23FBB)
Long Term Capital Gains	Nil	50,000 [10,00,000 ÷ 20]
Income from other sources	2,00,000 [40,00,000 ÷ 20]	1,50,000 [30,00,000 ÷ 20]
Income	2,00,000	2,00,000

Readers Note:

18.3 | 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).

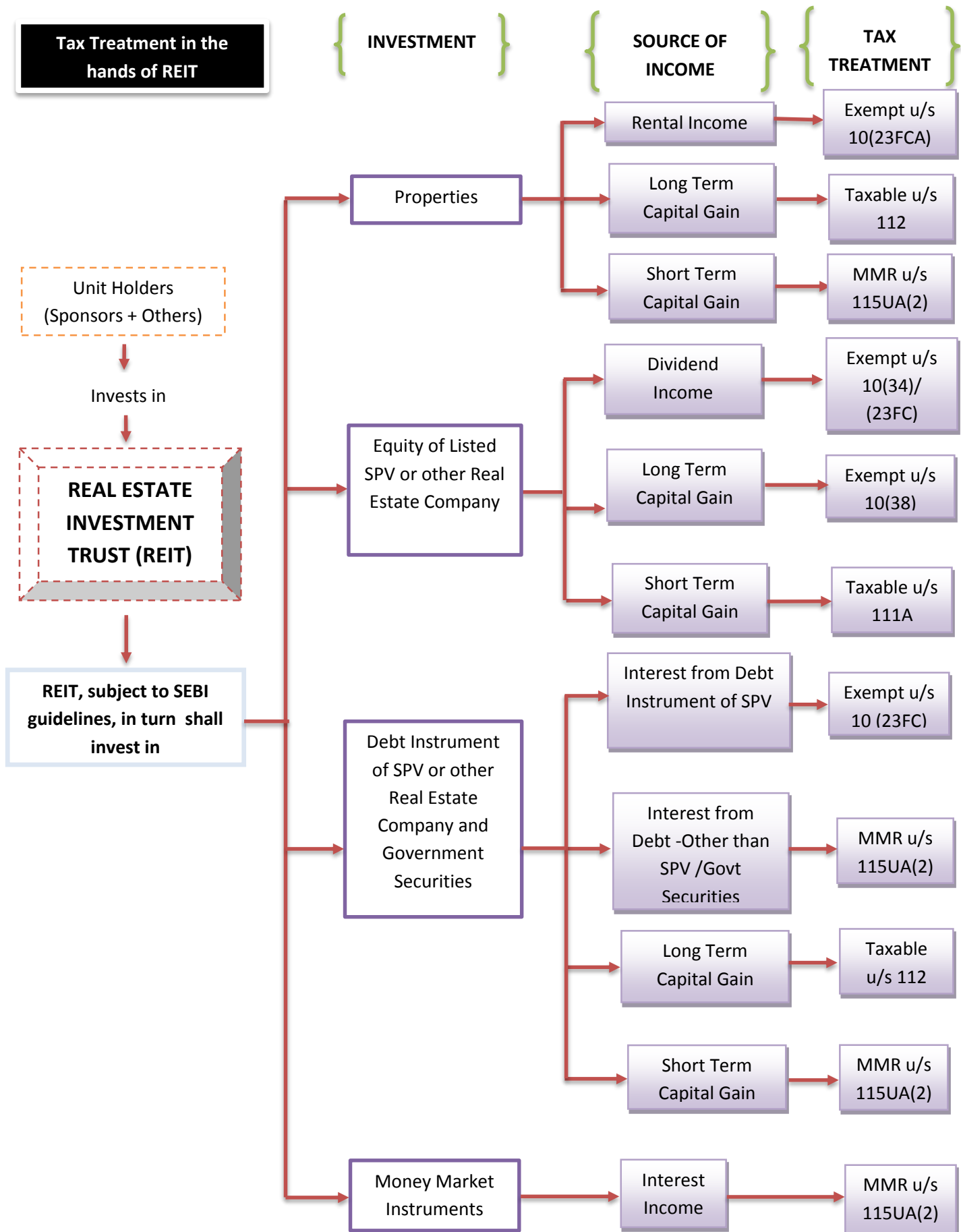
(c) As per section 115UA(2),

- 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).

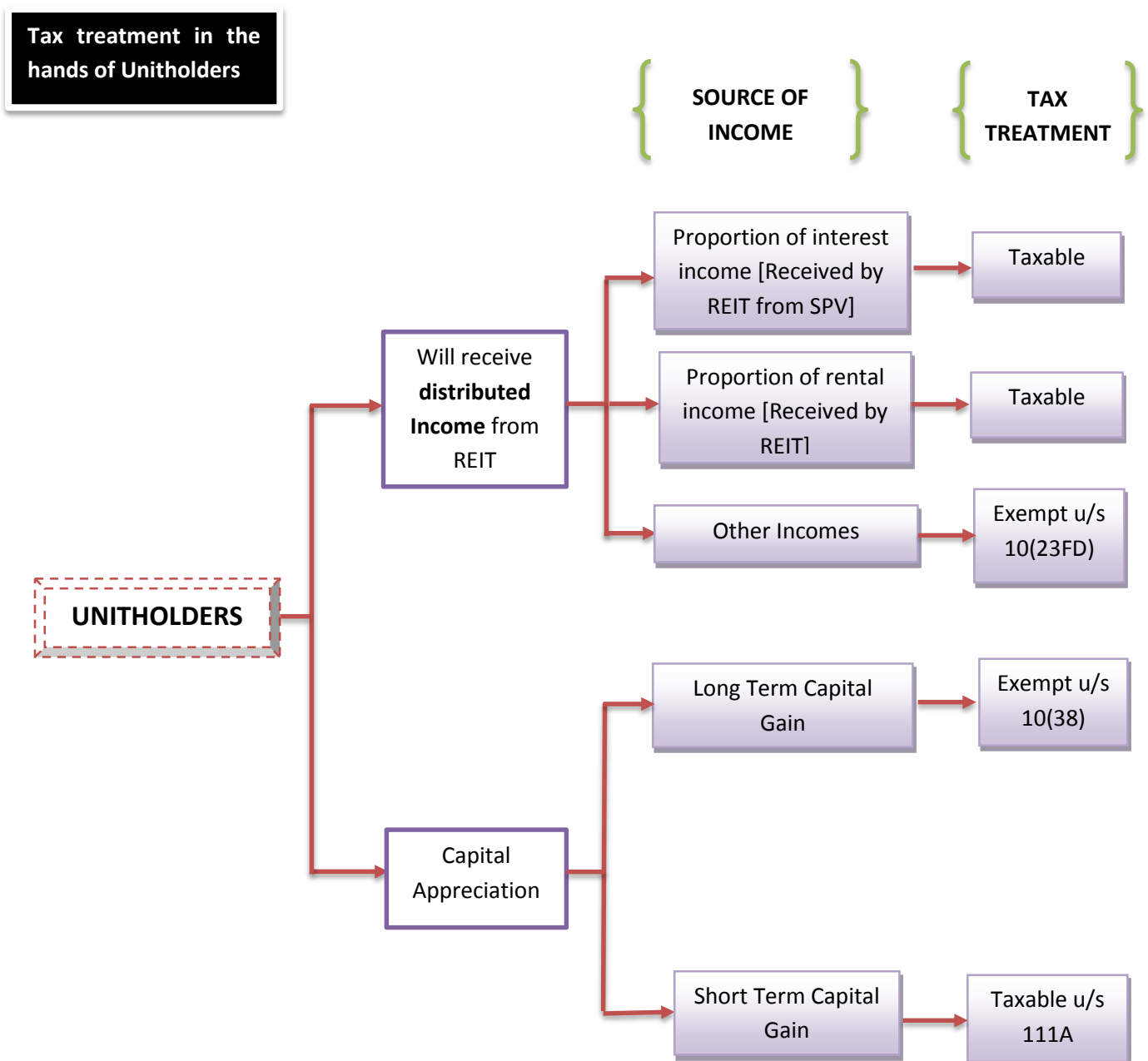
Readers are advised to go through following diagram covering possible sources of income in the hands of REIT and its tax treatment.



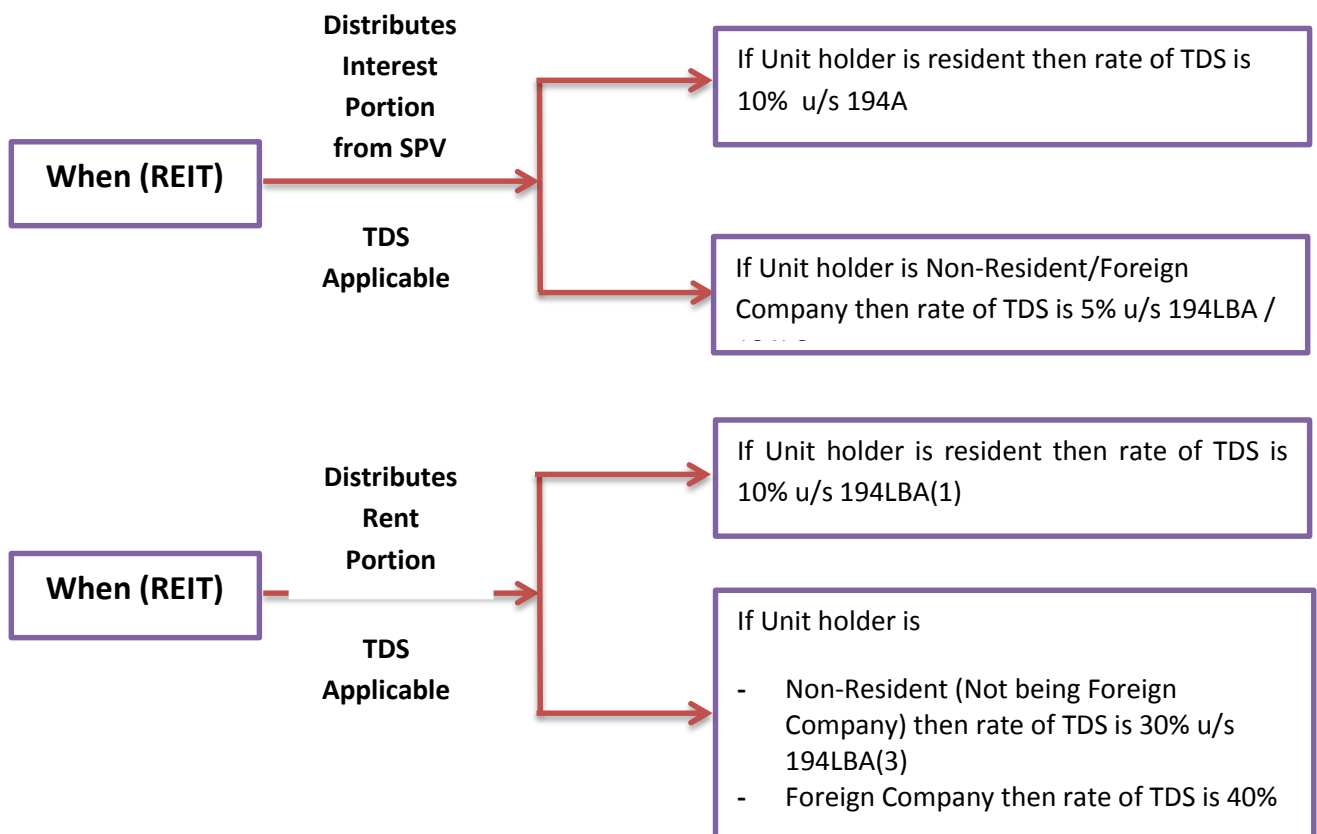
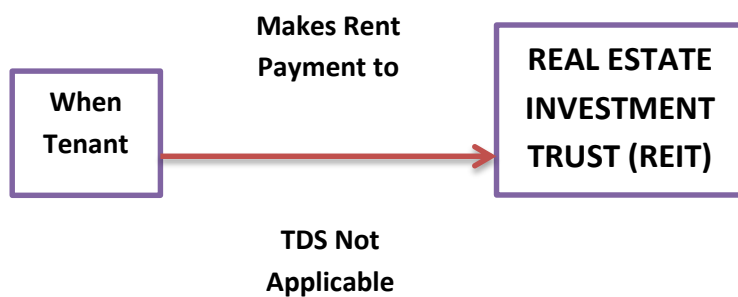
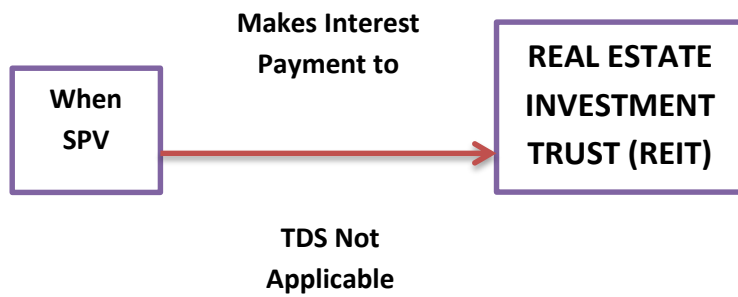
(B) Tax Treatment in the hands of Unit-holders

- (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



Practical 4

A REIT provides the following particulars of its income for the **P.Y.2017-18**:

Sr. No.	Particulars	Rs. in Lakhs
1.	Interest income from SPV	200
2.	Rental/Leasing income from real estate asset owned directly by REIT	300
3.	Dividend income from SPV “A” (in which REIT holds 60% equity)	100
4.	Dividend income from SPV “B” (in which REIT holds 100% equity)	200
5.	Short-term capital gains on sale of listed shares of SPV	200
6.	Interest from Government Securities	15
7.	Interest received from investments in unlisted debentures of real estate companies	10
8.	Long Term Capital Gains on sale of property	200
9.	Long Term Capital Gains on sale of listed shares of SPV	270
10.	Short term gain on sale of unlisted debentures of real estate companies	5

- (i) Discuss Tax treatment of each receipts in the hands of REIT.
- (ii) Discuss the tax consequences in the hands of unit holders assuming that the REIT has distributed Rs. 1400 Lakhs to the unit holders in the **P.Y.2017-18**.
- (iii) Discuss Corporate Dividend Tax (CDT) obligation under section 115-O in the hands of SPV “A” and SPV “B” in the light of amendments by finance Act, 2016.

Solution**(i) Tax Treatment in the hands of REIT**

Sr. No.	Particulars	Amount Rs. in Lakhs	Section Applicable	Tax Rate applicable
1.	Interest income from SPV	200	10(23FC)	Exempt
2.	Rental/Leasing income from real estate asset owned directly by REIT	300	10(23FCA)	Exempt
3.	Dividend income from SPV “A”	100	10(34)	Exempt
4.	Dividend income from SPV “B”	200	10(23FC)	Exempt
5.	Short-term capital gains on sale of listed shares of SPV	200	111A	15%
6.	Interest from Government Securities	15	115UA(2)	34.50%
7.	Interest received from investments in unlisted debentures of real estate companies	10	115UA(2)	34.50%
8.	Long Term Capital Gains on sale of property	200	112	20%
9.	Long Term Capital Gains on sale of listed shares of SPV	270	10(38)	Exempt
10.	Short term gain on sale of unlisted debentures of real estate companies	5	115UA(2)	34.50%

(ii) Tax treatment in the hands of unit holders.**(a) Distributed income representing Interest from SPV**

Out of distributed income of Rs. 1400 Lakhs, interest portion from SPV and rental income from REIT shall be taxable in the hands of unit holders. Same shall be worked out as under:

Total income derived by REIT during the year : 1500 Lakhs

Interest from SPV included in above income : Rs.200 Lakhs

Rental Income from REIT included in above income : Rs. 300 lakhs

Distributed income to Unit Holders : Rs. 1400 Lakhs

Therefore, Interest portion from SPV, distributed to Unit Holders = Rs. 186.66 Lakhs

$$\left[200 \times \frac{1400}{1500} \right]$$

Therefore, portion of Rental Income from REIT, distributed to Unit Holders = Rs. 280.00 Lakhs

$$\left[300 \times \frac{1400}{1500} \right]$$

(b) Other distributed income

(Rs. 1400 lakhs –Rs. 186.66 Lakhs –Rs. 280.00lakhs) = Rs. 933.34 is exempt in the hands of unit holders under section 10(23FD).

(iii) CDT obligation in the hands of SPV under section 115-O.

- SPV “A” (in which REIT holds 60% equity) is required to pay CDT on the amount of dividend distributed its shareholders under section 115-O.
- Because of amendment by Finance Act, 2016, SPV “B” (in which REIT holds 100% equity) is not required to pay CDT on the amount of dividend declared / distributed / paid to its shareholders. [Section 115-O(7)].

Readers Note:**Practical 5**

Mr. Kulbharat is already holding 10,000 equity of DFF Ltd (SPV). These shares were purchased on **20-01-2017** for Rs. 3,50,000. He would like to become sponsor of REIT and therefore, he exchanged these shares for units in REIT on **10-08-2017** and he was allotted 1,00,000 units with a face value of Rs.10 per unit. Thereafter, he sold out 20,000 units on **12-01-18** for Rs. 12 per unit. Discuss tax consequences of this transaction.

Before we refer solution, let us comprehend the provisions of section 47(xvii)

- (i) As per section 47(xvii) any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor is not treated as transfer.
- (ii) As per section 2(42A), while determining nature of capital asset being units allotted under section 47(xiii), the period of holding of shares shall be included.
- (iii) As per section 49(2AC), where the capital asset, being a unit of a business trust, became the property of the assessee in consideration of a transfer as referred to in clause (xvii) of [section 47](#), the cost of acquisition of units shall be deemed to be the cost of acquisition of the shares to the sponsor.

Solution

As per provisions of section 47(xvii), exchange of shares in SPV by sponsor for units in REIT is not treated as transfer. Therefore, exchange will not attract capital gain in the hands of Mr. Kulbharat. But, subsequent sale of REIT Units will attract capital gain tax in the hands of Mr. Kulbharat, computation of which is as under:-

Period of Holding: From **20-01-2017 to 12-01-2018**, hence Short Term Capital Asset.

Particulars	Amount Rs
Sale Consideration (20,000 × 12)	2,40,000
Less: COA	<u>70,000</u>
STCG u/s 111A	<u>1,70,000</u>

Working Note:

As per section 49(2AC),

Cost of acquisition of 1,00,000 units of REIT DFF Ltd. = Cost of acquisition of 10,000 shares of

=Rs. 3,50,000

Hence, cost of acquisition per unit of REIT is =Rs. 3,50,000/1,00,000

= Rs. 3.5 per unit

Hence, cost of acquisition of 20,000 units = Rs. 3.5 × 20,000

= 70,000

Readers Note:

Practical 6

Does your answer differ if Mr. Kulbharat had purchased shares of DFF Ltd. on **01-01-2015 instead of 20-01-2017**?

Solution

Then the asset becomes long-term capital asset in the hands of Mr. Kulbharat. And the gain arising shall be exempt under section 10(38).

Readers Note:

18.4 SCHEME OF TAXATION OF SECURITISATION TRUST AND ITS INVESTORS

Section:- 10(23DA), 115TCA & 194LBC

(A) Basic understanding on Process of Securitisation

- Original lender (bank or FI) selects and then sells various types of loans to another institution (which may promote a subsidiary for this purpose called Special Purpose Vehicle, which is a sort of Trust);
- The special purpose vehicle- SPV (called issuer also) makes the payment to the original lender for the loans purchased under the arrangement;
- These loans are converted into a pool of securities (generally called “Pass Through Certificates”) by SPV.
- These PTCs are then sold to individual or institutional investors, who are willing to make investments;
- The original lender may keep on getting recoveries from the original borrowers;
- He passes on these recoveries to the SPV.
- The issuer in turn passes on these recoveries to the individual/institutional investors as per the arrangement made.

(B) **Tax Treatment in the hands of Securitisation Trust**

Tax treatment is governed by section 10(23DA).

- As per this section, entire income of securitization trust shall be exempt.
- The person responsible for crediting or making payment of the income on behalf of securitisation trust and the securitisation trust shall furnish, within such period, as may be prescribed, to the person who is liable to tax in respect of such income and to the prescribed income-tax authority, a statement in such form and verified in such manner, giving details of the nature of the income paid or credited during the previous year and such other relevant details, as may be prescribed.
- With effect from 1st June, 2016, tax has to be deducted by securitisation trust at the time of payment or credit to the account of investor, whichever is earlier. [Section 194LBC]. Depending upon type of payees, the rates of TDS are as under:

Payee	Rate of TDS
Resident Individual and HUF	25%
Resident other than individual and HUF	30%
Non-resident, not being foreign company	30% Plus SC and EC
Foreign Company	40% Plus SC and EC

(C) Tax Treatment in the hands of Investors of Securitisation Trust

- Under section 115TCA, any income accruing to or received by a person, being investor of a securitization trust shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly.
- The income paid or credited by the securitisation trust shall be deemed to be of the same nature and in the same proportion in the hands of the investors as it had been received by, or had accrued to, securitisation trust during the previous year.
- The income accruing or arising to the securitisation trust during a previous year, if not paid or credited to the investor, shall be deemed to have been credited to the account of the person on the last day of the previous year in the same proportion in which such investor would have been entitled to receive the income had it been paid in the previous year.
- However, where income has been so included on accrual basis in the total income of the investor in the previous year, then it shall not be included again at the time such income is actually paid to him by the securitisation trust.

19 - TAXATION OF TRUSTS OR INSTITUTIONS

19.1 | CHARITABLE PURPOSE

Section:- 2(15)

- Section 11, 12 and 13 of the Act provides exemption from Income Tax to charitable trust or institution. In order to avail exemption, objects of the trust or institution must fall within the definition of the term “charitable purposes”.
- Section 2(15) defines "Charitable Purpose" to include relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife), preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility.

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

- such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- the aggregate receipts from such activity or activities during the previous year, do not exceed twenty percent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

Practical 1

Explain the ratio developed on the term “advancement of general public utility” based on various judicial pronouncements.

Solution

The term “advancement of general public utility” has been subject to interpretation before the various High Courts and the Supreme Court. Following is the summary of key observations from judiciary:

- To serve a charitable purpose, it is not necessary that the object should be to benefit the whole of mankind or even all persons living in a particular country.
- It is sufficient if the intention to benefit a section of the public.
- However, it shall not be for the benefit of specified individuals.
- Further, such Trust or institution should not have profit motive. –
 - **CIT Vs. Andhra Chamber of Commerce (SC) 55 ITR 722.**
 - **CIT Vs. Bar Council of Maharashtra (SC) 130 ITR 28.**

Reader’s Note:

Practical 2

XYZ Charitable Institution having object of “Medical relief” as well as “advancement of general public utility” provides following information for the Assessment Year **2018-19**.

Particulars	Rs. in Lakhs
Receipts including donations for the object "Medical Relief"	76
Receipts from Activity in nature of trade / commerce undertaken in the course of Advancement of General Public Utility	24

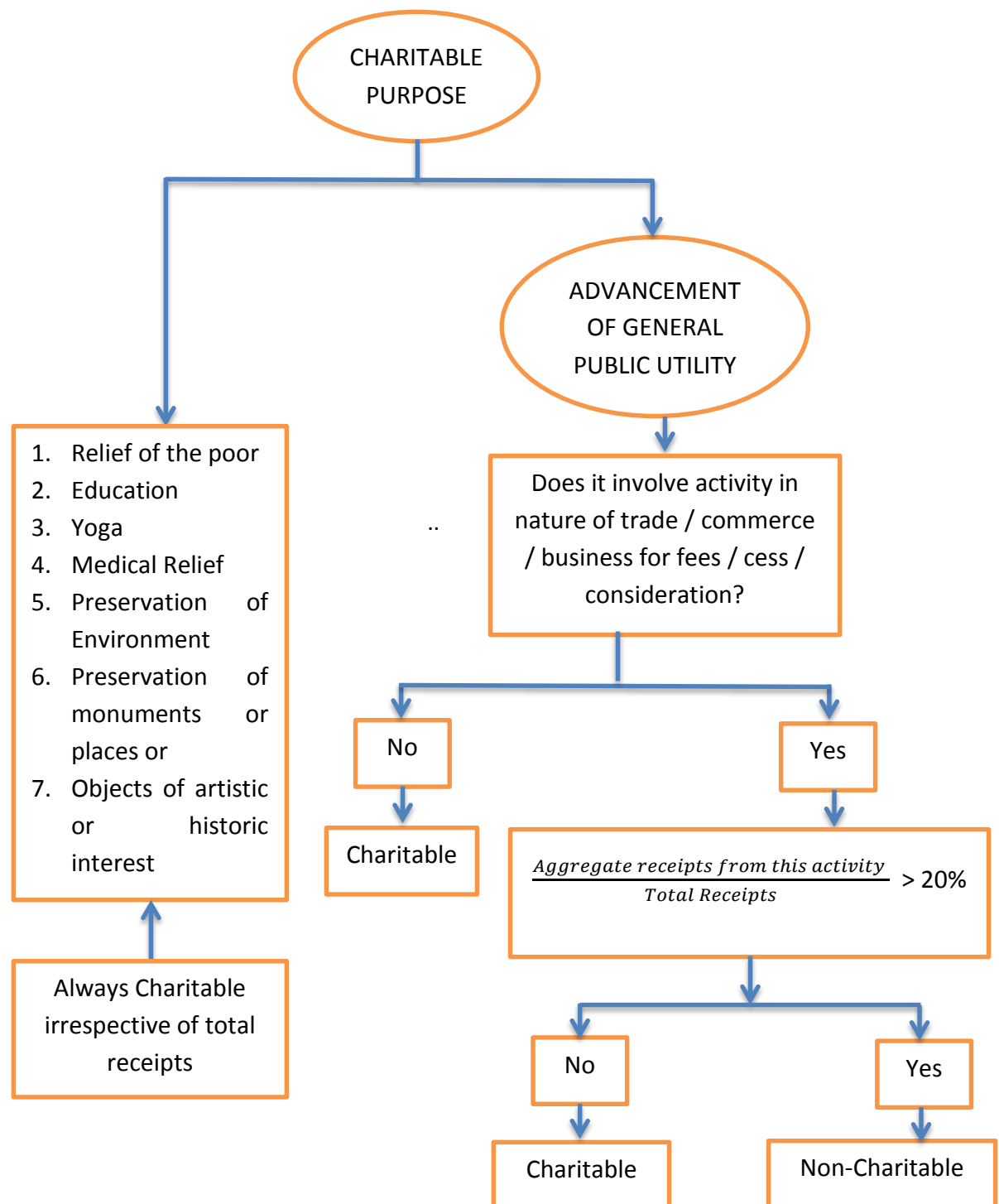
XYZ Charitable Institution claims that the object of advancement of general public utility is also considered as charitable since the receipts from activity in nature of trade / commerce does not exceed Rs. 25 Lakh. Comment.

Solution

Under section 2(15) of the Act, the criteria of Rs. 25 lakhs in has been dispensed with. The new criteria is that aggregate receipts from activity/ activities in the nature of trade/ commerce undertaken in the course of advancement of general public utility during the previous year, shall not exceed twenty per cent of the total receipts, of the trust or institution.

In the given issue, total receipts of the Institution is Rs. 100 Lakhs of which Rs. 24 Lakh is in relation to activity in the nature of trade/ commerce which comes to 24% of total receipts of the Institution (exceeding 20%). Therefore, the claim made by XYZ Charitable Institution that the object of advancement of general public utility is also considered as charitable is not tenable.

Reader's Note:



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

- 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.
- After being satisfied about the objects and the genuineness of activities, 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.

Practical 3

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, 2017**. Since the application was not disposed of by the Commissioner on or before **31st October, 2017** 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 **01.11.2017**. 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 APPLICABILITY OF EXEMPTION UNDER SECTION 11 AND 12 FROM WHICH ASSESSMENT YEAR?

Section:- 12A(2)

- Generally, the trust or institution is entitled for exemption u/s 11 and 12 from the assessment year immediately following the financial year in which the application is made.

Practical 4

Can a trust created for charitable purposes in **February 2017**, having filed application for registration as per section 12A on **11.4.2017**, claim benefits of sections 11 and 12 from Assessment Year **2017-18**?

Solution

As discussed above, the trust can avail benefits of section 11 and 12 from the assessment year immediately following the financial year in which application is made. In this case, trust can avail benefit from assessment year **2018-19** because application was made on **11.04.2017**.

Reader's Note:

- As per first proviso to this section, once registration has been granted to trust or institution, it will get benefit of section 11 and 12 for earlier years also for which assessment proceedings are pending before the assessing officer on the date of such registration provided activities of such trust or institution remain the same for such earlier years.
- As per second proviso to this section, once registration has been granted to trust or institution, no action under section 147 shall be taken by the assessing officer for earlier assessment years only for want of registration.
- As per third proviso to this section, the benefit of earlier two proviso are not available if trust or institution was refused registration in past or registration granted to them was cancelled in past.

Practical 5

ABC Charitable trust was registered with Charity Commissioner on **10-12-11**. But it failed to get registered with Commissioner of income tax under section 12AA of the Act. This trust had never filed income tax returns. For previous year **2016-17**, it received notice under section 142(1) to file the return on or before **31-12-2017**. Therefore, trust made an application to Commissioner of income tax for registration under section 12AA of the Act on **12.12.2017**. Pending registration, trust filed the income tax return for the previous year **2016-17**. The case of trust was selected for scrutiny. In mean time, it obtained registration from Commissioner on **15.01.2018**.

Assessing officer would like to take following actions:-

- (i) He wants to grant exemption under section 11 with effect from Previous year **2017-18** and onwards. Therefore, he denies benefit of exemption under section 11 for the previous year **2016-17**.
- (ii) He wants to give notice under section 148 for earlier six assessment years on the ground that trust had not been registered section 12AA and therefore, it is liable to tax for earlier six assessment years without taking exemption under section 11.

Is assessing officer justified in taking above actions?

Solution

- (i) As per provisions of the Income Tax Act, the trust is eligible for exemption u/s 11 and 12 from the financial year in which the application is made. Therefore, trust can claim exemption under section 11 from previous year **2017-18** and onwards because it made an application on **12-12-2017**.

But in view of first proviso inserted to section 12A(2), the benefit of sections 11 and 12 shall also be available for preceding previous years, provided the objects and activities of the trust remain the same for such preceding years.

Considering this amendment, the assessing officer is not justified in refusing exemption for the previous year **2016-17**.

- (ii) Primarily assessing officer is empowered to issue notice under section 148 if he has reason to believe that income has escaped assessment.

But in view of second proviso to section 12A(2), *no action under [section 147](#) shall be taken by the Assessing Officer in case of such trust or institution for any assessment year only for non-registration of such trust or institution for the said assessment year.*

Considering this, Assessing officer is not justified in initiating action under section 147 by issuing notice under section 148.

Reader's Note:

Practical 6

Does your answer differ if trust had applied for registration in previous year **2012-13** but registration was refused by Commissioner of Income Tax?

Solution

Considering third proviso to section 12A(2), benefit of first proviso (exemption under section 11 is available for earlier years) and benefit of second proviso (the assessing officer will not re-open cases of earlier years under section 147) is available only when trust or institution had not been refused registration in past or its registration had not been cancelled in past.

But in the given case, trust was refused registration in previous year **2012-13**, therefore, considering the effect of third proviso, assessing officer is correct in taking both the actions.

Reader's Note:

19.5 | EXEMPTION TO THE CHARITABLE TRUST OR INSTITUTION**Section:- 11**

Para No.	Section	Particulars
19.5A	11(1)	Exemption based on application of income
19.5B	11(2),11(3)&11(5)	Exemption based on accumulation of income
19.5C	11(1A)	Exemption on transfer of capital asset
19.5D	11(4), (4A)	Exemption in respect of income from business undertaking held by trust
19.5E	11(6)	Restriction on allowability of depreciation or deduction of asset in certain circumstances
19.5F	11(7)	Restriction on claiming benefit of exemption under various clauses of section 10 of the Act

19.5A | EXEMPTION BASED ON APPLICATION OF INCOME**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".

- 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 7

A charitable Trust provides the following information for the previous year **2017-18**,

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:

- Out of Rs.5,20,000 Rs.2,75,000 received in cash and the remaining balance is to be received in the year **2019-20**.
- Out of Rs.9,45,250 Rs.3,45,250 is with specific direction that it shall form part of corpus of the trust.
- The trust has obtained extension for applying the unrealised income of Rs.2,45,000 in the year of receipt, i.e., **2019-20**, whereas it actually spends Rs.16,145 in the year **2019-20** and Rs.28,855 in the year **2020-21**.

Determine its taxable income of the trust for the previous year **2017-18** and **2020-21**.

Solution

For Previous Year 2017-18

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 2020-21

Particulars	Rs.
Amount to be spent	2,45,000
Less: Spent in Previous Year 2019-20	(16,145)
Less: Spent in Previous Year 2020-21	(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 8

A charitable Trust provides the following information for the previous year **2017-18**,

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 **2018-19**

Determine the taxable income of the trust for the previous year **2017-18** and **2018-19**.

Solution**For Previous Year 2017-18**

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 2018-19

Particulars	Rs.
Amount to be spent in previous year 2018-19	3,70,000
Less: Amount actually spent	(1,70,000)
Taxable Income	2,00,000

Reader's Note:

19.5B | 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 under section 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 9

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 **31.3.2018**. 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. **2018-19**. What will be the tax implication if the trust could spend only Rs.7,50,000 of the amount of accumulated upto **31.3.2023** and Rs.1,00,000 during the previous year **2023-24**.

Solution**Previous Year 2017-18**

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 2023-24

Particulars	Rs.
Amount to be spent for construction of hospital	10,00,000
Less: Amount actually spent during previous year 2022-23 {fifth year}	(7,50,000)
	2,50,000
Less: Amount actually spend during previous year 2023-24 {sixth year}	(1,70,000)
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 10

Will your answer differ if charitable trust, out of accumulation donated Rs.1,50,000 to another trust during previous year **2023-24**?

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 11

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 **31/3/2018**, 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% under section 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 12

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 13

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

Solution**Computation of total income of trust**

Particulars	Rs. in lakhs
Income derived from property held under trust	250
Less: Expenses incurred in earning income	(55)
Less: Depreciation on used assets	(15)
Business Income	180
Less: 15% to be set apart (15% of Rs.180)	(27)
Balance	153
Less: Income not received during the year [Note 3]	(20)
	133
Less: Non-application of income resulting from non-signing lease agreement [Note 1]	(30)
Available amount	103
Less: Development and installation expenses of ERP package [Note 2]	(85)
Less: Purchase of desktop and laptop computers [Note 2]	(12)
Taxable income	6

Notes:

1. In **CIT v. Trustees of H.E.H The Nizam's Charitable Trust [1981] 131 ITR 497 (AP)**, it was held that in order to secure exemption under section 11, it is sufficient if the assessee provides or sets apart the funds for a charitable purpose and it is not necessary that the assessee must have spent the amount during the relevant assessment year.
2. In **S.R.M.M.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.

Reader's Note:

19.5C | 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 14

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 15**

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:

19.5D 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.

19.5E 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.

19.5F 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(38)	: Long Term Capital Gain
Section 10(33)	: Capital gain on transfer of unit of US 64
Section 10(34A)	: Capital gain on Buy Back of unlisted shares
And many more	: As covered by section 10 of the Income Tax Act, 1961

Practical 16

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 sale of shares (subject to security transaction tax)	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 in view of amendment discussed above)	1,00,000
Add: LTCG on sale of shares (Exemption u/s 10(38) not available in view of amendment discussed above)	3,00,000
Add: Income from Agricultural Operations (Exemption u/s 10(1) is available to trust)	Nil
	20,00,000
Less: 15% Set apart	(3,00,000)
Balance	17,00,000
Less: Applied for the objects of Trust	(11,60,000)
Less: Applied for purchase of Office	(5,00,000)
Total Income	40,000

Option 2

Particulars	Rs.
Income from property held under trust	9,00,000
Add: Voluntary Contribution received from public	7,00,000
Add: Corpus Donations are not an income	Nil
Add: Dividend income from shares (Exemption u/s 10(34) not available in view of amendment discussed above)	1,00,000

Add: LTCG on sale of shares (Exemption u/s 10(38) not available in view of amendment discussed above)	3,00,000
Add: Income from Agricultural Operations(Exemption u/s 10(1) is available to trust)	Nil
	20,00,000
Less: Depreciation in respect of Office [10% of Rs.5,00,000]	(50,000)
	19,50,000
Less: 15% Set apart Balance	(2,92,500)
	16,57,500
Less: Applied for the objects of Trust	(11,60,000)
Total Income	4,97,500

Reader's Note:

19.6 CASES WHEN INCOME SHALL NOT BE EXEMPT U/S. 11 OR 12

Section:- 13

The benefit of section 11 or 12 shall not be available in following cases.

Para No.	Section	Particulars
19.6A	13(1)(a)	Income for private religious purposes
19.6B	13(1)(b)	Income for the benefit of particular religious community
19.6C	13(1)(c), 13(2) and 13(3)	Enuring benefit to specified persons:
19.6D	13(1)(d)	Investment/deposit not in accordance with section 11(5)
19.6E	13(7)	Anonymous donation
19.6F	13(8)	"Advancement of general public utility" ceases to be charitable purpose.
19.6G	13(9)	Benefit of accumulation under section 11(2) shall not be available under certain circumstances.

19.6A INCOME FOR PRIVATE RELIGIOUS PURPOSES –

Section :- 13(1)(a)

Any part of income from property held under a trust for private religious purposes which does not enure for the benefit of the public is not eligible for exemption under section 11 or 12.

19.6B INCOME FOR THE BENEFIT OF PARTICULAR RELIGIOUS COMMUNITY

Section :- 13(1)(b)

Entire income of a charitable trust or institution established on or after April 1, 1962 created or established for the benefit of any particular religious community or caste is not eligible for exemption under section 11 or 12.

Exception: Trust created or established for the benefit of scheduled castes; backward classes; scheduled tribes or women & children.

Judicial pronouncements:

(a) The assessee trust was created for the purposes of establishing institutions for the educational, social and economic advancement of Muslims from all over the world, none of whom, except those in Kerala, are of backward classes. The assessee trust cannot be said to be established for backward classes so as to be covered by the above exception. Therefore, the trust is not entitled to exemption under section 11 since it is hit by section 13(1)(b)—***CIT v. Palghat Shadi Mahal Trust [2002] 254 ITR 212 (SC)***.

(b) There were two issues in case of ***CIT v. Chandra Charitable Trust (2006) 156 Taxman 19 (Guj)***, namely:-

- (i) Is Jainism not only a simple philosophy or a life-style, but a religion in itself?
- (ii) Is exemption under section 11 available to a trust promoting Jainism in addition to other charitable goals?

The High Court placed reliance on the judgment of the Apex Court in *Bal Patil v. Union of India* AIR 2005 SC 3172 in contending that **Jainism is not a simple philosophy or a life-style but is in fact a religion in itself**. Therefore, if a trust is formed only to promote Jainism, section 13(1)(b) would be attracted and the **assessee would not be entitled to exemption under section 11**.

However, in this case, from the covenants of the Trust Deed, it was evident that there were other charitable objects in addition to promoting Jainism. In such a case, the Trust would become a Charitable as well as Religious in nature, therefore, section 13(1)(b) **would not be applicable**. This was observed by the High Court in *CIT v. Barkate Saifiyah Society* (1995) 213 ITR 492, where it was held that in such cases, **the assessee would be entitled to exemption under section 11**.

19.6C | ENURING BENEFIT TO SPECIFIED PERSONS

Section :- 13(1)(c), 13(2) and 13(3)

Entire income of a religious/charitable trust/institution created or established after March 31, 1962 is not eligible for exemption if any part of its income **enures** directly or indirectly, for the benefit of any person specified in section 13(3).

Similarly, entire income of a trust/institution created/established after March 31, 1962 is also not eligible for exemption if any part of income or property is **used or applied**, during the previous year, **for the direct or indirect benefit of any person specified in section 13(3)**. However, exemption shall not be forfeited in the case of trust/institution created or established prior to April 1, 1962 and such use of the trust income or property is by way of compliance with a mandatory term of trust or institution.
[Section 13(1)(c)]

Section 13(2):- Deemed to be used or applied for the benefit of person specified in section 13(3)

The income or the property of the trust or institution shall be deemed to have been used or applied for the benefit of persons specified under section 13(3), in the following cases:

- (a) Where any part of the income or property of the trust (or institution) is (or continues to be) lent to any specified person for any period during the previous year without either adequate security or adequate interest or both [Sec. 13(2)(a)].
- (b) Where any land, building or other property of the trust (or institution) is (or continues to be) made available for the use of any specified person for any period during the previous year without charging adequate rent or other compensation [Sec. 13(2)(b)].
- (c) Where any amount is paid by way of salary, allowance or otherwise during the previous year to any specified person out of the resources of the trust (or institution) for services rendered by that person to such trust (or institution) and the amount so paid is more than what may be reasonably paid for such services [Sec. 13(2)(c)].
- (d) Where the services of the trust or institution are made available to any specified person during the previous year without adequate remuneration or compensation [Sec. 13(2)(d)].
- (e) Where any share, security or other property is purchased by or on behalf of the trust (or institution) from any specified person during the previous year for more than adequate consideration [Sec. 13(2)(e)].
- (f) Where any share, security or other property is sold by or on behalf of the trust (or institution) to any specified person during the previous year for less than adequate consideration [Sec. 13(2)(f)].
- (g) Where any income or property of the trust (or institution) is diverted during the previous year in favour of any specified person [Sec. 13(2)(g)]. Where, however, the aggregate of income or the value of the property so diverted does not exceed Rs. 1,000, this provision is not applicable.
- (h) Where any funds of the trust (or institution) are (or continue to remain) invested for any period during the previous year in any concern in which any specified person has a substantial interest [Sec. 13(2)(h)]. **Where, however, the aggregate of the funds of the trust (or institution) invested in a concern in which any specified person has a substantial interest does not exceed 5 per cent of the capital of that concern, exemption under section 11 will not be denied in relation to the application of any income other than the income arising to the trust or institution from such investment [Sec. 13(4)].**

Section 13(3): Specified persons for the purpose of section 13(1) (c) and 13(2):

- (a) the author of the trust or the founder of the institution ;
- (b) any person who has made a total contribution (up to the end of the relevant previous year) of an amount exceeding Rs. 50,000 (substantial contributor);
- (c) any member of the HUF (or any relative of such member) where such author or founder or substantial contributor is an HUF ;
- (d) any trustee of the trust or manager (by whatever name called) of the institution ;
- (e) any relative of such author, founder, substantial contributor, member, trustee or manager ; and
- (f) any concern in which any of the persons referred to above has a substantial interest.

Practical 17

A trust, unless created for "charitable purpose", does not qualify to claim exemption under Chapter-III of the Act. In this context, explain the meaning of "charitable purpose" and examine whether the "Welfare of industrial workers with a stipulation that the workers of settlor of trust have got preference over others" would fall within the term "charitable purpose"?

Solution

The Patna High Court has, in *CIT v. Tata Steel Charitable Trust* (1993) 203 ITR 764 held that "the welfare of industrial workers with a stipulation that the workers of settlor of trust have preference over others would also constitute "charitable purpose" within the meaning of section 2(15)". High Court further observed that exemption under section 11(1) can be availed only if the following conditions are satisfied—

- (a) the trust is created for a charitable purpose; and
- (b) no part of the income of such trust enures or has been used or applied directly or indirectly for the benefit of any person referred to in section 13(3).

The list of persons contained in section 13(3) does not include employees of the settlor of the trust. Section 13(3), which includes any relative of the author, can have no application because "relative" means a person connected by birth or marriage with another person. A person having relationship pursuant to a contract like that of an employer and an employee cannot be said to be a relative. The High Court concluded that it was immaterial that any employee of the settlor of the trust had acquired any benefit out of the income of the trust as an ordinary member of the community. Therefore, the application of part of the income of the trust for the benefit of the employees of the settlor cannot disentitle the trust from claiming exemption under section 11.

Reader's Note:**19.6D | INVESTMENT / DEPOSIT NOT IN ACCORDANCE WITH SECTION 11(5)****Section :- 13(1)(d)**

Income of a trust is not eligible for exemption under section 11 if its funds are invested/ deposited otherwise than in the forms specified in section 11(5). [Section 13(1)(d)]

Judicial pronouncements:

Supreme Court in case of *S.R.M.M.C.T.M. Tiruppani Trust v. CIT* held that accumulated income which is exempt under section 11(1)(a) need not be invested in accordance with section 11(5). It is only in respect of any additional accumulation beyond 15% that, if assessee wants exemption under section 11(2), the assessee is required to invest that additional accumulated income in the manner laid down in section 11(5).

19.6E | ANONYMOUS DONATION**Section :- 13(7)**

Benefit of section 11 or 12 shall not be available in respect of anonymous donations subject to tax under section 115BBC.

19.6F “ADVANCEMENT OF GENERAL PUBLIC UTILITY” CEASES TO BE CHARITABLE PURPOSE.

Section :- 13(8)

Benefit of section 11 or section 12 shall not be available to the assessee trust or institution having object of “advancement of general public utility” but ceases to be charitable due to the receipts from this activity exceeded 20% of total receipts of such trust or institution.

Practical 18

Trust has an object of “advancement of general public utility”. It got registered since 5 years. During previous year **2017-18**, ratio for receipts from this activity to total receipts exceeded 20%. Trust wants to claim exemption under section 11 on the ground that Commissioner has not cancelled the registration of trust under section 12AA. Examine the correctness of claim made by trust.

Solution

Considering the provisions of section 13(8), claim made by trust is not tenable even though trust continue to hold the certificate of registration.

Reader’s Note:

19.6G BENEFIT OF ACCUMULATION UNDER SECTION 11(2) SHALL NOT BE AVAILABLE UNDER CERTAIN CIRCUMSTANCES

Section :- 13(9)

Trust or institution shall not get benefit of accumulation under section 11(2) if any of the following conditions not satisfied.

- (a) The prescribed statement under section 11(2) [at present Form No.10] is not furnished on or before the due date of filing return under section 139(1) or
- (b) The return of income is not furnished on or before the due date prescribed under section 139(1).

Practical 19

Yamunaji Charitable Trust has filed return of income for the relevant Assessment Year within the stipulated time under section 139(1) and applied only 50% of its income to specified purposes. It intends to accumulate the balance 35% of income to be spent in future years. While completing the assessment, the Assessing Officer rejected the claim of accumulation and taxed the same on the ground that the trust has not furnished the prescribed statement as contemplated under Section 11(2) on or before due date of filing return under section 139(1). Discuss the validity of the action of the Assessing Officer in this case.

What would have been your answer if trust has furnished the prescribed statement as contemplated under section 11(2) on or before due date of filing return under section 139(1) but filed its income tax return under section 139(4).

Solution

Considering the above [point no. (a)], action taken by the assessing officer rejecting the claim of accumulation and taxing the same, is correct, since trust failed to furnish prescribed statement under section 11(2) on or before the due of filing return under section 139(1).

As discussed above [point no.(b)], section 13(9) requires that return of income must be filed in time for claiming the benefit of accumulation under section 11(2) of the Act. Therefore, answer would remain same (i.e. A.O. is justified in rejecting the claim of accumulation) even though trust has furnished the prescribed statement as contemplated under section 11(2) on or before due date of filing return under section 139(1) but filed its income tax return under section 139(4).

Reader's Note:

19.7 | SPECIAL TAX TREATMENT IN RESPECT OF EDUCATIONAL AND MEDICAL FACILITIES PROVIDED TO SPECIFIED PERSONS

Section:- 12 and 13(6)

Section 13(6) provides that a charitable or religious trust running an educational institution or a medical institution or a hospital shall not be denied the benefit of exemption under section 11 or section 12, in relation to any income by reason only that such trust has provided educational or medical facilities to interested persons.

Further, section 12(2) provides that the value of any medical or educational services made available by any charitable or religious trust running a hospital or medical institution or an educational institution to any interested person shall be deemed to be the income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of section 11(1).

19.8 | 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:

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.

Practical 20

Ram-Lakhan Charitable trust is a registered trust under Income Tax Act. During the course of assessment proceedings for the assessment year **2016-17**, 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 under section 143(3).

Based on the above assessment order, Commissioner issued notice to Ram Lakhan Charitable trust that why registration of trust shall not 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:

19.9 | COMPARISON BETWEEN SEC. 11 AND SEC. 80G

Section:- 11 and 80G

- The provisions of Sec.11 are intended to grant exemption to the income of a charitable or religious trust for the benefit for the public. As discussed earlier in case of Chandra Charitable trust's case, so long as the income of a religious trust is not meant for private religious purposes but ensures for the benefit of the public which is achieved by the establishment and maintenance of public places of worship and prayer halls open to all communities, the entire income of such religious trust shall qualify for exemption u/s.11.
- On the contrary, **Sec. 80G(5) does not recognise contributions to *religious trusts*** except in respect of donations for the renovation of any temple, mosque, gurudwara, church or other places of public worship as may be notified by the Central Government.
- **Contribution to *charitable trusts* is recognised as eligible for 80G(5) deduction.** For the purpose of section 80G(5), charitable purpose does not include any purpose the whole or substantially the whole of which is of a religious nature.
However, as per the provisions of section 80G(5B), in respect of contributions to charitable trust, the eligibility of deduction to the donor will not be lost merely because the charitable trust incurs towards religious purposes so long as the amount spent in this regard does not exceed 5% of the total income.
- The ***Supreme Court in Upper Ganges Sugar Mills Ltd v. CIT [1997] 227 ITR 578***, while referring to the objects of Vishwa Mangal Trust had observed that it has an object to establish, maintain and to grant public places of worship and prayer halls. This being the object of a religious nature, Supreme Court denied the deduction under section 80G to Upper Ganges Sugar Mills Ltd. in respect of donations made to Vishwa Mangal Trust even though the other objects of the trust were charitable.

19.10 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(l)(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 (2001) 114 Taxmann 19 (Bom.)**

Practical 21

Mr. X is a trustee of ABC charitable trust. Mr. X holds 20% equity share capital of Lanka Private Limited. During previous year **2017-18**, trust received donation of Rs.5,00,000. Trust applied Rs.1,25,000 towards object of trust.

Further trust has invested Rs.1,00,000 at 12% p.a in Lanka Private Limited(secured). Find out total income of trust and tax rate applicable under the following alternatives.

(a) Paid up capital of Lanka Private Limited is Rs.25,00,000.

(b) Paid up capital of Lanka Private Limited is Rs.1,00,00,000.

Solution**Alternative (a)****Computation of Total Income of ABC Charitable Trust**

Particulars	Rs.	Rs.
Income		
Donation	5,00,000	-
Interest	-	12,000
Less: Exemption 15%		
Balance		
Less: Section 11(1)	(1,25,000)	-
Taxable income		

Tax Rate Applicable

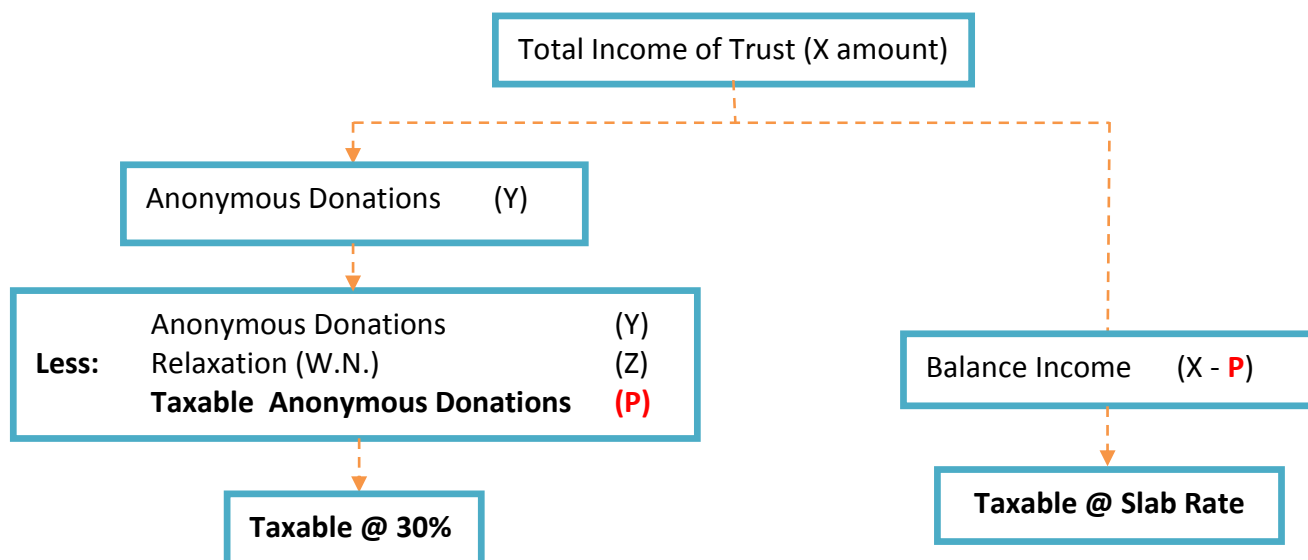
Particulars	Taxable Amount (Rs.)	Tax Rate applicable
Donation	3,00,000	Slab Rate
Interest	12,000	Maximum Marginal Rate (MMR)

Alternative (b):

Particulars	Rs.
Income	5,12,000
Less: Exemption 15%	
Balance	
Less: Applied for the object of the trust	1,25,000
Taxable Income	
Tax Rate applicable	

Reader's Note:**19.11 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.

Computation Methodology under section 115BBC

Working Note:

Relaxation given under section 115BBC shall be higher of the followings

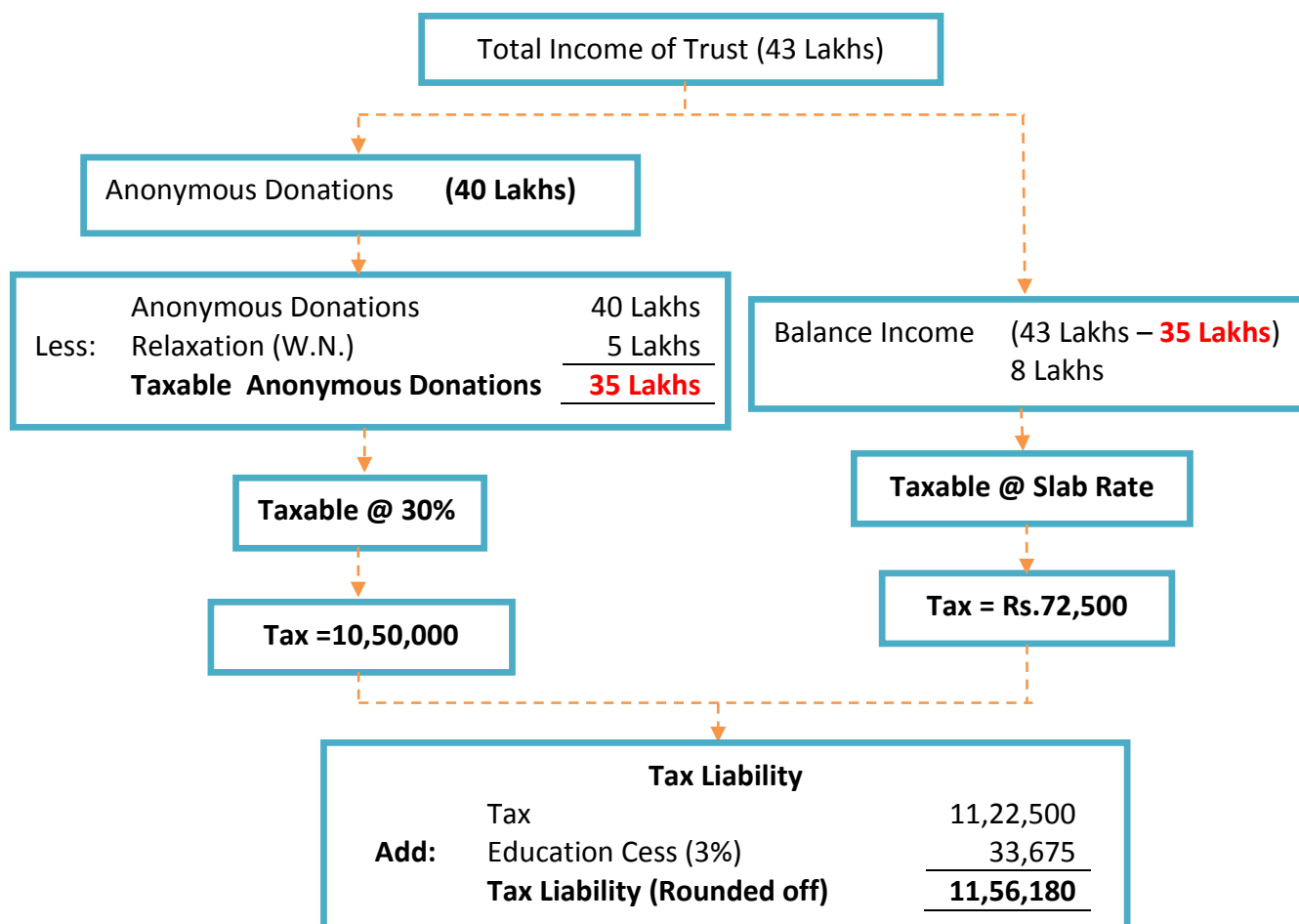
- (a) 5% of TOTAL DONATIONS
- (b) Rs. 1,00,000

Practical 22

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 for the **A.Y. 2018-19**

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:

DIVISION D

RETURNS, ASSESSMENT, REASSESSMENT AND RECTIFICATION, APPEALS, REVISION AND ASSESSMENT ON REMAND

INDEX

CHAPTER NO.	TOPICS	NO. OF PRACTICALS	PAGE NO.
20	Returns, Assessment, Reassessment and Rectification	35	1 to 58
21	Appeals	08	1 to 20
22	Revision by Principle Commissioner or Commissioner	19	1 to 13
23	Assessment on Remand	03	1 to 5

20 - RETURNS, 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, 10(38) and sections 80C to 80U]
- (iv) Every resident person shall mandatorily furnish return of income or loss if he or it at any time during the previous year-
 - (a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or
 - (b) is a beneficiary of any asset (including any financial interest in any entity) located outside India.

Exceptions:

1. This clause is not applicable to resident but not ordinary resident
 2. This clause is also not applicable to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includible in the income of the person referred to in clause (a) above.
- (v) The return of income shall be filed in the prescribed form containing prescribed particulars within the prescribed time.

Practical 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) Mr. Jayesh earned long term capital gain of Rs.3,80,000 [Eligible for exemption u/s 10(38)]. He does not have any other income.
- (c) M/s. N.R.K & Co., a firm, which has incurred a loss.

Solution

(a) As per fourth proviso to section 139(1), every person (other than company and firm) whose total income or total income of any other person in respect of which he is assessable exceeds the maximum amount not chargeable to tax, shall furnish a return of income.

For this proviso, total income means total income without giving effect to the provisions of sections 10A, 10(38) and sections 80C to 80U.

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

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

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

Readers Note:**Practical 2**

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

Solution

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

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

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

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

- (vi) 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,—
- (a) five thousand rupees, if the return is furnished on or before the 31st day of December of the assessment year
 - (b) 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.

This fee is in addition to the interest payable under section 234A

20.2 FURNISHING OF RETURNS BY EMPLOYEES THROUGH EMPLOYER

Section:- 139(1A)

Any person, being an individual who is in receipt of income chargeable under the head "Salaries" may, at his option, furnish a return of his income for any previous year to his employer, in accordance with such scheme as may be specified by the Board in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, and such employer shall furnish all returns of income received by him on or before the due date, in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and manner as may be specified in that scheme, and in such case, any employee who has filed a return of his income to his employer shall be deemed to have furnished a return of income under section 139 (1), and the provisions of this Act shall apply accordingly.

Note:-This provision does not have any practical relevance after introduction of NEW ITR Forms.

20.3 FILING OF RETURNS IN ELECTRONIC FORM [SECTION 139(1B)]

Section:- 139(1B)

Any person, being a company or being a person other than a company, required to furnish a return of income under section 139(1), may, at his option, on or before the due date, furnish a return of his income for any previous year in accordance with such scheme as may be specified by the Board in this behalf by notification in the Official Gazette and subject to such conditions as may be specified therein, in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and in the manner as may be specified in that scheme, and in such case, the return of income furnished under such scheme shall be deemed to be a return furnished under section 139(1), and the provisions of this Act shall apply accordingly.

Note:-This provision does not have any practical relevance after introduction of NEW ITR Forms.

20.4 SPECIFIED CLASS OR CLASSES OF PERSONS TO BE EXEMPTED FROM FILING RETURN OF INCOME

Section:- 139(1C)

- (a) For reducing the compliance burden of small taxpayers, the Central Government has been empowered to notify the class or classes of persons who will be exempted from the requirement of filing of return of income, subject to satisfying the prescribed conditions.
- (b) Every notification issued under section 139(1C) shall, as soon as may be after its issue, be laid before each House of Parliament while it is in session.

20.5 RETURN OF LOSS

Section:- 139(3)

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



SECTION 119-POWERS OF CBDT

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

Circular No.8 / 2001 dated 16th May 2001

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

Practical 3

Rajesh regularly files his return of income electronically. While he was trying to upload his return of income for assessment year **2018-19** on **31st July, 2018**, 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, 2018**. 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, 2018** 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:**20.6 | 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.

20.7 | 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.

20.8 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.

20.9 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) (*iiiab*)/ (*iiiac*)/ (*iiiad*)/(*iiiae*)/(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 4

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:

20.10 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).

20.11 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).

20.12 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).

20.13 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. **(modified by Finance Act, 2017)**

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 5

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:**20.14 THE DETAILS TO BE FURNISHED BY AN ASSESSEE IN THE RETURN OF INCOME****Section:- 139(6) and 139(6A)**

The following particulars are required to be submitted with the return as per section 139(6) and section 139(6A).

(1) Particulars required to be furnished under section 139(6) by every assessee :

- (1) Income exempt from tax.
- (2) Assets of the prescribed nature, value and belonging to the assessee.
- (3) His bank account and credit card held by him.
- (4) Expenditure exceeding the prescribed limits incurred by him under the prescribed heads.
- (5) Such other out goings as may be prescribed.

(2) Particulars to be furnished in case of an assessee engaged in any business or profession [Section 139(6A)]:

- (1) The report of audit referred to in section 44AB;
- (2) The particulars of location and style of the principal place where he carries on the business or profession; and all branches thereof;
- (3) Names and addresses of his partners if any in such business or profession;
- (4) If assessee is a member of an association or body of individuals, the names of other members;
- (5) The extent of assessee's share and of other partners/ members of the profits of the business or of the branches.

20.15 DEFECTIVE RETURN**Section:- 139(9)**

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

Rectification of Defect:-

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

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

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

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

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

NOTE:

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

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

- (i) In case of a defective return, the Commissioner shall intimate this to the person through e-mail or by placing a suitable communication on the e-filing website.
- (ii) A person shall comply with the notice regarding defective return by uploading the rectified return within the period of time mentioned in the notice.
- (iii) The Commissioner may, in order to avoid hardship to the person, condone the delay in uploading of rectified return.
- (iv) In case no response is received from the person in reply to the notice of defective return, the Commissioner may declare a return as not having been uploaded at all or process the return on the basis of information available



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

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

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

Fill in the blanks:

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

Solution: (a) illustrative (b) Invalid

20.16 | 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; and who has not been allotted a permanent account number shall, within such time, as may be prescribed¹⁸, 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 sub-section (3) of section 200:
- 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.
- (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.

20.17 | 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—
- (i) in the application form for allotment of permanent account number;
 - (ii) 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.
- (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.

- **Notification No. 37/2017, F. No. 370133/6/2017-TPL**

As per Notification No. 37/2017, the provisions of section 139AA shall not apply to an individual who does not possess the Aadhaar number or the Enrolment ID and is:-

- (i) residing in the States of Assam, Jammu and Kashmir and Meghalaya;
- (ii) a non-resident as per the Income-tax Act, 1961;
- (iii) of the age of eighty years or more at any time during the previous year;
- (iv) not a citizen of India

20.18 | SCHEME FOR SUBMISSION OF RETURNS THROUGH TAX RETURN PREPARERS.**Section:- 139B**

1. For the purpose of enabling any specified class or classes of persons in preparing and furnishing returns of income, the Board may, without prejudice to the provisions of section 139, frame a scheme, by notification in the Official Gazette, providing that such persons may furnish their returns of income through a Tax Return Preparer (TRP) authorized to act as such under the Scheme.
2. Every TRP shall assist the persons furnishing the return of income in such manner as may be specified in the Scheme framed under this section and affix his signature on such return.
3. For this purpose, TRP means any individual who has been authorized to act as TRP under the Scheme framed under this section. However, following persons cannot act as TRP:-
 - a. any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; [Section 288(2)(ii)] or
 - b. any legal practitioner who is entitled to practise in any civil court in India; [Section 288(2)(iii)] or
 - c. a chartered accountant; [Section 288(2)(iv)] or
 - d. an employee of the “specified class or classes of persons”.
4. The Scheme framed by the Board under this section may provide for the following, namely:-
 - (a) the manner in which and the period for which the TRP, shall be authorized;
 - (b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a TRP;
 - (c) the code of conduct for the TRP;
 - (d) the duties and obligations of the TRP;
 - (e) the circumstances under which the authorization given to a TRP may be withdrawn;
 - (f) any other matter which is required to be, or may be, specified by the Scheme for the purpose of this section
5. Every Scheme framed by the Board under this section shall be laid, as soon as may be after it is framed, before each House of Parliament, while it is in session.....

Notification No.84/2010 dated 22.11.2010

Paragraph 2(f) of the Tax Return Preparer Scheme, 2006 defining a Tax Return Preparer, specifically provided that a person who is in employment and income from which is chargeable under the head “Salaries” shall not be entitled to act as a Tax Return Preparer.

This disqualification has now been removed by amending paragraph 2(f). Consequently, a salaried person is now eligible to act as a Tax Return Preparer.

Considering above mentioned changes, employees of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force, are now eligible to act as Tax Return Preparers.

20.19 POWER OF BOARD TO DISPENSE WITH FURNISHING DOCUMENTS, ETC. WITH THE RETURN

Section:- 139C

The Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificates, reports of audit or any other documents, which are otherwise under any other provisions of this Act, except section 139D, required to be furnished, along with the return but on demand to be produced before the Assessing Officer.

20.20 FILING OF RETURN IN ELECTRONIC FORM

Section:- 139D

The Board may make rules providing for —

- (a) the class or classes of persons who shall be required to furnish the return in electronic form;
- (b) the form and the manner in which the return in electronic form may be furnished;
- (c) the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return in electronic form but shall be produced before the Assessing Officer on demand;
- (d) the computer resource or the electronic record to which the return in electronic form may be transmitted.

20.21 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	Managing Director Any other director Holder of a valid Power of Attorney

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

20.22 SELF – ASSESSMENT TAX

Section:- 140A

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

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



SECTION 221: Penalty payable when tax in default

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

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

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



SECTION 222: Certificate to be drawn by TRO

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

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

20.23 | 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.

20.24 INQUIRIES

Section:- 142(2)

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

20.25 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).***

20.26 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 6

Mr. X had not filed return for A.Y. **2018-19** though due date was **30/9/2018**. He was in receipt of notice u/s 142(1) requiring him to file return on or before **15/12/2018**. Mr. X didn't respond. A.O. issued another notice u/s 142(1) requiring him to file return on or before **31/12/2018**. He filed return on **15/2/19**. On **19/2/19** he received an assessment order u/s 144 and order was signed by A.O. on **13/2/19**. 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. **(31/3/2019)**.

Or

before completion of assessment. **(13/2/2019)**.{*whichever is earlier*}

However, Mr. X submitted return on **15/2/2019**. Therefore, return submitted by Mr. X is not valid.

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

Readers Note:

20.27 | 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 7

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:

20.28 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.
- (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 an agreement under section 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-

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

- (1A) For the purpose of processing the returns as mentioned above, the Board may make a scheme for centralized processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee.
- (1B) For the purpose of giving effect to the scheme, the Central Government may, by notification, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. Further, such notification may be issued at any time but not after 31st March, 2012.
- (1C) Every such notification shall be laid before each house of Parliament.
- (1D) 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.

20.29 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.

20.30 | 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.

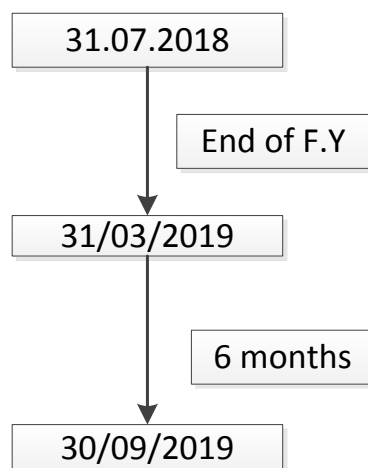
Practical 8

Mr. Joy filed return for the **A.Y. 2018-19** on **31.07.2018**, A.O. thereafter served notice u/s 143(2) requiring him to produce evidence. Notice was dated **30/09/2019**. However, it was served to Mr. Joy on **10/10/2019**. 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 **30/9/2019**, while in present case, it has been served on **10/10/2019**. Therefore, contention raised by Mr. Joy for challenging jurisdiction of the assessing officer is valid.

As a result, any order passed by the assessing officer under section 143(3) of the Act, in case of Mr. Joy, for the **A.Y. 2018-19** shall be considered as null and void.

Readers Note:

Practical 9**Section 143(1) – section 143(2)**

Mr. X filed return for A.Y.2018-19 on 15/7/2018 declaring income by Rs.3,51,000. A.O. issued intimation u/s 143(1) and determined income at Rs. 3,61,000. A.O. therefore raised notice of demand of Rs.1,200. Intimation was served to assessee on 10/12/2018. Assessee met demand in full on 12/12/2018. A.O. thereafter served notice u/s 143(2) on 15/9/2019 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. 2018-19 on 31/8/18. He received notice for scrutiny on 31/12/18 requiring him to produce books of a on 15/1/19. He responded and during the course of hearing, A.O. found error in rate of depreciation charged on plant and machinery. Therefore, assessing officer would like to issue intimation of demand u/s 143(1). Advice assessing officer.

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

20.31 | 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.

20.32 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.**

20.33 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**

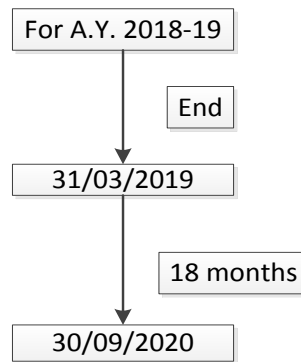
Within 21 months **from** the end of relevant assessment year.

2. The abovementioned time limit for completion of assessment has been modified by Finance Act, 2017 as under:

Assessment Year	Abovementioned time limit of 21 months shall be substituted by
2018-19	18 months
2019-20 and onwards	12 months

3. 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 **2018-19**, 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. 2018-19**, the case of Good Better Best Private Ltd. was selected under scrutiny. During scrutiny proceedings, the Assessing Officer, on **15-12-20**, had made a reference to Valuation Officer under section 142A for determining fair market value under section 69 of Income Tax Act. Thereafter, valuation officer determined fair market value and sent valuation report to Assessing Officer on **30-01-2021**. 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**

18 months from the end of Assessment Year

End of the Assessment year + 18 months

31.3.2019 + 18 months

30.09.2020

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.)

30.09.2020 + 46 days

15.11.2020

Step 3: Minimum Time Limit

Day on which authority can reassume jurisdiction + 60 days

30.01.2021 + 60 days

31.03.2021

Step 4: Effective Time Limit

Step 2 or Step 3 whichever is later

31.03.2021

Readers Note:**20.34 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**

20.35 CONCEPT – OPPORTUNITY OF BEING HEARD AS A PRINCIPLE OF NATURAL JUSTICE

Practical 12

Suresh Chandra Gupta HUF has filed the income tax return. The return was selected for scrutiny by serving valid notice under section 143(2). The assessment was completed under section 143(3) in the name of Mr. Suresh Chandra Gupta, Individual. At no point of time before completing the assessment, the assessing officer gave any notice to the taxpayer that his claim for assessment in the status of a Hindu Undivided Family was not likely to be accepted. Mr. Gupta claimed that the order passed by assessing officer is bad in law. Is such claim correct?

Solution

While dealing with the similar facts in case of **CIT Vs. Suresh Chandra Gupta 173 ITR 407**, the Rajasthan High Court held as under:

“It is a basic requirement of law that a person, who is likely to be adversely affected by an order, should have an opportunity to show cause why such adverse order should not be made.”

Considering the above, the order passed by the assessing officer is in violation of principle of natural justice. Therefore, Mr. Gupta rightly claimed that such order of assessing officer is bad in law.

Readers Note:

20.36 CONCEPT – SPEAKING ORDER

- The order of the Assessing officer shall be in writing.
- Further, it shall
 - (i) State the points for determination,
 - (ii) the decision thereon and
 - (iii) the reason for the decision.
- While passing the order under section 144 (best judgment assessment) of the Act, following points merit consideration:
 - (a) The officer must not act vindictively or capriciously or with a view to punish the assessee for non-compliance.

- (b) He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate. (In short, Assessing Officer, while making a best judgment assessment should make an intelligent well-grounded estimate. Such estimate must be based on adequate and relevant material.)
- (c) There must necessarily be guess-work in the matter but it must be honest guess-work. Further, it is not required that figures have to be proved of the exact amount by taxing authorities.

20.37 | CONCEPT – PRINCIPLE OF RES JUDICATA AND ITS EXCEPTION

- **Principle of 'res judicata'**

The principle of "res judicata" has no application to proceedings under the Income-tax Act. That means, the findings reached for one particular assessment year cannot be held to be binding in the assessment proceedings for subsequent years.

Example 1

X Ltd. has claimed the deduction under section 80-IE for the previous year 2011-12 for the first time. Thereafter, the assessing officer assessed the income under section 143(3) accepting the claim under section 80-IE.

Since principle of 'res judicata' has no application to the proceedings under the Income-tax Act, the assessing officer can reject the claim of deduction under section 80-IE for the subsequent year(s) (e.g. P.Y. 2012-13).

- **Exception to this rule:** (Popularly known as Estoppel as to Facts)

This principle remains valid (that means, the assessing officer is bound to follow the findings reached in earlier year while assessing the income of subsequent year (s)) provided in a subsequent year no fresh facts are found.

Example 2

Continuing above example, discuss the impact of principle of res judicata under following alternatives for the P.Y. 2012-13 (Subsequent year).

Alternative- I : During the course of survey conducted at the business premises of Jay Ambe Machinery Private Ltd., the assessing officer found that the all the plant & machinery purchased during previous year 2011-12 were not new as claimed by X Ltd.

Alternative-II : No such fresh facts were found by the assessing officer in this regard.

Impact under different alternatives**Alternative – I**

Since fresh facts were found later on that the machinery purchased were not new, the assessing officer is entitled to deny the deduction under section 80 IE for the subsequent assessment year (s).

Further, the assessing officer is empowered to re-open the assessment of P.Y. 2011-12 under section 147 to withdraw the claim of 80 IE which was already granted.

Alternative- II

In this case, no fresh facts were found, therefore, the assessing officer is bound to follow the findings reached for earlier year in relation to deduction under section 80 IE. As a result, the assessing officer is bound to approve the claim of deduction under section 80 IE for the previous year 2012-13 as well.

- **Estoppel as to Statute:**

Madras High Court in case of **C.G. Krishnaswami Naidu v. CIT [1975] 1100 ITR 33** held as under: It is well-settled that there cannot be any estoppel against a statute.

As a result, departmental officers who took a particular view of the statutory provisions at an earlier stage will not be estopped from taking a different / correct view of the statutory provisions at a later point of time.

20.38 | CONCEPT – VALIDITY OF ORDER

Practical 13

In the course of scrutiny proceedings of PQR Private Limited, the Assessing Officer rejected the book results and made additions based on estimates, but mentioned that assessment was completed under section 143(3). The PQR Private Limited challenged the assessment order on the ground that Assessing officer had made a reference of wrong section, therefore, the assessment can be held to be invalid. Whether the contention raised by PQR Private Limited is correct?

Solution

As per the decided case laws

- **CIT v. Gangaram Kanayalal & Co. [1940] 8 ITR 421 (Sind),**
- **Mriganka Mohan Sur v. CIT ,**
- **Ram Chand & Sons v. CIT [1967] 63 ITR 252 (All),**
- **Shaik Md. Shaffi Barry v. ITO [1967] 64 ITR 464 (Cal),**
- **Bidyut Prova Raha v. ITO [1971] 79 ITR 187 (Assam) ,**

wrong reference to the power under which the assessment order is passed does not make the assessment invalid, if there is some other power under which the order could be lawfully made.

Considering the above, the contention raised by PQR Private Limited is not correct.

Readers Note:

Practical 14

In case of XYZ Private Limited, the Assessing officer passed the order under section 143(3) of the Act for the **A.Y. 2018-19** on **15-09-2020** and it was served to the XYZ Private Limited on **19-09-2020**. However, the date mentioned in the order due to inadvertence was **15-09-2021**. XYZ Private Limited challenged the validity of order on the ground that it was not passed in time. Whether the contention raised by XYZ Private Limited is correct?

Solution

- Wrong mentioning of date on the assessment order would not make the assessment void when it is established beyond doubt that it was merely due to inadvertence. Such order is valid due to the provisions of section 292B which reads as under:
- It 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.
- Considering the above, the contention raised by XYZ Private Limited is not correct.

Readers Note:**Practical 15**

For the **A.Y. 2018-19**, the return filed by Mr. P.T. Patel was subject to scrutiny. The assessing officer passed the order under section 143(3) on **30-09-2020** and determined total income at Rs. 10,80,000. The order was served to Mr. P.T. Patel **03-10-2020** without notice of demand under section 156. Later on, authorized representative of Mr. P.T. Patel approached the assessing officer for notice of demand. The assessing officer prepared demand notice dated **07-10-2020** and handed over the same to the authorized representative on **08-10-2020**. Discuss the validity of order.

Solution

- Section 143(3) provides that
 - (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.
- As per provisions of section 153 of the Act, the above order has to be passed within the time frame of 21 months from the end of relevant assessment year.(i.e. **30-09-2020**)
- A look at the provisions of section 143(3) of the Act makes it clear that the determination of tax payable by the assessing officer is as much mandatory as the determination of income and that too within the time frame given under section 153 of the Act.
- **Gujarat High Court in case of CIT V. Purushottmadas T. Patel 209 ITR 52 (1994)** held that where the order determining the total income is passed within the prescribed time limit (**30-09-2020** in this case) but the tax payable is not determined within the prescribed time limit (**07-10-2020** in this case), the entire assessment would be barred by limitation.
- Thus, the order passed by assessing officer is barred by limitation.

Readers Note:

20.39 | THE POWERS OF JOINT COMMISSIONER TO ISSUE DIRECTIONS**Section:- 144A*****When it can be issued?***

The Joint Commissioner can call for and examine the records of any proceeding in which an assessment is pending either

- SUO MOTU (on his own motion) or
- On a reference made by the Assessing Officer or
- On an application by an assessee.

Issue Directions:

Having regard to the nature of the case, amount involved or for any other reason, the Joint Commissioner can issue directions to the Assessing Officer to enable him to complete the assessment.

The directions issued shall be binding on the Assessing Officer.

Opportunity:

If the directions are prejudicial to the assessee, then he must be given a opportunity of being heard.

20.40 | NOTICE DEEMED TO BE VALID IN CERTAIN CIRCUMSTANCES**Section:- 292BB**

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.

Practical 16

Tai Ltd. filed its return of income for assessment year **2016-17** on **6th June, 2016**. The return is selected for regular assessment under section 143(3) for which notice under section 143(2) is served on the company on **3rd October, 2017**. The company responded to the notice under section 143(2). State whether the service of the notice is within time and if not, whether the assessment order can be challenged by the assessee?

Solution

The time limit for service of notice under section 143(2) is six months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year **2016-17** was filed on **6th June, 2016**. Therefore, the notice under section 143(2) has to be served on or before **30th September, 2017**. But in present case, it was served on the assessee on **3rd October, 2017**. Hence the notice issued under section 143(2) is time-barred.

However, as per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry that the notice was not served upon him in time. However, the above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment.

Therefore, in the present case, Tai Limited is advised to raise objection that notice under section 143(2) is time barred and the same shall be raised before the completion of assessment. If it fails to raise such objection, the assessment order, on this count, cannot be challenged.

Readers Note:**20.41 | DISPUTE RESOLUTION PANEL (DRP)****Section:- 144C****Q.1 Who are the eligible assesseees for the purpose of DRP?****Ans:**

- (i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed u/s 92CA(3); and
- (ii) any foreign company.

Q.2 What does Dispute Resolution Panel mean?**Ans:**

Dispute Resolution Panel means a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose.

Q.3 What is the procedure to be followed by the Assessing Officer, in the first instance, before finalization of the assessment of eligible assessee?**Ans:**

The Assessing Officer shall, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee.

Q.4 Which are the obligations cast on the eligible assessee when he receives the draft order?**Ans:**

On receipt of the draft order, the eligible assessee shall, within 30 days of the receipt by him of the draft order,

- (a) file his acceptance of the variations to the Assessing Officer; or
- (b) file his objections, if any, to such variation with,
 - (i) the Dispute Resolution Panel; and
 - (ii) the Assessing Officer.

Q.5 Under which circumstances, the Assessing Officer shall complete the assessment on the basis of the draft order? And what is the time limit for the same?**Ans:**

The Assessing Officer shall complete the assessment on the basis of the draft order, if

- (a) the assessee intimates to the Assessing Officer the acceptance of the variation; or
- (b) no objections are received within the period of 30 days as stated above

Time Limit:- The Assessing Officer shall, notwithstanding anything contained in section 153 or 153B, pass the assessment order within one month from the end of the month in which,

- (a) the acceptance is received; or
- (b) the period of filing of 30 days for filing of objections expires.

Q.6 What is the procedure to be followed by DRP when objections are received from eligible assessee?**Ans:**

The Dispute Resolution Panel shall, in a case where any objection is received from the eligible assessee, issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

Q.7 Before issuing directions to the Assessing Officer by DRP, which points are to be considered?**Ans:**

The Dispute Resolution Panel shall issue the directions, after considering the following, namely:

- (a) draft order;
- (b) objections filed by the assessee;
- (c) evidence furnished by the assessee;
- (d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
- (e) records relating to the draft order;
- (f) evidence collected by, or caused to be collected by, it; and
- (g) result of any enquiry made by, or caused to be made by, it.

Q.8 What are the powers of DRP while issuing directions? Whether these directions are binding on the Assessing Officer?**Ans:**

The Dispute Resolution Panel may, before issuing any directions,

- (a) make such further enquiry, as it thinks fit; or
- (b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

Further, the Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order. However, it shall not set aside any proposed variation or issue any direction for further enquiry and passing of the assessment order.

[Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.]

No direction shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

As per amended section 131(1), the DRP shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908.

Further, every direction issued by the DRP shall be binding on the Assessing Officer.

Q.9 What shall be done if the members of DRP differ in opinion on any point?**Ans:**

If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

Q.10 What is the time limit for issuing directions by DRP?**Ans:**

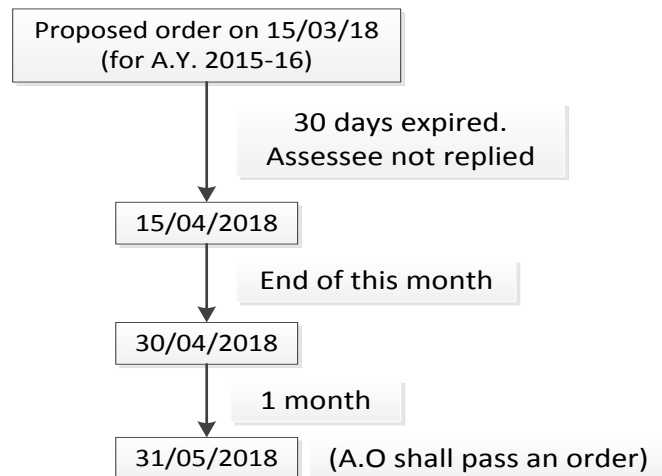
No direction shall be issued by DRP after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

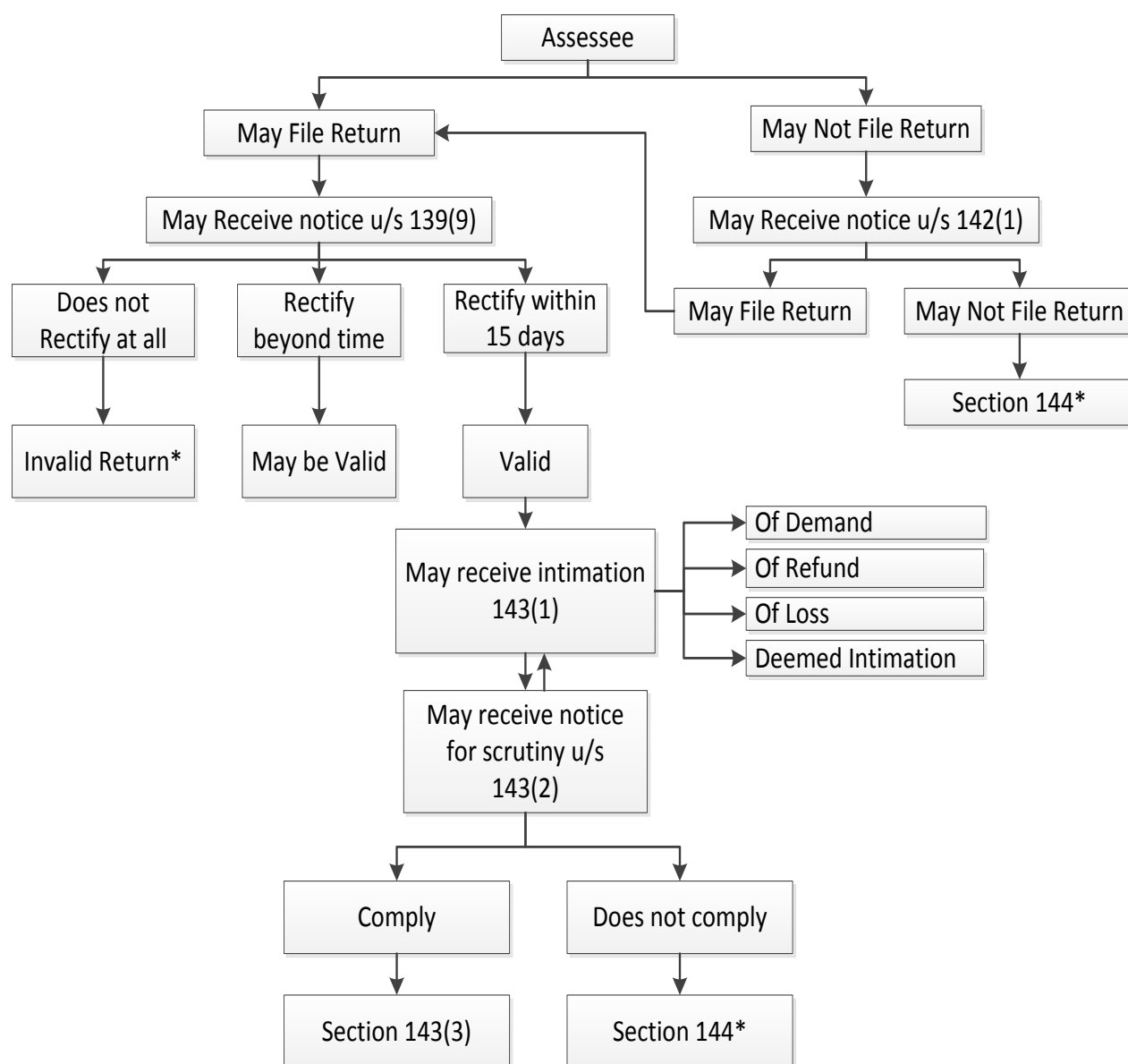
Q.11 What is the time limit for completion of assessment if directions are issued by the DRP?**Ans:**

Upon receipt of the directions, the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 or 15B, the assessment, within one month from the end of the month in which such direction is received. For this purpose, no further opportunity of being heard will be given to the assessee.

Q.12 To whom appeal shall lie, if eligible assessee is aggrieved by the order passed by assessing officer in conformity with the directions of the DRP?**Ans:**

In view of the amendments in section 246A and section 253, the appeal shall lie before Income Tax Appellate Tribunal and not to the Commissioner (Appeals).

Chart illustrating time limit for passing order by the Assessing officer in following situations**Case no. 1: If no objection is filed by the eligible assessee against draft order****Case no. 2: If objection is filed by the eligible assessee against draft order**

Summary Chart of Assessment Procedure

Section 144*

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

20.42 INCOME ESCAPING ASSESSMENT

Section:- 147

To understand the concept of income escaping assessment, following para are relevant.

Para No.	Section	Topic Name
20.42	147	Income escaping assessment
20.42A	148	Issue of notice where income has escaped assessment
20.42B	149, 150, 151	Time limit for issue of notice, sanction for notice and exceptions to the time limit for issue of notice

20.42C	-	How assessing officer shall proceed for carrying out assessment u/s 147?
20.42D	153(2), 153(4) and Explanation 1 to Section 153	Time limit for completion of assessments and certain periods are excluded from the time limit for passing assessment orders
20.42E	-	Summary of proceedings under section 147
20.42F	152	Other provisions

When it can be done?

- Where the A.O. has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or recompute such income **and also**
- any other income which has escaped assessment and which comes to the notice of the Assessing Officers subsequently in the course of the proceeding under section 147.

Two restrictions on the power of A.O.

- The Assessing Officer may assess or reassess any escaped income, other than the income involving matters which are subject matter of any appeal, reference or revision.
- No proceedings shall be taken under this section after the expiry of 4 years from the end of the relevant assessment year if the following conditions are satisfied:
 - The assessment has been completed u/s. 143(3) / 147
 - The assessee has filed return u/s. 139 or in response to notice u/s. 142 (1) or 148.
 - The assessee has **disclosed fully and truly all material facts** necessary for the assessment.

However, the restriction of 4 years mentioned above is not applicable in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.

Cases of Deeming escapement:-

1.	<u>No return</u> is <u>filed</u> by the assessee	Although Income was exceeding the maximum amount not chargeable to tax
2.	The assessee has <u>filed</u> a <u>return</u> of income but <u>no assessment</u> has been made [Sec. 143 (1)]	It is noticed by the A.O. that the assessee has understated income, excessive loss, deduction, allowance or relief claimed
3.	<u>Assessment</u> has been <u>made</u> [Sec. 143(3)/ 144/147]	But – Income chargeable to tax under assessed or Such income has been assessed at lower rate, Such income has been subject to excessive relief or excessive loss or depreciation allowance or any other allowance under this Act has been computed.
4.	Where assessee undertaken	But failed to furnish a report in respect of these

	international transaction (or specified domestic transaction)	transactions which he was so required u/s 92E
5.	where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, section 133C (2)	It is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.
6.	Where a person is	Found to have any asset (including financial interest in any entity) located outside India.

20.42A | ISSUE OF NOTICE WHERE INCOME HAS ESCAPED ASSESSMENT

Section:- 148

Section 148(1)

Before making the assessment, reassessment or re-computation under section 147, the assessing officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice, a return of his income, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; ***and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.***

Section 148(2)

The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

20.42B | TIME LIMIT FOR ISSUE OF NOTICE, SANCTION FOR NOTICE AND EXCEPTIONS TO THE TIME LIMIT FOR ISSUE OF NOTICE

Section:- 149, 150 and 151

Time Limit for issue of Notice [Section 149]

Situation 1:- If income in relation to any asset (including financial interest in any entity) located outside India has escaped assessment

<i>Up to 4 years from the end of the relevant assessment year</i>	<i>Beyond 4 years but up to 16 years from the end of the relevant assessment year</i>
Assessment can be re-opened whatever is the amount of income escaped ¹	Assessment can be re-opened whatever is the amount of income escaped ²

Situation 2:- Cases other than situation 1

<u>Up to 4 years from the end of the relevant assessment year</u>	<u>Beyond 4 years but up to 6 years from the end of the relevant assessment year</u>
Assessment can be re-opened whatever is the amount of income escaped ¹	If the escaped income is Rs. 1,00,000 or more for that year ²

Notes:- (Sanction for Notice- Section 151)

1. No notice can be issued by an A.O. who is below the rank of Joint Commissioner unless he is satisfied that on the reason recorded by A.O. that it is a fit case for issue of such notice.
2. Notice can be issued only if the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied on the reasons recorded by the A. O. that it is a fit case for issue of notice.

Explanation to section 151

For removal of doubts, it is hereby clarified that the Joint commissioner, Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, being satisfied on the reasons to be recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue the notice himself.

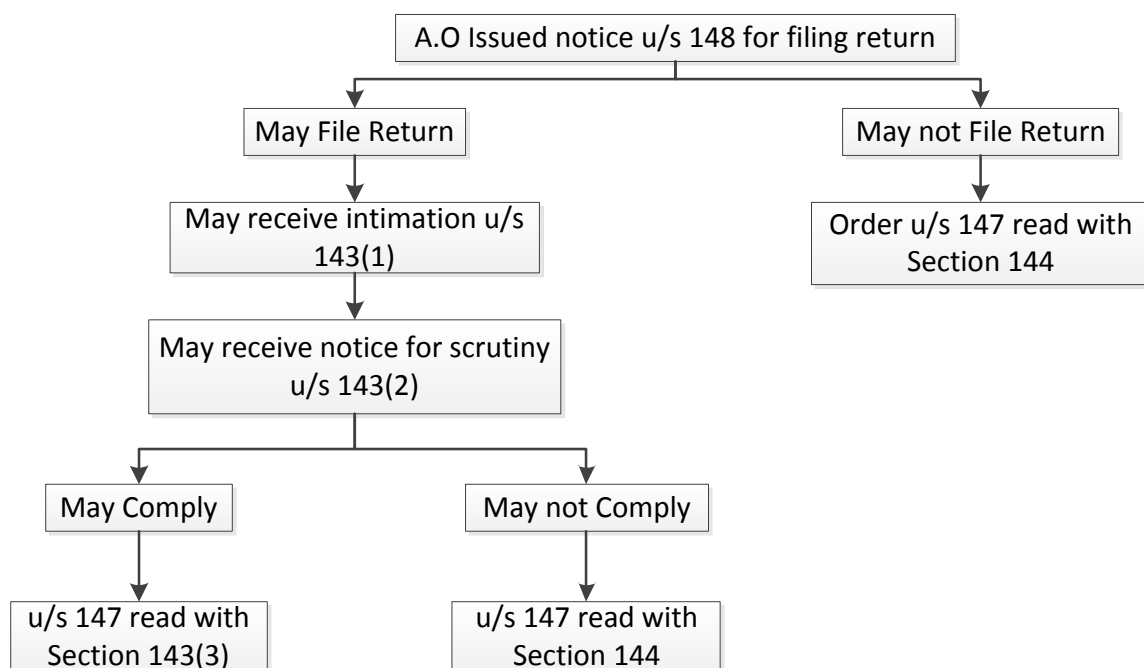
Exceptions for issue of notice (Section 150):-

1. The above notice can be issued at any time to give effect to any finding or direction contained in an order passed by: (a) any authority in any proceeding under the Act, by way of appeal, reference or revision or (b) any Court in any proceeding under any law.
However, notice u/s. 148 cannot be issued, if at the time when the order which was subject matter of appeal, reference, revision, was passed, the time limit for the issue of such notice had expired.
2. **No Notice shall be issued under section 148 to agent of non – resident after expiry of 6 years from the end of the relevant assessment year.**

20.42C	HOW ASSESSING OFFICER SHALL PROCEED FOR CARRYING OUT ASSESSMENT UNDER SECTION 147?

As discussed earlier under section 148(1), for the return to be filed in response to a notice under section 148, ***the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.***

Therefore, Delhi High Court in case of ***R. Dalmia v. CIT 194 ITR 700 (1992)*** held that Section 147 is merely a machinery section and, therefore, assessment has to be completed either under section 143(3), 143(1) or under section 144.



20.42D TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND CERTAIN PERIODS ARE EXCLUDED FROM THE TIME LIMIT FOR PASSING ASSESSMENT ORDERS

Section:- 153(2), 153(4) and Explanation 1 to Section 153

Time limit for completion of assessment u/s 147

1. Within 9 months **from** the end of financial year in which the notice under section 148 was served.
2. *The abovementioned time limit for completion of assessment has been modified by Finance Act, 2017 as under:*

Where notice under section 148 is served	Abovementioned time limit of 9 months shall be substituted by
On or after 1 st April, 2019	12 months

3. 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).

Explanation 1 to section 153 has already been discussed in para 20.32.

20.42E SUMMARY OF PROCEEDINGS UNDER SECTION 147

Sr. No.	Primary Flow of Procedure under section 147
(1)	There must be an information or some tangible material with the assessing officer.
(2)	Such information or tangible material must be specific.
(3)	Based on such specific information or material, assessing officer should form a belief in a subjective manner that income has escaped assessment.

(4)	The assessing officer must record the reasons for re-opening.
(5)	He must obtain appropriate sanction (as mentioned under section 151) for issuing notice under section 148.
(6)	Thereafter notice under section 148 shall be served to the taxpayer requiring him to file return. Such notice must be issued within the time limit prescribed under section 149 read with section 150.
(7)	On receipt of notice under section 148, appropriate course of action on the part of assessee is to file return. (Such return will have same effect as if it is required to be filed under 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 under section 139.
(13)	During the course of proceedings under section 147, if any other income which has escaped assessment and which comes to the notice of assessing officer, then same can also be included while passing order under 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).

Practical 17

A.O. issued notice u/s 148 requiring assessee to file return for **A.Y. 2011-12**. Notice was dated **31/3/18** and sent to Post Office on the same day. But it was served to assessee on **3/4/18**. Discuss validity of notice issued u/s 148.

Solution

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

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

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

Readers Note:

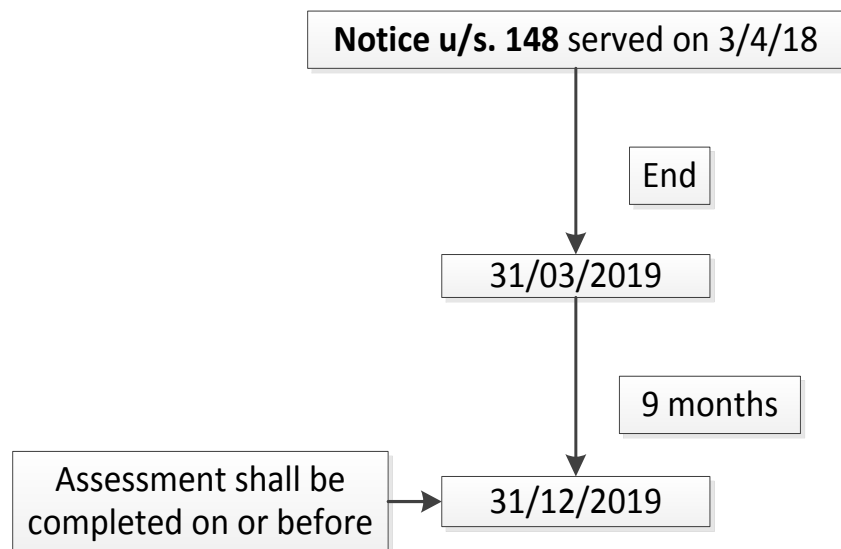
Practical 18

Suppose in the above practical, assessee submitted return on **15/4/18**. (i) Determine time limit for service of notice u/s 143(2), if A.O. would like to scrutinize the case. (ii) What is the maximum time

limit by which assessment u/s 147 shall be completed?

Solution

- (i) Maximum time limit by which notice u/s 143(2) shall be served is 30/09/19.
- (ii) Time limit for completing assessment under section 147 is 9 months from the end of financial year in which notice u/s 148 is served.



Readers Note:

Practical 19

A.O. issued notice u/s 148 requiring assessee to file return for A.Y. 2011-12. Notice was dated 31/3/18 and sent to Post Office on 02/04/2018. And it was served to assessee on 7/4/18. Discuss validity of notice issued u/s 148.

Solution

Gujarat High Court in case of **Kanubhai M. Patel HUF 334 ITR 25 (2011)** held that date of issue of notice does not mean the date of signing notice.

As per the Court decision, date of issue means the date on which it was handed over by income tax department to the postal authority/ courier for the delivery of the same to addressee.

Considering this decision, date of issue of notice comes to **02/04/2018** which is beyond 6 years from the end of **A.Y. 2011-12**. Therefore, notice under section 148 is time barred.

Readers Note:

Practical 20

The case of DNK Associates, Partnership firm for the assessment year **2013-14** was selected for re-assessment by issuing and serving valid notice under section 148 of the Act. During the course of hearing, A.O. confronted to the partner that there is an unaccounted sales done by the firm amounting to Rs. 20,00,000. The partner of the firm accepted unaccounted sales but requested to give deduction of Rs. 18,00,000 being unaccounted purchase made to effect unaccounted sales. The assessing officer rejected the plea of DNK Associates. Whether the action of assessing officer is justified?

Solution

The Bombay High Court in case **CIT vs. Caixa Economica De Goa 210 ITR 719** was of the considered opinion that assessee can put forward claims for deduction of any expenditure which is relatable to escaped income.

Considering the above principle, plea made by the partner of DNK Associates was in accordance with law. The rejection of the plea by Assessing officer is, therefore, not justified.

Readers Note:**Practical 21**

For the **A.Y. 2012-13**, Mr. Swamy was in receipt of notice under section 148 of the Act since income "X" had escaped the assessment. The assessing officer passed the order under section 147 taxing such income "X". Later on, assessing officer has reason to believe that income "Y" has also escaped the assessment for the **A.Y. 2012-13**. Therefore, he issued another notice under section 148 of the Act for the **A.Y. 2012-13**. Mr. Swamy challenged the notice that once assessment has been completed under section 147 of the Act, second time re-assessment is not permissible for the same assessment year. Whether challenged made by Mr. Swamy is valid?

Solution

Madras High Court in case of **CIT vs S.S.R.G. Arthanariswamy (1982) 136 ITR 147** laid down the ratio wherein it was held that the section 147 does not place any limit on number of times an assessing officer may invoke his power in respect of an assessment order.

Considering the ratio laid down by Madras High Court, the contention raised by Mr. Swamy challenging second time re-assessment is not valid.

Readers Note:**Practical 22**

Mr. X submitted return for **P.Y. 2017-18** on **15/7/2018**. He is in receipt of notice for scrutiny u/s 143(2) on **16/8/2018** requiring him to attend office of A.O. on **10/9/2018**. He attended hearing and during the course of hearing, A.O. found that Mr. X had not declared income from one of the sources [E.g. House property]. Therefore A.O. issued notice u/s 148 requiring him to file return for **P.Y. 2017-18** on or before **14/2/2019**. Discuss the validity of action taken by Assessing Officer.

Solution

Supreme Court decision in case of **Trustees of H.E.H. the Nizam's Supplemental Family Trust v. CIT 242 ITR 381 (2000)** held that A.O. cannot initiate reassessment proceedings so long as original assessment proceeding on the basis of return already filed are not completed.

Therefore, A.O. shall assess house property income while passing order u/s 143(3) instead of issuing notice u/s 148. Thus, action of A.O. to issue notice u/s.148 is not proper.

Readers Note:**Practical 23**

Mr. X had filed return for **P.Y. 2013-14** disclosing income of Rs. 1,08,000. Thereafter, assessment order was passed u/s 143(3) which reads as under:

Particulars	Rs.
Income returned	1,08,000
Add: Unexplained cash credit for want of confirmation	62,000
Add: G.P. Addition	1,80,000
Add: Travelling expenses incurred for visit to south India for want of business necessity /connection.	32,000
Total Assessed Income	3,82,000

Subsequently A.O. issued notice u/s 148 on 10/1/2018 requiring Mr. X to file return for **P.Y. 2013-14** on or before 31/01/2018. Mr. X submitted return on 19/1/2018 and asked for the copy of reasons. A.O. pointed out that Mr. X had made some sales at Madras which was unaccounted. Mr. X had not filed any objection.

During re-assessment proceeding Mr. X,

- (i) Produced confirmation of creditors- Rs.62000 which he failed to produce at the time of original assessment and requested to delete addition of Rs.62000.
- (ii) He further requested to allow travelling expenses of Rs.32000 pointing out that it is in connection with unaccounted sales at Madras.

Whether both the claims of Mr. X are valid?

Solution

Supreme Court in case of *CIT v. Sun Engg. Works (P.) Ltd.* 198 ITR 297 (1992) held that during the course of re-assessment proceeding, generally assessee cannot seek a review of concluded item under earlier assessment proceeding [143(3)]. Review of concluded item is permissible only if it is in relation to escaped income.

Considering the above ratio, Mr. X,

- (i) cannot seek a review of addition in respect of unexplained cash credit because it is not connected with escaped income.
- (ii) But he can seek review of allowability of travelling expenses for south India tour if he establishes the relation of this tour with unaccounted sales made at Madras.

Readers Note:

Practical 24

Notice u/s 148 was issued to Shri Ram Singh on the basis of information that he has made unaccounted investment in plot of land. This is the only reason recorded by A.O. before issuing notice under 148. Shri Ram Singh failed to offer an explanation for investment in Plot. During the course of reassessment proceeding u/s 147, it came to the notice of A.O. that Shri Ram Singh has advanced Rs.5 lacs to Hanuman Singh for the same assessment year which is not recorded while issuing notice under section 148. On conclusion of proceedings u/s 147, A.O. made two additions:

- (i) Addition on account of investment in plot.
- (ii) Addition of loan given to Hanuman Singh.

Assessee challenged 2nd Addition in appeal on the ground that while drafting reasons u/s 148, loan to Hanuman Singh was not included and therefore A.O has no jurisdiction for an issue of Hanuman Singh. Hence, addition of loan given to Hanuman Singh should be deleted. Is Assessee's contention

correct?

Solution

Section 147 states that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section.

Further, Explanation 3 to section 147 reads as under:

“For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under section 148(2)”.

Considering the above, contention of assessee is not correct.

Readers Note:

Practical 25

Notice u/s 148 was issued to Shri Ram Singh on the basis of information that he has made unaccounted investment in plot of land. This is the only reason recorded by A.O. before issuing notice u/s 148. During the course of proceeding u/s 147, A.O. found explanation offered by assessee for investment in plot satisfactory. But, further, it came to the notice of A.O. that Shri Ram Singh has granted advance of Rs. 5 lacs to Hanuman Singh for the same assessment year which is not recorded while issuing notice under section 148. On conclusion of proceedings u/s 147, A.O. made only addition; that is; loan given to Hanuman Singh:- Rs. 5 lacs

Assessee challenged this addition in appeal on the ground that while drafting reasons u/s 148, loan to Hanuman Singh was not included and therefore A.O has no jurisdiction for an issue of Hanuman Singh. Hence, addition of loan given to Hanuman Singh should be deleted. Is assessee's contention correct?

Solution

- Section 147 states that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income **and also any other income** chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section.
- Considering the language employed in section 147, **Bombay High Court in case of CIT v. Jet Airways (I) Ltd. 331 ITR 236** held that addition on second issue (loan to Hanumansingh) will survive only when the assessing officer makes addition for the main issue (investment in plot) for which he recorded the reason while issuing notice under section 148. If this view is adopted then, the contention made by assessee is correct.
- However, contrary view is given by **Punjab and Hariyana High court in case of CIT v. Mehak Finvest Pvt. Ltd. 367 ITR 769**, wherein court observed that addition for second issue will survive independently i.e. it is valid even though assessing officer has not made addition for the first issue. If this view is adopted then, the assessing officer is perfectly justified in making addition in respect of loan to Hanumansingh.

Readers Note:**Practical 26**

Can reopening under section 147 based on the report of valuation officer is valid?

Solution

The Supreme Court in case of ACIT v. Dhariya Construction Co. (2010) 328 ITR 515 held that the opinion of the DVO per se is not an information for the purpose of reopening assessment u/s.147. The Assessing Officer has to apply his mind to the information, if any, collected and form a belief thereon.

The opinion of DVO alone cannot be the basis for reopening the assessment.

Readers Note:**Practical 27**

Can reopening under section 147 is justified when there is mere a “change of opinion” by the assessing officer. Explain with the help of example.

Solution

The Delhi Court in case of **CIT v Kelvinator of India Ltd. 256 ITR 1** held that mere change of opinion or wrong legal reference will not empower the Assessing Officer to re-open assessment. Reassessment cannot be made on fresh opinion on the same facts.

Consider the following example:

“The regular assessment of MNO Ltd. for the assessment year **2013-14** was completed under section 143(3) on **13th April, 2014**. There was an audit objection by the Revenue Audit team that interest on loan should be partly disallowed as there was diversion of borrowed fund to sister concern without charge of interest. Based on the above facts, Assessing Officer issued notice under section 148 to MNO Ltd.”

In this example, issue in respect of deductibility of interest had already been considered earlier during the course of scrutiny assessment and the Assessing Officer had come to a conclusion that no disallowance of interest paid by the assessee is required, even though loans had been given to sister concern without any interest, the same issue cannot be the basis of reassessment, merely because the revenue audit team takes a different view. Thus, assessing officer is changing his opinion based on the same facts. Therefore, the Assessing Officer cannot issue notice under section 148 on the basis of audit objection of the Revenue Audit team.

Readers Note:**Practical 28**

The income tax return of assessee was accepted under section 143(1) for assessment year **2013-14**. The assessee, thereafter, received a notice under section 148 on **6th April, 2018** for reopening of assessment on the ground that it had claimed excessive bad debt. Can the assessee challenge the legality of the notice on the ground of change of opinion?

Solution

Supreme Court in case of **ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd. (2007) 291 ITR 500** held that where original assessment was made under section 143(1) in a summary manner, and hence where

returned income was accepted in a mechanical manner without even writing a formal order, there is no question of change of opinion of Assessing Officer and hence reopening of assessment was valid. Considering the same, challenge made by assessee on the ground of “change of opinion” is not tenable.

Readers Note:

Practical 29

ICICI Bank submitted Income tax return for the **A.Y.2013-14** under section 139(1). Thereafter, assessing officer selected the case of ICICI bank under section 143(2). During the course of scrutiny proceedings, assessing officer called for the details necessary for the verification of depreciation claim made by ICICI Bank. All the details called for were duly furnished. Thereafter, assessing officer passed the order under section 143(3) accepting the claim of depreciation.

On **10-8-2018**, assessing officer issued notice under section 148 for re-opening the assessment of **A.Y. 2013-14** on the ground that excessive depreciation had been allowed. Whether the action taken by assessing officer is tenable?

Solution

The **Bombay high court in case of ICICI Bank Ltd. v. DCIT 349 ITR 482** held that re-opening by the assessing officer after the expiry of four year is not justified because

- (a) ICICI bank had furnished the return under section 139(1);
- (b) The assessment has already been completed under section 143(3) and
- (c) ICICI bank had disclosed fully and truly all material facts necessary for the assessment

Readers Note:

20.42F | OTHER PROVISIONS

Section:- 152

- (1) In an assessment, reassessment or recomputation made under section 147, the tax shall be chargeable at the rate at which it would have been charged, had the income not escaped assessment.
- (2) where an assessment is reopened under section 147, the assessee may claim that the proceedings shall be dropped on his showing that –
 - (a) he had been assessed on an amount which is not lower than what he would be rightly liable for, even if the income alleged to have escaped assessment had been taken into account;
 - (b) he has not gone on appeal, reference or revision against any part of the original assessment order.

20.43 | 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 30

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 doing assessment in the hands of Mr. A & Mr. B?

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:

20.44 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

- 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,

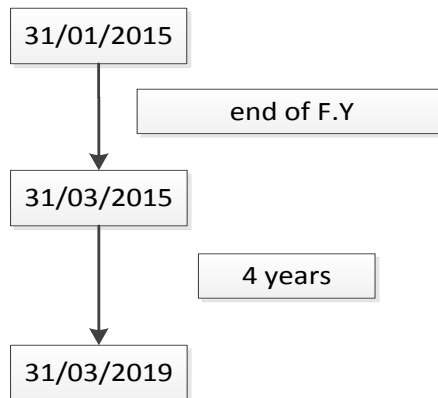
- (a) making the amendment; or
- (b) refusing to allow the claim.

Practical 31

For **A.Y. 2013-14**, Assessing Officer passed the order u/s 143(3) on **31/01/15**. 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

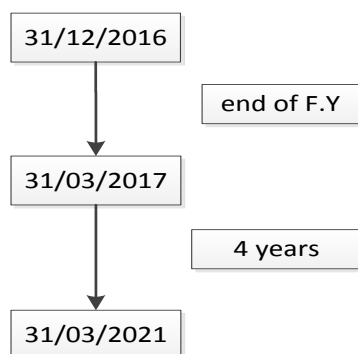
**Readers Note:****Practical 32**

For **A.Y. 2014-15**, Assessing Officer completed the assessment under u/s 143(3) on **31/12/16**. 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.

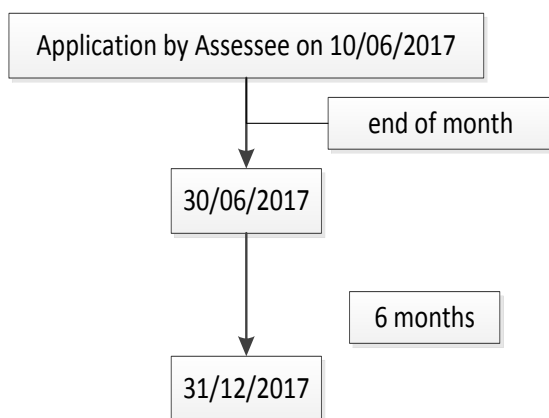
Assuming that the assessee submitted application for rectification on **10/06/2017**, what shall be the maximum time limit by which the assessing officer shall dispose of this application?

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 **31/03/2021**.

(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 **31/12/2017**.

Readers Note:**Practical 33**

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 34

In an order of assessment for the **A.Y. 2012-13**, 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:**20.45 MISCELLANEOUS RECTIFICATION****Section:- 155**

Situations	Time Limit
Amending assessment order of partner of firm or member of AOP / BOI for inclusion of correct share from firm / AOP / BOI	Within 4 years from the end of the financial year in which final order is passed in case of firm / AOP / BOI
Re – computing total income for succeeding years (s) in respect of loss or depreciation recomputed u/s. 147	Within 4 years from end of financial year in which order u/s 147 is passed
Re – computing deemed capital gain u/s 47A	Within 4 years from end of previous year in which capital asset is converted into stock – in – trade or in which parent company / holding company ceases to have 100% shareholding in subsidiary company.
Amending order of assessment so as to exclude unadjusted amount of capital gain exempted u/s 54H	Within 4 years from the end of the previous year in which compensation was received by the assessee.
Amending the order of assessment so as to compute capital gains by taking full value of consideration to be the value as revised in appeal, revision, etc., as per provisions of section 50C	Within 4 years from the end of the previous year in which the order revising the value was passed in the appeal or revision or reference.
Amending order of assessment so as to compute capital gain by taking into consideration compensation as ordered by the Court, Tribunal or authority.	Within 4 years from the end of the previous year in which the order reducing the compensation is passed by the Court, Tribunal or any other authority

Amending order of assessment so as to recalculate amount deductible under section 80RRB in case the name of the assessee has been excluded from patents register.	Within 4 years from the end of the previous year in which the order of the controller or High Court is passed.
Amending order of assessment so as to allow deduction u/s. 10A / 10B/10BA, in respect of late remittance of Foreign Exchange after RBI approval	Within 4 years from the end of previous year in which such income is so received in, or brought into India.
Amending order of assessment so as to give credit in respect of TDS / TCS	Within 4 years from the end of financial year in which order sought to be amended was passed.
Amending intimation under section 143(1) enabling the claim of credit for disputed foreign tax paid after the settlement of dispute subject to (a) Assessee shall furnish the evidence of settlement of dispute within six months from the end of month in which dispute is settled (b) Assessee shall give undertaking that no credit in respect of such amount has directly or indirectly been claimed or shall be claimed for any assessment year	Within 4 years from the end of financial year in which dispute relating to foreign tax paid is settled.

Practical 35

Nirav Shanti Private Limited provides details regarding returned income / losses as under:

Assessment year	Rs. In Lacs	Losses to be c/f if any
2011-12	-12	12
2012-13	9-9=Nil	3
2013-14	8-3=5	Nil
2014-15	6	Nil
2015-16	2.5	Nil
2016-17	8.5	Nil

The assessing officer reopened the case of Assessment year **2011-12** and completed the assessment under section 147 on **15-11-2017** by making an addition of concealed income of Rs. 2 Lac and thereby permitted to carry forward the loss of Rs. 10 Lac.

What shall be the course of action on the part of assessing officer for the subsequent assessment years?

Solution

First of all we need to study the impact of the order under section 147 for the subsequent assessment years.

Assessment year	Rs. In Lacs	Losses to be c/f if any	Is there any impact on Total Income?
2011-12	-10 (after order under section 147)	10	
2012-13	9-9=Nil	3	No
2013-14	8-1=7	Nil	Yes
2014-15	6	Nil	No
2015-16	2.5	Nil	No
2016-17	8.5	Nil	No

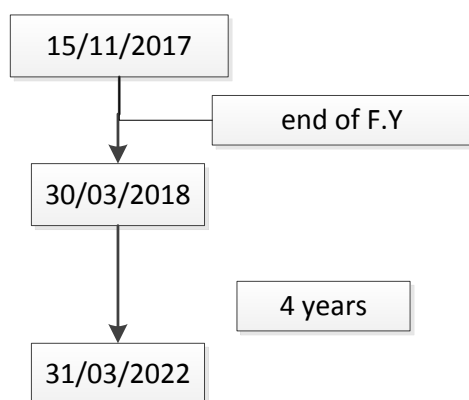
Above analysis reveals that the assessing officer is required to amend the assessment of **A.Y. 2013-14**.

For this purpose, section 155 (4) will be of great help to the assessing officer. It reads as under:

Where as a result of proceedings initiated under section 147, a loss or depreciation has been recomputed and in consequence thereof it is necessary to recompute the total income of the assessee for the succeeding year or years to which the loss or depreciation allowance has been carried forward and set off, the Assessing Officer may proceed to recompute the total income in respect of such year or years and make the necessary amendment.

This order of amendment for subsequent year or years can be passed within four years from the end of the financial year in which the order was passed under section 147.

Considering the above provision, the assessing officer is empowered to amend the assessment of **A.Y. 2013-14** under section 155 on or before **31-03-2022**.



Readers Note:

21 - APPEALS

21.1 | APPEALS TO COMMISSIONER (APPEALS)-APPEALABLE ORDERS

Section:- 246A

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

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

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

Section:- 249(1)

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

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

21.3 TIME LIMIT FOR PRESENTING APPEAL

Section:- 249(2), 248

Section 249(2)

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

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

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

Section 248

Appeal by person denying liability to deduct tax

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

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

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

Points to remember:

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

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

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

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

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

21.6 | PROCEDURE IN APPEAL**Section:- 250**

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

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

21.7 | POWERS OF COMMISSIONER (APPEALS)

Section:- 251

The Commissioner (Appeals) enjoys the following powers:

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

21.8 | WHETHER PRODUCTION OF ADDITIONAL EVIDENCE BEFORE COMMISSIONER (A) IS PERMISSIBLE?

Rule:- 46A

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

21.9 | WHEN ASSESSEE SHALL BE DEEMED TO BE IN DEFAULT?

Section:- 220(4)

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

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

Section:- 220(6)

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

Consider following case study:

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

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

21.11	WHAT SHALL BE THE NEXT COURSE OF ACTION IF ASSESSING OFFICER REFUSES TO GRANT THE STAY?

Section:-

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

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

21.12 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.

21.13 QUALIFICATIONS, TERMS AND CONDITIONS OF SERVICE OF PRESIDENT, VICE-PRESIDENT AND MEMBER.**Section:- 252A**

Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

21.14 | 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 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.

21.15 | 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 sub-section (1) of section 253, 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 Section 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 **1.1.2017**. The bench could not function thereafter till **1.2.2018** and therefore, the disputed matter could not be disposed off. The Assessing Officer attached the bank account on **16.2.2018** 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 **31.12.2017**, 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:

21.16 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)**

21.17 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:

21.18 | FUNCTIONING OF TRIBUNAL

Section:- 255

Section 255(2)

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

Section 255(3)

The President or a member of the Appellate Tribunal may be empowered by the Central Government, sitting singly, to dispose of any case where total income assessed does not exceed Rs.15 lakhs. (Rs. 50 lakh with effect from 01.06.2016). The President may constitute a Special Bench consisting of three or more members, one of whom shall be a judicial member and one on accountant member.

Section 255(4)

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

Practical 4

Mahakuteshwar Oil Industries was a manufacturer of edible oil. For the **A.Y. 1997-98**, it had declared the total income of Rs.8,660 in the return of income. The Assessing Officer computed the total income at Rs.48,27,614. The Commissioner(Appeals) enhanced the income to Rs.63,89,795. In appeal before the Tribunal, the Single Member of the Tribunal decided the appeal and granted relief to the assessee. Whether the single member of the Tribunal is justified in assuming jurisdiction to decide this appeal?

Solution

The Karnataka High Court in case of **CIT v. Mahakuteshwar Oil Industries 298 ITR 390** held as under :
 "A single member of the Tribunal can exercise powers if the income computed by the Assessing Officer is less than Rs.5 lakhs (Amended limit is Rs. 50 Lakhs), even though the same has been enhanced by the Commissioner (Appeals) in excess of Rs.5 lakhs (Amended limit is Rs. 50 Lakhs)".

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

Readers Note:

21.19 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.

21.20 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:

21.21 | APPEAL TO SUPREME COURT**Section:- 261 and 262**

Who can file appeal	Assessee or Commissioner
Order against which appeal to Supreme Court is possible	Any order passed in appeal by the High Court, if the High Court certifies the case fit for appeal to Supreme Court. If however, High Court refuses to give a certificate, the aggrieved party can make an application to Supreme Court under Article 136 of the Constitution.
Other important issues	Where the judgement of the High Court is varied or reversed by the Supreme Court, the Appellate Tribunal should pass such orders as are necessary to dispose of the case conformably to such judgement.

Practical 8

Explain the “Binding effect of Supreme Court decisions”.

Solution

On analysis of various High Court and Supreme Court decisions, following shall be considered for binding effect of Supreme Court decisions.

1. As per article 141 of Constitution, law declared by Supreme Court is binding on all Courts and Tribunals.
2. What is binding is the ratio of Supreme Court decision and not the factual aspects considered in decision by Supreme Court.
3. Supreme Court decision shall be read in the context of substantial question raised before it.
4. The decision of Supreme Court takes colour from the question involved in the case.
5. It is neither desirable nor permissible to pick out a word or sentence from the judgment of Supreme Court and treat this word or sentence as complete law declared by the Supreme Court.

Readers Note:

21.22 | 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:-

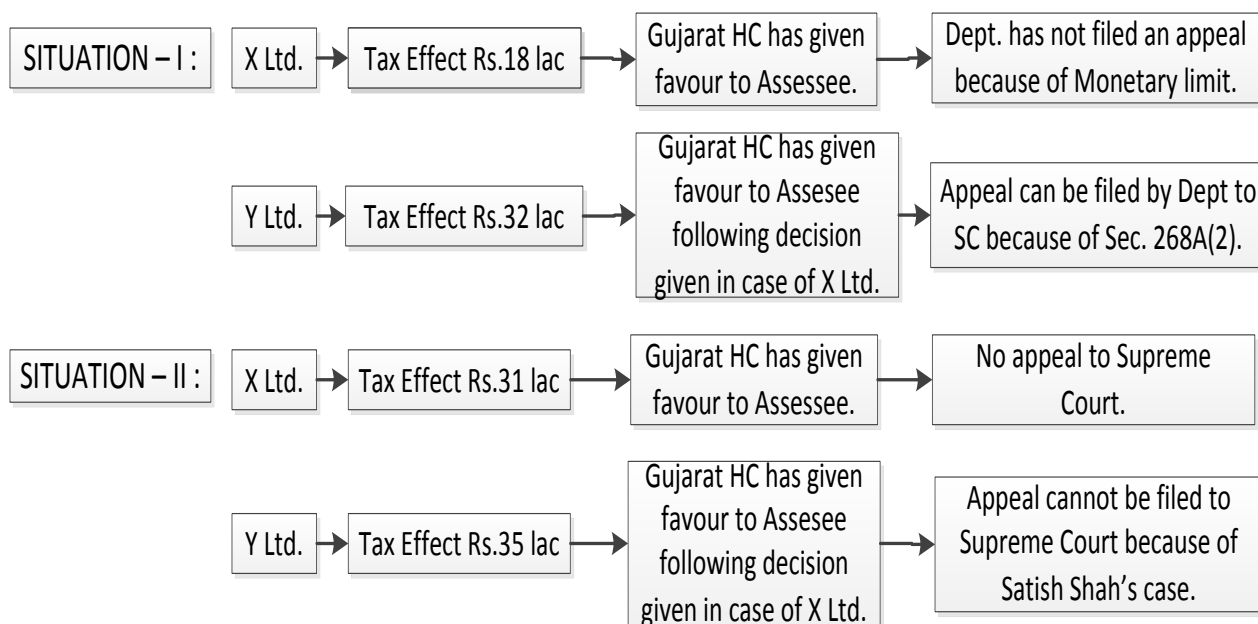
Limit

1. Appeal to Tribunal	-	Rs. 10,00,000
2. Appeal to High Court	-	Rs. 20,00,000
3. Appeal to Supreme Court	-	Rs. 25,00,000

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.



21.23 | PROVISION FOR AVOIDING REPETITIVE APPEALS**Section:- 158A**

The provisions of section 158A are given below-

1. The case of the assessee in respect of a question of law pertaining to an earlier assessment year is pending in an appeal/reference before the High Court or Supreme Court (to be called "earlier case")
2. An identical question of law arises in a later assessment year before the Assessing Officer or the appellate authority (to be called "later case")
3. The assessee may give a declaration in the prescribed form to the Assessing Officer or appellate authority that-
 - a. If the Assessing Officer or the appellate authority agrees to apply in the "later case", the final decision of High Court or Supreme Court on question of law in the "earlier case";
 - b. The assessee shall not raise such question of law in the "later case" in appeal before any appellate authority/High Court/Supreme Court.
4. If the abovementioned declaration is given to an appellate authority, a report shall be called from the Assessing Officer on the correctness of the claim made by the assessee. In this regard, an opportunity of being heard shall be given to the Assessing Officer, if request for the same was made by the assessing officer.
5. The Assessing Officer or the appellate authority may pass the following order in writing –

Different Possibilities
The Assessing Officer or appellate authority admit the claim if he or it is satisfied that the question of law is arising in later case is identical with the question of law in earlier case.
The Assessing Officer or appellate authority reject the claim if he or it is not so satisfied

6. The order of admission or rejection of the claim of the assessee shall be final and shall not be called into question in any proceedings under the Act.
7. When the decision on the question of law in the "earlier case" becomes final, it shall be applied to the "later case" and the Assessing Officer or appellate authority, will (if necessary) amend the order passed in the "later case" in conformity to such decision.

21.24 | PROCEDURE FOR APPEAL BY REVENUE WHEN AN IDENTICAL QUESTION OF LAW IS PENDING BEFORE SUPREME COURT

Section:- 158AA

The Finance Act, 2015 has inserted section 158AA with effect from June 1, 2015.

Section 158AA is applicable when department is in appeal before the Supreme Court.

- It provides that where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in the case for another assessment year which is pending before the Supreme Court (in an appeal or in a special leave petition) filed by the revenue, against the order of the High Court in favour of the assessee, the Commissioner or Principal Commissioner may (instead of directing the Assessing Officer to appeal to the Appellate Tribunal), direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within 60 days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case.
- The Commissioner or Principal Commissioner shall proceed under above provisions only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case.
- However, in case no such acceptance is received the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in section 253(2)/(2A) and, accordingly, may, if he objects to the order passed by the Commissioner (Appeals), direct the Assessing Officer to appeal to the Appellate Tribunal.
- Where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case (if the Supreme Court decides the earlier case in favour of the Income Tax Department), the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order within 60 days from the date on which the order of the Supreme Court is communicated to the Commissioner or Principal Commissioner.

Kindly refer following case study for better understanding:

For Assessment Year 2001-02 A.O disallowed some expenditure under section 37(1) treating it as capital expenditure. Assessee (X Ltd.) approached appellate forum and obtained favour from Gujarat High Court.

Against this order of Gujarat High Court, the Income Tax Department preferred an appeal to Supreme Court which is pending.

For the Assessment Year 2009-10, X Ltd. incurred similar expenditure which was disallowed by A.O. under section 37(1). Thereafter, X Ltd. preferred an appeal to CIT(Appeals) for Assessment Year. The CIT(Appeals) allowed the appeal following Gujarat High Court decision of assessee's own case for Assessment Year 2001-02.

Ideally, department shall file appeal to Tribunal for Assessment Year 2009-10 within 60 days of communication of CIT (Appeals) order.

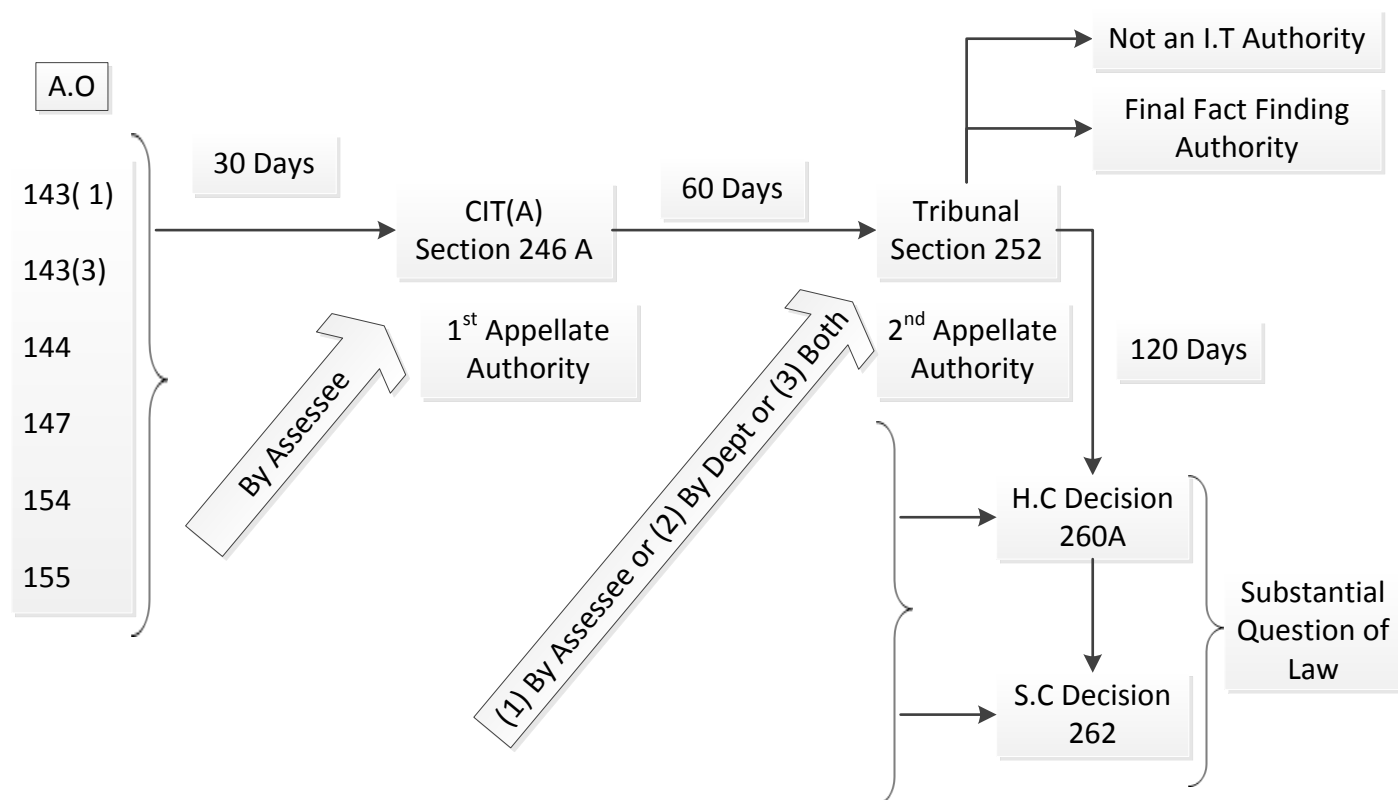
As per section 158AA, department shall not file appeal for Assessment Year 2009-10 to Tribunal but make an application to the Tribunal within 60 days of CIT(Appeals) order, stating that similar question of law is pending before Supreme Court [and in future, after Supreme Court decides for Assessment Year 2001-02, Income Tax Department will take decision whether appeal for Assessment Year 2009-10 needs to be preferred or not before Tribunal.]

As per provisions of section 158AA, Income Tax Department shall not file appeal for Assessment Year 2009-10, only if acceptance is received from the X Ltd. If no acceptance is received, department shall prefer an appeal to Tribunal.

If at a later stage, for Assessment Year 2001-02, Supreme Court holds that such expenditure is a capital expenditure (Decision of Supreme Court is in favour of Income Tax Department), then Income Tax Department may prefer an appeal to Tribunal for Assessment year 2009-10 within 60 days from the date on which the order of the Supreme Court is communicated to the Commissioner or Principal Commissioner.

Needless to say, if X Ltd. wins there is no meaning of department to file an appeal before ITAT for Assessment Year 2009-10 (because order of Supreme Court becomes the law of land).

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).

Practical 1

Mention the twin conditions to be satisfied by the Commissioner before exercising the jurisdiction under section 263.

Solution

The Commissioner has to be satisfied with the twin conditions, namely,

- (i) the order of the Assessing Officer sought to be revised is erroneous;
and
- (ii) it is prejudicial to the interests of the revenue.

If one of the conditions is absent – if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue – recourse cannot be had to section 263(1). — **Malabar Industrial Co. Ltd. v. CIT 243 ITR 83 [2000] (SC).**

Readers Note:**Practical 2**

When two views are possible and the Assessing officer has taken a view with which the Commissioner does not agree, can such order of A.O. be treated as erroneous?

Solution

Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue—**Malabar Industrial Co. Ltd. v. CIT 243 ITR 83 [2000] (SC).**

Readers Note:

Practical 3

What can be the illustrative list where assessment made by the assessing officer can be held to be the erroneous?

Solution

Assessment made on

- (i) wrong assumption of facts or
- (ii) on incorrect application of law or
- (iii) without due application of mind or

would certainly be 'erroneous' assessment warranting exercise of revisional jurisdiction under section 263 - **[CIT V. Jawahar Bhattacharjee 341 ITR 434 (Gau.) (FB)]**

Readers Note:

Practical 4

The assessee who had not earned the income wants such income to be assessed in his hands in order to assist someone else who may be assessed at a higher figure. The assessing officer accepted the claim of the assessee and passed the order without inquiry. Whether such order may be subject to revision under section 263?

Solution

An assessment made without enquiry, evidence and under haste is erroneous and prejudicial to the revenue. Where an income has not been earned by the assessee and is not assessable in its hands and the assessee wants it to be assessed in his hands in order to assist some one else who would have been assessed to a larger amount and rate of tax, the assessment of the income in assessee's hands will be erroneous and prejudicial to the interests of the revenue and the Commissioner has jurisdiction to set aside such an assessment—**Thalibhai F. Jain v. ITO 101 ITR 1 [1975] (Kar.)**.

Readers Note:

Practical 5

Assessing officer while passing the order under section 143(3) accepted the deduction claimed by assessee without inquiry. Can such order be subject matter of revision under section 263?

Solution

Failure of the Assessing Officer to make an inquiry before granting deduction would render the assessment erroneous and prejudicial to the interest of revenue—**CIT v. Seshasayee Paper & Boards Ltd. 242 ITR 490 [2000] (Mad.)**.

Readers Note:

Practical 6

Assessing officer passed the order and accepted some claim made by assessee after conducting inquiry. The Commissioner assumed jurisdiction under section 263 holding that the assessing officer should have made further inquiry before passing the order. Discuss the validity of action taken by the Commissioner.

Solution

For the purpose of holding an assessment order to be erroneous and prejudicial to the interests of revenue on that ground, there should be omission or failure to make such enquiry. (i.e. lack of inquiry)

Merely because from a perfectionist point of view it is felt that some more enquiries and verifications could have been made by the AO, the order cannot be declared to be erroneous. – Salora International Ltd. v. Addl CIT (2005) 2 SOT 705 (Del)

Respectfully following the above ratio, the action taken by Commissioner under section 263 is not valid.

Readers Note:**Practical 7**

The assessing officer, based on the decision of jurisdictional High Court treated certain receipts in the hands of assessee as capital receipts and therefore not taxed. The commissioner assumed jurisdiction under section 263 on the ground that the order of High Court is erroneous. Is action of Commissioner justified?

Solution

Commissioner cannot proceed under section 263 stating that the decision of High Court is erroneous and that the Assessing Officer who had acted on terms of the High Court decision had acted erroneously. [**CIT v. GM Mittal Steel Pvt. Ltd. 130 Taxman 67 (2003) (SC)**].

Therefore, the action of Commissioner assuming jurisdiction under section 263 is not justified.

Readers Note:**Practical 8**

For the **A.Y. 1983-84**, the New Jagat Textile Mills Private Limited had filed a statement of advance tax u/s.209A of the Income-tax Act, 1961 on **12-6-1982**, estimating the total income at Rs.1,35,404 and had also paid the advance tax thereon of Rs.74,000. However, the assessee failed to file the return of income within the prescribed time. The Assessing Officer therefore issued notice u/s.142 (1) of the Act, dated **1-9-1983** requiring the assessee to file the return of income. The assessee applied for extension of time. However, thereafter nothing further happened and ultimately on **30-10-1985**, the Income-tax Officer made the following entry in the order sheet: "The assessee-company untraceable, proceedings dropped." Subsequently, the Commissioner, in the exercise of powers u/s.263, set aside the order of the Assessing Officer dropping the assessment proceedings and directed the Assessing Officer to make a fresh assessment in accordance with law, after making necessary enquiries and giving a reasonable opportunity of being heard to the assessee-company. Would such dropping of proceedings amounts to an order which can be subject matter of revision under section 263 of the Act?

Solution

Gujarat High Court in case of **New Jagat Textile Mills P. Ltd. v. CIT, 282 ITR 399** held as under:

(a) Section 263 of the Income-tax Act, 1961, empowers the Commissioner to take up for consideration 'any order passed' in any proceedings under the Act. In these circumstances, it is

not possible to read the provisions as being limited to exercising revisional powers qua order of assessment only. It would take within its sweep even the orders wherein either the proceedings are dropped or the proceedings are filed.

- (b) Therefore, once the twin conditions for exercise of jurisdiction u/s.263 of the Act were shown to be fulfilled, the Commissioner was perfectly justified in taking action under the said provisions and exercising his revisional powers."

Readers Note:

Practical 9

Commissioner having found that assessee had suppressed the true value of the property which it had sold and that fact of suppression had come to light when the premises of the purchaser were raided, assumed jurisdiction under 263 of the Act. Comment on the validity of action taken by Commissioner.

Solution

The issue deals with scope of term "Record" for the purpose of section 263 of the Act.

The power of a Commissioner under section 263 is wide enough to make enquiry in case of an assessee on the basis of any other person's record—**CIT v. Arunaben Sumankumar 124 Taxman 57 [2002] (Guj.)**.

Even a statements in search operations carried out in relation to another person can be considered as forming part of the 'record' which can be examined by the Commissioner for invoking his power under section 263(1)—**CIT v. Vallabhdas Vithaldas 253 ITR 543 [2002] (Guj.)**.

Considering the above judgments of Gujarat High Court, the action taken by Commissioner is justified.

Readers Note:

Practical 10

The assessing officer passed the order under section 143(3) of the Act after considering the following issues:

Particulars	Claim by Assessee	Allowed by A.O.	Disallowed by A.O.
Interest Expense	1,20,000	-	1,20,000
Salary to Relative	1,80,000	1,80,000	-
Travelling Expense	1,12,000	56,000	56,000

Being aggrieved, the taxpayer preferred an appeal to CIT (A) against the addition of (i) Interest (ii) Travelling expense. The Commissioner while acting under section 263 would like to revise the whole order passed by the assessing officer. Comment on the action of Commissioner.

Solution

As per explanation 1(c) to section 263 of the Act, 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. Similar

observations were made in **Ranka Jewellers v. Addl CIT (2010) 328 ITR 148 (Bom) and CIT vs. Arbuda Mills Ltd.(1998) 231 ITR 50 (SC)**.

That means, CIT can revise that portion of order of assessing officer, which is not in appeal.

Particulars	Whether Assessee is in appeal?	Whether revision u/s 263 is possible?
Interest	Yes	No
Salary to Relative	No	Yes
Travelling Exp.	Yes	No

Considering the above, the action of Commissioner under section 263 purporting to revise the whole order passed by assessing officer is improper.

Readers Note:

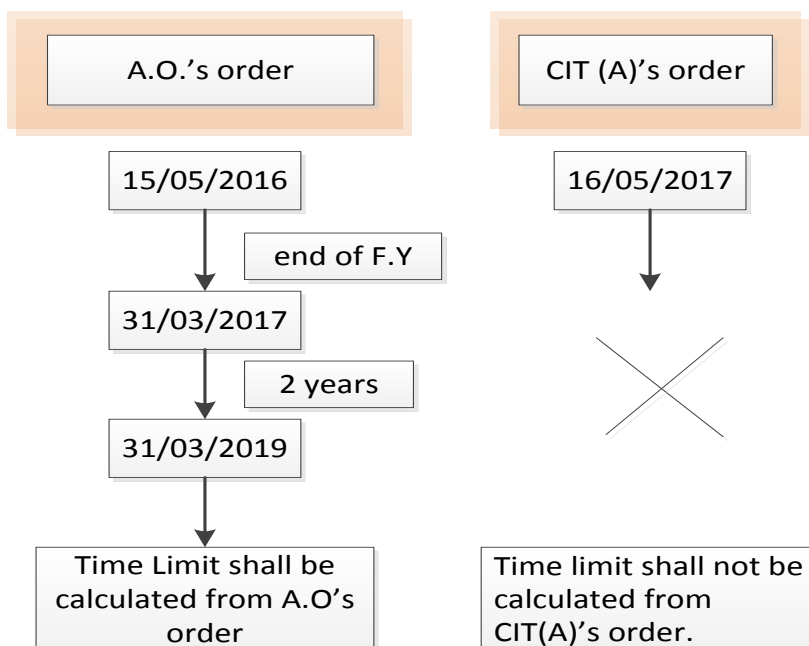
Practical 11

Suppose in the above case, A.O. passed an order on **15/05/16** and CIT(A) passed an order on **16/5/17**. Thereafter CIT acting under section 263 wants to do revision 'for salary paid to relative', then what is time limit for completion of proceeding u/s 263?

Solution

As discussed earlier the time limit for passing order under section 263 is two years from the end of the financial year in which the order sought to be revised was passed.

While dealing with the similar issue **Rajasthan High Court in case of CIT v. Hemraj Udyog 259 ITR 420** held that where an order prejudicial to the Revenue has become the subject matter of appeal on a different issue, the time limit under section 263 has to be reckoned with reference to the original order and not the later order.



Readers Note:

Practical 12

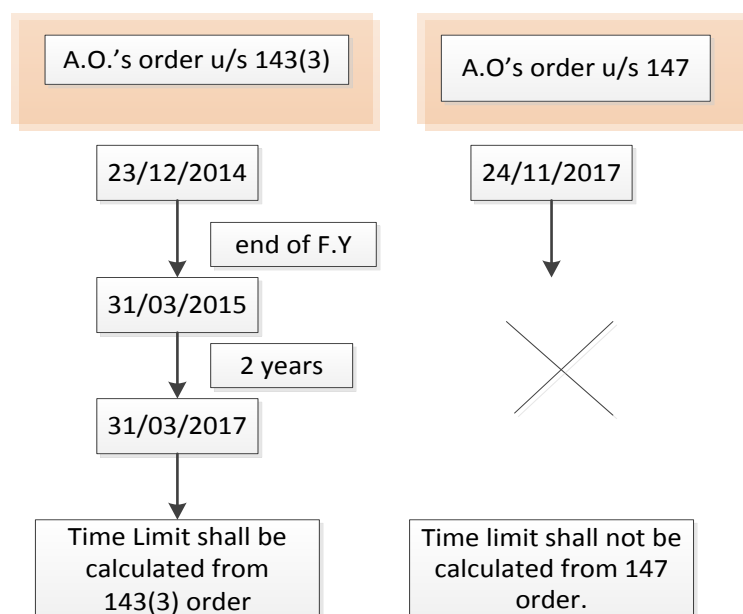
Assessment for **A.Y. 2013-14** was completed as per section 143(3) considering the various claims so made by the assessee on **23.12.2014**. Subsequently, this was reopened u/s 147 on certain issues, but excluding the claim of the assessee as to “Lease Equalisation Fund”. The order of reassessment was passed on **24.11.2017**. The Commissioner within the powers vested u/s 263 passed an order on **11.01.2019** rejecting the claim of assessee as to “Lease Equalisation Fund”. The assessee challenges that the action of the CIT is not sustainable because the same was barred by limitation.

Solution

Section 263(2) provides no order shall be made under section 263(1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

The period of limitation as referred to in section 263(2) relates to the assessment in which the claim of the assessee as to Lease Equalisation Fund was considered by the Assessing Officer. This issue was not the subject matter of reassessment proceedings. Accordingly, the period of limitation shall be reckoned with reference to the original assessment order and not from the date of the order of reassessment. - **CIT v. Alagendran Finance Ltd. (2007) 293 ITR 1.**

Therefore, in this case, the revision proceedings are barred by limitation since the original assessment order was made on **23.12.2014** and the revision should have been made by **31.3.2017**.

**Readers Note:****Practical 13**

During the course of scrutiny proceedings, the assessee placed reliance on the decision of Rajasthan High Court for deductibility of certain expenditure under section 37(1). The Assessing Officer, Ahmedabad, while passing an assessment order under section 143(3) allowed the deduction under section 37(1) relying on the said decision.

On **10-08-2016**, the Commissioner of Income Tax assumed revision jurisdiction under section 263 in respect of such order on the ground that on similar facts, there was a decision of Madras High Court denying deduction under section 37(1). The Commissioner of Income tax is of the opinion that the

order of Assessing officer under section 143(3) is deemed to be erroneous and prejudicial to the interest of revenue.

Examine the validity of jurisdiction assumed by Commissioner of Income Tax under section 263.

Solution

- On minute reading of the explanation 2 to Section 263 - clause (d), the order of assessing officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if the same has not been passed in accordance with any decision which is prejudicial to the assessee rendered by the jurisdictional High Court in case of the assessee or any other person.
- In present case study, the jurisdictional High Court shall be Gujarat High Court while the Commissioner of Income Tax relied on the decision of Madras High Court. Therefore, the opinion of the Commissioner that order passed by Assessing Officer, Ahmedabad is deemed to be erroneous and prejudicial to the interest of revenue is not tenable.
- Further, Supreme Court in case of **Malabar Industrial Co. Ltd. v. CIT (supra)** held that recourse cannot be had to section 263(1) unless the Commissioner is satisfied with the twin conditions, namely,
 - the order of the Assessing Officer sought to be revised is erroneous; and
 - it is prejudicial to the interests of the revenue.
- If one of the conditions is absent – if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue – then jurisdiction under section 263 fails.
- Therefore, every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue.
- Considering the above, action taken by Commissioner of Income tax is not tenable in the eyes of law.

Readers Note:

Practical 14

Does your answer differ, if there was a decision of Gujarat High Court instead of Madras High Court, denying deduction under section 37(1)?

Solution

If there was a decision of Gujarat High Court instead of Madras High Court, denying deduction under section 37(1), then the order of Assessing Officer falls within the explanation 2 to section 263- clause (d) and therefore, such order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue. Hence, Commissioner of Income Tax is justified in assuming jurisdiction under section 263 of the Act.

Readers Note:

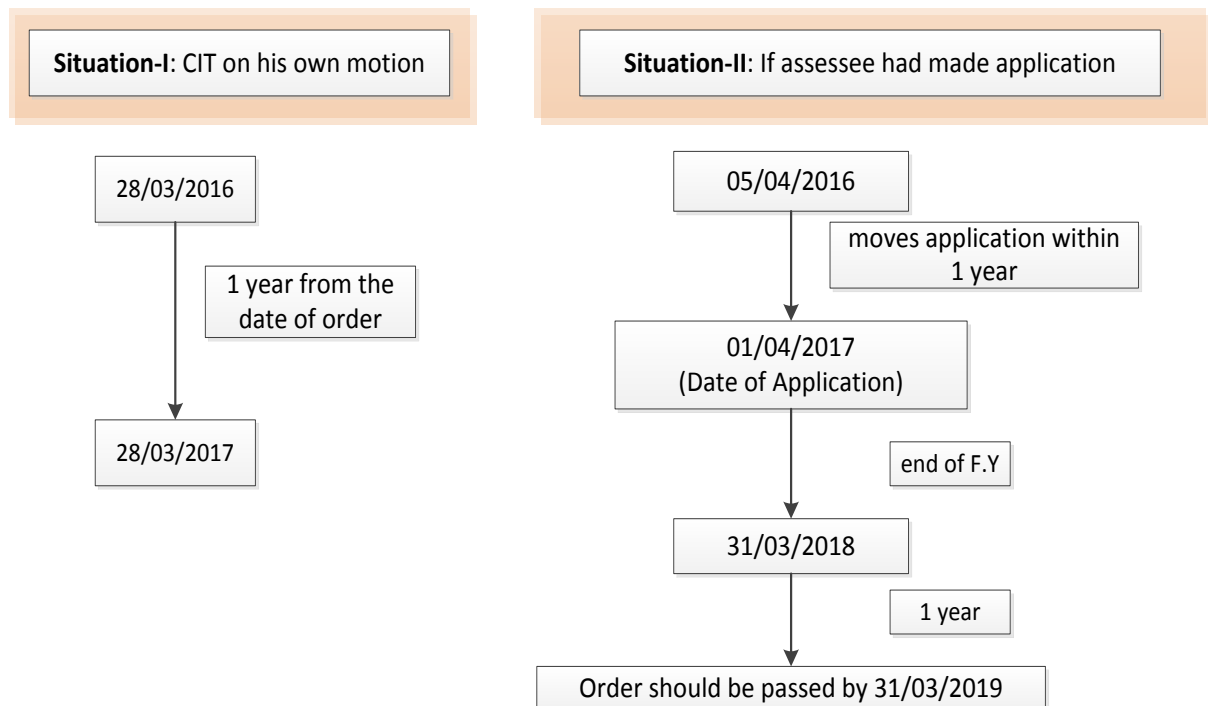
22.2 REVISION IN FAVOUR OF ASSESSEE**Section:- 264**

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.

Practical 15

The assessing officer passed the order under section 143(3) of the Act on **28-03-2016**. This order was communicated to the assessee on **05-04-2016**. Find out the maximum time limit by which the Commissioner shall pass the order under section 264 under following alternatives:

- (1) Commissioner while acting on his own motion
- (2) The assessee made an application for revision to the Commissioner on **01-04-2017**.

Solution**Readers Note:****Practical 16**

Taxpayer is in receipt of order under section 143(3) of the Act along with demand notice under section 156 on **01-01-2018**. He would like to make an application for revision under section 264 of the Act. Advise him about the timings of application so that his application is not hit by section 264(4) of the Act.

Solution

- (i) Taxpayer shall wait up to **31st January, 2018** and shall not file an appeal to CIT(A) and thereafter he shall make an application under section 264 of the Act.
- (ii) If taxpayer wants to make an application under section 264 of the Act on or before **31st January, 2018** then he can do so provided he must have waived his right to prefer an appeal. But once appeal is filed, the doors of revision are closed.

Readers Note:**Practical 17**

In the assessment of a firm, the Assessing Officer made two additions (i) Unexplained cash credits Rs.1 lac. (ii) Disallowance under section 43B. The firm filed an appeal before the CIT and being unsuccessful before the Appellate Tribunal only on the addition of unexplained cash credits. It was not successful in either forum. With regard to the disallowance under section 43B, it did not file any appeal, but preferred a revision petition before the CIT under section 264, who dismissed it on the ground that the assessment was the subject matter of an appeal to the Appellate Tribunal. The assessee relied on the Board's circular under which the CIT is empowered to accept such a petition. Is the petition maintainable?

Solution

The Supreme Court while dealing with the above issue in **Hindustan Aeronautics Ltd v. CIT 248 ITR 898** held that under section 264, the Commissioner has no power to revise any order which has been made the subject matter of an appeal to the Appellate Tribunal, even if the relief claimed in the petition is different from the relief claimed in appeal.

With regard to the Board's circular, Supreme Court further held that the instructions are, no doubt, binding on the authorities under the Act but where the Supreme Court or High court has declared the law on the question arising for consideration, it will not be open to a court to direct that a circular would be given effect to, over-riding the order of the High Court or Supreme Court.

Considering the settled legal position, the petition (application) of firm under section 264 is not maintainable.

Readers Note:**Practical 18**

An assessee, who is aggrieved by all or any of the following orders, is desirous to know the available remedial recourse and the time limit against each under the Income-tax Act, 1961:

- (i) passed under section 143(3) by the A.O.
- (ii) passed under section 263 by the CIT.
- (iii) passed under section 272A by the Director General.
- (iv) passed under section 254 by the ITAT.

Solution

- (i) An assessee, aggrieved by the order passed under section 143(3) by the Assessing Officer, can file an appeal before the Commissioner of Income-tax (Appeals) under section 246A(1) within 30 days of the date of service of the notice of demand relating to the assessment.
Alternatively, where the assessee does not want to prefer an appeal, then he can move a revision petition (application) before the Commissioner of Income-tax under section 264 within a period of one year from the date of on which the order was communicated to him.
- (ii) An assessee, aggrieved by the order passed under section 263 by the Commissioner of Income-tax, can prefer an appeal to Income-tax Appellate Tribunal under section 253(1)(c) within 60 days of the date on which the order sought to be appealed against is communicated to the assessee.
- (iii) An assessee, aggrieved by the order passed under section 272A by the Director General, can prefer an appeal before the Income-tax Appellate Tribunal under section 253(1)(c) within 60 days of the date on which the order sought to be appealed against is communicated to the assessee.
- (iv) An assessee, aggrieved by the order passed under section 254 by the Income-tax Appellate Tribunal, can prefer an appeal before the High Court under section 260A within 120 days from the date of receipt of order of Income-tax Appellate Tribunal, provided the order of Tribunal involves "substantial question of law".

Readers Note:

Practical 19

Suresh, an individual, filed his return of income for the assessment year **2016-17** erroneously offering for taxation, interest received from notified Relief Bonds exempt under section 10(15)(iic), in the said return. The Assessing Officer completed the assessment under section 143(3) on **20.04.2018** accepting the income returned by Suresh. Suresh approaches you for advice regarding the steps to be taken to secure exemption of the income.

Solution

- Suresh can file an appeal under section 246A, against the order of assessment, to the Commissioner (Appeals). The law is well settled that an appeal can be filed by an assessee even against inclusion in assessment, of such income erroneously included by him in the return of income. -**CIT v. Bharat General Reinsurance Co. Ltd. (1971) 81 ITR 303 (Del)**.
- Alternatively, Suresh can file a revision petition under section 264 with the Commissioner of Income-tax seeking exemption of interest from Relief Bonds, not claimed in the return of income and not allowed in the order of assessment.
- Gujarat High Court while dealing with almost similar issue in case of **S.R. Koshti vs. CIT 276 ITR 105 (2005)** held as under:
 - (i) The position is that, regardless of whether the revised return was filed or not, once an assessee is in a position to show that the assessee has been over-assessed under the provisions of the Act, regardless of whether the over-assessment is a result of assessee's own mistake or otherwise, the Commissioner has the power to correct such an assessment u/s. 264(1). If the Commissioner refuses to give relief to the assessee, in such circumstances, he would be acting *de hors* the powers under the Act and the provisions of the Act and, therefore, is duty bound to give relief to an assessee, where due, in accordance with the provisions of the Act.
 - (ii) The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected."
- One more course of action Suresh can undertake is to file an application under section 154 of the Act with the Assessing Officer, seeking rectification of assessment made.

Readers Note:

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 under section 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

23.1 TIME LIMIT FOR COMPLETION OF FRESH ASSESSMENT

Section:- 153(3)

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

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

The above time limit has been modified by the **Finance Act, 2017** in respect of above orders either passed by or received by Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner on or after 1st April 2019. In this situation, time limit of 9 months mentioned above shall be substituted by 12 months and 21 months shall be substituted by 24 months.

Practical 1

The assessments of Samip Chemicals Ltd. for the assessment year **2015-16** was completed under section 143(3). The Principal Commissioner found the order of assessing officer erroneous and prejudicial to the interest of revenue since it was passed without conducting any inquiry. The Principal Commissioner, therefore, while acting under section 263 of the Act, set aside the whole assessment order and directed the assessing officer to pass the order afresh. This order of Principal Commissioner was dated **10-07-2018**.

Based on the above facts, answer following questions:

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

Solution

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

Readers Note:

23.2 ASSESSMENT/REASSESSMENT IS MADE IN CONSEQUENCE OF OR TO GIVE EFFECT TO A FINDING OR DIRECTION

Section:- 153(6)

Nature of order	Time limit available with the assessing officer to pass the order giving effect to finding/ direction
<i>Finding or direction is contained in an order passed under:</i> section 250, section 254, section 260, section 262, section 263 or section 264 or an order of any Court in a proceedings otherwise than by way of appeal or reference under the Act	Twelve months from the end of month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be.
The assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147 of the Act	Twelve months from the end of month in which the assessment order in the case of firm is passed under section 147.

Explanations 2 relevant for section 153(6)

(a)	(b)
1. A finding or direction is given in an order under sections 250, 254, 260A, 262, 263, 264 or any order of any court.	1. A finding or direction is given in an order under sections 250, 254, 260A, 262, 263, 264 or any order of any Court
2. Under such order an income is excluded from the total income of the assessee for an assessment year	2. Under such order any income is excluded from total income of one person and held to be income of another person
3. An assessment of such income for	3. An assessment of such income on such other

another assessment year may be made within twelve months from the end of month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be.	person may be made within twelve months from the end of month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be.
	4. Such other person should be given an opportunity of being heard before passing on such other person.

Practical 2

For the A.Ys. 1979-80 to 1983-84 the Commissioner of Income-tax issued notice u/s.263 to the film producer Mr. D.N. Dosani as regards the following two items:

- (a) Total investment in films not properly considered.
- (b) Write off cost of films wrongly allowed.

After hearing the assessee the Commissioner passed the following order:

"The assessments under review are, therefore, set aside with a direction to the Income-tax Officer to look into the above mentioned aspects and redo the assessments as per law and keeping in view the directions given here the Income-tax Officer will also take the necessary consequential actions as the case may be."

While giving effect to the said order, the Assessing Officer made additions and disallowances beyond the said two issues. Assessee challenged those additions and disallowances. Whether the challenge made by the assessee is correct?

Solution

While dealing with the above issue, ITAT- Ahmedabad allowed the appeal and held that the assessments were not set aside in entirety and that Assessing Officer traveled beyond his jurisdiction as he had acquired jurisdiction to look into only those two aspects and nothing else.

Further, on reference at the instance of the revenue, the Gujarat High Court in case of **CIT v. D. N. Dosani, 280 ITR 275 (Guj.)** upheld the decision of the Tribunal and held as under:

"In the instant case the assessee was called upon by the Commissioner to tender an explanation qua two items mentioned in the show cause notice. On a plane reading of S. 263(1), it was apparent that the Commissioner could not have treated any further item or part of the assessment order as being erroneous and prejudicial to the interest of the revenue without giving the assessee an opportunity of being heard. Therefore, what the Commissioner himself could not have done, could not be permitted to be done by the Assessing Officer while giving effect to the order u/s.263. The Tribunal was right in law in holding that, in the fresh assessment orders the Assessing Officer was entitled to consider only those two items which had been considered by the Commissioner and was not entitled to consider any other item afresh for making additions."

Readers Note:

23.3 ORDER GIVING EFFECT TO AN ORDER UNDER SECTION 250, 254, 260, 262, 263 AND 264

Section:- 153(5)

<i>Order to be given effect to</i>	<i>Time-limit available with assessing officer to give the said effect</i>
If effect to an order under section 250, 254, 260 or 262 is given wholly or partly by the assessing officer	Such order (effect) shall be given within a period of 3 months from the end of the month in which order under section 250,254,260 or 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be.
If effect to an order under section 263 or 264 is given wholly or partly by the assessing officer	Such order (effect) shall be given within a period of 3 months from the end of the month in which order under section 263 or 264 is passed by the Principal Commissioner or Commissioner.

However, if it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, **may allow an additional period of six months** to give effect to the order.

However, where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in section 153 (3).]

Practical 3

The assessment of Smt. Daxaben Thakker (55 years) for the assessment year **2015-16** was completed under section 143(3) of Act. The assessing officer determined the assessed income as under:

Particulars	Rs.
Returned Income	3,00,000
Add: G.P. addition	7,00,000
Add: Unexplained cash credit	2,00,000
Total income assessed	12,00,000

As a result, the assessing officer served the notice of demand under section 156 of the Act amounting to Rs. 2,12,300.

Being aggrieved, Smt. Daxaben Thakker preferred an appeal to Commissioner Income Tax (Appeals). The Ld. CIT (A) passed the order under section 250 of the Act dated **10-03-2018** granting relief in G.P. addition to the tune of Rs. 1,50,000 and Rs. 50,000 in relation to unexplained cash credit. Such order was received by the Principal Commissioner on **04-04-2018**.

Based on the above facts, answer the following questions:

- (a) Find out the total income of Smt. Daxaben Thakker after giving effect to the order of CIT (Appeals) under section 250 of the Act.
- (b) What is the time limit available with assessing officer to pass the order giving effect to CIT (A)'s order?

Solution

- (a) Computation of total income of Smt. Daxaben Thakker after giving effect to the order of CIT (Appeals) under section 250 of the Act is as under:

Particulars	Rs.
Total Income assessed under section 143(3) of the Act	12,00,000
Less: Relief given by CIT (A) in G.P. addition	(1,50,000)
Less: Relief given by CIT (A) in unexplained cash credit	(50,000)
Total income assessed after giving effect to CIT(A)'s order	10,00,000

- (b) Time limit for passing above order giving effect to the order of CIT (A) under section 250 of the Act is now governed by section 153(5). Considering the provisions of this section, the assessing officer shall pass the order within **3 months** from the end of the month in which order under section 250 is received by the Principal Commissioner.

However, if it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, **may allow an additional period of six months** to give effect to the order.

Readers Note:

23.4 SPECIAL TIME LIMIT FOR THE PENDING MATTERS BEFORE 1ST JUNE, 2016 RELEVANT TO SECTION 153(5) / 153(6)

Section:- 153(7)

Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to be given by the Assessing Officer, within the time specified in the said sub-sections, and such order has been received or passed, as the case may be, by the income-tax authority specified therein before the 1st day of June, 2016, the Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, on or before the 31st day of March, 2017.

DIVISION E

INCOME TAX AUTHORITIES & THEIR POWERS, ASSESSMENT IN CASE OF SEARCH OR REQUISITION AND COLLECTION AND RECOVERY OF TAX

INDEX

CHAPTER NO.	TOPICS	NO. OF PRACTICALS	PAGE NO.
24	Income Tax Authorities and their Powers	17	1 to 27
25	Assessment in case of Search or Requisition	04	1 to 10
26	Collection and Recovery of Tax	02	1 to 11

24 - INCOME TAX AUTHORITIES AND THEIR POWERS

24.1 | INCOME TAX AUTHORITIES

Section:- 116

Income Tax Authorities under the Act

- (a) The Central Board of Direct Taxes
- (b) *Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax,*
- (c) Directors-General of Income-tax or Chief Commissioners of Income-tax,
- (d) *Principal Directors of Income-tax or Principal Commissioners of Income-tax,*
- (e) Directors of Income-tax or Commissioners of Income-tax or CIT (Appeals),
- (f) Additional Directors of Income-tax or Additional CIT or Additional CIT (Appeals),
- (g) Joint Directors of Income-tax or Joint Commissioners of Income-tax,
- (h) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax,
- (i) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,
- (j) Income-tax Officers,
- (k) Tax Recovery Officers,
- (l) Inspectors of Income-tax.

24.2 | APPOINTMENT OF INCOME TAX AUTHORITIES

Section:- 117

- The Central Government may appoint such person as it thinks fit to be the Income Tax authorities.
- The Central Government may authorize the Board or a Principal Director General or Director General of Income Tax or a Principal Chief Commissioner or Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner to appoint Income Tax Authorities below the rank of an Assistant Commissioner or Deputy Commissioner.
- An Income-tax Authority authorised by the Board may also appoint such executive or ministerial staff as may be necessary in the execution of its function in accordance with the rules of the Central Government.

24.3 | CONTROL

Section:- 118

The CBDT may notify in the Official Gazette directing that any Income-tax authority (ies) shall be subordinate to such other Income-tax authority (ies) as may be specified.

24.4 INSTRUCTIONS TO SUBORDINATE AUTHORITIES / POWERS OF CENTRAL BOARD OF DIRECT TAXES

Section:- 119

- (1) The Board may from time to time issue orders, instructions and directions to other Income-tax Authorities as it may deem fit for proper administration of Income Tax Act. Such orders, instructions and directions of the Board, shall be observed and followed by all the income tax authorities and persons who are employed in the execution of this Act.
- (2) However, the Board cannot issue orders, instructions or directions so as to-
 - (i) require any Income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
 - (ii) interfere with the discretion of the Commissioner (Appeals) in the exercise of appellate functions.
- (3) The Board may, if it considers it necessary or expedient so to do for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time, general or special order in respect of any class of income or class of cases.
 1. The above order may be by way of relaxation of any of the provisions of sections 115P, 115S, 115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115K, 139, 143, 144, 147, 148, 154, 155, 158BFA, 201(1A), 210, 211, 234A, 234B, 234C, 234E, 270A, 271, 271C, 271CA (inserted by Finance Act, 2017) and 273 or otherwise;
 2. The above order may set forth directions or instruction (not being prejudicial to the assessee) as to the guidelines, principles or proceedings to be followed by other Income-tax authorities in the work relating to (i) assessment or (ii) collection of revenue or (iii) the initiation of proceedings for the imposition of penalties.
- (4) 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.
- (5) The Board, 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 for reasons to be specified therein*, relax any requirements contained in any of the provisions of Chapter IV(all the heads of income) or Chapter VIA (relating to deductions u/s 80C to 80U), where the assessee has failed to comply with any requirement specified in such provision for claiming deduction there under, subject to the following conditions, namely
 - (i) the default was due to circumstances beyond the control of the assessee; and
 - (ii) The assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed
- (6) Every order passed at Sr. No. 3, 4 and 5 shall be laid before each House of Parliament.

Practical 1

Discuss the binding effect of circulars issued by CBDT.

Solution

1. The Supreme Court, in the case of **Navnit Lal C. Javeri v. K. K. Sen, AAC [1965] 56 ITR 198**, held that, a circular issued by the Board under section 119 would be binding on all person and officers employed in the execution of the Act.
2. Delhi High Court in case of **Delhi Flour Mills Co. Ltd. v. CIT [1974] 95 ITR 151** observed that the decisions of the CBDT are not binding upon Courts.

Readers Note:**Practical 2**

Can department officers challenge the validity of circulars issued by CBDT on the ground that it is inconsistent with the provisions of Income Tax Act?

Solution

Supreme Court while dealing with the above issue under Central Excise Act, 1944 in case of **Paper Product Ltd. v. CCE [2001]** held as under:

“Apart from the fact that the circulars issued by the Board are binding on the department, the department is precluded from challenging the correctness of the said circulars even on the ground of the same being inconsistent with the statutory provision.”

Considering the ratio laid down by Supreme Court in above case, the department officers cannot challenge the validity of circular issued by CBDT.

Readers Note:**Practical 3**

In case of **Peria Karamalai Tea & Produce Co. Ltd.**, the assessment for the **A.Y. 2013-14** was completed under section 143(3) on **10th June, 2015** accepting the claim of interest expenditure under section 36(1) (iii) of the Act even though some funds were diverted to sister concern without interest. Later, on **21st June, 2015**, CBDT issued circular directing that some portion of interest expense must be disallowed when interest free advances were made to sister concern. Later on, the case of **A.Y. 2013-14** was re-opened by issuing and serving a valid notice under section 148 of the Act for taxing some other income which has escaped assessment. Based on this facts, answer the following issues:

- (a) Can the above circular be applied during the re-assessment proceeding by the assessing officer with a view to disallow the some portion of interest expense which was fully allowed earlier while passing order under section 143(3) of the Act?
- (b) Can the above circular be used for the purpose of initiating the re-assessment proceedings?

Solution

Kerala High Court in case of **Peria Karamalai Tea & Produce Co. Ltd. v. CIT 124 ITR 899** while dealing with similar issues held as under:

- (a) A CBDT circular not in existence on the date of original assessment but existing on the date of reassessment would not apply to reassessment proceedings.

- (b) CBDT circular not in existence in the relevant assessment year cannot be used for reopening such assessment even if operative on the date of reassessment.

Readers Note:

24.5 JURISDICTION OF INCOME-TAX AUTHORITIES

Section:- 120

- (1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on or assigned to them in accordance with such directions as the Board may issue
- (2) In issuing the directions or orders, the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely:
 - (a) territorial area;
 - (b) persons or classes of persons;
 - (c) incomes or classes of incomes; and
 - (d) Cases or classes of case.
- (3) The Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein.
 - (a) authorize any Principal Director General or Director General or Principal Director or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;
 - (b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director.
- (4) The Board may require two or more Assessing Officer (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or income or classes of income or cases or classes of cases. In that event, the authority lower in rank shall exercise powers and perform the functions as any higher authority amongst them may direct.

24.6 JURISDICTION OF ASSESSING OFFICER

Section:- 124

- (1) If an Assessing Officer has been vested with jurisdiction over any area then he shall have jurisdiction within the limit of such area :-
 - (a) In case of any person carrying on a business or profession within that area or where the business/profession is carried on by any person in more places than one, if the principal place of business or profession is situated within that area.
 - (b) In respect of any other person residing within the area.

- (2) Any dispute relating to jurisdiction of an Assessing Officer to assess any person shall be determined by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax.
- (3) If the question of jurisdiction is relating to areas within the jurisdiction of different higher authorities mentioned above, then the concerned authorities shall determine the issue.
- (4) If they are not in agreement then it shall be decided by the Board or by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax as the Board may by notification in the Official Gazette authorize in this behalf.
- (5) The assessee can object to the jurisdiction of Assessing Officer within the time limit specified below:

Return of income filed	No return of income filed
Within one month from the date of service of notice issued u/s 142(1)/143(2) Or Before completion of assessment, whichever is earlier	Within the time allowed in notice u/s 142(1) or u/s 148 for filing the ROI Or Time allowed to show cause as to why best judgment assessment u/s 144 should not be made, whichever is earlier

- (6) In case of search under section 132 or requisition under section 132A, the assessee can object jurisdiction of the assessing officer within one month from the date of service of notice under section 153A(1) or section 153C(2)

Or

Completion of the assessment whichever is earlier.

- (7) Where the assessee calls on question the jurisdiction of an Assessing Officer and the Assessing Officer is not satisfied with such claim, he shall refer the matter for determination by Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax before completing the assessment.

24.7 POWER TO TRANSFER CASES

Section:- 127

- (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax may after giving the assessee a reasonable opportunity of being heard, and after recording reasons transfer any case from one Assessing Officer to any other Assessing Officer.
- (2) Where the Assessing Officer from whom the case is transferred and the Assessing Officer to whom the case is transferred do not fall under the control of the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax

Commissioner or Commissioner of Income-tax and where such concerned higher authorities mutually agree for such transfer, the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax from whose jurisdiction the case is transferred shall pass an order.

- (3) If they are not in agreement about the transfer then the Board or any such authority authorised by the Board may pass the order.
- (4) No opportunity of being heard to be given where the case is transferred between Assessing Officers within the same city or locality or place.
- (5) The transfer of a case may be made at any stage of the proceedings and it shall not render it necessary to reissue any notice already issued.

24.8 CHANGE OF INCUMBENT OF AN OFFICE

Section:- 129

Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.



EXPLANATION 1 TO SECTION 153 AND EXPLANATION TO SECTION 153B

While computing the time limit for completion of assessment or reassessment as mentioned under section 153 or section 153B, the time taken under section 129 of the Act, shall be excluded.

24.9 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

- (a) without recording reasons for doing so, or
- (b) 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.

24.10 SEARCH AND SEIZURE

Section:- 132 (1)

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

Para No.	Description
Para 24.10	Basis for search and seizure
Para 24.10A	Powers of authorized officer while carrying out search
Para 24.10B	Deemed Seizure
Para 24.10C	If books of account, money, bullion etc. Are kept in building not specified in the search warrant
Para 24.10D	Police Assistance
Para 24.10E	Where it is not practicable to seize books of account...
Para 24.10F	Examination on Oath
Para 24.10G	Rebuttable Presumption
Para 24.10H	Time limit for retention of seized books of account, etc.
Para 24.10I	Taking copies of seized documents or extracts therefrom
Para 24.10J	Authorized officer having no jurisdiction over the person searched
Para 24.10K	Power of authorized officer to attach property provisionally
Para 24.10L	Miscellaneous provisions relating to search and seizure

Basis for search and seizure

Where the Principal Director General or Director-General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner in consequence of information in his possession has reasons to believe that-

- (i) any person to whom summons/ notice u/s. 131(1) / 142(1) were issued to produce books of accounts or other documents has willfully omitted or failed to do so;
- (ii) any person to whom summons or notice, as aforesaid, has been or might be issued, does not or would not produce any books of accounts or other documents called for or which will be useful or relevant to any proceeding undertaken under the Income-tax Act;
- (iii) any person who is in possession of any articles or things, including money, bullion or jewellery, or other valuable article or things and these assets represent either wholly or partly the income which has not been disclosed or would not be disclosed for the purpose of Income tax Act.

then –

- (A) the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, may authorise any Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer to carry out the search and seizure, or
- (B) such Additional Director or Additional Commissioner or Joint Director, or Joint Commissioner, if empowered by the Board, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer to carry out the search and seizure.

The Officer so authorized is referred to as Authorised Officer. The authorization is done by issuing a search warrant.

Explanation to section 132(1) has been inserted by Finance Act, 2017 w.r.e.f. 1-4-1962 as under:

For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Practical 4

What are the pre-requisites for authorization of search by the competent Income-tax authorities?

Solution

Based on various judicial pronouncements, the pre-requisites for authorization of search are as under:

- (a) There must be information.
- (b) Such information must be something more than mere rumor or gossip or hunch i.e. such information has to be specific information rather than vague information.
- (c) Information on the basis of which the concerned officer forms "reason to believe" should be in possession of the concerned officer.
- (d) There must be a live link between information and formation of belief.
- (e) The expression "reason to believe" means a genuine satisfaction arrived at upon an honest and reasonable evaluation of information coming to authority. Thus, the opinion with regard to authorization of search has to be formed in a subjective manner on which a reasonable and prudent person could act.

Readers Note:

Practical 5

Diamond Star Exports Limited is a company engaged in the business of manufacture, purchase and sale of gold, diamonds, ornaments and jewellery. On 12-1-2001, the company's sales manager was carrying from Mumbai to Lucknow gold, diamonds and jewellery of value of Rs.84.68 lacs for an exhibition called 'Swarna Sambandh' organised by M/s. Sercon India Pvt. Ltd. to be held at Taj Hotel, Lucknow for 3 days from 13-1-2001 to 15-1-2001. On reaching the Lucknow airport, the officers of the Income-tax department served a search warrant u/s.132 of the Income-tax Act, 1961 on the said sales manager of the company and seized the said gold, diamonds and jewellery. The company challenged

the validity of search action before the Mumbai High Court. It was found that the warrant of authorisation was issued solely on the basis of a fax message from Mumbai Income tax Authorities to Lucknow, which reads as under:

"Kindly refer to the telephonic message given by the undersigned at 4.15 p.m. today regarding the above mentioned passenger Shri Dharmesh Sharma travelling to Lucknow by Sahara Airlines flight no. S27907 whose scheduled departure time from Mumbai is 4.05 p.m. today i.e. 12-1-2001. He has stated that he is carrying jewellery items worth Rs.69 lacs. This is for your information and necessary action please."

Discuss the validity of action under section 132.

Solution

Let's first evaluate the pre-requisites for authorization of search:

Sr. No.	Pre-requisites	Yes / No
(a)	There must be information.	Yes
(b)	Such information has to be specific information rather than vague information.	Yes
(c)	Information on the basis of which the concerned officer forms "reason to believe" should be in possession of the concerned officer.	Yes
(d)	There must be a live link between information and formation of belief.	No
(e)	The expression "reason to believe" means a genuine satisfaction arrived at upon an honest and reasonable evaluation of information coming to authority. Thus, the opinion with regard to authorization of search has to be formed in a subjective manner on which a reasonable and prudent person could act.	No

The Mumbai High Court while dealing with the above petition in case of **Diamond star Exports Ltd. v. DIT & Ors** (2004) held that this cannot be a valid basis for authorisation for search. Accordingly it further held that the search action and consequent actions are illegal and invalid. The High Court also directed for payment of interest on the value of the seized assets.

Readers Note:

Practical 6

Search was carried out at the clinic cum residence of Dr. Anita Sahai, gynaecologist. During search operation, some cash and investments in property were found. The search action was challenged in the High Court. It was observed by the High Court that search warrant was issued without formation of belief. However, the department contended that the cash and investment in property found during search for which satisfactory explanation was not given by Dr. Anita and her husband who is a radiologist. This fact itself is sufficient for validity of search operations. Discuss the validity of contention raised by the department.

Solution

Allahabad High Court in case of Dr. Mrs. Anita Sahai v. DIT(Inv.) (All.) 266 ITR 597 had made following observations:

"It is well-settled that before taking any action under s. 132 of the Act the condition precedent which

must exist should be information in possession of the Director of IT which gives him reason to believe that a person is in possession of some article, jewellery, bullion or money which represents wholly or partly his income which was not disclosed or would not be disclosed. If the aforesaid condition is missing the CIT or Director of Investigation will have no jurisdiction to issue the warrant of authorisation under s. 132(1), vide *Ganga Prasad Maheshwari vs. CIT* (1981) 21 CTR (All) 83 : (1983) 139 ITR 1043 (All); *Dr. Nand Lal Tahiliani vs. CIT* (1988) 69 CTR (All) 91 : (1988) 170 ITR 592 (All); *Dr. Sushil Rastogi vs. Director of Investigation, IT Department* (2003) 182 CTR (All) 194 : (2003) 260 ITR 249 (All); *Ravi Iron Industries vs. Director of IT (Inv.)* (2003) 185 CTR (All) 8 : (2003) 264 ITR 28 (All) and *Smt. Kavita Agarwal vs. Director of IT (Inv.)* (2003) 185 CTR (All) 129 : (2003) 264 ITR 472 (All)."

That means, the material recovered from search cannot justify the search. Hence, the contention raised by the department is not tenable.

Readers Note:

Practical 7

The Director of Income Tax received information that Mr. X has unaccounted cash exceeding Rs.50 lakhs. Can the Director pass orders for seizure of the cash invoking his powers under section 131(1A)? Does the Director have any other course open to him for the seizure of cash?

Solution

The powers under section 131(1A) deals with power of discovery and production of evidence. They do not confer the power of seizure of cash or any asset.

However, u/s 132(1), the Director has the power to initiate search proceeding by issuing search warrant and effect seizure through an authorized officer, if he has reason to believe that any person is in possession of any money which represents wholly or partly income which has not been disclosed.

Therefore, the proper course open to the Director is to exercise his power under section 132(1) and authorise the officer concerned by issuing search warrant to enter the premises in which the cash is kept and effect the seizure of such unaccounted cash.

Readers Note:

24.10A POWERS OF AUTHORIZED OFFICER WHILE CARRYING OUT SEARCH

Section:- 132 (1)

- (i) enter and search any building place, vessel, vehicle or aircraft where authorized officer has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
- (ii) break open the lock of any door, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;
- (iii) search any person who has got out of, or is about to get into, or is in the building, place, vessel, vehicle or aircraft, if the authorized officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

- (iv) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic records, to afford the authorized officer the necessary facility to inspect such books of account or other documents;
- (v) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search. However any bullion, jewellery or other valuable article or thing being stock-in-trade of the business found as a result of search shall not be seized.
- (vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;
- (vii) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

Practical 8

Search operations took place in case of M.K. Gabrail Babu and the authorized officer effected a seizure of immovable property. The assessee challenged that during search operation, immovable property cannot be seized. Whether the contention of assessee is correct?

Solution

Kerala High Court in case of **CIT v. M.K. Gabrail Babu [1991] 188 ITR 464** had made following observation:

"A word in a statute, like a man, is, quite often, judged by the company it keeps. The preceding words in s. 132(1)(c) cannot, therefore, be ignored or overlooked. "Money, bullion, jewellery" which precede "other valuable article or thing" forge a genus and consequently, the words "other valuable article or thing" assume a constricted meaning and interpretation in that context."

Applying the principles of ejusdem generis, the section, therefore, cannot be said to include in its ambit immovable properties also.

Once the location of an immovable property is known, there may not be any necessity to seize the property also.

Readers Note:

Practical 9

Custom authorities seized certain sum from the assessee. In meantime, search warrant issued by the Income Tax department on assessee and Custom department. Cash lying with the Customs department was taken possession by the Income tax department on the ground that customs effected only seizure and not the confiscation and therefore, assessee is still the legal owner of the money. Whether the action of Income Tax department is valid?

Solution

Supreme Court in case of CIT v. Tareem Kumar 161 ITR 505, interpreted that "possession" word used in section 132 of the Act considered to mean physical possession and not the legal possession.

Considering the abovementioned ratio, Court further held that where money was in the custody of the Customs department pursuant to a seizure made by it, the income-tax department could not issue a search warrant and seize the money from that authority.

Readers Note:

24.10B | DEEMED SEIZURE**Section:-** Second proviso to section 132(1)

Where, it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume weight or other physical characteristics or due to its being of a dangerous nature, the Authorised Officer may serve an order on the owner or the person who is in immediate possession thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such Authorised Officer and such action of the Authorised Officer shall be **deemed to be seizure** of such valuable article or thing. **However, the provision relating to deemed seizure shall not apply in case of any valuable article or thing, being stock-in-trade of the business.**

24.10C | IF BOOKS OF ACCOUNT, MONEY, BULLION ETC. ARE KEPT IN BUILDING NOT SPECIFIED IN THE SEARCH WARRANT**Section:-** 132(1A)

Where any Principal Chief Commissioner or Chief commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of accounts, other documents, money, bullion, jewellery or other valuable article or things of the assessee are kept in any building, place, vessel, vehicle or aircraft not specified in the search warrant, then such Principal Chief Commissioner or Chief commissioner or Principal Commissioner or Commissioner may authorize the authorized officer to search other building, place, vessel, vehicle or aircraft.

Explanation to section 132(1A) has been inserted by Finance Act, 2017 w.r.e.f. 1-10-1975 as under:

For the removal of doubts, it is hereby declared that the reason to suspect, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

24.10D | POLICE ASSISTANCE**Section:-** 132(2)

The authorized officer may requisition the services of any police officer or any officer of the Central Government or both to assist him at the time of search and seizure and it shall be duty of every such officer to comply with such requisition.

24.10E | WHERE IT IS NOT PRACTICABLE TO SEIZE BOOKS OF ACCOUNT...**Section:-** 132(3), 132(8A)

- Where, it is not practicable to seize books of account, other documents, money, bullion, jewellery or other valuable article or thing, for the reasons other than those mentioned in deemed seizure, then in such case the authorized officer may serve an order on the owner or the person who is

immediate possession or control thereof that such person shall not remove, part with or otherwise deal with it except with the prior permission of the authorized officer.

- Such authorized officer may take such steps as he deems necessary for proper compliance of his orders.
- Serving of aforesaid order is not to be deemed as case of seizure.
- However, above order shall not remain in force for a period exceeding sixty days from the date of the order.

Practical 10

Mention the instances where the order under section 132(3) can be passed by the authorized officer.

Solution

1. An amount in credit with the banker is always liable to attachment. An action in that behalf can be taken under s. 132(3) which contemplates a prohibitory order not to deal with the monies deposited by the petitioner, except with the prior permission of the authority. Such an order would undoubtedly be justified. However such FDRs cannot be ordered for encashment by the Department under section 132(1). – **Santosh Verma vs. UOI & others. 189 ITR 549 (Patna High Court)**
2. Where a firm was operating with their own undisclosed income, a number of bank accounts in benami names, order under section 132(3) can be issued directing the account holder not to operate his bank account – **Jain & Jain v. Union of India [1982] 134 ITR 655 (Bom)**

Readers Note:

24.10F EXAMINATION ON OATH

Section:- 132(4)

- The authorized officer may during the course of search and seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or valuable article or thing.
- Any statement made by such person during such examination may thereafter be used as evidence in any proceeding under the Act.
- The examination of any person may not be merely in respect of any books of account, other documents or assets found as a result of search but also in respect of all matters relevant for the purpose of any investigation, connected with any proceedings under the Act.

24.10G REBUTTABLE PRESUMPTION

Section:- 132(4A)

Where any books of account, other documents, money, bullion, jewellery and other valuable article or thing is found in possession or control of any person in the course of a search, the following presumption can be made:

- The books of account or other documents money, bullion, jewellery and other valuable article or thing belongs to such person;
- The contents of such books of account and other documents are true and
- The signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped, executed or attested by the person by whom it purports to have been so executed or attested.

24.10H | TIME LIMIT FOR RETENTION OF SEIZED BOOKS OF ACCOUNT, ETC.

Section:- 132(8), 132(10)

- The books of account or other documents seized cannot be retained by the authorized officer for a period exceeding 30 days from the date of the assessment under section 153A.
- Retention for a period exceeding 30 days can be made only if reasons are recorded in writing and the approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director-General or Director-General or Principal Director or Director is obtained.
- Moreover, the abovementioned higher authorities cannot authorize the retention for a period exceeding 30 days after all the proceedings under the Act in respect of years for which books of accounts or other documents are relevant are completed.
- However, if the person legally entitled to the books of account or other documents objects to the approval given by the abovementioned higher authorities, he may make an application to the Board stating therein the reasons for the objection and requesting for return of books of account or other documents.
- Thereafter, the Board shall pass such order as it thinks fit after providing an opportunity of hearing to such applicant.

24.10I | TAKING COPIES OF SEIZED DOCUMENTS OR EXTRACTS THEREFROM

Section:- 132(9)

The person from whom the books of account or other documents were seized is permitted to make copies thereof, or take extracts therefrom, in the presence of the authorized officer or any other person empowered by him in this behalf and at such place and time as the authorized officer may appoint in this behalf.

24.10J | AUTHORIZED OFFICER HAVING NO JURISDICTION OVER THE PERSON SEARCHED

Section:- 132(9A)

Where books of account or other documents or any money, bullion, jewellery or valuable article or thing have been seized by authorized person having no jurisdiction over the person searched, then such an

authorized officer is required to hand over the same to the Assessing Officer who has jurisdiction over such person within a period of 60 days from the date on which the last of the authorization for search was executed.

24.10K | POWER OF AUTHORIZED OFFICER TO ATTACH PROPERTY PROVISIONALLY

Section:- 132(9B), (9C) and (9D) – Amendment by Finance Act, 2017 w.e.f. 01-04-2017.

- Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer, for reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee in accordance with the provisions of the Second Schedule.
- Every provisional attachment shall cease to have effect after the expiry of a period of six months from the date of such order.
- The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, make a reference to a Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the said officer within a period of sixty days from the date of receipt of such reference.

24.10L | MISCELLANEOUS PROVISIONS RELATING TO SEARCH AND SEIZURE

Section:- 132(13), 132(14)

The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizure shall apply, so far as may be, to searches and seizure conducted under this Act.

The Board is empowered to make rules in relation to search and seizure under this section.

24.11 | POWER TO REQUISITION BOOKS OF ACCOUNTS ETC.

Section:- 132A

- Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to believe that—
 - any person to whom summons u/s. 131(1) or notice u/s. 142(1) has been issued or might be issued to produce any books of accounts or other documents, has failed to produce or would not produce them because such books or documents are in the custody of any officer or authority under any other law for the time being in force (e.g. excise officer / VAT officer) or

- (ii) Where any assets representing undisclosed income wholly or partly have been taken into custody by an officer or authority under any other law for the time being in force.

then-

the abovementioned authorities may authorize any Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer (to be called the requisitioning officer) to require the officer or authority under any other law for the time being in force, to deliver such books of account, other documents or assets to the requisitioning officer.

Explanation to section 13A(1) has been inserted by Finance Act, 2017 w.r.e.f. 1-10-1975 as under:

For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

- On receipt of a requisition, the officer or authority concerned (e.g. excise officer/VAT officer) shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.
- Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions starting from section 132(4A) to (14) and section 132B shall apply accordingly.

24.12 APPLICATION OF ASSETS SEIZED OR REQUISITIONED

Section:- 132B

- **Application of money and assets seized or requisitioned against few liabilities.**

All assets which are seized under section 132 or requisitioned under section 132A shall be dealt with in the following manner, namely against the amount of:

1. Liability existing on the day of seizure or requisition under Income-tax Act, Wealth-tax Act, Expenditure-tax Act, Gift-tax Act and Interest-tax Act.
2. Liability determined on completion of assessment under section 153A (including assessment of the previous year in which search is initiated) provided such person is in default or deemed to be in default for such liability.
3. Liability arising on an application made before Settlement Commission under section 245 C (1) of the Act.

For the removal of doubts, it is hereby declared that the **"existing liability" does not include advance tax payable.**

- **Release of sum or assets remaining after recovery**

Where any asset or proceeds are left, then such sum shall be released to the person from whose custody it was taken if the following conditions are satisfied:

1. The concerned person makes an application to the Assessing Officer within 30 days from the end of month in which the asset was seized.
2. Nature and source of such assets is explained to the Assessing Officer satisfactorily.
3. All existing liabilities and liability determined on completion of assessment under section 153A as mentioned in para above are recovered out of such assets.
4. Prior approval of Principal Chief Commissioner or Chief Commissioner of Income-tax or Principal Commissioner or Commissioner of Income-tax has been obtained.

- **Where assets seized or requisition consists of money**

- Where assets seized consists solely or partly of money, then the Assessing Officer is empowered to apply such money in discharge of the existing liabilities and liability determined on completion of assessment u/s. 153A and assessee shall be discharged of such liability to the extent of the money so applied.
- Further, the assets other than money may also be applied in discharge of remaining liability.
- For the aforesaid purpose, such assets shall be deemed to be held in distraint as if such distraint was effected by the Assessing Officer or as the case may be, by the Tax Recovery Officer under authorization from the Principal Chief Commissioner or Chief Commissioner of Income-tax or Principal Commissioner or Commissioner of Income-tax under section 226(5).
- Thereafter, such Assessing Officer or Tax Recovery Officer may recover the amount of such liability by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

- **Recovery through any other modes not affected**

Nothing contained in section 132B(1) shall preclude the recovery of the amount of liabilities as mentioned in above by any other mode laid down under the Income-tax Act. (i.e. mode suggested under the chapter collection and recovery under Unit F)

- **Payment of interest by the Central Government on excess money or excess proceeds**

The Central Government shall pay interest at half percent for every month or part of a month on the excess money or excess proceeds of assets sold.

The interest shall be paid from the date immediately following the expiry of the period of 120 days from the date on which the last of the authorization for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment under section 153A.

24.13 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.

Practical 11

The Assessing Officer issued notices under section 133 to four banks requiring particulars relating to a customer in a specific format duly verified in a prescribed manner. One of the banks refused to part with the information on the ground that the letter did not specify about any proceeding pending against the said customer under the Income-tax Act, 1961. Discuss the correctness of action of the bank in refusing to furnish the particulars as required by the Assessing Officer.

Solution

- As per section 133(6), power is given to an Assessing Officer to issue notice, for the purposes of the Act, requiring any person, including a banking company, to furnish information in respect of such points or matters or to furnish statement of accounts and affairs verified in the manner specified by the Assessing Officer, as may be useful for, or relevant to, any enquiry or proceeding under the Act. Therefore, the provisions of this section can be invoked even in case of any enquiry and it is not necessary that any proceeding should be pending against the customer for the same.
- However, in respect of an enquiry, this power can be exercised by any Income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner only after getting the prior approval of the Principal Director or Director or Principal Commissioner or Commissioner, as the case may be.
- Therefore, the Assessing Officer can issue notice under section 133(6) asking for particulars relating to a customer in the specified format duly verified in the prescribed manner from the banking company, even if no proceeding is pending against such customer, provided he has obtained the prior approval of the Principal Director or Director or the Principal Commissioner or Commissioner, as the case may be. This view was affirmed in case of **Kathiroor Service Cooperative Bank Ltd. Vs. Commissioner Of Income Tax (CIB) Ors. (2014) 360 ITR 0243 (SC)**.
- Hence, in such a case, the action of bank in refusing to furnish particulars relating to a customer as required by the Assessing Officer on the ground that no proceeding was pending against the customer, is not correct.

Readers Note:

24.14 | 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 12

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 13

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 14

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**

- The I. T. Authority has no right to remove from the place of survey any cash, stock or other valuable article or thing.
- If the assessee refuses or evades, the I. T. Authority shall have all powers u/s. 131(1) to enforce compliance.

Practical 15

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

- Recorded statements of director and chief accountant who were present at the time of survey;
- Placed marks of identification on books / documents wherever required;
- 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

- is correct in recording statements of director and chief accountant
- is correct in placing marks of identification of books/ documents
- 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:

24.15 POWER TO COLLECT CERTAIN INFORMATION / DOOR TO DOOR SURVEY

Section:- 133B

● Section 133B(1)

Joint Commissioner, Assistant Director, Deputy Director, Assessing Officer, and Inspector of Income tax authorized by the Assessing Officer may enter-

- (a) Any building or place within the limits of the area assigned to the income tax authority
- (b) Any building or place occupied by any person in respect of whom the income tax authority exercises jurisdiction,

at which a business or profession is carried on, whether such place be principal place or not,
and

require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession to furnish such information as per Form No. 45 D.

● Section 133B(2)

An income-tax authority may enter any place of business or profession only during the hours at which such place is open for the conduct of business or profession.

● Section 133B(3)

The income-tax authority acting under this section shall, on no account, remove or cause to be removed from the building or place, any books of account or other documents or any cash, stock or other valuable article or thing.

Practical 16

An Assessing Officer entered a hotel run by a person, in respect of whom he exercises jurisdiction, at 8 p.m. for the purpose of collecting information, which may be useful for the purposes of the Act. The hotel is kept open for business every day between 9 a.m. and 9 p.m. The hotelier claims that the Assessing Officer could not enter the hotel after sunset. The Assessing Officer wants to take away with him the books of account kept at the hotel. Examine the validity of the claim made by the hotelier and the proposed action of the Assessing Officer with reference to the provisions of section 133B of the Income-tax Act, 1961.

Solution

Section 133B(2) of the Income-tax Act, 1961 empowers an income-tax authority to enter any place of business during the hours at which such place is open for the conduct of business. The hotel is open from 9.00 a.m. to 9.00 p.m. for the conduct of business. The Assessing Officer entered the hotel at 8.00 p.m. which falls within the working hours. The claim made by the hotelier to the effect that the Assessing Officer could not enter the hotel after sunset is not in accordance with law.

Section 133B(3) provides that an income tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any books of account. In view of this clear prohibition, the proposed action of the Assessing Officer to take away with him the books of account kept at the hotel is not valid in law.

Readers Note:

24.16 | 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.

24.17 | POWER TO INSPECT REGISTERS OF COMPANIES

Section:- 134

The Assessing Officer, the Joint Commissioner or the Commissioner (Appeals) or any person subordinate to him authorised in writing in this behalf by the Assessing Officer, may inspect, and if necessary take copies, or cause copies to be taken, of any register of the members, debenture holders or mortgages of any company or of any entry in such register.

24.18 | OTHER POWERS**Section:- 135**

The Principal Director General or Director General or Principal Director or Director, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Joint Commissioner are competent to make any enquiry under this Act and for all purposes they shall have all the powers that an Assessing Officer has under this Act in relation to the making of enquires.

24.19 | PROCEEDINGS BEFORE I.T. AUTHORITIES TO BE JUDICIAL PROCEEDINGS**Section:- 136**

All the proceeding before Income-tax authorities shall be deemed to be the judicial proceedings within the meaning of section 193, 228 and 196 of the Indian Penal Code.

Further, every income-tax authority shall be deemed to be a Civil Court for the purposes of Section 195, but not for the purpose of chapter XXVI of the Criminal Procedure Code.

24.20 | DISCLOSURE OF INFORMATION RESPECTING ASSESSEES**Section:- 138**

- (i) The information may be furnished by the Board or any designated Income tax authority by a special or general order.
- (ii) Such information is received or obtained by the income tax authority in performance of function under this Act.
- (iii) Such Information may be furnished to any officer, authority or body performing functions under any law, relating to the imposition of tax, duty or cess or Foreign Exchange Management Act, 1999 or under any other law as Central Government may notify in public interest.
- (iv) If the designated income tax authority is satisfied that in public interest such information has to be furnished to the applicant, then he may furnish such information.
- (v) The decision in this regard of designated I.T. Authority shall be final

Practical 17

K. Muthukrishnan, being a partner of a partnership firm, sought for certified copies of the profit and loss account of the said firm, filed by the managing partner before the Assessing Officer for the three assessment years 1997-98 to 1999-00 to substantiate his right in the court of law as a partner of the said firm. The Assessing Officer refused to give the certified copy relying inter alia on the provisions of S. 138 of the Income-tax Act, 1961, which deals with the disclosure of information with respect to an assessee unless it is made in the public interest. Whether refusal made by the assessing officer invoking provisions of section 138 of the Act is correct?

On a writ petition filed by the petitioner, the Madras High Court held that the petitioner is entitled to certified copy and observed as under:

Solution

The Madras High Court in case of **K. Muthukrishnan v. ITO, 138 Taxman 37** held that the assessee is entitled to certified copy and observed as under:

- (i) When a partner applies for the certified copy of the profit and loss account of the assessment of the firm or the assessment order, the same shall be deemed to be made on behalf of the assessee-firm itself and the income-tax authorities cannot refuse to furnish a copy quoting S. 138 which bars the authority to furnish copies relating to the assessee except the same is required in the public interest.
- (ii) **The provision of S. 138 is to maintain the secret of the income-tax of the assessee and any information relating to the returns of the assessee shall not be furnished to third parties. But, when a person himself is competent to sign and verify the returns of the firm in his capacity as an existing partner of the firm, he is entitled to a copy of the returns of the firm, in which case, the question of refusing to furnish copies of the returns of the firm on an alleged ground, viz., want of public interest, is no more available to the income-tax authorities as S. 138 itself is not attracted in such cases."**

Readers Note:

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.

8. **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:

- a. 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);
- b. the abovementioned income has escaped assessment for such year or years;
- c. 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	12 months

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) **21 months** from the end of the financial year in which the last of authorisations for search under section 132 or for requisition under section 132A was executed; or
- (b) **9 months** from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person,
- whichever is later.**
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 **10.12.2016** and it was concluded on the same day.

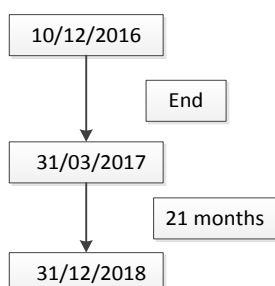
- (a) Mention the assessment years for which the Assessing Officer shall issue notice under section 153A requiring the Mansi to file the returns.
- (b) What will be the status of assessment proceeding of Assessment year **2014-15** which is pending on the date of search?
- (c) For the Assessment year **2011-12**, 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.
- (d) What is time limit for the completion of above assessments?
- (e) The assessing officer would like to complete the assessment of **A.Y. 2017-18** on or before **31.12.2019**. Advise the Assessing Officer.
- (f) Ms. Mansi is unwilling to file the return. What shall be the serious consequence?

Solution

(a)		P.Y.	A.Y.
(1)	10-11	11-12	
(2)	11-12	12-13	
(3)	12-13	13-14	
(4)	13-14	14-15	
(5)	14-15	15-16	
(6)	<u>15-16</u>	16-17	

10/12/16 → Search Date

- (b) 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. 2014-15** shall abate.
- (c) 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.
- (d) 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 **21 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 **31/12/2018**.

- (e) 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. – **31/12/2018**. Therefore, the assessing officer is advised to adhere this time limit for completion of assessment for the **A.Y. 2017-18**.
- (f) 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:

Practical 2

Search was conducted at MT's place by the Excise department on **10/12/16**. Income Tax department issued requisition u/s 132A on **28/12/16** to Excise department.

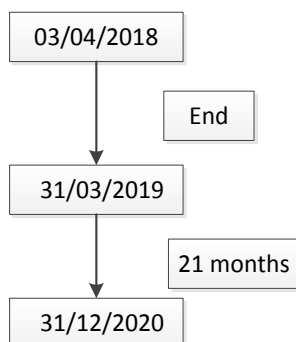
The Excise department handed over books of accounts, documents etc. to Income Tax department on **03/04/18**.

Answer the following questions:

- (i) For which six assessment years, notice u/s 153A shall be issued to MT?
- (ii) What is the time limit for completion of the above assessments?

Solution

- (i) Relevant date for deciding six years shall be the date on which requisition was made that is- **28/12/16**. Therefore, the notice shall be issued u/s 153A for the **A.Y. 2011-12 to A.Y. 2016-17**.
- (ii) 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 **requisition u/s 132A was executed**. The requisition shall be construed as executed on the actual receipt of the books of account or other documents or assets by the authorised officer i.e. **03/04/2018**.



Therefore, the assessing officer shall complete the assessments in the hands of MT on or before **31/12/2020**.

Readers Note:

25.3 ASSESSMENT OF INCOME OF ANY OTHER PERSON**Section:- 153C**

1. This section has an overriding effect over section 139, 147, section 148, section 149, section 151 and section 153 of the Act.
2. Where the Assessing Officer is satisfied that,—
 - (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
 - (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,a person other than the person referred to in [section 153A](#),
then
the seized or requisitioned records and assets shall be handed over to the assessing officer having jurisdiction over such other person.
3. **Thereafter, such assessing officer shall proceed to issue notice to such other person and assess or reassess his income in accordance with the provisions of sec.153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of [section 153A](#).**
4. **The section 153C has been amended (retrospective amendment applicable from June 1, 2003) so as to provide that for the purpose of assessment under section 153A in case of other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having the jurisdiction over such other person.**
5. The above assessments in the hands of other person shall be completed on or before the time limit mentioned at point no.3 in Section 153B discussed in earlier para.

Practical 3

Suppose in the above case study of MT, assessing officer found that some documents and assets pertain to Mr. Rahul. Thereafter, he transferred relevant documents and assets to the assessing officer having Jurisdiction over Mr. Rahul's case on **14/05/2020**.

Answer the following questions:

- i. For which six assessment years, notice u/s 153A shall be issued to Mr. Rahul?
- ii. What is the time limit for completion of above assessments?

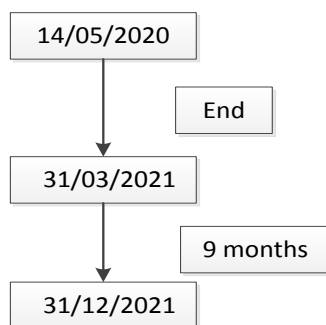
Solution

- i. Relevant date for deciding six assessment years shall be the date on which the assessing officer having jurisdiction over Mr. Rahul's case has, received books of accounts, etc., i.e. **14/05/2020**

	P.Y.	A.Y.
(1)	14-15	15-16
(2)	15-16	16-17
(3)	16-17	17-18
(4)	17-18	18-19
(5)	18-19	19-20
(6)	<u>19-20</u>	20-21

14/05/2020

- ii. Time limit for the completion of above assessments shall be (a) or (b) **(whichever is later)**
- (a) Applicable to 1st person (MT's case) – **31/12/2020**
- (b) 9 months from the end of financial year in which documents are received by the A.O. having jurisdiction over Mr. Rahul's case



Therefore, the assessing officer shall complete the assessments in the hands of Mr. Rahul on or before **31/12/2021**.

Readers Note:**Practical 4**

Income tax department carried out search at the business premise of Mr. Ramanlal on **10-12-2015**. During the course of assessment proceedings under section 153A, assessing officer (Rajesh Kumar) was satisfied that few documents and assets belong to Mr. Jigar. Therefore, he handed over the same to the assessing officer (Mahesh Kumar) having jurisdiction over Mr. Jigar's case on **05-03-2017**. After verification, Mahesh Kumar came to the conclusion that income covered in documents and the assets were very duly reported by Mr. Jigar in his income tax returns. But, considering the mandatory requirement of section 153C, Mahesh Kumar wants to issue notice to Mr. Jigar requiring him to file returns of six assessment years under section 153A. Advise Mahesh Kumar.

Solution

Considering the provisions of section 153C of the Act, Mahesh Kumar shall proceed against Mr. Jigar and assess or reassess his income in accordance with the provisions of [section 153A](#), only if, Mahesh Kumar is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of Mr. Jigar for the relevant assessment year or years referred to in [section 153A\(1\) of the Act](#).

Considering the facts of case, documents and assets do not have bearing on the determination of total income of Mr. Jigar and therefore, Mahesh Kumar advised not to issue notice under section 153A of the Act.

Readers Note:

25.4 PRIOR APPROVAL NECESSARY FOR ASSESSMENT IN CASES OF SEARCH OR REQUISITION

Section:- 153D

No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner.

25.5 PROVISIONS RELATING TO REVIVAL OF PROCEEDINGS WHICH GOT ABATED EARLIER PARTICULARLY WHEN THE PROCEEDINGS UNDER SECTION 153A HAS BEEN ANNULLED IN AN APPEAL OR ANY OTHER LEGAL PROCEEDING.

Section:- 153A (2) and 153(8)

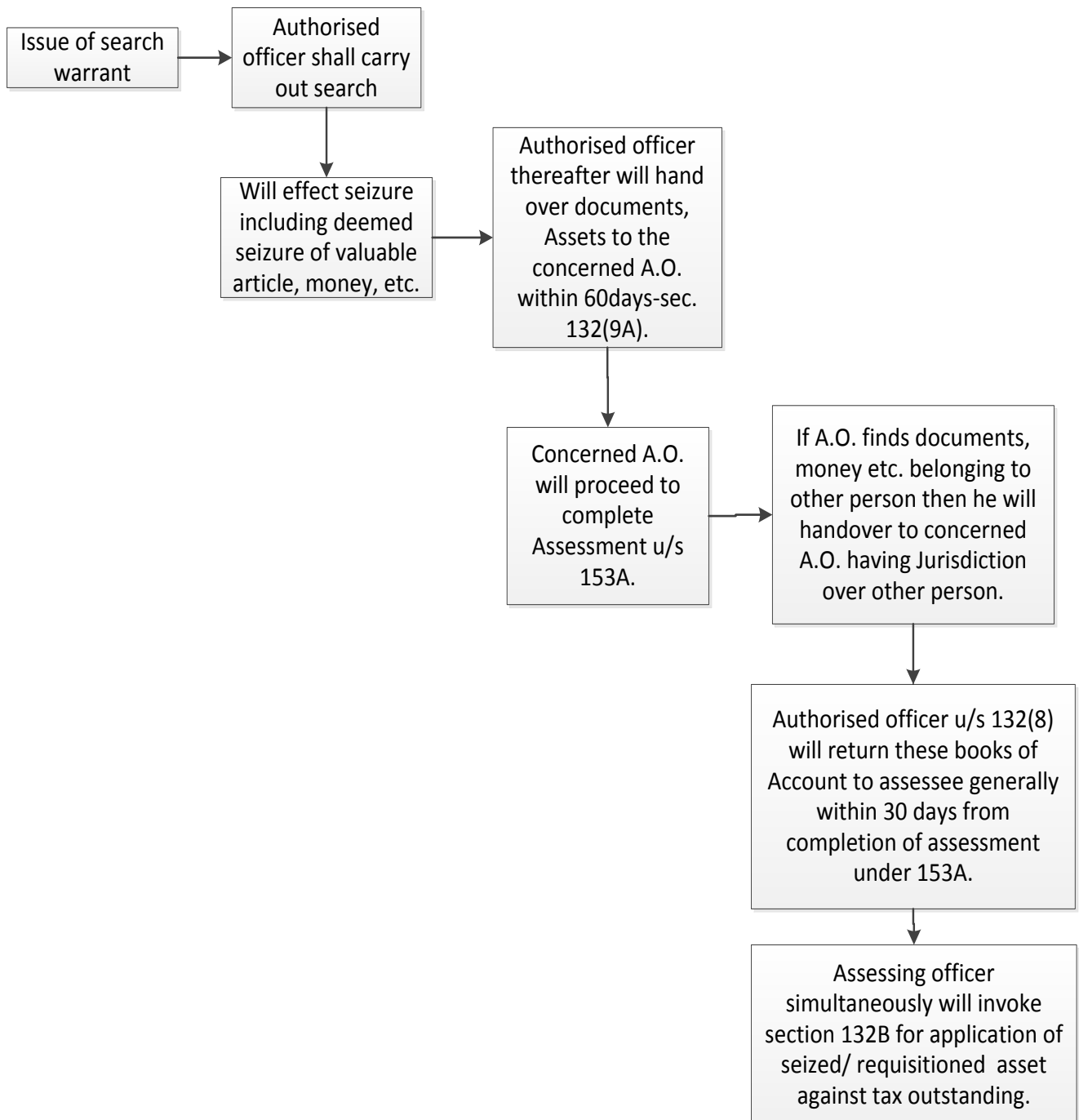
Provisions relating to revival of proceedings which got abated earlier – Sub-section (2) to Section 153A was inserted by Finance Act, 2008 with a retrospective effect applicable from June 1, 2003.

- a. As per provisions of section 153A (2), if any proceeding under section 153 A(1) or any order of assessment or reassessment made under section 153A(1) has been annulled in appeal or any other legal proceeding, the abated assessment or reassessment relating to any assessment shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner.
- b. And section 153(8) deals with the time limit for completion of such assessment which shall be one year from the end of the month in which the abated assessment revives or within the period specified in section 153 or in section 153B(1), whichever is later.

25.6 CONSEQUENCES WHEN ORDER OF ANNULMENT IS SET ASIDE

Section:- Proviso to section 153A(2) and Explanation to Section 153B – Clause (viii)

- a. If abovementioned order of annulment is set aside, such revival shall cease to have effect.
- b. The period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in section 153 A(2) till the date of receipt of order setting aside the order of such annulments by the Principal Commissioner or Commissioner, shall be excluded in computing the period of limitation under section 153B of the Act.

Flow of Search and Seizure

26 - COLLECTION & RECOVERY OF TAX

26.1 | TIME LIMIT FOR PAYMENT OF TAX PAYABLE IN A NOTICE OF DEMAND

Section:- 220(1)

- 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.

26.2 | INTEREST PAYABLE IF TAX NOT PAID WITHIN THE TIME LIMIT U/S. 220(1)

Section:- 220(2)

If the amount specified in any notice of demand u/s 156 is not paid within the period mentioned under section 220(1), the assessee shall be liable to pay simple interest at 1% for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in section 220(1) and ending with the day on which the amount is paid.

- However, 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 264 or an order of the Settlement Commission under section 245D(4), the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.
- Further, where the amount on which interest was payable under this section had been reduced as aforesaid and subsequently as a result of an order under said sections or section 263, the amount on which interest was payable under this section is increased, the assessee shall be liable to pay interest this section from the day immediately following the end of the period mentioned in the first notice of demand, referred to in section 220 (1) and ending with the day on which the amount is paid.

26.3 POWER OF PRINCIPAL CHIEF COMMISSIONER OR CHIEF COMMISSIONER OR PRINCIPAL COMMISSIONER OR COMMISSIONER TO WAIVE OR REDUCE INTEREST PAYABLE UNDER SECTION 220(2)

Section:- 220(2A)

- **Conditions**

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under section 220(2) if he is satisfied that –

- (i) payment of such amount has caused or would cause genuine hardship to the assessee;
- (ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and
- (iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The above conditions for waiver must be satisfied cumulatively- *Mani v. CIT* (2010) 190 Taxman 417 (Mad). However, contrary view has been expressed by Karnataka High Court in case *M.V. Amar Shetty* wherein court held that first condition is independent of second and third condition.

- **Time limit for passing order and opportunity of being heard**

- The order accepting or rejecting the application, either in full or part, shall be passed within a period of twelve months from the end of the month in which the application is received.
- However, in respect of any application pending as on the 1st day of June, 2016, the order shall be passed on or before the 31st day of May, 2017.
- The order rejecting the application, either in full or in part, shall not be passed unless the assessee has been given an opportunity of being heard.

26.4 SPECIAL PROVISIONS FOR PREVENTING DOUBLE LEVEY OF INTEREST

Section:- 220(2B) and 220(2C)

As per section 220 (2B), where interest is charged under section 201(1A) on the amount of tax specified in the intimation issued under section 200A(1) for any period, then, no interest shall be charged on the same amount for the same period under section 220 (2).

As per section 220 (2C), where interest is charged under section 206C(7) on the amount of tax specified in the intimation issued under section 206CB (1) for any period, then, no interest shall be charged on the same amount for the same period under section 220 (2).

26.5 | EXTENSION OF TIME LIMIT FOR PAYMENT OF TAX PAYABLE**Section:- 220(3)**

The Assessing Officer, on an application made by the assessee, before the expiry of due date mentioned section 220(1), may extend the time for payment or allow payment by instalments subsequent to such conditions as he may think fit to impose in the circumstances of the case.

However, the assessee shall continue to be liable for interest under section 220(2).

26.6 | DEEMED VALIDITY OF NOTICE OF DEMAND TILL THE DISPOSAL OF APPEAL**Section:- 220(1A)**

Sub-section (1A) has been inserted under section 220 with effect from October 1, 2014 to supersede the implications of Supreme Court's ruling in *Vikrant Tyres Ltd v. First 770* [2001] 115 Taxman 202. Consider the following practical.

Practical 1

Scrutiny assessment of XYZ Ltd. was completed by making certain additions and therefore, the assessing officer raised demand of Rs.3,00,000 by issuing notice dated **30-06-2011** under section 156. XYZ Ltd. met demand in full within 30 days of demand notice. The company also filed an appeal against this order before CIT(A) and was allowed 100 % relief by CIT(A) on **1st March, 2012**. As a result, company got refund of Rs. 3,00,000. However, this order of CIT(A) was challenged by department before Income Tax Appellate Tribunal (ITAT). ITAT restored the order of Assessing Officer on **18th March, 2015**. As a result, XYZ Ltd. was again required to pay Rs. 3,00,000 which was met in full by XYZ Ltd. within 30 days. The Assessing officer asked for interest from the date of order of CIT(A) till the date of order of ITAT under section 220(2). Whether action of assessing officer is correct?

Solution**Before Amendment**

In this case, A.O. cannot demand interest because assessee has not committed any default under section 220 (2). Assessee has met demand in full as and when it arose. As per **Supreme Court's** ruling in *Vikrant Tyres Ltd v. First 770* [2001] 115 Taxman 202, demand cannot be revived from the date when A.O passed an order.

Considering this, action of assessing officer is not correct.

After Amendment

The landmark ruling of the Supreme Court has been superseded with effect from **October 1, 2014** by inserting sub-section (1A) under section 201 which reads as under:

Section 201(1A)

“The amended provisions provide that **where any notice of demand has been served upon an assessee and any appeal** or other proceeding, as the case may be, **is filed** or initiated in respect of the amount specified in the said notice of demand, **then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority** or disposal of proceedings, as the case may be, and any such notice of demand shall have effect as provided in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964.

Considering this amendment, XYZ Ltd. is required to pay interest for the period commencing **October 1, 2014** and ending **18th March, 2015**.

Readers Note:

26.7	SECTION 3 OF THE TAXATION LAWS (CONTINUATION AND VALIDATION OF RECOVERY PROCEEDINGS) ACT, 1964

Continuation and validation of certain proceedings

- (1) Where any notice of demand in respect of any Government dues is served upon an assessee by a Taxing Authority under any scheduled Act, and any appeal or other proceeding is filed or taken in respect of such Government dues, then,-
- (a) where such Government dues are enhanced in such appeal or proceeding, the Taxing Authority shall serve upon the assessee another notice of demand only in respect of the amount by which such Government dues are enhanced and any proceeding in relation to such Government dues as are covered by the notice or notices of demand served upon him before the disposal of such appeal or proceeding may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;
- (b) where such Government dues are reduced in such appeal or proceeding,-
- (i) it shall not be necessary for the Taxing Authority to serve upon the assessee a fresh notice of demand;
- (ii) the Taxing Authority shall give intimation of the fact of such reduction to the assessee. Further, where a certificate has been issued to the Tax Recovery Officer for the recovery of such amount, intimation of the fact of reduction shall also be given to him;
- (iii) any proceedings initiated on the basis of the notice or notices of demand served upon the assessee before the disposal of such appeal or proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;
- (c) no proceedings in relation to such Government dues (including the imposition of penalty or charging of interest) shall be invalid by reason only that no fresh notice of demand was served upon the assessee after the disposal of such appeal or proceeding or that such Government dues have been enhanced or reduced in such appeal or proceeding;
- (2) No fresh notice of demand shall be necessary in any case where the amount of Government dues is not varied as a result of any order passed in any appeal or other proceeding under any scheduled Act.

(3) The provisions of this section shall have effect notwithstanding any judgment, decree or order of any court, tribunal or other authority.

Practical 2

X Ltd. is in receipt of assessment order for the assessment year **2013-14** along with demand notice under section 156 requiring X Ltd. to pay Rs.18,12,500 within 30 days of receipt of demand notice. Being aggrieved by the order of A.O., X Ltd. filed an appeal to CIT (A) under section 246A who while disposing appeal enhanced demand by another Rs.3,00,000. (Total Demand Rs. 21,12,500) Being further aggrieved by the order of CIT (A), X Ltd. preferred an appeal to Tribunal. The Tribunal while disposing appeal reduced demand by Rs. 5,00,000. (Total Demand Rs. 16,12,500). Discuss whether fresh notice of demand is required to be issued by taxing authority on each of the appellate stage?

Solution

Demand notice after the order of CIT(A)

Considering the provisions of section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964, fresh notice of demand has to be given only in respect of Rs.3 lakhs, being the amount of enhancement.

Demand notice after the order of Tribunal

Considering the provisions of section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964, fresh notice of demand is not required to be given in respect of reduction of tax liability. However, Taxing Authority shall give an intimation of the fact of such reduction to the assessee.

Readers Note:

26.8 WHERE AN ASSESSEE SHALL BE DEEMED TO BE IN DEFAULT

Section:- 220(4) and 220(5)

- If the amount is not paid within the time limited under section 220(1) or extended under section 220(3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.
- Further, in a case where payment by instalment is allowed under section 220(3), the assessee commits default in paying any one of the installments, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

26.9 ASSESSEE MAY NOT BE DEEMED TO BE IN DEFAULT IN CERTAIN CASES

Section:- 220(6) and 220(7)

Section 220(6)

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

Section 220(7)

Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

For the purpose of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form.

26.10 | PENALTY PAYABLE WHEN TAX IN DEFAULT**Section:- 221**

- When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable Section 220(2), be liable, by way of penalty, to pay such amount as the Assessing Officer may direct, and in the case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct, so however, that the total amount of penalty does not exceed the amount of tax in arrears:
- However, before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard.
- Further, where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section.
- For the removal of doubt, it is hereby declared that an assessee shall not cease to be liable to any penalty under this sub –section merely by reason of the fact that before the levy of such penalty he has paid the tax.
- Where as a result of any final order, the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

26.11 | CERTIFICATE TO BE DRAWN BY TAX RECOVERY OFFICER AND PROCEDURE OF RECOVERY OF TAX**Section:- 222**

- When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in Form No. 57 specifying the amount of arrears due from the assessee (such statement being hereafter referred to as “certificate”) and shall proceed to recover from such assessee the amount specified in the

certificate by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule.

- (a) attachment and sale of the assessee's movable property;
 - (b) attachment and sale of the assessee's immovable property;
 - (c) arrest of the assessee and his detention in prison;
 - (d) appointing a receiver for the management of the assessee's movable and immovable properties.
- For the purposes mentioned above, the assessee's movable or immovable property shall include any property which has been transferred, directly or indirectly on or after the 1st day of June, 1973, by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the assessee's movable or immovable property for recovering any arrears due from the assessee in respect of any period prior to such date.
 - The Tax Recovery Officer may take action as per above, notwithstanding that proceedings for recovery of the arrears by any other modes have been taken.

26.12 RECOVERY TO BE EFFECTED BY WHICH TAX RECOVERY OFFICER?

Section:- 223(1)

The Tax Recovery Officer competent to take action under section 222 shall be –

- (a) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principle place of his business or profession is situated, or
- (b) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situated.

26.13 TAX RECOVERY OFFICER MAY FORWARD CERTIFICATE TO ANOTHER TAX RECOVERY OFFICER

Section:- 223(2)

Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer and the Tax Recovery Officer by whom the certificate is drawn up:-

- (a) is not able to recover the entire amount by sale of the property, movable or immovable within his jurisdiction, or
- (b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Chapter, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property and thereupon that Tax Recovery Officer shall also proceed to recover the amount under this Chapter as if the certificate or copy thereof had been drawn up by him.

26.14 | VALIDITY OF CERTIFICATE AND CANCELLATION OR AMENDMENT THEREOF

Section:- 224

It shall not be open to the assessee to dispute the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.

26.15 | STAY OF PROCEEDINGS IN PURSUANCE OF CERTIFICATE AND AMENDMENT OR CANCELLATION THEREOF

Section:- 225

- (1) It shall be lawful for the Tax Recovery Officer to grant time for the payment of any tax and when he does so, he shall stay the proceedings for the recovery of such tax until the expiry of the time so granted.
- (2) Where the order giving rise to a demand of tax for which a certificate has been drawn up is modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject – matter of further proceeding under this Act, the Tax Recovery Officer shall stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.
- (3) Where a certificate has been drawn up and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Tax Recovery Officer shall when the order which was the subject – matter of such appeal or other proceeding has become final and conclusive, amend the certificate, or cancel it, as the case may be.

26.16 | OTHER MODES OF RECOVERY OF TAX

Section:- 226

Section 226(1)

Where no certificate has been drawn up, the Assessing Officer or where the certificate has been drawn up, the Tax Recovery Officer without prejudice to the modes of recovery specified in section 222 as the case may be, may recover the tax by any one or more of the following modes.

(1) Deduction from salaries [Section 226(2)]

If any assessee is in receipt of any income chargeable under the head 'Salaries', the Assessing Officer or Tax Recovery Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs.

However, any part of the salary exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908, shall be exempt from any requisition made under this sub – section.

(2) Garnishee order [Section 226(3)]

- (a)** The Assessing Officer or Tax Recovery Officer may, at any time or from time to time by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the assessing officer so much of money due from him to the assessee as is sufficient to pay the amount due by the assessee in respect of arrears of tax due or the whole of the money when it is equal to or less than that amount.
- (b)** Every person to whom a notice is issued under this sub – section shall be bound to comply with such notice and in particular where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit, receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.
- (c)** Any claim respecting any property in relation to which a notice under this sub – section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.
- (d)** Where a person to whom a notice under this sub – section is sent, objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this sub – section shall be deemed to require such person to pay any such sum or part thereof, as the case may be. But if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee on the date of the notice, or to the assessee's liability for any sum due under this Act, whichever is less.
- (e)** The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, amend or revoke any notice issued under this sub – section or extend the time for making any payment in pursuance of such notice.
- (f)** The Assessing Officer or Tax Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub – section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

- (g) Any person discharging any liability to the assessee after receipt of a notice under this sub – section shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.
- (h) If the person to whom a notice under this sub – section is sent fails to make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in section 222 to 225.

(3) Money belonging to assessee lying in court custody [Section 226(4)]

The Assessing Officer or Tax Recovery Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

(4) Distraint and Sale of movable property [Section 226(5)]

The Assessing Officer or Tax Recovery Officer may, if so authorised by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner by general or special order, recover any arrears of tax due from an assessee by distraint and sale of his movable property in the manner laid down in the Third Schedule.

26.17 RECOVERY THROUGH STATE GOVERNMENT

Section:- 227

If the recovery of tax in any arrear has been entrusted to a State Government under clause (1) of article 258 of the Constitution, the State Government may direct, with respect to that arrear or any part thereof, that tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

26.18 RECOVERY OF TAX IN PURSUANCE OF AGREEMENT WITH FOREIGN COUNTRIES

Section:- 228

- Where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may, if the assessee has property in a country outside India (being a country with which the Central Government has entered into an agreement for the recovery of income – tax under this Act and the corresponding law in force in that country), forward to the Board a certificate drawn up by him under section 222 and the Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

- On the same line, when the Government of foreign country or any authority under that Government sends to the Board a certificate of recovery of any tax due under such corresponding law from a person having property in India then the Board may forward such certificate to Tax Recovery Officer within whose jurisdiction such property is situated and thereupon such Tax Recovery Officer shall—
 - (a) proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 222; and
 - (b) remit any sum so recovered by him to the Board after deducting his expenses in connection with the recovery proceedings.

26.19 | RECOVERY OF PENALTIES, FINE, INTEREST AND OTHER SUMS

Section:- 229

Any sum imposed by way of interest, fine, penalty, or any other sum payable under the provisions of this Act, shall be recoverable in the manner provided in this Chapter for the recovery of arrears of tax.

26.20 | RECOVERY BY SUIT OR UNDER OTHER LAW NOT AFFECTED

Section:- 232

The several modes of recovery specified in this Chapter shall not affect in any way –

- (1) any other law for the time being in force relating to the recovery of debts due to Government; or
- (2) the right of the Government to institute a suit for the recovery of the arrears due from the assessee;

and it shall be lawful for the Assessing Officer or the Government as the case may be to have recourse to any such law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter.

DIVISION F

TAX DEDUCTION AND COLLECTION AT SOURCE

INDEX

CHAPTER NO.	TOPICS	NO. OF PRACTICALS	PAGE NO.
27	Tax Deduction and Collection at Source	68	1 to 77

27 - TAX DEDUCTION AND COLLECTION AT SOURCE

27.1 DEDUCTION OF TAX FROM SALARIES

Section:- 192

- (A) **Person liable to deduct tax at source:** Any person responsible for paying any income chargeable under the head “Salaries” is required to deduct tax at source.
- (B) **Time of deduction:** Such tax is required to be deducted at the time of payment of salary.
- (C) **Threshold limit:** No tax is required to be deducted at source unless the estimated salary exceeds the maximum amount not chargeable to tax.
- (D) **Rate of TDS:** Tax shall be deducted at average rate of income-tax computed on the basis of the rates in force for the financial year in which payment is made.

Practical 1

MNO Ltd., the employer, credited salary due for the financial year **2017-18** amounting to Rs. 3,40,000 to the account of Q, an employee, in its books of account on **31.3.2018**. Discuss the obligation of MNO Ltd. to deduct tax at source.

Solution

- As discussed above, section 192 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but merely credited to the account of the employee.
- Considering the above, MNO Ltd. therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q but not paid.

Reader's Note:

(E) Other relevant points

- (a) Every person responsible for paying salary income is first required to estimate the income chargeable under the head “Salaries”.
- (b) The value of the perquisites provided by the employers to their employees shall be determined under rule 3 and shall be taken in to account while estimating income under the head “Salaries”.
- (c) Further, any income falling under section 10 (income which do not form part of total income) shall not be included in computing the income from salaries for the purpose of section 192 of the Act.
- (d) The person responsible for making payments shall also take into consideration amount deductible under section 80C, 80CCC, 80CCD, 80CCG, 80D, 80DD, 80DDB, 80E, 80EE, 80G, 80GG, 80GGA, 80TTA and 80U.

- (e) **Section 192(2A)** provides that deduction of tax at source is to be made after allowing relief u/s 89(1) and after considering the tax on perquisites agreed to be borne by employer.
- (f) **Section 192(2D)** further casts responsibility on the person responsible for paying any income chargeable under the head 'Salaries' to obtain from the assessee (employee), the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner for the purposes of –
- estimating income of the assessee (employee); or
 - computing tax deductible under section 192(1).
- (g) **Section 192 (2)** provides that where an assessee is employed under more than one employer, then the assessee (employee) may choose the employer for deduction of tax at source. Thereupon, that employer shall deduct tax at source from the aggregate salary of an employee. For this purpose, employee is required to furnish details of salary due or received by him from other employer(s) in Form No. 12B to one of the employers (as chosen by him).
- (h) As per the provision of **section 192(3)**, the person responsible for paying the salary may, at the time of deducting tax at source, increase or reduce the amount to be deducted for the purpose of adjusting any excess or deficiency arising out of previous deduction or non-deduction.

Practical 2

An Indian company pays gross salary including allowances and monetary perquisites amounting to Rs. 6,80,000 to its General Manager. Besides, the company provides non-monetary perquisites to him whose value is estimated at Rs. 1,20,000. Discuss about the liability for tax deduction at source.

Solution

Particulars	Rs.
Gross salary	6,80,000
Non-Monetary perquisites	1,20,000
	8,00,000
Tax Liability	74,675
Average rate of tax (Rs. 74,675 / Rs. 8,00,000 × 100)	9.3344%

Alternative-I

- The company can deduct Rs. 74,675 at source from the salary of the General Manager.

Alternative-II

- Alternatively, the company can pay tax on non-monetary perquisites @ 9.3344% of Rs. 1,20,000 = Rs. 11,201.
- Balance tax to be deducted from salary = Rs. 63,474.
- The amount of tax paid towards nonmonetary perquisite by the employer, however, is not chargeable to tax in the hands of the employee as per section 10(10CC).
- The tax borne by company on non-monetary perquisites is not a deductible expenditure as per section 40(a).

Readers Note:

Practical 3

LL Limited paid leave travel facility to its employees and considered exemption under section 10(5), based on the self-declaration furnished by the employees. The Assessing Officer held that the company as an employer ought to have verified the genuineness of the claim of exemption by obtaining from them, the proof of actual expenditure incurred by availing leave travel facility. Accordingly, the Assessing Officer treated the assessee company as assessee in default. Decide the correctness of action.

Solution

- Section 192(2D) casts responsibility on the person responsible for paying any income chargeable under the head 'Salaries' to obtain from the assessee, the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner for the purposes of –
 - (i) estimating income of the assessee; or
 - (ii) computing tax deductible under section 192(1).
- In this case, the employer has paid leave travel concession / facility to its employees and the said concession / facility would be eligible for exemption subject to the conditions laid down in section 10(5) read with Rule 2B of the Income-tax Rules, 1962.
- Further, Rule 26C of the Income-tax Rules, 1962 mandates a salaried assessee claiming leave travel concession to furnish the proof of expenditure incurred in relation thereto to the person responsible for making for payment under section 192(1), for the purpose of estimating his income for computing the tax deductible under section 192.
- In the present case, LL limited considered exemption under section 10(5) based on the self-declaration furnished by assessee which is in violation of section 192(2D). Therefore, the action of the Assessing Officer treating LL limited in default is correct.

Reader's Note:**Practical 4**

An employee of the Central Government receives arrears of salary for the earlier 3 years. He enquires that whether entire amount is liable for deduction during the current year?

Solution

- As per section 192, tax is deductible at source by any person who is responsible for paying any income chargeable under the head 'Salaries'. However, the employee will be entitled to relief under section 89 and consequently he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form (i.e. Form No.10E).
- As per the provisions of section 192(2A), the person responsible for making the payment shall take into account such relief while deducting tax at source from salary.

Reader's Note:

(F) Tax to be deducted from other incomes of the employee

- The employee may declare his other incomes to the employer for the purpose of tax deduction at source under this section.
- If he wants to declare, then particulars of
 - (i) other income (not being a loss) and tax deducted thereon
 - (ii) the loss under the head “Income from house property”
 shall be submitted to the employer in a prescribed form and verified in a prescribed manner.
- On receipt of the same, employer shall deduct tax under section 192 after taking into account the other income.
- However, this shall not have the effect of reducing the tax deductible (except where the loss under the head “Income from house property” has been taken into account) from salary income below the amount that would be so deductible if the other income and tax deducted thereon had not been taken into account.

Steps to be followed to determine tax to be deducted from salary when employee reports other income

- Step 1** Compute tax on (salary income Plus loss under head house property less eligible deduction under section 80 C to 80U) less TDS pertaining to rent Income, if any.
- Step 2** Compute tax on (Salary income Plus loss under head house property Plus positive income under any other head(s) less eligible deduction under section 80 C to 80U) less TDS pertaining to rent Income and TDS pertaining to other positive income under any other head, if any.
- Step 3** TDS to be deducted from salary is Step 1 or Step 2 whichever is higher

Practical 5

Mr. Mahesh draws salary of Rs. 9,81,000 from Gateway Techno Pvt. Ltd during the previous year under consideration. He submitted following information to his employer in respect of his other incomes:

Particulars	Rs.
Income from Project Consultancy as a free-lancer	1,00,000
Tax deducted on such income	10,000
Expenses incurred for the above activity	80,000
Short-term capital Gain on sale of listed equities	(-) 60,000
Income under the head house property	(-) 2,01,000
Tax deducted on Rent Income	20,000
Contribution to Recognised Provident Fund	60,000
Principal repayment towards housing loan	1,80,000

You are required to ascertain the tax amount that is to be deducted from the salary of Mr. Mahesh under section 192.

Solution

Step 1 : Computation of total income and tax payable considering loss under head house property only.

Computation of Total Income

Particulars	Rs.
Salary Income	9,81,000
Income under head house property	(2,01,000)
Gross Total Income	7,80,000
Less: 80 C	1,50,000
Total Income	6,30,000

Computation of Tax

Particulars	Rs.
Tax on Rs. 6,30,000	38,500
Add: Education Cess	1,155
Sub- Total	39,655
Less: TDS on Rent Income	20,000
TDS to be deducted as per Step 1	19,655

Step 2 : Computation of total income and tax payable considering loss under head house property and positive income under other heads.

Computation of Total Income

Particulars	Rs.
Salary Income	9,81,000
Income under head house property	(2,01,000)
Income under the head PGBP (net)	20,000
Gross Total Income	8,00,000
Less: 80 C	1,50,000
Total Income	6,50,000

Computation of Tax

Particulars	Rs.
Tax on Rs. 6,50,000	42,500
Add: Education Cess	1,275
Sub- Total	43,775
Less: TDS on Rent Income	20,000
Less: TDS on Consultancy Income	10,000
TDS to be deducted as per Step 2	13,775

Step 3: Tax to be deducted from the salary is Step 1 or Step 2 whichever is higher: Rs. 19,655

Reader's Note:

Practical 6

Hotelia Ltd., engaged in the business of owning, operating and managing hotels, allowed its employees to receive tips from the customers, by virtue of their employment. The tips were also collected directly by the hotel-company from the customers, when payment was made by them through credit cards. The hotel-company thereafter disbursed the tips to the employees. The Assessing Officer treated the receipt of the tips as income under the head “Salary” in the hands of the various employees and held that the company was liable to deduct tax at source from such payments under section 192.

Since the company had not deducted tax at source on such payments, the Assessing Officer treated the company as an assessee-in-default under section 201(1). Discuss the correctness of the action of the Assessing Officer.

Solution

- The issue under consideration is whether “tips” received by the hotel-company from its customers and distributed to the employees fell within the meaning of “Salaries” to attract tax deduction at source under section 192.
- This issue came up before the **Supreme Court in ITC Ltd. v. CIT (TDS) (2016) 384 ITR 14** wherein it was observed in respect of tips collected by the company from the customers and distributed to the employees, the person responsible for paying the employee was not the employer at all, but a third person, namely the customer. As income from tips would be chargeable in the hands of the employees as “Income from Other Sources”, on account of such tips being received from customers and not from the employer, section 192 would not get attracted at all. The Supreme Court further observed that there was no vested right in the employee to claim any amount of tip from his employer.
- Tips are purely voluntary amounts that may or may not be paid by customers for services rendered to them, and hence, would not fall within the meaning and scope of section 15. Further, the amount of tips collected from the customers by the employer and paid to the employees has no reference to the contract of employment at all. Tips were received by the employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to the customer. There was, therefore, no reference to the contract of employment when these amounts were paid by the employer to the employee. Due to this reason the tips received by the employees could not be regarded as profits in lieu of salary in terms of section 17(3). The payments of collected tips included and paid by way of a credit card by a customer, would not be payments made “by or on behalf of” an employer. The contract of employment not being the proximate cause for the receipt of tips by the employee from a customer, such payments would be outside the scope of sections 15 and 17.
- Applying the rationale of the above Supreme Court ruling to the case on hand, the action of the Assessing Officer in treating Hotelia Ltd. as an assessee-in-default for non-deduction of tax at source on the amount of tips collected by it from the customers and distributed to its employees, is not correct.

Reader’s Note:

27.2 | PAYMENT OF ACCUMULATED BALANCE DUE TO AN EMPLOYEE**Section:- 192A**

(A) Person liable to deduct tax at source:- Tax is to be deducted by the trustees of Employees' Provident Fund Scheme, 1952 or any other person authorized under the scheme to make payment of accumulated sum to employees.

(B) Which amount is subject to tax deduction

- a. Tax is deductible from accumulated lump sum payment when the employee has not rendered continuous service of 5 years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.).
- b. Out of the lump sum payment, tax deduction shall be made on that portion of payment which is includible in the total income of the employee. Thus, tax deduction shall be made as under:-

Component of lump sum payment	Is this component taxable in the hands of employee not completing continuous 5 years of service?	Is it subject to TDS if other conditions of section 192A are satisfied?
Employer's Contribution	Taxable under head "Salary"	Subject to TDS
Interest on Employer's Contribution	Taxable under head "Salary"	Subject to TDS
Employee's Contribution	Not Taxable	No TDS required
Interest on Employee's Contribution	Taxable under head "Other Sources"	Subject to TDS

(C) Time of tax deduction – Tax is deductible at the time of payment.

(D) Threshold limit – Tax is not deductible where aggregate amount of taxable component of lump sum payment is **less than Rs.50,000**.

(E) Rate of TDS- Tax is deductible at the rate of 10 per cent of taxable component of lump sum payment. However, if employee fails to furnish PAN, then tax shall be deducted at maximum marginal rate.

Practical 7

Mr. Sharma is an employee of M/s. ABC Ltd. since **01-04-2015**. He has resigned on **28-03-2018** and has withdrawn the amount of Rs. 1,00,000 being the balance in his EPF account.

Discuss whether the payment to Mr. Sharma is subject to tax deduction at source?

Solution

- As per section 192A, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income, the trustees of the Employees Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax@10% at the time of payment.
- Tax deduction at source has to be made only if the amount of such payment or aggregate amount of such payment of the payee is Rs. 50,000 or more.
- Rule 8 of Part A of the Fourth Schedule provides that only if an employee has rendered continuous service of five years or more with the employer, then accumulated balance in a recognized provident fund payable to an employee would be excluded from the total income of that employee.
- In the present case, Mr. Sharma has withdrawn an amount exceeding Rs. 50,000 on his resignation after rendering a continuous service of only three years with M/s. ABC Ltd.
- Therefore, tax has to be deducted at source@10% under section 192A on Rs.1,00,000.

Note – It is assumed that Mr. Sharma has furnished his permanent account number (PAN) to the person responsible for deducting tax at source. It is further assumed that Rs. 1,00,000 withdrawn by Mr. Sharma represents taxable portion of EPF.

Reader's Note:**27.3 | 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:
- (a) interest on any security of Central Government or State Government
 - (b) interest on debentures or
 - (c) 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:

- (a)** 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.
- (b)** 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.
- (c)** Any listed security in dematerialized form.
- (d)** Debentures (whether listed or not) issued by a company in which the public are substantially interested subject to following conditions:-
 - (i) such interest is payable to an individual or Hindu Undivided family;
 - (ii) the interest is paid by the company by an account payee cheque; and
 - (iii) the aggregate amount of interest paid or likely to be paid by the company during the financial year **does not exceed Rs.5,000.**
- (e)** Securities beneficially owned by LIC or the GIC or any other insurer.
- (f)** Securities owned by the fund established for the benefit of armed forces. Circular No.735, 30-01-1996.
- (g)** Securities owned by the provident fund whose income is exempt under section 10(25)(ii):- Circular No. 741, 18-04-1996.

Practical 8

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:

27.4 DEDUCTION OF TAX AT SOURCE FROM DIVIDENDS**Section:- 194**

- (A) **Person liable to deduct tax at source:-** The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of any dividend to a shareholder who is resident in India, is required to deduct tax at source.
- (B) **Time of deduction:-** Such tax shall be deducted before making payment of dividend.
- (C) **Rate of TDS:-** 10%.
- (D) No tax deduction shall be made in respect of dividend referred to in section 115-O.

27.5 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 where the payer is a banking company;
 - b. Rs.10,000 where the payer is a co-operative society engaged in business of banking;
 - c. Rs. 10,000 where the payer is a post office;
 - d. Rs.5,000 in any other case.

The aforesaid limit of Rs.10,000 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. 10,000 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 9

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 10,000.

The Assessing Officer disallowed the entire interest expenditure where the interest on time deposits credited exceeded the limit of Rs 10,000 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 10**

Examine the applicability of provisions relating to deduction of tax at source and compute the liability, if any, for deduction of tax at source in the following case:

"Rs. 80,000 towards interest on compensation credited to the account of the payee by Motor Accidents Claim Tribunal ".

Solution

- As per section 194A, tax has to be deducted at source @10% from interest on the compensation amount awarded by the Motor Accidents Claims Tribunal if amount or the aggregate amount of such income paid during financial year does exceeds Rs. 50,000.
- In the present case, since the amount of Rs. 80,000 towards interest on compensation is only credited to the account of the payee by the Motor Accidents Claims Tribunal and not paid, no tax is deductible at source.

Reader’s Note:

Practical 11

Mr. Intelligent has made following fixed deposits with different branches of Bank.

- (a) Rs. 1,00,000 @ 7.5% with Nariman Point Branch
- (b) Rs. 1,00,000 @ 7% with Prabha Devi Branch
- (c) Rs. 1,00,000 @ 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. 10,000.

Alternative II :- Bank has adopted core banking solutions.

Since aggregate interest payable to Mr. Intelligent by the Bank exceeds Rs. 10,000, bank is under an obligation to deduct TDS.

Reader's Note:

Practical 12

Examine the TDS obligation in respect of following payments:

- (a) On **31st March, 2018**, Jay Ambe credit co-operative society credited Rs. 12,000 interest on fixed deposit made by Ms. Gita, a member of such society.
- (b) On **31st March, 2018**, Jay Ambe credit Co-operative society credited Rs. 13,000 interest on fixed deposit made by Jay Madi Farmer's Co-operative society, a member of former society.
- (c) On **31st March, 2018**, Kalupur Co-operative Bank credited Rs. 14,000 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 13

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. 12,000. 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. 10,000. Therefore, the contention raised by Mr. Ramesh objecting tax deduction at source is not valid.

Reader's Note:**Practical 14**

Arihant Trust is assessed as individual under section 161 of the Act. It had paid interest on unsecured loans without tax deduction at source. The assessing officer treated trust as assessee in default. Whether action of assessing officer is justified?

Solution

Madras High Court in case of *ITO v. Arihant Trust [1995] 214 ITR 306* held that even an artificial juridical person can be treated as an individual under section 194A. Status fixed for the purpose of assessment cannot get altered for the purpose of section 194A. Once a trust has been assessed as an individual under section 161, section 194A will not be applicable to it. Therefore, the action of assessing officer treating Arihant Trust is not justified.

Reader's Note:

27.6 DEDUCTION OF TAX AT SOURCE FROM WINNINGS FROM LOTTERIES OR CROSSWORD PUZZLES

Section:- 194B

- (A) **Person liable to deduct tax at source:-** The person responsible for paying to any person any income by way of winnings from lotteries or crossword puzzles or card game or any other game of any sort is required to deduct tax at source.

Meaning of term "Lottery"

The expression "lottery" includes:-

Winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called.

Meaning of term "card game and other game of any sort"

The expression "card game and other game of any sort" includes:-

Any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game.

- (B) **Time of deduction:-** Tax is required to be deducted at the time of payment of such winnings.
- (C) **Threshold limit:-** Tax is required to be deducted under this section only if payment is **exceeding Rs.10,000**.
- (D) **Rate of TDS:-** 30%.

- (E) **Other points:-** Where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

Practical 15

A T.V. channel pays Rs. 10 lakh as prize money to the winner of a quiz programme, “Who will be a Millionaire”? Whether T.V. channel is responsible to deduct tax at source on the prize money so distributed?

Solution

- The prize money so distributed falls within the meaning of “winning from any card game” and therefore, under section 194B, the person responsible for paying the same, shall at the time of payment, deduct tax at 30% provided prize money exceeds Rs. 10,000.
- Considering the above, T.V. channel is responsible to deduct tax at source on the prize money so distributed under section 194B of the Act.

Reader’s Note:

Practical 16

Mr. Govind won the first prize in a lottery ticket and the prize was a Maruti car worth Rs. 5 lacs. What is the procedure to be adopted before handing over the Maruti Car to Mr. Govind?

Solution

- Section 194B provides that the person responsible for paying to any person, any income by way of winnings from any lottery or crossword puzzle, card game or any other game of any sort and the amount of winning exceeds Rs.10,000, tax shall be deducted at source @ 30%.
- However, in case where the winning is wholly in kind, the person responsible for paying the prize shall before releasing the winning, ensure that the tax has been paid in respect of such winning.
- In this regard, the CBDT **Circular No.763 dated 18/2/1998** clarifies that the person responsible for paying the winnings shall, before releasing such winnings, ensure that the tax is paid by the winner. He can do so, for example, by collecting from the winner a sum equal to the tax deductible at source on the winnings in kind, before releasing the winnings. For this purpose, the value of the winnings in kind shall be taken as the cost incurred by the payer in acquiring the said winnings in kind.
- Therefore, in the present case since the entire winning is in kind, it must be ensured that the sum equal to the tax deductible at source (i.e. Rs.1,50,000, being @ 30% of Rs. 5 lacs) is paid by Mr. Govind, before the car is released in his favour. This can be done by collecting Rs.1,50,000 from Mr. Govind before releasing the Maruti car to him and remitting the said sum to the Government account or verifying the tax payment by the winner and thereafter releasing the prize in favour of Mr. Govind.

Reader’s Note:

27.7 DEDUCTION OF TAX AT SOURCE FROM WINNINGS FROM HORSE RACES**Section:- 194BB**

- (A) **Person liable to deduct tax at source:-** The person, being bookmaker or a person to whom license has been granted by the Government for horse racing, who is responsible for paying to any person, any income by way of winnings from any horse race is required to deduct tax at source.
- (B) **Time of deduction:-** Such tax is required to be deducted at the time of payment of such winnings.
- (C) **Threshold limit:-** Tax is required to be deducted under this section only if payment is **exceeding Rs. 10,000**.
- (D) **Rate of TDS:-** 30%

Practical 17

A Turf Club awards a jack-pot of Rs. 5 lakh to the winner of one of its races. Discuss the obligation of Turf club to deduct tax at source.

Solution

- The payment by way of winnings from horse race is governed by section 194BB. As discussed above, the person responsible for payment shall, at the time of payment, deduct tax at source @ 30%, if the payment exceeds Rs. 10,000.
- Accordingly, tax @ 30% amounting to Rs.1,50,000 has to be deducted from the winnings of Rs. 5 lakh payable by the Turf Club to the winner of the race.

Reader's Note:**27.8 DEDUCTION OF TAX AT SOURCE FROM PAYMENTS TO CONTRACTORS****Section:- 194C**

- (A) **Person liable to deduct tax at source:-** Any specified person responsible for paying any sum to any resident contractor for carrying any work (including supply of labour for carrying out any work) is required to deduct tax at source.

For the purpose of this section, specified person shall mean:

- the Central Government or any State Government; or
- any local authority; or
- any corporation established by or under a Central State or Provincial Act, or
- any company ; or
- any co – operative society; or
- any authority constituted in India by or under any law engaged either for the purpose of

- dealing with and satisfying the need for housing accommodation or for the purpose of planning development of cities towns and villages or for both ; or
- g. any society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India ; or
 - h. any trust ; or
 - i. any University established or incorporated by or under a Central State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956; or
 - j. any firm;
 - k. any Government of a foreign State or a foreign enterprise or any association or body established outside India;
 - l. Any person, being an individual or a Hindu Undivided Family or an association of persons or a body of individual whose books of accounts are required to audited under section 44AB(a)/(b) during the immediately preceding financial year and sum credited or paid to the account of the contractor.

(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:- Tax is not deductible under this section if the following two conditions are satisfied—

- a. the amount of any sum credited or paid or likely to be credited or paid to the contractor **does not exceed Rs. 30,000 and**
- b. the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year **does not exceed Rs.1,00,000.**

Practical 18

Alap Ltd. has made following payments on various dates to Vilambit Ltd. towards work done under different contracts

Contract Number	Date of Payment	Amount (Rs.)
1.	05.05.2017	20,000
2.	06.06.2017	15,000
3.	08.08.2017	25,000
4.	10.12.2017	25,000
5.	29.01.2018	17,000

Alap Ltd. claims that it is not liable for deduction of tax at source under section 194C. Examine the correctness of the claim made by the company. What would be the position if the value of the contract no. 5 is Rs. 14,000 only and there was no further contract during the year?

Solution

- As per section 194C(5) tax has to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds Rs. 30,000 in a single payment or Rs. 1,00,000 in aggregate during the financial year.
- In the present case, though the value of each contract does not exceed Rs. 30,000, the aggregate amount exceeds Rs. 1,00,000 during the financial year. Hence, Alap Ltd is required to deduct tax at source on the whole amount of Rs. 1,02,000 from the last payment of Rs. 17,000.
- However, no tax deduction is to be made if the value of the last contract is Rs. 14,000 since the aggregate amount in such case would only be Rs.99,000, which does not exceed Rs.1,00,000.

Reader's Note:**(D) Rate of TDS:-**

If payee is an Individual or HUF	1%
If payee is any other person	2%

(E) No liability to deduct tax at source in following cases:

- (a) Individual or Hindu undivided family shall not be liable to deduct income tax on the sum credited or paid to the account of contractor where such sum is exclusively for personal purposes.
- (b) Tax is not deductible on any sum credited or paid to the contractor during the course of business of plying, hiring or leasing goods carriages subject to following conditions:
- (a) Such contractor owns ten or less goods carriages at any time during the previous year and
- (b) Such contractor shall furnish a declaration to that effect along with PAN to the payer.

Practical 19

T, an individual whose total sales in business during the year ended **31.3.2017** was Rs. 1.20 crores, paid Rs. 9 lacs by cheque on **01.01.2018** to a contractor (an individual), for construction of his factory building. No amount was credited earlier to the account of the contractor in the books of T. Discuss the obligation of T to deduct tax at source.

Solution

- An individual who is liable for tax audit under section 44AB (a) / (b) in the immediately preceding financial year (**2016-17**) is liable to deduct tax at source under section 194C for the financial year **2017-18** in respect of the payment made to contractor exceeding Rs. 30,000 in a single contract and Rs. 1,00,000 in aggregate of contracts during the financial year.
- Turnover of the individual T exceeded Rs.1 crore in the financial year **2016-17**. Therefore, T is liable to get his accounts for that year audited under section 44AB(a). As the payment during **F.Y. 2017-18** to the contractor has exceeded the limits prescribed in section 194C, tax has to be deducted u/s 194C.

Reader's Note:

(F) Meaning of work :

The expression “work” shall also include

- (a) advertising
- (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting
- (c) carriage of goods and passengers by any mode of transport other than by railways
- (d) catering
- (e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

In case of point no. (e) above, tax shall be deducted:

- (i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or
- (ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

Practical 20

Dabur Ltd. has entered into a contract to buy plastic bottles from Packaging Pvt. Ltd as per the designs and specification given to it. For this purpose, Dabur Ltd. sold necessary raw material to Packaging Pvt. Ltd. For the previous year **2017-18**, Packaging Pvt. Ltd. has raised following invoices on Dabur Ltd.

Date	Invoice no.	Qty.	Value of Raw Material	Labour Charges	Total Bill Rs.
14/10/17	1020/17-18	10,000	-	-	60,000
31/11/17	1255/17-18	20,000	80,000	45,000	1,25,000

Discuss the TDS obligations of Dabur Ltd. Would your answer differ if Packaging Pvt. Ltd. has purchased raw material from any supplier other than Dabur Ltd?

Solution

- In this case, Dabur Ltd. is the customer of Packaging Pvt. Ltd. (PPL). PPL is manufacturing bottles according to the specification given by Dabur Ltd. For this purpose, PPL is using material purchased from Dabur Ltd. Therefore, this transaction results into “work” according to the definition given under explanation to section 194C. Therefore, Dabur Ltd. is required to deduct TDS while making payment to PPL.
- As discussed above, TDS shall be made on invoice value excluding the value of material, if it is mentioned separately in the invoice otherwise TDS shall be made on whole of the invoice value.
- Considering the same, Dabur Ltd. is required to deduct TDS on Rs. 60,000 for the invoice no. 1020/17-18 while in invoice no. 1225/17-18 TDS to be made on Rs. 45,000 only.
- If raw material is purchased by PPL from any supplier other than Dabur Ltd. (i.e. Customer) then, this transaction would not amount to “work” as defined under the explanation to Section 194C. It is more a contract of sale, hence, no TDS is required to be made by Dabur Ltd.

Reader’s Note:

Practical 21

By virtue of an agreement with a nationalised bank, a catering organisation receives a sum of Rs. 50,000 per month towards supply of food, water, snacks etc. during office hours to the employees of the bank. Discuss about the liability of bank to deduct tax at source.

Solution

As discussed above, the definition of “work” under *Explanation* to section 194-C includes catering services and therefore, TDS provisions under section 194C are attracted in respect of payments to a caterer. As the payment exceeds Rs. 30,000, the nationalised bank is required to deduct tax at source at 2% on the payments made to catering organisation under 194-C. If the catering organization is run by an individual or HUF, then the tax deduction shall be @ 1%.

Reader’s Note:**27.9 DEDUCTION OF TAX AT SOURCE FROM INSURANCE COMMISSION****Section:- 194D**

(A) **Person liable to deduct tax at source:** - Any person responsible for paying to a resident any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance, 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, “payment” can be in cash or by issue of a cheque or draft or by any other mode.

(C) **Threshold limit:-** No deduction shall be made under this section in a case 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 payee, **does not exceed Rs. 15,000.**

(D) **Rate of TDS:-**

If payee is domestic company	10%
If payee is other person	5%

Practical 22

"Profit Commission" of Rs. 1 lac paid by a re-insurance company to the insurer company after the expiry of the term of insurance and where there was no claim during the treaty. Whether re-insurance company is required to deduct tax at source?

Solution

- In order to attract section 194D, the commission or any other payment covered under the section shall be a remuneration or reward for soliciting or procuring the insurance business.
- The insurance companies do not procure business for the reinsurance company nor does the reinsurer pay commission or other payment for soliciting the business from the insurance companies. Therefore, section 194D has no application.
- Hence, when profit commission is paid by a reinsurance company to an insurance company, after the expiry of the term of insurance, in respect of cases where there is no claim during the operation of the reinsurance treaty, no tax deduction under section 194D is required.

Reader's Note:

27.10 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%

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 23

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.)
(i)	Naresh	01.04.2013	5,00,000	1,25,000	31.03.2018	5,50,000
(i)	Ramesh	05.02.2011	3,00,000	45,000	04.02.2018	3,85,000
(ii)	Mahesh	08.03.2014	80,000	18,000	07.03.2018	87,000

Solution

- (i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken on 1.4.2012, the maturity proceeds of Rs. 5,50,000 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 on the maturity proceeds of Rs. 3,85,000.
- (iii) Even though the annual premium exceeds 10% of sum assured in respect of a policy taken 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, the tax deduction under section 194DA is not required since the maturity proceeds are less than Rs. 1,00,000.

Reader's Note:

27.11 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)

27.12 DEDUCTION OF TAX FROM PAYMENTS IN RESPECT OF NATIONAL SAVINGS SCHEME

Section:- 194EE

- (A) **Person liable to deduct tax at source:-** The person responsible for paying any amount on account of National Savings Scheme, 1987, is required to deduct tax at source.
- (B) **Time of deduction:-** Tax is deductible at the time of payment.
- (C) **Threshold limit:-** No tax is deductible where the aggregate of payments during the financial year is **less than Rs.2,500.**
- (D) **Tax rate:-** 10%
- (E) Further, no tax deduction at source shall be made where the payment is made to the legal heirs of the assessee.

27.13 DEDUCTION OF TAX ON PAYMENTS ON ACCOUNT OF REPURCHASE OF UNITS BY MUTUAL FUNDS OR UTI

Section:- 194F

- (A) **Person liable to deduct tax at source:-** The person responsible for paying to any person any amount referred to in section 80CCB.
- (B) **Time of deduction:-** Tax is deductible at the time of payment.
- (C) **Tax rate:-** 20%

27.14 DEDUCTION OF TAX FROM COMMISSION ON SALE OF LOTTERY TICKETS

Section:- 194G

- (A) **Person liable to deduct tax at source:-** Any person responsible for paying any income by way of commission, remuneration or prize (by whatever name called) on stocking, distributing, purchasing or selling lottery tickets, shall deduct 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 “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:-** Tax is required to be deducted under this section only if payment is **exceeding Rs. 15,000.**
- (D) **Tax rate:-** 5%

Practical 24

A State Government pays Rs.22,000 as commission to one of its agents on sale of lottery tickets. Discuss the liability for tax deduction in this case.

Solution

- Considering the provisions of Section 194G discussed above, tax @5% amounting to Rs.1,100 has to be deducted from commission payment of Rs.22,000 to the agent of the State Government.

Reader's Note:

27.15 DEDUCTION OF TAX AT SOURCE FROM COMMISSION OR BROKERAGE**Section:- 194H**

- (A) Person liable to deduct tax at source:-** Any person, not being an individual or a Hindu Undivided Family, who is responsible for paying commission (not being insurance commission) or brokerage to a resident, is required to deduct tax at source.

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 commission or brokerage 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) Threshold limit:-** No deduction shall be made under this section in a case 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, or to, the payee, does not exceed Rs. 15,000.

- (D) Tax rate:-** 5%

- (E) Other points:** Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited are not required to deduct tax at source on any commission or brokerage payable by them to their public call office franchises.

- (F) Meaning of Commission or brokerage:**

For the purpose of this section, commission or brokerage includes any payment received or receivable by a person acting on behalf of payer for-

(a) services rendered (not being professional services) or

(b) any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities.

Practical 25

On **17.6.2017**, a commission of Rs.50,000 was retained by the consignee 'ABC Packaging Ltd.' and not remitted to the consignor 'XYZ Developers', while remitting the sale consideration. Examine the obligation of the consignor to deduct tax at source.

Solution

- Section 194H requires deduction of tax at source @5% from commission and brokerage payments to a resident.
- In the given case, 'ABC Packaging Ltd.', the consignee, has not remitted the commission of Rs. 50,000 to the consignor 'XYZ Developers' while remitting the sales consideration.
- Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission vide **CBDT Circular No.619 dated 4/12/1991**.
- Therefore, XYZ Developers has to deduct tax at source on Rs. 50,000 at the rate of 5%.

Reader's Note:**Practical 26**

B. Airways Ltd. sold tickets to the travel agents in India at a minimum fixed commercial price. The agents were permitted to sell the tickets at a higher price but not exceeding the maximum published price. Commission at the rate of 9% of minimum fixed commercial price was deducted under section 194H by the company. The Assessing Officer contended that the liability for tax deduction at source is attracted on the difference between the minimum fixed commercial price and the maximum published price by treating it as "additional special commission" in the hands of the agents.

Is the contention of Assessing Officer tenable in law?

Solution

- Section 194H requires person responsible for making payment of commission to a resident, to deduct tax at source at the time of credit or payment, whichever is earlier.
- Therefore, B. Airways Ltd. correctly deducted tax at source under section 194H from the commission @ 9% of the minimum fixed commercial price paid to the travel agents.
- However, the contention on the part of Assessing Officer was that the airline company was required to deduct tax at source on the difference between the minimum fixed commercial price and the maximum published price by treating it as "additional special commission" in the hands of the agents.
- The facts of the case are similar to the case of **CIT v. Qatar Airways (2011) 332 ITR 253**, wherein the Bombay High Court held that the difference between the maximum published price and the minimum fixed commercial price cannot be taken as "additional special commission" in the hands of the agents. This is because the maximum published price is the maximum price and the airline company has granted permission to the agents to sell the tickets at a price lower than the maximum published price. Further, the airline company would have no information about the exact rate at which the tickets were ultimately sold by its agents to customers. In order to deduct tax at source as suggested by the assessing officer, the exact income in the hands of the agents requires to be ascertainable by the airline company. However, the same cannot be ascertained, since the agents are given discretion to sell the tickets at any rate between the minimum fixed commercial price and the maximum published price. Further, it would be impracticable and unreasonable to expect the airline company to get a feedback from its numerous agents in respect of the price at which the tickets were sold by them.

- Applying the rationale of the above case, B. Airways Ltd. is not liable to deduct tax at source under section 194H on “additional special commission” as suggested by the assessing officer. Therefore, the contention of the Assessing Officer is not tenable in law.

Reader’s Note:

Practical 27

Discuss the applicability of provisions for deduction of tax at source under section 194H in respect of discount given to stamp vendors on purchase of stamp papers.

Solution

- The issue as to whether discount given to stamp vendors on purchase of stamp papers can be treated as “commission or brokerage” to attract the provisions for tax deduction at source came up before the **Supreme Court in CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378.**
- The principal issue in that case was whether stamp vendors were agents of the State Government who were being paid commission or brokerage or whether the sale of stamp papers by the Government to the licensed vendors was on “principal- to- principal” basis involving a “contract of sale”.
- On this issue, the Gujarat High Court had made following observation after considering the Gujarat Stamp Supply and Sales Rules and the Gujarat Sales Tax Act, 1969 :
 - Although the Government has imposed a number of restrictions on the licensed stamp vendors regarding the manner of carrying on the business, the stamp vendors are required to purchase the stamp papers on payment of price less discount on “principal to principal” basis and there is no “contract of agency” at any point of time.
 - The definition of “commission or brokerage” under clause (i) of the Explanation to section 194H indicates that the payment should be received, directly or indirectly, by a person acting on behalf of another person, inter alia, for services in the course of buying or selling goods. Therefore, the element of agency is required in case of all services and transactions contemplated by the definition of “commission or brokerage” under Explanation (i) to section 194H. When the licensed stamp vendors take delivery of stamp papers on payment of full price less discount and they sell such stamp papers to the retail customers, neither of the two activities (namely, buying from the Government and selling to the customers) can be termed as service in the course of buying and selling of goods.
 - The High Court, therefore, held that discount on purchase of stamp papers does not fall within the expression “commission or brokerage” to attract the provisions of tax deduction at source under section 194H.
- The Supreme Court affirmed the above decision of the High Court holding that the said transaction is a sale and the discount given to stamp vendors for purchasing stamps in bulk quantity is in the nature of cash discount and consequently, section 194H has no application in this case.

Reader’s Note:

Practical 28

Vodafone Essar Cellular Ltd. (VECL), a telecom company, supplied SIM cards and recharge coupons to its distributors under a prepaid scheme. VECL was accountable to the ultimate subscribers for rendering prompt services pursuant to connections given by the distributors. VECL claimed that tax was not deductible on the discount given on supply of SIM cards and recharge coupons to the distributors since the transaction was a sale transaction.

Examine, whether the discount given on supply of SIM cards and recharge coupons by VECL to its distributors under the prepaid scheme can be treated as commission to attract the TDS provisions under section 194H?

Solution

This issue came up before the Kerala High Court in ***Vodafone Essar Cellular Ltd. v. ACIT (TDS) (2011) 332 ITR 255***

- On this issue, the Kerala High Court observed that it was the SIM card which linked the mobile subscriber to the assessee's network. Therefore, supply of SIM card by the assessee-telecom company was only for the purpose of rendering continued services to the subscriber of the mobile phone. The position was the same so far as recharge coupons or e-top ups were concerned which were only air time charges collected from the subscribers in advance under a prepaid scheme.
- Therefore, there was no sale of any goods involved in this transaction, as claimed by VECL. The charges collected by VECL from the distributors at the time of delivery of SIM cards or recharge coupons were only for rendering services to ultimate subscribers. VECL was accountable to the subscribers for failure to render prompt services pursuant to connections given by the distributor. Therefore, the distributor only acted as a middleman on behalf of VECL for procuring and retaining customers.
- Therefore, the discount given to distributor was within the meaning of commission under section 194H on which tax was deductible.

Readers Note:**Practical 29**

Whether fees/charges taken or retained by advertising companies from media companies for canvassing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount' to attract the provisions of tax deduction at source under section 194 H of the Act?

OR

An advertising company has retained a sum of Rs. 1.5 lakhs, towards charges for procuring and canvassing advertisements, from payment of 10 Lakhs due to Moon TV, a television channel, and remitted the balance payment of Rs. 8.5 Lakhs to Moon TV. Would the provisions of tax deduction at source under section 194H be attracted on the sum retained by the advertising company?

Solution

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

- The Circular draws reference to the **Allahabad High Court ruling in the case of Jagran Prakashan Ltd.** and the **Delhi High Court ruling in the matter of Living Media Limited.** In both the cases, the Courts have held that the relationship between the media company and the advertising agency is that of a 'principal-to-principal' and, therefore, not liable for TDS under section 194H.
- Though these decisions are in respect of print media, the ratio is also applicable to electronic media/television advertising as the broad nature of the activities involved is similar.
- In view of the above, the CBDT has clarified that no liability to deduct tax is attracted on payments made by television channels to the advertising agency for booking or procuring of or canvassing for advertisements.
- Accordingly, in view of the clarification given by CBDT, no tax is deductible at source on the amount of Rs.1.5 lakhs retained by an advertising company from payment due to Moon TV, a television channel.

Readers Note:

27.16 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.**
- (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 30

Ramesh gave a building on sub-lease to Mac Ltd. with effect from **1-7-2017** on a rent of Rs. 15,000 per month. The company also took on hire machinery from Ramesh with effect from **1-11-2017** on hire charges of Rs. 10,000 per month. The rent of building and hire charges of machinery for the year **2017-18** were credited by the company to the account of Ramesh in its books of account on **31-3-2018**. 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. 1,80,000. 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.2017-18** is Rs. 1,85,000 (i.e., Rs. 1,35,000 for building and Rs. 50,000 for machinery) which is exceeding Rs. 1,80,000. 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 31

"Come Air Ltd." has paid a sum of Rs.12 lakhs during the relevant previous year to Airports Authority of India towards landing and parking charges. The company has deducted tax at source@2% under section 194C on the said payment and remitted the tax deducted within the prescribed time. The Assessing Officer contended that landing and parking charges were levied for use of the land of the

airport and hence, the payment was in the nature of rent attracting TDS@10% under section 194-I. Discuss the correctness or otherwise of the contention of the Assessing Officer.

Solution

- The issue as to whether the charges fixed by the Airport Authority of India (AAI) for landing and take-off facilities and parking facility for the aircraft are for the “use of the land” by the airline company came up before the Supreme Court in case of ***Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372***.
- The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport
- There are various international protocols which mandate all authorities manning and managing these airports to construct the airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.
- The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from the reality.
- The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the larger picture in mind, it becomes very clear that the charges are not for use of the land *per se* and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in *Singapore Airlines* case and overruled the view taken by the Delhi High Court in *United Airlines/Japan Airlines* case.
- Applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Assessing Officer that landing and parking charges are levied for use of the land of airport and hence, the charges are in the nature of rent to attract the provisions of tax deduction at source u/s194-I is not correct.

Reader's Note:

Practical 32

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	1,80,000
One month Advance Rent	15,000
Non-refundable Deposit	15,000

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. 2,10,000 to be made to Mr. Nipur.

Reader's Note:**Practical 33**

Whether payment made for hotel accommodation will be in the nature of rent for the purpose of tax deduction under section 194 I of the Act?

Solution

CBDT in its **circular No. 5/2002 dated 30th July, 2002** clarified as under:

- **Liability to deduct tax at source when hotel accommodation was taken on regular basis:-** Payment for hotel accommodation taken on regular basis will be in the nature of rent subject to tax deduction under section 194–I if such payment exceeds threshold limit.
- **Liability to deduct tax at source in case of rate contract agreements:** Where corporate employers, tour operators and travel agents enter into agreements with hotels with a view to merely fix the room tariffs of hotel rooms for their executives / guests/customers, such agreements (usually entered into for lower tariff rates) are in the nature of rate-contract agreements. A rate-contract, therefore, may be said to be a contract for providing specified types of hotel rooms at pre-determined rates during an agreed period. Where an agreement is merely in the nature of a rate contract, it cannot be said to be accommodation 'taken on regular basis', as there is no obligation on the part of the hotel to provide a room or specified set of rooms. The occupancy in such cases would be occasional or casual. In such case section 194-I is not applicable.

- **Liability to deduct tax at source where payment is made by an individual and later on reimbursed by the company:** The question of tax deduction at source would not normally arise (except where he is covered u/s 44AB) since it is employee or an individual representing a company (like consultant, auditor etc.) who makes the payment and the company merely reimburses the expenditure.

Reader's Note:

Practical 34

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. 4,80,000. 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. 1,80,000 or more. If there are a number of payees, each having definite and ascertainable share in the property, the limit of Rs.1,80,000 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. 1,80,000.

Reader's Note:

27.17 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.

Practical 35

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 **20.6.2017**. 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:**27.18 | 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 36

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, 2018**. 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 2017-18 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 under section 194IB in the month of March, 2018 on Rs.1,40,000 at the rate of 5%.

Reader's Note:

Practical 37

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, 2018**. 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, 2018) 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 38

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 2017. Advise him with regard to TDS obligation under following alternatives:

- (a)** Total turnover of M/s. MASIKOTAR TRADING for the previous year 2016-17 was Rs. 2.5 Cr.
(b) Total turnover of M/s. MASIKOTAR TRADING for the previous year 2016-17 was Rs. 95 Lakhs.

Solution**Alternative (a):**

- Since turnover for the previous year 2016-17 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 2016-17 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:**27.19 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 under section 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 or 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 -** Tax is deductible at the rate of 10 per cent of Rent
- (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.

27.20 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 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 39

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 **6.10.2017**. The total sum of Rs. 55,000 was paid by cheque to HG on **18.12.2017**. 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 40**

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:

Sports Persons,
Umpires and Referees,
Coaches and Trainers,
Team Physicians and Physiotherapists,
Event Managers,
Commentators,
Anchors and
Sports Columnists.

Practical 41

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 42

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 43

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 44

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 :

- (i) Whether P Ltd has to deduct tax at source on the payment?
- (ii) 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 45

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:

27.21 TAX DEDUCTION FROM PAYMENT OF COMPENSATION IN CERTAIN CASES**Section:- 194LA**

- (A) **Person liable to deduct tax at source:-** Any person responsible for paying to a resident any compensation or enhanced compensation or consideration or enhanced consideration on account of compulsory acquisition of any immovable property (other than agricultural land) is responsible for deduction of tax at source.
- (B) **Time of deduction:-** Tax is deductible at the time of payment of aforesaid sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.
- (C) **Threshold Limit:-** No deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments during the financial year **does not exceed Rs.2,50,000.**
- (D) **Tax rate:-** 10%.
- (E) **Other points:** Agricultural land for the purpose of this section means agricultural land in India situated in any area. Therefore, tax cannot be deducted in respect of compensation payable on account of compulsory acquisition of agricultural land situated in urban area—***Mysore Urban Development Authority v. ITO [2008] 175 Taxman 307 (Kar.)***
- (F) **No tax is deductible:-** Tax is not deductible in respect of any award or agreement which has been exempted from income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. **(effective from 1st April, 2017)**

Practical 46

Rs. 2,45,000 paid to Mr. X on **01-02-2018** by Karnataka State Government on compulsory acquisition of his urban land. Discuss liability for tax deduction at source. What would be your answer if the land is agriculture land?

Solution

- As discussed above, tax is deductible at source under section 194LA at 10% if the aggregate payments in a year does not exceed Rs. 2,50,000.
- Therefore, no tax is required to be deducted at source on payment of Rs. 2,45,000 to Mr. X assuming that there are no other payments made during financial year 2017-18.
- Further no tax shall be deducted at source, if the land would have been agriculture land since the scope of immovable property specifically excludes agricultural land.

Reader's Note:

27.22 DEDUCTION OF TAX AT SOURCE FROM INTEREST PAYABLE ON INRASTRUCTURE DEBT FUND

Section:- 194LB

Person liable to deduct tax at source	An infrastructure debt fund referred to in section 10(47)
Payee	A non-resident or a foreign company
Nature of Payment	Interest
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, “payment” can be in cash or by issue of a cheque or draft of by any other mode.
Threshold limit	Nil
Rate of tax deduction	5%(+SC+EC+SHEC)

27.23 CERTAIN INCOME FROM BUSINESS TRUST, INVESTMENT FUND AND INVESTMENT IN SECURITIZATION TRUST

Section:- 194 LBA, 194LBB and 194LBC

Section No.	Particulars	
194LBA	Certain Income from Units of Business Trust	Refer Publication - “Taxation Of Business Trusts”
194LBB	Certain Income from Units of Investment Fund	
194LBC	Certain Income from Investment in Securitization Trust	

27.24 DEDUCTION OF TAX AT SOURCE FROM INTEREST PAYABLE BY AN INDIAN COMPANY

Section:- 194 LC

Person liable to deduct tax at source	An Indian company or a Business Trust
Payee	A non-resident or a foreign company
Nature of Payment	- Interest payable by an Indian Company or a Business Trust in respect of monies borrowed by it in foreign currency from a source outside India,— (a) under a loan agreement at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2020; or

	(b) by way of issue of long-term infrastructure bonds at any time on or after the 1st day of July, 2012 but before the 1st day of October, 2014; or (c) by way of issue of any long-term bond including long-term infrastructure bond at any time on or after the 1st day of October, 2014 but before the 1st day of July, 2020, as approved by the Central Government in this behalf. Interest payable in respect monies borrowed by it from a source outside India by way of issue of rupee denominated bond before the 1st day of July, 2020.
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, “payment” can be in cash or by issue of a cheque or draft of by any other mode.
Threshold limit	Nil
Rate of tax deduction	5%(+SC+EC+SHEC)
Additional Point	Interest does not exceed the amount of interest calculated at the rate approved by Central Government in this behalf after considering the terms of bond or loan and its repayment. The provisions of section 206AA shall not apply in respect of payment of interest on long-term infrastructure bonds, as referred to in this section.

27.25 DEDUCTION OF TAX AT SOURCE ON INTEREST ON BONDS/GOVERNMENT SECURITIES

Section:- 194 LD

Person liable to deduct tax at source	An Indian company or a Government
Payee	Qualified Foreign Investor (QFI) or Foreign Institutional Investor (FII)
Nature of Payment	Interest payable on or after the 1st day of June, 2013 but before the 1st day of July, 2020 in respect of investment made by the payee in— (i) a rupee denominated bond of an Indian company ; or (ii) a Government security.
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, “payment” can be in cash or by issue of a cheque or draft of by any other mode.

Threshold limit	Nil
Rate of tax deduction	5%(+SC+EC+SHEC)
Additional Points	- Rate of interest in respect of rupee denominated bond of an Indian company shall not exceed the rate as may be notified by the Central Government in this behalf. - "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD. - "Government security" shall have the meaning assigned to it in clause (b) of section 214b of the Securities Contracts (Regulation) Act, 1956. - "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992. - If tax is deductible under this section, then provisions of section 195 and Section 196D are not applicable in respect of such payment.

27.26 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 to the Assessing Officer to determine 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.

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 to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under this section on that proportion of the sum which is so chargeable.

Practical 47

Omega Ltd., an event management company, organized a concert of international artists in India. In this connection, it engaged the services of an overseas agent Mr. John from UK to bring artists to India. He contacted the artists and negotiated with them for performance in India in terms of the authority given by the company. He did not take part in event organized in India. The company made the payment of commission of Rs. one lac to the overseas agent. Discuss the liability of Omega Ltd. to deduct tax at source.

Solution

- Under section 195 of the Act, TDS shall be deducted while making payment to non-resident on sum chargeable to tax in India. If no sum is chargeable to tax in India, then there is no liability on payer to deduct tax at source.
- An overseas agent of an Indian company operates in his own country (and does not have PE in India) and no part of his income accrues or arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. The commission paid to the non-resident agent for services rendered outside India is, thus, not chargeable to tax in India.

- Therefore, in the present case, commission income earned by Mr. John (assuming that it is not received in India and Mr. John does not have PE in India) is not subject to tax in India, consequently, there is no liability for deduction of tax at source.

Reader's Note:

Practical 48

In order to overcome a situation where tax is deducted at a rate prescribed in the relevant Double Taxation Avoidance Agreement which is higher than the rate prescribed in the Income-tax Act, 1961, CBDT has clarified this issue, to avoid genuine hardship faced by the resident deductor. Explain, in brief, the contents of this CBDT circular.

Solution

- The CBDT had issued *Circular No.7/2007, dated 23.10.2007* laying down the procedure for refund of tax deducted at source under section 195 to the person deducting tax at source from the payment to a non-resident. The Circular allowed refund of tax deducted at source to the person making payment to a non-resident in certain circumstances. For example, if the income does not accrue to the non-resident or if the income is accruing, no tax is due but tax has been deducted, or tax has been deducted at a higher rate specified in the Income-tax Act, 1961, whereas it is deductible at a lower rate under the relevant DTAA.
- A similar situation arises in a case where tax is deducted at a rate prescribed in the relevant DTAA which is higher than the rate prescribed in the Income-tax Act, 1961. This situation is, however, not included in the list of circumstances covered under the above Circular of the CBDT. Since the law requires deduction of tax at a rate prescribed in the relevant Double Taxation Avoidance Agreement (DTAA) or under the Income-tax Act, 1961, whichever is lower, there is a possibility that in such cases, excess tax is deducted relying on the provisions of relevant DTAA.
- Accordingly, in order to remove the genuine hardship faced by the resident deductor, the CBDT has, vide ***Circular No. 7/2011 dated 27-09-2011***, modified *Circular No.07/2007, dated 23.10.2007* to the effect that the beneficial provisions under the said Circular allowing refund of excess tax deducted at source under section 195 to the deductor shall also apply to those cases where tax has been deducted at source at a higher rate as mentioned in the relevant DTAA while a lower rate is prescribed under the domestic law.

Reader's Note:

27.27 INCOME PAYABLE "NET OF TAX"

Section:- 195A

Where under an agreement or arrangement, the tax chargeable on any income which is subject to tax deduction, is to be borne by the payer of income, then while deducting tax, such income shall be increased to such amount as would, after deduction of tax, be equal to the net amount payable under such agreement or arrangement.

Provisions of this section shall not be applicable to tax borne by an employer in respect of non-monetary perquisites, which is eligible for exemption under section 10(10CC).

27.28 DEDUCTION OF TAX AT SOURCE IN RESPECT OF UNITS REFERRED TO IN SECTION 115AB

Section:- 196B

Person liable to deduct tax at source	Any person responsible for making payment
Payee	Offshore Fund
Nature of Payment	(a) Income from units referred to in section 115AB (b) Long-term capital gain arising from transfer of such units
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, “payment” can be in cash or by issue of a cheque or draft or by any other mode.
Threshold limit	Nil
Rate of tax deduction	10%(+SC+EC+SHEC)

27.29 DEDUCTION OF TAX FROM INCOME OR LONG – TERM CAPITAL GAIN FROM FOREIGN CURRENCY BONDS / GLOBAL DEPOSITORY RECEIPTS

Section:- 196C

Person liable to deduct tax at source	Any person responsible for making payment
Payee	Non-resident
Nature of Payment	(a) Interest on notified bonds referred to in section 115AC (b) Dividends on Global Depository Receipts referred to in section 115AC (c) Long-term capital gain arising from transfer of such bonds or Global Depository Receipts
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, “payment” can be in cash or by issue of a cheque or draft or by any other mode.
Threshold limit	Nil
Rate of tax deduction	10%(+SC+EC+SHEC)
Additional Point	No deduction shall be made in respect of dividend referred to in section 115-O.

27.30 DEDUCTION OF TAX AT SOURCE FROM INCOME OF FOREIGN INSTITUTIONAL INVESTORS FROM SECURITIES

Section:- 196D

Person liable to deduct tax at source	Any person responsible for making payment
Payee	Foreign Institutional Investors
Nature of Payment	Income in respect of securities referred to in section 115AD (not being interest referred to in section 194LD)
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, “payment” can be in cash or by issue of a cheque or draft or by any other mode.
Threshold limit	Nil
Rate of tax deduction	20%(+SC+EC+SHEC)
Additional Point	No deduction shall be made in respect of capital gains arising from transfer of such securities

27.31 BRAIN STORMING PRACTICALS

Section:- Various Sections

Practical 49

Ma Agro Fresh Ltd. regularly stores fruits with Thanda Cold Storage Pvt. Ltd. It seeks your advice with regard to tax deduction at source.

Solution

CBDT in its **circular no. 1/2008 dated 10th January, 2008** clarified as under:

- The main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature. The customer is also not given any right to use any demarcated space or place or the machinery of the cold storage and thus does not become a tenant. Therefore, the provisions of section 194-I is not applicable to the cooling charges paid by the customers of the cold storage.
- Since the arrangement between the customers and cold storage owners are basically contractual in nature, the provision of section 194C will be applicable to the amounts paid as cooling charges by the customers of the cold storage.
- Considering the above, Ma Agro Fresh Ltd. is advised to deduct tax at source u/s 194 C of the Act.

Reader's Note:

Practical 50

SUN TV, a television channel, made payment of Rs.80 lakhs to a production house for production of content (programme). All rights of the programme rests with SUN TV. Would such payment be liable for tax deduction at source under section 194C?

Would answer differ if, the payment was made by SUN TV for acquisition of telecasting rights of the content (programme) already produced by the production house.

Solution

- The CBDT has, vide **Circular No. 4/2016 dated 29.2.2016**, clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:
 - (i) a payment for production of content/ programme as per the specifications of the broadcaster/telecaster; and
 - (ii) a payment for acquisition of broadcasting/telecasting rights of the content already produced by the production house.
- In the first situation where the content is produced as per the specifications provided by the broadcaster/telecaster and the copyright of the content/programme also gets transferred to the telecaster/broadcaster, such contract is covered by the definition of the term 'work' in section 194C and, therefore, subject to TDS under that section.
- However, in a case where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there is no contract for "carrying out any work", as required in section 194C(1). Therefore, such payments are not liable for TDS u/s 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act. Considering the above clarification, SUN TV is required to deduct tax at source under section 194C of the Act in respect of payment made for production of content.
- But where SUN TV acquires only telecasting right in respect of content already developed by production house, it is not the contract for "carrying out any work", as required in section 194C(1). Therefore, such payment would not be liable for tax deduction at source under section 194C.

Readers Note:**Practical 51**

EL Ltd., a foreign company, pays outside India, salary to its employee, Mr. Raghavan, a foreign national and a non-resident, for services rendered in India. Examine the applicability of provisions relating to deduction of tax at source in the hands of E Ltd.

Solution

- Section 195 requires deduction of tax at source by any person responsible for making payment to a non-resident, any interest or any other sum chargeable under the provisions of the Income-tax Act, 1961 (other than income chargeable under the head "Salaries").
- Section 192(1) requires "any person" responsible for paying income under the head "Salaries" to deduct tax at source. Therefore, even if the payer is a foreign company, section 192 would be applicable.

- TDS provisions under section 192 are attracted, if the salary payable to a non-resident is chargeable to tax in India. Under section 9(1)(ii), income which falls under the head "Salaries" shall be deemed to accrue or arise in India, if it is earned in India.
- Therefore, salary paid to Mr. Raghavan, a non-resident, is chargeable to tax in India since he has rendered services in India.
- Assuming that estimated salary payable to Mr. Raghvan exceeds exemption limit, EL Limited, foreign company is liable to deduct tax at source under section 192.

Reader's Note:**Practical 52**

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 year ended **31-3-2018**:

- 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 under section 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.
- 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.
- Under section 195, if no sum is chargeable to tax in India, then there is no liability on payer to deduct tax at source. As per section 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 53

A television company pays Rs. 80,000 to a cameraman for shooting of a documentary film. Discuss the liability for deduction of tax.

Solution

If the cameraman is an employee of the T.V. Company, the provisions of section 192 will apply. However, if he is a professional, TDS provisions under section 194-J will apply.

Reader's Note:**Practical 54**

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 55**

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 service tax. 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 **Circular No.4/2008 dated 28.04.2008** has clarified that service tax paid by the tenant does not partake the nature of income of the landlord. The landlord only acts as a collecting agency of the Government for collection of service tax. Therefore, tax deduction at source under section 194-I would be required to be made on the amount of rent paid/payable without including the service tax.
- Further, in respect of payments other than rent, the CBDT has, vide **Circular No.1/2014 dated 13.01.2014**, clarified that wherever in terms of the agreement / contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid/payable without including the service tax component.
- Considering these circulars, Mahanadi Limited is required to deduct tax at source under section 194-I from gross amount of rent without including the service tax.

Reader's Note:**Practical 56**

Mention the section no. under which TDS to be made and the rate of TDS.

- Interest paid to FII in respect of rupee denominated bond of an Indian company
- Interest paid to FII in respect of debenture of an Indian company
- Payment to FII resulting into Long term capital gain on transfer of security
- Payment to FII resulting into Short term capital gain on transfer of security
- Interest paid to non-resident by infrastructure debt fund referred to in section 10(47) (Non-resident does not have PAN)
- 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:

27.32 PAYMENT WITHOUT TAX DEDUCTION OR WITH DEDUCTION AT LOWER RATE**Section:- 197A, 197****(A) Section 197A**

If a declaration (form no. 15G and 15 H) is submitted under section 197A by the recipient to the payer, then no tax is deductible in a few cases.

The payer shall submit the declaration to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, on or before the seventh day of the month next following the month in which the declaration is furnished to him.

Conditions for submitting declaration

	Section 192A	Interest on securities [Sec. 193]	Dividend [Sec. 194] and NSS [Section 194EE]	Interest other than interest on securities [Sec. 194A]	Insurance Commission [Sec. 194D]	Section 194DA	Section 194-I Rent [w.e.f. 01.06.2016]
Condition 1 - Who is recipient?	Other than a company or firm	Other than a company or firm	Resident individual	Other than a company or firm	Other than a company or firm	Other than a company or firm	Other than a company or firm
Condition 2 - What is tax on estimated total income of the previous year?	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Condition 3 - How much is total of income covered by sections 192A, 193, 194, 194A, 194EE, 194D, 194DA and 194I?	Not to exceed the amount of exemption limit						

Condition 3 is not applicable from June 1, 2003 if the recipient is a resident individual who is 60 years or more at any time during the financial year.

Practical 57

Mr. Jagat, aged 55 years, provides following estimation for the previous year **2017-18**

- (a) F.D. interest from State Bank of India- Rs. 1,00,000
- (b) Income under the head “PGBP” - Rs. 2,22,000
- (c) Contribution to P.P.F.- Rs.1,10,000

He wants to submit Form No. 15G to State Bank of India. Advise him.

Solution

Particulars	Rs.
Income under the head “PGBP”	2,22,000
FD interest with SBI	1,00,000
Gross Total Income (GTI)	3,22,000
Less: Deduction u/s 80C-Contribution to PPF	(1,10,000)
Total Income	2,12,000
Tax on estimated income	Nil

In this case FD interest Income (covered by Sec 194A) is Rs.1,00,000 which doesn't exceed exemption limit. Therefore, all the conditions of section 197A are satisfied. Hence, Mr. Jagat can submit form No. 15G to SBI in duplicate.

Reader's Note:**Practical 58**

Consider following changes in Practical 1 above.

"Instead of income under the head “PGBP”, interest on debentures from Reliance Industries Limited is given".

Can Jagat submit Form No. 15G to State Bank of India as well as Reliance Industries Limited?

Solution

Here, total of [FD interest (sec 194A) and interest from Reliance industries Ltd. (section 193)] is Rs.3,22,000 [1,00,000+2,22,000] which exceeds Rs. 2,50,000 [exemption limit]. Therefore, condition 3 is not satisfied. Hence, Mr. Jagat cannot submit form 15G to SBI as well as Reliance Industries Limited.

Reader's Note:**Practical 59**

Mr. Bhagat, resident, aged 66 years, provides following estimation for the previous year **2017-18**

- (a) F.D. interest from State Bank of India- Rs. 3,10,000
- (b) Pension Income - Rs. 72,000
- (c) Contribution to P.P.F. and LIC premium- Rs. 1,00,000

He wants to submit Form No. 15H to State Bank of India. Advise him.

Solution

Particulars	Rs.
Pension income	72,000
FD Interest	3,10,000
Gross Total Income (GTI)	3,82,000
Less: Deduction u/s 80C	1,00,000
Total Income	2,82,000
Tax on estimated income	Nil

Mr. Bhagat, being resident and senior citizen, therefore, **condition 3** is not applicable. Hence, Mr. Bhagat can submit Form 15H to SBI.

Reader's Note:**(B) 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 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.

27.33 NO DEDUCTION OF TAX IN CERTAIN CASES:**Section:- 196 & 197A**

- No deduction of tax shall be made by any person from any sums payable to
 - (a) the Government
 - (b) the Reserve Bank of India
 - (c) a corporation established by or under the Central Act whose income is exempt from income – tax
 - (d) a mutual fund: or
 - (e) any person for, or on behalf of, the new pension system trust
- Further, no deduction of tax shall be made by the Offshore Banking Unit from the interest paid —
 - (a) on deposit made on or after the 1st day of April, 2005, by a non-resident or a person not ordinarily resident in India; or
 - (b) on borrowing, on or after the 1st day of April, 2005, from a non-resident or a person not ordinarily resident in India.
- Further, section 197A has been modified with effect from 1st July, 2012 to provide that no deduction of tax shall be made from such specified payment to such institution, association or body or class of institutions, associations or bodies as may be notified by the Central Government in the Official Gazette, in this behalf.

Notification No. 56/2012 dated 31.12.2012

Accordingly, the Central Government has notified that no deduction of tax shall be made from the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank—

- (i) bank guarantee commission,
- (ii) cash management service charges,
- (iii) depository charges on maintenance of DEMAT accounts ,
- (iv) charges for warehousing services for commodities,
- (v) underwriting service charges,
- (vi) clearing charges (MICR charges) and
- (vii) credit card or debit card commission for transaction between the merchant establishment and acquirer bank,

The said notification shall come into force from the 1st January, 2013

Circular No. 7/ 2008, 1st August, 2008

CBDT clarified that corporations which are established by a Central or State Act for the welfare and economic upliftment of ex-servicemen and whose income qualifies for exemption from income-tax under section 10(26BBB), are exempt from tax deduction or collection at source on their receipts. That means, these corporations can receive payments without TDS and can purchase goods without TCS.

But these organizations shall continue to be liable for deducting TDS on all contractual payments made by them.

27.34 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]
- 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.

27.35 | BAR AGAINST DIRECT DEMAND ON ASSESSEE**Section:- 205**

Section 205 provides that the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

Practical 60

M, an individual, had let out his building on a monthly rent of Rs. 20,000. The tenant deducted tax under section 194-I from the rent paid to M, but did not remit such tax to the credit of the Central Government. M filed his return of income for the assessment year 2017-18 including therein the rental income from the said building and paid the balance tax on his total income after taking credit for tax deducted at source by the tenant. The Assessing Officer has called upon M to pay the tax to the extent of tax deducted at source. Is the Assessing Officer justified in doing so?

Solution

- Section 205 of the Income-tax Act, 1961 provides that where tax is deductible at source under the provisions of Chapter XVII, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income. Section 205, therefore, bars a direct demand being made on an assessee to the extent of tax deducted from the income. The Income-tax Department can recover the tax deducted at source from the tenant treating tenant as assessee in default and not from M in view of the clear mandate in section 205.
- The Karnataka High Court has, in **Smt. Anusuya Alva v. DCIT (2005) 278 ITR 206**, ruled that tax deducted at source by the tenant from the rent paid but not remitted to the credit of the Central Government can be recovered only from the tenant and not from the landlord. Therefore, in view of the clear mandate in section 205, the Assessing Officer is not justified in law in calling upon M to pay the said tax.

Reader's Note:**27.36 | TIME LIMIT FOR DEPOSIT OF TAX DEDUCTED AT SOURCE****Section:- 200(1) and (2)**

Time limit for deposit of tax deducted at source with Government is as under:

<i>Different situations</i>	<i>Time limit</i>
(i) Tax is deducted by an office of the Government and tax is paid	
(a) Without production of an income-tax challan	Tax shall be deposited on the same day on which tax is deducted.
(b) By income-tax challan	Tax shall be deposited on or before 7 days from the end of the month in which it is was deducted.

(ii) Tax is deducted by a person other than the office of the Government (a) Where amount is paid or credited in the month of March (b) Where amount is paid or credited before 1st March	Tax shall be deposited by 30th April. Tax shall be deposited within 7 days from the end of the month in which it was deducted.
(iii) Tax is deducted by a person under section 194 IA	<i>Tax shall be deducted within 30 days from the last date of month in which tax was deducted.</i>
(iv) Tax is deducted by a person other than the office of the Government) and the Assessing Officer (with prior approval of Joint Commissioner) has permitted quarterly deposit of tax deducted under sections 192,194A, 194D and 194H.	• <i>For the quarter ending 30th June:-</i> Tax shall be deposited by 7th July. • <i>For the quarter ending 30th September:-</i> Tax shall be deposited 7th October. • <i>For the quarter ending 31st December:-</i> Tax shall be deposited by 7th January. • <i>For the quarter ending 31st March:-</i> Tax shall be deposited by 30th April.

27.37 FORMS AND TIME LIMIT FOR SUBMITTING QUARTERLY STATEMENT OF TAX DEDUCTION (TDS RETURNS)

Section:- 200(3)

Forms for quarterly statement of tax deduction:-

	Form No.
Tax deduction from salary under section 192	24Q
Tax deduction when deductees are non-resident (not being a company), foreign company and persons who are resident but not ordinarily resident	27Q
Tax deduction under section 194-IA	26QB
Tax deduction in any other case	26Q

Time Limit for filing the above quarterly statements of tax deduction (popularly known as TDS Returns)

Quarter ending on	Due date
30 th June	31 st July of the financial year
30 th September	31 st October of the financial year
31 st December	31 st January of the financial year
31 st March	31 st May of the financial year immediately following the financial year in which deduction is made

27.38 PRESCRIBED FORM FOR TDS CERTIFICATES AND THE TIME LIMIT FOR ISSUE OF SUCH CERTIFICATES

Section:- 203

Form and Time Limit for issue of TDS Certificates

Form No. (new format)	Periodicity	Due Date
Form No. 16 and Form No. 12BA	Annual	On or before May 31 of the financial year immediately following the financial year in which tax is deducted.
Form No. 16A	Quarterly	Within 15 days from the due date of furnishing quarterly TDS returns.
Form No. 16B	-	Within 15 days of furnishing challan in Form No. 26QB

Practical 61

'X' while making payment "net of tax" to a non-resident for providing technical services on a world bank aided project had deducted tax out of such payments as per rates prescribed but says that the payee is not entitled for the TDS certificate. Examine.

Solution

- As per section 198, any sum deducted in accordance with the provisions of Chapter XVII-B of the Income-tax Act, 1961 is deemed to be income received while computing the income of the payee.
- As per section 203, every person deducting tax at source shall furnish to the payee a certificate in the prescribed form within the prescribed time.
- Even in a case where 'X' undertakes to pay the tax on the grossed up amount, the non-resident shall be entitled for issue of certificate for tax deducted at source in respect of payment made 'net of tax' in terms of section 195A. This has been clarified vide CBDT Circular No.785 dated 24.11.1999.
- Therefore, X has a legal obligation to issue TDS certificate to the non-resident.

Reader's Note:

27.39 PROCESSING OF STATEMENT OF TAX DEDUCTED AT SOURCE

Section:- 200A

Section 200A(1): Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:-

- the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—
 - any arithmetical error in the statement; or
 - an incorrect claim, apparent from any information in the statement;
- the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

- (c) the fee, if any, shall be computed in accordance with the provisions of section 234E;
- (d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;
- (e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and
- (f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor:]

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

- (i) of an item, which is inconsistent with another entry of the same or some other item in such statement;
- (ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

Section 200A(2): For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section.

Practical 62

Mr. Madhusudan is regular in deducting tax at source and depositing the same. In respect of the quarter ended **31st December, 2017** a sum of Rs. 75,000 was deducted at source from the contractors. The statement of tax deducted at source under section 200 was filed on **23rd March, 2018** for the quarter ended **31.12.2017**.

- (i) Is there any delay on the part of Mr. Madhusudan in filing the statement of TDS?
- (ii) If the answer to (i) above is in the affirmative, how much amount can be levied on Mr. Madhusudan for such default under section 234E?
- (iii) Is there any remedy available to him for reduction/waiver of the levy?

Solution

- (i) Yes, there has been a delay on the part of Mr. Madhusudan in filing the statement of TDS.

As per section 200(3) read with Rule 31A, the statement of tax deducted at source for the quarter ended 31st December, 2017 has to be filed on or before **31st January, 2018**. However, the same has been filed only on **23rd March, 2018**.

Hence, there has been a 51 days delay on the part of Mr. Madhusudan in filing the statement of TDS.

- (ii) As per section 234E of the Income-tax Act, 1961, where a person fails to file deliver or cause to be delivered the statement of tax deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of Rs. 200 for every day during which the failure continues. The amount of fee shall not, however, exceed the amount of tax deductible.

Therefore, late fee payable by Mr. Madhusudhan shall be Rs. 10,200 (51 days X 200).

- (iii) Under section 119 of the Act, the CBDT is empowered to issue general or special orders, whether by way of relaxation of any of the provisions of sections 139, 143, 144, 147 etc. or otherwise, in respect of any class of incomes or class of cases. The CBDT may issue such order(s) from time to time if it considers expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue. The Finance (No.2) Act, 2014 has widened the powers of CBDT and thereby included section 234E in the list of sections in respect of which the CBDT is empowered to issue order for relaxation of the provisions of the Act.

Hence, the remedy available to Mr. Madhusudhan is that he can file an application to the CBDT under section 119 and seek relief from late fee payable under section 234E.

Readers Note:

27.40 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 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—*

- (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 or on the sum credited to the account of a resident 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.

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.

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 63

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 **31.03.2017**. The Assessing Officer, while completing the

assessment for **A.Y. 2017-18** of Soft Drinks Limited in **March 2018**, 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 64

A sum of Rs.60,000 was paid to Mr. Dastur, an advocate, on **1st July, 2017** 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, 2018** from which tax of Rs. 13,000 was deducted at source. The tax so deducted was deposited on **25th June, 2018**. 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 -

- (i) 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.
 - (ii) 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 65

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:

27.41 TAX DEDUCTION AND COLLECTION ACCOUNT NUMBER

Section:- 203A

- Every person, deducting tax or collecting tax, who has not been allotted a tax deduction account number or, as the case may be, a tax collection account number, shall, within one month from the end of the month in which tax was deducted or collected, apply to the Assessing Officer for the allotment of a "tax deduction and collection account number".
- The above number shall be quoted in -
 - (a) all challans for the payment of tax deducted at source or tax collected at source.
 - (b) all TDS or TCS certificates issued under the Act
 - (c) all the TDS and TCS returns prepared and delivered under the Act
 - (d) all other documents pertaining to such transactions as may be prescribed in the interests of revenue.
- The provisions of this section shall not apply to such person, as may be notified by the Central Government in this behalf.

27.42 MANDATORY REQUIREMENT OF FURNISHING PAN-SECTION 206AA

Section:- 206AA

*Section 206AA has been inserted to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at **higher of the following rates** –*

- (a) applicable rate of TDS or
- (b) at the rate of 20%

This section further provides as under:

- No certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.
- Tax is required to be deducted at the rates (as suggested under this section) also in cases where the deductee files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.
- If the PAN provided to the deductor is invalid or it does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the highest of the two rates specified above.
- Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.
- These provisions will also **apply to non-residents or foreign company** where tax is deductible on payments or credits made to them. However, the provisions of this section shall not apply to a non-resident or to a foreign company, in respect of—
 - (i) payment of interest on long-term bonds as referred to in section 194LC; and
 - (ii) any other payment subject to such conditions as may be prescribed.

Notification No 53/2016, dated 24-06-2016

Relaxation from deduction of tax at higher rate under section 206AA

Accordingly, the CBDT has, vide this notification, inserted Rule 37BC to provide that the provisions of section 206AA shall not apply to a non-corporate non-resident, or to a foreign company not having PAN in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details and documents to the deductor:

- Name, e-mail id, contact number;
- address in the country or specified territory outside India of which the deductee is a resident;
- a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory, if the law of that country or specified territory provides for issuance of such certificate;
- Tax Identification Number of the deductee in the country or specified territory of his residence. In case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or specified territory of which he claims to be a resident.

Practical 66

Mrs. Narmada, a senior citizen, has invested her savings of Rs.1,20,000 on **29th March, 2017** in a three-year bank fixed deposit carrying interest@9% p.a, the interest being payable annually. Since her income is below taxable limit, she has not obtained a Permanent Account Number. The Bank Manager contends that Mrs. Narmada has to produce her Permanent Account Number, and if she fails to do so, tax would be deductible at the higher rate prescribed under the Income-tax Act, 1961 i.e., @ 20%, from interest credited to her account for the year ended **31st March, 2018**. Is the contention of the bank manager correct? Discuss.

Solution

- Section 206AA, with a view to strengthening the PAN mechanism, requires every person whose receipts are subject to deduction of tax at source, to mandatorily furnish his or her PAN to the deductor, failing which the deductor shall deduct tax at the rate of 20% or the rate prescribed in the Act or the rate in force, whichever is higher
- Tax is deductible@10% under section 194A in case the interest on fixed deposits credited or paid or likely to be credited or paid to an assessee by a bank during any financial year exceeds Rs.10,000. In this case, the interest on fixed deposits is Rs.10,800 (i.e., 9% of Rs.1,20,000) and hence, TDS provisions under section 194A are attracted.
- The issue under consideration is whether, in the case of Ms. Narmada, a senior citizen, who has not obtained a PAN due to the reason that her income is below the taxable limit, the provisions of section 206AA would be attracted for non-furnishing of PAN and consequently, tax would be deductible@20%
- In this context, it may be noted that section 139A requires every person whose total income exceeds the basic exemption limit to apply for allotment of a PAN. As a logical corollary, a person whose total income is less than the basic exemption limit is not required to apply for allotment of a PAN. Therefore, the requirement in section 206AA to deduct tax at a higher rate for non-furnishing of PAN is contrary to what is contemplated under section 139A.
- Therefore, in view of the specific provision contained in section 139A, section 206AA would not be attracted in respect of non-furnishing of PAN by persons whose total income is less than the taxable limit. It was so held by the Karnataka High Court in **Smt. A. Kowsalya Bai v. UOI (2012) 346 ITR 0156**. The banks, therefore, cannot insist such persons to furnish PAN.
- The contention of the bank manager in this case is, therefore, not correct.

Readers Note:

27.43 TAX COLLECTION AT SOURCE**Section:- 206C****(A) Section 206 C(1)**

(1) Every person, being a seller, shall collect, from the buyer of following goods, income tax at the rates mentioned in corresponding column.

Nature of goods	Percentage of rate of TCS
1. Alcoholic liquor for human consumption (other than Indian made foreign liquor)	1
2. Indian made foreign liquor	1
3. Tendu leaves	5
4. Timber obtained under a forest lease	2.50
5. Timber obtained by any mode other than under a forest lease	2.50
6. Any other forest produce (not being timber or tendu leaves)	2.50
7. Scrap	1
8. Minerals, being coal or lignite or iron ore	1

(2) Tax has to be collected by the seller at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the buyer in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.

(3) “Seller” means-

- (a) the Central Government,
- (b) a State Government
- (c) any local authority
- (d) corporation
- (e) authority established by or under a Central, State or Provincial Act
- (f) any company
- (g) firm
- (h) Co – operative society.
- (i) Individual or a HUF whose books of account are required to be audited under section 44AB (a)/ (b) during the financial year immediately preceding the financial year in which goods are sold.

(4) “Buyer” means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in section 206C(1) or the right to receive any such goods. However, buyer does not include the following:

- (a) a public sector company, the Central Government, a State Government, and an Embassy, a High Commission, Legation, Commission, Consulate and the trade representation, of a foreign State and a club.
- (b) a buyer in the retail sale of such goods purchased by him for personal consumption.

- (5) “Scrap” means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons.

Accordingly, following would not be covered within the meaning of scrap and therefore not subject to tax collection at source.

- a. Scrap or waste not arising from manufacture or mechanical working of material. (e.g. old newspapers)
- b. Scrap or waste which is usable as such.

- (6) No collection of tax shall be made from a resident buyer who purchases goods (which are to be utilized) for the purposes of manufacturing, processing or producing any article or thing or for the purpose of generation of power and not for the purpose of trading. For this purpose, resident buyer shall give a declaration in Form No. 27 C to the seller in duplicate. The seller shall deliver one copy to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner on or before the seventh day of the month next following the month in the declaration is furnished to him.

(B) Section 206C (1C)

- (1) Every person, who grants a lease or a license or enters into a contract or otherwise, transfers any right or interest in
- (a) any parking lot or
 - (b) toll plaza or
 - (c) mine or quarry,
- to another person (hereafter referred to as “licensee or leasee”) for the use of such parking lot or toll plaza or mine or quarry, for the purpose of business, shall collect tax at source at two percent.

The provisions of this section shall not apply to mining and quarrying of mineral oil, petroleum and natural gas.

The provisions of this section shall not apply if the licensee or lessee is a public sector company.

- (2) Tax has to be collected by the seller at the time of debiting of the amount payable by the licensee or leasee to the account of the licensee or leasee or at the time of receipt of such amount from the licensee or leasee in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.

(C) Section 206C(1F)

- (1) Every person, being seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ten lakh rupees, shall collect tax from buyer at one percent of sale consideration. – **Applicable from 1st June, 2016**
- (2) Tax shall be collected at the time of receipt of amount from the buyer.
- (3) “Seller” means- Seller as defined in **Para 41.1 (3)**
- (4) Buyer means buyer of motor vehicle of the value exceeding ten lakh rupees.

However, the tax collection at source shall not be made in relation to sale of motor vehicle of the value exceeding ten lakh rupees to the following class or classes of buyers, namely:-

- (a) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State
- (b) a local authority
- (c) a public sector company which is engaged in the business of carrying passengers.

Practical 67

ABC Ltd., a manufacturer of automobiles, sells high value cars (each of value exceeding Rs. 10 lakh) to its dealers across the country. Discuss whether the manufacturers are liable to collect tax at source under section 206C.

Also, discuss the liability, if any, of dealers to collect tax at source on sale of these cars to the retail customers, if no part of the consideration is received in cash?

Solution

- Section 206C(1F) provides for collection of tax at source@1% by the seller from the buyer, at the time of receipt of consideration for sale of motor vehicle, the value of which exceeds Rs. 10 lakhs. CBDT Circular No.22/2016 dated 8.6.2016 clarifies that sub-section (1F) was inserted by the Finance Act, 2016 to cover all transactions of retail sales and accordingly, it will not apply to sale of motor vehicles by manufacturers to dealers.
- Hence, car manufacturers are not liable to collect tax at source under section 206C(1F). In respect of sale of high value cars (each of value exceeding Rs. 10 lakhs) by dealers to retail customers, tax has to be collected at source@1% under section 206C(1F), even if no part of the consideration is received in cash.

Reader's Note:

- (D) Where the Assessing Officer is satisfied that the total income of the buyer or licensee justifies the collection of the tax at any lower rate than the relevant rate specified, the Assessing Officer shall, on an application made by the buyer or licensee in Form No.13 in this behalf, give to him a certificate for collection of tax at such lower rate.

Where such certificate is given, the person responsible for collecting the tax shall, until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate. The certificate shall be issued directly to the person responsible for collecting the tax under advice to the buyer who made an application for issue of such certificate.

- (E) **Time Limit for deposit of tax:-**

Time limit for deposit of tax collected at source with Government is as under:

<i>Different situations</i>	<i>Time limit</i>
(i) Tax is collected by an office of the Government and tax is paid	
(a) Without production of an income-tax challan	Tax shall be deposited on the same day on which tax is collected.
(b) By income-tax challan	Tax shall be deposited on or before 7 days from the end of the month in which it is was collected.

(ii) Tax is collected by a person other than the office of the Government	
(a) Where amount is received or debited in the month of March	Tax shall be deposited by 30 th April.
(b) Where amount is received or debited before 1st March	Tax shall be deposited within 7 days from the end of the month in which it was collected.

(F) TCS Return

TCS return shall be submitted in form no. 27 EQ within the time limit give below:-

Date of ending of the quarter of the financial year	Due date
30 th June	15 th July of the financial year
30 th September	15 th October of the financial year
31 st December	15 th January of the financial year
31 st March	15 th May of the financial year immediately following the financial year in which deduction is made.

(G) Certificate of tax collection at source

Certificate of tax collection at source shall be issued within 15 days from the due date of furnishing quarterly TDS/TCS returns.

(H) The amount collected under this section is deemed to be a payment of tax on behalf of the person from whom the amount has been collected. A tax credit is given to him for the amount so collected in the assessment for which the income is assessable.

(I) Section 206 C(6A): If any person responsible for collecting tax in accordance with the provisions of this section does not collect the whole or any part of the tax or after collecting, fails to pay the tax as required by or under this Act, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax:

Provided that any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee—

- (i) has furnished his return of income under section 139;
- (ii) has taken into account such amount for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

Provided further that no penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that the person has without good and sufficient reasons failed to collect and pay the tax.

- (J) **Section 206C(7):** Without prejudice to the above, if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter.

Provided that in case any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is not deemed to be an assessee in default under the first proviso of sub-section (6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee.

- (K) **Section 206C(8):** Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the person responsible for collecting tax.

(L) **Processing of statements of tax collected at source [Section 206CB]**

(1) Where a statement of tax collection at source or a correction statement has been made by a person collecting any sum (herein referred to as collector) under [section 206C](#), such statement shall be processed in the following manner, namely:—

- (a) the sums collectible under this Chapter shall be computed after making the following adjustments, namely:—
 - (i) any arithmetical error in the statement;
 - (ii) an incorrect claim, apparent from any information in the statement;
- (b) the interest, if any, shall be computed on the basis of the sums collectible as computed in the statement;
- (c) the fee, if any, shall be computed in accordance with the provisions of section 234E;
- (d) the sum payable by, or the amount of refund due to, the collector, shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 206C or section 234E and any amount paid otherwise by way of tax or interest or fee;

- (e) an intimation shall be prepared or generated and sent to the collector specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and
- (f) the amount of refund due to the collector in pursuance of the determination under clause (d) shall be granted to the collector

Provided that no intimation under this sub-section shall be sent after the expiry of the period of one year from the end of the financial year in which the statement is filed

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

- (i) of an item, which is inconsistent with another entry of the same or some other item in such statement;
 - (ii) in respect of rate of collection of tax at source, where such rate is not in accordance with the provisions of this Act.
- (2) The Board may make a scheme for centralised processing of statements of tax collected at source to expeditiously determine the tax payable by, or the refund due to, the collector, as required under sub-section (1).

Practical 68

ABC Pvt. Ltd. submitted TCS return for the quarter ending on **30-06-2015**. It was in receipt of intimation under section 206CB(1) demanding Rs. 24,200. Answer the following questions:

1. Is it necessary for the income tax department to issue separate notice of demand under section 156 for the same amount of Rs. 24,200?
2. ABC Pvt. Ltd. found mistake apparent from record in the intimation issued under section 206CB(1), then what are the remedies available under the Act?
3. ABC Pvt. Ltd. failed to meet demand within the time allowed under section 156. Explain the manner in which interest under section 220(2) shall be levied.

Solution

1. As per the provisions of section 156 (**As amended by Finance Act, 2015**), intimation issued under section 206CB(1) shall be deemed to be the notice of demand. Therefore, it is not necessary on the part of income tax department to issue separate notice of demand u/s 156 of the Act.
2. If there is mistake apparent from record in the intimation issued under section 206CB (1), same shall be rectified under section 154 of the Act (**As amended by Finance Act, 2015**). Further, ABC Pvt Ltd. can prefer an appeal to CIT (A) u/s 246A against the intimation issued u/s 206CB(1).
3. In order to remove possibility of charging interest on the same amount for the same period of default both under section 206C(7) and section 220(2), section 220(2C) has been inserted to specifically provide that **where interest is charged for any period under section 206C(7) on the amount of tax specified in the intimation issued under 206CB(1), no interest shall be charged under section 220(2)** on the same amount for the same period.

Reader's Note:

27.44 | MANDATORY REQUIREMENT OF FURNISHING PAN**Section:- 206CC**

Section 206CC has been inserted (**w.e.f. 1st April, 2017**) to provide that any person whose payments are subject to tax collection at source i.e. the collectee, shall mandatorily furnish his PAN to the collector failing which the collector shall collect tax at source at **higher of the following rates** –

- (a)** At twice the applicable rate of TCS or
- (b)** at the rate of 5%

This section further provides as under:

- No certificate under section 206C (9) will be granted by the Assessing Officer unless the application contains the PAN of the applicant.
- Tax is required to be collected at the rates (as suggested under this section) also in cases where the collectee files a declaration in Form 27C [[under section 206C(1A)] but does not provide his PAN.
- If the PAN provided to the collector is invalid or it does not belong to the collectee, it shall be deemed that the collectee has not furnished his PAN to the collector. Accordingly, tax would be collectible at the highest of the two rates specified above.
- Both the collector and the collectee have to compulsorily quote the PAN of the collectee in all correspondence, bills, vouchers and other documents exchanged between them.
- The provisions of this section shall not apply to Non-resident who does not have permanent establishment in India. For this purpose, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

DIVISION G

ADVANCE TAX AND INTEREST PAYABLE

INDEX

CHAPTER NO.	TOPICS	NO. OF PRACTICALS	PAGE NO.
28	Advance Tax	01	1 to 03
29	Interest Payable	14	1 to 21

28 - ADVANCE TAX

28.1 | LIABILITY FOR PAYMENT OF ADVANCE TAX AND CONDITIONS

Section:- 207 and 208

- Tax shall be payable in advance during any financial year, in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year. Such income shall be referred to as "current income".
- The liability to pay advance tax arises where the "advance tax payable" is Rs.10,000 or more.
- The above provision shall not apply to an individual resident in India, who-
 - (a) does not have any income chargeable under the head "Profit and gains of business or profession"; and
 - (b) is of the age of 60 years or more at any time during the previous year.

28.2 | COMPUTATION OF ADVANCE TAX PAYABLE

Section:- 209 (1)

Step 1: First estimate the current income.

Step 2: Compute "advance tax payable" as per following format

Particulars	Rs.
Compute tax on current income at the rate in force in the financial year	xxxx
Less: TDS/TCS <i>[Such reduction is possible only when TDS/ TCS has actually been deducted or collected]</i>	(xxxx)
Advance Tax Payable	xxxx

Practical 1

Mr. Jitendra, resident, 52 years, provides following information.

Tax on current income: Rs. 15,500

TDS on interest by ABC & Co.: Rs. 6,900

Advise him, whether he is liable to pay advance tax for the current financial year assuming that ABC & Co. fails to deduct TDS while making payment of interest to Mr. Jitendra?

Does your answer differ if Mr. Jitendra is of 72 years and does not carry on any business or profession?

Solution

Let's compute "Advance tax payable" by Mr. Jitendra.

Particulars	Rs.
Tax on current income	15,500
Less: TDS <i>(Reduction is possible only if it has been actually deducted by ABC & Co.)</i>	Nil
Advance Tax payable	15,500

Here "Advance Tax payable" (Rs. 15,500) is Rs.10,000 or more. Therefore, Mr. Jitendra is liable to pay advance tax.

If Mr. Jitendra is of 72 years and does not carry on any business or profession

As discussed above, the provision relating to advance tax shall not apply to an individual resident in India, who-

(a) does not have any income chargeable under the head “Profit and gains of business or profession”; and

(b) is of the age of 60 years or more at any time during the previous year.

Considering the above, Mr. Jitendra is not liable to pay advance tax.

Readers Note:

28.3 | PAYMENT OF ADVANCE TAX BY THE ASSESSEE ON HIS OWN ACCORD

Section:- 210(1) And 210 (2)

- Every person who is liable to pay advance tax shall, of his own accord, pay advance tax on his current income.
- Such payment shall be made on or before each of the due dates specified in section 211 at an appropriate percentage specified in that section.
- A person who pays any instalment or instalments of advance tax under section 210(1), may increase or reduce the amount of advance tax payable in the remaining instalment or instalments to accord with his estimate of his current income and the advance tax payable thereon.

28.4 | PAYMENT OF ADVANCE TAX IN PURSUANCE OF THE ORDER PASSED BY THE ASSESSING OFFICER

Section:- 210(3) And 209(1)(b)

- In the case of a person who has been already assessed by way of regular assessment in respect of the total income of any previous year, the Assessing Officer, if he is of opinion that such person is liable to pay advance tax, may, by order in writing, require such person to pay advance tax.
- For this purpose, assessing officer will issue to such person a notice of demand under section 156 specifying the instalment or instalments in which such tax is to be paid.
- The above order requiring to pay advance tax may be passed at any time during the financial year but not later than the last day of February.
- For this purpose, the assessing officer shall estimate the current income as per the basis given under section 209(1)(b) of the Act.

Basis for estimation of current income by the A.O.

- a. total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment; or
- b. the total income returned by the assessee for any subsequent year, whichever is higher.

28.5 PAYMENT OF ADVANCE TAX IN PURSUANCE OF THE REVISED ORDER PASSED BY THE ASSESSING OFFICER

Section:- 210(4) And 209(1)(c)

- Such revised order may be passed by the assessing officer if subsequent to passing an order u/s 210(3) but before March 1 of the relevant financial year, the assessee had furnished a return of income for a later year or any assessment for a later year has been completed at a higher figure.
- For estimation of current income, while revising the order u/s 210(4), the assessing officer shall take into account income of a later year return or later year assessment, as the case may be.

28.6 DUTY OF THE TAXPAYER ON RECEIPT OF ORDER UNDER SECTION 210(3) AND/OR 210(4)

Section:- 210(5) And 210(6)

- Lower estimate by assessee**
On receipt of the order from the Assessing Officer to pay advance tax, the assessee can submit his own estimate of lower advance tax payable and pay tax accordingly.
In such a case he is required to send an intimation in a prescribed form to the Assessing Officer.
- Higher estimate by the assessee**
On the hand, if the estimate of advance tax payable by the assessee exceeds the amount mentioned in the order passed by the Assessing Officer, he assessee shall pay higher tax in accordance with his own estimate without filing any intimation.

28.7 INSTALMENTS OF ADVANCE TAX AND DUE DATES

Section:- 211

Due date of instalment	Amount payable in case of all assessee (except an eligible assessee referred to in section 44AD or 44ADA of the Act)	Amount payable in case of an eligible assessee in respect of an eligible business referred to in section 44AD or 44ADA of the Act
On or before June 15 of the previous year	Upto 15 percent of advance tax payable	NA
On or before September 15 of the previous year	Upto 45 percent of advance tax payable	NA
On or before December 15 of the previous year	Upto 75 percent of advance tax payable	NA
On or before March 15 of the previous year	Upto 100 percent of advance tax payable	Upto 100 percent of advance tax payable

Any payment of advance tax made on or before 31st day of March shall also be treated as advance tax paid during the financial year.

29 - INTEREST U/S 234A, 234B, 234C & 234D

29.1 COMMON POINTS RELEVANT FOR COMPUTATION OF INTEREST UNDER SECTION 234A, 234B AND 234C

RULE: 119A

- (i) At the time of calculation of interest, the amount on which interest is payable, shall be rounded off, always on lower side in multiple of Rs. 100.

Rounded off

E.g. Rs. 12,743/= $\longrightarrow$ Rs. 12,700/-

Rounded off

E.g. Rs. 12,799/= $\longrightarrow$ Rs. 12,700/-

- (ii) Applicable rate of interest shall be 1% per month or part of a month.
- (iii) Any fraction of month shall be deemed to be a full month.

29.2 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 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	<u>xxxx</u>

(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 90, 90A, 91/MAT credit u/s 115JAA/AMT credit u/s 115JD	(xxx)
Less: Advance Tax paid, if any.	<u>(xxx)</u>
Amount on which interest is payable	<u>Xxxx</u>

(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/s 144.

(b) Amount on which interest is payable

Particulars	Rs.
Tax on income assessed under section 144 of the Act	xxx
Less: TDS or TCS/ Relief u/s 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Less: Advance Tax paid, if any.	<u>(xxx)</u>
Amount on which interest is payable	<u>xxxx</u>

(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.	<u>(xxx)</u>
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.

Practical 1

Will the provisions of section 234A are applicable, if self-assessment tax paid before the due date of filing return while return has been submitted after due date?

Solution

CIRCULAR NO. 2/2015, DATED 10-2-2015 will be of great help in this regard. Following is the text of circular:

Interest under section 234A not chargeable on self-assessment tax paid before the due date of filing of return of income

Interest under section 234A is charged in case of default in furnishing return of income by an assessee. The interest is charged at the specified rate on the amount of tax payable on the total income, as reduced by the amount of advance tax, TDS/TCS, any relief of tax allowed under section 90 and 90A, any deduction allowed under section 91 and any tax credit allowed in accordance with section 115JAA and section 115JD. Since self-assessment tax is not mentioned as a component of tax to be reduced from the amount on which interest under section 234A is chargeable, interest is being charged on the amount of self-assessment tax paid by the assessee even before the due date of filing of return.

However, it has been held by **Hon'ble Supreme Court in the case of CIT vs Prannoy Roy (2009), 309 ITR 231** that interest under section 234A on default of furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the Income-tax return for the relevant assessment year.

Accordingly, the CBDT reviewed the present practice of charging interest and decided that no interest under section 234A shall be charged on self-assessment tax paid by the assessee on or before the due date of filing of return.

Readers Note:

Practical 2

The assessee was a partnership firm and the assessment of relevant assessment year was completed under section 143(3) of the Act. It resulted into demand of tax and interest under section 234A Rs.30,460 and under section 234B Rs. 1,02,322. The assessee contended that it has not been given opportunity of being heard before levy of captioned interest. Is contention of assessee firm is justified?

Solution

While dealing with the similar issue in case of **CIT v. R. Ramalingair [2000] 108 Taxman 1 (Ker.)**, High Court concluded as under:-

The liability to pay interest under sections 234A, 234B and 234C arises by operation of law. Such interest liability is automatic and the question of granting opportunity of being heard in the matter does not arise.

Considering the abovementioned ratio, the contention of assessee firm is not justified.

Readers Note:**Practical 3**

The assessment order passed did not contain any direction for the payment of interest under section 234B. However, the amount of interest payable under section 234B was contained in the Income-tax Computation Form or 'Form for Assessment of Tax/Refund (I.T.N.S 150)'. Whether levy of such interest is valid?

Solution

The Supreme Court in case of **CIT Vs. Bhagat Construction Co (P) Ltd. 383 ITR 9** observed that the facts of the present case are squarely covered by the three judges' bench decision of this court in the case of **Kalyankumar Ray v. CIT (1991) 191 ITR 634**, wherein it was held that the **Form I.T.N.S 150 is also a form for determination of tax payable and when it is signed or initialed by the Assessing Officer, it is certainly an order in writing by the Assessing Officer determining the tax payable within the meaning of section 143(3)**. The said form also contains the calculation of interest payable on the tax assessed. This form must, therefore, be treated as part of the assessment order.

The Supreme Court further observed that the provisions of section 234B are attracted the moment an assessee liable to pay advance tax has failed to pay such tax or the advance tax paid by him is less than 90% of the assessed tax. The assessee, thus, becomes liable to pay simple interest at 1% for every month or part of the month.

The Apex Court, accordingly, held that the levy of interest under section 234B is automatic when the conditions specified under that section are met.

Considering the above, levy of interest under section 234B through I.T.N.S. 150 is valid.

Readers Note:

29.3 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 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Less: Advance Tax	<u>(xxx)</u>
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 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, 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)

Practical 4

PINTU & Co., a partnership firm provides following information:

- Due date of filing income tax return for the assessment year **2018-19 : 30-09-2018**
- The return was filed on : **16-03-2019**
- Returned Income: Rs. 2,00,000
- Tax deducted at source: Rs. 11,800
- Advance tax paid: Rs. 44,000
- Self-assessment tax together with applicable interest was duly deposited on **16-03-2019**
- Scrutiny assessment under section 143(3) got completed on: **19-07-2020**
- Assessed income: Rs. 3,60,000.
- Interest payable under section 234C : Rs.220

You are required to find out:

(a) Self-assessment tax payable under section 140A.

(b) Amount to be mentioned in demand notice under section 156 of the Act.

Solution

(A) Computation of Self-Assessment Tax Payable by PINTU & Co.

Particulars	Rs.	Rs.
Tax on Returned Income (Rs. 2,00,000 x 30.90%)		61,800
Less: TDS		(11,800)
Less: Advance Tax		(44,000)
Add: (1) Interest u/s 234A (W.N. 1)	360	
(2) Interest u/s 234B (W.N. 2)	720	
(3) Interest u/s 234C (Given)	220	1,300
Self-Assessment Tax Payable		7,300

Working Notes:

(1) Calculation of Interest under section 234 A at the time of Self-Assessment

(a) Period of Interest: 6 months [i.e., from 01.10.2018 to 31.03.2019]

(b) Amount on which Interest is payable

Particulars	Rs.
Tax on returned income (Rs. 2,00,000 x 30.90%)	61,800
Less: TDS	(11,800)
Less: Advance Tax	(44,000)
Amount on which Interest is payable	6,000

(c) Interest under section 234A [Rs.6,000 x 6 months x 1%] = Rs.360

(2) Calculation of Interest under section 234 B at the time of Self-Assessment

(a) Applicability of section 234B

Whether 90% of Advance Tax payable has been paid by way of advance tax?

(b) Calculation of advance tax payable

Particulars	Rs.
Tax on Total income	61,800
Less: TDS	11,800
Advance Tax payable	50,000
90% of advance tax payable	45,000

But PINTU & Co has paid advance tax Rs.44,000 which is less than Rs.45,000. Therefore, PINTU & Co. is liable for interest under section 234B.

(c) **Period of Interest:** 12 months [i.e., from 01.04.2018 to 31.03.2019]

(d) **Amount on which Interest is payable**

Particulars	Rs.
Tax on returned income (Rs. 2,00,000 x 30.90%)	61,800
Less: TDS	(11,800)
Less: Advance Tax	(44,000)
Amount on which Interest is payable	6,000

(e) **Interest under section 234B** [Rs.6,000 x 12 months x 1%] = Rs. 720

(B) Computation of amount to be mentioned in Demand Notice

Particulars	Rs.	Rs.
Tax on Assessed Income (Rs. 3,60,000 x 30.90%)		1,11,240
Less: TDS		(11,800)
Less: Advance Tax		(44,000)
Add: (1) Interest u/s 234A (W.N. 1)	3,324	
(2) Interest u/s 234B (W.N. 2)	14,552	
(3) Interest u/s 234C (Given)	220	18,096
		73,536
Less: Self-Assessment Tax Paid		7,300
TAX PAYABLE : Amount to be mentioned in demand Notice	R/off	66,240

Working Notes:

(1) Calculation of Interest under section 234 A at the time of Regular Assessment

(a) **Period of Interest:** 6 months [i.e., from 01.10.2018 to 31.03.2019]

(b) **Amount on which Interest is payable**

Particulars	Rs.
Tax on Assessed Income (Rs. 3,60,000 x 30.90%)	1,11,240
Less: TDS	(11,800)
Less: Advance Tax	(44,000)
<i>Amount on which Interest is payable</i>	55,440
<i>Amount on which Interest is payable (Rounded off)</i>	55,400

(c) **Interest under section 234A** [Rs. 55,400 x 6 months x 1%] = Rs.3324

(2) Calculation of Interest under section 234 B at the time of Regular Assessment**(a) Period of Interest: 28 months** [i.e. from 01.04.2018 to 31.07.2020]**(I) Interest for 12 months** [i.e. from 01.04.2018 to 31.03.2019]– **Amount on which Interest is payable**

Particulars	Rs.
Tax on Assessed Income (Rs.3,60,000 x 30.90%)	1,11,240
Less: TDS	(11,800)
Less: Advance Tax	(44,000)
Amount on which Interest is payable	55,440
Amount on which Interest is payable (Rounded off)	55,400

– **Interest under section 234B [Rs. 55,400 x 12 months x 1%] = Rs. 6648****(II) Interest for 16 months** [i.e. from 01.04.2019 to 31.07.2020]– **Amount on which Interest is payable**

Particulars	Rs.
Tax on Assessed Income (Rs.3,60,000 x 30.90%)	1,11,240
Less: TDS	(11,800)
Less: Advance Tax	(44,000)
Less: Self-Assessment Tax <u>[only principal portion]</u>	(6,000)
Amount on which Interest is payable	49,440
Amount on which Interest is payable (Rounded off)	49,400

– **Interest under section 234B [Rs. 49,400 x 16 months x 1%] =Rs.7904****(b) Total Interest under section 234B = Rs.6648 + Rs.7904 = Rs.14552****Readers Note:****Practical 5**

Suppose in the above problem, firm deposited Rs. 6,300 as self-assessment tax. Find out amount to be mentioned in demand notice under section 156 of the Act.

Solution**Computation of amount to be mentioned in Demand Notice**

Particulars	Rs.	Rs.
Tax on Assessed Income (Rs. 3,60,000 x 30.90%)		1,11,240
Less: TDS		(11,800)
Less: Advance Tax		(44,000)
Add: (1) Interest u/s 234A (W.N. 1)	3324	

(2) Interest u/s 234B (W.N. 2)	14712	
(3) Interest u/s 234C (Given)	220	18,256
		73,696
Less: Self-Assessment Tax Paid		6,300
TAX PAYABLE: Amount to be mentioned in Demand Notice	R/off	67,400

(1) Calculation of Interest under section 234A at the time of Regular-Assessment**(a) Period of Interest:** 6 months [i.e., from 01.10.2018 to 31.03.2019]**(b) Amount on which Interest is payable**

Particulars	Rs.
Tax on returned income (Rs. 3,60,000 x 30.90%)	1,11,240
Less: TDS	(11,800)
Less: Advance Tax	(44,000)
Amount on which Interest is payable	55,440
Amount on which Interest is payable (Rounded off)	55,400

(c) Interest under section 234A [Rs. 55,400 x 6 months x 1%]=Rs.3324**(2) Calculation of Interest under section 234 B at the time of Regular Assessment****(a) Period of Interest:** 28 months [i.e., from 01.04.2018 to 31.07.2020]**(I) Interest for 12 months** [i.e. from 01.04.2018 to 31.03.2019]– **Amount on which Interest is payable**

Particulars	Rs.
Tax on Assessed Income (Rs.3,60,000 x 30.90%)	1,11,,240
Less: TDS	(11,800)
Less: Advance Tax	(44,000)
Amount on which Interest is payable	55,440
Amount on which Interest is payable (Rounded off)	55,400

– **Interest under section 234B [Rs. 55,400 x 12 months x 1%) = Rs.6648****(II) Interest for 16 months** [i.e. from 01.04.2019 to 31.07.2020]– **Amount on which Interest is payable**

Particulars	Rs.
Tax on Assessed Income (Rs.3,60,000 x 30.90%)	1,11,240
Less: TDS	(11,800)
Less: Advance Tax	(44,000)
Less: Self-Assessment Tax [REFER NOTE]	(5,000)
Amount on which Interest is payable	50,440
Amount on which Interest is payable (Rounded off)	50,400

NOTE: As per section 140A of the Act, where the amount paid by the assessee falls short of the aggregate of tax and interest, the amount so paid shall first be adjusted

towards interest and the balance, if any, shall be adjusted towards tax.

Therefore, Self-Assessment Tax (Principal Portion)

=Rs.6,300-Rs.1,300

=Rs. 5,000

– **Interest under section 234B [Rs. 50,400 x 16 months x 1%]=Rs.8064**

(b) Total Interest under section 234B = Rs.6648 + Rs.8064 = Rs.14712

Readers Note:

(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.	(xxx)
Amount on which interest is payable	<u>Xxxx</u>

Practical 6

Mr. Raghav provides following information:

- (a)** Scrutiny assessment for **A.Y. 2014-15** under section 143(3) was completed on: **26-9-2015**
- (b)** Tax on the total income assessed under section 143(3) was Rs. 75,000.
- (c)** A.O. issued notice under section 148 on **25-01-2017** requiring Mr. Raghav to file the income tax return for the assessment year **2014-15** on or before **31-3-2017**.
- (d)** Mr. Raghav furnished return of income on **18-6-2017** in response to the notice under section 148 of the Act.
- (e)** Tax on total income assessed under section 147 was Rs. 1,00,000.
- (f)** A.O. completed reassessment under section 147 on **15-12-2017**.

You are required to find out interest payable under section 234A and 234B at the time of reassessment.

Solution

(1) Calculation of Interest under section 234 A at the time of re-assessment

(a) Period of Interest: 3 months [i.e., from 01.04.2017 to 30.06.2017]

(b) Amount on which Interest is payable

Particulars	Rs.
Tax on Assessed income u/s 147	1,00,000
Less: Tax determined u/s 143(3)	(75,000)
<i>Amount on which Interest is payable</i>	25,000

(c) Interest under section 234A [Rs.25,000 x 3 months x 1%]= Rs. 750

(2) Calculation of Interest under section 234 B at the time of re-assessment

(a) Period of Interest: 45 months [i.e., from 01.04.2014 to 31.12.2017]

(b) Amount on which Interest is payable

Particulars	Rs.
Tax on Assessed income u/s 147	1,00,000
Less: Tax determined u/s 143(3)	(75,000)
<i>Amount on which Interest is payable</i>	25,000

(c) Interest under section 234B [Rs.25,000 x 45 months x 1%]= Rs. 11,250

Readers Note:**(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	(xxx)
<i>Amount on which interest is payable</i>	<u>xxxx</u>

Practical 7

X Ltd. filed its return for the **A.Y. 2015-16** declaring income of Rs. 10,00,000. On **10-10-2017**, the assessee was in receipt of notice under section 148 for the **A.Y. 2015-16**, whereby X Ltd. was required to file return on or before **15-11-2017**. X Ltd. filed an application to settlement commission on **31-10-2017** 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. 2015-16** 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:

Additional Tax = Tax on {Income returned + Income disclosed in Application} less Tax on income returned

$$\begin{aligned}
 &= \text{Tax on } \{Rs. 10,00,000 + Rs. 60,00,000\} \text{ less Tax on Rs. 10,00,000} \\
 &= \text{Tax on Rs. 70,00,000 less tax on Rs. 10,00,000} \\
 &= Rs. 21,00,000 \text{ less Rs. 3,00,000} \\
 &= Rs. 18,00,000
 \end{aligned}$$

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 01.04.2015 to 31.10.2017]

(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 8

Continuing above problem, the Settlement Commission passed the order on **17-08-2018** 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 01.04.2015 to 31.08.2018]

(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:

(6) Increase or reduction of interest payable under section 234B 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, 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.

29.4 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)
15.03.18		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)
15.06.17		15%		3 months
15.09.17		45%		3 months
15.12.17		75%		3 months
15.03.18		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 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 9

Surana & Co, a partnership firm provides following information:

(a) The returned income for the previous year **2017-18** is Rs.5,00,000.

(b) The advance tax has been deposited as under-

15-06-2017	Rs. 12,000
14-09-2017	Rs. 38,000
17-12-2017	Rs. 20,000
15-03-2018	Rs. 30,000

(c) TDS was actually deducted Rs. 41,900.

You are required to compute interest payable under section 234C.

Solution**Calculation of “Tax due on returned income”**

Particulars	Rs.
Tax on Rs.5,00,000 @ 30.90%	1,54,500
Less: TDS	(41,900)
Tax due on returned income	1,12,600

<i>Dates of Installment</i>	<i>Advance Tax Paid Till Date</i>	<i>Check Provision</i>	<i>Whether 234C is attracted?</i>	<i>% of “tax due on returned income”</i>	<i>Difference (Short fall) (5)-(2) [Refer NOTE]</i>	<i>Period (in Months)</i>	<i>Interest under Section 234C</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
15.06.17	12,000	[12%] =13,512	Yes	[15%] =16890	4,800	3 M	144
15.09.17	50,000	[36%] =40,536	No	[45%] =NA	NA	3 M	NA
15.12.17	50,000	[75%] =84,450	Yes	[75%] =84450	34,400	3 M	1,032
15.03.18	1,00,000	[100%] =1,12600	Yes	[100%] =112600	12,600	1 M	126
TOTAL INTEREST PAYABLE UNDER SECTION 234C							<u>1,302</u>

NOTE: Amount in column 6 is rounded off to lower side of 100's.

Readers Note:

Practical 10

Zandu & Co, a partnership firm submits the following information for the previous year **2017-18**.

Income under the head “PGBP”	5,00,000
LTCG on sale of land dated 1 st November, 2017	99,515

You are required to compute the minimum amount of advance tax payable by Zandu & Co. for each of the installments in such a way that it will not attract interest liability under section 234C.

Solution

Particulars	Minimum amount of advance tax (Rs.)
1st Instalment of advance tax payable {15.06.2017} [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 { 15.09.2017} [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 {15.12.2017} [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. <u>20,500</u> 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 {15.03.2018} [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. <u>20,500</u> Total Tax =Rs.1,75,00 <u>x 100%</u>	43,750 [1,75,000-18,540-37,080-75,630]

Readers Note:**29.5 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 11

Mr. X filed return of income for assessment year **2017-18** claiming a refund of Rs.45,000. The said refund was granted and paid to the assessee on **March 1, 2018** 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, 2018** 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., 01.03.2018 to 31.08.2018]

Interest under section 234D is Rs.1,350 (i.e., 45,000 x ½ % x 6).

Readers Note:

Practical 12

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., 01.03.2018 to 31.08.2018]

Interest under section 234D is Rs.720 (i.e., 24,000 x ½ % x 6).

Readers Note:

29.6 | WAIVER OR REDUCTION OF INTEREST UNDER SECTIONS 234A, 234B AND 234C**Order:-** F. No. 292/495/92-IT(A-II), dated 02-05-1994

In exercise of the powers conferred under section 119(2)(a), the Central Board of Direct Taxes have directed (vide order dated June 2, 1994) that in cases where any income accrues or arises for any previous year due to the operation of any order of a Court, statutory authority or of the Government (other than an order of assessment, appeal, reference or revision passed under the provisions of the Income-tax Act) passed after the close of the said previous year (such income and the order hereinafter referred to as the “relevant income” and the “relevant order” respectively) interest under sections 234A, 234B and 234C shall be reduced or waived by the Chief Commissioner/ Director-General subject to certain conditions.

(1) Cumulative Conditions

Condition 1	The relevant income is disclosed in a return of income furnished for the said previous year or is otherwise disclosed to the Assessing Officer
Condition 2	The tax attributable to such income has been paid.

(2) Period

Section	Period in respect of which reduction or waiver is allowed
234A	From the date immediately following the due date for furnishing the return of income for the relevant assessment year till the end of the month in which the relevant order giving rise to the relevant income is passed.
234B	From the first day of April of the relevant assessment year till the end of the month in which the relevant order giving rise to the relevant income is passed.
234C	For the period mentioned in that section.

(3) Quantum

Particulars	Rs.
Interest computed for the abovementioned period with reference to tax on the total income inclusive of the relevant income.	Xxx
Less: Interest computed for the same period with reference to tax on total income reduced by the relevant income	(xxx)
Quantum	<u>Xxxx</u>

29.7 | WAIVER OR REDUCTION OF INTEREST UNDER SECTIONS 234A, 234B AND 234C**Order :-** F. No. 400/129/2002-IT(B), dated 26-06-2006

- The Central Board of Direct Taxes through abovementioned order empowered Chief Commissioner of Income Tax and Director General of Income Tax to reduce or waive penal interest under sections 234A, 234B and 234C of the Act under certain circumstances.

- However, no reduction or waiver of such interest shall be ordered unless the assessee has filed the return of income for the relevant assessment year and paid the entire income-tax (principal component of demand) due on the income as assessed.
- Further, the Chief Commissioner of Income-tax or Director-General of Income-tax may also impose any other conditions as deemed fit for the said reduction or waiver of interest.

Circumstances which may warrant waiver or reduction of interest under section 234A / 234B / 234C

- (1) Where, in the course of search and seizure operation or otherwise, books of accounts / incriminating documents have been seized by the Department and there was delay in furnishing of return by the assessee because the same were not available to the taxpayer to prepare his return of income, then waiver or reduction can be granted for the interest under section 234A. – Also refer **Paras Bansilal Patel v. B.M. Jindel [2004] 135 Taxman 125 (Guj.)**.
- (2) Any income other than capital gains which was received or accrued after the date of first or subsequent instalment of advance tax, which was neither anticipated nor contemplated by the taxpayer and on which advance tax was paid by taxpayer after the receipt of such income, then waiver or reduction can be granted for the interest under section 234C.
- (3) Where, as a result of any retrospective amendment of law or the decisions of the Supreme Court or jurisdictional High Court, certain incomes which were not chargeable to income-tax, become taxable, then waiver or reduction can be granted for the interest under section 234B and section 234C- Also refer **CIT v. Sedco Forex International Drilling Co. Ltd. [2004] 134 Taxman 109 (Uttaranchal)**.
- (4) Where a return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without detection by the Assessing Officer, then waiver or reduction can be granted for the interest under section 234A.

Practical 13

Is Settlement Commission empowered to waive or reduce interest u/s 234A, 234B and 234C?

Solution

Supreme Court in case of **CIT vs. Anjum M. H. Ghaswala [2001] 252 ITR 1** held as under:

“Settlement Commission does not have power to waive or reduce interest statutorily payable under sections 234A, 234B and 234C except to the extent of granting relief under the circulars issued by the Board u/s. 119.”

Readers Note:

Practical 14

Debate Limited provides following information:-

Sr. No.	Particulars	Rs.
1.	Tax on returned income for the relevant previous year	32,00,000
2.	TDS was deductible by ABC Edu Pvt Ltd on interest income (but ABC Edu Pvt Ltd failed to deduct TDS)	2,00,000

3.	Cash seized during search operations (search took place during the relevant previous year). Debate Limited written a letter to AO for adjusting this cash against advance tax liability	25,00,000
4.	Advance tax paid during previous year	2,00,000

Debate Limited claims that it is not liable for interest under section 234B of the Act on the following grounds:

- (a) Advance tax payable is Rs. 30,00,000 and
- (b) It had paid 90% of advance tax payable

Examine the correctness of contention raised by Debate Limited.

Solution

Before, we go to the solution, lets comprehend the relevant provision of section 132 B First.

Section 132B: Application of seized assets for recovery of advance tax payable not allowed

All assets which are seized under section 132 or requisitioned under section 132A shall be dealt with in the following manner, namely against the amount of:

- (1) Liability existing on the day of seizure or requisition under Income-tax Act, Wealth-tax Act, Expenditure-tax Act, Gift-tax Act and Interest-tax Act.
- (2) Liability determined on completion of assessment under section 153A (including assessment of the previous year in which search is initiated) provided such person is in default or deemed to be in default for such liability.
- (3) Liability arising on an application made before Settlement Commission under section 245 C (1) of the Act.

For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable

Computation of Advance Tax Payable

Particulars	Rs.
Tax on Returned Income	32,00,000
Less: Tax Deducted at Source (it can be reduced only when it has been actually deducted)	Nil
Advance Tax Payable	32,00,000

In order to overcome, interest liability of section 234B, Debate Limited shall pay 90% of Rs. 32,00,000. But in this case, Debate Limited had made following payments towards advance tax.

Computation of Total Advance Tax Paid

Particulars	Rs.
(i) Cash seized cannot be adjusted against advance tax liability	Nil
(ii) Advance tax paid	2,00,000
Total advance tax paid	2,00,000

Total advance tax paid is Rs.2,00,000 which is less than 90% of Rs.32,00,000. Hence, contention of Debate Limited is not tenable.

Readers Note:

DIVISION H

SETTLEMENT OF CASES AND ADVANCE RULING

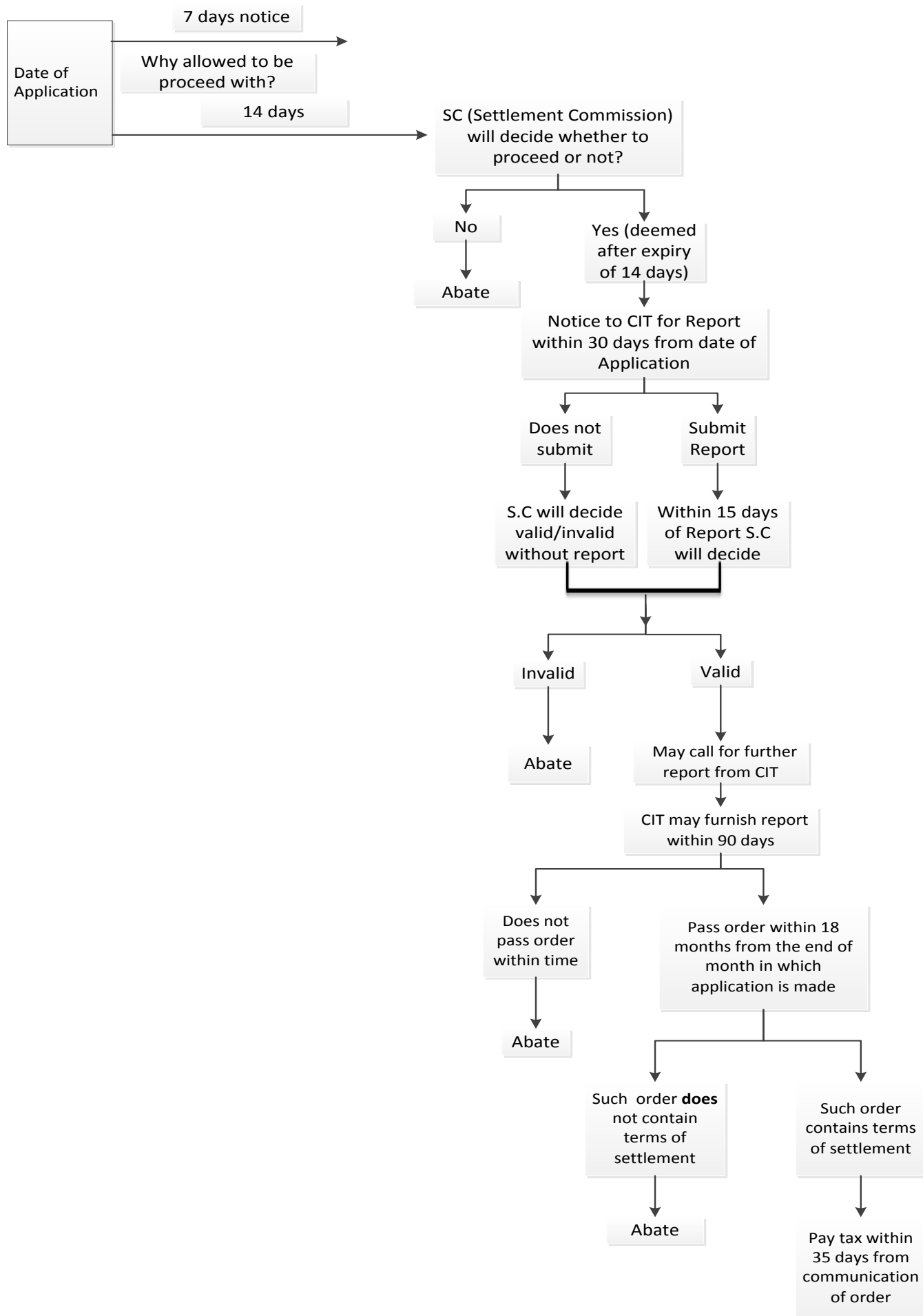
INDEX

CHAPTER NO.	TOPICS	NO. OF PRACTICALS	PAGE NO.
30	Settlement of Cases	09	1 to 18
31	Advance Ruling	07	1 to 08

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 be 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:**Practical 2**

M/s. A Ltd. has received a notice under section 148 for the Assessment Year **2014-15** on **02-02-2018**. They also anticipate similar notices for the Assessment Years **2012-13** and **2013-14** for which they have already furnished return of income. On examination of the books of account produced, you have noticed huge amounts of concealed income. As a consultant, what is your advice to A Ltd.?

Solution

As per section 245C, an assessee may, at any stage of a case relating to him, make an application in the prescribed form and manner to the Settlement Commission.

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.

Where a notice under section 148 is issued for any assessment year, a proceeding under section 147 shall be deemed to have commenced on the date of issue of such notice and the assessee can approach the Settlement Commission for other assessment years as well, even if notice under section 148 for such other assessment years have not been issued but could have been issued on that date. However, a return of income for such other assessment years should have been furnished under section 139 or in response to notice under section 142.

In the present case of M/s A Ltd., it has received a notice under section 148 for the. **A.Y.2014-15** and also anticipates similar notices for the **A.Y.2012-13** and **A.Y.2013-14**, for which return of income has been furnished. Thus, a proceeding for assessment is pending before an Assessing Officer i.e., the basic condition for approaching Settlement Commission is satisfied.

Based on these facts and assuming that the other conditions have been fulfilled, our advice as consultant to M/s A Ltd. is that management shall approach to the Settlement Commission.

Readers Note:

30.4 "ADDITIONAL AMOUNT OF INCOME TAX PAYABLE" AND THE COMPUTATION METHODOLOGY

Section:- 245C

- **"Additional amount of income tax payable shall exceed specified amount"**

As discussed earlier, application to the Settlement Commission cannot be made unless the additional income-tax payable exceeds specified amount.

Consider the following.

Case No.	Particulars	Application can be filed only if the additional amount of income-tax payable exceeds
1.	When an application is in a case where proceedings for assessment or reassessment have been initiated for any assessment years referred to in Section 153A(1)(b) or Section 153B(1)(b).	Rs. 50 lakh
2.	a. Where the applicant is related to the person (at case 1 above) who has filed an application (called “Specified Person”); and b. proceedings for assessment or reassessment have been initiated for any assessment years referred to in Section 153A(1)(b) or Section 153B(1)(b) or Section 153C in his case also.	Rs. 10 lakh
3.	Where an application is filed in any other case	Rs. 10 lakh

● **Meaning of “related” for the purpose of case no. 2 above**

— The applicant (for case no. 2), in relation to the specified person, means,—

- (i) where the specified person is an individual, any relative of the specified person;
- (ii) where the specified person is a company, firm, association of persons or Hindu undivided family, any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;
- (iii) any individual who has a substantial interest in the business or profession of the specified person, or any relative of such individual;
- (iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the specified person or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;
- (v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the specified person; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;
- (vi) any person who carries on a business or profession,—
 - (a) where the specified person being an individual, or any relative of such specified person, has a substantial interest in the business or profession of that person; or
 - (b) where the specified person being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member

of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person.

- For the above purpose, a person shall be deemed to have a substantial interest in a business or profession, if—
 - (a) in a case where the business or profession is carried on by a company, such person is, on the date of search, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend, whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and
 - (b) in any other case, such person is, on the date of search, beneficially entitled to not less than twenty per cent of the profits of such business or profession.

Practical 3

The business premise of Shivam Digi Private Limited was searched. As a result, the assessing officer has commenced assessment or re-assessment under section 153A of the Act. Further, Mrs. Shivangi, wife of the director of this company was also in receipt of notice under section 153C of the Act.

State the minimum amount of additional income-tax payable by Shivam Digi Private Limited if it would like to approach settlement commission.

Can Mrs. Shivangi approach settlement commission? If yes, subject to which conditions?

Solution

- The proceedings for assessment or reassessment in case of Shivam Digi Private Limited have been initiated under section 153A(1), therefore, the minimum additional amount of income tax payable it, shall exceed Rs. 50 Lacs. (Refer case no. 1 above)
- Mrs. Shivangi can also approach the Settlement Commission subject to following conditions:
 1. She must be related to Shivam Digi Private Limited. (In present case, she is related to Shivam Digi Private Limited, being the wife of director of the company.)
 2. Shivam Digi Private Limited must have filed an application to the Settlement Commission.
 3. The minimum additional amount of income tax payable Mrs. Shivangi, shall exceed Rs. 10 Lacs.

Readers Note

• Additional amount of income-tax payable – Computation of Methodology

Different Situations	Computation Methodology
Where the income disclosed relates to only one previous year	
1.1 If no return of income has been furnished for that year	Tax on income disclosed in the application as if such income were the total income.

1.2 If the return of income has been furnished for that year	Tax on [the aggregate of the total income returned and income disclosed in the application to settlement commission] minus tax calculated on returned income
Where the income disclosed relates to more than one previous year	First determine the additional amount of income-tax for each year according to the situation no. in 1.1 and 1.2, as applicable. <i>Thereafter, aggregate such additional amount of income-tax for all the previous years under settlement</i>

Practical 4

The returned income of Mr. X is Rs.3,70,000 for A.Y. 2018-19. His matter is pending before the assessing officer as a result of notice under section 143(2). He would like to make application to settlement commission by making full and true disclosure of additional income amounting to Rs. 33 lacs. Given these facts, is Mr. X, eligible to approach settlement commission?

Solution

Considering the definition of case u/s 245C, the proceeding pending because of 143(2) is a “case”. However, additional amount of income-tax payable shall exceed Rs.10,00,000.

Computation of additional income-tax payable

$$\begin{aligned}
 &= [\text{Tax on \{Returned income + Income disclosed in the application\}} - \text{Tax on Returned Income}] \\
 &= \text{Tax on } (3,70,000 + 33,00,000) - \text{Tax on } 3,70,000 \\
 &= \text{Rs. } 9,40,905 - \text{Rs. } 6,180 \\
 &= \text{Rs. } 9,34,725
 \end{aligned}$$

In the present case, additional tax does not exceed Rs. 10,00,000.

Therefore, Mr. X is not eligible to approach settlement commission.

Readers Note:**Practical 5**

Suppose in the above problem, instead of Mr. X, X Ltd., being an Indian company is given. Does your answer differ?

Solution**Computation of additional income-tax payable**

$$\begin{aligned}
 &= [\text{Tax on \{Returned income + Income disclosed in the application\}} - \text{Tax on Return Income}] \\
 &= \text{Tax on } (3,10,000 + 33,00,000) - \text{Tax on } 3,10,000 \\
 &= \text{Tax on } 36,10,000 - \text{Tax on } 3,10,000 \\
 &= \text{Rs. } 11,15,490 - \text{Rs. } 95,790 \\
 &= \text{Rs. } 10,19,700
 \end{aligned}$$

Since all the basic conditions for filing an application to the settlement commissioner are satisfied, X Ltd., being an Indian company is eligible to approach settlement commission.

Readers Note:

30.5 | PROCEDURE ON RECEIPT OF APPLICATION UNDER SECTION 245C**Section:- 245D**

The following procedure is followed by the Settlement Commission:

- **Notice to the applicant**

On receipt of application, the Settlement Commission shall, within 7 days from the date of receipt of application, issue a notice to the applicant requiring him to explain as to why the application made by him is to be allowed to be proceeded with.

- **Settlement Commission can allow or reject the application**

- On hearing, the Settlement Commission shall, within a period of 14 days from the date of application, by an order in writing, reject or allow the application.
- Where the Settlement Commission does not pass the order within 14 days from the date of application, it shall be deemed that the application is allowed to be proceeded with.

- **Calling for the report from the Principal Commissioner or Commissioner of Income-tax**

- Once the application is allowed to be proceeded with, the Settlement Commission shall call for a report from the Principal Commissioner or Commissioner of Income-tax within 30 days from the date on which the application was made.
- On receipt of the communication from Settlement Commission, the Principal Commissioner or Commissioner shall furnish the report within a period of thirty days of the receipt of such communication.

- **Application to be declared as invalid in certain circumstances**

- **If report called for has been furnished within thirty days**

The Settlement Commission on the basis of the report of the Principal Commissioner or Commissioner of Income-tax, within a period of 15 days of the receipt of the report, declare the application as invalid and shall send a copy of such order to the applicant and the Principal Commissioner or Commissioner.

However, before declaring the application as invalid, an opportunity of hearing must be given to the applicant.

- **If report called for has not been furnished within thirty days**

The Settlement Commission shall proceed further in the matter without the report of the Principal Commissioner or Commissioner.

- **A second report from the Principal Commissioner or Commissioner of Income-tax**

- After the application is not declared as invalid, the Settlement Commission may call for the records from the Principal Commissioner or Commissioner and after examination of such records, if it is of the opinion that a further enquiry or investigation is necessary, it may direct the Principal Commissioner or Commissioner to make such further enquiry or investigation.
- The Principal Commissioner or Commissioner shall furnish a report on the matters covered by the application and any other matter relating to the case, within a period of 90 days of the receipt of communication from the Settlement Commission.
- If the Commissioner does not furnish a report within 90 days, the Settlement Commission may proceed to pass an order without such report.

- **Order of Settlement Commission**

- After examination of the records and the reports of the Commissioner, and after giving an opportunity to the applicant and to the Principal Commissioner or Commissioner to be heard (either in person or through a representative), and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of the Act, pass such order as it thinks fit on
 - (a) the matters covered by the application, and
 - (b) any other matter relating to the case not covered by the application, but referred to in the report or reports of the Principal Commissioner or Commissioner. - **Section 245D(4)**

- The Settlement Commission shall pass an order as per the time-limit given below—

If an application is filed on or after June 1, 2010	18 months from the end of the month in which application was made

- Further, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under this chapter. – **Section 245D(5)**
- Every order passed by the Settlement Commission shall provide for
 - (a) the terms of settlement including any demand by way of tax, penalty, or interest.
 - (b) the manner in which any sum due under the settlement shall be paid,
 - (c) all other matters to make the settlement effective, and
 - (d) that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.
- Tax payable in pursuance of the order shall be paid within 35 days of the receipt of a copy of order by the applicant. The assessee shall be liable for simple interest under section 245D(6A) at the rate of 1.25 per cent per month (or part of month) on the amount remaining unpaid after the expiry of 35 days. Such interest is payable even if Settlement Commission has extended the time for payment of such tax or allowed payment by way of instalments.

Practical 6

X & Co Ltd. had made an application to the Settlement Commission. The issue in the said application related to cash credits in the books of account. The Commission passed an order making addition to the income on the basis of difference in gross profit rate adopted, which was neither an issue in the application nor in the report of the Commissioner of Income-tax. Discuss the validity of the order of the Settlement Commission.

Solution

- The issue under consideration is whether the Settlement Commission can pass an order making addition to the income on the basis of difference in gross profit rate adopted, which was neither an issue in the application nor in the report of the Commissioner of Income-tax.
- Section 245D(4) provides that the Settlement Commission, after examination of records and the report of the Commissioner and after examining such further evidence as may be placed before it or obtained by it, may, in accordance with the provisions of the Act, pass such order as it thinks fit.
- Further, section 245D(5) provides that the **materials brought on record before the Settlement Commission shall be considered** by the Members of the concerned Bench before passing any order under section 245D(4).
- The Settlement Commission, therefore, has to consider the material brought on record before it and “consideration” means independent examination of the evidence and material on record.
- In this case, since the material was available before the Settlement Commission and such material has been taken into consideration for determining the undisclosed income of the applicant, the addition made on the basis of difference in gross profit rate adopted is justified. Therefore, the order of the Settlement Commission is valid.

This view has been upheld in case of **Supreme Agro Foods P Ltd. v. ITSC (2013) 353 ITR 385 (P & H)**.

Readers Note:**Practical 7**

Seizures were made from Mr. Om Prakash pursuant to a search conducted in his premises. He filed an application for settlement by claiming to have received the amount by way of loans from several persons. The Settlement Commission accepted his statement and made an order. The CBI, however, conducted enquiry at the instance of the Revenue regarding the claimed amount of loans and opined that the alleged lenders had no means or financial capacity to advance such huge loans to Mr. Om Prakash and were mere name lenders only. The Commissioner filed an application under section 245D(6) praying for the order to be declared void and for withdrawal of benefit granted. Mr. Om Prakash, however, contended that the order of the Settlement Commission was final and any fresh analysis would amount to sitting in judgement over an earlier decision, for which the Settlement Commission was not empowered. Discuss the correctness of Mr. Om Parkash's contention

Solution

The **Apex Court** in case of **CIT, Jalpaiguri v. Om Prakash Mittal (2005) 273 ITR 0326** held that the declaration contemplated in section 245C is in the nature of voluntary disclosure of concealed income, but it must be true and fair disclosure. Voluntary disclosure and making a full and true disclosure of the income are necessary pre-conditions for invoking the Commission's jurisdiction.

Since, the order of settlement commission was obtained by fraud or misrepresentation of facts, considering the provisions of section 245 D, such order is liable to be set aside.

Hence, the contention of Mr. Om Prakash is not tenable.

Readers Note:

- **Power of Settlement Commission to rectify order**

The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any final order passed by it—

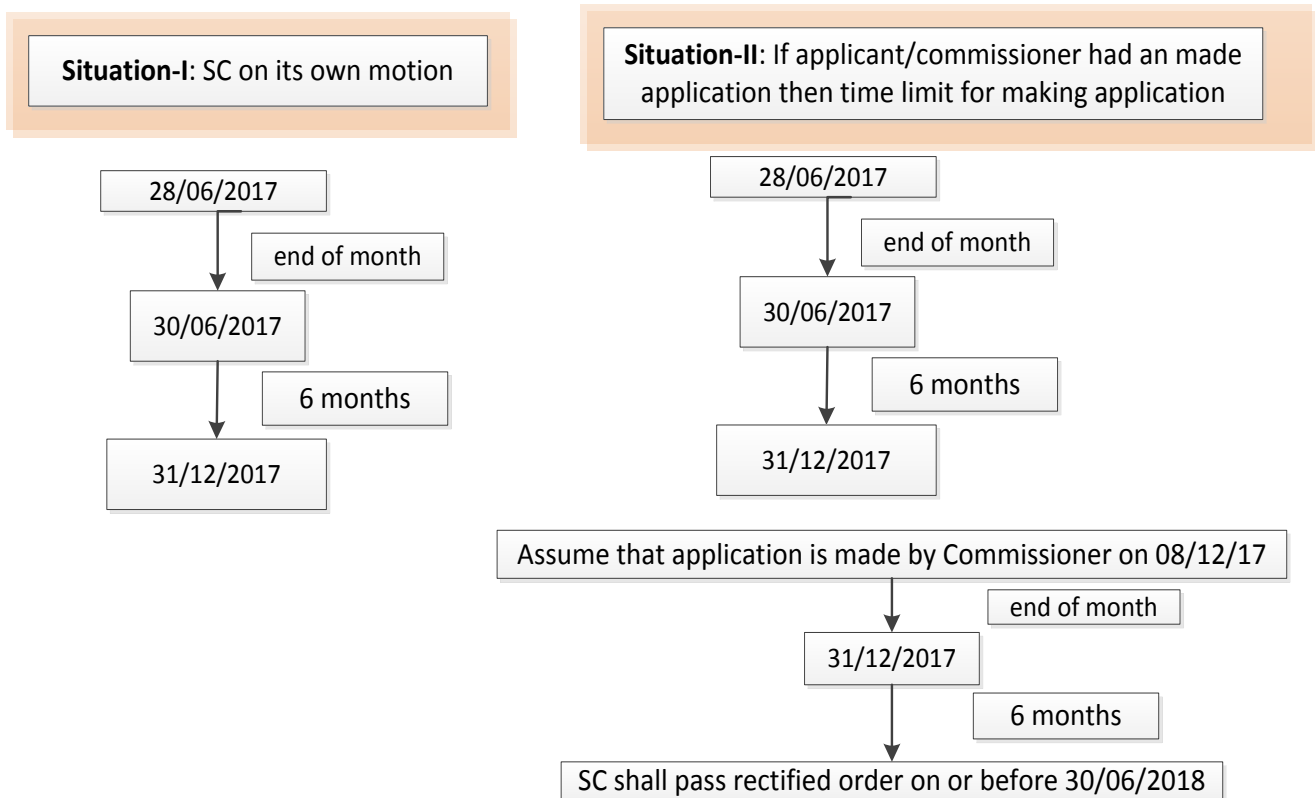
- (a) at any time within a period of six months from the end of the month in which the final order was passed; or
- (b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be:

Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which final order is passed by the Settlement Commission:

Provided further that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.

Consider following illustration for better understanding:-

If order of Settlement Commission(SC) is passed on **28/06/17**,



- **Consequences if settlement order is obtained by fraud or misrepresentation**

Where a settlement becomes void if it has been obtained by fraud or misrepresentation of facts, the proceedings with regard to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with.

Thereafter, income tax authority concerned shall complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void, notwithstanding anything contained in any other provisions of the Act.

Practical 8

For the assessment year **2013-14**, Zinga Limited made an application to the settlement commission when the assessment under section 153A for the said assessment year was pending. The application was declared as valid on **10-08-2015**. As a result, the assessing officer ceases to have jurisdiction over the case from that date. Later on, the Settlement Commission passed the order on **12-04-2016**. Subsequently, the revenue established that the said order of settlement was obtained by fraud. As a result, the settlement commission declared settlement as void by passing order dated **15-01-2017**. Discuss the consequences of settlement becoming void.

Solution

First of all, the proceedings under section 153A in case of Zinga Limited shall be deemed to be revived with effect from **10-08-2015**.

Further, the assessing officer can complete the assessment of Zinga Limited under section 153A on or before **31-03-2019** notwithstanding the time limit prescribed under section 153B of the Act.

Readers Note:

30.6 POWER OF SETTLEMENT COMMISSION TO ORDER PROVISIONAL ATTACHMENT TO PROTECT REVENUE

Section:- 245DD

- Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner provided in the Second Schedule.
- Every provisional attachment shall cease to have effect after the expiry of a period of 6 months from the date of such order.
- The Settlement Commission may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as it thinks fit.

30.7 POWER OF SETTLEMENT COMMISSION TO REOPEN COMPLETED PROCEEDINGS

Section:- 245E

The Settlement Commission does not have any power to reopen completed proceedings where an application under section 245C is made on or after June 1, 2007.

30.8 POWERS AND PROCEDURE OF SETTLEMENT COMMISSION

Section:- 245F

In addition to the specific powers given to the Settlement Commission under this chapter, all the powers which are vested in an income-tax authority under the Act are also exercisable by the Settlement Commission.

30.9 INSPECTION, ETC., OF REPORTS

Section:- 245G

- No person is entitled to inspect or obtain copies of any reports given by any income-tax authority to the Settlement Commission.

- However, the Settlement Commission has been given full discretion to allow inspection of such reports or to furnish copies thereof to the applicant on an application and on payment of the prescribed fee.
- In case, some evidence has been brought on record against the applicant in any report, for the purpose of enabling the applicant to rebut such evidence, he will be entitled to obtain a certified copy of any such report or part thereof on making an application to the Commission and on payment of the prescribed fee.

30.10 POWERS OF SETTLEMENT COMMISSION TO GRANT IMMUNITY FROM PROSECUTION, ETC.

Section:- 245H

- Under section 245H of the Act, the Settlement Commission has been vested with the power to grant immunity to the applicant from prosecution and also from imposition of penalty (either wholly or partly).
- The immunity from prosecution may relate to any offence under the Income-tax Act or Wealth-tax Act or Indian Penal Code or under any Central Act, for the time being in force.
- While granting immunity, the Settlement Commission is competent to impose such conditions as it may think fit.
- Further, such immunity is subject to:
 1. Such an immunity can be granted if the Settlement Commission is satisfied that the applicant has extended full co-operation in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived.
 2. The Settlement Commission must record reasons in writing while granting such immunity.
 3. Further no immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C.
 4. The Finance Act, 2007 has inserted a proviso to this section whereby the Settlement Commission cannot grant immunity from prosecution under the Indian Penal Code or under any Central Act other than the Income-tax Act and the Wealth tax Act.
 5. An immunity granted to a person as stated above shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed u/s 245D(4) within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted. On withdrawal of the immunity the provisions to the Act shall apply as if such immunity had never been granted.
 6. In case the Settlement Commission is satisfied that a person to whom an immunity from prosecution or penalty was granted had given false evidence or concealed material particulars, it will be competent for the Settlement Commission to withdraw the immunity. Upon withdrawal of the immunity, the applicant shall become liable to prosecution and also liable to the imposition of penalty in respect of any offence for which he would have been so liable had the immunity not been granted to him.

30.11 ABATEMENT OF PROCEEDING BEFORE SETTLEMENT COMMISSION**Section:- 245HA**

- **Proceedings for settlement shall abate from the date given below—**

<i>Circumstances in which the proceeding abates</i>	<i>Date of abatement</i>
Where the application is rejected within 14 days from the date of application under section 245D(1)	Date on which the application is rejected
An application made under section 245C declared as invalid with or without the report of the Commissioner under section 245D(2C)	The last day of the month in which the application is declared as invalid
An application made under section 245C and the order is not passed within the time prescribed in section 245D(4A)	Date on which the time period specified in section 245D(4A) expires.
An order is passed under section 245D(4) but not provided for the terms of settlement.	Date on which such order is passed.

- **Consequence of abatement of proceedings before Settlement Commission**
 - As per provisions of section 245HA (2), where the proceedings before the Settlement Commission abates, the Assessing Officer before whom the proceedings are pending at the time of making the application under section 245C shall reassume jurisdiction and shall dispose of the case in accordance with the provisions of the Act as if no application has been made to the Settlement Commission.
 - Further, the Assessing officer shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of any enquiry held or evidence recorded by the Settlement Commission as if such material, information, enquiry and evidence was produced before him or held or recorded by him in the course of the proceedings before him.- Section 245HA(3).
 - As per Section 245HA(4), in respect of time limit prescribed under section 153 or 153B for completing assessment or reassessment, the period commencing from the date of application and ending with the date of abatement shall be extended.
 - As per the explanation to section 153 or 153B, if after extending the time under section 245HA(4), the period available to the assessing officer for passing an order is less than one year, then such period shall be extended to 1 year.
 - As per the provisions of section 245HAA, where an application is made under section 245C is rejected under section 245D, the credit for the tax and interest paid on or before making application or during the pendency of the case, shall be allowed by the Assessing Officer.

Practical 9

For the **A.Y. 2018-19**, the case of Good Better Best Private Ltd. (company) was selected under scrutiny. Pending scrutiny proceedings, company filed an application to settlement commission on **01-03-19**. The settlement commission passed the order under section 245D(4) on **31-12-2019**. However, such order did not contain the terms of settlement. Discuss the consequences of such order.

Solution

- Step 1: Regular Time Limit under section 153**
 18 months from the end of Assessment Year
 31.3.2019 + 18 months
 30.09.2020
- Step 2: Revised Time Limit**
 Original Time Limit + days lost (01.03.2019 to 31.12.2019)
 30.09.2020 + 306 days
 02.08.2021
- Step 3: Minimum Time Limit**
 Day on which authority can reassume jurisdiction + 1 year
 01.01.2020 + 1 year
 31.12.2020
- Step 4: Effective Time Limit**
 Step 2 or Step 3 whichever is later
 02.08.2021

Readers Note:**30.12 ORDER OF SETTLEMENT TO BE CONCLUSIVE****Section:- 245-I**

- An order passed by the Settlement Commission under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order, shall be reopened in any proceedings under this Act or under any other law for the time being in force except as provided in this Chapter.
- The order of Settlement Commission to a limited extent can be challenged in a Court by filing writ petition. Following are the few circumstances which may warrant writ petition.
 - (i) When proper opportunity of being heard is not given to the parties by Settlement Commission i.e. principles of natural justice violated
 - (ii) Procedural lapse on the part of Settlement Commission.
 - (iii) When there is a contradiction between the reasoning given in the order passed by the Settlement Commission and the conclusion drawn.

30.13 | Recovery of sums due under order of Settlement Commission**Section:- 245J**

For the recovery of any sum due from any person in pursuance of the order passed by the Settlement Commission under section 245D(4), the provisions of Chapter XVII of the Act shall be observed.

30.14 | Bar on subsequent application for settlement in certain cases**Section:- 245K**

- In the following cases a person or related person cannot apply for settlement under section 245C in relation to any other matter:
 - a. where an order of settlement passed under section 245D(4) provides for the imposition of a penalty on the person who made the application under section 245C for settlement, on the ground of concealment of particulars of his income ; or
 - b. where after the passing of an order of settlement under section 245D(4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case ;
- Further, where a person has made an application under section 245C and if such application is allowed to be proceeded with under section 245D(1), such person or related person shall not be entitled to make another application under section 245C at any time later. In other words, only once, the benefit of settlement of the case could be availed by the taxpayers.

Related person for the purpose of this section means:

- (i) where such person is an individual, any company in which such person holds more than fifty per cent of the shares or voting rights at any time, or any firm or association of persons or body of individuals in which such person is entitled to more than fifty per cent of the profits at any time, or any Hindu undivided family in which such person is a karta;
- (ii) where such person is a company, any individual who held more than fifty per cent of the shares or voting rights in such company at any time before the date of application before the Settlement Commission by such person;
- (iii) where such person is a firm or association of persons or body of individuals, any individual who was entitled to more than fifty per cent of the profits in such firm, association of persons or body of individuals, at any time before the date of application before the Settlement Commission by such person;
- (iv) where such person is a Hindu undivided family, the karta of that Hindu undivided family.

31 - ADVANCE RULINGS

31.1 MEANING OF ADVANCE RULING AND RESTRICTIONS ON APPLICATION

Section:- 245N and 245R(2)

Who Can Apply?	Advance 'ruling' means –	Circumstances in which Authority (AAR) will not allow the application
A non-resident who has undertaken or proposes to undertake a transaction;	a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; and such determination shall include the determination of any question of law or of fact specified in the application; or	where the question raised in the application: (a) is already pending before any income-tax authority, the ITAT or any court (b) involves determination of fair market value of any property (c) relates to a transaction which is designed <i>prima facie</i> for the avoidance of income-tax
A resident who has undertaken or proposes to undertake a transaction with a non-resident	a determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with a non-resident, and such determination shall include the determination of any question of law or of fact specified in the application; or	where the question raised in the application: (a) is already pending before any income-tax authority, the ITAT or any court (b) involves determination of fair market value of any property (c) relates to a transaction which is designed <i>prima facie</i> for the avoidance of income-tax
A resident falling within notified class or category Notified Resident means a resident, who has undertaken or proposed to be undertaken one or more transactions valuing rupees one hundred crore or more in total. [Notification 73/2014]	a determination by the Authority in relation to the tax liability of a resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a such applicant, and such determination shall include the determination of any question of law or of fact specified in the application;	where the question raised in the application: (a) is already pending before any income-tax authority, the ITAT or any court (b) involves determination of fair market value of any property (c) relates to a transaction which is designed <i>prima facie</i> for the avoidance of income-tax

A resident falling within notified class or category of persons. (PSU)	a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application.	where the question raised in the application: (a) is already pending before any court (b) involves determination of fair market value of any property

Practical 1

If applicant is non-resident then with reference to which previous year, his status shall be determined for the purpose of making an application to AAR?

Solution

AAR-New Delhi, while dealing with the above issue in case of **Robert W. Smith v. CIT [1994]** made following observation:

It cannot be the “previous year” in which the application is made for an application may be made very early in a financial year and may even have to be disposed of long before the end of the financial year. In such cases, the full picture of the applicant’s stay in India during the previous year may not be always available by the date of the application or even by the date of its disposal by the authority.

The only “previous year” with reference to which the status of the applicant is determinable for purpose of section 245N, must be the “previous year” preceding the financial year in which the application is made.

Readers Note:**Practical 2**

AAR will not allow application where the question raised in the application is already pending before any income-tax authority, the ITAT or any court. In this context, how to interpret the word “already pending”?

Solution

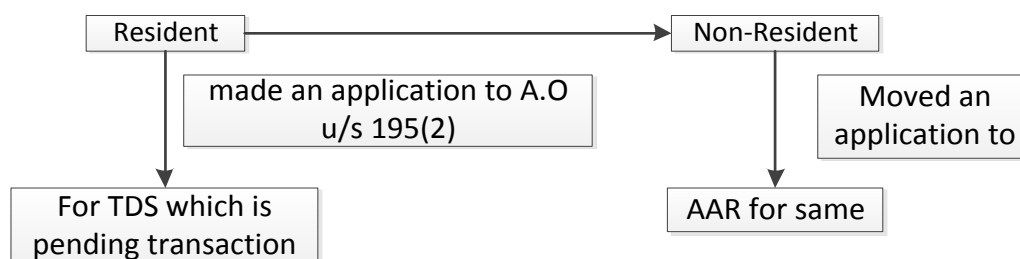
AAR-New Delhi, while dealing with the above issue in case of **Monte Harris v. CIT [1995]** made following observation:

The words “already pending”, shall be interpreted to mean pending as on the date of the application.

Readers Note:

Practical 3

A foreign company entered into contracts with several Indian companies for installation of mobile telephone system and made an application to the Authority for Advance Rulings for advance ruling on the rate of withholding tax on receipts from Indian companies. One of the Indian companies had also made an application to the Assessing Officer under section 195(2) of the Act, for determination of the rate at which tax is deductible on payment to the said foreign company. The Authority for Advance Rulings rejected the application of the foreign company on the ground that the question raised in the application is already pending before an income tax authority. Is the rejection of the application of the foreign company justified in law?

**Solution**

- In the above case, no application had been filed by the applicant (foreign company) before any income-tax authority/Appellate Tribunal/court, raising the question raised in the application filed with AAR.
- One of the Indian companies, however, had raised the question before the Assessing Officer, not on the applicant's behalf or with a view to benefit the applicant, but only to safeguard its own interest, as it had a statutory duty to deduct the proper amount of tax from payments made to a non-resident under section 195(2) of the Act. Although the question raised pertains to one of the payments made or to be made to the non-resident applicant, it was not one pending determination before any income-tax authority in the applicant's case.
- Therefore, as held by the AAR in *Ericsson Telephone Corporation India AB v. CIT (1997) 224 ITR 203*, the application filed by the Indian company before the Assessing Officer cannot be treated to have been filed by applicant (foreign company).
- Hence, it would not be proper to reject the application of the foreign company.

Readers Note:**Practical 4**

Give the instance of a transaction prima facie held to be for the avoidance of income-tax for the purpose of this chapter.

Solution

AAR-New Delhi in case of X. Ltd. [1996] not allowed the application of companies which were fully-owned subsidiaries of British Company and were residents of Mauritius and made investments in shares in an Indian bank because the purpose of investment by British company through applicant-companies instead of directly, was found to be for avoidance of tax.

Readers Note:

31.2 APPLICATION FOR ADVANCE RULING**Section:- 245Q**

- 4 copies of application in such form and manner as may be prescribed stating question on which the advance ruling is sought.
- Application shall be accompanied by a fee of Rs. 10,000 or such fee as may be prescribed, whichever is higher.
- Application may be withdrawn by the applicant within 30 days from the date of the application.

Filing fees before AAR:- Notification No. 74/ 2014

Category of applicant	Category of case	Fee (Rs)
Public Sector Undertaking (PSU)	All Cases	10,000
Other Applicants	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought does not exceed Rs. 100 crore.	2,00,000
	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds Rs. 100 crore but does not exceed Rs. 300 crore.	5,00,000
	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds Rs. 300 crore.	10,00,000

Practical 5

Janeman Limited, an Indian company would like to enter transaction valuing Rs. 85 crore with Jackson Inc, US Company. Janeman Limited would like to seek advance ruling for its tax liability arising out of this transaction. Whether Janeman Limited can approach Authority of Advance Ruling (AAR)?

What would have been your answer, if value of proposed transaction is Rs. 185 Crore? What would be the filing fees for approaching AAR?

Solution

As per amendment made by Finance Act, 2014 read with rules, Resident can seek advance ruling for its tax liability if value of one or more transactions exceeds Rs. 100 crore. But in the given case, value of proposed transaction is Rs. 85 crore only, therefore, Janeman Limited, an Indian company cannot seek advance ruling for its tax liability.

If value of proposed transaction is Rs. 185 crore, then Janeman Limited is eligible to seek advance ruling for its tax liability. For that purpose, it has to pay fees Rs. 5,00,0000 along with application in a prescribed form.

Readers Note:

Practical 6

Q, a non-resident, made an application to the Authority for Advance Rulings on **2.7.2017** in relation to a transaction proposed to be undertaken by him. On **31.8.2017**, he decides to withdraw the said application. Can he withdraw the application on **31.8.2017**?

Solution

Section 245Q(3) Act provides that an applicant may withdraw the application within 30 days from the date of the application. In the present case, more than 30 days have elapsed since the date of application by Q to the AAR, he cannot withdraw the application.

However, **AAR, in M.K.Jain AAR No.644 of 2004**, has observed that section 245Q(3) does not preclude the AAR from permitting withdrawal of the application after the period of 30 days, if the circumstances of the case so justify.

Readers Note:**31.3 | PROCEDURE ON RECEIPT OF APPLICATION****Section:- 245R**

- On receipt of an application, the Authority shall forward a copy thereof to the Principal Commissioner or Commissioner and, if necessary, call upon him to furnish the relevant records.
- The Authority may, after examining the application and the records called for, by order, either allow or reject the application.
- However, no application shall be rejected unless an opportunity has been given to the applicant of being heard. Further, where the application is rejected, reasons for such rejection shall be given in the order.
- A copy of every order rejecting application shall be sent to the applicant and to the Principal Commissioner or Commissioner.
- Where an application is allowed, the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.
- On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.
- The Authority shall pronounce its advance ruling in writing within six months of the receipt of application.
- A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Principal Commissioner or Commissioner.

31.4 APPELLATE AUTHORITY NOT TO PROCEED IN CERTAIN CASES.**Section:- 245RR**

No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect of which an application has been made by a resident applicant under section 245Q (1).

31.5 APPLICABILITY OF ADVANCE RULING.**Section:- 245S**

- The advance ruling pronounced by the Authority shall be binding only—
 - (a) on the applicant who had sought it;
 - (b) in respect of the transaction in relation to which the ruling had been sought; and
 - (c) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.
- The advance ruling shall continue to be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

Practical 7

Mr. Balram is a non-resident. The appeal pertaining to the assessment year **2015-16** is pending before the Income-tax Appellate Tribunal, the issue involved being computation of export profit and tax thereon. The same issue persists for the assessment year **2016-17** as well. Mr. Balram's brother Mr. Krishna has obtained an advance ruling under Chapter XIX – B of Income-tax Act, 1961 from the Authority for Advance Ruling on an identical issue. Mr. Balram proposes to use the said ruling for his assessment pertaining to the assessment year **2016-17**. Can he do so?

Solution

- As discussed earlier, the advance ruling pronounced by the AAR shall be binding only on the applicant who had sought it and in respect of the specific transaction in relation to which advance ruling was sought. It shall also be binding on the Principal Commissioner/Commissioner and the income-tax authorities subordinate to him, in respect of the concerned applicant and the said transaction.
- In view of the above provision, Mr. Balram cannot use the advance ruling, obtained on an identical issue by his brother, for his assessment pertaining to the assessment year **2016-17**.
- Though the ruling of the Authority for Advance Rulings is not binding on others but there is no bar on the Tribunal for assessment year **2015-16** taking a view in consonance with the reasoning of the Authority for Advance Rulings. [**CIT v. P. Sekar Trust (2010) 321 ITR 305 (Mad.)**].

Readers Note:

31.6 | ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES.**Section:- 245T**

- Where the Authority finds, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act shall apply to the applicant as if such advance ruling had never been made.
- A copy of such order shall be sent to the applicant and the Principal Commissioner or Commissioner.

31.7 | POWERS OF AUTHORITY**Section:- 245U**

- The Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908.
- The Authority shall be deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973 and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code.

31.8 | PROCEDURES OF AUTHORITY**Section:- 245U**

The Authority shall have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

31.9 | CONSTITUTION OF AUTHORITY OF ADVANCE RULING**Section:- 245-O**

Section 245-O has been amended with effect from October 1, 2014. The amended provisions are given below

1. The Central Government shall constitute an Authority for giving advance rulings, to be known as "Authority for Advance Rulings".
2. The Authority shall consist of a Chairman and such number of Vice-chairmen, Revenue Members and Law Members as the Central Government may by notifications appoint.
3. A person shall be qualified for appointment as –

Chairman	Who has been a Judge of the Supreme Court or the Chief Justice of a High Court or at least seven years a Judge of a High Court
Vice-Chairman	Who has been Judge of a High Court
Revenue Member	(i) From the Indian Revenue Service, who is, or is qualified to be, a Member of the Board, (ii) From the Indian Customs and Central Excise Service, who is, or is qualified to be, a Member of Central Board of Excise and Customs, on the date of occurrence of a vacancy.
Law Member	From the Indian Legal Service, who is, <i>or is qualified to be</i> , an Additional Secretary to the Government of India on the date of occurrence of a vacancy.

4. The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed.
5. The Central Government shall provide to the Authority with such officers and employees, as may be necessary, for the efficient discharge of the functions of the Authority under the Act.
6. The powers and functions of the Authority may be discharged by its Benches as may be constituted by the Chairman from amongst the Members thereof.
7. In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the senior-most Vice-chairman shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.
8. In case the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Vice-Chairman shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.]
9. A Bench shall consist of the Chairman or the Vice-chairman and one revenue Member and one law Member.

The Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at such places as the Central Government may, by notification specify.