

# PREFACE

It gives me immense pleasure to present this **COMPACT & COMPREHENSIVE** Book relevant for **MAY/NOV 2020** updated as per Finance Act (No.2) 2019.

This Book covers all relevant provisions for **CA Final Exams** with all legal language relevant for exams.

Further following relevant things will be uploaded on **YOUTUBE & Telegram Channel** of Swapnil Patni Sir:

1. **Revision Videos** Covering Entire Syllabus in approximately 10 hours.
2. **All Case Laws** (more than 140) covered in **ICAI Study Material** along with **Precise Notes** of 70 sides.
3. **Finance Act (No.2) 2019 Amendment Videos** along with **Notes**.
4. **RTP Amendment Videos**.
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6. **INTERNATIONAL TAXATION- Paper 6C- Page-wise Summary** so that it helps a student to find a provision easily from **Study Material**. It's a **CONTROL + F** for students.
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**GOD BLESS YOU ALL.**

**CA AARISH KHAN FROM AJ NEXT MUMBAI.**

# INDEX

<b>Sr No.</b>	<b>Name of Chapters</b>	<b>Page Nos.</b>
1.	Profits & Gains from Business & Profession	1 to 62
2.	Taxation of Cooperative Societies	62 to 63
3.	Taxation of Film Producer	63 to 64
4.	Taxation of Mutual Concern	64 to 65
5.	Taxation of Firm (LLP)	66 to 69
6.	Taxation of Political Parties	70 to 70
7.	Taxation of Electoral Trust	71 to 71
8.	Taxation of AOP/BOI	71 to 72
9.	Filing of Returns	73 to 77
10.	Assessment Procedures	77 to 84
11.	Income Escaping Assessment	84 to 88
12.	Rectification of Mistake	89 to 90
13.	Powers of Income Tax Authority	91 to 94
14.	Appeals & References	95 to 103
15.	Collection & Recovery of Tax	103 to 104
16.	Revision by CIT u/s 263 & 264	105 to 108
17.	Search & Seizure & its Assessment	109 to 117
18.	Super Summary of ALL Imp Time Limits	118 to 120
19.	Taxation of Trusts	120 to 127
20.	Profit Linked Deduction under CH-VIA	128 to 133
21.	Taxation of Companies ( MAT ) Including Summary of MAT.	134 to 145
22.	Alternate Minimum Tax ( AMT )	145 to 146
23.	Penalties & Prosecution	147 to 177
24.	Settlement Commission	178 to 187
25.	Advance Ruling	187 to 191
26.	Set off & Carry Forward of Losses	191 to 199
27.	Taxation of Investment Fund & its Investors	200
28.	Taxation of Securitisation Trust	201
29.	Dividend Stripping & Bonus Stripping	201 to 202
30.	TDS & TCS	202 to 237

31.	Capital Gains	238 to 288
32.	Taxation of Dividends	288 to 301
33.	Taxation of Non Residents ( IT )	301 to 329
34.	Double Taxation Avoidance Agreement ( IT )	330 to 332
35.	Transfer Pricing ( IT )	332 to 357
36.	Vodafone Case Law & Its Effects ( IT )	357 to 360
37.	Taxation of Gifts	361 to 368
38.	Deduction u/s 10AA	368 to 370
39.	Taxation of Mutual Funds	370 to 372
40.	Taxation of Business Trust	372 to 377
41.	Miscellaneous Recent Amendments	377 to 381
42.	Overview of Model Tax Convention ( IT )	381 to 391
43.	Application & Interpretation of Tax Treaties ( IT )	391 to 398
44.	Base Erosion & Profit Shifting ( IT )	399 to 408
45.	List of All Important Sections ( IT )	409 to 413

**CA AARISH KHAN,  
REGARDS.**

## PROFITS AND GAINS FROM BUSINESS AND PROFESSION

### (1) GENERAL CHARGEABILITY OF PGBP:

As per **Sec 28(i)** "Profits and gains from business & profession which was carried on by the assessee at any time during the P.Y".

This is the general chargeability under the head B & P. Further there are certain special charging section as well which do not fulfill the conditions of general chargeability, to widen the scope of taxability.

(2) Whether a particular income will come under the head B & P will be dependent upon the facts & circumstances of each case.

(3) The term "Business" is defined u/s 2(13) in an inclusive manner to include **trade, commerce, manufacture or any adventure** in the nature of trade, commerce, manufacture. However, this **definition does not give any substantial test** to identify whether an activity amounts to business or not. We need to rely on the judgements given by the Court to understand the term Business. Therefore, SC in the case of **Barendra Prasad Ray** has held that **"Business implies a systematic and organized activity by applying labour & skill with a dominant intent to earn profits thereon"**.

Therefore, earning of profits should be one of the dominant purpose from the activities carried on to constitute it as business.

### On the afore mentioned test the following proposition arises :-

- (1) In case of classification between CG or PGBP regular activity and profit motive will decide the relevant head.
- (2) Between PGBP & IFOS if the income is inextricably (very closely) linked with the activity of business then it will be classified under PGBP.

Sr. No.	PARTICULARS	RELEVANT HEAD	REMARKS
(1)	The assessee undertook the activity of <b>plotting, to sell the huge land</b> . Whether such activity can be construed as Business Activity?	Capital Gains	<u>Suresh Chandra Goel (SC)</u> . The activity of plotting was done to <b>ease the process of sale</b> of huge land. When the land is sold in plots, the dominant purpose is to sell the land & exit the market & there is no systematic & organized activity done by the assessee to call it as Business.
(2)	Where the assessee after buying a huge land <b>constructs a colony</b> on it and then sell it.	PGBP	In this case the assessee has undertaken a <b>systematic &amp; organized</b> activity by applying labour & skill & it also amounts to kind of

	Whether such activity would be considered as Business?		adventure done to fetch better price.
(3)	<b>Interest income</b> on deposits made in the bank ,which has furnished <b>bank guarantee</b> on the behalf of Assesseees for a tender.	PGBP	The interest income so earned is not an independent Investing Activity. Such deposits so placed are <b>inextricably linked</b> with the activity of business. Therefore, chargeable under the head B & P.
(4)	The Assessee <b>let out</b> the P & M during the course of <b>lockout</b> in the factory. Whether the rental income chargeable under IFOS or PGBP?	PGBP	<b>LAXMI SILK MILLS LTD (SC)</b> The dominant <b>purpose</b> of the <b>facilities</b> of the business is to generate <b>revenue for its owners</b> . Where the facilities cannot be used by the owner himself on account of some problems in the Co. and therefore it is temporarily let out to generate some revenue, then it would amount to <b>business expediency</b> . Therefore, such income is arising out of business consideration & therefore shall be classified under the head business & profession.
(5)	The <b>income</b> earned by <b>hotel</b> industry by letting out the rooms would be classified under which head?	PGBP	In case of hotels the income from their activity are in nature of business income, as the dominant purpose is not only let out of rooms but it is <b>hospitality services</b> .

### CHENNAI PROPERTIES & INVESTMENT LTD

It was held by SC that , if it is written in the MOA that the **main object** of the company is **to acquire & let out immovable property and income from such activity is substantial** , then income from such activity shall be taxable under PGBP instead of IFHP.

As per **2(36)** Profession includes 'Vocation'.

### Q. What do you mean by term 'PROFITS AND GAINS'?

**Ans.** The profits and gains must be **revenue** in nature i.e. all revenue receipts are chargeable to tax. Any trading receipt incidental to business will be chargeable under section 28(i). Any capital receipt, like damages for not supplying machinery on time will not be taxable, as it is capital receipt.

- Profits & gains may arise from **legal or illegal business**.
- Profits may arise in **cash or kind**.
- Profits u/s 28(i) must be **Real Profits** i.e. not notional, not anticipated i.e. it should not be arrived by applying by deeming fiction. (there are **some exceptions** eg :- Sec. 44AD/44ADA/44AE etc)

- (4) The term **carried on by the assessee** means the assessee controls the business and need not do all the activities himself. A non-resident appoints an agent in India, then this agent will carry on the business but the control of the business is with NR only.
- (5) The term **anytime during the P.Y.** means business or profession must be conducted **at least sometime** during the P.Y., if not for the entire year. Further it is not necessary business should be in existence in A.Y.
- (6) **SECTION 29 : HOW TO COMPUTE PGBP INCOME ?**

In accordance with Sec. 30 to Sec. 43D.

**Notes:**

As per Sec. 145(1) every assessee covered under the head **B & P or IFOS** can maintain BOA on **Mercantile or Cash** basis regularly followed by the assessee.

For the purpose of maintaining BOA's on **Mercantile basis**, Assessee has to follow **Accounting standards notified** by the Central Govt. CBDT has notified its own standards known as **"INCOME COMPUTATION & DISCLOSURE STANDARDS"**. (However only few ICDS have been notified so far)

As per Sec. 145(3) if an assessee is found to be **not complying with sub sec (1) or (2)** then A.O. has the power to invoke Best Judgement Assessment **u/s 144 [Refer Assessment Procedure ]**.

**SECTION 30 - 37 → DEDUCTION OF EXPENSES & ALLOWANCES**

↓		↓
<b>Sec. 30 - 36</b>		<b>Sec. 37</b>
↓	↓	
<b>Specific Ded<sup>n</sup></b>		<b>General Ded<sup>n</sup></b>
<b>Available to All</b>	<b>Sector wise deductions</b>	<b>(+)</b>
• Sec. 30	32AD ,35, 35ABB, 35ABA, 35AD,	2 Explns
• Sec. 31	33AB, 33ABA, 36(1)(viiia),	(+)
• Sec 32	36(1)(viii), 35CCA, 35D, 35DD,	Case laws
• Sec 36(1)	35E, 35DDA, 35CCC, 35CCD.	

SECTION 32 → DEPRECIATION			
↓	↓	↓	↓
<b>Sec. 32(1)(ii)</b>	<b>Sec. 32(1)(iia)</b>	<b>32(1)(i)</b>	<b>32(1)(iii)</b>
Normal dep Under Block Scheme	Additional dep under Block Scheme	Dep on SLM for power Generating units	Terminal dep for PGU

### Section 32(1)(ii) :- NORMAL DEPRECIATION UNDER BLOCK SCHEME

#### (1) WHAT DO YOU MEAN BY THE TERM 'OWNERSHIP' ?

→ The term "Ownership" is **not defined** under IT Act. However, the Supreme Court in the landmark Judgement of **Mysore Minerals Ltd** has held that the term 'owner' means **beneficial owner and not legal owner**. One who has taken the possession and started to use such assets for its own business or profession will be considered as real owner. Accordingly, **registration, title all are irrelevant** to determine ownership.

#### (2) Who will claim Depreciation in case of Lease & Hire Purchase Transactions ?

In case of **lease** transactions, depreciation would be claimed by **lessor** [CBDT Cir. No. 9/2001].

In case of **Hire purchase** transactions, depreciation would be claimed by **Hire purchaser** [CBDT Circular of 1943].

#### ICDS Ltd (SC) V/S CIT

It was held in this case that lessor would be entitled to claim depreciation. The term 'used' referred in Sec. 32(1)(ii) does **not mean** that the assessee **itself should use** the assets. In fact the term 'use' means usage in the **course of the business** which the assessee is definitely doing. Further the term **owner means beneficial owner and one who retained all the rights of ownership**. It is irrelevant that the vehicles are in the name of the lessee, as these were mandatory requirements of Motor Vehicle Act 1988.

#### (3) WHAT DO YOU MEAN BY TERM 'USE' FOR THE PURPOSE OF DEP ?

The term 'use' means both **active as well as passive use** i.e. ready for use.

It was held in the case of **Chennai Petroleum Corp. Ltd.** that so long as the business was a going one and the machinery got ready for the use but **could not be put to use due to some extraneous reasons** [mainly shortage of RM] then depreciation would be **allowable** u/s 32.

**SECTION 2(11) :- BLOCK OF ASSETS**

Tangible Assets				Intangible Assets
				25%
Plant 15%	Machinery 15%	Furniture 10%	Building 10%	↓
@ prescribed rates & Rule 5(1)3				Half dep. Is also applicable here
If Assets are used for $\geq$ 180 days		If Assets are used for $<$ 180 days		
↓		↓		
Then dep. @ full Rate		Then dep. @ half Rate		
<b>Proviso to Sec. 32(1)</b>				

**Notes :-**

- (1) Residential buildings will be depreciated @ 5% whereas temporary structures will be depreciated at 40%.
- (2) Motor cars will be depreciated @ 15%, moreover if it is used in business of running them on hire than 30%.
- (3) Computer( including software) including its peripheral will be depreciated at 40%.  
( Refer the discussion of sec 115A later on in International Taxation )
- (4) Mobile phones and EPBAX are not computers, hence higher rate of depreciation is not applicable i.e. it will be depreciable at 15%.
- (5) Windmills will be depreciated at 40% earlier it was dep. at 15%.
- (6) Professional Books will be depreciated at 40%.
- (7) Ships will be depreciated at 20%.
- (8) Aircraft will be depreciated at 40%.
- (9) Pollution Control Equipment depreciated at 40%.

**WHEN DEP RATE U/S 32(1) BECOMES HALF ?**

- It becomes half when an asset is **acquired & put to use in that P.Y.** for less than 180 days .
- Therefore, if an asset is acquired in one year, but put to use for less than 180 days in next year, then it won't become half in next year.
- This provision is applicable to dep u/s 32(1)(ii)(iii)(i) & not 32(1)(iii).



### IS GOODWILL AN INTANGIBLE ASSET ?

→ The SC in the case of **Smifs Securities Ltd** has observed that the expression intangible assets includes **other business or commercial rights**. Therefore, the term goodwill will fall under the said expression.

In the process of amalgamation, the amalgamated Co. had **acquired a capital right** in the form of goodwill because of which the **market worth** of the amalgamated Co. **increases**.

- Therefore it is held, goodwill is an intangible asset u/s 32(1) and eligible to take deduction @ 25%.

### SECTION 43(3) DEFINITION OF PLANT

Plant includes ships, vehicles, books, scientific apparatus and surgical equipments **but does not include tea bushes, livestock or building furniture and fittings**.

### WHEN DEPRECIATION CAN BE CLAIMED?

↓	↓		↓
(1) The block of asset must be <b>positive</b> on the last day. ₹ Amount column 3	<b>AND</b>	(2) The Block must <b>not cease to exist</b> on last day. ₹ Qty column 3	

**Note:** Refer Text Book for Illustration, if required.

### IS IT MANDATORY TO CLAIM DEPRECIATION ?

→ Yes, as per **Explanation 5** to Sec. 32(1) it is mandatory to claim dep.

### HOW TO ARRIVE AT WDV FOR NEXT YEAR ?

→ As per sec 43(6) WDV means **Actual Cost as reduced 'depreciation Actually allowed**. "However, there are 2 exceptions to this norm as follows :-

#### a) **Exception 1:**

As per Expln 3 to Sec. 43(6) any **UAD** carried forward u/s 32(2) shall be **deemed to be actually allowed** in the current year.

**Example:**

(b) Exception 2**CIT V/S DOOM DOOMA INDIA LTD. (SC).**

1)	Composite income from growing and Mfg Tea in India before Depreciation	3000 lacs
	<b>Less:</b> - Depn on actual cost of Rs. 1000 x 15%	(150 Lacs)
	<b>Total Income</b>	<b>2850 Lacs</b>
2)	Taxable business income = 40 /% X 2850 lacs	= 1140 lacs
3)	<b>As per S.C.</b>	
	Actual cost	1000 lacs
	(-) Actual Dep ( Only 60%)	(60) Lacs
	<b>WDV as per SC</b>	<b>940 Lacs</b>
4)	<b>After expn 7 to Sec 43 (6) in 2009</b>	
	Actual Cost	1000 lacs
	(-) Dep ( Deemed to be fully allowed )	(150) lacs
	<b>WDV after expn 7 to Sec 43(6)</b>	<b>850 lacs</b>

**Sec. 32(1)(iia) : Additional Depreciation @ 20% acquires & Install & Use****New Machinery or Plant**

<b>Manufacture</b> any article or thing	Generation (OR) Generation & Distribution of power or Transmission of <b>Power</b> .
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**Note :**

- (1) It is **not allowed** in case of P & M which is 2<sup>nd</sup> Hand or any office premises or residential accommodation, ships, aircrafts, road transport vehicle, any P & M which is already allowed as deduction.
- (2) Additional depreciation is also **subject to 50% proviso** if an asset is acquired & put to use in that P.Y. for less than 180 days. However, remaining **50%** would be allowable in the immediately **next year**.
- (3) Just like normal depreciation additional depreciation is also **reduced from the block of asset**.
- (4) Additional Depreciation is one-time benefit for that Plant & Machinery.
- (5)

Assessee set up a <b>mfg unit</b> between <b>1/4/2015 to 31/3/2020.</b>	(+)	In notified Backward areas of <b>AP/Bihar/ Telangana/ WB.</b>	(+)	Acquire & install & <b>Use a new P &amp; M</b> between 1/4/15 to 31/3/2020	=	Benefit <b>35%</b> of Actual Cost instead of 20%.
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**KEY NOTES:**

1. The above depreciation of **35%** in 4 states is **not available** to assessee engaged in business of **power generation** etc.
2. All other conditions are same (50% condition, plant & machinery which are excluded etc.

**RECENT AMENDMENTS:****CBDT Circular 15/2015 dated 19/05/2015 :**

CBDT has clarified that the **printing or printing & publishing amounts - to manufacture**, therefore such assesseees are eligible for additional depreciation u/s 32(1)(ia).

**SEC 43(1) : MEANING OF ACTUAL COST:**

The term Actual Cost means **actual cost of asset** to the assessee, as **reduced by** that portion which is met directly or indirectly by any person or authority.

**DETAILED ANALYSIS:**

1/04/1995	1/10/98	1/1/99	31/3/1999
10% Loan 100 cr	Business commenced & Assets used	10% Loan 500 cr & Const <sup>n</sup> Going on	→ Int 4 Expl <sup>n</sup> 8 to Sec 43(1)
Interest 1 [C.S.M]	Interest 2 [36 (1)(iii)]	Interest 3 Proviso to Sec 36(1)(iii)	

**INTEREST 1**

As the SC judgement of **Challapali Sugar Mills Limited**, interest on borrowed Capital **till the commencement** of business, has to be **capitalised** to the cost of the asset and then dep<sup>n</sup> can be claimed accordingly on it, by the assessee. This exp cannot be allowed as revenue exp in the year of commencement as it amounts to prior period expenses. Therefore by applying the principle of C.S.M, we can conclude that till the time the business is not ready, the exp are not incurred for earning revenues but incurred for Fixed assets. Therefore the term 'actual cost' is wide enough to include all those expenses which are inextricably linked with the asset.

**INTEREST 2**

In this case, since the business is **commenced** and assets are used and therefore interest expense will be allowed as **revenue expenditure** as per Sec. **36(1)(iii)**.

### INTEREST 3

The Co. has taken a **new loan for construction of another asset**. While reading the main prov<sup>n</sup> of Sec. 36(1)(iii) interest for such period shall be allowed as revenue expense since the business is commenced.

However, **proviso to Sec 36(1)(iii) will not allow** such interest as **revenue exp** because it states that any capital borrowed for an **asset which is not put to use** shall not be allowed as deduction.

However, till the time the asset is not put to use, such interest shall be **capitalized** to the cost of Asset.

### INTEREST 4

This interest will **never form a part of actual cost** as per expl<sup>n</sup> 8 to sec 43(1), as the asset is put to use.

This interest cannot be covered in proviso to sec 36(1)(iii) as the asset is put to use.

This interest will be **fully allowed as revenue exp** as the borrowed capital is for the purpose of business & profession and the asset is also used. Therefore it will come in the main prov<sup>n</sup> to sec 36(1)(iii)

### DISCUSSION ON PREVIOUS YEAR:

The term '**previous year**' is defined u/s 2(34) as '**PY defined u/s 3**'. Since this is the most widely used term in the entire Act, therefore the government has taken the pain of defining separately u/s 3.

### SECTION 3 DEFINES PREVIOUS YEAR AS FOLLOWS:

For the purpose of this Act a previous year means a financial year immediately preceding the AY.

### PROVISO

In the case of business or profession newly set up in a financial year, the previous year shall be a period beginning with the date of setting up of business or profession, i.e not from 1st April.

### INCOME COMPUTATION & DISCLOSURE STANDARDS

#### Link of ICDS with & 43 (1) :

#### ICDS - V → Tangible Fixed Asset

↓	↓
Admin and Gen. OHs exps are to be <b>excluded</b> from cost, if they <b>do not relate</b> to a specific Tangible Fixed Asset.	Expenses which are <b>specifically attributable</b> to construction of a project on acqn of T.A. or bringing it to its working condition, <b>shall be incl.</b> as a part of cost.

## ICDS - V → Tangible Fixed Asset

↙	↘
Expenditure incurred on <b>startup</b> and <b>commissioning</b> of the project, incl. the exp <sup>n</sup> on test runs shall be <b>capitalized</b> .	Exp. incurred <b>after</b> the plant has begun <b>commercial prod<sup>n</sup></b> i.e. prod <sup>n</sup> for sale or captive consumpt <sup>n</sup> , shall be treated as revenue exp.

## I.C.D.S - IX BORROWING COSTS

↙	↘
If the funds are borrowed specifically for "Qualifying Asset"	If the fund are borrowed generally for "Qualifying Asset"
then the actual borrowing cost incurred during the period for which funds are borrowed for that asset must be Capitalized	then Borrowing cost shall be computed in accordance with following formula $A \times \frac{B}{C}$

**Where;**

- A** = Borrowing costs incurred during the P.Y, except borrowing directly relatable to specific purpose
- B**= (i) Average of cost of 'QA' as appearing in the B/S on 1<sup>st</sup> & last day of P.Y (OR);  
(ii) in case the Q.A does not appear in B/S on 1<sup>st</sup> day or both then half of the cost of 'Q.A' (OR)  
(iii) in case the Q.A does not appear in B/S on last day, then average of cost of Q.A appearing on 1<sup>st</sup> day and date of put to use
- (C)** Average of the amount of total assets as appearing in B/S on 1<sup>st</sup> day and last day

The Capitalization of borrowing cost shall cease in case of the Qualifying Asset, when such Asset is first put to use i.e. it will available as a revenue expenditure as per Section 36(1)(iii).

**EXPLANATIONS TO SEC 43(1) : ACTUAL COST IN SPECIAL CASES**

EXPL. TO SEC. 43(1)	MODE OF ACQUISITION	ACTUAL COST
1	Asset acquired for <b>scientific research</b> subsequently brought into business use	NIL ( To be done with Sec 35 )
2	Asset acquired by way of <b>gift</b> or inheritance	Actual Cost to the previous owner <b>minus</b> depreciation actually allowed to previous owner.
3	Asset <b>acquired at higher price</b> from any other person using the asset for his business or profession with a view to claim depreciation on enhanced cost and reduce tax liability	Actual cost to be determined by the <b>Assessing Officer</b> with prior approval of <b>Joint Commissioner</b> .
4	Asset once belonged to the assessee which was used by him for business & is transferred and <b>reacquired</b> by him	The <b>WDV</b> at the time of <b>original transfer</b> or the <b>price</b> paid for <b>reacquiring</b> the asset; whichever is <b>less</b> .
5	<b>Building</b> used for private purpose subsequently brought into <b>business use</b> .	The cost of purchase or construction of the building as reduced by the notional depreciation calculated at the depreciation rate applicable to the year of conversion in to business use.
8	Asset acquired out of borrowed funds <b>£ Do along with CSM &amp; proviso to sec 36(1)(iii) 3</b>	Interest on loan borrowed relating to the period after the asset is first put to use shall never form part of actual cost.
9	Asset acquired subject to levy of GST in respect of which input credit is availed.	So much of the GST/Duty in respect in respect of which a claim of credit has been made and allowed shall not form part of the actual cost.
10	A portion of the cost of an asset acquired is met directly or indirectly by Government or any statutory authority or any other person in the form of a subsidy or grant or reimbursement.	So much of the cost as is relatable to such subsidy or grant or reimbursement shall not form part of the actual cost. If subsidy is not directly relatable to the asset acquired, but subsidy is with reference to the assets then the subsidy shall be proportionately reduced from the actual cost of the assets with reference to which subsidy has been granted.

11	Asset brought into India by a Non-resident assessee or a foreign company for use in his business or profession.	Actual cost as reduced by the amount of depreciation calculated at the rate in force as if the asset was used in India since the date of acquisition.
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## SUBSIDY AND ITS COMPUTATION UNDER INCOME TAX.

### Subsidies

Added by Finance Act 2015

Section 2(24)(xviii)

**Definition of Income includes**

**Assistance in the form of:**

<ul style="list-style-type: none"> <li>☞ a subsidy or</li> <li>☞ Grant or</li> <li>☞ Cash incentive or</li> <li>☞ Duty drawback or</li> <li>☞ waiver or</li> <li>☞ Concession or</li> <li>☞ reimbursement (by whatever name called</li> </ul>	<ul style="list-style-type: none"> <li>☞ by C.G (or) S.G (or) any authority (or) body (or) agency; in cash or kind to the assessee</li> </ul> <p style="text-align: center;"><b><u>EXCLUSION NO-1</u></b></p> <ul style="list-style-type: none"> <li>☞ <b>Other than subsidy or grant or reimbursement referred in Explanation 10 to section 43(1)</b></li> </ul>
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### EXCLUSION NO- 2:

Subsidy or grant **by Central Government** for the purpose of corpus of a **trust or institution established by Central Government or State Government** shall not form part of income.

**However the following and are taxable.**

- (i) Subsidy or grant **by CG** for the purpose of corpus of a trust or institution **established by Local Authority.**
- (ii) Subsidy or grant **by SG** for the purpose of corpus of a trust or institution **established by State Government or Local Authority.**

### EXCLUSION NO-3:

**LPG subsidy** and other welfare subsidies received by individuals are **not taxable.**

### CONCLUSION TO BE DRAWN FROM ABOVE AMENDMENT

- (i) If subsidy, is for acquiring **asset then reduce from A/C (Actual cost)** as per Explanation 10 to Section 43(1).
- (ii) **Any other subsidy** etc will become taxable under **PGBP or IFOS if it is received from C.G (or) S.G (or) any authority (or) body (or) agency.** Therefore if waiver of loan





### REFUND OF GOVERNMENT GRANTS

←	→
<b>Refund in case of (2) / (4) &amp; (5)</b>	<b>Refund in case of Depreciable Asset</b>
(a) Refundable amount have should be first applied against unamortized deferred credit remaining	(a) Refundable Amt shall be recorded by increasing the Actual cost or WDV of the Block
(b) Excess can be charged to P & L	

### Section 32(2) : Set off and carry forward of unabsorbed depreciation

↓	↓
Set off against any B & P <u>OR</u> income of any other head <b>except Salaries.</b>	C/F to next years and set off against subsequent year PGBP income (OR) any other income <b>except Salaries.</b>

**Time limit = Infinite years i.e. no time limit.**

### PRIORITY OF SET OFF :-

- (1) Current year's depreciation (**Expn 5 to Sec. 32(1) mandatory**).
- (2) Brought forward business loss (**because it is subject to 8 yrs time limit**).
- (3) Unabsorbed depreciation  $\xi$  3

### PROVISO TO SEC. 32(1) :- DEPN IN CASE OF AMALGAMATION, ETC.

In case of amalgamation, succession, demerger, compute dep<sup>n</sup> **as if no amalgamation**, succession, demerger has **taken place**, then **apportion** such depreciation between amalgamating and amalgamated Co. OR predecessor and successor OR demerged and resulting Co. on the basis of no. of days assets were used by them.

#### **Illustration:**

A Ltd has a block of furniture amounting to Rs 1,00,000 on **01.04.2019**. Further, A Ltd bought another furniture on **01.07.2019** amounting to Rs 200,000. Further, A Ltd got amalgamated with B Ltd from **4<sup>th</sup> October, 19**. Compute dep. as per section 32 for A Ltd and B Ltd and also determine the actual cost to be shown in the block of B Ltd.

**Ans.** Depreciation on Rs. 1,00,000 = 10,000  
 Depreciation on Rs 2,00,000 = 20,000

	A Ltd	B Ltd
(1) 10,000	10,000 (x)	10,000 (x)

(2) 20,000	20,000 (x)	20,000 (x)
------------	------------	------------

**Q. What will be the value of Asset to be shown in the books of B Ltd?**

- As per Expl<sup>n</sup> 2 to Sec 43(6) the value of opening WDV will be taken as part of block of B Ltd. i.e. Rs 1,00,000.
- As per Expl<sup>n</sup> 7 to Sec 43(1) in case of amalgamation the actual cost i.e. Rs 2,00,000 will be forming part of B Ltd block.

**Section 38(2) :- Assets not exclusively used for Business or profession**

<b>Example:-</b>	<b>AY :- 2020 - 21</b>	<b>Rate = 15%</b>
Actual cost of Car		1,00,000
(-) Dep @ 15%	15,000	
Personal use = 30%	(4,500)	<u>(10,500)</u>
(on fair proportionate Basis)	<b>CLOSING WDV</b>	<b>90,500</b>

**Note:** Calculate % of Personal use on dep amount & do not bifurcate cost of the Asset.

**Section 32(1)(i) :- SLM DEPRECIATION FOR POWER GENERATING**

		Rate = 10% (SLM)
Original Cost		1,00,000
(-) Dep for 3 yrs		<u>(30,000)</u>
W.D.V.		70,000
↓		↓
<b>(a)</b> S.P. = 50,000	<b>(b)</b> → S.P. = 80,000	<b>(c)</b> S.P. = 1,20,000
<b>Terminal = 20,000 dep u/s 32(1) (iii)</b>	<b>Balancing charge OR Deemed income u/s 41(2) = 10,000</b>	<b>Bal. Charge OR Deemed Income u/s 41(2) = 30,000 [1,00,000 - 70,000]</b>
COA / Adj WDV = 50,000	Adj. WDV / COA = 80,000	Adj. WDV / COA = 1,00,000 (70,000 + 30,000)
No. Cap Gains (70,000 - 20,000)	No Cap Gains (70,000 + 10,000)	CG = 20,000 (120,000 - 100,000)

### SECTION 50A :- HOW C.G. IS COMPUTED WHEN A POWER GENERATING UNITS SELLS AN ASSET?

Sale consideration	XX
(-) Cost of Asset = Adj WDV**	(XX)
<b>Capital Gains</b>	XX

#### **Note :- Adjusted WDV :-**

WDV	XX
(+) Balancing charge u/s 41(2)	XX
(-) T/D u/s 32(1)(iii)	(XX)
<b>Adj WDV = COA</b>	XX

### ADDITIONAL DEPRECIATION FOR POWER GENERATING ASSESSEES:

#### 1. If claimed depreciation as per Sec. 32(1)(ii)

If the assessee opts for this option, then he is also allowed to claim additional depreciation u/s 32(1)(iia)

#### 2. Claim depreciation on SLM basis u/s 32(1)(i)

If the assessee opts for this option, then he cannot claim additional depreciation u/s 32(1)(iia).

### General Note for your knowledge :

Generally under the Income Tax Act, no depreciation is allowed in the year of sale, in respect of asset which is sold during the year.

However there are 2 exceptions under Income Tax Act, where the assessee gets depreciation in the year of sale:

- i) Terminal depreciation.
- ii) In case of amalgamation, demerger etc.

### SECTION 43A :- CHANGE IN FOREIGN EXCHANGE RATES

↓		
<b>Conditions</b>		
When an asset is acquired from <u>outside India</u>	(+)	For that purpose assessee takes a <u>foreign currency loan</u> OR foreign supplier.

**Note :- Make Adjustment in the previous year in which actual payment is made.**

**ICDS - VI EFFECTS OF CHARGES IN FOREIGN EXCHANGES RATES****Initial recognition**

Initial recognition	
(1)	(2)
Should be recorded as per the rate on the date of transaction	(i) An average rate for a week or a month may be used for all transaction during that period (ii) If Exchange rate fluctuates significantly then take rate on the date of transaction.

**Conversion on last date of Previous Year**

Conversion on last date of Previous Year		
Monetary limit		Non-Monetary limit
(1)	(2)	
Shall be converted based on <u>closing Rate</u>	If closing rate is unrealistic (or) does not reflect reasonable accuracy	Shall be recorded as per the rate prevailing on the date of transaction  Section 43A is an Exception
	Then report at an amount which is likely to be realised or disburse, such item on the last day of P.Y	



## DEDUCTION AND ALLOWANCES

### Section 30 :- Rent, Rates & Taxes, Repairs and Insurance of Building

Owner	Tenant
Rates, Taxes, <b>Revenue Repairs</b> and Insurance	Rent, Rates, taxes, <b>Revenue Repairs</b> and Insurance
↓	↓
Capital Repair, then cost of C/R should be added to cost of Building & then claim dep <sup>n</sup> on it.	For Capital repair, Tenant will be Deemed owner of the Building and he can also claim dep. on C/R. {Expl <sup>n</sup> 1 to Sec. 32(1)}

**Note:** Rates & Taxes will allowed on actual payment basis as per sec 43B.

### Section 31 :- Repairs and Insurance of Plant, Machinery and Furniture

1. Repairs must **not be capital** in nature.
2. **Rent** of plant, machinery & Furniture is not deductible here. It is deductible **u/s 37(1)** subject to conditions mentioned there.

### OTHER DEDUCTION U/S 36(1)

↓	↓	↓
(i) <b>Insurance</b> premium paid against risk of destruction or damage of <b>stocks</b> .	(ib) <b>Health Insurance</b> premium paid by employers for <b>employees</b> (other than cash)	(ii) <b>Bonus / Comm.</b> Paid to employees. • However, where sum represents profits, then not allowed.

	SH's	Dividend	Bonus
	A (25%)	25,000	-
	B (25%)	25,000	-
Employee's }	C (25%)	5,000	20,000
	D (25%)	5,000	20,000

Rs 40,000 bonus in the form of dividend can't be allowed.

**Note :** Bonus or commission are allowed on actual payment basis as per sec 43B.

### SECTION 36(1)(iii) :- INTEREST ON BORROWED CAPITAL

↓	↓	↓
Borrowed money	Money must be used for B & P	Interest is paid or payable.

- (1) The expression '**capital**' for the purpose of this section means **only money** and not other assets. Further, there must be an element of **refund**.
- (2) The borrowed capital must be **"used for B & P"**. This term is **quite wider** as compared to the term for the "purpose of earning profit". Interest paid on the loans which are used for discharging day-to-day business expenses, for the purpose of acquiring capital assets, for the purpose of discharging dues in relation to business shall be allowed as deduction
- (3) The A.O. has **no right to dictate the rate of interest** at which capital is borrowed. Depending upon the market conditions, the assessee might pay interest at higher rate, that does not mean assessee is evading tax. What has to be seen is whether the borrowed capital is actually used for the purpose of B or P or not.
- (4) **Certain Interest payments are subject to sec 43B.**

### S.A. BUILDERS (SC)

#### FACTS:-

During the PY assessee advanced huge amount of its cash credits to its sister concern. The A.O. disallowed the proportionate interest on the grounds that the assessee has diverted funds to sister concern.

#### JUDGEMENT:-

It was held by SC that expression **commercial expediency is of wide import** and includes such expenditure as a prudent business man incurs for the purpose of his business.

The IT **Authority must put themselves in the shoes of the assessee** and see how prudent businessmen would act.

If advance is given to the sister concern on account of commercial expediency, then it should be allowed as deduction.

#### Note:

Interest on borrowed capital which is used for the payment of **Income Tax is not allowed as deduction**. However if it is to pay GST or service tax etc then it is allowed.

### Sec. 36(1)(iii): DISCOUNT ON ZERO COUPON BONDS.

13/09/2019	10000 Bonds Issue value = 50	Life = 5yrs
Issue Date	Redeemable value	= 100

Discount =  $10000 \times 50 = 5,00,000$

Redeemable date = **12/09/2024**

<b>2019 - 20</b> = 7m x 8,333	Discount / month = 5,00,000/60 = 8,333
<b>2020 - 21</b> = 12m x 8,333	
<b>2021 - 22</b> = 12m x 8,333	
<b>2022 - 23</b> = 12m x 8,333	
<b>2023 - 24</b> = 12m x 8,333	
<b>2024 - 25</b> = 5m x 8,333	

**Note :**

If the bonds are issued for 15 days or more by the company , then take it as a complete month.

**Sec 36(1)(iv): Employer Contribution to Recognised Provident Fund/Superannuation Fund** is allowed as deduction **£ Subj to Sec 43B**.

**Sec 36(1)(iva): Employer Contribution to Approved Pension Fund** is allowed as deduction **£ Subj to Sec 43B**.

**Sec 36(1)(v): Employer Contribution to Approved Gratuity Fund** is allowed as deduction **£ Subj to Sec 43B**.

**Sec 36(1)(va): Employees Contribution to RPF etc is allowed** as deduction to employer if paid before the **due date of the Relevant Fund**  
 £ }

**Note:** It is pertinent to note that Employees Contribution is considered as Income of Employer as per sec 2(24)(x) when it is deducted from the salary of Employee. Thereafter when it is paid before the funds due date then it is allowed as deduction to employer. Therefore it gets nullified. ( There are contradictory views on this which will be seen in later part )

**SEC 36(1)(vi): ALLOWANCE FOR ANIMALS USED FOR B OR P ( OTHER THAN STOCK IN TRADE )**

Deduction = Cost - Sale Value

**Note:** The **deduction** is available in the **year** in which the animals have become **useless or they are dead**.



**Section 36(1)(vii) :- DEDUCTION OF ACTUAL BAD DEBTS**

↓		↓
The Debt must be <b>written off</b> as irrecoverable <b>in BOA</b> "for the P.Y."	<b>AND</b>	The debt must be taken into <b>income</b> of assessee of year of deduction or earlier P.Y.
		↓
<b>EXCEPTION:-</b> Banking and money lending business in relation to their Loan amount		

**T.R.F. Ltd.**

- It is **not necessary** for the assessee **to establish** that the debt has become **irrecoverable** . It is enough if it is w/off as irrecoverable.
- For the purpose of this section, Bad Debts w/off **shall not include prov. for doubtful debts. § Also refer section 36(1)(viii) later. §**
- It was held in the case of **T. Veerbhadra Rao K. Koteshwara Rao** that where the goods, are **sold by predecessor** on credit basis & subsequently, it has become **bad in the hands of successor**, then deduction is **allowed** to successor.

**AMENDMENT MADE BY FINANCE ACT, 2015**

In order to reduce litigation and provide clarity Finance Act 2015 has inserted a proviso to sec 36(1)(vii) which states that "Any income which is offered for tax as per ICDS without recording the same in the BOA, if it becomes bad then it shall be DEEMED that such debt is written off as irrecoverable and deduction will be allowed. § Refer TB for detail §

**Section 36(1)(ix) :- EXPENDITURE ON PROMOTION OF FAMILY PLANNING  
AMONGST EMPLOYEES  
ONLY COMPANIES**

↓		↓
Revenue → Fully Allowed		Capital → 1/5 <sup>th</sup> in 5 Equal Installment

**Note:** Unabsorbed Capital Expense shall be treated as UAD.

- **36(1)(xv)** - STT § provided the assessee is trader in securities § ( In Capital Gains STT is not allowed as deduction )
- **36(1)(xvi)** - CTT § provided the assessee is trader in commodities §

**SEC 36(1)(xvii) : DEDUCTION FOR COOPERATIVE SOCIETY :**

Deduction of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price equal to or less than the price fixed or approved by the Government.

**AMENDMENT MADE BY FINANCE ACT 2018:**

As per Sec. 36(1)(xviii), deduction in respect of mark to market loss shall be allowed. However, the deduction is allowed only if such loss is computed in accordance with ICDS. Further, as per Sec. 40A(13), no deduction shall be allowed in respect of mark to market loss, if it is not determined as per Sec. 36(1)(xviii).

**SECTORWISE PROVISIONS****SECTION 32AD → SPECIAL INCENTIVE FOR 4 STATES**

₹ Inserted by Finance Act, 2015

<b>Any Assessee</b> (i.e. Corporate as well as Non-corporate)	Set up a mfg. undertaking btwn 01.04.15 to 31.03.20 in <b>Andhra Pradesh / west Bengal / Telangana / Bihar.</b>	<b>Acquire &amp; Install</b> new P&M btwn 01.04.15 to 31.03.2020.	Then 15% allowance of Actual cost.

→ **IMPORTANT POINTS :-**

- (1) Such asset should not be sold or otherwise transferred ( other than amalgamation, demerger etc) for a period of 5 years from the date of installation. However, in case of Amalgamation, demerger etc this lock-in period is not applicable for Amalgamating Co. but for the Amalgamated Co from the date of installation by amalgamating Co. If an asset on which deduction is claimed is sold or otherwise transferred within 5 years then, dedn u/s 32AD shall be deemed to be income of P.Y. in which the Asset is sold along with the implication of Capital Gains.
- (2) The allowance under this section is in addition to normal dep. u/s 32(1)(ii) & additional dep. u/s 32(1)(ia).
- (3) Allowance under this section shall not be deducted from the block of Asset.
- (4) Allowance is not subject to 50% dedn if an asset is used for less than 180 days → No condition that P & M should be actually put to use.
- (5) The allowance is subject to those P & M which are eligible for addln dep.

(6) **Fork lift trucks are eligible** for deduction u/s 32(1)(ia) as well as 32AD as they are specially designed vehicle and hence they are not classified in the definition of vehicle as per the Motor Vehicle Act 1988.

(7)

### SECTION 33AB → GROWING & MANUFACTURING TEA, COFFEE AND RUBBER IN INDIA

#### OVERVIEW:

<b>Only Growing</b> ↓	<b>Only Manufacturing</b> ↓	<b>Growing + Manufacturing</b> ↓
Fully exempt u/s 10(1).	Fully taxable.	→ 33AB. → Rule 8/7A / 7B. → Explanation 7 to 43(6). → Plant - 43(3).

	<u>Time Limit</u>	<u>Quantum</u>
(a) <b>Deposit</b> any amt in NABARD	(a) <b>within 6 months</b> from the end of F.Y.	(a) Amount deposited
<b>OR</b>	<b>OR</b>	<b>OR</b>
(b) deposit any amt in "Deposit A/c" (+)C.G. Approval.	(b) <b>Before</b> due date of <b>return ;</b> <b>Whichever is earlier.</b>	(b) <b>40% of PGBP</b> income (Before this dedn (+) setting off of Losses); <b>Whichever is lower</b>

**NOTES :-**

- (1) The above amount can be withdrawn in the following circumstances:
- Closure of business ( **Will be Taxable** )
  - Death of an assessee ( **Will be Exempt** )
  - Partition of HUF ( **Will be Exempt** )
  - Dissolution of a firm ( **Will be Taxable** )
  - Liquidation of a company. ( **Will be Exempt** )
- (2) The **amount withdrawn** from NABARD / Deposit A/c must be **utilized** for the purpose specified in the scheme **in the same P.Y.**  
If it is **not utilized** in the year in which it is withdrawn then, it is deemed to be income in that year. **{Only 40%/35%/25% will be taxable }**
- (3) **If** an amount withdrawn from NABARD is **utilized in the same FY** for the purpose specified in the scheme, then **no dedn** shall be allowed again in the year of **actual expenditure** as it is already allowed u/s 33AB when it was deposited in NABARD.
- (4) The amount withdrawn from NABARD **should not be utilized for purchasing any prohibited assets** like P & M installed in office or Residential Accommodation or office appliances (Not Being computer) **(Refer TB for complete list)**
- (5) Any asset acquired under scheme should not be transferred or sold for **8 years.**

**Exceptions**

↓	↓
(a) Sold or transferred to local/Govt. Authority, etc.	(b) Succession of a firm by a company subj to following conditions:
	Firm → Co.
	(1) All Assets : All Assets
	(2) All Liabilities : All Liabilities.
	(3) All Partners : All shareholders

**Income Tax Rules**

↓							
Rule 8		Rule 7A		Rule 7B			
Income from mfg. of Tea		Income from mfg. of Rubber		↓			↓
40%      60%		35%      65%		Income from mfg. coffee grown cured		grown cured & Roasted & mixed	
Business      Agriculture		Business      Agriculture		25%	75%	↓	
				Business	Agriculture	40%	60%
						Business	Agri

**SECTION 33ABA : SITE RESTORATION FUND.**

(Prospecting or Extraction OR prdn of petrol or natural gas in India)

(a) deposit any amount with SBI <u>OR</u>	<b>Time Limit :</b> Before the end of the P.Y.	<b>Quantum :</b> (a) Amount deposited
(b) any other bank in form of Site Restoration Fund A/c.		<u>OR</u> (b) <b>20% of PGBP</b> → Income (Before this dedn (+) setting of losses)

Note :- Rest all the provisions are same as sec 33 AB

**SEC 35 : EXPENDITURE ON SCIENTIFIC RESEARCH**

Research related to Assessee's Business

↓		↓	
<b>Sec 35(1)(i) : Rev, Exp → 100%</b> (only last 3 years)		<b>Sec 35(1)(iv) : Capital Expenditure</b> → @ 100%	
<b>PRE Comm.</b>	<b>Post Comm.</b>	↓	↓
<ul style="list-style-type: none"> <li>Salary</li> <li>Purchase of material ↓ Above exp. must be authorized by pres. Authority (DGIT) → @ 100%</li> </ul>	<ul style="list-style-type: none"> <li>Any Revenue Exp @ 100%</li> </ul>	<b>Pre Comm.</b>	<b>Post Comm.</b>
		<ul style="list-style-type: none"> <li>Any Asset <b>except Land</b> only Last 3 years @ 100%</li> </ul>	<ul style="list-style-type: none"> <li>Any asset <b>except Land</b> @ 100%</li> </ul>
<b>Example :-</b> <ul style="list-style-type: none"> <li>P &amp; M purchased for Laboratories</li> <li>Purchase cars &amp; buses for EE's</li> <li>Exp. incurred on const. of approach roads.</li> </ul>			

Note : No deduction of depreciation shall be allowed.

**SECTION 35 (2AB) → 150% OF REVENUE & CAPITAL EXP, BUT ONLY  
POST COMMENCEMENT**

Research related to Assessee's Business

↓	↓	↓	↓
<b>Company ( Earlier it was there in Family Planning expenses)</b>	Mfg of any article / thing (other than <u>XI<sup>th</sup> Sch. Items</u> )  OR <b>Bio-technology</b>	On <u>In house Research</u> & Approved by pres. Authority (+) Agreement	<u>Not Available for Building &amp; Land.</u>  But for Bldg claim 100% u/s 35(1)(iv)

**Note :** A Company approved u/s 35(1)(iia) will not be eligible for above deduction. However it can claim deductions u/s 35(1)(i)(iv).

**CONTRIBUTION TO OUTSIDERS**

€ APPLICABLE TO BOTH RESEARCH & NON RESEARCH ASSESSEE)

↓	↓	↓	↓
<b>Sec 35(1)(ii)</b>	<b>Sec 35(1)(iii)</b>	<b>Sec 35(2AA)</b>	<b>Sec 35(1)(iia)</b>
Contribution to Research Association / college / university / other Ins.	Contribution to R.A. / college / university / other Ins.	Contribution to <u>National Laboratory or IIT.</u>	Contribution to Indian Co. indulged in Scientific Research .
↓	↓		
<b>Scientific Research 150%</b>	<b>Statistical / social science 100%</b>	<b>150%</b>	<b>100%</b>
	<b>Must be Approved.</b>		

**Note:-** The dedn shall not be denied merely on the ground that subsequent to payment by assessee the approval granted is withdrawn.

**WHEN SCIENTIFIC RESEARCH ASSET CEASES TO BE USED FOR SCIENTIFIC  
RESEARCH.**

<b>Sold after using for the purpose of Business.</b>	<b>Sold without using for Business propose</b>
<b>a)</b> Explanation 1 to Sec 43(1) shall apply and actual cost to be taken as NIL.	<b>a)</b> <b>Sec 41(3):</b> Deemed Income will be applicable and lower of

<p>b) Sec 50 i.e. CG for Depreciable Asset &amp; Sec 43(6) i.e. WDV of asset will be applicable and STCG will be chargeable to tax.</p>	<p>i) [Sale proceeds] - [Capital Expenditure on asset <b>minus</b> Deduction allowed under section] OR ii) Deduction allowed; will be taxable.</p> <p>b) CG as per sec 48</p>
---	---

### AMORTISATION OF TELECOM LICENSE FEES PAID [SEC 35ABB]

<b>Pre-commencement Deduction</b>	<b>Post-Commencement Deduction</b>
In the year in which <b>business commences</b> for the amount actually paid over the unexpired period of license.	From the year in which the <b>fees is actually paid</b> over the unexpired period of the license.

**Note:** No deduction u/s 32 will be allowed.

### TAX TREATMENT IN CASE OF TRANSFER OF LICENSE

PY 19 - 20 = COST 100 CR. Paid.

Life = 10 yrs.

Sold on 15/6/2021

PGBP	(+)	CAPITAL GAINS		
Sale Price (minus) OPN WDV of License on 1 <sup>st</sup> day of PY of sale		(1)	(2)	(3)
		SP	60	90
		COA	(100)	(100)
		CG	(40)	(10)
		PGBP	(20)	10
		20		
		( This part is not mentioned in ICAI Study Material )		
<b>Deficit</b>		<b>Surplus</b>		
Then, it will be deductible in the year of sale.		Income of PY of sale subject to <u>Maximum of Deduction allowed earlier.</u>		

### AMORTIZATION OF SPECTRUM FEES FOR PURCHASE OF SPECTRUM [Sec 35ABA] (Inserted by Finance Act 2016)

The Govt. has newly introduced spectrum fees for auction of air waves. There is **uncertainty** in tax treatment of payments in respect of spectrum i.e. whether spectrum is an **intangible asset** to be depreciated **under Sec. 32** ? or whether it is in the nature of a license to operate telecommunication business to be eligible for deduction under Sec 35 ABB?





**INVESTMENT LINKED DEDUCTION [SEC 35AD]****Deduction of Capital Expenditure**

100%	100%
1) Cold chain facility for certain products	6) Cross country natural gas or crude or petroleum oil pipeline.
2) Warehousing facility for <b>agriculture products.</b>	7) Hotel $\geq$ 2 stars
3) Hospital $\geq$ 100 beds	8) Housing project for <b>slum Redevelopment</b>
4) Housing project for <b>affordable Housing</b>	9) Inland container Depot / container freight station
5) Production of fertilizer	10) Bee - keeping and production of honey and beeswax
	11) Warehousing facility <b>for sugar.</b>

**AMENDMENT MADE BY FINANCE ACT (NO 2) 2014:**

Finance Act 2014 has added following 2 additional business u/s 35AD for deduction of 100% of Capital expenditure.

- (12) Laying and operating a **slurry pipeline** for transportation of **iron ore**.
- (13) Setting up and operating a semi-conductor **wafer fabrication** manufacturing unit.
- (14) Setting up & Operating an **infrastructure facilities** in India.

The term infrastructure facility means the following :

1. A **Road** including toll road, bridge or rail system.
2. A **highway project** including housing or other activities being integral part of the highway project.
3. A **water supply project**, water treatment system, irrigation project sanitation and sewerage system or solid waste management system.
4. A **port, airport, inland waterway or inland port**.

**Note:** The deduction mentioned in 6<sup>th</sup> & 14<sup>th</sup> Business is available only to India Company or Consortium of Indian Companies .

**CAPITAL EXPENDITURE ELIGIBLE FOR DEDUCTION.**

<u>POST COMMENCEMENT</u>	<u>PRE COMMENCEMENT</u>
Capital Exp incurred wholly or exclusively during the <b>P.Y. in which it is incurred.</b>	<b>Capital Exp</b> incurred wholly and exclusively during the preceding yrs will be allowed in the PY in which <b>business</b>

	<b>Commences operations :</b> if the amount is <b>capitalized</b> in the BOA on the date of Commencement.
--	--

No deduction for acquisition of following in pre as well as post:

- LAND
- GOODWILL
- FINANCIAL INSTRUMENTS.

Note:

#### Conditions to be satisfied

(i)	(ii)	(iii)
It is <b>not</b> set up by <b>splitting up</b> (OR) reconstruction of a Business already in existence.	It is <b>not</b> setup by transfer of <b>Ind hand</b> plant & Machinery	Exceptions (1) 2 <sup>nd</sup> hand Machinery upto <b>20% of total value</b> is allowed. (2) <b>Imported 2<sup>nd</sup> hand</b> P & M is allowed provided no dep is allowed earlier.

#### No Deduction under any other provisions of the act

No deduction u/s 10AA (OR) Chapter VI A	<b>AND</b>	No deduction u/s - 32
---	------------	-----------------------

#### Special Benefits for Hotel Industry

Hotel Industry will get deduction if it transfers the operations but continue to own the hotel.

#### Sec 73A : Set off & carry forward of Loss

Losses of any specified business u/s 35AD can be set off and c/f against any other specified business.

Time limit : Infinite period.

**INCOME**

<b>Demolished / Destroyed / Discarded / Transferred.</b>  Then, Sale price will deemed income  <b>Sec 28</b> <b>(No Time Limit)</b>	If an asset is <b>used for non specified purpose</b> before expiry of 8 years then deemed Income is :	
	Deduction allowed earlier	xx
	(-) Depreciation u/s 32(1)(ii)/(iia)	(xx)
	<b>PGBP( Deemed Income)</b>	<b>xx</b>
	[Sub sec (7A) & (7B) introduced by Finance Act, 2014	
	<b>Note:</b> Deemed Income not Applicable to "Sick Unit"	

**AMENDMENT MADE BY FINANCE ACT 2017**

1. Earlier, there was **no provision** for those cases whereby, an asset on which deduction u/s 35AD is claimed & allowed and subsequently, such asset is **used for non-specified purposes**.
2. However, FA 2014 has inserted Sec. **35AD(7A)**, which states that such assets should be **used only for** specified purposes for a period of **8 yrs** beginning from the PY in which the asset is acquired.
3. If the assessee **uses** such asset **for non-specified purpose**, then Sec 35AD (7B) will be attracted and **deemed income** will be amt. of ded<sup>n</sup> allowed earlier less dep<sup>n</sup> u/s 32, as if no ded<sup>n</sup> u/s 35AD is allowed.
4. Suppose an assessee engaged in setting up and operating a warehousing facility for sugar, buys an asset, say bldg worth Rs. 100 cr on 15/04/2015. The same bldg was put to use on the date of acquisition. It is the obligation of the assessee to use such bldg for warehousing of sugar for a period of 8 yrs, otherwise deemed income will be attracted. Suppose on 15/04/17, assessee started using the bldg for storage of non-specified goods, the assessee now has to bear the burden of deemed income u/s 35AD as follows:

Ded <sup>n</sup> Allowed:	100 cr
(-) Dep for 2 yrs	(19 cr)
Deemed income 35AD(7B)	81 cr

**AMENDMENT BY FA (2017)**

5. Now since the assets are used for non-specified purpose and the assessee has also borne the burden of deemed income u/s 35AD. Therefore, the **issue** under consideration is what will be the **actual cost of such asset** which were earlier used for specified purpose but now for non-specified purpose.

6. For this purpose, there was an **Expl<sup>n</sup> 13** to Sec. 43(1) which states that any Capital Asset received by way of Gift, will, on liquidation, amalgamation, etc., then actual cost shall be Nil. However, **Expl<sup>n</sup> 13 does not speak about the actual cost in those cases** where the assets have been used for non-specified purpose.
7. Therefore, in light of recommendation of **IT simplification committee and to bring clarity**, Sec. 43(1) has been amended to provide that the COA in respect of such asset = **Actual cost to the assessee as reduced by dep<sup>n</sup> that would have been allowable** had the asset been used for the purpose of business, since the date of Acquisition.
8. Therefore in the case of warehousing of sugar :  
Actual cost = 100 - 19 = 81

### TAXATION OF MINING OF COAL, LIMESTONE, IRON, ETC. [SEC 35E]

**Only Indian Co's or Resident Non Corporate assessee.**

Amortization of Expenditure incurred wholly and exclusively on any operation relating to :

(1)		(2)		(3)
Prospecting for minerals	(OR)	Development of a mine	(OR)	Other Natural Deposits

**Note:** The above excludes any expenditure met by Govt. or any other authority

Qualifying Exp = Amt Incurred	- Met by any authority
-------------------------------	------------------------

### WHEN IT SHOULD BE INCURRED

(2)	(1)
4 preceeding yrs	During the year of "Commercial Production" (5 yrs including current yr)

### EXPENDITURE DOES NOT INCLUDE:

- (i) **Acquisition of site** of any minerals or any rights.
- (ii) **Acquisition of deposits** of any minerals or any rights
- (iii) **Any exp of Capital Nature**, i.e. building, plant & Mach, Furniture, etc. for which depreciation is admissible u/s 32

**QUANTUM AND TIME LIMIT****LOWER OF :**

- a) 1/10<sup>th</sup> of "Qualifying Expenditure"  
OR
- b) Income (before deduction u/s - 35E)  
of PY arising from commercial exploitation of any mine  
(Income of all mines shall be taken)
- Any unabsorbed amt will be C/f for next 9 years.

**SECTION 36(i)(viiia) :- PROV FOR BAD DEBTS FOR BANKS/ NBFC**

In case of Scheduled Banks Other Non Scheduled Banks including Cooperative Banks	In case of public, State Financial, State Industrial Corp.	Foreign Banks/ NBFC
1. <b>8.5%</b> of <b>Total Income</b> before this deduction and deduction under Chapter VIA.  <b>AND</b>	<b>5%</b> of Total Income before this deduction and deduction under Chapter VI-A.	<b>5%</b> of Total Incl before this dedn and dedn under chapter VI - A.
2. <b>10%</b> of Aggregate Average <b>Advances</b> made by <b>Rural Branches</b>	NIL	NIL

**Notes :-**

- No** deduction u/s **36(i)(vii) unless** actual bad debts exceeds provision for Bad Debts.
- The provision for Bad Debts must be debited to P & L A/c.
- The actual bad debts must be debited to PBD A/c.

**Section 36(1)(viii) :- TRANSFER TO SPECIAL RESERVES****Available to following**

↓	↓	↓
(1)(a) Financial Corporation specified under Companies Act	(2) Housing Finance Company.	(3) Any other Financial corporation for development of infrastructure facility.
↓	↓	↓
Industrial or Agricultural Development	Infrastructure facility	Development of Housing

The above companies should be engaged in providing Long Term Finance.

**AMOUNT OF DEDUCTION :-**

- (1) Amount **transferred** during the P.Y. to special Reserve A/c u/s 36(1)(viii)  
OR
- (2) **20% of profits** from Above Business (Before this deduction)  
OR
- (3) **200% of** (Paid up capital & General Reserve) as on the last day of the P.Y. (-) the Balance of S/R A/c on the 1st day of P.Y.

**SECTION 41(4A) :- DEEMED INCOME**

Any amount withdrawn from the S/R A/C will be **chargeable to the tax** in the year in which the amount is withdrawn.

**MISCELLANEOUS DEDUCTIONS:**

- **Section 35CCA** :- Expenditure by way of making payment **for Rural Development** to Associations or Institutions.

- **Section 35DD** :- **Amortisation of Amalgamation / Demerger Expenses**

↓	↓	↓
Only to <b>Indian Companies</b>	(+)	<b>5</b> equal Installments.

- **Section 35 DDA** :- Amortisation of expenditure under **VRS i.e. 5 equal installments.** (1/5<sup>th</sup> has earlier came in Family Planning expenses/ Preliminary Expenses / Amalgamation or Demerger Expenses)

- **Section 35CCC** :- Expenditure on **Agriculture Extension** project



**150% of Expenditure**

- **Section 35CCD** :- Expenditure on **Skill Development** project **150% of Expenditure** (By Companies excl. Land & Building).

**TREATMENT OF LOSSES UNDER IT ACT :-****BADRIDAS DAGA V/S CIT(1958) / CALCUTTA CO. LTD (1959)(SC)**

One has to keep in view the **general commercial principles** while determining real & true profits of a business or profession.

There may be **loss** which is **not admissible loss under any of the provisions of the Act** and **yet such losses should be allowed** in order to determine **true and real** profits of assessee & it is the duty of every person who has anything to do with taxing business people to understand what are the principles of commercial accounting.

Unless one understands the principle of commercial accounting, it is absolutely difficult to make a proper assessment.

**Trading losses which are incidental to the operations of the business must be allowed even if it is not specially coded anywhere in the Act.**

As capital receipts are not chargeable to tax, therefore even **capital Losses can't be allowed** as deduction. [CIT v/s Mysore Sugar Co. Ltd].

**Following are the some of the instances which are deductible as losses :-**

- a. Loss of stock by fire.
- b. Loss of stock by Ravages of Ants
- c. Loss of cash by theft.
- d. Loss of stock by Act of God.
- e. Loss on Account of foreign exchange.
- f. Loss due to embezzlement by employee.

**SECTION 37(1) :- GENERAL DEDUCTION OF EXPENSES**

<b>(a)</b> It is not specified u/s 30 to 36.	<b>(b)</b> It is not personal in nature	<b>(c)</b> It is not capital in nature	<b>(d)</b> It is incurred wholly and exclusively for the purpose of B & P.
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**EXPLANATION 1 TO SEC 37(1)**

Any expenditure incurred for any purpose which is an **offence or prohibited** by law shall **not be allowed** as deduction.

**EXPLANATION 2 TO SEC 37(1)**

Any expenditure incurred on the activities relating to **CSR** referred in Sec 135 of Companies Act, 2013 shall not be allowed as deduction u/s 37(1).

**Notes:**

Donation to **Swachh Bharat and clean Ganga** forms part of CSR and it is **allowed** u/s 80G. Expenditure on certain activities which is **otherwise allowable** under any other section will **not be disallowed u/s 37(1)**.

Donation to certain trusts mentioned u/s 35(1)(ii)/35(1)(iii) etc. will be allowed as deduction.

**CIRCULAR NO. 5/2012**

Any **freebies** provided by pharmaceutical sector to medical practitioner and their professional association shall **not be allowed** as deduction in the light of expln 1 to Sec 37(1). Further such amount would be taxable in the hands of recipient.

**PREMIUM OF KEYMAN INSURANCE POLICY:**

CBDT has clarified that premium paid by firm for a Keyman Insurance Policy of a partner, to safeguard the firm against disruption of business is an allowable deduction u/s 37(1)

**DR. T.A. QURESHI V/S CIT(SC)**

**Losses of illegal business** will be allowed as deduction to compute the real profits and gains as **expln 1** to section 37(1) **has nothing to do with case of losses**, it only covers expenses.

The similar judgement was also given by Andhra Pradesh H.C. in case of T.C. Reddy whereby the Losses on A/c of the confiscation of pharmaceutical drugs by Custom Authorities was allowed as deduction based on above mentioned S.C. Judgement.

**PENALTIES**

↓	↓
Compensatory	Penal
Allowed	Disallowed

**Note :-**

1. Interest and penalties under direct tax is not allowed
2. Interest on sales Tax is allowed
3. Penalties under Direct & Indirect Tax both will not be allowed.
4. Secret Commission shall not be allowed as deduction.

**Section 37(2B)**

Notwithstanding anything contained in Sub sec (1), any expenditure incurred by an assessee on **advertisement** in any brochure or pamphlet of a **political party** shall be disallowed.



**NOTE ON BOT :****KERELA ROAD LINES (SC)**

It was held that **Sale proceeds of the scrap** after demolishing the building was treated as **business income** and if that was so, the payment **of interest** which is a contractual obligation should also be **allowed** as business expenditure.

**CONFEDERATION OF INDIAN PHARMACEUTICAL INDUSTRY (H.P.)**

It was held that Circular 5/2012 dated 01.08.2012 is in line with Explanation 1 to section 37(1). However if the assessee satisfies the assessing authority that the expenditure incurred is not in violation of the regulations framed by the Medical Council then it may legitimately claim a deduction, but it is for the assessee to satisfy the Assessing Officer that the expense is not in violation of the Medical Council Regulations.

**CIT V. KAP SCAN AND DIAGNOSTIC CENTRE P. LTD. (2012) (P&H)**

The demanding as well as paying of commission by Medical Practitioner is bad in law. It is not a fair practice and is opposed to public policy and should be discouraged. Thus, the High Court held that commission paid to doctors for referring patients for diagnosis is not allowable as a business expenditure.

**DINESH MILLS LTD. (GUJARAT HC)****FACTS :**

Company's clerk mis-apportioned cash on various occasions :-

P.Y. 2011-12 → Rs 4,40,000

P.Y. 2012-13 → Rs 5,20,000

P.Y. 2013-14 → Rs 3,80,000

The said embezzlement was discovered in the year 2015-16 & assessee claimed Loss in P.Y. 2015-16.

**JUDGEMENT :-**

1. It was held that loss should be incidental to the business.
2. It should be **allowed in the year in which it is discovered** irrespective of the year to which it pertains.

**CIT v/s Khemchand Motilal Jain Tobacco Products (P. Ltd)****ξContradictory to Expl. 1 to Sec 37(1).ξ**

It was held that the ransom money paid to release the director from dacoits where **police was unsuccessful to do so shall be allowed as deduction.**

**SHANTI BHUSHAN V. CIT (DELHI)**

It was held the amount paid for heart surgery can neither be allowed u/s 31 nor u/s 37(1).

**MILLENNIA DEVELOPERS (P) LTD. (KARN.)**

It was held that the amount paid to compound an offence is obviously a penalty and hence, does not qualify for deduction under section 37. Merely describing the payment as a compounding fee would not alter the character of the payment.

**CIT V. NEELAVATHI & OTHERS (KARN)**

It was held that ,if the assessee had incurred expenditure for the purpose of security, the same would have been allowed as deduction. However, in the instant case, since the payment has been made to the police and gundas to keep them away from the business premises, such a payment is illegal and hence, not allowable as deduction.

**HINDUSTAN ZINC LTD. (RAJ. H.C.)**

The assessee owned a plant which required huge quantity of water for its day to day operations. It was held that this **expenditure** was incurred with an objective of **facilitating its trade operations.** Further, it was held that it was incurred to conduct business more efficiently & profitably and therefore, it should be **allowed** as revenue expenditure.

**TRIVENI ENGINEERING & INDUSTRIES LTD. (DELHI H.C.)**

The **advance** given to employees which became irrecoverable is a **"trading Loss"** and therefore it would be allowed as deduction to arrive at profits.

**Non-Recovery** of security **Deposits** to Landlord for obtaining Tenancy Rights is a **Capital Loss.** It **won't be allowed** as deduction.

### ORIENT CERAMICS & INDUSTRIES LTD (DELHI H.C.)

#### Whether expenditure on Glow sign Boards displayed at dealer outlet, capital or revenue ?

→ The Delhi court observed the following :-

1. This exp. **doesn't** bring into existence a **capital asset**.
2. It is **not** an asset of **permanent** nature. It was further observed that it has **short shelf life**.
3. It was observed that it **decays with weather** and requires **frequent replacements**. The replacement is necessary almost every year.
4. Therefore, it was held that the expenditure was incurred with the object of facilitating business operations and not acquiring capital assets & therefore it should be **allowed as deduction**.

#### ALLOWABILITY OF CERTAIN EXPENSES

1. Dividend and Dividend distribution tax under section 115-0 is not allowed as deduction.
2. Income tax, wealth tax, surcharge & education cess is not allowable as deduction.
3. Provision for loss of subsidiary company is not allowable as deduction.
4. Provision for deferred tax as per IND AS 12 is not allowable as deduction.
5. Provision for diminution in the value of investment / assets as per IND AS is not allowable as deduction.
6. Provision for unascertained liability is not allowable as deduction.
7. Prior period expenses are not allowable as deduction, but they are allowable if liability to pay crystallized during the Previous Year. (E.g. increased salary is paid in current year under pay commission).
8. Salary & Perquisites paid to directors are fully allowed as deduction subject to section 40A(2). If however, salary paid to director exceeds limit prescribed under the Companies Act, then such excess salary shall be disallowed.

#### DISALLOWANCES

↓	↓
<b>Section 40A</b>	<b>Section 40(a)</b>
1. 40A(2): Excess payment to Relatives	1. 40(a)(i): TDS for NR Payee
2. 40A(3)/(3A): Cash > Rs 10,000	2. 40(a)(ia): TDS for Residents Payee
3. 40A(7): Provision for Gratuity	3. 40(a)(ii): Income Tax
4. 40A(9): Contribution to unrecognized provident Fund.	4. 40(a)(ia): Wealth Tax
	5. 40(a)(iib): Fees charged by State Govt.
	6. 40(a)(ib): Equalisation Levy

	7. 40(a)(iii): TDS on salary for N.R.
	8. 40(a)(v): Tax on Non-monetary Perquisite paid by employer.

### SECTION 40A(2): EXCESS PAYMENT TO RELATIVES:

Assessee Incurs Expenditure	(+) made payment to Specified person	(+) A.O. may disallow
	If AO considers to be <b>unreasonable and Excessive</b>	Having regard to <b>Fair Market Value &amp; Legitimate needs of business.</b>

- If the Co. sells goods of Rs 1,00,000 to director whereby the FMV of goods sold is Rs 1,50,000 then, A.O. can't invoke section 40A(2) as it is applicable only to expenditure and not income.
- It is on A.O. to prove that the exp. is in excess of FMV or unreasonable. i.e. the onus lies on the assessing officer.

### Section 40A(3)

Assessee incurs an expenditure*	(+) Payment OR Aggregate of Payments	(+) To a person in a single day of a sum exceeding Rs 10,000**	By other than "Account payee crossed cheque OR Bank Draft OR ECS or such other electronic mode as may be prescribed. ( FA 2019 )
---------------------------------	--------------------------------------	--	--

\* ~~Only Revenue Expenditure are covered & not capital Exp.~~

\*\* For payment mode to **transporters the Limit is Rs 35,000.**

### Section 40A(3A)

P.Y. 2019-20		P.Y. 2020-21
Salary a/c 80K		
To Salary (o/s) (This is not paid but still allowed on Accrual Basis in PY 2019-20)	80K	Rs 80,000 is paid to a person in single day by cash in PY 2020-21.

		# <u>RESULT:-</u> It can't be disallowed u/s 40A(3) as it is not allowed in P.Y. 2020-21 but as per Section 40A(3A) it will be deemed to be PGBP Income of P.Y. 2020-21
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### AMENDMENT MADE BY FINANCE ACT 2017

#### I. Depreciation disallowance u/s 32 and capital Expenditure u/s 32AD & 35AD on cash payment:

1. Hitherto (Till now i.e till P.Y 2016-17) **only revenue expenditures** were covered u/s 40A(3)/(3A).
2. In order to discourage cash transactions even for CAPEX, **a proviso has been attached to Sec. 43(1)**, which states that where an assessee incurs any exp for acquisition of any asset, in respect of which payments or aggregate of payments made to a person on a day otherwise than by A/c payee cheque drawn or A/c payee bank draft or use of ECS **or such other electronic mode as may be prescribed** exceeds Rs. 10,000, then such expenditure shall be ignored for the purpose of determination of actual cost of such asset. ( FA 2019 )  
Therefore even deduction u/s 32AD shall not be allowed, because sec 32AD is also allowed as 15% of Actual Cost.

#### Illustration

XYZ purchased machinery of Rs. 1L. The payment in respect of the same is made by A/c payee cheque. It also incurred installation cost of Rs. 12,000 in cash in a day, to a person. Determination of actual cost as per Sec. 43(1)

	Pre Amendment	Post Amendment
Purchase Value	1,00,000	1,00,000
Add: Installation cost	<u>12,000</u>	<u>0</u>
Actual cost of Machinery	1,12,000	1,00,000

Further, Sec 35AD is also amended. 35AD(8)(f) states that any expenditure in respect of which payment or aggregate of payment made to a person in a day otherwise than by A/c payee cheque or bank draft or ECS **or such other electronic mode as may be prescribed**. exceeds Rs. 10,000, no deduction shall be allowed in respect of such expenditure.

#### Note:

In the absence of any info, it is logical to conclude that exceptions given in rule 6DD cannot be extended to CAPEX as rule 6DD is notified through Sec 40A(3) only.

**RULE 6DD: EXCEPTION****Circular No. 10/2008, Dated 5-12-2008 : Clarification Regarding Rule 6DD**

<u>"Fish or Fish Products"</u>	<u>"Producer of Fish / Fish Products"</u>
Would include other marine products, such as <b>shrimp, prawns, cuttlefish, squid, crabs lobsters, etc.</b>	Would include either <b>fishermen or headmen</b> of fishermen who sought the catch of Fishes.

**40A(2) vs 40A(3) THE INTERLINKING:****SECTION 40A(7) :- PROVISION FOR PAYMENT OF GRATUITY IS DISALLOWED**

Actuarial Valuation	18,00,000
(-) Amount avail. In Grat fund	<u>(15,00,000)</u>
<b>Prov for payment of Gratuity Disallowed u/s 40A(7)</b>	3,00,000

Gratuity liability is determined by Actuary in the year of retirement or termination of employment. Suppose, determined liability comes to Rs 18,00,000. Now, the employer is liable to pay this Rs 18,00,000 to employee on retirement. However, amount available in Grant. Fund is Rs 15,00,000. Employer passed the following entry in BOA :-

Gratuity A/c	Dr	3,00,000
To Prov. for Gratuity A/c		3,00,000

This amount is disallowed u/s 40A(7). However, when this Rs 300,000 is actually paid to employee, it will be allowed as deduction.

### **SECTION 40A(9) :- CONTRIBUTION TO UNRECOGNIZED PROVIDENT FUND ETC. IS DISALLOWED.**

- **CASE I:-** If an employer contributes Rs 60,000 p.a. to Recognised P.F. etc then this contribution itself is allowed as deduction in respective years u/s 36(1)
- **CASE II:-** If an employer contributes Rs 60,000 to an unrecognized P.F. then this contribution every year will be disallowed by virtue of section 40A(9). However when this amount is actually discharged to employees it will be allowed in the hands of employer.

### **Section 40(a)(i) : Payments to N.R. or Foreign Company of any Interest, Royalty, Fees for Technical Services or other sum chargeable**

Payable		
↓		↓
In India	<u>OR</u>	Outside India
↓		
To a NR OR foreign Company		
↓		↓
Deduct Tax	<u>AND</u>	Deposit till time specified u/s <b>139(1) i.e. Due date of return</b>

- \* **100% expenditure will be disallowed** if the tax is not deducted OR after deducting is not paid till the due date specified u/s 139(1).
- \* Where in respect of any such sum, where tax has been deducted in any subsequent year, or has been deducted in the previous year but paid after the due date of filing of return, then it will be allowed in the P.Y. in which payment is made.  
**(As per proviso to Sec 40(a)(i))**

- \* **Where assessee has failed to deduct TDS & he is not treated as Assessee in default u/s 201(1), then for the purpose of section 40(a)(i) it shall be deemed that assessee has deducted and paid the tax on such amount on the date of furnishing of return by Non Resident payee & deduction of such expenditure will be allowed. ( Inserted by Finance Act ( No. 2 ) 2019 )**

- \* All the aforesaid sums **must be taxable in the hands of the recipient** under IT Act, 1961. ( Refer Past Questions for Illustration )

### CIRCULAR NO. 3/2015 DATED 12/02/2015

Doubts have been raised about interpretation of the term "**other sum chargeable**" i.e. whether this term refers to the **whole sum being remitted abroad** or only the portion representing the sum chargeable to IT under relevant provision of the Act.

CBDT clarifies that for the purpose of making disallowance u/s 40(a)(i) the **appropriate portion** of the sum which is chargeable to tax under the Act shall form the basis of such disallowances & it has to be **determined by A.O.** considering facts & circumstances.

**Eg:-** Suppose a Co. remits \$ 500,000 to a USA firm abroad for rendering services partly in India and partly in USA. Entire \$ 500,000 can't be disallowed as entire amount is not chargeable in India. The A.O. has to determine the relevant portion of Service which is provided in India & accordingly make disallowances. Say the A.O. determines that 40% of Service are received in India, disallowance u/s 40(a)(i) will be only \$ 2,00,000.

### Section 40(a)(ia): PAYMENT TO RESIDENTS PAYEE

↓		↓
Deduct Tax	<b>AND</b>	Deposit till time limit specified u/s <b>139(1)</b> <b>i.e. Due Date of filing of Return.</b>

**Note:-** If tax is not deducted or after deducting it is not paid then **30%** of expenditure will be disallowed. (FA 2014).



**Not Applicable for N.R or Foreign Co.**

- \* Where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted in the previous year but paid after the due date of filing of return, then 30% will be allowed in the P.Y. in which payment is made.

### Section 201(1) (FA 2012)

#### If an assessee

↓		↓
Fails to Deduct TDS	<b>OR</b>	After ded <sup>n</sup> fails to pay TDS
↓		
Then he shall be deemed to be "Assessee in Default"		



**CONSEQUENTLY HE IS LIABLE TO PAY:**

1. Penalty u/s 221 which can be up to TDS not deducted or not paid.
2. Interest u/s 220 @ 1% p.m.

\* **It is well established law laid down by various courts that deductor shall be treated as 'Assessee in default' only if :-**

1. Deductor has failed to deduct TDS **AND**
2. Deductee has also failed to pay tax directly.

**2ND PROVISO TO SECTION 40(a)(ia)**

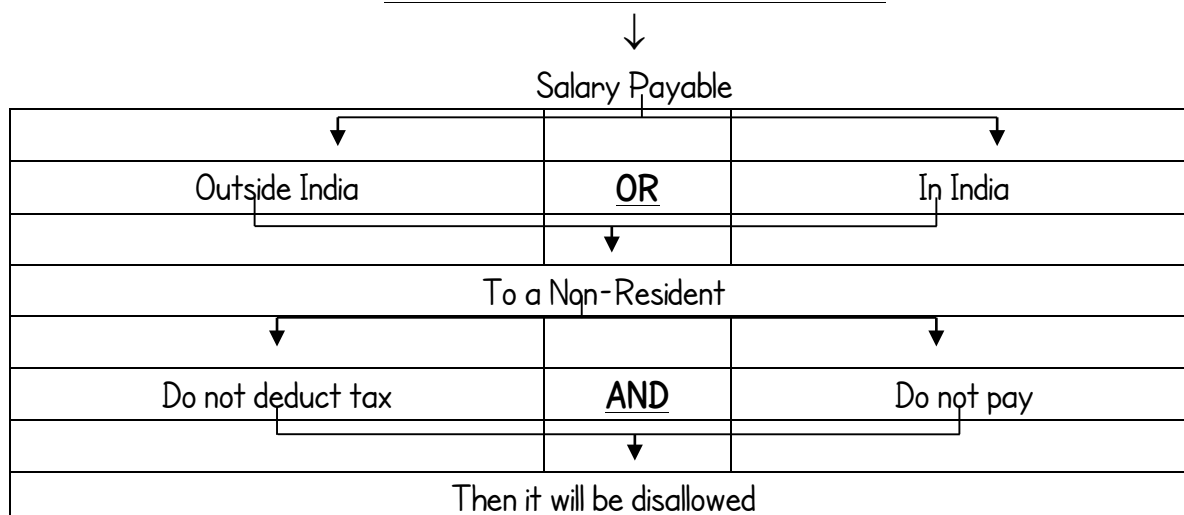
Where assessee has failed to deduct TDS & he is not treated as Assessee in default u/s 201(1), then for the purpose of section 40(a)(ia) it shall be deemed that assessee has deducted and paid the tax on such amount on the date of furnishing of return by Resident payee & deduction of such expenditure will be allowed. ( Finance Act 2012 )

**VERY MUCH NEEDED CLARIFICATORY JUDGEMENT :**

It was held by SC in the case of Palam Gas Services that disallowance u/s 40(a)(ia) shall apply not only in respect of those amount which are payable during the PY but is also applicable in respect of those amount which are paid during the PY.

Further, disallowance u/s 40(a)(ia) is applicable not only to assesses following mercantile system but also cash system. The above judgement has overridden the Allahabad HC judgment of Vector Shipping Co.

The above judgement is also applicable to sec 40(a)(i).

**Section 40(a)(iii): SALARY TO NR**

**Note:-**

It means if an assessee has deducted but not paid, then it will be allowed & other consequences of TDS will prevail. This might be a lacunae in the law.

OTHER DISALLOWANCES			
Sec 40(a)(ii)	Sec 40(a)(iia)	Sec 40(a)(iib)	Sec 40(a)(v)
<u>Income tax</u> is disallowed.	<u>Wealth tax</u> is disallowed.	Royalty, fees, service charges etc. paid by State Govt. undertaking to State Govt. <b>₹ Refer TB3</b>	Employer paying <u>tax on Non monetary perquisites</u> of Employees. Such perquisite is Exempt <b>₹ 10(10CC) 3</b>

**EQUALISATION LEVY****₹ REFER INTERNATIONAL TAX LATER ON 3**

(Introduced by CH VIII of FA 2016)

1. Many companies in India, in order to make online ads, make payment to foreign companies like Facebook, google, etc. Such Co's do not have a PE in India. The issue under consideration is, the India Co's and non-residents having PE in India, are making huge payments to these Co's and claiming deductions of such exp. However, these foreign Co's are not liable to tax in India because as per the DTAA, foreign Co will not be liable to tax in India if it does not have a PE.  
This leads to revenue loss of CG, i.e., ded<sup>n</sup> on one hand and exemption on another therefore, Ch VIII of FA, 2016 has introduced the concept of Equalisation Levy (EL) wef 1-6-16.
2. As per **Sec 165 of Ch VIII of FA, 2016** any amt of consideration paid to a non-resident, in respect of certain specified services, i.e, online ads, etc. shall be liable for EL @ 6%.
3. Such EL is payable by a resident carrying on B/P or a non-resident having a PE in India to a non-resident not having a PE in India.
4. In the following cases, Equalisation Levy is **not applicable**.
  - Where the aggregate amt of consideration for a specified service **does not exceed Rs. 1L.**
  - Where payment is **not made for B/P**
  - As per **Sec. 166, of FA 2016**, such levy has to be **deducted & paid by 7th** of the following month. In case the assessee does **not deduct**, then also the assessee has to **pay by grossing up.**

→ As per **Sec 170 of FA**, in case of **failure to pay** within time specified, interest will be levied @ **1% or part** thereof. As per **Sec 171** of FA 2016, if the assessee **fails to deduct** equalisation levy, then he is liable to pay **penalty equivalent to EL**.

**After deducting**, if the assessee **fails to pay** such levy, then penalty will be **lower of EL failed to pay (OR) Rs 1,000 for every day** for during which, the failure continues.

5. As per **Sec 40(a)(ib)**, if an assessee has not deducted EL or after deducting, has not paid on or before, the due date mentioned in Sec. 139(1), then such expenditure will be **disallowed** in the hands of the assessee. However as per the proviso, such expenditure will be allowed in the year of actual payment.
6. As per **Sec 10(50)**, any income arising from such specified service and chargeable to equalisation levy, shall be **exempt** from tax.

### **SEC 43B :- CERTAIN DEDUCTIONS ALLOWED ONLY ON ACTUAL PAYMENT**

**Notwithstanding anything contained in any of the prov. of IT Act, following deductions will be allowed on actual payment :**

- (a) Tax, duty, cess or fees under any other law OR
- (b) **Employer's** contribution to any provident fund or superannuation fund or gratuity fund or any fund for the welfare of EE'S OR
- (c) Bonus or commission payable to Employees OR
- (d) Interest on any loan or borrowing from public Financial Institutions or state Finance Corp. or State Industrial Investm Corporation OR
- (e) Interest on any loan or advance from scheduled Bank (including Cooperative Banks) OR
- (f) Any Leave Salary OR
- (g) Any expenditure which is payable to Indian Railways for use of Railway Assets shall be allowed as deduction only in the year in which it is ACTAULLY PAID. ( FA 2016)

#### **AMENDMENT MADE BY FINANCE ACT ( NO. 2 ) 2019 :**

#### **Note :**

- 1) The above deductions will be **allowed in the year** in which it incurred even if it is **paid** till due date of return specified u/s 139(1).
- 2) However, if the **payment is not made** till due date of filing of return, then it will be allowed in the **year of actual payment**.

- 3) A bank guarantee given by a company towards disputed tax liabilities does not amount to actual payment and hence it is not allowed as deduction.

### EMPLOYEE RELATED ISSUES:

#### TREATMENT OF EMPLOYEES CONTRIBUTION IN THE HANDS OF EMPLOYER :-

As & when the employer deducts EE's contribution, it is treated as an income in the hands of the employer as it is defined as income u/s 2(24)(x). Subsequently, when such contribution is deposited before the funds due date i.e. 15th day of the following month, then it is allowed as dedn in the hands of EER u/s 36(1) (va) to nullify the income.

The intention of the legislature is far clear that **EE's contribution is not subject to the due date mentioned u/s 43B**, but it is the **funds due date only**. However, Delhi H.C. in the case of Aimil Ltd & Uttrakhand H.C. in kiccha Sugar Co. Ltd has given a **contradictory view** by holding that the due date should be read as mentioned in Sec 43B.

However Gujarat High Court has disallowed the Employees Contribution if payment is made after 15 days.

#### CASE I:- INCLUSIVE ACCOUNTING

<b>Books of Accounts</b>				Say this Rs 10,000, sales Tax is not paid till the date of filing return
(1) Bank A/c	Dr	200,000		
To Sales A/c		200,000		
(Incl. of Sales Tax)				<b>Computation of Total Income :-</b>
			NP as per P & L A/c	1,90,000
			(+) Sales Tax Disallowed	10,000
			Total Income	2,00,000

(2) Sales Tax A/c	Dr	10,000		
To Sales Tax Payable A/c		10,000		
<b>Profit &amp; Loss A/c</b>				
To Sales A/c		10,000	By Sales A/c	200,000
To NP A/c		190,000		
		<u>2,00,000</u>		<u>2,00,000</u>

**Case II:-EXCLUSIVE ACCOUNTING**

<b>Books of Accounts :-</b>		Sales Tax should be Routed through P * L A/c (Chowringee Sales Bureau)	
Bank A/c	Dr	200,000	
To sales A/c		190,000	
To Sales Tax Payable A/c		10,000	

P & L A/c		Computation of Income	
-	By Sales	NP as per P & L A/c	1,90,000
	1,90,000		
To NP A/c	190,000	(+) Sales Tax Dis.	10,000
		↙ Total Income	<u>200,000</u>

Though Not Dr  
to Profit & Loss  
A/c

**EXPLANATION 3C & 3D TO SEC. 43B**

For removal of doubts, it is hereby declared that a dedn of interest under clause (d) & (e) is available only if it is actually paid & not if it is just converted into new Loan.

**Circular 7/2006 Dated 17/7/2006 :-**

Any O/S interest which is converted into a loan will be **allowed** as dedn in the year in which such converted loan is actually paid irrespective of nomenclature being loan.

**SECTION 41(1):- RECOVERY OF EXPENDITURE & REMISSION & CESSATION OF TRADING LIABILITY (DEEMED INCOME)**

Sec 41(1)	Sec 41(1)	
Where any <b>loss or expenditure</b> has been <b>allowed</b> as deduction <b>AND</b> subsequently such amount is <b>received/written off</b> in respect of such loss or expenditure then it is deemed to be <b>Business Income</b> .	<b>Remission or cessation</b> of Trading liability is also deemed to be Business Income.	
	If working cap loan is waived off (trading liab.) then Sec. 41(1) is applicable.	If loan on FA is waived off. (Non-trading liab) Sec. 41(1) is Not Applicable.

1. This section is **applicable** even in the year in which **business has ceased**.
2. This section is **applicable** in the hands of **successor** if it is recovered by it where deduction was claimed by predecessor.

**UNILATERAL CESSATION OF TRADING LIABILITY**  
**(SEC 41(1) APPLICABLE]**

Mr. A:- Seller	Mr. B:- Buyer
B/S	B/S
Debtors 1,00,000	Crs. 100000 →

Where Mr. B i.e. buyer ceases a liability of Rs 1,00,000, then also Sec 41(1) is applicable even though such amount is not written off as bad debt by Mr. A as it amount to unilateral cessation of Trading Liability.

**POLY FLEX INDIA (P) LTD V/S CIT (SC)**

The assessee Co. paid excise duty under protest & took the deduction of the same. The assessee challenged the levy of such duty in H.C. & subsequently H.C. decided the case in the favour of the assessee. Department gave the refund of such E.D. to the assessee on the direction of H.C. Further, department challenged H.C. decision in S.C.

The issue under consideration is whether Sec 41(1) will be applicable when the assessee has received the money & matter is pending in S.C.

**JUDGEMENT :-**

Sec. 41(1) is a **deeming fiction** which comes into play as soon as **assessee receives** any amount in respect of such expenditure or losses. It is **irrelevant** that such receipt has been **disputed** by the department in further appeal. A.O. is justified in invoking sec 41(1) in the year in which assessee received the money.

**Note:**

Assessee has received the refund, therefore it is taxable in the year of receipt. In case, the refund is not received but only the order of HC is passed, then such amount won't be taxable till the time amount is received.

**RECOVERY OF BAD DEBTS :**

As per **Sec 41(4) Recovery of Bad Debts** which was allowed a deduction will be deemed to be **business income** irrespective of whether the business exists or not.

Further it was held by Supreme Court in the case of P.K. Kaimal that bad debts claimed by Predecessor and recovered by successor is not chargeable to tax.

### SECTION 14A:- EXPENDITURE INCURRED DISALLOWED IN RESPECT OF EXEMPT INCOME UNDER THIS ACT

- **No deduction** shall be allowed in the respect of **expenditure** incurred for earning **exempt income** under this ACT.
- The A.O. shall determine the amount of expenditure disallowed in prescribed manner.
- The prescribed manner is given in rule 8D.

### RULE 8D : METHOD FOR DETERMINING AMOUNT OF EXPENDITURE IN RESPECT TO EXEMPT INCOME.

- (i) Amount of Expenditure **Directly** relating to exempt income.

**AND**

- (ii) **an amount equal to one percent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income.**

### CIRCULAR 5/2014

Doubts have been raised by industry whether disallowances can be made even in those cases where no income has been earned by an assessee which has been claimed as exempt during the Financial year.

CBDT has put an emphasis on term **income should be exempt under this Act & not under the year in which the expenditure is disallowed.**

Eg:- If an assessee takes an loan in **P.Y. 2019-20** & invests that in tax free bonds in **P.Y. 2019-20**. However, interest on such tax free bonds is accrued & realized in **P.Y.2020-21**.

- CBDT clarifies that still the interest of P.Y. **2019-20** will be disallowed in P.Y.**2019-20** only irrespective of the fact that interest is earned in P.Y. **2020-21**.

### CIT V. KRIBHCO (2012) (DELHI)

The High Court observed that section **14A is not applicable for deductions**, which are permissible and allowed under Chapter VIA. Section 14A is applicable only if an income is not included in the total income as per section 10 of the Income-tax Act, 1961. Deductions under Chapter VIA are different from the exclusions/exemptions provided under Section 10.

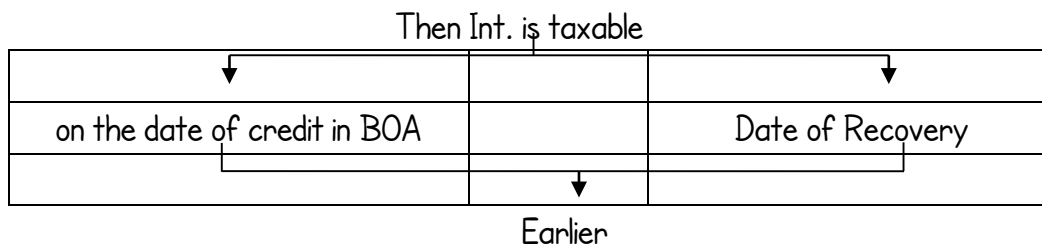
Section 14A of the Income-tax Act, 1961 [‘Act’] provides for disallowance of expenditure in relation to income not “includible” in total income.

**SECTION 43D :- INTEREST INCOME ON BAD & DOUBTFUL DEBTS**

- (a) In case of public Financial Institutions OR State Financial Corporation OR State Industrial Investment Corp. OR Sch. Bank Or **COOPERATIVE BANKS.**

**AND**

- (b) In case of Public Company whose object is providing L.T. Finance for Construction & Purchases of Houses in India.



**AMENDMENT MADE BY FINANCE ACT ( NO. 2 ) 2019 :**

**SECTION 44AA : MAINTENANCE OF BOOKS OF ACCOUNTS**

Specified Profession	
↓	↓
<b>Existing</b>	<b>New</b>
Keep & maintain BOA if GR > 1.5L in <u>All</u> <b>3</b> preceding PY's	Keep & maintain BOA, if GR is likely to be greater than 1.5 lakhs.

**Note :-** All the above BOA should be maintained for 6 PY's from the end of Relevant AY's.

**BUSINESS AND OTHER NON SPECIFIED PROFESSIONS**

	Other than Individual & HUF	Individual & HUF
<b>In case of existing business or profession</b>		
1. If income exceeds in any of the 3 preceding PYs (OR)	1,20,000	2,50,000
2. If Turnover exceeds in any of the 3 preceding PYs	10,00,000	25,00,000



<b>If business or profession is newly set up</b>		
1. If income is likely to exceed (OR)	1,20,000	2,50,000
2. If Turnover is likely to exceed	10,00,000	25,00,000

**Section 271A :-** Penalty for failure to keep & maintain BOA, other documents, etc.

A.O. or CIT (Appeals) may direct that such person shall pay by way of penalty a sum of Rs. **25,000.**

### SECTION 44 AB :- TAX AUDIT

<u>Business</u>	<u>Profession</u>
If T/O, Sales GR > 1 crore	GR > 50,00,000

### AMENDMENT MADE BY FINANCE ACT 2017

1. FA 2017 has added a new proviso to Sec 44AB which states that **if an eligible assessee opts for Sec 44AD, then he should not get his BOA audited unless the T/O exceeds Rs. 2cr.**
2. This increase in limit from 1cr to 2cr of tax audit is only applicable to assessee opting for Sec 44AD. In other words, if the assessee claims that his actual profits are lower than deemed profits, then he has to conduct tax audit.

**Due Date :- 30/09/2020 or 30/11/2020.**

### Section 271B :- Penalty for failure to get Accounts Audited

↓		↓
	OR	
0.5% of T/o, Sales or GR		Rs 1,50,000
	↓	
<b>Whichever is lower</b>		

**PRESUMPTIVE INCOME :-**

**Section 44AD :- Notwithstanding anything to contrary Contained in Section 28 to Sec 43C.**

↓	↓
<b>a. "Eligible Assessee"</b>	<b>b. "Eligible Business"</b>
→ Individuals, HUF, → Partnership Firm but <u>not a LLP</u> . <b>All Resident.</b>	Any Business except Sec. 44 AE & T/o, GR, Sales ≤ 2 Cr. <b>(Amended by Finance Act, 2016)</b>
<b>Then Deemed profits = 8% of T/O.</b>	

**NOTE:**

In order to **promote digital transactions & to encourage small unorganized businesses** to accept digital payments, FA 2017 has inserted a new proviso u/s 44AD(1) to provide that deemed profits would be **6% of Total T/O received during the FY or before D/D of filing of Return u/s 139(1)** provided it is received by any of the following modes:

1. A/c Payee Cheque
2. A/c Payee Bank Draft
3. Use of ECS
4. **such other electronic mode as may be prescribed ( Finance Act 2019 )**

However, the existing rate of 8% would continue to apply in respect of Total T/O received by any other mode.

**Illustration:**

An eligible assessee carrying out eligible business u/s 44AD provides the following details:

1. Total T/O for **FY 19-20** is Rs. 150 lacs
2. **Out of the above,**
  - (i) Rs. 25 lacs is received by A/c payee cheque during **FY 19-20**
  - (ii) Rs. 50 lacs is received by cash
  - (iii) Rs. 25 lacs is received by A/c payee cheque before due date of filing of Return
  - (iv) Rs. 50 lacs is not received till due date of filing of Return.

**Compute presumptive income u/s 44AD for AY 20-21**

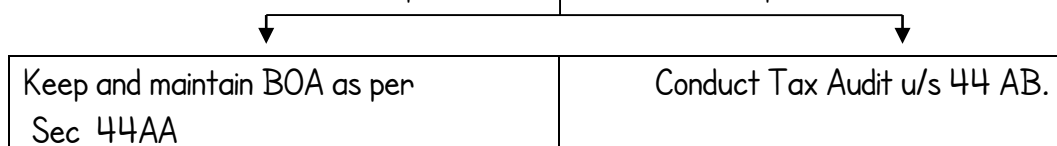
Mode of Receipt	Taxable @ 8%	Taxable @ 6%
By A/c Payee Cheque in <b>PY 19-20</b>	-	25l
By Cash in <b>PY 19-20</b>	50l	-
By A/c Payee Cheque before D/D u/s 139(1)	-	25l
Not recd.	50l	-
T/O Total	100l	50l
Deemed Business Profit	8l	3l

→ **Conditions to get covered u/s 44AD :-**

1. Assessee should **not claim** deduction under the head " Deduction in respect of certain Incomes " i.e. deduction under **CH VI A from 80-IA to 80RRB & Profit Linked Deductions**
2. **Sec. 44AD is not Applicable for certain assesseees :-**
  - Any profession **& Refer 44ADA**
  - Any person earning any income in the nature of commission or brokerage.
  - Any person carrying on any agency business.

**Notes :-**

- Disallowances u/s 40A(3) can't be made because Sec 44AD over sides Sec. 28 to Sec. 43C.
- Any deduction u/s **30 to 38 shall be deemed to have been already allowed.**
- The **WDV** of any asset shall be **deemed** to have been calculated as if depn is actually **allowed.**
- Dedn u/s 80C to Sec. 80GGC can be claimed.
- Unabsorbed dep u/s **32(2) can't be set off.** However brought forward losses u/s 72 can be set off.
- If an assessee claims that his actual profits are lower than deemed profits u/s 44AD, then



**Note: However above option will have serious consequences from Finance Act 2016 onwards.**

**AMENDMENTS MADE BY FINANCE ACT 2016 in Sec 44AD**

- 1) It is also amended that expenditure in the nature of **salary, remuneration, interest etc** paid to the partner as per Sec 40(b) shall **not be deductible** while computing the income u/s 44 AD.
- 2) It is also amended that where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five consecutive AY's relevant to the PY succeeding such PY not in accordance with the provision of 44AD, then he shall not be eligible to claim the benefit of this section for 5 AY's subsequent to the AY relevant to the PY in which the profits have not been declared in accordance with the provisions of Sec 44AD.

For example, an eligible assessee claims to be taxed on presumptive basis under sec 44AD for AY 2017 - 18 and offers income of Rs.8L on Turn-over of Rs.1 Cr.

For AY 2018 - 19 and AY 2019 - 20 also he offers income in accordance with the provisions of Sec 44AD

However for AY 2020 - 21 he offers income of Rs. 4L on Turnover of Rs. 1 Cr. Now in this case since he has not offered income in accordance with provisions of Sec 44 AD for 5 consecutive AY's after AY 2017 - 18, therefore now he will not be eligible to claim benefit of Sec 44AD for next 5 AY's [AY 21 - 22 to AY 25 - 26]

- 3) The eligible assessee shall be **required to pay Advance tax once by 15<sup>th</sup> March** of the Financial year. ( Same in sec 44ADA but u/s 44AE pay 4 times )

### **SEC 44ADA : PRESUMPTIVE INCOME TO SPECIFIED PROFESSIONALS**

A new section 44ADA is inserted in the Act, to provide for presumptive Income of an assessee who is engaged in any **profession which is specified** under Sec 44AA(1) such as,

- Legal, Medical, engineering, Architecture, Accountancy, Technical consultancy or interior Decoration or any other profession as notified by BOARD and Whose gross Receipts does **not exceeds Rs. 50L** in a previous year. Then Deemed profits are **50% of Gross Receipt**.
- This benefit is available to **all Resident assessee**.
- The restriction of 5 yrs as applicable in 44AD is not applicable here.
- The eligible assessee shall be **required to pay Advance tax once by 15<sup>th</sup> March** of the Financial year.

[Rest all same as Sec 44AD]

### **SECTION 44AE :- DEEMED INCOME IN CASE OF BUSINESS OF PLYING, HIRING OR LEASING GOODS CARRIAGE**

This section is applicable if the assessee does not own more than 10 Goods Carriage at any time during the PY.

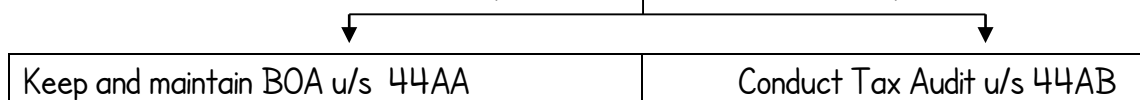
**LIGHT MOTOR VEHICLE** : Deemed Income = Rs. 7,500 per month or part of the month per vehicle for no. of months vehicles are owned by the assessee( All whether R or not )

**HEAVY MOTOR VEHICLE** : Deemed Income = Rs. 1,000 per ton , per month or part of the month, per vehicle for no. of months vehicles are owned by the assessee. ( All whether R or not ) ( FA 2018 )

Heavy Motor Vehicle = Gross Vehicle weight > 12000 kgs.

**Deduction of remuneration & interest to a Firm is allowed as per sec 40(b).  
( Not allowed in sec 44AD/ADA)**

If an assessee claims that his actual profits are lower than deemed profits u/s 44AE, then



### **EXPENDITURE ON ISSUE OF SHARES & DEBENTURES OR OTHER LONG TERM BORROWINGS :-**

- (1) It was held in case of **Punjab State Industrial Development Corp. Ltd. (SC)** that fees paid to ROC for expansion of authorized capital of the Company is **directly related to capital Expenditure, hence not allowable.**
- (2) It was held that in the case of **Brooke Bond India Ltd.** expenditure incurred by Co. in connection with a view to increase its **share capital is directly related to expansion of capital base** of the company and such exp. will be considered as capital expenditure as the benefit from them will be enduring in nature.
- (3) It was held in the case of **General Insurance Corporation** that issuance of **bonus shares does not result in any inflow of fresh funds** or increase in the capital employed; the capital employed remains same. It is merely capitalization of reserves of company's fund. Thus, it is **revenue in nature.**
- (4) It was held by Supreme Court in the case of **India Cements Ltd** that any expenditure incurred for **raising loans** or debentures is **fully allowed** as deduction. Therefore expenses on issue of non convertible as well as convertible bonds/ debentures is allowed as deduction.
- (5) It was held in the case of **Madras Industrial Investment Corp.** that **discount on issue of debentures** will be allowed as deduction **over the life** of debentures.
- (6) It was held in the case of **Kodak India Ltd** expenditure incurred on **issue of Shares will always be capital** in nature. It was further held that, whichever way one looked at it, the object of the assessee was to increase its share capital, whether it did so to continue the business after the RBI directive.
- (7) It was held in the case of **S.M. Holding & Finance (P) Ltd. (Bom. H.C.)(2009)** that **premium on redemption** of debentures is **allowable** as deduction and there should not be any argument regarding its certainty.

(8) It was held in the case of **ITC Hotels Ltd** that expenditure in respect of issue of **convertible debentures** shall be treated as **revenue** expenditure, even though it will be converted at a Later Stage.

**Alternative View:**

However, some courts have held that such expenditure is done for enduring benefits and therefore, nature of such expenditure will be capital and hence, not allowable.

(9) It was held in the case of **Mascon Technical Services Ltd** that the expenditure on issue of shares will be capital in nature notwithstanding the fact that public issue was not materialize **due to non clearance by SEBI**.

- All the above 9 judgements are relevant if the case does not fall under Sec. 35 D.

**MISCELLANEOUS ISSUES:**

**SPECIAL CHARGING SECTION**

1. As per Sec. 28(va), any amount received or receivable in cash or kind under an agreement for not carrying out any activity in relation to any business or profession shall be chargeable under the head PGBP.
  - ★ The payer will get the deduction of such fees if TDS is deducted @ 10% u/s 194J.
2. As per Sec. 28, value of any benefit or perquisites arising from business or profession shall be chargeable under the head PGBP.

**TREATMENT OF INSURANCE**

- ★ Any amount received from life insurance policy is exempt u/s 10(10D) if :

(1) If policy is issued on or after 01/04/2003 but up to 31/03/2012	Annual premium $\leq$ 20% of sum Assured (SA) (AP)
(2) If policy is issued on or after 01/04/2012 but up to 31/03/2013	AP $\leq$ 10% of SA
(3) If policy is issued on or after 01/04/2013	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> <p><b><u>Normal</u></b> AP <math>\leq</math> 10% of SA</p> </div> <div style="text-align: center;"> <p><b><u>Disability</u></b> u/s 80DDB AP <math>\leq</math> 15% of SA</p> </div> </div>

If premium is above the limit, then claim is fully taxable & no deduction in Sec. 80C can be allowed.

### KEYMAN INSURANCE POLICY

1.	2.	3.
If recd by Employer	If recd by Employee	If recd by Nominees of Employee
↓	↓	↓
Taxed u/s 28	Taxed u/s 17 - profits in lieu of salary	Taxed u/s 56 - IFOS

### Special Charging section relating to Export Assesses ( Sec 28 )

1. Profit on sale of Import Licence under an import & export scheme shall be chargeable under the head PGBP.
2. Any amount of duty of customs repaid or repayable as drawback shall be chargeable under PGBP.
3. Cash assistance received or receivable against exports under any scheme of government is chargeable under PGBP.

### Amendment made by FA 2018:

- ★ Any compensation due or received by any person in connection with termination or modification of terms & condition of any contract relating to business shall be chargeable under the head PGBP ( Also Refer IFOS )

### Miscellaneous Issue No. 1

If assessee incurs expenditure on repairs for which he has not undertaken to bear the cost of repairs, whether such expense will be allowed u/s 30 ?

- Such deduction will not be allowed u/s 30. However if such expense is incurred for the purpose of B/P, then it will be allowed u/s 37(1).

### Miscellaneous Issue No. 2

#### What is the meaning of interest?

- As per Sec. 2(28A), interest means interest payable in any manner in respect of any money borrowed or debt incurred & includes any **service** fee or other charge in respect of money borrowed or debt incurred.

### Miscellaneous Issue No. 3

The assessee took a Long Term loan of 10 years from IDBI, a Public Financial Institution. The said loan was used for the purpose of business. Later on, as a measure of restructuring to reduce the rate of interest, the assessee made a payment of Rs. 10lacs as lumpsum prepayment premium. Whether a complete deduction of 10L will be available in 1 year or in 10 years?

#### Judgement:

Delhi HC in the case of **Gujarat Guardian Ltd.** held that such prepayment premium shall be allowed as deduction in 1 year itself. This is because as per Sec. 36(1)(iii) interest on borrowed capital used for business is allowed as deduction. As per Sec. 2(28A), the term interest is wide enough to include any other charges like lumpsum prepayment premium. Further, the loan was taken from a PFI. Thus, the deduction shall be allowed u/s 43B in 1 year itself irrespective of method of Accounting.

### INTER-LINKING IN THE CHAPTER OF PGBP:

#### Sections where Manufacturing or Production occurs :

1. Sec 32(1)(ia) - Additional Depreciation.
2. Sec 32AD - Investment Allowance to 4 States.
3. Sec 35(2AB) - In house Scientific Research.
4. Sec 35AD - Investment Linked Deductions ( **3 Business**)

#### Sections where Company is mentioned:

1. Sec 36(1)(ix) - Expenditure on Promotion of Family Planning.
2. Sec 35(2AB) - In house Scientific Research.
3. Sec 35AD - Investment Linked Deductions ( **2 Business**)
4. Sec 35CCD - Expenditure on Notified Skill Development.

#### Sections where Indian Company is mentioned:

1. Sec 35D - Amortisation of Preliminary Expenses.
2. Sec 35E - Amortisation of Exploration Expenses.
3. Sec 35DD - Amortisation of Amalgamation or Demerger Expenses.

#### Sections where Amortisation is mentioned :

1. Sec 36(1)(ix) - 1/5<sup>th</sup>.
2. Sec 35D - 1/5<sup>th</sup>.
3. Sec 35E - 1/10<sup>th</sup>.
4. Sec 35DD - 15<sup>th</sup>.



5. Sec 35DDA - 1/5<sup>th</sup>.  
 6. Sec 35ABB/ABA - Over the life of License.

**Sections where deduction is based on percentage :**

1. Sec 32AD - 15% of Actual Cost.  
 2. Sec 33AB - 40% PGBP (before 33AB & b/f losses ).  
 3. Sec 33ABA - 20% PGBP (before 33ABA & b/f losses ).  
 4. Sec 36(1)(vii) - 8.5%/5 % of GTI & 10% Aggregate Rural Advances.  
 5. Sec 36(1)(viii) - 20 % of PGBP from 36(1)(viii) Activities OR  
 200% of ( Paid up Capital + GR ) on last day - SR A/c on 1<sup>st</sup>  
 day.  
 6. Sec 35D - Higher of ( 5% of COP or 5% of CE ) . Compare with Actual Exp and  
 then whichever is lower.

**TAXATION OF CO-OPERATIVE SOCIETIES**

**Tax Rates**

Upto Rs. 10,000	10% of Total income
Between Rs. 10,000 to Rs. 20,000	1000 + 20% of Excess.
Above Rs. 20,000	3,000 + 30% of Excess.

**Note:** If TI > Rs. 1 cr then Surcharge @ 12%.

Health & Education cess @ 4 %.

**Note:** No AMT if Cooperative Societies Income is Deductible u/s 80P.

**SECTION 80P :- DEDUCTION IN RESPECT OF INCOME OF COOPERATIVE SOCIETIES :**

**(A) SPECIFIED DEDUCTIONS (100% DEDUCTIBLE)**

**(I) Profits of following specified Activities :-**

(i) Carrying on business of banking or providing **credit facilities to its members.**

**Note:-** \* However, exemption **not** available to **Co-operative Banks.**

\* But exemption is available in respect of primary agricultural society or a primary co-operative agricultural and rural development bank.

(ii) A **cottage** industry

(iii) **Marketing** of Agriculture produce **grown by its members.**

(iv) **Purchase** of agriculture implements, seeds, livestock or other articles intended for agriculture for the purpose of **supplying its members.**

(v) Processing **without aid of power** of agriculture produce of its members.

(vi) Collective disposal of Labour of its members.

(vii) Fishing or allied activities.

**(II) PROFITS OF CERTAIN PRIMARY CO-OPERATIVE SOCIETY :-**

<p>A co-operative society engaged is supplying milk, oil seeds, fruits or vegetables grown or raised by its members.</p>	<p>To →</p>	<p>(1) Federal Co. Op Society. (2) Govt. or Local Authority. (3) Govt. Co. or statutory Corp. All of the above should be engaged in supplying milk, oil seeds, fruits or vegetables to public.</p>
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(III) Income from investment with Co-operative Societies → 100% Interest / Dividend is deductible.

(IV) Income from letting of godowns or warehouse → 100% of Rental Income is deductible.

(B)

**GENERAL DEDUCTION**

<p>(i) If it is a consumer co-operative society ↓ Rs. 1,00,000 flat</p>	<p>(ii) In case of Any other Society ↓ Rs. 50,000 flat.</p>
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**TAXATION OF FILM PRODUCER / FILM DISTRIBUTOR**

	QUANTUM OF DEDUCTION	
	Films released on OR before 2nd Jan 2020	Films released after 2 <sup>nd</sup> Jan 2020
1. Taxation of Film producer (Rule 9A)		
(a) Film producer sells <u>all rights</u> of exhibition of the film in P.Y.	Entire cost of production.	Entire cost of production.
(b) Film producer himself exhibits the film in all or some areas.	Entire cost of production	(i) Cost of production OR
(c) Film producer sells the rights of exhibition in respect of some areas.		(ii) Amount realised by exhibiting the film & sale of rights of exhibition; <b>whichever is less.</b>
(d) Film producer himself exhibits the film in certain areas and sells the rights of exhibition in respect of all or some of remaining areas.		

<b>(2) Taxation of Film Distributor (Rule 9B)</b>	<b>Films released on OR before 2nd Jan 2020</b>	<b>Films released after 2<sup>nd</sup> Jan 2020</b>
<b>(a)</b> Film distributor sells at rights of exhibition of the film in P.Y.	Entire cost of acquisition.	Entire cost of acquisition.
<b>(b)</b> Film distributor himself exhibits the film in all or some areas.	Entire cost of acquisition.	(i) Cost of acquisition OR (ii) Amount realised by exhibiting the film & sale of rights of exhibition; <b>whichever is less.</b>
<b>(c)</b> Film distributor sells the rights of exhibition in respect of some areas.		
<b>(d)</b> Film distributor himself exhibits the film in certain areas and sells the rights of exhibition in respect of all or some of remaining areas.		

**Note:**

- a) If any portion is **met by govt**, then it shall be **reduced** from the cost of production.
- b) Cost of Production shall **not include** the following:
1. Expenditure incurred for preparation of positive prints.
  2. Expenditure incurred in connection with the advertisement of the film.
- These 2 expenses will be allowed as revenue expense in the year of release.
- c) It is clarified that Rule 9A does not apply to abandoned feature films. The cost of production of an abandoned feature film is to be treated as revenue expenditure and allowed as per the provisions of section 37 of the Income-tax Act, 1961.

**TAXATION OF MUTUAL CONCERNS**

The basic principle of mutuality is that no person can trade with himself or make income out of it. These associations arise when a group of persons associate together with a common object and contribute funds for achieving that object.

**HOW MUTUAL CONCERNS ARE TAXED ?**

Others ( Social Clubs etc )		Trade / professional Association (Sec. 44A)			
General Receipts from member	Specific Sr. to member	Specific services to outsiders			
Exempt		Taxable	General Receipts(x) from members	Receipts from members for specific	
			(-) General Expense(x)	Service	xxx
			Surplus / Deficit	(-) Exp.	(xx)
		Exempt	Can Be (xx)	<b>PGBP</b>	xxx
			***Set off xxx		

\*\*\* This deficit can be set off against the business income or any other income subject to 50% of total income. ( First give the effect of B/F Loss & UAD and then set off the deficiency u/s 44A)

**BANIKPUR CLUB LTD. (SC)**

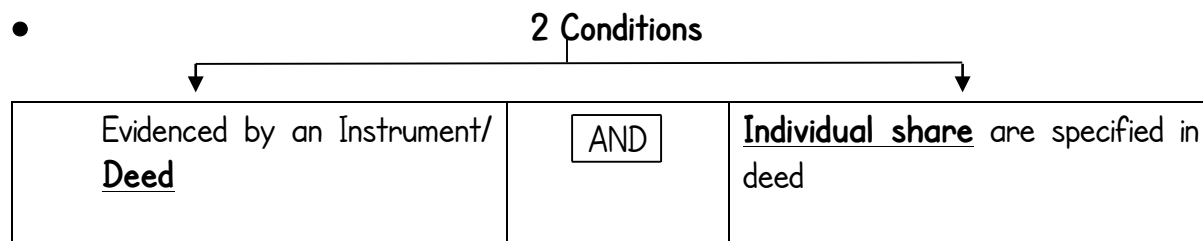
It was held by SC that in this case sale of drinks, refreshments, etc to members does not involve any commerciality as these are privileges, conveniences, etc which members are entitled from clubs. The objective of club was not profit motive but it was to give services to its members. This transaction is not subject to tax.

**SIND CO-OPERATIVE HOUSING SOCIETY (BOMBAY H.C)**

H.C. held any amount received as transfer fees from incoming members or outgoing members are not subject to tax as these amounts are used for maintenance of property of society only.

## TAXATION OF FIRM ( INCL LLP )

### SECTION 184:- ASSESSMENT AS FIRM



### OTHER CONDITIONS

- \* A certified Copy of deed shall **accompany the Return** of Income for first time.
- \* Deed Should be **certified by all the partners**, not being minor.

*	If there is <b><u>change</u></b> in constitution	then furnish →	<b><u>Revised</u></b> instrument of partnership along with ROI
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### DEDUCTION OF REMUNERATION, SALARY, BONUS, COMMISSION :-

Interest/ Remuneration shall be not be allowed in following cases

<b>Section 184(5)</b>	<b>Sec 185</b>
If firms fails to comply with Sec 144 (Best Judgement Assessment)	If the firm does not comply with technical requirements of Sec. 184.

- \* **Note:-** However above expenditures will not be taxable in the hands of the partner.

### SECTION 187:- CHANGE IN CONSTITUTION OF FIRM

At the time of making assessment u/s 143, 144, 147 or 153A	<u>It is found</u> → that a change has occurred.	Then assessment shall be made on Re constituted Firm.
--	--	---

- \* However, as per Sec. 188A all the partners will be jointly and severally liable.

### SECTION 188:- SUCCESSION OF ONE FIRM BY ANOTHER FIRM

- \* If the case is not covered by Sec 187, then separate assessment for predecessor separate for successor
- \* Succession occurs when all the partners change.

### SECTION 188A:- JOINT & SEVERAL LIABILITY OF PARTNERS FOR TAX PAYABLE BY FIRM :-

→ Every person who was, during the P.Y. a partner, a legal representative of such person who is deceased, shall be jointly and severally liable along with the firm for any tax, penalty or other sum payable.

### SECTION 189:- FIRM DISSOLVED OR BUSINESS DISCONTINUED

\* Every person who was at the time of dissolution, a partner and a legal representative of such person, shall be jointly or severally liable. (Refer Page No :- )

\* Tax Rate of Firm = Flat 30% (+) (12% Surcharge when TI > Rs. 1 Cr) (+) 4 % Health & Education cess.

LTCG taxed u/s 112, STCG taxed u/s 111A, LTCG referred u/s 112A .

### Section 40(b) :- REMUNERATION AND INTEREST TO PARTNERS.

Remuneration	Interest
(1) To <u>working partners</u> .	(1) To Any partner
(2) To <u>Individual only</u> .	(2) To Any partner
(3) Should be authorized by Deed.	(3) Should be authorized by Deed
(4) In the partnership Deed:- specify manner <u>OR</u> lays down the manner	(4) Rate of Interest should be specified in the deed.
(5) Should <u>not be retrospective</u> .	(5) Should <u>not be retrospective</u> .

### Circular No. 739 (By CBDT) (1996) :-

It has been observed by CBDT that assessee's are incorporating clause like amount of remuneration will mutually agreed upon between the partners or amount of remuneration will be as provisions of 40(b).

The CBDT has clarified that remuneration shall be admissible only if the deed either **specifies the amount or lays down the manner of quantifying the same**. If the assessee does not fulfils the above conditions, then A.O. is justified in disallowing the remuneration.

### NOVEL DISTRIBUTING ENTERPRISE (2001) (KERELA HC)

The issue under consideration is whether interest paid to partners on current A/c which is not authorized by deed is allowed, if the partners have included said interest in their individual returns.

It was held that assessee has to mention the rate of interest of **both current and capital A/c**. Such impugned (disputed) interest on **current A/c** will be **disallowed** as it is not specified in the deed, notwithstanding the fact, the partners have included in their individual returns.

\* **Section 40(b) :- Interest can't exceed 12% p.a. (Simple Interest)**

\* **Section 40(b) :- MAXIMUM PERMISSIBLE REMUNERATION:-**

(a) In case Book profit is negative	Rs. 1,50,000 flat
(b) In case Book profit is upto Rs. 3,00,000	Rs. 150,000 <u>OR</u>
	90% of Book profit
	<b>(whichever is more)</b>
(c) On Balance book profits	60% of Book profit

#### EXPLANATION TO SECTION 40(b)

##### MEANING OF BOOK PROFITS :-

- (1) Net profit as per profit and loss A/c.
- (2) Give effect from Sec 28 to 44D.
- (3) Add remuneration if debited to P & L A/c.

#### STEPS TO BE FOLLOWED DURING QUESTIONS :

**Step 1 :** Find out Book Profit.

**Step 2:** Find out Maximum Remuneration Allowable.

**Step 3:** Find out Total Income & Tax Liability.

#### EXPLANATION TO SEC. 40(b)

↓	↓
<u>Explanation 1</u>	<u>Explanation 2</u>
Where an individual is a partner in representative capacity, then interest / rem paid on individual capacity will not be covered by Sec. 40(b)	Where an individual is a partner in a firm in personal capacity, then Sec 40(b) will not be applicable for any amount paid to HUF.

**GREAT CITY MANUFACTURING CO. (ALLAHABAD H.C.)**

It was held that disallowances covered u/s **40A(2) can't be** made to cases **covered under Sec. 40(b)**. Sec 40(b) allows remuneration, the moment the amount or the manner in which the remuneration is to be quantified is mentioned. Remuneration paid to working partner within the limits specified u/s 40(b) can't be disallowed by invoking Sec 40A(2).

**CIRCULAR NO. 8/2014 → 31.03.2014.**

It is clarified that total income of a firm for a section 10(2A) includes exempt or deductible incomes under various provisions of the Act. It is therefore clarified that **income of the firm** whether taxed in the hands of the firm or exempt, **under no circumstances it will be taxed in the hands of the partner.**

Eg:-	Total Income	100L
	(-) Ded <sup>n</sup> u/s 80IA / 80IB	<u>(100L)</u>
	Taxable Income	NIL

**Still the partners share will be exempt u/s 10(2A).**

**Whether remuneration and interest is allowed for Assessee's who are covered under presumptive income (Sec 44AD/44ADA/44AE)?**

**Ans:** No for Sec 44AD/ADA . But for Sec 44AE it is allowed.

**SECTION 78(1) :- C/F AND SET OFF OF LOSSES IN CASE OF CHANGE IN CONSTITUTION**

Where a change in constitution of firm takes place on account of retirement or death of a partner, the firm shall not c/f and set off the following b/f losses :-

Shares of Retired / Deceased partner in b/f losses	xx
(-) Share in C.Y. profits	<u>(xx)</u>
Can't be c/f by the firm	xx

(Refer page No :- )

**Note: Sec. 78(1) is not applicable if the partner does not die/retire but there is only is a change in PSR.**

**REMUNERATION PAID BY HUF TO KARTA OR ANY MEMBER OF HUF :-****Jugal kishore Baldeo Sahai v/s CIT**

<b>(a)</b> Paid under valid & bonafide Agreement.	<b>(b)</b> In the interest of & expedient for the business of family.	<b>(c)</b> Reasonable & not excessive.
---	---	--



**TAXATION OF POLITICAL PARTIES****Exemption u/s Section 13A :**

Following items shall not be included in total income

- (a) Income from House property.
- (b) Income from other Sources or CG.
- (c) Voluntary contributions ( **See below for conditions** )

**Conditions**

↓	↓	↓
(a) Keeps & maintains BOA & other documents as would enable A.O. to compute income.	(b) If V/C per person exceed <u>Rs.20,000</u> then keep record of name & address of donor.	(c) Audit by Accountant.

**AMENDMENT MADE BY FINANCE ACT 2017:**

The issue under consideration is whether it is necessary for a political party to file an IT Return to claim exemption u/s 13A

In order **to bring transparency**, FA 2017 has amended Sec 13A to provide that, to claim exemption u/s 13A, a political party is supposed to **furnish return u/s 139(4B) on or before the due date of furnishing return u/s 139(1)**.

The **second issue** under consideration is, whether a political party can accept donations in cash In order to discourage cash transactions, FA 2017 has made an amendment in Sec 13A to provide that **no donation of Rs. 2,000 or more** is received otherwise than the following

- (1) A/c payee crossed cheque
- (2) A/c payee bank draft
- (3) ECS
- (4) Electoral Bonds ( **Refer Below** )
- (5) **or such other electronic mode as may be prescribed.**

( **Underlined and bold words are amended by Finance Act (No.2) 2019** )

Further, in order to address the concern of anonymity of the donors, it is proposed to amend the said section to provide that the political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond

**TAXATION OF ELECTORAL TRUST**

**SECTION 13B**

- (1) Any voluntary donation received by such trust would be exempt u/s 13B, **if 95%** of aggregate **donation** received during the PY **along with surplus** if any brought forward from earlier years **is distributed** to a registered political party.
- (2) If an ET earns an income in form of interest or any other income by investing in fixed deposit or other securities then such interest / other income will not be exempt u/s 13B.
- (3) Donations given to such trust are eligible for deduction in the hands of the donor u/s 80GGC.

**TAXATION OF AOP / BOI**

**Sec 167B**

↓	↓
Where share of the members are known & determinable	Where shares of the members are unknown and undeterminable.

**WHERE SHARES OF THE MEMBERS ARE KNOWN AND DETERMINATE:**

←	↓	→
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
<p>None of the members have *TI &gt; BEL</p> <p style="text-align: center;"><b>AND</b></p> <p>None of the members are assessable at a rate higher than MMR.</p> <p>Tax AOP / BOI at rates applicable to Individual</p> <p>Here make statement of allocation as per Sec 67A for members</p>	<p>One or more members have *TI &gt; BEL.</p> <p style="text-align: center;"><b>AND</b></p> <p>None of members are assessable at a rate higher than M.M.R</p> <p>Tax entire income of AOP / BOI at MMR</p> <p>Share of Income from AOP is Exempt as per sec 86. <b>( Also Refer MAT )</b></p>	<p>One or more members are assessable at rate higher than M.M.R</p> <p>Tax on AOP / BOI shall be aggregate of:</p> <p>(i) Tax at such higher rate on such member share &amp;</p> <p>(ii) Tax at MMR on balance income</p> <p>Share of Income from AOP is Exempt as per sec 86. <b>( Also Refer MAT )</b></p>

**Where share are indeterminate & unknown**

←	→
Where none of members are assessable at a rate higher than MMR	Where any of the members are assessable at a rate higher than MMR
Tax Entire AOP at MMR	Tax entire AOP at such higher rate
Share of Income from AOP is Exempt as per sec 86.	Share of Income from AOP is Exempt as per sec 86.

**Note:**

1. As per Sec 2(29C), MMR i.e. maximum marginal rate means the highest of the slab rates applicable to an individual including surcharge & cess. ∴ MMR = \_\_\_\_\_% .
2. As per Sec 40(ba), No deduction of remuneration and interest shall be allowed to AOP/BOI.
3. \*Total Income includes all income other than share of income from AOP or BOI.
4. No MAT shall be applicable on that share of Income from AOP/BOI , on which AOP/BOI has paid tax at MMR. **ξ Refer Chapter of MAT ξ**

\*\*\*\*\*

**(PY 2019-20) FILING OF RETURN AND ASSESSMENT PROCEDURE**

	Previous year 2019-20			
139(1)	139(3)	139(4)	139(5)	139(9)
	Loss	Belated	Revised	Defective

Scrutiny Notice	Order	Remedy to Assessee		
↓	↓	↓	↓	↓
u/s 143(2)	u/s 143(3)	CIT(A)	Rectify	Revision
↓	↓	246A	154	264
Commencement of proceedings	Completion of proceedings			
└──────────┘				
* Pendency of Proceedings *				

**FILING OF RETURN OF INCOME [SECTION 139(1)]****WHO IS OBLIGATED TO FILE ROI ?**

- (a) A Company or a Firm (Always ).  
 (b) Any other Person, if **GTI > B.E.L.**

**NOTE :** GTI = Total Income before deductions under CH VIA.

**4<sup>TH</sup> & 5<sup>TH</sup> PROVISO TO SEC 139(1):**

**R & OR Individual (+) Beneficial Owner or Beneficiary (+) any asset** (including Financial Interest in any entity ) located **outside India** or signing authority of any account located outside

India is also suppose to **file return**, even if the GTI is lower than BEL. (Refer Page \_ \_ \_ \_)

**DUE DATES U/S 139(1)**

	30.09.2020	30.11.2020	31.07.2020
(i) Company		Assessee covered by Transfer Pricing	Any other case
(ii) Other persons whose accounts are audited (any law)			
(iii) Working partners of a firm whose A/C's are audited		} Because working partners get remuneration from firm as per Sec. 40(b).	

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019**

**CONSEQUENCES OF NOT FILING THE RETURN WITHIN THE DUE DATE U/S  
139(1):**

1. PGBP & CG Losses are not allowed to Carry Forward.
2. Interest u/s 234A.
3. Fee u/s 234F.
4. Best Judgement Assessment u/s 144.
5. Notice u/s 142(1)(i) requiring assessee to file ROI.
6. Exemptions u/s 11 & 13A shall not be allowed.
7. As per Sec 80AC no profit linked deductions shall be allowed.

**SECTION 80AC :- NO DEDUCTION FOR PROFIT LINKED DEDUCTIONS:**

**No deduction** u/s 80-IA / IB / IAB /IAC/ IC / ID / IE / IBA / JJA /JJAA / P / PA / QQB / RRB/LA, **unless ROI** is furnished on or before due date **u/s 139(1)**.

**SEC 234F: FEE FOR LATE FILING OF INCOME TAX RETURN :**

1. **Rs. 5,000** if the return is filed after due date but till **31<sup>st</sup> Dec of the AY**.
2. **Rs. 10,000** in any other case.
3. In case where the **TI < 5,00,000**, then the fee shall not exceed **Rs. 1,000**.
4. Sec. 140A also provide that while paying SA Tax, such fee shall be considered.
5. Sec 143(1) also provide that while processing the return, such fee shall be considered.

**RETURN OF SPECIAL ASSESSEE'S :**

Section	Particulars	Conditions to file	Due Date	Penalty
139(4A)	C/R Trust	If TI before exemption u/s 11 & 12 > B.E.L.	30.09	272A,i.e. Rs 100 per day & 234F
139(4B)	Political party	If TI before exemption u/s 13A > B.E.L.	30.09	234F
139(4C)	Certain Special Institution whose income is exempt u/s 10.	If IT before exemption u/s 10 > BEL £ Also Refer Proviso to section 143(3) }	30.09	272A,i.e. Rs 100 per day & 234F
139(4D)	University, college, etc u/s 35(1) (ii),(iii)	No Limit £ Also Refer Proviso to section 143(3) }	30.09	234F
139(4E)	Business Trust	No Limit	30.09	234F
139(4F)	Investment Fund	No Limit	30.09	234F

**SECTION 139(3) R.W. SEC 80 :- LOSS RETURN**

If loss under head :-	} →	
PGBP OR		is to
Capital Gains		be c/f → Then file ROI within <u>T/L u/s 139(1)</u>

**KEY NOTES :-**

- (1) Section 80/139(3) does **not prohibit set off** of losses of P.Y. as well as C.Y.
- (2) Losses of **H.P.** can be **c/f** even if, return is filed late, as it is covered by sec 71B.
- (3) **U. A.D.** can be **c/f** even if return is filed late, as it covered by Sec 32(2). Further, it was held that UAD can be c/f even if return is not filed.
- (4) The **restriction is not on b/f** losses of earlier years.
- (5) Losses of PGBP or CG u/s 72, 73, 73A, 74 or 74A are covered u/s 139(3).

**CAN DELAY IN FILING ROI BE CONDONED TO C/F LOSSES/ REFUND CASES?**

1. Make an **application** for condonation of delay in filing ROI claiming refund or losses:
  - a) If the claim is not more than **10L** for any 1 year, then application can be made to **CIT**.
  - b) If the claim exceeds 10L but not more than **50L** for any 1 year then application shall be made to **Chief CIT**.
  - c) If **exceeds 50L**, the application shall be made to the **Board( CBDT)**.
2. Application shall **not considered after 6** years from the end of R.A.Y.
3. CIT will direct the AO to make necessary enquiries.
4. **No interest** shall be granted on belated **refunds**.

**SECTION 139(4) :- BELATED RETURN**

If ROI is not filed before the time limit under Sec 139(1) then he may furnish ROI :-

<b>Before the expiry of R.A.Y.</b>	<b>OR</b>	Before completion of Assessment
↓ Whichever is earlier		

- (1) "Assessment" includes Best Judgement u/s 144.
- (2) Completion of Assessment = **Date of Passing the Order** & not date of service of order.

**SECTION 139(5) :- REVISED RETURN**

If a person has filed ROI u/s 139(1) **or 139(4)** and discovers any **omission or wrong** statement, then he may furnish a revised return: -

↓ <b>Before Expiry of the R.A.Y.</b>	<b>OR</b>	↓ Before completion of Assessment
Whichever is earlier.		

**KEY NOTES :-**

- (1) A return can be revised for 'n' number of times, subject to time limit u/s 139(5).
- (2) A Loss Return filed u/s 139(3) can be revised.
- (3) A return can be **revised** even **after the scrutiny notice** u/s 143(2).

**SECTION 139(9) :- DEFECTIVE RETURN**

If <b>A.O. considers</b> →	That Return is "defective"	→ then he may intimate the defect to assessee
		<b>AND</b>
		give him <b>O.O.B.H.</b> to rectify the defect within 15 days. A.O. may extend the T/L on application by Assessee.

Refer Text Book for list of Defects.

**Note:** If assessee does **not revert** back within 15 days, then ROI shall be "**Void ab-initio**".

**Note:** For Discussion on Signing of Return & ITRP Refer Page \_\_\_\_\_ of Textbook.

**ASSESSMENT PROCEDURE****SECTION 142(1)(i) :- NOTICE FOR RETURN FILING**

↓	↓	↓	↓
Assessee	(+) <b>Not filed</b> ROI till - u/s 139(1)	(+) The A.O may <b>issue a</b> <b>notice</b> to file ROI	(+) T/L Mentioned in such Notice.

**KEY NOTES :-**

1. To make Best Judgement Assessment u/s 144, it is not mandatory to issue such notice.
2. This return can neither be revised u/s 139(5) nor belatedly filed u/s 139(4).

**Section 142(1)(ii) : PRELIMINARY ENQUIRY:**

For the purpose of making assessment			
A.O. by <u>issuing</u> this notice can require the assessee to furnish: <b>(max. for 3yrs prior to P.Y.)</b>			
↓	↓	↓	↓
Accounts	Documents	Various other Information	A statement of A & L



**KEY NOTES :-**

By Issuing Notice u/s 142(1)(ii) alone, the A.O. can't make an assessment. Following notice must be send to initiate an assessment proceedings:

**LEGAL POSITION FOR MAKING ASSESSMENTS:**

FOR MAKING AN ASSESSMENT	IT IS MANDATORY TO ISSUE
Under section 143(3)	Notice under section 143(2)
Under section 144	Show Cause Notice under section 144 [except in one case as referred to in section 144]
Under section 147	Notice under section 148
Under section 153A	Notice under section 153A

**SECTION 142(2A) :- SPECIAL AUDIT**

If at "**Any stage of proceedings**" before **A.O.**,

He is "**of the opinion**" that having regard to :-

↓		↓
(1) Nature & complexity of A/c's (OR) (2) Volume of A/c's (OR) (3) Doubts about correctness of A/c's (OR) (4) Multiplicity of transactions (OR) (5) Specialized Nature of Business.	<b>AND</b>	Having regard to the <b>Interest of Revenue</b> , it is necessary to get Accounts Audited.

Then he **may direct** the Assessee to get the Account's Audited after taking approval  
(+)

Give him **O.O.B.H.**

**KEY NOTES :-**

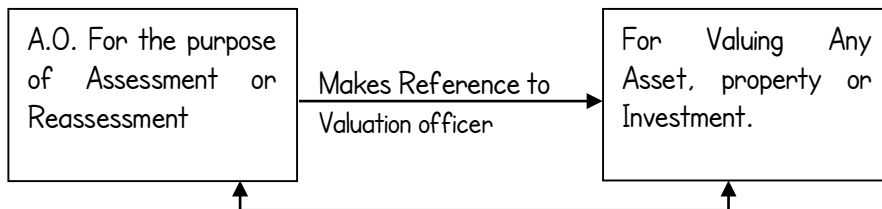
- (1) **Pendency** of proceedings before A.O. is "**Sine - Qua-Non**" (Absolutely Necessary).
- (2) **O.O.B.H.** must be given to Assessee **before** making a **direction** u/s 142(2A).
- (3) If section 142(2A) is initiated **without** giving a reasonable **opportunity** to the Assessee, then the assessee may **file a writ petition** to H.C. & if the H.C. is satisfied with the Assessee, then it may Quash such direction.
- (4) The direction is issued with **previous approval of chief commissioner** or commissioner  
(+) Audit done by C.A. (+) Expenses will be borne by C.G.

**(5) What is the time Limit to get BOA Special Audit?**

It must be done within the time **specified in the direction**. However, this time can be **extended by A.O , suo-moto** or on an **application** by an assessee, but in no case the time limit allowed earlier along with extended time should **not exceed 180** days from date of receipt of direction by assessee.

**(7)** If A.O. wants to use the material gathered from special Audit ,then he has to give O.O.B.H. to assessee before he uses such material for such assessment( **other than sec 144**). But to make assessment u/s 144 he need not give O.O.B.H. (Refer Page No. \_\_ for Illustration).

**SECTION 142A : VALUATION OF ASSET BY VALUATION OFFICER.**

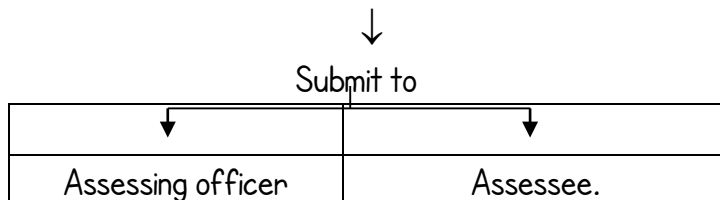


Whether or not he is satisfied about the correctness or completeness of A/cs of Assessee. } F.A.2014.

**→ How the valuation officer will value the Asset ?**

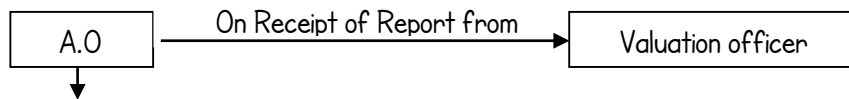
↓	↓
(1) After <b>taking into account</b> such evidence as the Assessee may produce and any other evidence gathered in his possession (+) O.O.B.H.	(2) If the Assessee <b>doesn't co-operate</b> then, he will value based on Best of his judgement.

**Report made by valuation officer**



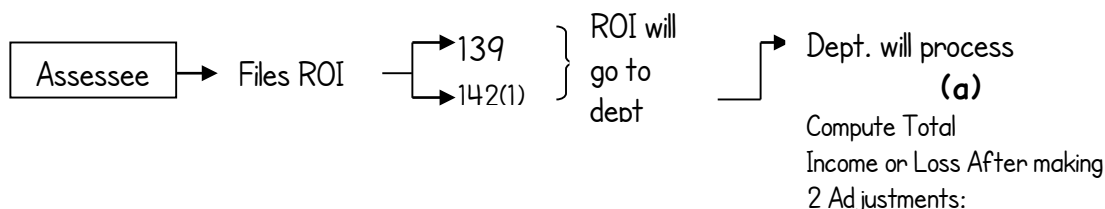
**What is the time limit for sending this report?**

Within 6 months from the end of the month in which reference was made by A.O.



Shall make Assessment based on such report after giving O.O.B.H.

**SECTION 143(1) :- SCHEME OF PROCESSING RETURNS**



- (1) A claim on the basis of an entry in the return inconsistent with another entry.
  - (i) Any Arithmetical Error.
  - (ii) "An incorrect claim if such incorrect claim is apparent from info in return."
- (2) Information required to substantiate entry has not been furnished. (80G)
- (3) Deduction exceeds specified statutory limit (M/P/R/F).

**Following adjustments were added by Finance Act, 2016:**

1. Disallowance of loss claimed, if return for the year for which loss has been claimed was furnished beyond the due date specified in section 139(1).
2. Disallowance of expenditure indicated in tax audit report but not considered in the Return of Income.
3. Disallowance of deduction claimed u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if the return has been filed beyond the due date specified in section 139(1).

However, no adjustment will be made without intimating the assessee about such adjustment in writing or in electronic mode and giving him a time of 30 days to respond. The adjustment will be made only after considering the response received or after the lapse of 30 days in case no response is received.

### TIME LIMIT FOR 'SENDING' INTIMATION U/S 143(1)

Within 1 year from end of F.Y. in which return is made only in following cases :-

(1) Where tax as or interest is found <u>payable</u> after making adjustment	<u>OR(2)</u> Where tax or interest is found <u>refundable</u> after making Adjustment.	<u>OR(3)</u> After making Adjustment it results in increase / decrease of <u>Loss</u> even though <u>no change in tax</u> .
--	--	---

**Note :-** It is mandatory to send intimation only in the above 3 cases. In any other case Acknowledgement of return will be deemed intimation.

### Can Assessee file an appeal / Revision against Intimation ?

Against an Intimation an assessee can go for CIT(A) or Rectification, but Revision by CIT u/s 264 is not possible.

### Can Assessee revise a return after receipt of intimation ?

Yes, it can be revised subject to conditions to Sec 139(5).

### SEC 143(2): SCRUTINY NOTICE :

Where a return is filed u/s 139 or 142(1), then A.O. or **Prescribed Authority** shall serve a notice to the assessee for scrutiny. Prescribed Authority = ITA not below the rank of ITO.

Time Limit= It should be served within 6 months from the end of F.Y in which ROI was furnished.

### SEC 143(2) LINKED WITH SEC 292BB:

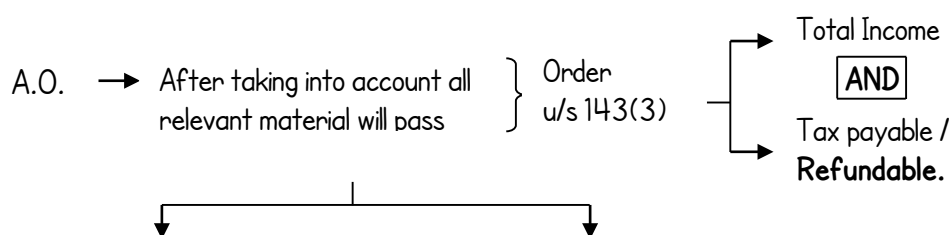
Where an assessee has cooperated in any inquiry, then it shall be deemed that any notice which is required to be served upon him, has been duly served on time and he shall be precluded from taking any objection in proceeding under this ACT that, notice was not served or not served on time or served in an improper manner.

However, if the assessee has raised such objection before the completion of such assessment, then assessment cannot be conducted.

### IS PROCESSING A RETURN ALWAYS MANDATORY ?

Processing of Return is mandatory even in cases where notice is issued u/s 143(2).

However, in case of recovery of revenue in doubtful cases, a new Sec 241A is inserted which provides that where any refund is due u/s 143(1), then the AO may withhold such refund till the date of assessment if he is of the opinion that grant of refund may adversely affect the recovery of revenue. Then he may for reasons recorded in writing and with prior approval of PCIT or CIT withhold the refund.

**SECTION 143(3) SCRUTINY / REGULAR ASSESSMENT**

Assessee	3 <sup>rd</sup> party
(1) ROI	(1) Special Audit Report ₹ 142(2A)₹
(2) Material gathered u/s 143(2)	(2) Valuation Report ₹ 142A₹
	(3) SFT ₹ 285A₹
	(4) Survey ₹ 133A₹
	(5) Summons ₹ 131₹ etc

**1<sup>st</sup> and 2<sup>nd</sup> proviso to Sec 143(3)**

If A.O. wants to disallow an exemption u/s 10(21),10(22B),10(23A),10(23B),10(23C)(iv)(v)(vi)(via) of certain institution or specified institution specified u/s 35(1)(ii)/(iii), then A.O must intimate the violation of conditions by such institutions to CG./prescribed Authority. Then CG/PA will rescind the notification & withdraw the approval & then only A.O. can disallow such exemption.

The A.O suo motu cannot disallow the exemptions without intimating CG/PA.

**3<sup>rd</sup> Proviso to Sec 143 (3)**

A.O. will disallow exemption u/s 11 & 12 or 10(23C), if C/R exceeds 20% of total receipts. This disallowance can be made irrespective of cancellation of registration by CIT u/s 12AA.

Here AO can suo motu disallow. ₹ Refer discussion of Trust \_\_\_\_\_₹

**KEY NOTES:-**

- (1) Assessment u/s 143(3) can't be made without ROI & without scrutiny Notice.
- (2) It was held in the case of "Goetze India Ltd (SC)" that a fresh claim can be made before A.O in the Assessment proceedings only through a Revised Return & not through the letter. The A.O. can't entertain any new claim merely on the basis of letter.

**AMENDMENT MADE BY FINANCE ACT 2018**

A new scheme for the purpose of making assessment has been introduced for greater transparency & accountability in the following manner:

1. by eliminating interaction between AO & assessee.
2. by optimal utilization of resources.
3. by introduction of team based assessment .

For this purpose, new Sec. 143(3A) & 143(3B) are introduced through which the government will notify the scheme.

**SECTION 144 :- BEST JUDGEMENT ASSESSMENT**

If any Assessee FAILS:			
↓	↓	↓	↓
<b>(a)</b> To furnish ROI within 139(1) & has not furnished the ROI u/s 139(4) upto the date of SCN u/s 144.	<b>(b)</b> To comply sec 142 (1) ↓	<b>(c)</b> To comply Sec 142(2A) ↓	<b>(d)</b> To comply sec 143(2) ↓
SCN ( Y )	SCN ( N )	SCN ( Y )	SCN ( Y )
Then, A.O. After taking into account all relevant material.		He will make Best Judgement and determine <b>Tax Payable</b> .	

**(e)** As per Sec. 145(3), if an assessee violates 145(1) / (2), then AO may initiate BJA u/s 144. As per 145(1), a PGBP or IFOS assessee can maintain BOA on cash or mercantile basis regularly followed by assessee. As per 145(2), an assessee following mercantile system shall follow the ICDS.

**KEY NOTES:**

- No refund can be granted u/s 144. Further A.O. can't assess the income below the returned income and loss higher than Returned Loss.
- Sec 144 must be made on scientific basis and not adhoc.
- The A.O. must specify the basis of computation of income u/s 144. The order u/s 144 should be a SPEAKING ORDER.

### SECTION 144A: POWERS OF THE JOINT COMMISSIONER TO ISSUE DIRECTIONS IN CERTAIN CASES

1. The Directions can be issued only if the case is pending in an assessment/ reassessment.
2. The Directions can be issued by the JC to the AC/ DC/ ITO, i.e. AO.
3. The Directions can be in favour of assessee or can be against the assessee.
4. No appeal can be filed against the Directions . If the Directions issued are prejudicial to the assessee then AC/ DC/ ITO will disallow the deduction or tax the receipt, in accordance with Directions of JC under section 144A. The assessee can file an appeal to CIT (Appeal) against the assessment order of DC/ AC/ ITO.

### SECTION 147 : INCOME ESCAPING ASSESSMENT.

If Assessing officer  
(+)  
has Reason to believe  
(+)  
Income has escaped assessment  
(+)  
Subject to Sec 148 to sec 153  
(+)  
Assess or Reassess "Such Income" and  
also any other income subsequently  
noticed during assessment proceeding.

### DOCTRINE OF PARTIAL MERGER

A.O. order u/s 143(3)		Appeal to CIT (A) <u>or</u> Revision u/s 264 by CIT made on Exp D. CIT(A) or CIT allowed the deduction of Exp. D.
Exp. A - Allowed		
Exp. B - Allowed		
Exp. C - Allowed		
<b>Exp. D - Disallowed.</b>		

As per the concept of "Partial merger" part of A.O's. order get merged with the order of CIT (A) or CIT. As per this concept A.O. can re-open assessment u/s 147 for Exp A, B or C but not for Exp D as it was a subject matter of Appeal / Revision.

<b>Income Escaped</b>	
↓	↓
Assessee's Default	Subsequent Development In Law
↓	↓
Assessment u/s 147	Retrospective Amendment/SC Judgement
(+)	(+)
Penalty can be imposed.	Disallowance (+) Assessment u/s 147 . But No penalty.

### WHAT AMOUNTS TO REASON TO BELIEVE?

1. Matters arising from CAG Audit Report can be considered as RTB. However personal opinion of CAG cannot be considered as RTB.
2. Sec 147 cannot be invoked based on rumours, gossips, as these does not amount to RTB.
3. It was held by SC in the case of Kelvinator of India Ltd that sec 147 cannot be invoked merely on the basis of change in personal opinion.
4. Following constitutes RTB for invoking sec 147:
  - (i) A Later SC Judgement.
  - (ii) Retrospective Amendment in Law.
  - (iii) Evidence in possession of A.O. etc.
5. **A mere objection by an Audit team cannot be termed as Reason to Believe. The Belief should be of AO and not of Audit Team.**

### SEC 148: SERVICE OF NOTICE

Before making an assessment or reassessment u/s 147, AO has to fulfill the following 2 conditions:

<b>Serve a notice</b> requiring the assessee to <b>file ROI</b> within the time specified in the notice.	<b>AND</b>	Record the <b>reasons</b> for doing so.
--	------------	---



**KEY NOTES:**

1. If any income is subsequently noticed which has escaped assessment in earlier years, then there is no need to record reasons of the same. ( **Explanation 3 to sec 147** )
2. It was held in the case of Ranbaxy Laboratories Ltd and Jet Airways P Ltd that the phrase '**and also**' used in sec 147 is of wide import.  
Therefore, the A.O cannot independently tax "such other income" without charging the original income for which reason to believe was recorded earlier u/s 148.  
In such cases if AO wants to tax such independent income then he has to issue a fresh notice u/s 148.
3. The AO is required to issue separate notice for each assessment years.
4. Return filed u/s 148 cannot be revised.
5. It was held in the case of Jawaharlal Gupta that AO is duty bound to supply to the assessee the reasons recorded by him for issue of notice u/s 148, after filing of ROI.

**SECTION 149(1) :- TIME LIMIT FOR ISSUE OF NOTICE U/S 148.**

↓	↓	↓
<b>(a)</b> If escaped income is likely to be < 1 lakh then issue notice for 4 years from end of R.A.Y.  ↓	<b>(b)</b> If escaped income is likely to be ≥ 1 lakh then issue notice for 6 years from end of R.A.Y.	<b>(c)</b> If escaped income is w.r.t. a foreign Asset, etc then 16 years from end of R.A.Y.
Section 151 :- Sanction	Sec 151:- Sanction	
<ul style="list-style-type: none"> <li>● By JC</li> <li>● By AC/ DC/ITO if JC is satisfied with reasons.</li> </ul>	<ul style="list-style-type: none"> <li>● By A.O. if P.C.C / C.C. / P.C. /C is satisfied with reason.</li> </ul>	

**KEY NOTE:**

It was held in the case of Kanubhai M Patel that what is to be seen is date of sending the notice u/s 148 and not date of signing the notice. The word used in sec 149 is send.

**Exceptions to the Time Limit u/s Section 149 (1)****First proviso to Sec 147:**

Where an Assessment has been made earlier u/s 143(3) or u/s 147, then notice u/s 148 shall not be issued after expiry of 4 yrs from the end of R.A.Y. if the foll 2 conditions are satisfied

:

- (a)** Assessee has filed ROI

AND

(b) Assessee has disclosed fully & truly all material facts necessary for assessments.

**Note:** It is possible only when income has escaped assessment because of mistake of A.O.

### Second proviso to Sec. 147

Nothing contained in proviso 1 shall apply in respect of asset located outside India.

### SECTION 150 - NO TIME LIMIT FOR ISSUE OF NOTICE ( Ignore during exams )

Notwithstanding anything contained in section 149, a notice under section 148 may be issued at any time for the purposes of making an assessment or reassessment in consequence of or in order to give effect to the finding or direction contained in an order under section 250, 254, 260A, 262, 263 or 264 of the Income-tax Act or the ORDER OF A COURT UNDER ANY OTHER LAW.

Practically its difficulty to reopen assessment which is older than 6 years, as under Income Tax Act an assessee is supposed to maintain Books of Accounts for only 6 years.

### Section 152(1):- What would be the Tax Rate to be charged on Escaped Income?

The tax rate would be of the year to which escaped income relates and not of the year in which assessment is done.

### SUN ENGINEERING PVT LTD (SC)

#### Facts of the case :-

↓	↓	↓
<b>(1)</b> Filed ROI for AY <b>2012-13</b> declaring income of Rs. 20,00,000	<b>(+)(2)</b> A.O. passed order u/s 143(3) disallowing an Exp "A" although SC allowed such exp in some other case Amt = Rs. 15L  Assessed income = Rs. 35L  • No appeal / Revision / Rectification was filed.	<b>(+)(3)</b> On <b>31.01.2019</b> A.O. issued notice u/s 148 for AY <b>2010-11</b> for escaped income =Rs. 25,00,000.
<b>(4)</b> Assessee filed ROI as follows :-		
Assessed Income	35,00,000	
(+) Escaped Income	25,00,000	
(-) Expenses wrongly disallowed u/s 143(3)	(15,00,000)	
	45,00,000	

The assessee contended that undisclosed income of Rs. 25,00,000 should be reduced by expenditure of Rs. 15,00,000 which couldn't be made earlier.

The court has made the following observations as follows :-

- (1) Sec 147 is not for the benefit of the assessee.
- (2) The matters which have been concluded earlier can't be revised u/s 147 i.e. sec 147 does not wipe off the original order which has achieved finality.
- (3) The Assessee can't be permitted to convert the reassessment proceedings into appeal/revision proceedings and seek relief in respect of items rejected earlier.
- (4) Scope of "such income" shall only be confined to the escaped of income & no deduction shall be allowed from it for the purpose of Sec 147. However, if the assessee can show nexus between the escaped income & expenditure disallowed earlier, then it can be considered to be reduced.

### SUN ENGINEERING V/S SEC 152(2)

#### TIME LIMIT FOR MAKING ASSESSMENT OR REASSESSMENT

	Normal Period of Assessment/ Reassessment	Where a reference has been made to TPO to determine Arm's Length Price {Sec 153(4)}
Assessment under section 143(3) or under section 144	12 months from the end of the relevant Assessment Year.	24 months from the end of the relevant Assessment Year.
Assessment or reassessment under section 147	12 months from the end of the financial year in which notice under section 148 was served.	24 months from the end of the financial year in which notice under section 148 was served.
Fresh assessment under section 143(3)/144/147 where assessment has been cancelled and referred back to Assessing Officer for fresh assessment by an order under section 254, 263 or 264	12 months from the end of the financial year in which order under section 254 is received by the CIT or order under section 263 or 264 was passed by the CIT. <b>{ To be done later }</b>	24 months from the end of the financial year in which order under section 254 is received by the CIT or order under section 263 or 264 was passed by the CIT. <b>{ To be done later }</b>

**SECTION 154 :- RECTIFICATION OF MISTAKE**

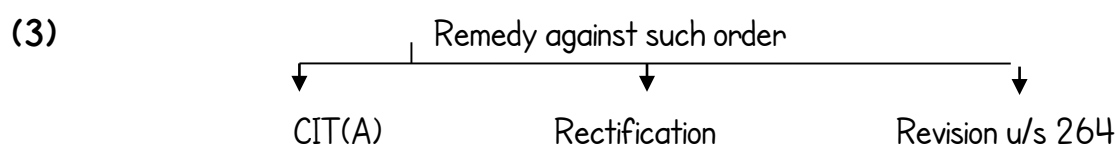
To Rectify a (\*) **"Mistake Apparent from Record"** an ITA may amend

↓	↓	↓	↓
Any order Passed by it	Any Intimation u/s 143(1)	Any TDS Intimation u/s 200A(1)	Any TCS Intimation u/s 206CB(1)

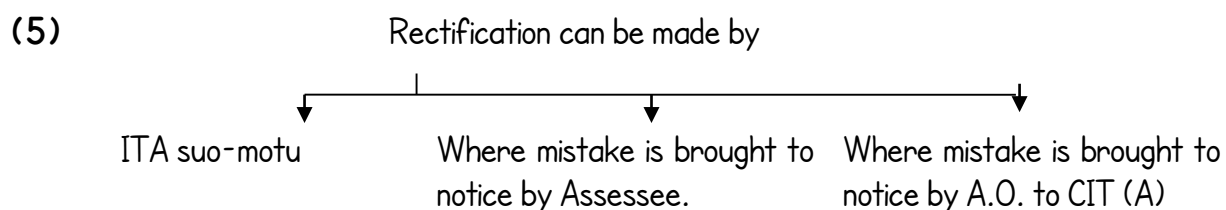
(\*) "MAR" means about which no two views are possible & there could be no arguments.

(1) ITAT is not an ITA. It can't rectify mistake u/s 154. However it can rectify its Mistake Apparent from Record u/s 254(2).

(2) The rectification is made by passing rectification order u/s 154.



(4) Supreme Court Judgement is considered as "MAR" (But Not H.C.)



(6) If rectification leads to enhancing the liability, then give O.O.B.H.

**SECTION 154(7)(8) :- TIME LIMIT FOR PASSING RECTIFICATION ORDER**

↓	↓
By ITA, suo-moto 154(7)	By Application by Assessee 154(8)
↓	↓
Within 4 years from end of F.Y. in which order sought to be amended was passed.	Within 6 months from end of the month in which application is received by it. Otherwise deemed to be in favour.

**What is the time limit to file Rectification Application ?**

At least file application within 4yrs from the end of FY in which order sought to be amended was passed. Then ITA can rectify order to the advantage of assessee. ( **Sec 154(8) NA** )

**HIND WIRE INDUSTRIES LTD (SC)**

<p>A.Y. 2005-06 143(3) order passed on 30.01.2008 ↓ A.O. allowed dep @ 5% on Building (+) A.O. also disallowed certain dedn u/s 43B even though it was paid on time</p>	<p>Assessee filed a Rectification Application u/s 154 on 12.07.11 claiming dedn u/s 43B &amp; Assessee did not claim 10% depreciation.</p>	<p>A.O. passed Rectification order on 31.12.11 &amp; allowed deduction.</p>	<p>Assessee filed another Rectification Appln on 04.07.2013 claiming depn @ 10%.</p>
---	--	---	--

**DECISION:**

The supreme court held that Sec 154 provides that Rectification can be made before expiry of 4 years from the end of F.Y. in which order sought to be amended was passed.

This order will not necessarily mean the original order but also rectified order. The A.O. should have rectified both the mistakes in his rectification order on 31.12.2011 ∴ he has rectified only 1 mistake, there is a mistake in the order passed u/s 154. Therefore, Rectification Application is valid & can be made till 31.03.2016.

**DOCTRINE OF PARTIAL MERGER****Assessing officer's order :**

Expn A → Allowed

Expn B

Expn C

Expn D

} → Disallowed

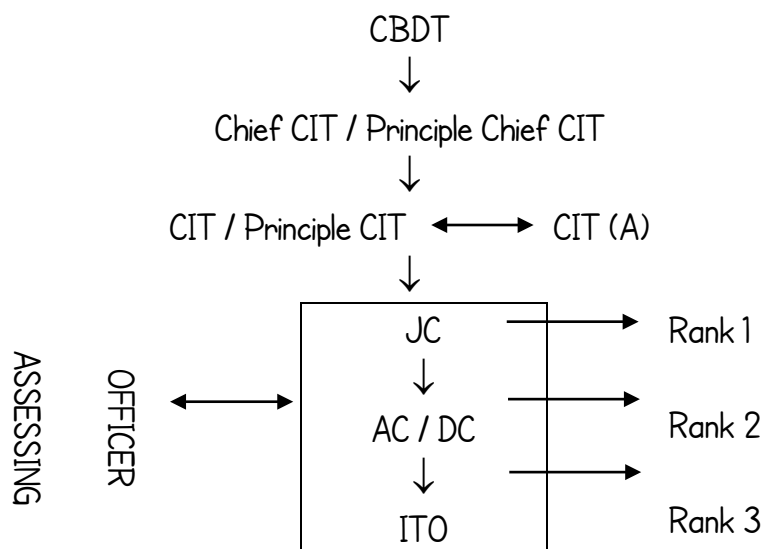
} → Appeal CIT (A) has been  
made on Exp C & D.

Applying the principle of DPM, rectification not to be made for Expn C & D.

**Note:** DPM earlier came in sec 147 and it will again come in sec 263. However in sec 264 Doctrine of Complete Merger will come.

## ITA & THEIR POWERS

### HIERARCHY OF INCOME TAX DEPT ( SEC 116 )



### SECTION 131(1): POWERS OF ISSUING SUMMONS

I.T.A may issue a summon for following matters		
↓	↓	↓
(a) Discovery & Inspection.	(b) Enforcing attendance of any person & examining both.	(c) Compelling production of BOA & Documents.

(1) All the above powers are vested in civil court.

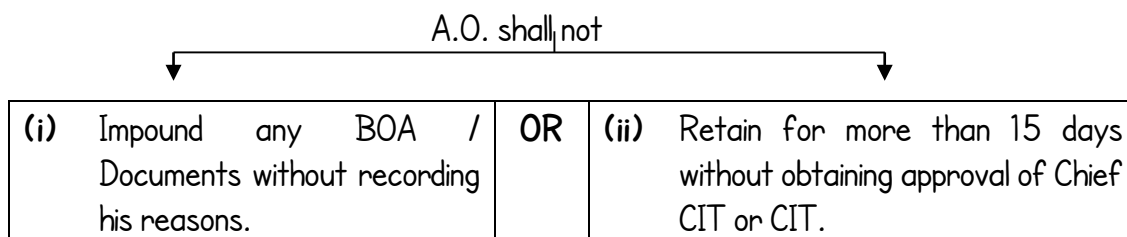
(2) These powers can be exercised even if no proceedings are pending.

As per section 131(2) an ITA not below the rank of Assistant commissioner of IT for the purpose of making any inquiry / investigation in respect of any person in relation to an agreement referred to in section 90,90A can exercise powers u/s 131(1).

### SEC 131(3) :- IMPOUNDING OF BOOKS AND DOCUMENTS

(1) ITA may impound and retain any BOA & DOC in its custody for such period as it thinks fit.

(2)



### SUBHA & PRABHA BUILDERS PVT LTD (KARNATAKA)

#### Can extension of 15 days be granted indefinitely ?

The H.C held that extension can be exercised supplementing the outer Limit of 15 days for few more days depending on the circumstances. ∴ The outer Limit is specified in days, the period can be extended in days & not in months/years.

### SECTION 133: POWER TO CALL FOR INFORMATION

A.O. OR CIT (A) may require :-			
(a) Any firm to furnish names, addresses of partners and their shares.	(b) Any HUF to furnish names & addresses of members of family.	(c) Any trustee, guardian/agent to give details of its trusts, etc.	(d) Any Assessee to furnish names & Addresses of all persons to whom he has paid any Rent, commission, Interest, etc.

### SECTION 133B :- POWER TO COLLECT INFORMATION

ITA may (+) Enter any Building/place in its jurisdiction

(+)

At which Business/Profession is carried on

**AND**

Require proprietor / Employees / other persons to help providing prescribed information.

- The I.T.A. can't remove from Building / place where in he has entered any BOA or other documents or any cash, stock or other valuable articles.

**Sec 133C :- Powers to call for Information by prescribed Authority**

To verify information in its possession

(+)

I.T.A. may issue notice to such person to furnish information or documents within the time prescribed, which may be useful for any inquiry or proceedings under this Act.

**SECTION 133A :- POWER OF SURVEY**

I.T.A may

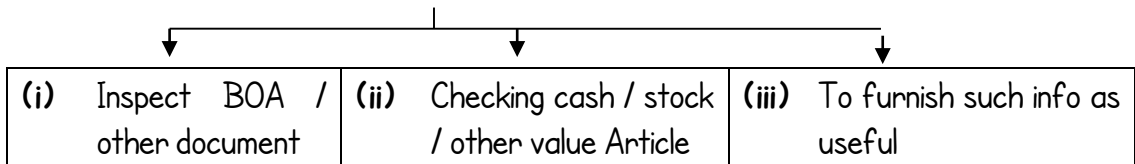
(+)

{ Only after sunrise but before sunset

Enter any Business place/ Charitable activity place in its jurisdiction

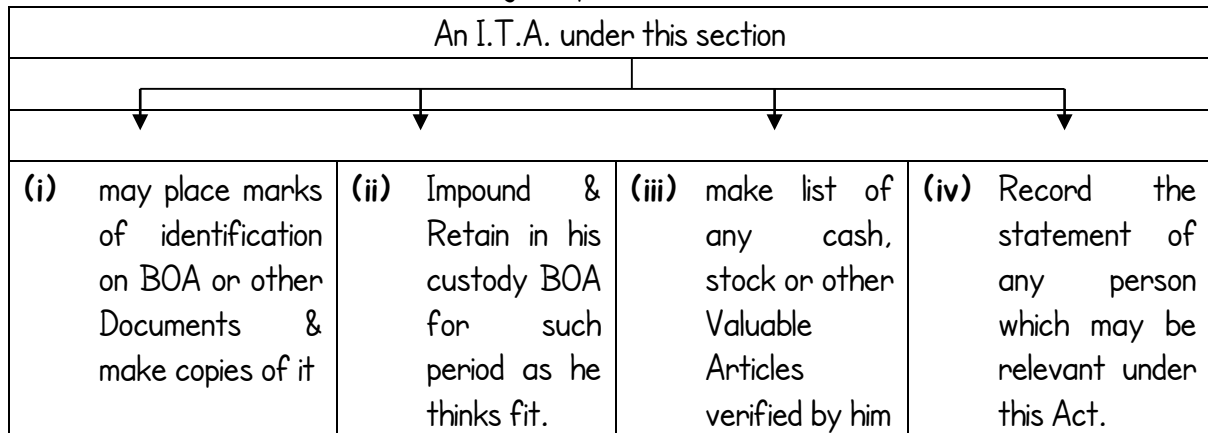
(+)

At which Business / profession is carried on or where charitable activity is carried on & require any proprietor / employee or any other person to help:



(+)

Also for checking compliance of TDS/TCS.



An I.T.A.



Can't remove from the place



Any cash / stock / valuable article (other than BOA / Other DOC).



**SURVEY IN CASE OF EVENTS , CEREMONY ETC:****Considering Nature and scale of expenditure**

(+)

in connection with any function, ceremony or event, the ITA is of the opinion that it is necessary to get info from person who incurred such expenditure or any other person which may be useful

(+)

Such statement so recorded may be used as evidence in any proceeding under this Act.

↓

→ If a person don't co-operate under this section, then I.T.A. shall have all the powers u/s 131(1) for enforcing compliance with the requirement.

↓

Non-compliance with Sec 131(1) results in Authorisation of search & seizure.

**SECTION 281B :- PROVISIONAL ATTACHMENT OF ANY PROPERTY**

(1) During pendency of proceedings

(+)

A.O. is of the opinion

(+)

He may be order in writing, provisionally attach any property **in the Interest of the Revenue.**

(+)

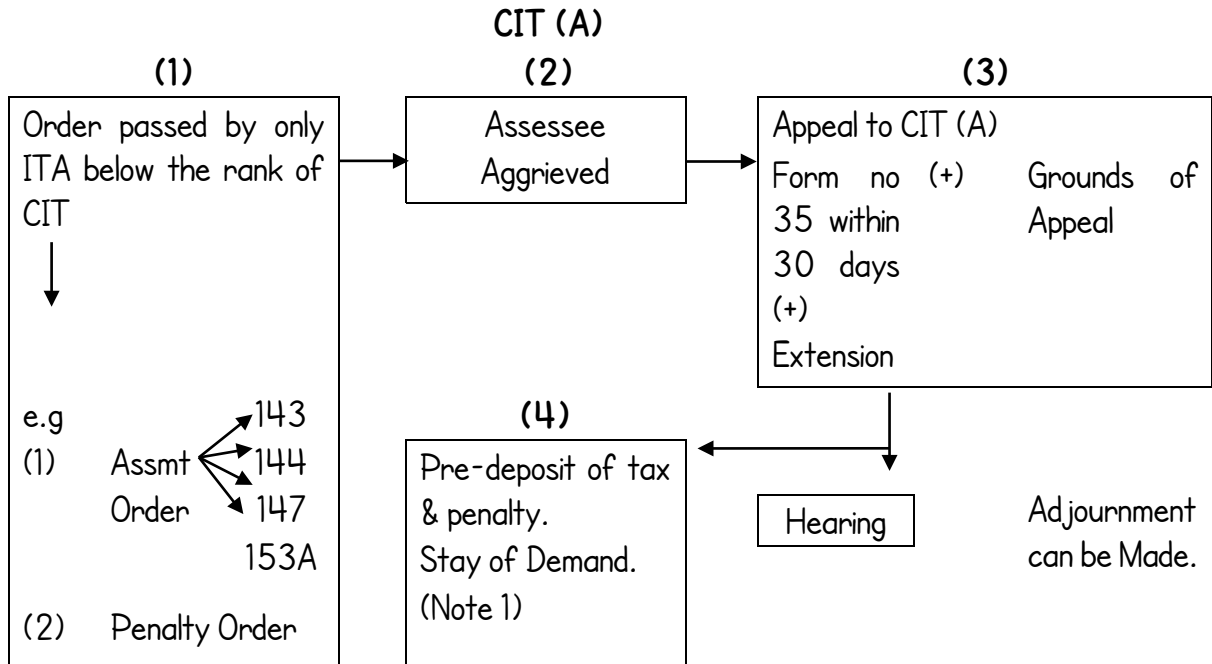
A.O. should take prior approval of C.C/comm.

(2) After six months from the date of passing order such Attachment would be cease to be effective.

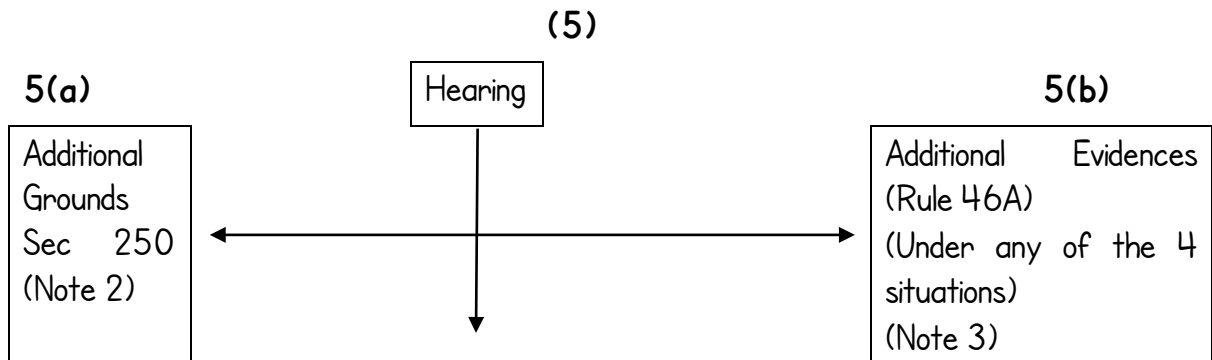
**Note :** Also Refer Provisional Attachment Provisions for Search & Seizure on Page \_ \_ \_ \_

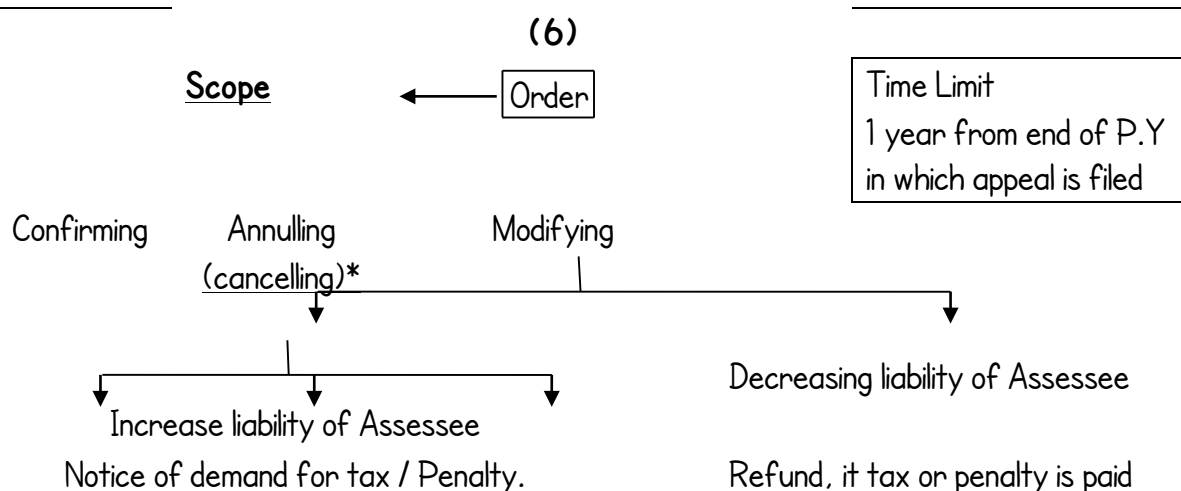
**APPEALS & REFERENCES**

**1. APPEAL TO CIT (A)**



From FA 2012 even intimation u/s 143(1) 200A(1), 206CB (1) can be Appealed .





\*CIT(A) cannot cancel and remand back the case to AO for fresh assessment. This power is there with ITAT, CIT u/s 263 and 264.

**NOTE 1 : STAY OF DEMAND:**

Stay implies an extension towards payment of tax beyond 30 days till the time extension is applicable. Therefore, once the time limit expires, the assessee shall be liable towards payment on the basis of notice of demand.

**NOTE 2 : ADDITIONAL GROUNDS V/S ADDITIONAL EVIDENCE.**

<u>Additional Grounds (Sec 250)</u>	<u>Additional Evidence (Rule 46A)</u>
<p>It means a new subject matter, which was not raised in original grounds of appeal.</p> <p style="text-align: center;">↓</p> <p>Addnl Grounds may be heard, when CIT(A) is being satisfied that omission of that ground was not willful or unreasonable.</p>	<p>It means new evidence <span style="border: 1px solid black; padding: 0 2px;">or</span> explanations, which was not put forth, before the A.O whose order, has been made subject matter of appeals</p> <p style="text-align: center;"><b>4 situations</b></p>

**4 situations (Also there in IDT)**

↓	↓	↓
(1)	(2)	(3)
Where A.O has to Admit the additional Evidence eg: CBDT Circular	Where the Asst. has been made without giving sufficient opportunity to the appellant to produce evidence.	- Where the appellant was prevented by sufficient cause from producing the additional evidence called upon by the A.O
	eg: The asst was done u/s 143(3) requiring the assessee to file evidence of purchases, towards which assessee made an application for providing him 15 days to furnish the same. But AO did not provide such time.	eg: The evidence w.r.t. purchase could not be furnished by assessee as records were impounded by excise dept. The assessee was prevented from producing evidence called upon by the A.O.

**4<sup>th</sup> Situation**

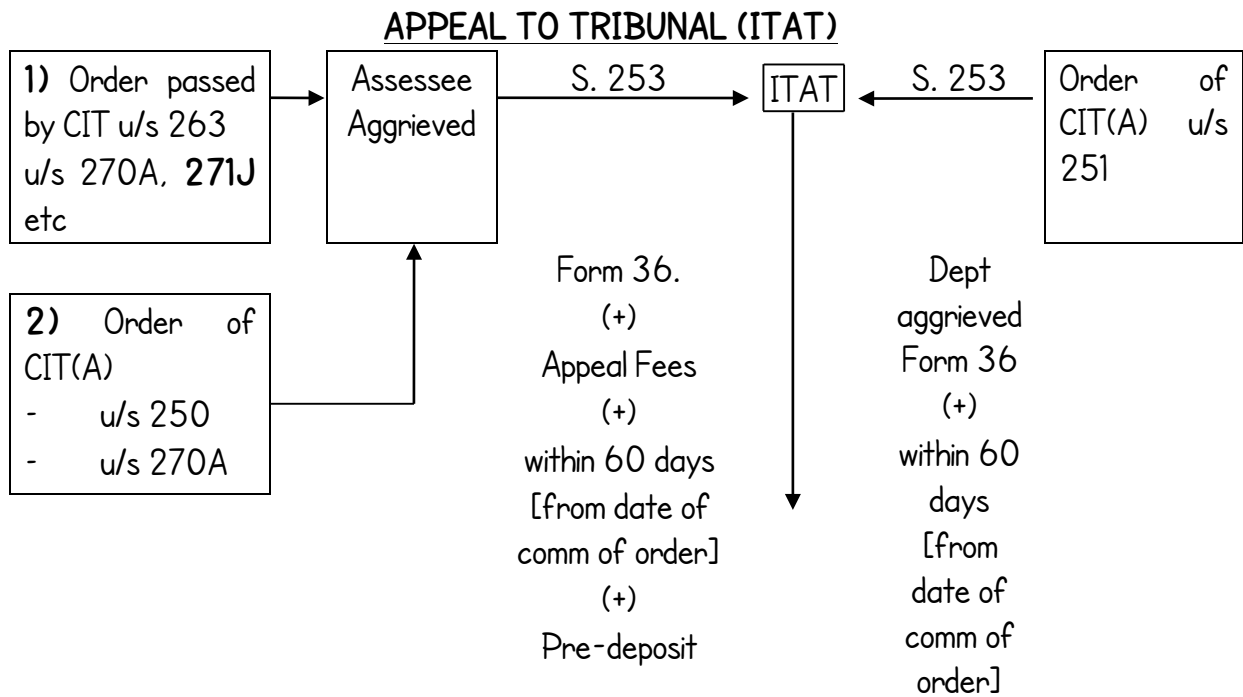
- Where the appellant was prevented by sufficient cause from producing before AO any evidence relevant to any ground of Appeals.

**Example:** The B.O.A were not regularly maintained by the assessee & AO made asst. u/s 144 without calling for any evidence. Evidences can be furnished to CIT (A) relevant to any ground of appeal.

**Note 3: Can deduction / exemption can be claimed before CIT(A) which was not claimed before A.O?**

**Ans.** The Apex Court has held in "Kanpur Coal Syndicate Ltd. SC (1964), that the power of CIT (A) is 'coterminous' (at par) with that of A.O i.e. he can do what A.O can do, also he can direct him to do what A.O has failed to do.

Therefore, CIT(A) have dual jurisdiction that of A.O as well as the judiciary.



ITAT



Receipt of appeal from Assessee / dept, other party shall be given Notice to file **Memorandum of cross objection (MCO)**

The Respondent shall file MCO within 30days from date of receipt of notice in form 36A

**Note:** The above time limits of 30/60 days can be extended by ITAT, if there is a sufficient cause.

	<b>ITAT</b>	
<b>Additional grounds</b>	<b>HEARING</b>	<b>Additional Evidence</b>
(not mentioned in Appeal)	↓	
But Sec 254 read with rule 11 of Appellate Tribunal rules, allows Additional Grounds with the permission of ITAT		No specific provision.  It can only accept if it finds it necessary.
	<b>ORDER</b>	

**ORDER**

Time Limit						
1) 4 yrs from end of F.Y in which appeal is filed	2) If stay is granted then decide within 180 days.	3) Stay can be extended, but the total period of stay shall not go beyond 365 days. After 365 days, it cannot be extended	Disposal at his own end			Remand back of case to A.O to pass fresh order. <b>ξ This power not available to CIT(A) 3</b>
			Confirming order	Modifying order	Annuling order	

**Issue 1: Where the ITAT has remanded an Asst order to the A.O for making fresh asst, can AO deal with the issue not before ITAT?**

**Ans:** No, once the issue is remanded back to the A.O with specific direction of Asst, the jurisdiction of A.O. is confined only on the direction given by the ITAT.

**Issue 2: Can ITAT direct to re-open a completed asst. for a year which is not under appeal before it?**

**Ans:** The ITAT can't direct to re-open a completed asst not being subject matter of appeals. Such power of re-opening a completed asst. is with ITA u/s 147, 154, 263, Also the assessee can re-open the case u/s 154 & 264.

**Issue 3: Can ITAT review its own order?**

**Ans :** The ITAT cannot review its own order i.e. it cannot change its opinion. [1<sup>st</sup> view should be the last view and there should be no review]

However if there is a mistake apparent from record in the order of ITAT then it can rectify such mistake u/s 254(2) [ ITAT cannot rectify its mistake u/s 154 as it is not an income tax authority ]

**Suo Motu Rectification by ITAT :**

Rectify the mistake u/s 254(2) within 6 months from the end of the month in which the order sought to be rectified was passed by ITAT.

**Rectification on Application by Assessee or AO:**

Where the application for rectification is made by the Assessing Officer or the assessee within 6 months from the end of the month in which the order sought to be rectified was passed, the Appellate Tribunal is bound to decide the application on merits and not on the ground of limitation i.e. order can be passed after expiry of 6 months from the end of the month in which the order sought to be rectified was passed. However, the application for rectification cannot be filed belatedly after 6 months from the end of the month in which the order sought to be rectified was passed.

**Note:** However a High Court has an inherent power to review its own order subject to some conditions ( Refer the Case Meghalaya Steels Ltd in Case Law Book )

**Issue 4 : Appeal to ITAT is heard by a bench of 2 members i.e. 1 judicial Member and 1 accountant member.**

However if the total income of the assessee as per the order of the AO is up to Rs. 50,00,000 then, appeal is heard by a single member bench.

**Issue 5: An appeal by ITAT cannot be decided in the event of difference of opinions between the judicial & the accountant member. Comment.**

**Ans :** The statement is incorrect. As per Sec. 255, both the members shall state the point or points of difference & the case shall be referred by the president of the tribunal for hearing on such points by one or more of the other members of the tribunal. Such points shall be decided according to the majority of members' opinion, of the Tribunal who heard the case including those who has 1<sup>st</sup> head it.

**Issue 6: Does Tribunal has the Power to allow the assessee to urge any ground of appeal which was not raised by him before the Commissioner (Appeals) . Comment.**

**Ans:** The ITAT has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals).

It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record. The decision of the Supreme Court in the case of *National Thermal Power Company Limited vs. CIT (1998) (SC)* supports this view. This Power was not available to AO as it was held by Supreme Court in the case of *Goetze India Ltd* & Refer Sec 143(3) 3

**Issue 7: 'The Appellate Tribunal is empowered to grant indefinite stay for the demand disputed in appeals before it.'**

**Ans :**

Section 254(2A) provides that the Appellate Tribunal, where it is possible, may hear and decide an appeal within a period of four years from the end of the financial year in which such appeal is filed.

The Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order. The Appellate Tribunal has to dispose off the appeal within this period of stay.

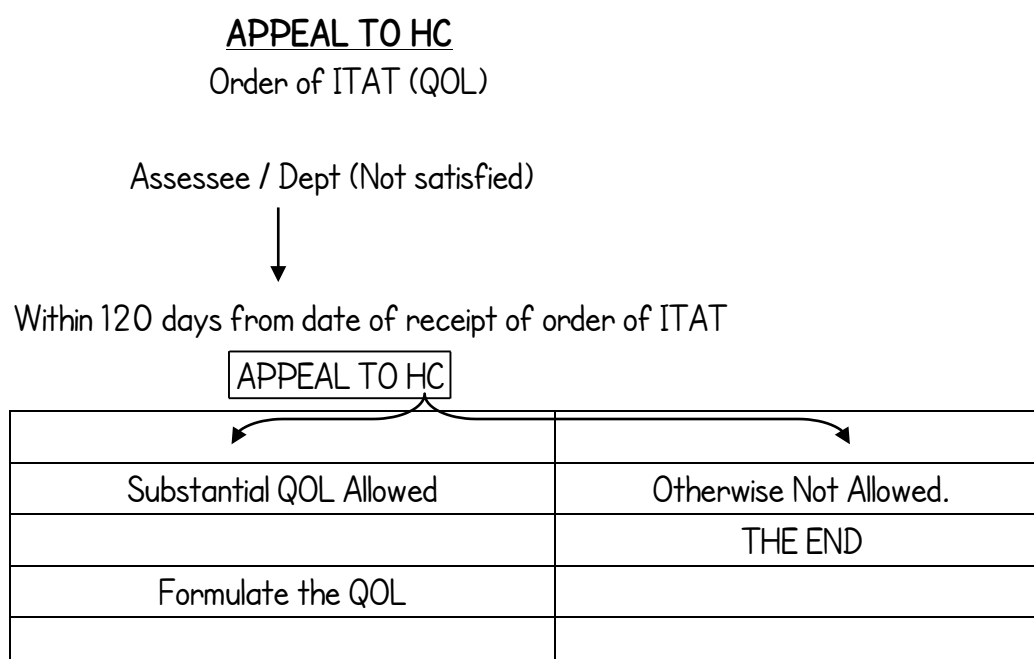
Where the appeal has not been disposed off within this period and the delay in disposing the appeal is not attributable to the assessee, the Appellate Tribunal can further extend the period of stay originally allowed. However, the aggregate of period originally allowed and the period so extended should not exceed 365 days even if the delay in disposing of the appeal is not attributable to the assessee. The Appellate Tribunal is required to dispose off the appeal within this extended period. If the appeal is not disposed of within such period or periods, the order of stay shall stand vacated after the expiry of such period or periods.

Therefore, the statement given in the question is not correct.

**CONCLUSION :**

ITAT is the last fact finding authority and if the assessee or dept wants to further appeal in High Court or Supreme Court then, it has to be a 'SUBSTANTIAL QUESTION OF LAW' A 'substantial question of law' means an issue which is debatable in nature. It is a question for which there is NO CLARITY in law and no authentic previous judgements.

If assessee's application is accepted in HC then it is regulated by Code of Civil Procedure, 1908.





Give Judgement (i.e. pass order)	
(NO TIME LIMIT)	

**APPEAL TO SC**

Order of HC

Assessee / Dept (Not satisfied)	
↓	↓
H.C certifies that the case is fit for SC	Otherwise
	THE END
↓	Within 90 days from date of receipt of order of H.C
APPEAL TO SC	
Give Judgement	
(i.e. pass order)	
(No Time limit)	

**SEC 158A: SPECIAL PROVISION FOR AVOIDANCE OF REPETITIVE APPEALS.**

- 1) The assessee can claim that a QOL pending before AO, CIT (A) or ITAT for a particular year [Present year] is identical with QOL pending before HC or SC for another year [Past years] then in such case the assessee can furnish a declaration in 'Form 8' to A.O, CIT (A) or ITAT stating that, if the AO, CIT (A) or ITAT agrees to apply the judgement of HC or Supreme Court in his current case then assessee shall not file an appeal.
- 2) The A.O, CIT (A) or ITAT may admit or reject the claim of assessee.
- 3) If the claim is admitted the AO, CIT (A) or ITAT shall pass the order in the current case and whenever the judgement of HC or SC becomes final this order will be amended accordingly.

**SEC 268A :SPECIAL PROVISION FOR APPEALS BY DEPT.**

- 1) This section empowers CBDT to fix monetary limits for regulating appeals by dept. The underlying objective is to reduce litigation in small cases.

- 2) In the exercise of this power CBDT has notified following limits i.e. Dept should file appeal only if the 'TAX EFFECT' is more than the following amount :

		Tax Effect
For Appeal to	ITAT	> 50 lacs
	HC	> 1 Cr
	SC	> 2 Cr

**Tax Effect Means the 'Current Tax (MINUS) Estimated Tax if Dept wins'**

- 3) If Dept did not filed an appeal on a particular issue in case of a particular assessee in a particular year then, it shall not stop the dept from filing an appeal of the same issue in case of same assessee in another year or of the same issue in case of another assessee in any year.
- (4) The assessee cannot claim that the dept has agreed on a particular issue by not filing appeal on such issue.

### COLLECTION & RECOVERY OF TAXES

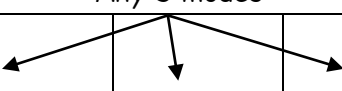
(Sec 156, Sec 220 to Sec 226)

Notice of Demand Served u/s 156	pay demand →	After 30 days Of Non - Payment
	↙ ↘	'Assessee in default'
	←	
	→	*4 consequences
<b>Extended</b>		<b>Reduced (Reason to Believe)</b>
- On Application by assessee		- Suo - motu by A.O
- Installment facility (with interest)		₹ RTB that giving 30 is detrimental to the Interest of Revenue. 3

TRO - Tax Recovery officer

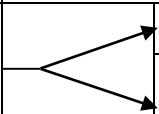
COA - Certificate of Action

**4 CONSEQUENCES.**

(1)	(2)	(3)			(4)
Sec 220 Int @ 1% p.m or part there of  Waiver of Int u/s 220 (2)*  By CCIT/ CIT  H - undue <b>Hardship</b> (+) C - Delay was beyond the <b>control</b> (+) C - Assessee gave necessary <b>cooperation</b>	Penalty  $\leq$ Tax in Arrears  u/s 221	Recovery as per mode specified u/s 222 - 225  TRO  Prepare COA  Any 3 modes 			Recovery under the modes specified u/s 226  After TRO has made COA  Then Recovery by T.R.O
		<b>Attach</b>	<b>Appoint</b>	<b>Auction</b>	
		Moveable & Immoveable property	A person for mgmt. of property		

**\*Note:** The order accepting or rejecting the application of the assessee for waiver of interest, either in full or part, shall be passed within 12 months from the end of the month in which application is received.

**4 MODES:**

S [226(2)]	D [226(3)]	C [226(4)]	D [226(5)]
From <b>salary</b> due to Assessee  Employer shall pay salary to Govt of India	Garnishee order to <b>Debtors</b> of Assessee	Application to release the property in the <b>Court</b> custody in favour of Debt	<b>Distraint</b> sale
	If Drs pay to assessee instead of GOI		
	Then Drs shall be "Deemed to be assessee in default"		

**SEC. 263 : REVISION OF ORDERS BY CIT  
(Prejudicial to Revenue)**

CIT may call for & examine the record	If he considers that any order passed by A.O. is			Then →	He may after giving O.O.B.H # pass such order as he deems fit. # if O.O.B.H is not given then order by CIT is void ab initio
	Erroneous	AND	Prejudicial to int of Revenue		

Scope of order passed by CIT				
Enhance i.e. can increase the income	OR	Modify	OR	Cancel & direct fresh Assessment. This power is not there with CIT (A).

**Explanation to Sec 263 :**

An order passed by A.O. is deemed to be erroneous (+) prejudicial to Int of Revenue if CIT is of the opinion that :

↓	↓	↓	↓
Order is passed without making inquiries or rectification	• Order is passed allowing relief without inquiry	• Order is not made in accordance with Sec 119 i.e. powers of CBDT	• Order not passed in accordance with any decision of juris HC of SC

**KEY POINTS :**

- 1) CIT can only revise order of A.O.
- 2) Intimation / Deemed Intimation cannot be revised.  
**(Intimation can be rectified & appealed)**
- 3) An order is said to be "Prejudicial to Revenue" if

Income was under assessed.	OR	Losses have been assessed	OR	Income assessed at a lower rate	OR	Excessive loss, deduction, allowances, reliefs have been allowed
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- 4) An appeal to ITAT can be filed against order of CIT u/s 263
- 5) Assessment / Reassessment u/s 147 is possible without an earlier asset order. However, revision u/s 263 is possible only, if AO has passed an order.

6)	If CIT starts revision proceedings u/s 263	☞	Subsequently assessee proves that no income has escaped	☞	Then CIT shall drop the proceeding's u/s 263
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- 7) CIT can revise order based on later valuation Reports, retrospective amendments etc.

**Time limit to pass an order**

Within 2 years from end of F.Y in which order sought to be revised was passed.

**Exception to Time Limit**

Order can be passed at any time to give effect to finding or direction of H.C. or S.C.

**CIT V/S ICICI BANK LTD. [Bombay HC]**

**Facts of the case**

AY 2008-09 AO passed order u/s 143(3) on 30.1.2011 allowing deduction u/s 36(i)(vii), 36(1)(viii) etc.		On 10.2.2013 notice u/s 148 was issued for asst u/s 147 & order was passed on 31.12.2013 on matters other than 36(1)(vii)(viii) etc.		Later on, CIT passed an order u/s 263 on 31.3.2015 for disallowing ded <sup>n</sup> u/s 36(1) (vii),(viii) which have not been taken up in Sec 147
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**JUDGEMENT**

It was held that period of limitation for revising an order in respect of a matter which does not form part of the subject matter of reassessment shall be reckoned from the date of original order u/s 143(3) & not 147.

Therefore, CIT should have passed the order u/s 263 upto 31.3.2013.

**SEC 264 :REVISION OF OTHER ORDERS (PREJUDICIAL TO ASSESSEE)**

Any order other than to which Sec 263 applies passed by an authority below CIT AO.	Then →	CIT	On his own motion OR Application by assessee	CIT may call for records Of any proceedings under this Act in which such order has been passed and make further inquiries.
--	--------	-----	--	--

**Note:** After revision u/s 263 revision u/s 264 is not possible. However after revision u/s 264, revision u/s 263 is possible

### KEY NOTES :-

- 1) Under section 264 only the order of AO can be revised.
- 2) Intimation / Deemed Intimation cannot be revised u/s 264.
- 3) CIT can cancel /set aside the order of AO and direct him to make fresh assessment and such directions shall not be prejudicial to the assessee. **∴ This power is not available to CIT(A). It is available with ITAT, CIT u/s 263 & 264 ∴**

### TIME LIMITS:

<u>TIME LIMITS:</u>	
<u>T/L to pass an order :</u> CIT on his own shall not revise any order after 1 year from date of passing.	<u>T/L for application for Revision by assessee:</u> An application for revision by assessee must be made within 1 year from the date of communication of order to him (If CIT is satisfied that there was sufficient cause for delay, then he may admit application beyond 1 yr.) <u>T/L to pass an order:</u> Within 1 yr from end of FY in which application is made by assessee.

### Under what circumstances revision u/s 264 is not possible ?

- 1) Where an assessee has filed an appeal on any matter ,then revision u/s 264 is not possible [**Doctrine of complete merger**]
- 2) However revision u/s 264 is possible when time limit to file an appeal to CIT (A) has not expired and the assessee has waived the right to appeal.
- 3) Revision u/s 264 is possible if time limit to appeal is expired.

### What is the remedy against order passed u/s 264


No appeal is possible against the above order, however such order can be challenged in the High court through a WRIT petition.

However if there is a "MAR" in such order than it can be rectified u/s 154.

**COMPARISON OF SEC 263 AND SEC 264 SIMILARITIES.**

1. Revision by CIT
2. Revision of order of AO
3. Revision can be suo motu
4. Assessment can be cancelled / set aside and a direction be given to A.O to make fresh assessment
5. Can be rectified u/s 154.

**DISTINCTIONS**

Sr. No.	Sec 263	Sec 264		
1.	Revision of order prejudicial to Revenue.	Revision of order prejudicial to Assessee.		
2.	An appeal can be filed to ITAT against order passed u/s 263	No Appeal can be filed against the order passed u/s 264		
3.	Doctrine of partial Merger.	Doctrine of complete Merger		
4.	Revision u/s 263 is possible after 264	Revision u/s 264 is not possible after 263		
5.	Order u/s 263 must be passed within 2 years from end of FY in which order sought to be revised was passed [ICICI Bank Ltd]	<div style="text-align: center;">  </div> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Suo-motu 1 yr from date of passing the order.</td> <td style="width: 50%; padding: 5px;">Application by Assessee. 1 yr from end of FY in which application was filed Application can be filed within 1 yr from the date of communication of order.</td> </tr> </table>	Suo-motu 1 yr from date of passing the order.	Application by Assessee. 1 yr from end of FY in which application was filed Application can be filed within 1 yr from the date of communication of order.
Suo-motu 1 yr from date of passing the order.	Application by Assessee. 1 yr from end of FY in which application was filed Application can be filed within 1 yr from the date of communication of order.			

## SEC 132 : - SEARCH AND SEIZURE

### 1. Who can authorise search and seizure i.e. issue search warrants?

(1) By Director General (DG) / Director (D) / Chief Commissioner (CC) / CIT

**Additional Director (AD) / Additional Commissioner (AC) / Joint Director (JD) / Joint Commissioner (JC)**

└───> **If these people are empowered by CBDT.**

The above 8 authorities will authorise "Assessing officer"

### 2. When can search and seizure be authorised?

If ITA (+) on the basis of information in possession (+) has Return to Believe that:

↓		↓	↓
<p><b>(a)</b> person has <u>failed</u> to comply u/s 131 or u/s <u>142</u> (1)</p>	OR	<p><b>(b)</b> a person <u>might</u> fail to comply u/s <u>131</u> or u/s <u>142</u>(1).</p>	<p><b>(c)</b> a person is in <u>possession of any article or things inc.</u> money, bullion or jewelry etc. and these assets represents <u>income not disclosed</u>.</p>

### AMENDMENT MADE BY FINANCE ACT, 2017

Confidentiality and sensitivity are the hallmarks of proceedings under section 132. However, certain judicial pronouncements have created ambiguity in respect of the disclosure of 'reason to believe' or 'reason to suspect' recorded by the income-tax authority to conduct a search under section 132. Therefore a new explanation is inserted to declare that the 'reason to believe' or 'reason to suspect', as the case may be, shall not be disclosed to any person or any authority or the Appellate Tribunal.

### (3) POWER OF 'AUTHORISED OFFICER'

An "Authorised Officer" (A.O) is authorised to :-

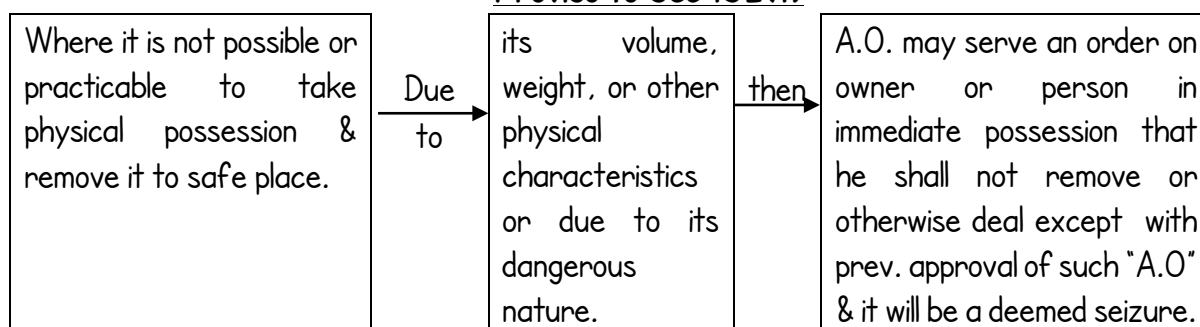
↓		↓	↓
<p><b>(i)</b> Enter &amp; search any building, place, vessel, vehicle or aircraft where he has reason to suspect that BOA, other doc, money, bullion, etc are kept.</p>		<p><b>(ii)</b> break open the lock of any door, box, lockers, etc where keys are not available</p>	<p><b>(iii)</b> Search any person who has <u>got out of</u> or is about to <u>get in to</u> or is in building, etc.</p>



↓	↓	↓
(iv) require any person who is found to be in electronic form to afford "A.O" the necessary facility to inspect such BOA, etc.	(v) Seize any BOA etc (+) However, stock in trade shall not be seized but can make a note of it.	(vi) place marks of identification on BOA etc (+) make copies of it.

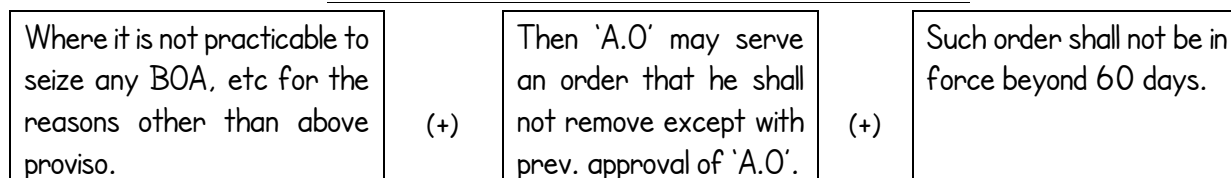
**DEEMED / CONSTRUCTIVE SEIZURE :-**

**Proviso to Sec 132(1)**

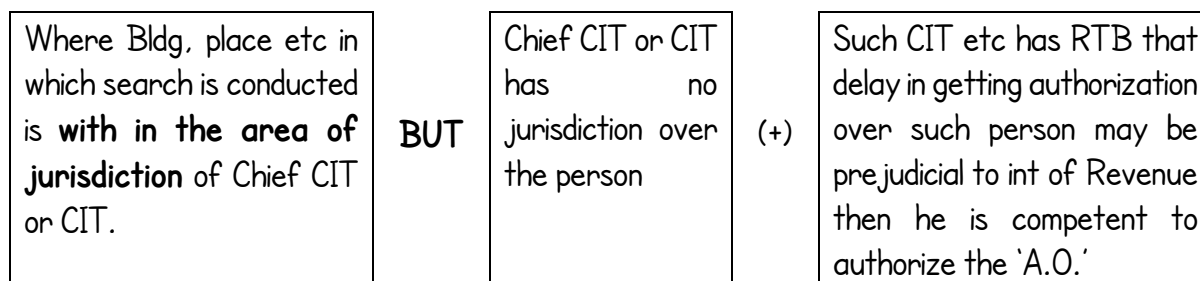


**Note:-** The above proviso shall not apply to stock-In-trade.

**SECTION 132 (3) :- ORDER OF RESTRAINT**



**JURISDICTION OF CIT**



**KEY NOTES :-**

(1) The 'A.O'. may **requisition** the services of **any police** or any **officer** of C.G. or **both** to assist him in search and seizure.

**(2) Examination of Oath :-**

"AO" may examine an oath on **any person** who is found to be in possession of any BOA, etc and any statement made by such person thereafter be used in evidence in any proceeding under the Act.

**PRESUMPTIONS IN COURSE OF SEARCH AND SEIZURE :-**

Where any BOA etc are found in possession of any person, it may be presumed :-

↓	↓	↓
(i) that it belongs to such person.	(ii) that contents of such BOA etc are true.	(iii) All documents, sign etc are in handwriting of such person and any stamp, attestation etc is done by such person.

**TWO AMENDMENTS MADE BY FINANCE ACT 2017 :****VALUATION DURING SEARCH :**

The authorised Officer may for the purpose of estimation of FMV of property obtained during search , make a reference to a VO referred to in sec 142A. VO shall furnish such report within 60 days of receipt of such reference. ( Refer Sec 142A )

**PROVISIONAL ATTACHMENT DURING SEARCH:**

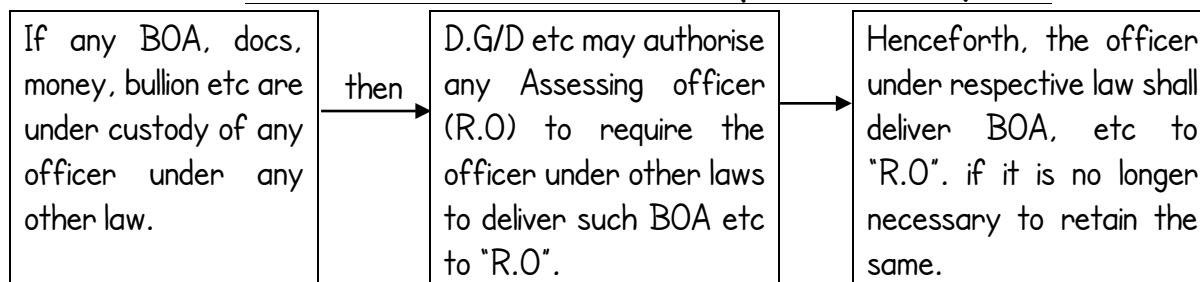
During the course of search or with in 60 days, the "AO" for protecting the Interest of Revenue may provisionally attach with prior approval of PDG/DG/PD/D. It will have effect for 6 months. ( Refer Sec 281B )

**PERIOD OF RETENTION OF B.O.A. AND OTHER DOCUMENTS :-**

(1) BOA etc seized shall not be retained for a period exceeding 30 days from the date of order of assessment u/s 153A unless the reasons for retaining the same are recorded by him in writing and approval of C.C./C for retention is obtained. C.C./C shall not authorise retention of BOA for a period exceeding 30 days after all proceedings are completed [i.e. Penalty Proceedings]

- (2) The person from whose custody any BOA, etc are seized, may make copies, etc in the presence of 'A.O'. at such place and time as the 'A.O'. may appoint.
- (3) Section 132 (9A) :- Where the 'A.O'. has no jurisdiction over the person searched by him then he shall handover such documents. etc to Assessing officer having jurisdiction over such person within a period of 60 days from the date on which search is completed.

**SECTION 132A :- POWER TO REQUISITION BOA, ETC.**

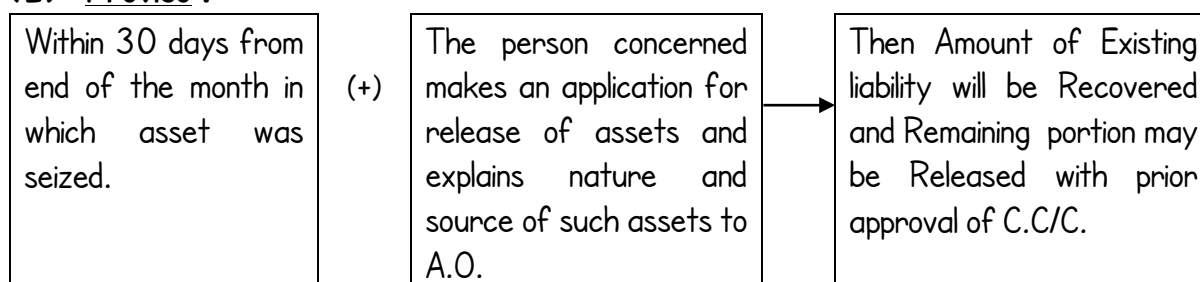


**SECTION 132B :- APPLICATION OF SEIZED OR REQUISITIONED ASSETS**

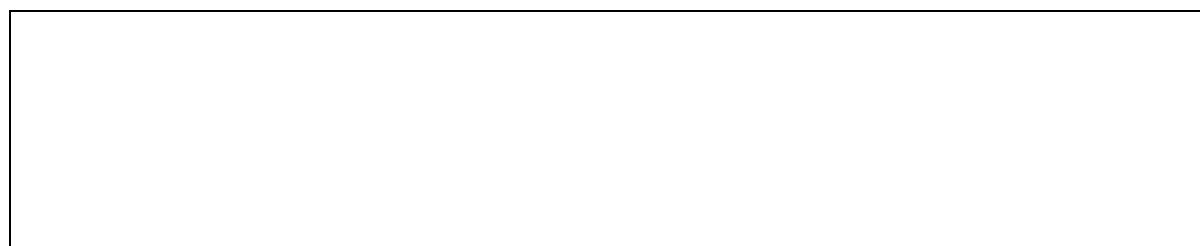
- (1) Assets seized etc may be dealt in foll manner [i.e. foll things can be recovered].
  - (i) Existing liability under IT Act, Wealth Tax Act, Gift Tax Act.
  - (ii) Liability determined u/s 153A and also from the A.Y. in which search was initiated.
  - (iii) Penalty and Interest
  - (iv) Amount of liability arising on application made before (ITSC) Settlement Commission u/s 245C (F.A, 2015)

**Note:** Existing Liability shall not include Advance Tax liability.

**(2) Proviso :-**



**Note:-** Such remaining assets shall be released within 120 days from the date of completion of search.



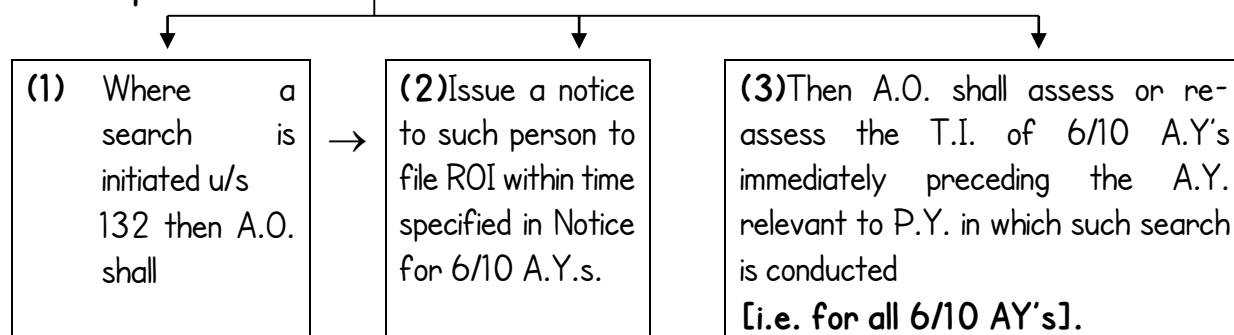
**(3) How liabilities will be discharged?**

If assets consist of money then it will be discharged to the extent of money.

If the assets consist of other than money, then it will be discharged by sale of such assets.

**Note:-**

Any assets or proceeds thereof, remain after discharging liabilities then it should be returned back, or else C.G. shall pay simple interest @ 0.5% p.m. or part of the month.

**SECTION 153A :- ASSESSMENT IN COURSE OF SEARCH.****(1) As per Section 153A(1)****KEY NOTES :-**

- (1) ROI is required to be filed, even if the Assessee is not obligated.
- (2) ROI is required to be furnished even if :-
  - ROI has already been filed (or)
  - Asst / Re-Asst have been completed (or)
  - Asst / Re-Asst for any A.Y. is still pending
- (3) The Assessment shall be made separately for all 6/10 years.
- (4) Any assessment which is pending on date of initiation of search shall abate. However, appeal, revision or rectification proceedings shall NOT abate.
- (5) All provisions of Income Tax Act shall apply to sec 153A
  - Penalties for concealment of Income.
  - Penalties for defaults like non-filing of return.
  - Interest u/s 234 A/B/C.
  - Prosecution.
- (6) Tax Rate = Rate applicable to such A.Y's

(7) Appeal to CIT (A) can be filed against order u/s 153A.

### **AMENDMENT MADE BY FINANCE ACT 2017:**

If the search is initiated on or after 01/04/17, then the AO can issue notice u/s 153A for 6 preceding AY's & **"for relevant AY or AY's"**.

For this purpose, **relevant AY or AY's** shall mean the AY which falls beyond the 6<sup>th</sup> year but not later than 10<sup>th</sup> year.

Suppose, the search is conducted on **10/10/2019**, then 6 AY's will be **AY 14-15 to AY 19-20** and 4 relevant AY's will be **AY 10-11 to AY 13-14**.

### **A notice can be issued for relevant AY's only if the following 4 conditions are fulfilled:**

- 1) The AO has in his possession the books of A/cs which reveal that the income which has escaped assessment amounts to or is likely to amount to Rs. 50 L or more in one year or in aggregate of the 4 relevant AY's.
- 2) Such income escaping asset is represented in the form of asset (for this purpose assets shall include loans & advances, shares & securities, land or building)
- 3) The income escaping assessment or part thereof relates to such years
- 4) **The search is initiated on or after 01/04/2017.**

### **TIME LIMIT FOR COMPLETION OF ASSESSMENT U/S 153A :- Section 153B**

	<b>Normal period of Asst/Re-Asst u/s 153B.</b>	<b>Where case is referred to TPO u./s 92CA</b>
<b>(1)</b> For 6/10 A.Y.S' immediately preceding the A.Y. Relevant to P.Y. in which search is conducted.	18 months from the end of F.Y. in which search is completed (and not initiated).	30 months from the end of F.Y. in which search is completed (and not initiated).
<b>(2)</b> For A.Y. Relevant to P.Y. in which search is started.	Same As Above.	Same as Above.

### **SECTION 153C :- ASSESSMENT OF INCOME OF "ANY OTHER PERSON".**

Where A.O. is satisfied	(+) any money, bullion, jewellery, BOA, etc seized.	(+) belongs to / pertains to a person other than person ref. in Sec. 153A.	(+) then it shall be handed over to A.O. having jurisdiction over such other person.
-------------------------	---	--	--

**Note** :- Subsequently, A.O. will initiate proceedings u/s 153A for 6/10 years if he is satisfied that BOA / documents etc seized **have a bearing on total income of such other person.**

**Section 153B :- Time limit for completing Assessment in case of OTHER PERSON.**

	Normal period of Assessment/Re-Assessment u/s 153C.	If Referred to TPO
(1) For 6 A.Y's immediately preceding the A.Y. relevant to P.Y. in which search is conducted.	18 months from end of F.Y. in which search is completed.  (OR) 12 months from end of P.Y. in which BOA, etc are handed over u/s 153C to A.O. having jurisdiction over such other person.  <b>Whichever is later</b>	Will increase by 1 year
(2) For A.Y. relevant to P.Y. in which search is started.	Same As above.	Will increase by 1 year.

**ANALYSIS OF SECTION 153A AND SECTION 153C :-**

Search is initiated on Mr. A (Assessee) on 30<sup>th</sup> June, 2019 and completed on 4<sup>th</sup> July, 2019. Mr. A proves to the satisfaction of his A.O. i.e. Mr. X (Assessing officer) that certain BOA, money, etc belongs to Mr. B. The A.O. of Mr. A i.e. Mr X hands over the BOA documents, etc belonging to Mr. B to the A.O. Mr. Y having jurisdiction over Mr. B on 10<sup>nd</sup> August, 2019.

Now the assessment / re-assessment u/s 153A shall be made on Mr. A and Mr. B for AY 2014 - 15 to AY 2019 - 20 ( 4 years extra also subject to conditions ).

For AY 20 - 21 i.e. current AY the Assessment shall be made on Mr. A and Mr. B u/s 143(3) or 144.

As per section 153B the time limit for completion of Assessment / Re-assessment of Mr. A is as under :-

(1) **For AY 14 - 15 to AY 2019 - 20 :-**

Assessment / Re-assessment should be completed u/s 153A upto 30.09.21

(2) **For AY 2020 - 21 :-**

Assessment u/s 143(3) or 144 should be completed upto 30.09.21

The A.O. Mr. Y of Mr. B will issue notice u/s 153A and make assessment or re-assessment of Mr. B u/s 153A only if he is satisfied that BOA, documents, assets seized have bearing on total income of Mr. B for R.A.Y. referred in section 153A(1). It means that if on the basis of such BOA, etc seized it is found that Mr. B has concealed income of any one or more AY's referred to Sec 153A then A.O. of Mr B will proceed u/s 153A for all the A.Y.'s. But if A.O. finds that Mr. B has not concealed any income in any A.Y. referred to section 153A, A.O. shall not proceed against Mr. B.

Prior to amendment, A.O. of Mr. B was bound to proceed against Mr. B and issue him notice u/s 153A and make assessment / re-assessment u/s 153A even if no concealed income was found in case of Mr. B in any of the A.Y's referred to in section 153A on the basis of documents , accounts handed over to him.

Now as per the amendment if concealed income is not found then he shall not proceed against Mr. B.

**Time limit for the completion of asst / re-asst on Mr. B will be as under :-**

**(1) For AY 2014 -15 to AY 2019 - 20 :-**

Asst / Re-assessment u/s 153A should be completed upto 30.09.21 or 31.3.2021, whichever is later. (i.e. 30/09/2021) u/s 153A.

**(2) For AY 2020- 21 [same as above]**

**Note:**

In case of Mr. A the asst / re-asst pending on 30.06.2019 for AY 2014 - 15 to AY 2019 - 20 shall come to an end.

In case of Mr. B the asst/ reasst pending on 10.08.2019 for AY 2014-15 to AY 2019-20 shall come to an end ( i.e. **date of receiving BOA**) .

The assessment u/s 143(3) or 144 shall be completed by 30.09.2021.

**S.R. BATLIBOI & CO.**  
**FACTS OF THE CASE :-**

The petitioner was a reputed C.A Firm. The laptops of some employees were seized by Deputy director. On the request, said employees provided him with electronic data of 3 group companies of Assessee.

Further the Deputy Director insisted on securing total & unrestricted access to Laptops to gain information of all the clients of petitioner is it justified?

1. It was held by Delhi HC that granting absolute access to the Department of all the data even pertaining to the other clients having no dealings with assessee group would tantamount to grave professional misconduct and would be contrary to code of Ethics applicable upon the petitioner.
2. Further, it was held that u/s 153C, that department act as a post office i.e. it sends the seized material to concerned A.O.
3. Therefore, the materials which are not connected with raid must be ignored.

### SECTION 153A(2) :- REVIVAL OF ASSESSMENT ABATED EARLIER.

#### EXAMPLE :-

Search is conducted on 30.06.2019 and completed on 04.07.2019.

- (1) Now A.Y. 2014 - 15 to AY 2019 - 20 Asst / Re-asst can be made under u/s 153A.
- (2) Suppose for AY 2015 - 16 notice u/s 148 was issued and served on 20/02/2019 and Re-asset u/s 147 is pending on 30/06/2019. Therefore, Re-asset u/s 147 shall come to an end.
- (3) Suppose for A.Y. 2018 - 19, the asst is pending u/s 143(3) on 30/6/2019. Asst u/s 143(3) shall come to an end.
- (4) Now let us say that A.O. made Re-asst u/s 153A for A.Y. 2014 - 15 to AY 2019 - 20 on 30/09/2021.
- (5) Now let us say that assessee files appeal to CIT(A) & then ITAT.
- (6) Now let us say that ITAT on 30/06/2024, annulled re-asst u/s 153A for AY 2014 - 15 to AY 2019 - 20 on the ground that search was illegal.
- (7) The order of ITAT is received by CIT on 01/08/2024.  
∴ Now on 01/08/2024, the Re-asst u/s 147 for AY 2015 - 16 and Asst u/s 143(3) for AY 18 - 19, will revive as per Sec 153A(2).

#### Sec 153(8):T/L for completion of Assessment/ Re-Assessment when it is REVIVED u/s 153A(2) shall be :-

- (1) within 1 year from the end of the month of such revival or
- (2) within Time specified u/s 153B.  
Whichever is later.





<b>12) 147</b>		
←		→
148	149	Order 153(2)
ROI	4AY if E/I < 1lac 6AY if E/I ≥ 1lac 16 AY if Foreign Asset	12 mths from end of FY in which notice u/s 148 is served
As Specified in notice.		

<b>13) 153A [Search &amp; Seizure Asst]</b>		
←		→
153 A		153B
ROI	Notice for which yrs.	18 months from end of FY in which search was completed.
As specified in notice	All 6 AY's or 10 AY's	

<b>14) 153C [In case of other person]</b>		
←		→
153 A		Order 153B
ROI	Notice for which yrs.	18 months from end of FY in which search was completed. OR 12 months from end of FY in which BOA etc is handed over to AO having jurisdiction one such person.
As specified above.	All 6 AY's or 10 Ay's	

<b>15) Rectification u/s 154</b>	
←	→
Suo moto by Dept.	Application by Assessee
Within 4 yrs from end of FY in which order sought to be amended was passed	Within 6 months from end of month in which application was received by Dept.

<b>16) 263 Revision by CIT</b>
Within 2 years from end of FY in which order sought to be revised was passed.

<b>17) 264 Revision CIT</b>	
<b>Suo moto</b>	<b>Application by Assessee</b>
Within 1 yr from the <input type="text" value="date"/> of passing if order	Within one year from the date order was communicated to assessee
	<b><u>T/L for Order.</u></b>
	Within one year from end of FY in which application was made.

### TAXATION OF TRUSTS

To claim exemption under IT Act in relation to a trust, a trust should be formed for a lawful purpose which can be either charitable or religious purpose. The term religious purpose is not defined under IT Law. However, the term Charitable Purpose is defined u/s 2(15) to include :-

- (i) Relief of poor.
- (ii) Education.
- (iii) Medical Relief.
- (iv) Yoga (inserted by FA 2015).
- (v) Preservation of Monuments.
- (vi) Preservation of Environment.
- (vii) **Any other object of General Public Utility (Amendment by FA 2015).**

The first 6 categories of purposes are specified categories who will enjoy exemption irrespective of amount of Commercial receipt (Fees) from that activity in a P.Y.

**Example:-** If a school which is registered as trust will enjoy exemption even if it will receive fees of Rs. 10 crore in a P.Y. (i.e. even if it crosses 20% of Total Receipts).

However if trust is covered under general category, then it would be treated as charitable trust only if it receives Commercial receipt (fees) from that activity up to 20% of total receipts.

**Eg:-** XY charitable trust with a main object of promotion of sports receives corpus donation of Rs. 40L, voluntary donation of Rs. 40L and fees from activity is Rs. 50L.

Since the fees from the activity of promoting sports exceeds 20% of total receipts.

XY can't enjoy exemption. In case if the fees received from the activity is Rs. 10L, then it can enjoy exemption as the fees of Rs. 10L is less than 20% of total receipts.

### TREATMENT OF DONATIONS :

(1) Where Identity of Donor is known	
(a) Corpus	(b) Voluntary
Not an income	Taxable
Not taxable	Add to Income statement

### (2) Where identity is not known - Anonymous Donation Taxable u/s 115BBC

<u>COMPUTATION OF INCOME OF TRUST</u>	
Income from trust (Gross Fees - Expenses)	20,00,000
(+) Voluntary Donation	<u>10,00,000</u>
	30,00,000
(-) Adhoc Exemption u/s 11(1) @ 15%	(4,50,000)
(-) Application for charitable / Religious purpose	<u>( 15,50,000)</u>
<b>Total Income</b>	<b><u>10,00,000</u></b>

### WHAT AMOUNTS TO APPLICATION FOR CHARITABLE OR RELIGIOUS PURPOSE?

→ The word application is quite wider as compared to the word expenditure.

The following amounts to application of income:- ( **Illustrative list** )

- (1) Repayment of loans taken to fulfill the objective of the trust amounts to application of income provided that the expenditure incurred for which loans were taken was not treated as application.

**(2) EXPENDITURE ON PURCHASE OF CAPITAL ASSETS:-**

Sec 11(6) was inserted from P.Y. 2014-15 to provide that where any capital asset has been allowed as application of income, then no depreciation can be claimed on such assets.

**(3)** Payment of taxes whether of current year or last years amount to application of income.

**(4)** Advancing education loans to students would also amount to application of income.

The above list just illustrative in nature and it would include many other activities in relation to a trust.

**(5)** Loss due to excess application of earlier years can be allowed as application in the current Financial Year.

**AMENDMENT MADE BY FINANCE ACT 2018**

A new explanation has been inserted in Sec. 11 which provides that for the purpose of determination of application of income, the provisions of Sec. 40(a)(ia) & 40A(3)/(3A) shall, mutadis mutandis, apply.

**VARIOUS TAX PLANNING MEASURES :-****(1) DONATION TO ANOTHER TRUST :**

A trust can claim exemption by donating another trust who is registered under Sec 12AA and Sec 10(23C) of IT Act. Further, the objects of the donor and the donee may or may not match.

**Example :-** A school can give donation to another school or even to hospital who is registered under respective sections.

**AMENDMENT MADE BY FINANCE ACT 2017**

1. Any donations made by a trust registered u/s 12AA, to another trust registered u/s 12AA or 10(23C), is considered as application of income.
2. Donations received with specific direction is not an income of recipient trust. However, at the same time, it is allowed as application of income to donor trust.
3. **Therefore FA, 2017 has made an amendment to provide that any donation made with a specific direction to a trust registered u/s 12AA will not be considered as application of income.**

**(2) NON-APPLICATION DUE TO NON-RECEIPT:**

Where a trust has not received any amount during any P.Y, then it can claim exemption in the current year in which the income is earned but not received by making an application in writing on or before the due date of filing of return. However, whenever such amount

is received it must be applied in the year of receipt or year following the receipt. In case of non-application such amount will become deemed income of the year following the receipt.

**(3) ACCUMULATION FOR THE SPECIFIED PURPOSE:**

If an assessee do not wish to apply the income in the current year, then it can take benefits specified u/s 11(2) provided it wants to accumulate for specified purpose.

For this purpose a trust has to file a statement in prescribed form and manner in writing to A.O. specifying the purpose and the period of accumulation. In no case the period of accumulation should exceed 5 years.

The assessee is supposed to file the statement before the due date mentioned u/s 139(1) The amount accumulated must be deposited in the modes specified u/s 11(5).

**£Mainly Government Securities£**

**DEEMED INCOME :**

If such amount is withdrawn and not used for specified purpose, then it will become deemed income of the year of withdrawal. £ Sec 11(3) £

If such amount is withdrawn and donated to another trust, then it is deemed income of the year of withdrawal.

If such amount ceases to be invested in the mode specified u/s 11(5), then also it will be deemed income of the year in which it ceases to remain invested in modes specified u/s 11(5).

If such amount is not withdrawn and applied within 6 years, then unutilized amount will become deemed income of 6<sup>th</sup> year. £ i. e it should be accumulated for 5 years and applied till 6<sup>th</sup> year£

**(4) ANY OTHER REASON**

A trust can make application under any other reason whereby it can claim exemption in current year without applying the money. However, it must be applied in immediate next year. In case of any default, it will become deemed income of next year.

**AMENDMENT MADE BY FA 2014:-**

Sec 11(7) provide that where a trust has been granted registration u/s 12AA and registration is in force in P.Y, then trust can't claim exemption u/s 10 except Sec 10(1) or Sec 10(23C). Therefore, following income which was exempt for trust earlier will now become taxable and should be added to Income statement :

- (i) Dividend on shares (earlier exempted u/s 10(34).
- (ii) Dividend on units (earlier exempted u/s 10(35).

- (iii) Long term capital Gain on shares where STT is paid (earlier exempted u/s 10(38)).  
By making this amendment, the Govt. is forcing the assessee to apply such income for the objects of the trust which was earlier not applied.  
The above list is just illustrative, i.e. all income referred in sec 10 will become taxable for a trust except 10(1) and 10(23C).

### **SECTION 12A:- CONDITIONS FOR APPLICABILITY OF SECTION 11 & 12.**

- (1) An Assessee to be registered as trust has to make an application in prescribed form & manner to the commissioner and such trust would be registered u/s 12AA.  
(2) The exemption u/s 11 & 12 will be available to the assessee from the P.Y. in which the application is made e.g. if an application is made on 20-11-19, then exemption will be available from P.Y. 2019-20 and for future years. However, earlier the assessee could not use to enjoy the exemption for preceding years under any circumstances.

### **FA 2014 HAS INSERTED 3 PROVISO'S U/S 12A :-**

**First Proviso:-** A trust can enjoy exemption for preceding years if on the date of registration the assessment for preceding years are pending in front of the A.O. and the objects on the date of registration and preceding years are similar.

**Second proviso:-** It is further provided that no action u/s 147 shall be taken by A.O. in case of trusts for any preceding years only for grounds of non-registration.

**Third Proviso:-** It is also provided that benefit contained in 1<sup>st</sup> and 2<sup>nd</sup> proviso shall not be available if the registration was refused or it was cancelled earlier.

### **SECTION 12AA :- PROCEDURE FOR REGISTRATION TRUST**

(1)	<pre> graph LR     TRUST[TRUST] -- Application --&gt; CIT[CIT]     style TRUST fill:#fff,stroke:#000     style CIT fill:#fff,stroke:#000     </pre>	Call for such documents and information as he thinks necessary in order to satisfy himself about the genuiness of activities of trust.
-----	---	--

(2) **After satisfying :**

(i) Pass on order in writing registering the Trust.	OR	(ii) If he not satisfied, then pass an order in writing refusing* the registration.
---	----	---

(\*) Before refusing an opportunity of being heard must be given to the applicant.

### **(3) TIME LIMIT FOR GRANTING OR REFUSING REGISTRATION:-**

Every order refusing / granting registration shall be passed before expiry of 6 months from the end of the month in which application was received. If no order is passed within 6 months, then it shall be deemed that trust is registered.

#### **MEENAKSHI AMMA ENDOWMENT TRUST (KARNATAKA H.C.)**

a.) The H.C observed that with the funds available with the trust, it can't be expected to carry out activity of charity immediately after its formation. Therefore, it can't be concluded that the trust has not intended to do any activity of charity.

b.) In such a situation, the objects of the trust mentioned in the trust deed have to be taken into consideration for satisfying themselves.

c.) Later on, if it is found the CIT is open to cancel registration.

d.) The registration can't be denied on the grounds that the trust has not carried out any activity of charitable Nature in short span of time after its formation.

(4) The CIT may pass an order in writing to cancel the registration subsequently, if he is satisfied that activities of the trust are **not genuine or are not being carried out in accordance with the objects of the trust.**

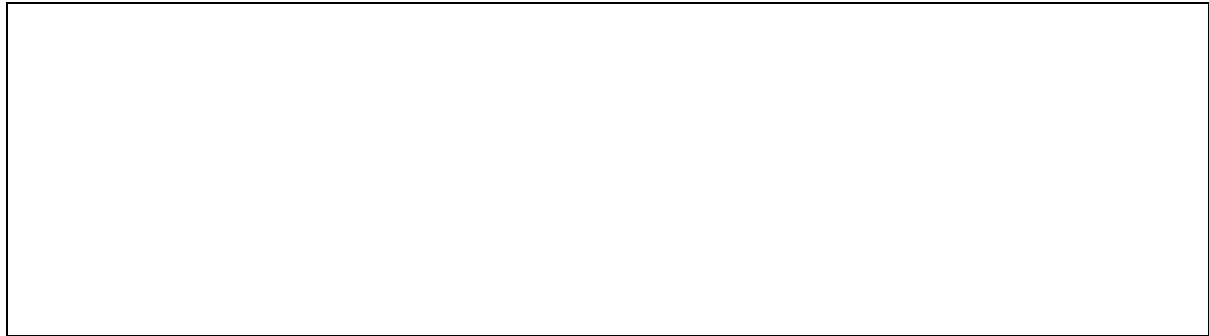
The above power of CIT is very restrictive in nature. Say for eg if an assessee deliberately invests Rs. 10,000 in a mode other than Sec 11(5), then by virtue of sec 13(1) for such P.Y. Sec 11 & 12 will not be applicable to the assessee and this is what the assessee wants, so that he can compute his income under general provision of IT Act & claims all exemptions u/s 10 which are otherwise taxable to trust. Further, in the next year the assessee can claim exemption u/s 11 & 12, as CIT used to have no power to cancel Registration in such cases.

With the intention of broadening the powers of CIT, FA 2014 has amended section 12AA to cancel the registration of the trust if the assessee founds doing any activity u/s 13(1).

Now, if the assessee invests Rs. 10,000 in non-specified modes, then he will lose exemption u/s 11 & 12 and commissioner will also cancel the registration. Practically speaking, registration once cancelled can't be again availed by the assessee.

#### **AMENDMENT MADE BY FINANCE ACT (NO.2) 2019**





### WHAT IS TO BE DONE IF THERE ARE CHANGES IN THE OBJECTS OF THE TRUST ?

1. In order to provide clarity, sec 12AA has been amended which provides that in case of modifications in the objects, the trust is required to obtain fresh registration by making an application within 30 days from the date of such adoption / modification of objects in the prescribed form and manner.

#### SECTION 11(1A):- EXEMPTION FOR CG IN CASE OF TRUST

FVC.	9,30,000
(-) Exp on transfer	<u>(30,000)</u>
N.S.C	9,00,000
(-) C.O.A.	<u>(6,00,000)</u>
Capital Gains	3,00,000

- (1) If the trust invests in new capital asset of an amount equivalent to the NSC or > NSC, then entire CG of the trust will be exempt u/s 11(1A).
- (2) If the trust invests in a new capital asset for an amount < NSC, then exemption u/s 11(1A) will

be as follows:

**Cost of New Asset - Cost of Old Asset transferred.**

#### SECTION 13(8) :-

This section provides that if the trust has the object of any other activity of general public utility & trust has been granted registration u/s 12AA & if the commercial receipts of the trust goes beyond 20% of total receipts, then exemption u/s 11 & 12 will be denied, but CIT will not cancel the registration. **[Also refer Proviso to sec 143(3)]**

**ANONYMOUS DONATION → TAXABLE U/S 115BBC @ 31.2%.****(1) WHEN Sec 115 BBC IS APPLICABLE ?****If**

A.D. > 5% of T.D.	<b>AND</b>	A.D. > 1 lakh.
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**(2) HOW ANONYMOUS DONATIONS ARE TAXABLE ?**

T.D. = 100L		Anonymous Donation	XX	10L
↙ ↘		(-) Exemption :-	(XX)*	(5L)*
A.D.	Other	• 5% of T.D. ↑		
10L	90L	• Rs. 1 Lakh ↑		
		Taxable A.D. u/s 115BBC @ 31.2 %	XX	5 L

**Notes:**

1. No exemption u/s 11 shall be allowed from Anonymous donation taxable u/s 115BBC.
2. (\*) It will be added to Normal Income Statement before 15% and then apply for Charitable & Religious purpose and claim exemption u/s 11.

**(3) NON-APPLICABILITY OF SEC 115BBC :-**

(i) A trust which is wholly registered as Religious trust.

**Note 1:-** However, from F.A. 2014 onwards a trust which is partly charitable & partly religious, then it has to keep 2 donation boxes :-

→ Amount Received in school → Sec. 115BBC will be applicable.

→ Amount Received in temple → Sec. 115BBC Not Applicable  
(Add to Normal Statement).

**Note 2:-** Sec 115BBC is applicable to a trust who is wholly charitable in nature.

**PROFIT LINKED DEDUCTIONS**  
**(SUNSET PROVISIONS)**

**Section 80-IB : Deduction in respect of P & G from Industrial undertaking,  
other than Infrastructure Development.**

**(1) Available to :-**

- (i) assessee engaged in Industrial Undertaking [Begins up to 31.03.04]
- (ii) Construction & development of Housing Project.
- (iii) Commercial production or refining of mineral oil in any part of India.
- (iv) Undertaking engaged in business of handling, storage and transportation of food grains.
- (v) Undertaking engaged in processing, preservation & packaging of fruits and vegetables or meat or meat products or poultry or marine or dairy products.
- (vi) Undertaking engaged in operating & maintaining hospital of at least 100 beds anywhere in India other than excluded areas.

**(2) Quantum & period :-**

- (a) For Initial 5 years → 100% of P & G derived from such undertaking.
- (b) For Next 5 years → 25% of P & G derived from such undertaking.  
[30% for company].

\* If an assessee who claims deduction under this section in case of an Industrial undertaking should employ 10 or more workers in a manufacturing process carried on with the aid of power or 20 or more workers in a manufacturing process without the aid of power.

● **Section 80-IA:-**



- (1) Any undertaking which starts providing telecommunication services and internet services on or after 1<sup>st</sup> April, 1995 but before 31<sup>st</sup> March, 2005.
- (2) Any undertaking which develops, develops & operates or maintains and operates an industrial park or SEZ notified by C.G.
- (3) An undertaking which is setup in any part of India for generation or generation & distribution of power.

\* **Period & Quantum :-**

- **Period** = 10 A.Y.

- **Quantum** = 100 % of P & G derived from eligible business.  
**Exception** :- In case of telecommunication services :-  
For 1<sup>st</sup> 5 A.Y. - 100%  
For next 5 A.Y. - 30%
- **Section 80-IC :- Special provisions in respect of certain undertaking in certain Special category states :-**

**Conditions**

	
<p><b>(a)</b> Any undertaking which mfg or produces any article or thing &amp; undertakes "Substantial Expansion" in the state of Himachal Pradesh or Uttaraanchal on or before 31.03.2012.</p>	<p><b>(b)</b> Any undertaking which begins to manufacture or produce any article in H.P. or Uttaraanchal on or before 31.03.2012.</p>




\* "Substantial Expansion" :- It means increase in the investment in the P & M by at least 50% of the book value of P & M.

\* **Quantum & period :-**

- Period = 10 years
- For Initial 5 A.Y. = 100% of P & G derived from such undertaking
- For Next 5 A.Y. = 25% of P & G derived from such undertaking.  
(30% for Company)

- **Section 80-ID :- Deduction in respect of P & G from business of Hotels & Convention Centers in specified Areas**

**Applicable to**

		
<p><b>(1)</b> engaged in business of hotels in "Specified areas" &amp; started between 01.04.07 to 31.07.2010 At least 2 star.</p>	<p><b>(2)</b> engaged in building, owning and operating a Convention center in "Specified area" between 01.04.07 to 31.07.2010</p>	<p><b>(3)</b> engaged in the business of the hotel located in the specified district having a "World Heritage Site" between 01.04.08 &amp; 31.03.2013. "22 districts covered here"</p>

\* **Quantum & Period :-**

- (1) Period - 5 A.Y.
- (2) Quantum - 100% of P & G derived from eligible business.

• **Section 80-IE:- Special provisions in respect of certain undertaking in North-Eastern States [AP, Assam, Manipur, Meghalaya, Sikkim, Tripura, Mizoram, Nagaland]**

Available to		
↓		↓
<p>(1) to manufacture or produce any eligible article or thing other than :</p> <ul style="list-style-type: none"> <li>• tobacco or tobacco substitutes.</li> <li>• Pan masala</li> <li>• Plastic carry bags</li> </ul> <p style="text-align: center;">└──────────┘ Ineligible goods.</p>	<p>(2) to undertake substantial expansion to mfg or produce any article or thing.</p>	<p>(3) To carry any eligible business</p> <ul style="list-style-type: none"> <li>(a) Hotel (not below * 2);</li> <li>(b) adventure or leisure sports incl. ropeway.</li> <li>(c) providing medical &amp; health services in the nature of nursing homes with minimum capacity of 25 bed.</li> <li>(d) running an old age Home.</li> <li>(e) operating vocational training.</li> <li>(f) running information technology related training centre.</li> <li>(g) manufacturing of information technology hardware.</li> <li>(h) bio-technology.</li> </ul>

**Period & Quantum:-**

- (1) **Period** = 10 years.
- (2) **Quantum** = 100% of P & G derived from eligible business.

**SEC 80-IAC : DEDUCTION IN RESPECT OF ELIGIBLE STARTUPS :**

Conditions		
←	↓	→
(1)	(2)	(3)
Company <span style="border: 1px solid black; padding: 0 2px;">OR</span> LLP engaged in "Eligible Business"	is incorporated on or after 1 <sup>st</sup> April 2016 but before 1 <sup>st</sup> April 2021.	T/O does not exceeds Rs. 25cr. in the PY relevant to the AY for which deduction is claimed under section 80-IAC.

- (4) It holds a certificate of eligible business from the inter ministerial board of certification as notified in official Gazette by Central Government.
- (5) The above Company or LLP is not formed by splitting up or reconstruction of business already in existence. **(Same as 35AD)**
- (6) It is not formed by transfer to a new business, a plant & machinery which was previously used. ( 2 exceptions Same as 35AD)

#### AMOUNT OF DEDUCTION:

- 1) If above condition are satisfied, 100% of Profits & Gains derived from eligible business is deductible for 3 consecutive AY's.  
However this deduction may at the option of the assessee be claimed by it for any 3 consecutive AY's out of 7 years beginning from the previous year in which eligible startup is incorporated.
- 2) BOA should be audited and audit report should be remitted along with ROI.

#### SEC 80-IBA : DEDUCTION FOR CERTAIN HOUSING PROJECTS:

##### CONDITIONS :

Deduction under this section is available to an assessee (may be an individual, HUF, AOP/BOI, company, firm or any other person) if following conditions are satisfied :

- 1) The assessee has profits derived from business of developing and building a housing project i.e. a project consisting predominantly of residential units with such other facilities and amenities as the competent authority may specify.
- 2) The competent authority has approved the project on or after 1<sup>st</sup> June 2016 but on or before **31<sup>st</sup> March 2020. ( Amended by Finance Act (No.1) 2019 )**
- 3) The assessee completes the project within a period of 5 yrs from date of 1<sup>st</sup> Approval from competent authority.
- 4) The project shall be deemed to have completed when a certificate of completion as a whole is obtained in writing from the competent authority
- 5) Where a residential unit in the housing project is allotted to an individual no other residential unit in the housing project shall be allotted to such individual or spouse or minor child of such individual.
- 6) The carpet area of shops and other commercial establishment does not exceed 3% of aggregate carpet area.

- 7) The size of plot, area of residential units and minimum utilisation of FAR (Floor area Ratio) should satisfy the criteria given below.

Location of Project	Area of plot of land	Carpet Area of Residential unit	Utilization of MINIMUM FAR
Within Chennai, Delhi, Kolkata, Bengaluru, Hyderabad or Mumbai	Not less than 1000 sq metres	Not exceeding 30 sq metres	Not less than 90%
Any other place	Not less than 2000 sq metres	Not exceeding 60 sq metres	Not less than 80%

- 8) The assessee should maintain separate BOA in respect of Housing project.

### AMOUNT OF DEDUCTION

If the above condition are satisfied, then 100% of the profits derived from above business is deductible u/s 80-IBA.

#### Reversal of Deduction if project not completed within stipulated time:

Where a housing project is not completed within 5 years from the date of 1<sup>st</sup> Approval and in respect of which deduction has been allowed under this section, the total amount of deduction allowed shall be deemed to be the Business Income of the assessee of the previous year in which the period for completion so expires.

#### AMENDMENT MADE BY FINANCE ACT (NO.2 ) 2019

The existing provisions of the section 80-IBA of the Act, inter alia, provide that where the gross total income of an assessee includes any profits and gains derived from the business of developing and building housing projects, there shall, subject to certain conditions, be allowed, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business.

With a view to align the definition of "affordable housing" under section 80-IBA with the definition under GST Act, it is proposed to amend the said section so as to modify certain conditions regarding the housing project approved on or after 1st day of September, 2019. The modified conditions are as under:

- (i) the assessee shall be eligible for deduction under the section, in respect of a housing project if a residential unit in the housing project have carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities of Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan Region); and

(ii) the stamp duty value of such residential unit in the housing project shall not exceed forty five lakh rupees;

These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to assessment year 2020-21 and subsequent assessment years.

### **AMENDMENT MADE BY FINANCE ACT 2018**

#### **Deduction in respect of certain income of producer companies [Sec. 80PA]**

•**Conditions** - In order to avail of deduction under section 80PA, the following conditions should be satisfied -

1. The assessee is a producer company under section 581A(l) of the Companies Act, 1956.
2. The total turnover of the producer company is less than Rs. 100 crore in any previous year.
3. The gross total income of the producer company includes any profits and gains derived from "eligible business".

**AMOUNT OF DEDUCTION** -If the above conditions are satisfied, 100 per cent of the Profit and gain attributable to "eligible business" is deductible for the assessment years 2019-20 to 2024-25. If the assessee is also entitled to deduction under any other provision or provisions of Chapter VI-A (ie., sections 80C to 80U), the deduction under section 80PA shall be allowed from the gross total income as reduced by the deductions under such other provisions.

**\*ELIGIBLE BUSINESS\*** - Only income from eligible business (not from all activities given under section 581B of the Companies Act) is qualified for deduction under section 80PA. "Eligible business" for the purpose of section 80PA means -

- a. the marketing of agricultural produce grown by the members; or
- b. the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or
- c. the processing of the agricultural produce of the members.



**TAXATION OF COMPANIES****SEC 115JB(1) CHARGING SECTION :-**

Notwithstanding anything contained in any other provisions of IT Act, if IT Payable as per I.T. Act < 15% of "Book Profits". Then such Book Profits shall be deemed to be Total Income and Tax = 15% (x) Book Profits. ( The MAT rate is changed on 20<sup>th</sup> Sept 2019 by FM )

**Note :-** MAT is applicable to all companies including Foreign companies ( Refer amendment made by Finance Act 2016)

	PY 18 - 19	PY 19 - 20
<b>Company</b>	<b>Rates for AY 19 - 20</b>	<b>AY 20 - 21</b>
Where the Total T/O or G/R does not exceed 250 Cr in PY 16 - 17( Domestic Co.)	25%	NA
Where its Total T/O or G/R does not exceed 400Cr during PY 17 - 18( Domestic Co.)	NA	25%
Other Domestic Co.	30%	30%
Foreign Co.	40%	40%
<b>SURCHARGE</b>		
	<b>Domestic</b>	<b>Foreign</b>
If TI is > 1 Cr but upto Rs. 10 cr	7%	2%
If TI is more than Rs.10 Cr	12%	5%
then Add: 4% Health & Education Cess		
MAT Rate for all assesseees = 18.5%	18.5%	18.5%
(+) Surcharge = Same as above		
(+) Health & Education Cess @ 4 %		

**SECTION 115JB(2): APPLICABILITY OF MAT:**

(a) Applicable for companies who are covered under Companies Act 2013.	(+)	(b) Applicable for Other companies also who are not covered by companies Act like Insurance, Banking & Electricity Companies
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**KEY NOTES:**

1. While preparing the profit & loss account , the accounting policies , accounting standards, the method & rates adopted for depreciation should be the same as adopted for preparing the annual accounts to be laid down in front of shareholders in AGM.

2. Where a company follows a different Financial Year as compared to Previous Year mentioned in Income Tax Law , then the company has to redraft its accounting P&L according to the Income Tax Previous year.

### **EXPLANATION 1 TO SEC 115JB :- COMPUTATION OF BOOK PROFITS.**

"Book Profits" = NP as per P & L A/c (+) Few Additions (-) Few Deletions

#### **ADDITIONS :-**

- (a) **Income Tax paid or payable and provision there of :-**

Income tax includes :- DDT, Interest on Income Tax, Health & Education Cess.

Note :- Wealth Tax & penalties under IT Act are not added back to compute Book profits u/s 115JB - However, the same are added to arrive at Total Income under IT Act, 1961.

- (b) The amounts transferred to any Reserves & Also Refer reduction clause (i) 3
- (c) Provisions for Unascertained Liabilities.
- (d) Provision for losses of subsidiary.
- (e) Amount of dividend paid / proposed.
- (f) Any expenditure relating to any income to which Sec. 10, Sec 11 & Sec 12. (Also refer point (ii) of deletion]

#### **Notes:**

(a) Example: Dividend u/s 10(34) & 10(35) will not subject to MAT.

(b) Further Income & Expenditure in respect of Sec 10AA shall be not reduced or added to Book Profit. It means Income referred u/s 10AA is liable to MAT.

(c) Even Incomes referred u/s 80-IA, 80-IB, 80-IC, 80-ID, 80-IE, 80-IAC, 80-IBA etc are also liable for MAT.

- (fd) the expenditure relatable to income by way of royalty of patent taxable u/s 115BBF.
- (g) Amount of depreciation [Refer point (iia) of Reduction].

- (h) Amount of Deferred Tax & provisions thereof.
- (i) Provision for Diminution in the value of any asset must be added back to N.P. to arrive at Book Profits. (Inserted by FA 2009 w.r.e.f from A.Y. 2001-02).

The SC in the case of HCL Comnet Systems and services Ltd (2008) has held that Prov for Bad & Doubtful Debts can't be said as unascertained liability at all. As per the SC, it can't be added back under clause (c).

Further it does not represent amount transferred to any Reserves.

It can't be added back by the virtue of clause (b) also.

The SC held that Prov for Bad and Doubtful debts amounts to diminution in the value of assets and it should not be added back to compute book profits, although the same is disallowable under normal provision of IT Act.

To override the above judgement, FA 2009 inserted clause (i).

- (j) Amount standing in revaluation reserve relating to revalued asset on the disposal of such asset:-

#### EARLIER TAX PLANNING

Eg:- A Co. has an asset whose actual cost = Rs. 100 L and it is to be sold during the P.Y. 31.03.2020 for Rs. 2000 L.

When asset is sold the Co. passes the following journal entry :-

Bank A/c	Dr.	Rs. 2,000 L
	To Asset A/c	Rs. 100 L
	To P & L A/c	Rs. 1,900 L

Now Rs. 1,900 L will form part of N.P. & Co. will have to pay MAT on Rs. 1900 L.

#### Now, the Co. does the following tax planning :-

- (1) The Co. revalues the asset by Rs. 1,890L & passes the J.E. :-

Asset A/c	Dr.	Rs. 1,890 L
	To Revaluation A/c	Rs. 1,890 L

- (2) Company sells the asset and passes the J.E. :-

Bank A/c	Dr.	Rs. 2,000 L
	To Asset A/c	Rs. 1,890 L
	To P & L A/c	Rs. 10 L

Therefore the government introduced clause (j) as above.

**DEDUCTIONS :-**

(i) Profit from manufacturing Activity - Rs. 5 L.

Profit from sale of Investment - Rs. 6 L → Transferred to XYZ Reserve.

(ii) Any amount of income to which any provision of Sec 10, Sec 11 and Sec 12 applies must be reduced (also refer clause (f) of addition).

(iia) Amount of depreciation debited to P & L (excluding on account of revaluation) (Also refer clause (g) of addition).

(iib) Cost of Asset = 100	Rate = 10%	
Revaluating Asset by 200	Net profit	xx
Asset (after Revaluation) = 300	(+) Depreciation	30
	(-) Depreciation	<u>(10)</u>
	Book Profit	<u>20</u> = P & L A/c.

Amount withdrawn from R/R which is credited to P & L A/c is reduced from Net profit to arrive at Book profit. However, such withdrawal from R/R cannot exceed the amount of depreciation on account of Revaluation. If the Co. withdraws Rs. 50 from R/R and credit to P & L A/c, then by virtue of clause (iib) company would be allowed to reduce Rs. 20 only because depreciation on account of revaluation is Rs. 20 only.

Suppose, if Co. withdraws Rs. 10 only then entire Rs. 10 would be allowed for deduction.

**(iii) Amount of Brought Forward Loss or Unabsorbed depreciation whichever is less as per BOA :-**

Eg:- Profit of a Co. is Rs. 50,00,000. It has following b/f losses as per Books of Accounts:

1.	B/f losses inc. depreciation	11,00,000	11,00,000	11,00,000
2.	B/f Dep. incl. above	2,00,000	8,00,000	Nil
3.	B/f losses without dep.	9,00,000	3,00,000	11,00,000
	Amount to be set off ((2) or (3) ↓)	2,00,000	3,00,000	Nil
	Book Profit	48,00,000	47,00,000	50,00,000

**AMENDMENT MADE BY FINANCE ACT 2018**

The existing provision of c/f & set off of b/f losses & UAD under MAT is allowed to the extent whichever is less. This is creating a barrier to companies who are seeking insolvency resolutions under IBC, 2016. Therefore, it is provided that the aggregate of UAD & loss shall be allowed to be reduced from book profit if Co's application for insolvency resolution process under IBC, 2016 has been admitted by the adjudicating authority.

**Also Refer Sec 79 later on for amendment made by Finance Act (No.2) 2019.**

**(iv) PROFIT OF SICK INDUSTRIAL COMPANY :-**

Eg:- Suppose a Co. becomes sick on **31.03.2014** as its paid up Equity Share Cap (+) Free reserves = Rs. 100L & Accumulated loss = Rs. 150L.

P.Y.	Profits	Accumulated Losses
<b>31.03.2015</b>	10L	140L
<b>31.03.2016</b>	15L	125L
<b>31.03.2017</b>	10L	115L
<b>31.03.2018</b>	12L	103L
<b>31.03.2019</b>	10L	93L
<b>31.03.2020</b>	13L	80L

The Co. will not be liable to MAT from P.Y. \_\_\_\_\_ to P.Y. \_\_\_\_\_. The year in which Net worth exceeds accumulated losses, MAT will not be liable for that year also. For subsequent years i.e. P.Y. \_\_\_\_\_, MAT will be liable.

- (v) **Amount of deferred tax, if such amount is credited to P & L A/c (Also refer clause (h)).**

### **FA 2015 AMENDMENT :-**

#### **Analysis of clause ( fa) of Addition & clause ( iic) of deletion :-**

Sec. 86 provides that no income tax is payable on the share of the member of AOP/BOI in the certain circumstances. However, same is liable for MAT as it is not excluded from Book Profit. In case of partnership Firm, share of profits of a firm is exempt u/s 10(2A) and no MAT is payable on it by partners.

In the view of the above Sec 115JB has been amended from A.Y. 2016-17 so as to provide that share of the member of AOP/BOI on which no income tax is payable by virtue of Sec. 86 shall be excluded while computing MAT liability of members u/s 115JB.

The expenditure, if any, debited to P & L A/c corresponding to such income is also added back to net profit to arrive at book profit for the purpose of MAT.

#### **Analysis of clause (fb) of Addition & clause (iid) of deletion :-**

##### **( Do after International Taxation )**

- (1) **In case of foreign companies, CG on transaction of securities are taxable at a lower rate than 18.5% in same cases :-**

(a) STCG on Listed Equity shares / units of Equity oriented MF/units of Business Trust taxable @ 15% u/s 111A.

(b) LTCG on Equity shares / units of Equity oriented MF/units of Business Trust are Chargeable @ 10% if STT is paid, etc.

The major investors in the Indian markets are foreign co. and lot of foreign exchange flows in India, because of investments made by these companies. The Lower rates on STCG and LTCG attracts foreign Co. to invest in Indian market.

But as per Finance Minister, the MAT liability of 18.5% on these CG, which are otherwise taxable at lower rate hampers the investment to be made by these Companies.

As a result Central Government has exempted these CG from MAT liability from A.Y. 2016-17.

Consequential amendment is made by introducing clause (fb) which provides that any expenditure relatable to the above C.G if debited to P & L A/c, in case of foreign Co. shall be added to net profit to arrive at book profit.

- (2) In case of Foreign Co., royalty and fees for technical services are taxable at 10% u/s 115A of chapter XII. The Lower rate of 10% was introduced so that foreign Co. transfers their know how or technical Service to Indian Co. to enjoy tax rate of 10%. But imposition of MAT liability of 18.5% on such incomes hampers the purpose. The Central Govt exempted such royalty and fees from technical Service from MAT in case of foreign Co.
- In case of foreign Co., certain interest referred u/s 194LB, 194LC are taxable at 5% u/s 115A of chapter XII.
- The lower rate of tax on interest on certain bonds encourages to get certain necessary foreign exchange in India. But 18.5% of MAT discourages such purpose. Such interest are also excluded from MAT.

**As per 115JB(5A) : NO MAT to LIFE INSURANCE BUSINESS u/s 115B.**

#### **SECTION 115JAA :- MAT CREDIT**

(1)	MAT credit Available	=	Tax paid under Sec 115JB	(-)	Tax payable under Normal provisions.
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- (2) MAT credit shall be allowed in the A.Y. in which :-

Tax payable under Normal provision > Tax payable under Sec 115JB

- (3) MAT credit to be allowed shall be

Tax payable under 115JB (-) Tax payable under Normal provision

Eg:- MAT credit = 2,00,000 c/f from last year

	I.T. Normal	115JB
T.I. / B.P.	5,00,000	8,00,000
Normal Tax @		
MAT @		
Tax payable		
(-) Tax credit		
Final Tax		
(-) MAT credit c/f		

MAT Credit can be carried forward for 15 years.

Also Refer the discussion of Foreign Tax Credit later on as follows on youtube:

<https://www.youtube.com/watch?v=Y-az9RDbdYo>

### APOLLO TYRES LTD V/S CIT :-

#### JUDGEMENT :-

It was held that A.O. has limited power of making certain additions and deletions to Net Profit to arrive at Book profit.

- He has no power to doubt the BOA which is certified by auditors, laid in the general meeting and filed with ROC.
- Sec 115JB does not empower the A.O. to embark upon a fresh enquiry in regard to the entries made in BOA.

It was held that while determining Book profit, A.O. can't recompute P & L by excluding arrears of depreciation.

### N.J JOSE & CO. (P) Ltd (Kerela)

- Can capital Gains exempted by virtue of Sec 54EC be included in Book profit u/s 115JB?
- YES.

### CERTAIN AMENDMENTS MADE BY FA 2016.

#### 1) SEC 115BBF & SEC 115JB - TAXATION OF INCOME FROM "PATENTS".

As per Sec 115BBF where the total income of Resident assessee includes any income by way of royalty in respect of a patent developed and registered in India then such Royalty shall be taxable @ 10% + (Surcharge if any & H&E cess) on the gross amount of royalty without allowing any deduction for any expenditure of allowance.

However the same income was liable to MAT @ 18.5%. Therefore this is defeating the purpose of encouraging through sec 15BBF.

Therefore FA 2016 has inserted clause (fd) - Addition & clause (iig) Deletion to add back expenditure in relation to such royalty and to reduce revenue in respect of such royalty. Therefore such income is not liable to MAT.



### ANALYSIS OF SEC 115BBF:

- The new section 115BBF provides that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of 10%.
- An eligible assessee would mean a person resident in India, who is the true and first inventor of the invention and whose name is entered in the patent register as the patentee.
- Deduction of any expenses from the royalty income is not allowed.
- Provisions of section 115JB (MAT) are not applicable on such royalty income from patent.
- The eligible assessee can opt for the concessional rate and to exercise the option in the prescribed manner on or before due date of filing the return of income for the relevant previous year.
- Once the option is exercised, he does have a choice of opting out of the section. If he does so, in any of the five assessment years succeeding the relevant assessment year of exercising the option, he would not be eligible to opt for concessional rate for five assessment years subsequent to the assessment year in which he opted out. ( Same as sec 44AD)
- **The Benefit u/s 115BBF is available if 75% of the expenditure i.r.t. R&D is incurred in India.**

### 2. Sec 115BA: TAX ON INCOME OF CERTAIN DOMESTIC COMPANIES

In order to provide relief to newly setup domestic companies engaged solely in the business of manufacture or production of article or thing, a new section 115BA has been inserted, which provide option to domestic company to pay tax **@ 25% on TOTAL INCOME subject to rates mentioned in CH XII( Sec 110 to Sec 115BBG )** from Assessment Year 2017-18, provided following conditions are fulfilled:

1. The company has been setup and registered on or after 1st day of March, 2016;
2. The company is engaged in the business of manufacture or production of any article or thing and is not engaged in any other business;
3. The company while computing its total income has not claimed:
  - i. any benefit under section 10AA, or
  - ii. benefit of section 32AC and 32AD; or
  - iii. benefit of additional depreciation; or
  - iv. benefit of section 33AB; or
  - v. deduction under section 35AD; or

- vi. benefit of sections 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(2AA), 35(2AB);
  - vii. Expenditure on agricultural extension project under section 35CCC; or
  - viii. Expenditure on skill development project under section 35CCD; or
  - ix. any deduction in respect of certain income under Part-C of Chapter VI-A other than the provisions of section 80JJAA;
  - x. set-off of bought forward losses;
4. The option is furnished in the prescribed manner before the due date of furnishing of income.
5. Once the option is exercised, the company cannot opt out for lifetime.

£ Also Refer Sec 115BAA & Sec 115BAB introduced on 20<sup>th</sup> September 2019 by Finance Minister Nirmala Sitharaman.ji. 3 £ See Revision Videos. It is covered there3

### 3) WHETHER MAT IS APPLICABLE TO FOREIGN CO.?

In line with the recommendation of justice AP Shah committee, FA 2016 has inserted explanation 4 to Sec 115JB which states that MAT shall not be applicable to a foreign Co, in respect of following cases:

- a) If the assessee is a resident of a country or specified territory with which India has an agreement as per Sec 90(1) or 90A(1) and the assessee does not has permanent establishment in India.
- b) The assessee is a resident of a country with which India does not have an agreement under the above referred sections and is not required to seek registration under any law for the time being in force.

This amendment is from retrospective effect i.e. from 1.4. 2001

### 4) Concessional MAT Rate to INTERNATIONAL FINANCIAL SERVICES CENTRE

:

As per Sec 115JB(7) in case of a company being a unit located in International financial service centre and deriving its income solely in convertible foreign Exchange. The MAT shall be chargeable at rate of 9% instead of 18.5%. (Also there in AMT )

### SUMMARY FOR LAST DAY REVISION:

Particulars	115JB	Normal provisions
1) Income Tax (Sur, cess)	Add	Add £40(a)(ii)3
2) Interest on I.T	Add	Add £37(1)3
3) Penalty on I.T	Ignore (Allowed)	Add (Penal)
4) Wealth Tax	Ignore (Allowed)	Add (40(a)(iia))
5) DDT u/s 115-0/115-R	Add	Add

6)	Transfer to Reserves	Add	Add (Except 36(1)(viii), etc)
7)	STT, CTT	Ignore (Allowed)	Allowed if Income is PGBP
8)	Prov for unascertained liabilities	Add	Add
9)	Prov for losses of subsidiary	Add	Add
10)	Dividend paid	Add	Add
11)	Expenses in relation to Sec 10	Add	Add ( sec 14A)
	Income in relation to Sec 10	Less	Less as exempt exempt
	LTCG	Ignore	Add/Less LTCG in PGBP and show under Cop Gains.
	STCG 10AA / 80IA / 80IB / 80IAC / 80IAB, etc	Ignore	Add/Less STCG in PGBP and show under Cop Gains. 80IA etc Include in GTI and Less from Ch VIA
	Share of profit from partnership firm	Less	Exempt u/s 10(2A)
	Share of profit from AOP / BOI	Less	Exempt u/s 86
12)	<b>Foreign Company</b>		
	1) LTCG on securities	Less	Taxable @ applicable Rates
	2) STCG on securities	Less	Taxable @ applicable Rates
	3) Interest, royalty, fees from Technical services	Less	115A, 194LB, LC, LD, etc. Taxable at concessional rates.
13)	Depreciation	Add Dep <sup>n</sup> Dr to P & L Less Dep <sup>n</sup> other than reval	Add Dep <sup>n</sup> Dr to P & L Less Dep <sup>n</sup> u/s 32.
14)	Deferred Tax	Add/Less	Add/Less
15)	Prov <sup>n</sup> for Diminution	Add 1) Eg: Prov <sup>n</sup> for RDD	Add 1) ξexception is Banks/NBFC3
16)	Royalty income u/s 115BF	Add / Less	Taxable @ 10%
17)	Amount withdrawn from Reserves & Cr to P & L	Less if Added earlier	Less



**(2) ADJUSTED TOTAL INCOME :-**

Total Income as per Normal Provisions of IT Act	Xxx
(+) Deductions u/s 80-IA to 80RRB except 80P	Xxx
(+) Deductions u/s 10AA	Xxx
(+) Deductions u/s 35AD	Xxx
(-) Depreciation u/s 32(1)(ii)/(iia) assuming ded <sup>n</sup> u/s 35 AD was not allowed	(xxx)
<b>Adjusted Total</b>	Xxx
<b>Income</b>	

**AMENDMENT MADE BY FINANCE ACT 2018:**

Sec. 115JC has been amended to provide that in case of a unit located in IFSC, the AMT shall be calculated at 9% if the consideration is payable in Foreign Currency (Same as in MAT)

**KEY NOTES :-**

- (1) Deduction u/s 80C to 80GGC & 80U are not to be added back.
- (2) AMT is not payable by Individual, HUF, AOP/BOI, every Artificial Judicial person if adjusted total income of such person does not exceed to Rs. 20,00,000.
- (3) The provisions of AMT are applicable to Partnership Firm including LLP even if Adjusted Total Income is less than Rs. 20,00,000 as partnership firm can't be called as artificial judicial person.
- (4) As per Sec 115JD if AMT paid is greater than tax as per normal provisions, then it can be carried forward for 15 A.Y. ( Same as MAT )
- (5) Even if AMT is not applicable in a particular Financial year , still compute AMT for getting for taking AMT Credit.
- (6) Rest all provisions are same as MAT .

**PENALTIES & PROSECUTIONS****WHO CAN IMPOSE THE PENALTY**

Penalty can be levied by :

- (i) The Assessing Officer
- (ii) The CIT(Appeals)
- (iii) The Commissioner of Income-tax

**KEY NOTES:**

1. Income Tax Appellate Tribunal (ITAT) cannot impose penalty.
2. The penalty proceedings must be initiated before levying any penalty. Penalty proceedings are initiated by issuing a show cause notice.
3. Assessing Officer shall levy penalty for under reporting or mis-reporting of income on the additions made by him in an assessment or reassessment under section 143(3)/144/147/153A. CIT (Appeals) shall levy penalty for under reporting or mis-reporting of income on the additions made by him in an order passed under section 250. CIT shall levy penalty for under-reporting or mis-reporting of income on the additions made by him in an order passed under section 263.
4. If Assessing Officer is to levy the penalty for under-reporting or mis-reporting of income, then the penalty proceedings must be initiated by the Assessing Officer before the completion of assessment.

If CIT(Appeals) is to levy the penalty for under-reporting or mis-reporting of income, then the penalty proceedings must be initiated before passing the order under section 250.

If CIT under section 263 increases the income, then he must initiate the penalty proceedings before passing the order under section 263.

**5. SHADIRAM BALMUKUND (SUPREME COURT)****Facts :**

The assessee filed a return of income declaring an income of Rs . 20,00,000. The Assessing Officer added unexplained cash credits of Rs . 6,00,000 and assessed the income at Rs . 26,00,000. The Assessing Officer initiated penalty proceedings under section 270A before the completion of the assessment.

The assessee filed an appeal to CIT(Appeals) against the order of the Assessing Officer. The CIT (Appeals) by his order under section 250 confirmed the additions made by the Assessing Officer and further increased the income by Rs . 5,00,000 to Rs . 31,00,000. Assessee decided not to file any further appeal, Assessing Officer levied penalty on the additions of Rs . 11,00,00.

**Decision :**

The Supreme Court held that the Assessing Officer can levy penalty for under-reporting or mis-reporting on the additions made by him and not on the additions made by the CIT

(Appeals). Similarly, the CIT(Appeals) can levy penalty on the additions made by him and not on the additions made by the Assessing Officer.

In the present case, the Assessing Officer can levy penalty on the additions of Rs . 6,00,000 made by him and not on the additions of Rs . 5,00,000 made by CIT(Appeals). The Supreme Court accordingly deleted the penalty levied by the Assessing Officer on the additions of Rs . 5,00,000 made by CIT(Appeals).

The Supreme Court also held that CIT(Appeals) cannot be directed to levy penalty on the additions made by him since he had not initiated the penalty proceedings before passing the order under section 250.

6. Penalty other than penalty for under reporting or mis-reporting of income can be levied by initiating the penalty proceedings (by issuing a show cause notice) and such proceedings can be initiated at any time. Penalties such as penalty for failure to get tax audit done, penalty for non-maintenance of books of account, can be initiated even if an assessment is not made on the assessee.
7. Penalty order and assessment order are distinct order. Similarly, penalty proceedings and assessment proceedings are distinct proceedings.
8. Penalty is levied by passing a penalty order. Against the penalty order passed by Assessing Officer an appeal can be filed to CIT(Appeals) or a revision application can be made to CIT under section 264 or a rectification application can be made under section 154. Against the penalty order passed by CIT(Appeals) or the Commissioner of Income-tax, an appeal can be filed to ITAT.
9. Law relating to penalty for concealment of income was contained in section 271(1)(c) and that section is no more relevant from Assessment Year 2017-18. From Assessment Year 2017-18, new section 270A replaces section 271(1)(c).

#### SECTION 270A

<b>A PERSON SHALL BE CONSIDERED TO HAVE UNDER-REPORTED THE INCOME IF:</b>	<b>AMOUNT OF UNDER-REPORTED INCOME &amp; TAX THEREON:</b>
<p><b><u>Return has been filed and assessment made for first time</u></b>            Income assessed &gt; Income determined under section 143(1)(a)</p>	<p><b><u>Under-reported Income:</u></b>            Income assessed <b>minus</b> Income determined under section 143(1)(a)</p> <p><b><u>Tax on under-reported Income</u></b>            Tax on [Under-reported Income + Income determined under section 143(1)(a)]</p> <p style="text-align: center;"><b>Minus</b>            Tax on Income determined under section 143(1)(a)</p>

<p><b><u>No Return has been filed and assessment made for first time</u></b> Income assessed &gt; Maximum amount not chargeable to Tax</p>	<p><b><u>Under-reported Income :</u></b> (i) In case of assessee other than individual / HUF = Amount of income assessed (ii) In case of Individual / HUF = Amount of income assessed <b>minus Rs . 2,50,000/3 lacs/5 lacs.</b></p> <p><b><u>Tax on under-reported Income</u></b> (i) Tax on under reported income as if it were the total income (ii) Tax on (under-reported income + Rs . 2,50,000/ 3 lacs/ 5 lacs) as if it were total income of assessee</p>
<p><b><u>Case of Re-assessment</u></b> Income reassessed &gt; Income assessed or reassessed immediately before such reassessment.</p>	<p><b><u>Under-reported Income</u></b> Amount of Income reassessed – Amount of income assessed in preceding order</p> <p><b><u>Tax on Under-reported Income</u></b> Tax on (Under-reported Income + Income assessed in preceding order] <b>Minus</b> Tax on Income assessed in preceding order</p>
<p><b><u>Where section 115JB or 115JC applies and return has been filed by the assessee and assessment made for first time</u></b> Deemed Income assessed as per section 115JB/115JC &gt; Deemed income as per section 115JB/115JC determined under section 143(1)(a) Total as per</p>	<p><b><u>Under-reported Income</u></b> <b>(A – B) + (C – D)</b> A = Total Income assessed as per general provisions B = Total Income assessed as per general provisions reduced by under-reported income C = Total Income assessed as per section 115/JB/115JC D = Total Income assessed as per section 115/JB/115JC reduced by under-reported income. <b>Note:</b> If under-reported income in ‘B’ and ‘D’ are the same, then under-reported income shall not be considered in ‘D’.</p>
<p><b><u>Where section 115JB or 115JC applies and it is a case of reassessment</u></b> Deemed total Income assessed as per section 115JB / 115JC &gt; Deemed income as per section 115JB / 115JC assessed immediately before such reassessment Total as per</p>	<p><b><u>Under-reported Income</u></b> <b>(A – B) + (C – D)</b> A = Total Income assessed as per general provisions B = Total Income assessed as per general provisions reduced by under-reported income C = Total Income assessed as per section 115/JB/115JC</p>



	D = Total Income assessed as per section 115/JB/115JC reduced by under-reported income. <b>Note:</b> If under-reported income in 'B' and 'D' are the same, then under-reported income shall not be considered in 'D'.
<b><u>Returned Income is a Loss and on assessment Loss is reduced or in converted into income</u></b>	<b><u>Under-reported Income</u></b> Loss assessed / – Loss as per section income assessed 143(1)(a) <b><u>Tax on Under-reported Income</u></b> Tax on under-reported income as if it were total income of the assessee.
<b><u>Case of reassessment and on reassessment</u></b> Loss in assessment immediately before such reassessment in reduced or converted into income.	<b><u>Under-reported Income</u></b> Loss assessed / – Loss assessed in income assessed preceding assessment order <b><u>Tax on under-reported Income</u></b> Tax on under-reported income as if it were the total income of the assessee.

### **AMENDMENT MADE BY FINANCE ACT (NO.2) 2019**

#### **Rationalisation of penalty provisions relating to under-reported income**

Section 270A contains provisions relating to penalty for under-reporting and misreporting of income. The existing provisions provide for various situations for the purposes of levy of penalty under this section. However, these provisions do not contain the mechanism for determining under-reporting of income and quantum of penalty to be levied in the case where the person has under-reported income and furnished the return of income for the first time under section 148 of the Act.

In order to provide for manner of computing the quantum of penalty in a case where the person has under-reported income and furnished his return for the first time under section 148, it is proposed to suitably amend the provisions of section 270A.

These amendments will take effect retrospectively from 1st April, 2017 and will, accordingly, apply in relation to assessment year 2017-2018 and subsequent assessment years.

#### **ANALYSIS OF SECTION 270A(4) & 270A(5) - INTANGIBLE ADDITIONS**

Sometimes the Assessing Officer makes additions for purely technical reasons e.g. application of a presumptive rate of gross profit or yield, addition on account of presumptive disallowance of expenditure, additions on account of low drawings. These additions are commonly referred as "INTANGIBLE ADDITIONS". Penalty for under-reporting or misreporting of income cannot be levied on such additions.

Say for example a contractor files return of income for Assessment Year 2020-21 as under:

Receipts	Rs. 10 crores
Returned Income	Rs. 20 lakhs
<b>Add:</b> Assessing Officer under section 143(3) makes additions on account	Rs. 180 lakhs

of low Gross Profit Rate (G.P. Rate) and maintains G.P. rate @20% and makes additions of RS . 180 lakhs	
<b>Assessed Income</b>	<b>Rs . 200 lakhs</b>

RS . 180 lakhs represents intangible additions and no penalty for under-reporting or misreporting of income shall be levied on such intangible additions.

Suppose, Assessing Officer completed the above assessment on 31.12.2021 and did not initiate penalty for underreporting of income.

The assessee on 10.2.2022 is found to be in possession of unaccounted cash of RS . 180 lakhs. The assessee explains that the cash of RS . 180 lakhs represents the intangible additions made by Assessing Officer in Assessment Year 2020-21.

The Supreme Court held in *Anantharam Veera Singhaiah & Co.* that these intangible additions represent the real income of the assessee and can be used in subsequent assessment years for explaining the unexplained investments, unexplained cash credits and unexplained assets. The assessee can take a plea that the unexplained investments, unexplained cash credits and unexplained assets have been acquired out of the intangible additions and the departments shall have to accept his plea.

In this case although the assessee is admitting underreporting of income in Assessment Year 2020-21 but penalty for underreporting cannot be levied because the penalty has not been initiated before the completion of assessment of Assessment Year 2020-21.

The objective of introducing 270A(4) and 270A(5) is to levy penalty for underreporting of income in such case. Section 270A(4) and 270A(5) affirms the Supreme Court judgement that an assessee can explain unexplained investments etc. out of intangible additions made in the past assessment years. **However, the said section provides that the intangible additions so used in explaining the unexplained investments etc. shall be deemed as underreported income on which penalty for under-reporting or misreporting of income shall be levied.**

### Illustration 1:

The Assessing Officer finds unexplained investments of RS . 10 lakhs in Assessment Year 2020-21 and the assessee explains that the said investments have been made out of the intangible additions made in the past. The following data is given to you:

Assessment Year	Additions made on which concealment penalty has not been levied i.e. the intangible additions
2008-09	10,00,000
2009-10	1,00,000
2010-11	NIL
2011-12	5,00,000
2012-13	2,00,000
2013-14	NIL
2014-15	NIL
2015-16	1,00,000
2016-17	NIL
2017-18	NIL

Can the assessee explain the unexplained investments out of the above intangible additions? What is the consequence if he can do so?

**Answer:**

By virtue of the Supreme Court's decision in *Anantharam Veerasinghaiah & Co.*, the assessee can explain the investments of RS . 10 lakhs in Assessment Year 2020-21 out of the intangible additions made in the past assessment years. But by doing so, Explanation 2 to section 271(1)(c) [similar to section 270A(4) and 270(5)] will be attracted and RS . 10 lakhs will be treated as the concealed income of past assessment years in the following manner:

Assessment Year	Concealed Income
2015-16	1,00,000
2012-13	2,00,000
2011-12	5,00,000
2009-10	1,00,000
2008-09	1,00,000
<b>Total</b>	<b>10,00,000</b>

Penalty for concealment of income as per the law relevant in above assessment years shall be levied.

**Illustration 2:**

Suppose in Illustration 1 above, further unexplained investments of RS . 12 lakhs are found in assessment year 2021-22 also, can the assessee explain them out of the intangible additions made in the past assessment years.

**Answer:**

The assessee can explain the investment of RS . 9 lakhs out of the intangible additions made in Assessment Year 2008-09. As per section Explanation 2 to section 271(1)(c) [similar to section 270A(4) and 270(5)], RS . 9 lakhs shall be deemed as concealed income of Assessment Year 2008-09 for which penalty proceedings can be initiated at any time. RS . 3 lakhs is the misreported income of Assessment Year 2021-22, on which the assessee shall pay:

- (a) tax,
- (b) interest under section 234A/ 234B/ 234C, and
- (c) penalty for misreporting of income under section 270A @200%

**ANALYSIS OF SECTION 270A(6) - CERTAIN ADDITIONS/DISALLOWANCES NOT REGARDED AS UNDER-REPORTED INCOME OR MISREPORTED INCOME**

Section 270A(6) provides that the following shall not be treated as under-reported income/ mis-reported income and therefore no penalty under section 270A shall be levied.

**1. BONAFIDE EXPLANATION [CLAUSE (a)]**

It provides:

- Under-reported income shall not include amount of income for which the assessee offers an explanation:
- The specified authority is satisfied about the explanation that it is bona fide; and
- The assessee has disclosed all the material facts to substantiate the explanation.

There is possible where disallowance/addition in made by the Revenue Authorities but assessee proves that he has claimed the deduction/ exemption on the basis of a High Court Judgment.

2. **UNDER-REPORTED INCOME ESTIMATED, WHERE ACCOUNTS CORRECT AND COMPLETE [CLAUSE (b)]**

It provides that where:

- amount of under-reported income is estimated,
- the accounts are correct and complete to the satisfaction of the specified authority, and
- the method employed does not enable proper determination of income,

This is possible where additions are made based on estimation of gross profit, as against the declared profits, without rejecting the books of account and/or without finding that the audited financial statements of the assessee are not true and correct. In such a case, the difference attributable to estimated amount of gross profit shall be excluded from the underreported income.

3. **ENHANCEMENT OF THE ESTIMATE OF THE ASSESSEE RESULTING IN UNDERREPORTING OF INCOME [CLAUSE (c)]**

It contemplates a situation where:

- an assessee estimated an amount in respect of a claim or disallowance;
- such claim is reduced or disallowance is increased in the assessment;
- such difference in the estimate shall not be considered as amount of income underreported; and
- the assessee has disclosed all the facts material to the addition or disallowance.

Such a case can arise where, to illustrate personal expenditure is estimated at a certain amount in respect of travel or conveyance or the like expenditure and accordingly disallowed in computing the returned income, which is accepted in the intimation. In the assessment, the disallowance is increased or deduction decreased. The incremental disallowance or reduction shall not be treated as underreported income provided all the facts necessary in relation to the same are disclosed.

4. **UNDER-REPORTED INCOME REPRESENTED BY TRANSFER PRICING ADJUSTMENT [CLAUSE (d)]**

It contemplates a situation where:

- Addition is made to the total income returned on account of adjustment in arm's length price determined by the Transfer Pricing Officer;
- the assessee has maintained information and documents prescribed under section 92D of the Act;
- the assessee has declared the international transaction in Transfer Pricing Audit Report
- the assessee has disclosed all the material facts relating to the transaction, in such a case, the addition will not be regarded as under-reported income.

5. **UNDISCLOSED INCOME [CLAUSE (e)]**

In respect of undisclosed income found in case of search & seizure, in the Act, there is a separate provision for levy of penalty, namely, section 271AAB. The undisclosed income referred in the said provision should be excluded from the amount of under-reported income.

**ANALYSIS OF SECTION 270A(8) & 270A(9)**

200% of amount of tax on under-reported income shall be the penalty where under-reported income is in consequence of misreporting of income.

The following cases are the cases of misreporting of income:

**(a) Misrepresentation or suppression of facts**

- i. Cash deposits made and source of income not disclosed. It amounts to misrepresentation or suppression of facts.
- ii. STCG shown as LTCG to claim lower rate of tax.
- iii. Capital gains claimed exempt although they are not exempt.
- iv. Deduction under section 43B claimed by declaring the amount has been paid by due date although amount paid after due date.

**(b) Failure to record investments in the books of account**

Assessing Officer discovers unexplained investment e.g. immovable property, FDR, Jewellery etc. which are not there in books of account.

**(c) Claim of expenditure not substantiated by any evidence**

- Bogus bills of expenditure.
- Claim of expenditure without Bills.

**(d) Recording of any false entry in the books of account**

- Cash deposits made and declared to be current year income
- Bogus expenditure
- Income received shown as advances
- Loans given shown as expenses.

**(e) Failure to record any receipt in books of account having a bearing on total income**

Sales not accounted.

**(f) Failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction to which the provisions of Transfer Pricing apply.****ANALYSIS OF SECTION 270A(11)**

Suppose unexplained investments are found in Assessment Year 2020-21 of Rs . 1 crore. The said investments are not recorded in books of account. The Assessing Officer levies penalty @ 200% under section 270A for Assessment Year 2020-21 on additions made on account of unexplained investment.

Now assessee records these investments in books of account in Assessment Year 2021-22. Now no penalty under section 270AA shall be levied in Assessment Year 2021-22 as per section 270A(11).

**SECTION 270AA: IMMUNITY FROM IMPOSITION OF PENALTY, ETC.  
(INSERTED BY FINANCE ACT, 2016)****ANALYSIS OF SECTION 270AA**

For Assessment Year 2020-21, the Assessing Officer passes assessment order under section 143(3) on 01.01.2021. Notice of demand under section 156 and assessment order under section 143(3) is served on the assessee on 01.01.2021. The Assessing Officer also initiates penalty proceeding under section 270A on 01.01.2021. A demand of Rs. 15,00,000 (Rs. 12,00,000 Tax and Rs. 3,00,000 interest) has been created on the assessee.

Now assessee can make an application to Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of prosecution proceeding under section 276C and under section 276CC if:

- Assessee pays the demand of Rs. 15,00,000 (Tax plus interest) by 31.01.2021.
- Assessee does not file an appeal to CIT(A) against the order under section 143(3).
- Assessee makes application as aforesaid on or before 29.02.2021.

Assessing Officer shall by 31.03.2021 make an order of acceptance or rejection of application made under section 270AA.

**Key Notes:**

1. The order of rejection passed under section 270AA is final and no appeal/revision is possible against such order.
2. Where application of the assessee has been admitted, i.e. he gets immunity from penalty and prosecution, then assessee cannot file an appeal/revision application under section 264 against the order of assessment/reassessment.
3. Suppose the assessee made application on 29.02.2021 and the application of the assessee is rejected by an order under section 270AA, dated 31.03.2021 and the said order is received by the assessee on 02.04.2021. Now as per amendment by Finance Act, 2016 in section 249, the period beginning from date of application i.e. 29.02.2021 to the date on which rejection order under section 270AA is received by the assessee i.e. 02.04.2021, shall be excluded from the period of limitation for filing appeal to CIT(Appeals). Therefore, appeal can be filed to CIT(Appeals) by 31.01.2021 + (29.02.21 to 02.04.2021) 34 days. = 5<sup>th</sup> March, 2021. **This is an ERROR IN LAW.**
4. The Assessing Officer cannot grant immunity from penalties and prosecution under section 270AA where penalty proceedings have been initiated on account of misreporting of income i.e. on account of following namely:
  - (a) misrepresentation or suppression of facts;
  - (b) failure to record investments in the books of account;
  - (c) claim of expenditure not substantiated by any evidence;
  - (d) recording of any false entry in the books of account;
  - (e) failure to record any receipt in books of account having a bearing on total income;or

- (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction to which the provisions of Chapter of Transfer Pricing apply.

**NEW LAW OF PENALTY FOR CONCEALMENT OF INCOME IN CASE OF SEARCH & SEIZURE (AS INTRODUCED BY FINANCE ACT 2012)**

**ANALYSIS OF SECTION 271AAB**

Search is conducted on **2<sup>nd</sup> August, 2019**. Cash of **Rs . 3 crores** and jewellery of **Rs . 4 crores** are seized. The due date of filing of return is **30<sup>th</sup> September** of the Assessment year and the Assessing Officer issued notice under section 153A on **4th August, 2019** to file the returns of income under section 153A for Assessment Year **2014-15** to Assessment year **2019-20** on before **5<sup>th</sup> September, 2019**. Assessee has not filed the return of income for Assessment Year **2019-20** upto **1<sup>st</sup> August, 2019**.

1. Now "**Specified Previous year**" means:
  - (i) **Previous year 31.03.2019** i.e. the previous year which has ended before the date of search but the due date of furnishing the return of Income under section 139(1) for such year has not expired before the date of search and the assessee has not furnished the return of income for the said previous year before the date of search.
  - (ii) **Previous year 31.03.2020** i.e. the previous year in which search is conducted.
  
2. Now "**Specified Date**" means:
  - (i) For previous year **31.03.2019** i.e. Assessment Year **2019-20** → **5th September, 2019**, i.e. the date on which the period specified in the notice issued under section 153A for furnishing the return of income expires.
  - (ii) **For previous year 31.03.2020** i.e., Assessment Year **2020-21** → **30th September, 2020** i.e. the due date of furnishing the Return of Income under section 139(1).
  
3. Let us say that out of cash of **Rs . 3 crores** & Jewellery of **Rs . 4 crores** seized, cash of **Rs . 75 lakh** and jewellery of **Rs . 1.20 crores** was recorded in regular books of account of previous year **31.03.2019** and/ or previous year **31.03.2020** on or before **02.08.2019** . Then, cash of **Rs . 75 lakhs** and jewellery of **Rs . 1.20 crores** shall not be treated as undisclosed income of previous year **31.03.2019** and / or **31.03.2020** and no penalty of concealment under section 271AAB or under section 270A shall be levied.
  
4. Regarding remaining cash of **Rs . 2.25 crores** and jewellery of **Rs . 2.80 crores**(which is not recorded in regular books of account before **2.8.2019** of Previous Year **31.3.2019** and/ or **31.3.2020**), if the assessee proves that cash of **Rs . 2.25 crores** and jewellery of **Rs . 2.80 crores** is but of the income of previous year **31.3.2019** and/ or previous year **31.03.2020** in the following manners:
  - He makes statement under section 132(4) in the course of search and admits the undisclosed income of **Rs . 2.25 crores** and **Rs . 2.80 crores** and specifies the manner in which such income has been derived.
  - And proves the manner in which undisclosed income has been derived.

- And pays tax and interest in respect of undisclosed income of previous year **31.03.2019** on or before **5.9.2019** and of previous year **31.3.2020** on or before **30.09.2020**.

then penalty of 30% on **Rs . 5.05** crores i.e., **Rs . 1,51,50000** shall be levied under section 271AAB. This is in addition to income tax and interest on the said income. Penalty under section 270A shall not be levied.

5. If assessee is not able to admit the concealed income and substantiate it in the statement given under section 132(4) but assessee declares such income in the return of previous year **31.03.2019** and / or previous year **31.03.2020**, then there shall be a penalty of 60% of **Rs . 5.05** crores i.e. of **Rs . 3.30** crores. This is in addition to income tax and interest on the said income. Penalty under section 270A shall not be levied.
6. If assessee does not admit / disclose the income in manner given in para 4 and 5 above and A.O. assesses the above income in previous year **31.03.2019 / 31.03.2020**, then assessee shall pay penalty of 60% of undisclosed income. Penalty under section 270A shall not be levied.

**AMENDMENT MADE BY FINANCE ACT 2017:**

**PENALTY ON PROFESSIONALS FOR FURNISHING INCORRECT INFORMATION IN STATUTORY REPORT OR CERTIFICATE [SEC. 271 J]**

In order to ensure that the person furnishing report or certificate undertakes due diligence before making such certification, section 271J has been inserted (with effect from April 1, 2017). This section provides that if a chartered accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act (or the rules made thereunder), the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of Rs. 10,000 for each such report or certificate by way of penalty. If, however, the concerned person proves that there was reasonable cause for the aforesaid failure, referred to above, then penalty shall not be imposable under section 271J.

**SECTION 274: PROCEDURE FOR IMPOSITION OF PENALTY**

- (1) No order imposing a penalty shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.
- (2) No order imposing a penalty shall be made -
  - (a) by the Income-tax Officer, where the penalty exceeds **Rs . 10,000**;
  - (b) by the Assistant Commissioner/ Deputy Commissioner where the penalty exceeds **Rs . 20,000**;
 except with the prior approval of the Joint Commissioner.



<b>SECTION 273A: POWER TO REDUCE OR WAIVE PENALTY IN CERTAIN CASES</b>
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1. **Section 273A(1):** Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, reduce or waive the amount of penalty imposed or imposable under section 271(1)(c) or 270A of the Act.
2. **Section 273A(1):** This power can be exercised by the Commissioner on his own motion or on an application made by the assessee.
3. **Section 273A(1):** The Commissioner shall exercise this power if he is satisfied that
  - (a) the assessee has cooperated in any enquiry relating to the assessment of his income and
  - (b) the assessee has either paid or made satisfactory arrangements for the payment of tax and interest payable in respect of the relevant assessment year/years and
  - (c) the assessee has prior to detection by the Assessing Officer, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars.

#### ANALYSIS OF SECTION 273A(1)

**The objective of introducing section 273A(1) is to encourage voluntary disclosure of undisclosed incomes.** The intent of section 273A(1) is to encourage those taxpayers to disclose the undisclosed income where they have not been caught by the department and wants to become honest. Section 273A affords an opportunity to such assesseees to declare their incomes and avail waiver of penalties for concealment from the CIT.

#### Illustration:

It after demonetization of currency, assessee deposits cash currency (Rs . 500 / Rs . 1000) in bank account from 9.11.2016 to 30.12.2016 say Rs . 10 crores and voluntarily discloses this income in his return of income of Previous Year 31/3/2017, then penalty for misreporting of income under section 270A amounting to 200% of tax on 10 crores shall be levied. This is because he has misreported or suppressed the facts of income of Rs . 10 crores and he is not able to explain satisfactorily the source of Rs . 10 crores. Assessee cannot seek waiver under section 273A(1) because disclosure is NOT VOLUNTARY AND IN GOOD FAITH.

He has no alternative but to deposit the money in bank account consequent to demonetisation. Assessee also cannot seek waiver under section 273A(4) since he has enough money to pay tax and penalty and no genuine hardships arise to him on payment of penalty.

4. **Section 273A(2):** No order reducing or waiving the penalty under section 273A(1) shall be made by the Commissioner without the approval of Chief Commissioner or Director General, as the case may be, in a case where the amount of income in respect of which penalty is imposed or imposable for the relevant assessment year, or, where such disclosure relates to more than one assessment year, the aggregate amount of such income for those years, exceeds Rs . 5,00,000
5. **Section 273A(3):** Where an order has been made under section 273A(1) in favour of any person, whether such order relates to one or more assessment years, he shall not be

entitled to any relief under this section in relation to any other assessment year at any time after making of such order. In other words, the order under section 273A(1) can be made in the favour of the assessee once in his life time.

6. **Section 273A(4):** The Commissioner may, on an application made by the assessee and after recording his reasons for doing so, reduce or waive the amount of any penalty payable by the assessee under the Act if he is satisfied that:
- (a) to do otherwise would cause genuine hardship to the assessee, having regard to the circumstances of the case and
  - (b) the assessee has cooperated in any enquiry relating to assessment or any proceeding for the recovery of any amount due from him.

**NOTE:** Where the amount of any penalty or where the application relates to more than one penalty, the aggregate amount of such penalties exceed **Rs. 1 lakh**, no order under section 273A(4) shall be passed by the Commissioner without the prior approval of Chief Commissioner or Director General, as the case may be.

7. **Section 273A(4A):** The order under sub-section (4), either accepting or rejecting the application in full or in part, shall be passed within a period of 12 months from the end of the month in which the application under the said sub-section is received by the Commissioner.

**Provided that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.**

**(Added by Finance Act, 2016)**

8. The order under section 273A is a final order and no appeal is possible against such order.

**IMPORTANT KEY NOTES ON SECTION 273A:**

1. **Anwar Ali:** The power conferred on the Commissioner under section 273A is a quasi-judicial power. It should be exercised judiciously and not arbitrarily. The order under section 273A should be a "Speaking Order", i.e., it should state the reasons as to why the relief has not been granted to the assessee or why it has been restricted to a specified percentage as against the claim of the assessee for 100% waiver. An order which is not a speaking order is void ab-initio.
2. There is no time limit for passing an order under section 273A(1). However Finance Act, 2016 prescribes time limit of 12 months for passing order under section 273A(4).
3. Application under section 273A can be made for a number of Assessment Years.
4. If penalty has been paid by the assessee, then also the CIT can waive/ reduce the penalty under section 273A and in such a case, the penalty shall be refunded to the assessee.
5. If income is detected in a raid, i.e. search and seizure, then, benefit under section 273A is not applicable.

6. **If conditions referred to in 273A are satisfied then the CIT is duty bound to grant the relief under section 273A.**
7. Where the applications for waiver under section 273A were made on different dates for different Assessment Years by the assessee, then the CIT must consider all the applications together and pass an order under section 273A in respect of all the applications. The CIT will not be justified in considering the first application only and rejecting the subsequent applications.
8. CIT under section 273A cannot waive or reduce interest under sections 234A, 234B and 234C.
9. **Section 279(1A) provides that the prosecution proceedings shall be dropped for an assessment year in respect of which penalty under section 271(1)(c) has been reduced or waived by an order passed by the CIT under section 273A.**
10. The order under section 273A is a final order and no appeal is possible against it. However, the assessee can challenge the order passed under section 273A in the High Court through a WRIT PETITION. Thereafter, a SPECIAL LEAVE PETITION can be filed to the Supreme Court. If the CIT has not acted in accordance with the law, the Courts will quash the order passed under section 273A and direct the CIT to make an order under section 273A in accordance with the law.
11. **CBDT Circular: "Genuine Hardships" referred to in section 273A(4) should exist at the time at which the application is made by the assessee and should also exist even at the time of passing of an order under section 273A(4) by the CIT.**

#### COMPARISON BETWEEN SECTION 273A(1) AND SECTION 273A(4)

S. No.	Section 273A(1)	S. No.	Section 273A(4)
1.	CIT can waive/ educe penalty under section 271(1)(c) or 270A	1.	CIT can waive/ reduce any penalty including penalty under section 271(1)(c) or 270A.
2.	CIT can act suo-moto or an application made by the assessee.	2.	CIT can act on an application made by the assessee.
3.	Approval of Chief CIT or Director General required if the concealed Income exceeds <b>Rs . 5 Lakhs.</b>	3.	Approval of Chief CIT or Director General required if penalties exceed <b>Rs . 1 Lakh.</b>
4.	Condition to be fulfilled <ul style="list-style-type: none"> <li>- Cooperation</li> <li>- Payment</li> <li>- True &amp; Full disclosure</li> </ul>	4.	Condition to be fulfilled <ul style="list-style-type: none"> <li>- Genuine hardships</li> <li>- Cooperation</li> </ul>
5.	Penalty if paid shall be refunded on waiver.	5.	No waiver possible if penalty has been paid.
6.	No time limit for passing order under section 273A(1).	6.	Order under section 273A(4) has to be passed within 12 months from the end of the month in which application is received by CIT.



	<b>document as required under section 92D(4). (Added by Finance Act, 2016)</b>	
<b>271AAB</b>	Undisclosed income of the previous year in which search has been initiated or previous year whose due date of filing of ROI has not expired before the date of search.	30% of the undisclosed income <b>60% of the undisclosed income</b>
<b>271B</b>	Failure to get accounts audited or furnish a report of audit as required under section 44AB.	½ % of total sales, turnover, or gross receipts, etc., or <b>Rs . 1,50,000</b> , whichever is less.
<b>271BA</b>	Failure to furnish a report from an accountant as required by section 92E	<b>Rs . 1,00,000</b>
<b>271C</b>	<ul style="list-style-type: none"> <li>- Failure to deduct the whole or part of tax deducted at source tax at source (TDS)</li> <li>- Failure to pay the whole or part of Corporate Dividend Tax under section 115-O.</li> <li>- Failure to pay the whole or part of tax on winnings from lotteries, crossword puzzles etc. where such winnings are wholly or partly in kind under second proviso to section 194B.</li> </ul>	Amount equal to tax not deducted or paid.
<b>271CA</b>	Failure to collect the whole or any part of the tax as required by or under the provisions of Section 206C.	Amount of tax, which such person failed to collect.
<b>271D</b>	Taking or accepting certain loans and deposits <b>or specified sum</b> in contravention of the provisions to section 269SS.	Amount equal to loan or deposit <b>or specified sum</b> taken or accepted.
<b>271E</b>	Repaying any loan or deposit <b>or specified advance</b> specified in section 269T in contravention of its provisions.	Amount equal to loan or deposit <b>or specified advance</b> repaid.
<b>271FA</b>	Failure to furnish Statement of Financial Transaction or Reportable Account (SFTRA) [Earlier known as Annual Information Return] as required under section 285BA within the time prescribed under section 285BA.	<b>Rs . 500</b> per day for everyday during which the failure continues. <b>Rs . 1,000/- per day from the date assessee was asked to file SFTRA by a notice under section 285BA(5).</b>
<b>271FAB</b> (Added by Finance Act, 2015)	<b>Failure to furnish statement or information or document by an eligible investment fund within the time prescribed under section 9A</b>	<b>Rs . 5,00,000</b>
<b>271G</b>	Failure to furnish information or	2% of the value of the international

	documents in pursuance of a notice under section 92D(3).	transaction or specified domestic transactions for each such failure.
<b>271H (Added by Finance Act, 2012)</b>	(i) Failure to deliver the quarterly returns of TDS / TCS within the time prescribed (ii) Furnishing incorrect information in the quarterly returns of TDS/TCS	Penalty minimum <b>Rs. 10,000</b> and maximum upto <b>Rs. 1,00,000</b> . <b>Note:</b> No penalty for failure to deliver quarterly returns of TDS/TCS in time, if quarterly return submitted before the expiry of one year from time prescribed and Fees under section 234E and interest under section 201(1A) paid.
<b>271-I (Added by Finance Act, 2015)</b>	Failure to furnish information or furnishing inaccurate information under section 195(6)	<b>Rs. 1,00,000</b>
<b>272A(1)</b>	(a) Refusal to answer any question put to by an Income tax Authority. (b) Refusal to sign any statement made in the course of proceedings under the Act. (c) Failure to attend or produce books of account or documents required under a summon issued under section 131. (d) <b>Failure to comply with a notice under section 142(1) or section 143(2) or failure to comply with a direction issued under section 142(2A)</b>	<b>Rs. 10,000</b> for each failure or default.
<b>272A(2)</b>	(a) Failure to give notice of discontinuance of business or profession u/s 176 (b) Failure to furnish in due time the information required under section 133. (c) Failure to furnish the return of income under section 139(4A) or under section 139(4C) or to furnish within the time allowed therein. (d) Failure to deliver in due time a copy of declaration in section 197A. (e) Failure to furnish TDS or TCS certificate. (f) Failure to deliver or cause to be delivered a statement within the time as may be prescribed under	<b>Rs. 100</b> for every day during which the failure continues. However, in respect of penalty for failures in relation to declaration mentioned in section 197A, furnishing of TDS/TCS certificate, returns under section 206 and 206C and 200(3) and 206C(3A), the penalty shall not exceed amount of TDS/TCS.

	section 200(2A) or section 206C(3A)	
<b>272AA</b>	Failure to comply with section 133B	Not exceeding Rs . 1,000
<b>272B(1)</b>	Failure to comply with the provisions section 139A. i.e. PAN	<b>Rs . 10,000</b>
<b>272B(2)</b>	(a) Failure to quote permanent account required; or (b) Failure to intimate such number as required; or (c) To quote or intimate a number which is false and which he either knows or believes to be false or does not believe to be true.	<b>Rs . 10,000</b>
<b>272BB(1)</b>	Failure to comply with section 203A i.e. Failure to: (i) Failure to obtain Tax Deduction and collection Account Number (TDCAN). (ii) Failure to quote TDCAN in the challans, certificates, returns of TDS and TCS and prescribed documents.	<b>Rs . 10,000 for each failure / default.</b>
<b>272BB(1A)</b>	If a person is required to quote "tax deduction account number" or, as the case may be, "tax collection account number" or "tax deduction and collection account number", quotes a number which is false, and which he either knows or believes to be false or does not believe to be true.	<b>Rs . 10,000 for failure/ default</b>

### SECTION 68: CASH CREDITS

Where any sum is found credited in the books of the assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the sum so credited may be charged to tax as the income of that previous year (i.e., the previous year in the books of which such sum is first credited).

#### **The following provisos shall be inserted in section 68 by the Finance Act, 2012;**

Provided that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in section 10(23FB).

#### **SECTION 69: UNEXPLAINED INVESTMENTS**

Where in the previous year relevant to the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the value of investments may be deemed to be the income of such previous year (i.e., the previous year in which investments are made).

#### **SECTION 69A: UNEXPLAINED MONEY, ETC.**

Where in any previous year, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or other article is not recorded in the books of account, if any, maintained by him, and the assessee offers no explanation about the nature and source of acquisition of such assets or the explanation offered by him is not satisfactory, in the opinion of the Assessing Officer, then the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee of such previous year (i.e., the previous year in which he is found the owner).

#### **SECTION 69B: AMOUNT OF INVESTMENTS, ETC., NOT FULLY DISCLOSED IN THE BOOKS OF ACCOUNT**

Where in any previous year, the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by him, and the assessee offers no explanation about such excess amount or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the excess amount may be deemed to be the income of the assessee for such previous year.

For example, Mr. X has purchased gold and amount recorded in the books is **Rs.** 1 lakh. But according to the Assessing Officer, the gold has been purchased for **Rs.** 3 lakhs being its market value. Then 2 lakhs will be the income of the assessee under this section of the previous year in which gold was purchased.

#### **SECTION 69C: UNEXPLAINED EXPENDITURE**

Where in any previous year, an assessee has incurred any expenditure (e.g., marriage/party) and he offers no explanation about the source of such expenditure or part thereof, or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the amount of such expenditure or part thereof, may be deemed to be the income of the assessee of such previous year.



The Finance Act, 1998 has made the following amendment in section 69C:

**"Notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income."**

This amendment has been made to over-rule certain judgements wherein it was held that the unexplained expenditure not recorded in the books of account but actually incurred for business purposes shall be allowed as deduction. The effect of these judgements was that if an assessee incurred some business expenditure out of his black money, then such expenditure was deemed as income under section 69C and the same was also allowable as business expenditure and the net result was that nothing was added to the income of the assessee. The above amendment nullifies these judgements and now such expenditure shall be deemed as income and shall not be allowed as a deduction.

**Note:** The judgement of Supreme Court in SUN ENGINEERING PVT. LTD. which provides that expenditure incurred to earn the escaped income can be allowed from the escaped income is not applicable in this case since section 69C has been specifically amended to provide that the unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as deduction.

#### **SECTION 69D: AMOUNT BORROWED OR REPAYED ON HUNDI**

Where any amount is borrowed on a hundi from a person, or any amount due thereon is repaid to any person, otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid. Such income shall be charged to tax in the previous year in which the amount was borrowed or repaid, as the case may be. However, in case the amount borrowed under this section has been deemed as income of the borrower, then the borrower shall not be liable to be assessed again in respect of such amount under this section on re-payment of such amount.

Suppose Mr. A borrows Rs. 10,00,000 on hundi from Mr. B in cash on 1.1.2019. Rs. 10,00,000 will be deemed to be the income of Mr. A for Assessment Year 2019-20. Now, if Mr. A repays the hundi in cash on 30.4.2019 of Rs. 10,00,000, then it shall not be again deemed to be his income under this section.

#### **SECTION 115BBE: TAX ON INCOME REFERRED TO IN SECTION 68 OR SECTION 69 OR SECTION 69A OR SECTION 69B OR SECTION 69C OR SECTION 69D (INSERTED BY FINANCE ACT, 2012)**

- (1) Where the total income of an assessee,-
- (a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C, or section 69D and reflected in the return of income furnished under section 139; or
  - (b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C, or section 69D, if such income is not covered under clause (a),

the income tax payable shall be aggregate of-

- (i) the amount of income tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and
  - (ii) the amount of income tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).
- (2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance **or set-off of any loss** shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) or (b) of sub-section (1).

**KEY NOTE:**

**Effective Tax Rate = 60% + 25% surcharge = 75% + 4% = 78%.**

**Sec 271AAC: Penalty in Other Cases:**

(1) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

(2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

**SECTION 269SS: MODE OF TAKING OR ACCEPTING CERTAIN LOANS, DEPOSITS AND SPECIFIED SUM**

- No person shall
- **take or accept** from any other person (herein after called "depositor"),
- **any loan or deposit or any specified sum,**
- otherwise than by an account payee cheque or account payee draft or by use of electronic clearing system through a bank account **or such other electronic mode as may be prescribed, ( Finance Act (No.2 ) 2019 )**

- If,
- (a) the amount of such loan or deposit or **specified sum** or the aggregate amount of such loan, deposit and specified sum; or
  - (b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit accepted sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
  - (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),
- is **Rs . 20,000** or more.

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by, –

- (a) the government
- (b) any banking company, post office saving bank or cooperative bank,
- (c) any corporation established by a Central, State or Provincial Act.
- (d) any Government company as defined in section 2(45) of the Companies Act, 2013;

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

**Explanation.** —For the purposes of this section, —

- (i) "**loan or deposit**" means loan or deposit of money;
- (ii) "**specified sum**" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

#### ANALYSIS

Section 269SS, as substituted, applies to cash received in relation to transfer of an immovable property. It does not matter whether immovable property being transferred is held as capital asset or as stock-in-trade.

The limit of **Rs . 20,000** will have to be reckoned person-wise.

The provisions of this section shall not apply to any loan or deposit or specified sum where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under the Income tax Act. (i.e. neither of them have any income under any head of income. Even one of them has income of **Rs . 4,00,000** from P/G/B/P, then this exception is not applicable).

For example, an agriculturist farmer A agrees to sell his land to agriculturist farmer B. A receives cash advance of **Rs . 50,00,000**. Section 269SS is not attracted if both A and B do not have any income chargeable to tax under the Income tax Act. However, section 269SS will be attracted even if one of them has say income of **Rs . 4,00,000** from Profits and Gains of Business or Profession chargeable to tax.

**Illustration:**

Situations	Violation
(i) Mr. A takes loan of <b>Rs .</b> 19,000 in cash from Mr. B	Section 269SS not attracted
(ii) Mr. A takes loan of <b>Rs .</b> 20,000 in cash from Mr. B	Section 269SS attracted. Mr. A has to pay penalty of <b>Rs .</b> 20,000.
(iii) Mr. A on 1-1-2017 takes a loan of <b>Rs .</b> 15,000 in cash from Mr. B and a loan of <b>Rs .</b> 19,000 in cash from Mr. C	Section 269SS not attracted
(iv) Mr. A on 1-1-2017 takes a loan of <b>Rs .</b> 15,000 in cash from Mr. B. Mr. A repays loan of <b>Rs .</b> 15,000 in cash on 10-1-2017. Mr. A again takes a loan of <b>Rs .</b> 19,000 in cash from Mr. B on 1-2-2017	Section 269SS not attracted
(v) Mr. A on 1-1-2017 takes a loan of <b>Rs .</b> 15,000 in cash from Mr. B. Mr. A on 10-1-2017 takes a cash deposit of <b>Rs .</b> 16,000 from Mr. B.	Section 269SS attracted. Mr. A has to pay penalty of <b>Rs .</b> 31,000.
(vi) Mr. A on 1-1-2017 agrees to transfer his immovable property to Mr. B for <b>Rs .</b> 1 crore. Mr. A receives advance money of <b>Rs .</b> 10,00,000 by cash.	Section 269SS attracted. Mr. A has to pay penalty of <b>Rs .</b> 10,00,000. THIS SHALL APPLY EVEN IF: (a) Agreement for sale is cancelled later on (b) Agreement for sale is executed and Mr. A receives the balance <b>Rs .</b> 90 lakhs by account payee cheque. If <b>Rs .</b> 90 lakhs is paid by cash, then also there is a violation of section 269SS and Mr. A has to further pay penalty of <b>Rs .</b> 90 lakhs.
(vii) Mr. A on 1-1-2017 agrees to sell gold to Mr. B for <b>Rs .</b> 1 crore and receives advance money of <b>Rs .</b> 10,00,000 by cash	Section 269SS not attracted

**SECTION 271D: PENALTY FOR FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION 269SS**

If a person takes or accepts any loan or deposit **or specified sum** in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit **or specified sum** taken or accepted. The penalty shall be imposed by Joint Commissioner.

**SECTION 269T: MODE OF REPAYMENT OF CERTAIN LOANS OR DEPOSITS**

**No Person including a banking company shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee draft drawn in the name of the person who has made the loan or deposit **or paid the specified advance** or by use of electronic clearing system through a bank account **or such other electronic mode as may be prescribed,** if-**

- (a) the amount of the loan or deposit or specified advance together with interest payable thereon is **Rs . 20,000** or more; or
- (b) the aggregate amount of the loans or deposits held by such person with the branch of a banking company or other person, either in his own name or jointly with any other person on the date of such repayment together with interest if any payable on such loan or deposit is **Rs . 20,000** or more. (Therefore, if assessee made a fixed deposit with the bank for **Rs . 18,000** and after one year the bank has to repay **Rs . 21,000**, then the bank cannot pay such amount in cash).
- (c) **the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances is Rs . 20,000 or more.**

**KEY NOTES:**

1. Where the repayment is by branch of a banking company or cooperative bank, such repayment may also be made by crediting the amount of such **loan or deposit** to the savings bank account or the current account with such branch of the person to whom such **loan or deposit** has to be repaid.
2. **Nothing contained in section 269T shall apply to repayment of any loan or deposit or specified sum taken or accepted from:-**
  - (i) **Government;**
  - (ii) **any banking company, post office savings bank or co-operative bank;**
  - (iii) **any corporation established by a Central, state or Provincial Act;**
  - (iv) **any Government company**
3. **"Loan or Deposit"** means any loan or deposit of money, which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.
4. **"Specified advance"** means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.

**ANALYSIS**

**Illustration 1:**

Mr. A has taken a cash loan from B of **Rs . 20,000** and repaid the same in cash. Section 269SS and 269T are attracted. Penalty of **Rs . 40,000** shall be levied.

**Illustration 2:**

Mr. X took the advance of **Rs . 15,00,000** in cash from Mr. Y on 1-1-2017 against the flat situated at Dwarka. However, the deal could not materialized and later on Mr. X refunded the money to Mr. Y on 31-3-2017 by cash.

**Answer:**

Section 269T and section 269T attracted Mr. X has to pay penalty of **Rs . 15,00,000 + Rs . 15,00,000 = Rs . 30,00,000.**

**Illustration 3:**

Situations	Violation
(i) Mr. A has received a loan of <b>Rs . 1,00,000</b> on 1-1-2017 from Mr. B by account payee cheque. Mr. A repays in cash on 20-1-2017 the loan to Mr. B of <b>Rs . 10,000.</b>	Section 269T is attracted and Mr. A has to pay penalty of <b>Rs . 10,000.</b>
(ii) Mr. A agrees to sell his house property to Mr. B and receives <b>Rs . 10,00,000</b> in cash as advance money on 1-6-2016. The sale agreement is cancelled and Mr. A refunds <b>Rs . 10,00,000</b> is cash to Mr. B on 31-3-2017.	Section 269SS and section 269T are attracted. A will have to pay penalty of <b>Rs . 20,00,000</b>
(iii) A house property is registered in the name of Mr. A and Mrs. A jointly. Both agree to sell property to Mr. B on 1-1-2017 and receives advance of <b>Rs . 15,000</b> each in cash. Now agreement to sell is cancelled and Mr. A returns <b>Rs . 15,000</b> by cash and Mrs. A return <b>Rs . 15,000</b> by cheque.	Section 269SS is not attracted. However, section 269T is attracted since the aggregate advance received by Mr. A jointly with Mrs. A exceeds <b>Rs . 20,000.</b> Since Mr. A has paid <b>Rs . 15,000</b> in cash, he shall have to pay penalty of <b>Rs . 15,000.</b>

**SECTION 271E: PENALTY FOR FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION 269T**

If a person repays any loan or deposit or **specified sum** referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or **specified sum** so repaid. The penalty shall be imposed by Joint Commissioner.

**SECTION 129: CHANGE OF INCUMBENT OF AN OFFICE**

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.

**PROVISO TO SECTION 129**

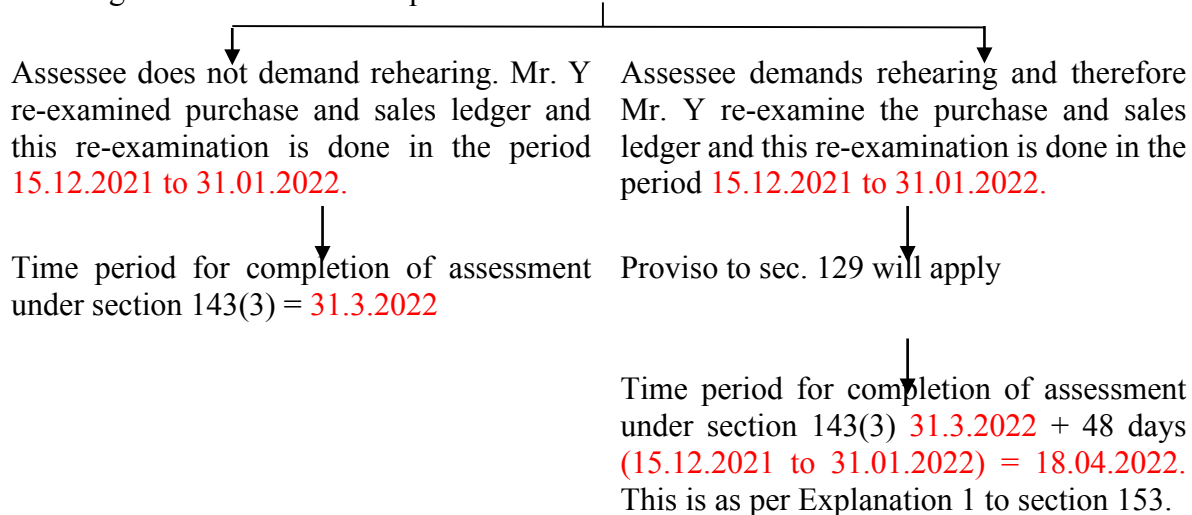
Provided that the assessee concerned may demand that before the proceeding is so continued, the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.

**Illustration:**

For Assessment Year **2020-21**, the case of the assessee was taken up for scrutiny assessment under section 143(3) by Assessing Officer Mr. X.

Mr. X during the course of assessment proceedings from 3<sup>rd</sup> July 2021 to 30<sup>th</sup> November 2021 examined the purchase & sales ledger.

The assessment is pending on 01.12.2021 and Mr. X is transferred on that date and new Assessing Officer Mr. Y takes up the case.



### OFFENCES AND PROSECUTIONS

#### DO NOT READ OTHERWISE YOU WILL GO MAD

#### Disclaimer:

This is just for reference purpose of students. By far you would have realized that. It is practically impossible to remember so many things for exam. On this note we are concluding that following penalties cannot be by hearted. Further it is pertinent to note that such individual meagre penalties are not tested by ICAI in exams.

Section	Nature of offence	Minimum period of rigorous imprisonment	Maximum period of rigorous imprisonment
(1)	(2)	(3)	(4)
<b>275A</b>	Dealing with seized assets in contravention of the order made under section 132(3) by the officer conducting search	Any period up to 2 years and fine	2 years and fine
<b>275B</b>	Failure to afford necessary facility to the authorized officer to inspect books of account or other documents as required under section 132(1)(iib)	Any period up to 2 years and fine	2 years and fine
<b>276</b>	Removal, concealment, transfer or delivery of property to thwart tax recovery	Any period up to 2 years and fine	2 years and fine
<b>276A</b>	Failure to comply with the provisions of section 178(1), (3) by liquidator of a company	Any period up to 2 years. Imprisonment shall not be less than 6 months unless special and adequate reasons	2 years

		are recorded in the judgement of court.	
<b>276B</b>	Failure to pay to the Government's treasury deducted tax at source or tax payable under proviso to section 194B	3 months and fine	7 years and fine
<b>276BB</b>	Failure to pay to the credit of Central Government tax collected under section 206C	3 months and fine	7 years and fine
<b>276C(1)</b>	Wilful attempt to evade tax penalty or interest imposable under the Act	If amount sought to be evaded exceeds <b>Rs. 25,00,000</b> : 6 months and fine otherwise 3 months and fine.	If amount sought to be evaded exceeds <b>Rs. 25,00,000</b> : 7 years and fine otherwise 2 years and fine.
<b>276C(2)</b>	Wilful attempt to evade the <b>payment</b> of any tax penalty or interest.	3 months and fine	2 years and fine
<b>276CC</b>	Wilful failure to file return of income in time under section 139(1), or in response to notice under section 142(1) or section 148 or section 153A.	If tax sought to be evaded exceeds <b>Rs. 25,00,000</b> : 6 months and fine. In any other case: 3 months and fine <b>Note:</b> No prosecution for failure to furnish the return in due time under section 139(1) if: (i) the return is filed before the expiry of the assessment year; or (ii) the tax payable on regular assessment, as reduced by TDS and advance tax does not exceed <b>Rs. 3000</b>	If tax sought to be evaded exceeds <b>Rs. 25,00,000</b> : 7 years and fine. In any other case: 2 years and fine <b>Note:</b> No prosecution for failure to furnish the return in due time under section 139(1) if: (i) the return is filed before the expiry of the assessment year; or (ii) the tax payable on regular assessment, as reduced by TDS and advance tax does not exceed <b>Rs. 3000</b>
<b>276D</b>	Wilful failure to produce books of account and documents under section 142(1) or willful failure to comply with a direction to get the accounts audited under section 142(2A)	Any period upto 1 year and fine	1 year and fine
<b>277</b>	Making a false statement in verification or delivering a false account or statement	If tax evaded exceeds <b>Rs. 25,00,000</b> : 6 months and fine; otherwise: 3 months and fine.	If tax evaded exceeds <b>Rs. 25,00,000</b> : 7 years and fine otherwise: 2 years and fine
<b>278</b>	Abetment to make a false statement or declaration relating to any	If tax evaded exceeds <b>Rs. 25,00,000</b> : 6	If tax evaded exceeds <b>Rs. 25,00,000</b> : 7



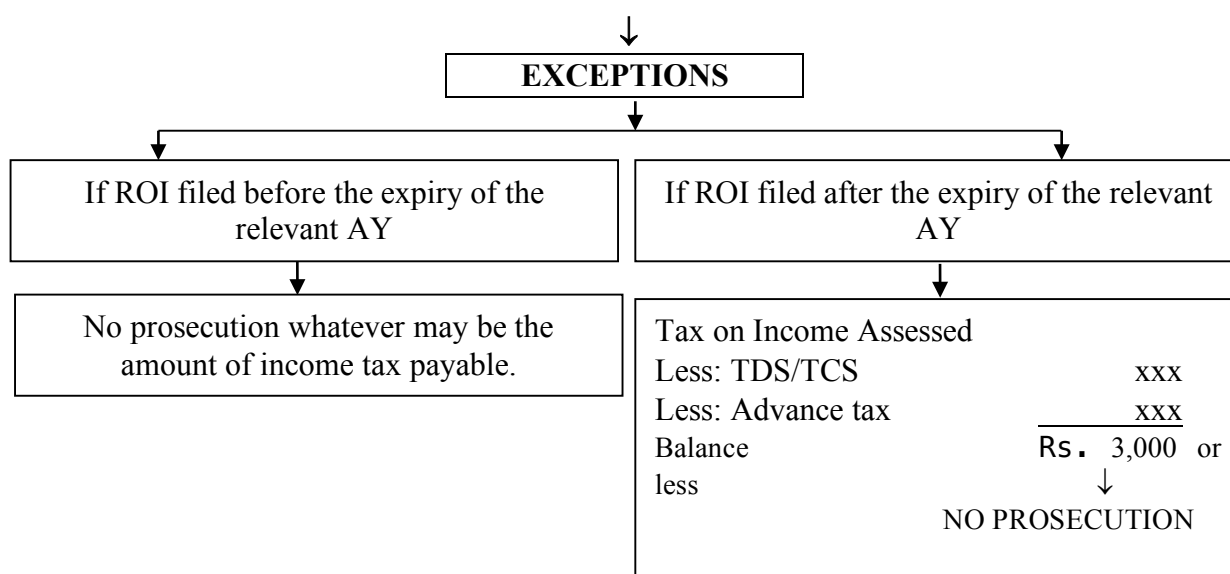
	income.	months and fine: otherwise 3 months and fine.	years and fine otherwise: 2 years and fine
<b>278A</b>	Punishment for second and subsequent offences under section 276B, 276C(1), 276CC, 277 or 278	6 months for every offence	7 years for every offence.
<b>280(1)</b>	Disclosure of particulars by public servants in contravention of Section 138(2) (prosecution to be instituted with the approval of Central Government)	Upto 6 months and fine	6 months and fine

**Section 276C:** Prosecution for concealment or under reporting of income. It provides as follows:

Amount of Tax Sought to be evaded	Minimum period of rigorous imprisonment	Maximum period of rigorous imprisonment
If amount of tax sought to be evaded or tax on under reported income is RS . 25 lakh or less	3 months and fine	2 years and fine
If amount of tax sought to be evaded or tax on under reported income is more than RS . 25 lakh	6 months and fine	7 years and fine

**SECTION 276CC: PROSECUTION IN CASE OF WILFUL FAILURE TO FILE RETURN OF INCOME UNDER SECTION 139/148/153A OR IN RESPONSE TO NOTICE UNDER SECTION 142(1)**

1. Failure to file ROI within the time allowed in a notice under section 142(1)/ 148/ 153A
  - PROSECUTION WILL BE THERE
2. Failure to file ROI within the time allowed under section 139(1)
  - PROSECUTION WILL BE THERE



<b>Amount of Tax Sought to be evaded</b>	<b>Minimum period of rigorous imprisonment</b>	<b>Maximum period of rigorous imprisonment</b>
It amount of tax sought to be evaded is Rs . 25 lakh or less	3 months and fine	2 years and fine
If amount of tax sought to be evaded is more than Rs . 25 lakh	6 months and fine.	7 years and fine

**AMENDMENT MADE BY FINANCE ACT 2018:**

Section 276CC provides that if a person wilfully fails to furnish in due time the return of income which he is required to furnish, he shall be punishable with imprisonment for a term, as specified therein, with fine.

- Amendment - Proviso to section 276CC provides that a person shall not be proceeded against under the said section for failure to furnish return if the tax payable by him on the total income determined on regular assessment (as reduced by advance tax/TDS) does not exceed Rs. 3,000.

This proviso has been amended (with effect from April 1, 2018) so as to provide that this proviso will not be applicable in the case of a company.

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:**

**Rationalisation of the provisions of section 276CC**

The existing provisions of section 276CC of the Act, inter alia, provide that prosecution proceedings for failure to furnish returns of income against a person shall not proceed against, for failure to furnish the return of income in due time, if the tax payable by such person, not being a company, on the total income determined on regular assessment does not exceed three thousand rupees. The existing provisions do not provide for taking into account tax collected at source and self-assessment tax for the purposes of determining the tax liability.

Since the intent of said provision has always been to take into account pre-paid taxes, while determining the tax payable, it is proposed to amend the said section so as to make the legislative intention clear and to include the self-assessment tax, if any, paid before the expiry of the assessment year, and tax collected at source for the purpose of determining tax liability.

Further, in order to rationalise the existing threshold limit of tax payable under said section, it is further proposed to amend the said section so as to increase the threshold of tax payable from the existing rupees three thousand to rupees ten thousand.

These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to assessment year 2020-21 and subsequent assessment years.

**SECTION 278B: OFFENCES BY COMPANIES**

- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be

deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

**Provided** that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (3) Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

**Explanation.**—For the purposes of this section,—

- (a) "**company**" means a body corporate, and includes—
  - (i) a firm; and
  - (ii) an association of persons or a body of individuals whether incorporated or not.
- (b) "**director**", in relation to—
  - (i) a firm, means a partner in the firm;
  - (ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

<b>SECTION 278C: OFFENCES BY HINDU UNDIVIDED FAMILIES</b>
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- (1) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

**Provided** that nothing contained in this sub-section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act, has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

<b>SECTION 279: PROSECUTION TO BE AT INSTANCE OF CHIEF COMMISSIONER OR COMMISSIONER</b>
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- (1) A person shall not be proceeded against for an offence under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277 or section 278 except with the previous sanction of the Commissioner or Commissioner (Appeals):  
**Provided** that the Chief Commissioner or, as the case may be, Director General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.
- (1A) A person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under section 271(1)(c) has been reduced or waived by an order under section 273A.
- (2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or a Director General.
- .....

## SETTLEMENT COMMISSION

<b>SECTION 245A: "CASES" WHICH CAN BE REFERRED TO SETTLEMENT COMMISSION</b>
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**"CASE" means any proceedings for assessment or reassessment of any previous year which is pending before an Assessing Officer on the date on which an application is made to Settlement Commission under section 245C:**

- (i) In assessment proceedings under section 143(3)/144, CASE becomes pending under section 143(3)/144 on the date on which notice under section 143(2)/ show cause notice under section 144 is ISSUED.
- (ii) In assessment or reassessment proceedings under section 147. A proceeding for assessment or reassessment under section 147 shall be deemed to have commenced—
  - (a) from the date on which a notice under section 148 is issued for any assessment year;
  - (b) from the date of issuance of the notice referred to in sub-clause (a), for any other assessment year or assessment 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 under section 139 or in response to a notice under section 142.
- (iii) In fresh assessment proceedings where fresh assessment is made in pursuance of an order passed under section 254/ 263/ 264 cancelling the assessment and directing a fresh assessment. Such fresh assessment proceedings shall be deemed to have been commenced on the date on which order under section 254/ 263/ 264 cancelling the assessment was passed.
- (iv) In assessment or reassessment proceedings under section 153A for the 6/10 Assessment Years immediately preceding the Assessment Year relevant to the previous year in which search is conducted.  
These proceedings shall be deemed to have commenced on the date on which notice under section 153A is issued.
- (v) In assessment proceedings under section 143(3)/ 144 of the Assessment Year relevant to the previous year in which search is conducted.  
These proceedings shall be deemed to have commenced from the date on which the return of income for that assessment year is furnished under section 139 or in response to a notice served under section 142.

**KEY NOTE:**

Application for settlement cannot be made for an assessment year which is not pending under section 143(3)/144/147/153A.

**ANALYSIS OF AMENDMENT BY FINANCE ACT. 2015**

The Assessing Officer issues notice under section 148 on 1-1-2020 for Assessment Year 2016-17 to tax the income escaping assessment. For the following Assessment Years, notice under section 148 has not been issued and following assessment years are not pending in any assessment / reassessment.

Assessment Years	Return of income filed under section:
2012-13	139(1)
2013-14	139(4)
2014-15	No Return of Income filed
2015-16	139(1)
2017-18	No Return of Income filed
2018-19	142(1)
2019-20	139(1)

Now, no notice under section 148 has been issued for the above Assessment Years but on 1.1.2020 Assessing Officer could have issued notice for Assessment Year 2013-14 and onwards.

Now if on 20-1-2020, the assessee wants to make an application to Settlement Commission, then as per Finance Act, 2015:

- (i) Assessment of Assessment Year 2016-17 is pending under section 148 and application can be made to the Settlement Commission
- (ii) For Assessment Years 2013-14, 2015-16, 2018-19 and 2019-20, application can be made to settlement Commission since returns for these Assessment Years have been filed under section 139/ 142(1) and notice under section 148 could have been issued for these Assessment Years on 1-1-2020. The assessment of these Assessment Years shall be deemed to be pending under section 147.

**KEY NOTES:**

1. Assessee shall make an application to ITSC in prescribed form making a true and full disclosure of his income which has not been disclosed before Assessing Officer.
2. The application to ITSC can be made if:

- (i) Additional amount of income tax on the income disclosed in application exceeds Rs. 50 lakhs for 6/10 Previous Years preceding the Previous Year in which search is conducted and for the Previous Year in which search is conducted.
- (ii) If the person on whom search is conducted is a person related to the person referred to in (i) above and person referred in (i) above has filed settlement application → Additional amount to income tax on the income disclosed in application exceeds Rs. 10 lakhs for 6/10 Previous Years preceding the Previous Year in which search is conducted and for the Previous Year in which search is conducted.
- (iii) Other case i.e. 143(3)/ 144/ 147, the additional amount of income tax should exceed Rs. 10 lakh.

### 3. CALCULATION OF ADDITIONAL AMOUNT OF INCOME-TAX WHERE APPLICATION PERTAINS TO ONE YEAR ONLY.

#### I. WHERE RETURN OF INCOME HAS NOT BEEN FURNISHED BY THE ASSESSEE

Tax on total income disclosed in the application to Settlement Commission.

#### II. WHERE RETURN OF INCOME HAS BEEN FURNISHED BY THE ASSESSEE

Tax on [Income disclosed in the application to Settlement Commission + Returned Income] minus [Tax on Returned Income]

- 4. An application made shall not be allowed to be withdrawn. §
- 5. As assessee shall, on the date on which he makes an application to the ITSC, also intimate the Assessing Officer in the prescribed manner of having made such application to the ITSC.

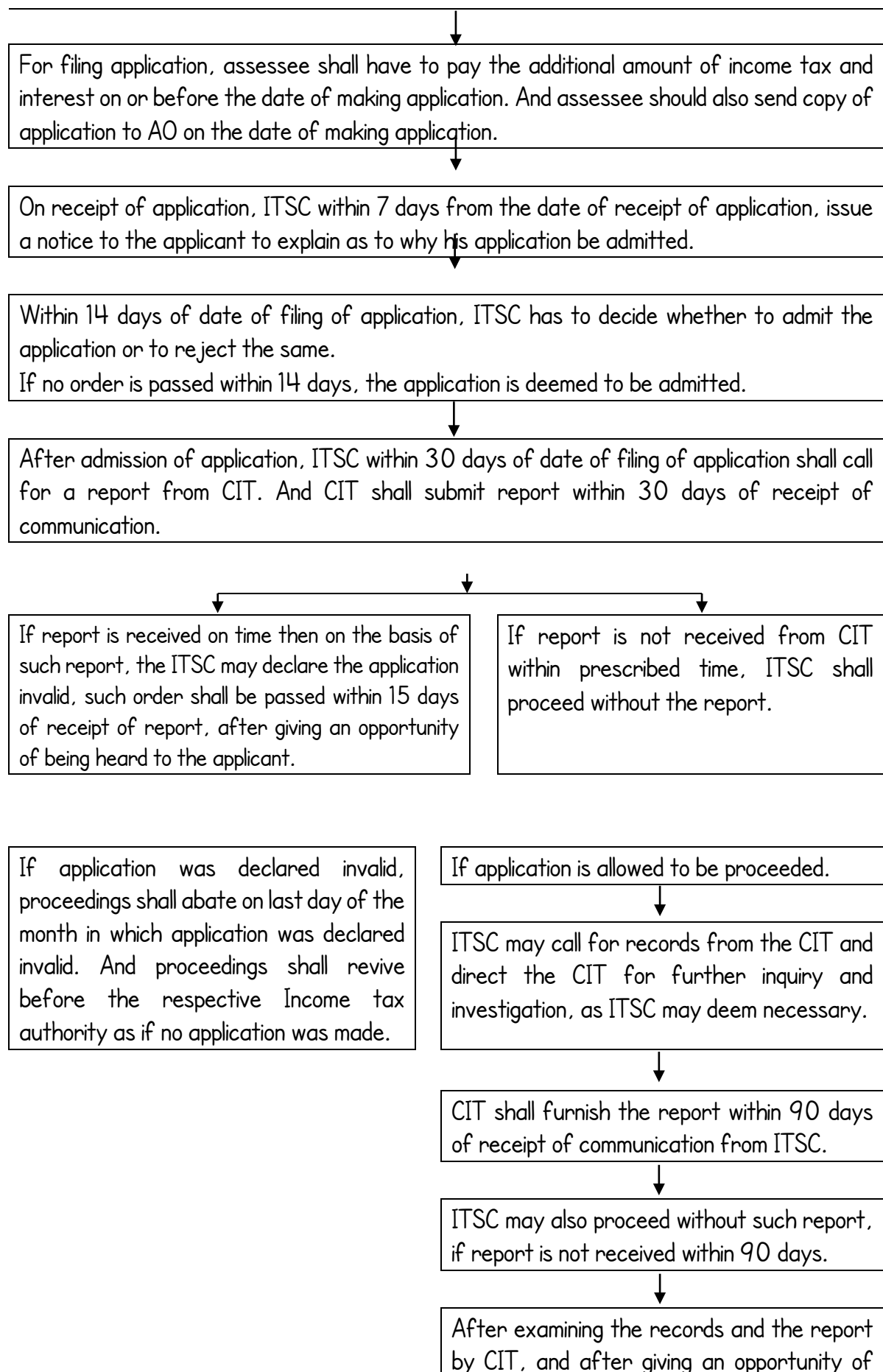
### 6. SECTION 245D: PROCEDURE ON RECEIPT OF APPLICATION

#### APPLICATIONS FILED TO SETTLEMENT COMMISSION (ITSC)



Application can be filed before ITSC if following conditions are satisfied:

- 1. Additional amount of income tax exceeds Rs. 50,00,000 in case of applicant and Rs. 10,00,000 in case of related applicants in case of search & seizure and Rs. 10,00,000 in other cases.
- 2. Case is pending before AO only in an assessment or reassessment proceeding u/s 143(3)/144/147/153A.





being heard, shall pass an order under section 245D(4) within 18 months from the end of the month in which application was made.



If settlement order is not passed within the prescribed time proceedings shall abate after the expiry of 18 months as aforesaid. And proceedings shall revive before the respective Income tax authority as if no application was made.

**7. THE ORDER OF SETTLEMENT PASSED UNDER SECTION 245D(4) SHALL PROVIDE FOR:**

1. Income settled and tax thereon.
2. Interest under section 234A/B/C. **As per Supreme Court in Anjum M. H. Ghaswala, ITSC cannot waive/ reduce the interest under section 234A/B/C. It can waive/reduce to the extent Chief CIT / DG can do.**
3. Immunity from penalty and prosecution.
4. Levy of penalty and filing of case of prosecution.
5. Manner in which tax due on settlement shall be paid.
6. Other matters to make settlement effective.
7. That the order of settlement shall be declared void if it is found that the settlement was obtained by fraud or misrepresentation of facts. ( **ITSC suo motu or even Department can make an application later on , that settlement was obtained by fraud or mis representation of facts )**

**Note:**

The Settlement Commission, has to consider both the material brought on record before it by Income Tax Authority and **independent examination** of the evidence and material on record.

8. If the settlement becomes void since it was obtained by fraud or mis representation of facts, the income tax proceedings in respect of Assessment Years covered by settlement shall be deemed to have been revived from the date of the application for settlement. Notwithstanding anything contained in Income-tax Act the Income-tax authority can complete such proceedings at any time before the expiry of 2 years from the end of the Financial Year in which the settlement became void.

## 9. SECTION 245D(6B): RECTIFICATION OF MISTAKE APPARENT FROM RECORD

The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4)-

- (a) at any time within a period of six months from the end of the month in which the 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 an order under sub-section (4) 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.

### **Illustration:**

Settlement Commission passed order under section 245D(4) on 1-12-2019. There is a mistake apparent from record in the said order passed under section 245D(4).

### **Now the Settlement Commission:**

- (a) Suo-moto can pass rectification order under section 245D(6B) rectifying the order passed under section 245D(4) up to 30-6-2020.
- (b) Assessee and / or Commissioner of Income-tax can file an application for rectification of mistake only up to 30-6-2020. If application for rectification is made by assessee and / or Commissioner of Income-tax after 30-6-2020, the Settlement Commission cannot rectify the mistake apparent from record.

Suppose assessee/ Commissioner of Income-tax made rectification application on 10.5.2020 to rectify the order passed under section 245D(4). Now Settlement Commission shall pass the rectification order under section 245D(6B) up to 30-11-2020.

## 10. POWERS OF ITSC

- (a) It cannot reopen the completed proceedings.
- (b) It can attach property. Attachment initially is for 6 months but can be extended.
- (c) It has all the powers which are conferred by Income-tax Act on IT. Authorities. Therefore, ITSC can levy penalty, launch prosecution, levy interest under section 234A/B/C.
- (d) ITSC shall have exclusive jurisdiction i.e. no I.T. authority will touch the case:
  - From the date the application is made to ITSC:
    - (i) till the date ITSC passes order of settlement under section 245D(4); or
    - (ii) Till the date ITSC passes rejection order under section 245D(1)
    - (iii) Till the date ITSC declares application invalid on the basis of CIT's objections

## 11. SECTION 245H: POWERS OF THE SETTLEMENT COMMISSION TO GRANT IMMUNITY FROM PROSECUTIONS AND PENALTIES

1. Settlement Commission, if it is satisfied that:
  - (i) any person who made the application under section 245C has co-operated with it in proceedings before it and
  - (ii) has made a full and true disclosure of his incomessubject to conditions as it may think fit to impose **for reasons to be recorded in writing**, grant immunity with respect to the case covered by Settlement, from: -
  - (i) **Prosecution for any offence under Income-tax Act.**
  - (ii) **Imposition of penalty under Income-tax Act.**

As per amendment by Finance Act, 2015 Settlement Commission is bound to record reasons in writing for granting immunity from penalties and prosecution.

2. An immunity granted by Settlement Commission shall be withdrawn by Settlement Commission if:
  - (i) the assessee fails to pay the sum specified in the order of Settlement passed under section 245D(4) within the time specified in the order or within such further time which Settlement Commission has allowed.
  - (ii) the assessee fails to comply with the conditions subject to which immunity was granted.
  - (iii) If it is found that the assessee has concealed any particular material or has given false evidence to Settlement Commission.

**12. SECTION 245HA: ABATEMENT OF PROCEEDING BEFORE SETTLEMENT COMMISSION****(1) PROCEEDINGS BEFORE SETTLEMENT COMMISSION SHALL ABATE**

- (i) Where an application made under section 245C has been rejected under section 245D(1).
- (ii) Where an application made under section 245C has been declared as invalid under on the basis of CIT's objections.
- (iii) In respect of any other application made under section 245C, an order under 245D(4) has not been passed within 18 months.
- (iv) in respect of any application made under section 245C, an order under section 245D(4) has been passed not providing for the terms of settlement.

- (2) Where a proceeding before the Settlement Commission abates, the Assessing Officer before whom the proceeding at the time of making the application was pending shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been made.

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 the inquiry held or evidence recorded by the Settlement Commission.

For the purposes of the time-limit for making the assessment, the period commencing on and from the date of the application to the Settlement Commission under section 245C and ending with date of abatement shall be excluded.

**13. SECTION 251: POWER OF THE COMMISSIONER (APPEAL)**

In an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, the CIT(A) shall consider all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission and confirm, reduce, enhance or annul the assessment.

**14. SECTION 273AA: POWER OF COMMISSIONER TO GRANT IMMUNITY FROM PENALTY**

- (1) A person may make an application to the Commissioner for granting immunity from penalty, if—
- (a) he has made an application for settlement under section 245C and the proceedings for settlement have abated under section 245HA; and

- (b) the penalty proceedings have been initiated under this Act.
- (2) The application to the Commissioner shall not be made after the imposition of penalty after abatement.
- The Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any penalty under this Act.

**Note:** As per Finance Act, 2016, the order under this section either accepting or rejecting the application, shall be passed within a period of twelve months from the end of the month in which the application is received by the Commissioner.

#### 15. SECTION 278AB: POWER OF COMMISSIONER TO GRANT IMMUNITY FROM PROSECUTION

- (1) A person may make an application to the Commissioner for granting immunity from prosecution, if he has made an application for settlement under section 245C and the proceedings for settlement have abated under section 245HA.
- (2) The application to the Commissioner shall not be made after institution of the prosecution proceedings after abatement.
- The Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from prosecution for any offence under this Act.

#### 16. SECTION 245HAA: CREDIT FOR TAX PAID IN CASE OF ABATEMENT OF PROCEEDINGS

Once proceedings abate under section 245HA, Assessing Officer has to give credit for taxes paid at the time of making application before Settlement Commission while making assessment.

#### 17. SECTION 245K: BAR ON SUBSEQUENT APPLICATION FOR SETTLEMENT

Where a person has made an application under section 245C and if such application has been allowed to be proceeded with under section 245D(1), he or any person related to such person (herein referred to as related person) shall not be entitled to make an application under section 245C.

**Note:** "RELATED PERSON" with respect to a person means, -

- (i) where such person is an individual,
- ➔ any company in which such person holds more than 50% of voting rights, or

- ➔ any form or AOP/BOI in which such person is entitled to more than 50% of the profits
- ➔ any Hindu undivided family in which such person is a karta;
- (ii) **where such person is a company,**
  - ➔ any individual who held more than 50% of the voting rights in such company
- (iii) **where such person is a firm or AOP/BOI,**
  - ➔ any individual who was entitled to more than 50% of the profits in such firm, AOP/BOI;
- (iv) **where such person is a Hindu undivided family,**
  - ➔ the karta of that Hindu undivided family.

### 18. SECTION 245-I: ORDER OF SETTLEMENT COMMISSION TO BE CONCLUSIVE

- Matters covered by the order of Settlement Commission cannot be reopened in any proceeding under the Act or under any other law. Hence, the matters covered by the order of Settlement Commission cannot be reopened by issuing a notice under section 148 of the Income-tax Act. Also, such matters cannot be reopened under any other law.
- The order of the Settlement Commission is final and conclusive and no appeal is possible against such an order. However, it can be challenged in the High Court through a WRIT PETITION and thereafter in Supreme Court through a Special Leave Petition.

### ADVANCE RULING

#### SECTION 245N: DEFINITIONS

(a)	<b>"Advance Ruling"</b> means -	<b>"Applicant"</b> means any person who is a-
(i)	<ul style="list-style-type: none"> <li>- A determination by the AAR</li> <li>- in relation to a</li> <li>- <b>transaction</b> which has been <b>undertaken or is proposed to be undertaken</b></li> <li>- by a NR applicant and</li> <li>- such determination shall include the determination of <b>any question of law or question of fact</b> specified in the application.</li> </ul>	non-resident referred to in a(i),

<b>(ii)</b>	<ul style="list-style-type: none"> <li>- A determination by the AAR</li> <li>- in relation to <b>the tax liability of a NR arising out of a</b></li> <li>- transaction which has been <b>undertaken or is proposed to be undertaken</b></li> <li>- by a <b>Resident applicant</b> with such NR and</li> <li>- such determination shall include the determination of any question of law or question of fact specified in the application</li> </ul>	resident referred to in (a)(ii)
<b>(iia)</b>	<ul style="list-style-type: none"> <li>- A determination by the AAR</li> <li>- in relation to the tax liability of a <b>resident applicant</b>,</li> <li>- arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant, and</li> <li>- such determination shall include the determination of any question of law or question of fact specified in the application; (Added by Finance Act, 2014)</li> </ul>	aresident referred to in clause (a)(iia) above, as may be notified by Central Government. [Central Government has notified that a resident can move application for Advance Ruling, in relation to his tax liability arising out of one or more transactions valuing Rs. 100 crore or more in total which have been undertaken or proposed to be undertaken] (Added by Finance Act, 2014)
<b>(iii)</b>	<ul style="list-style-type: none"> <li>- A determination by the AAR</li> <li>- in respect of</li> <li>- <b>an issue relating to computation of total income</b></li> <li>- which is <b>pending</b> before any Income Tax Authority, or ITAT and</li> <li>- such determination shall include the determination of <b>any question of law or question of fact</b> specified in the application</li> </ul>	<b>Public sector company (PSU)</b>

\*AAR means Authority for Advance Ruling.

**Note:**

<b>SECTION 245-O: AUTHORITY FOR ADVANCE RULINGS</b>
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- (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 notification, appoint.

<b>SECTION 245Q: APPLICATION FOR ADVANCE RULINGS</b>
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**Step 1:** Make an Application in prescribed form and manner stating the question on which the advance ruling is sought.

**Step 2:** Application can be withdrawn within 30 days from the date of application.

**Note:**

**Step 3:** Application shall be in quadruplicate and be accompanied by a fee as given below:

Category of applicant	Category of case	Fee
An applicant referred to in sub-clauses (i) or (ii) or (ia) of section 245N	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.	Rs. 2 lacs
	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.	Rs. 5 lacs



	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds Rs. 300 crore.	Rs. 10 lacs
PSU's	In any case.	Rs. 10,000

### SECTION 245R: PROCEDURE ON RECEIPT OF APPLICATION

<b>Step 1</b>	AAR shall forward a copy of application to CIT to ascertain whether the case is pending or not, and if necessary call for the records.		
<b>Step 2</b>	AAR may allow or reject the application. However in following 3 cases, AAR shall reject the application:-		
	<b>(i)</b>	<b>(ii)</b>	<b>(iii)</b>
	<ul style="list-style-type: none"> <li>• With regard to NR &amp; R applicant (except PSUs), whether the issue is pending before any ITA, ITAT or COURT on the date of application.</li> <li>• With regard to PSUs, when the issue is pending before any COURT</li> </ul>	Question raised in the application involves determination of FMV of any property	Question in the application relates to a transaction which is designed prima facie for the avoidance of tax  This restriction shall not be applicable for the PSUs
	<ul style="list-style-type: none"> <li>o Opportunity of being heard shall be given to the applicant before order of rejection of application.</li> <li>o Reason for rejection shall be given in the order</li> <li>o Copy of order shall be sent to the applicant and to the CIT</li> <li>o No appeal is possible against order of rejection</li> </ul>		
<b>Step III</b>	After allowing application and after examining the information placed by the applicant or obtained by the authority, AAR pronounces its Advance Ruling on the question specified in the application.		
<b>Step IV</b>	On request of applicant, AAR shall, before pronouncing its Advance Ruling, provide an opportunity of being heard either in person or through a duly authorized representative.		
<b>Step V</b>	AAR shall pronounce its Advance Ruling with in 6 months from the date of receipt of application.		
<b>Step VI</b>	A copy of the Advance Ruling pronounced by AAR shall be sent to applicant and to the CIT.		

"The Order of AAR giving its opinion is a final order and no Appeal is possible against such an order"

### SECTION 245RR: INCOME TAX AUTHORITY OR APPELLATE AUTHORITY NOT TO PROCEED IN CERTAIN CASES

**No Income Tax Authority or ITAT shall proceed** to decide any issue in respect of which an application has been made by the **APPLICANT**. It shall wait for the decision of AAR.

### SECTION 245S: APPLICABILITY OF ADVANCE RULING

The Advance Ruling pronounced by AAR is **BINDING** on -

- the **applicant** who has sought it
- in respect of **transaction** in relation to which the ruling had been sought
- **AO, CIT, CIT(A)** in respect of applicant i.e. **it is not binding on ITAT**

**NOTE:** The Advance Ruling shall be binding unless there is a change in law or facts on the basis of which Advance Ruling has been pronounced.

### SECTION 245T: ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES

- Where the AAR finds that Advance Ruling sought by applicant by **fraud or misrepresentation of facts**,
- then it may by order declare such ruling to be **void-ab-initio**.
- and all the provisions of this Act shall apply as if such advance ruling has never been made.

## SET OFF AND CARRY FORWARD & SET OFF OF LOSSES

### SECTION 70: INTER SOURCE ADJUSTMENT

**General Rule:** The loss in respect of any source of income under any head of income shall be set off against the income from any other source under the same head.

**Exceptions:**

- (1) Losses from speculation business.
- (2) Losses from the activity of owning and maintaining race-horses.
- (3) **Long Term Capital Loss cannot be set off against short term capital gains.**
- (4) Loss of specified business referred to in section 35AD cannot be set-off except against profits and gains of any other specified business referred to in section 35AD.

### SECTION 71 : INTER HEAD ADJUSTMENT

**GENERAL RULE:** Where in respect of any assessment year, there is a loss under any head of income, it can be set-off against income under any head of income for that assessment year.

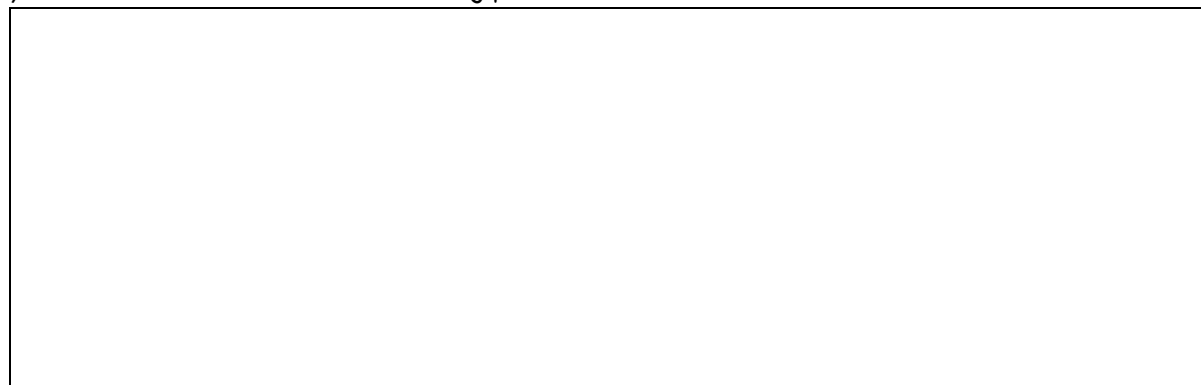
**EXCEPTIONS:**

1. Losses from speculation business.
2. Losses from the activity of owning and maintaining race-horses.
3. Losses under the head capital gains.
4. **Losses of P/G/B/P cannot be set-off against salary.**
5. **Loss computed in respect of any specified business referred to in section 35AD cannot be set-off against any other income.**

**Note:** Loss of tax exempt activity shall not be set-off under section 70 or 71 and shall not be carried forward.

**AMENDMENT MADE BY FINANCE ACT 2017****RESTRICTION ON SET-OFF OF LOSS FROM HOUSE PROPERTY**

Section 71 of the Act relates to set-off of loss from one head against income from another. In line with the international best practices it is proposed to insert sub-section (3A) in the said section to provide that set-off of loss under the head "Income from house property" against any other head of income shall be restricted to two lakh rupees for any assessment year. However, the unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years in accordance with the existing provisions of the Act.

**SECTION 71B: CARRY FORWARD AND SET-OFF OF LOSS FROM HOUSE PROPERTY**

Loss under the head house property:

- (i) Can be set-off in current year against any income
- (ii) Balance to be carried forward for 8 Assessment Years and set-off only against "Income from House Property."

**KEY NOTES:**

Loss under the head House Property can be carried forward even if ROI is filed after the due date of filing ROI under section 139(1).

## SECTION 72: CARRY FORWARD & SET-OFF OF BUSINESS LOSSES

Loss under the head P/G/B/P:

- (i) Can be set-off in current year against any income except salary.
- (ii) Balance to be carried forward for 8 Assessment Years and set-off only against "P/G/B/P."

**Note:** Loss can be carried forward even if business has been discontinued.

### EXCEPTIONS TO THE RULE THAT THE ASSESSEE MUST BE THE SAME

1. On inheritance on death of an individual, the legal heir shall carry forward the losses of deceased for the balance number of years **£ Sec 78(2) 3.**

#### MADHUKANT M. MEHTA (SUPREME COURT)

Where sole proprietary (speculation business) was carried on by legal heirs by forming partnership firm, firm could claim carry forward of loss of sole proprietor, as it was found by Tribunal that there was succession to business of deceased.

#### PRAMOD MITTAL (DELHI)

If a partnership firm was dissolved and the takeover of the running business of the firm by the erstwhile partner as a sole proprietor was not a case of succession by inheritance. Hence, **the carry forward of losses of the firm by the sole proprietor was not allowed in this case.**

### EXCEPTIONS TO THE RULE THAT LOSSES CAN BE CARRIED FORWARD FOR EIGHT ASSESSMENT YEARS

1. **Section 35AD:** Loss of business which is specified under section 35AD can be carried forward without any time limit.
2. As per sec 41(5) if business was discontinued and there is income chargeable under section 41(1)/(3)/(4)/(4A) in respect of such discontinued business, then business loss of the previous year in which business was discontinued can be set-off against such incomes.

#### **EXAMPLE:**

In case a business is discontinued & there is a loss in that business, then it can be carried forward and set off against deemed income u/s 41(1),(3),(4) & (4A), irrespective of the time limit. However, all unabsorbed losses of discontinued business cannot be set off. Only loss pertaining to year of discontinuance can be set off against 41(1) etc. Eg: Mr X has incurred the following losses PY 92 - 93 = 5lacs ; PY 93 - 94 = 8lacs ; PY 94 - 95 = 10lacs. The business is discontinued PY 94 - 95. Later on in the year PY 2017 - 18, Mr X recovers a bad debt chargeable u/s 41(4). Now, if 41(5) were not there,

13lacs would be fully taxable. However, as per 41(5), the assessee can set off the loss only of year of discontinuance against 41(4) income. Therefore, taxable income is 3lacs. Loss pertaining to 92 - 93 & 93 - 94 are lapsed.

3. Where business is discontinued in circumstances given in section 33B and is re-established within the period given in section 33B, then the losses of such business including bought forward losses shall be:
- (i) Carried forward to Assessment Year in which business is re-established and set off against P/G/B/P;
  - (ii) Balance carried forward to next 7 Assessment Years.

### EXAMPLE:

Till PY 1984 - 85, there was a rehabilitation allowance u/s 33B which was available to the assessee if the business is discontinued due to some circumstances like floods, earthquake, cyclone, war, etc and if it is reestablished within 3 years from the end of the 'PY in' which business was discontinued. However, the allowance is not available with effect from 1.4.85, but the implication of this section is there in this chapter.

If a business is discontinued due to flood, etc. and is re-established within 3 yrs from the end of the PY in which the business was discontinued, then b/f losses and loss of the year of discontinuance can be set off for another 8 yrs from the year of re-establishment. Suppose the business is discontinued in PY 16 - 17 due to earthquake and there was a loss in that year of Rs. 10lacs. There was also a b/f loss of 2010-2011 of Rs. 8l. Now, if this business is established in PY 2019-20, then lossess of 2016 - 17 and 2010-2011 can be carried forward for another 8 years from 2019 - 20.

## SECTION 73: LOSSES IN SPECULATION BUSINESS

Losses of speculation business can be set-off against profits of speculation business. Such losses can be carried forward for 4 Assessment Years and set-off against speculation income only.

## SECTION 73A: CARRY FORWARD AND SET OFF OF LOSSES BY SPECIFIED BUSINESS REFERRED IN SECTION 35AD

Loss of specified business of section 35AD can be set-off in current year and future years only against the profits of any specified business referred to in section 35AD.

Loss of specified business referred in 35AD carried forward indefinitely.

<b>SECTION 74: LOSSES UNDER THE HEAD CAPITAL GAINS</b>
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(i) Brought forward Long-Term Capital Loss	→	Can be set off against current year Long Term Capital Gain.
(ii) Brought forward Long-Term Capital Loss	→	Cannot be set off against current year Short Term Capital Gains
(iii) Brought forward Short-Term Capital Loss	→	Can be set off against current year Short Term Capital Gains
(iv) Brought forward Short-Term Capital Loss	→	Can be set off against current year Long Term Capital Gains

<b>SECTION 74A: LOSS FROM THE ACTIVITY OF OWNING AND MAINTAINING RACE-HORSES</b>
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1. Loss from the activity of owning and maintaining race horses shall be set-off against the income from the activity of owning and maintaining race horses.
2. The loss to the extent not set-off shall be carried forward to the next assessment year and set-off against the income from the activity of owning and maintaining race horses.
3. Carry forward is permissible for four years.
4. **The loss from the activity of owning and maintaining other animals ( eg- Camel Race ) are not covered here . However, it can be allowed to be carried forward as per sec 72 as it amounts to business.**

<b>SECTION 79: CARRY FORWARD AND SET-OFF OF LOSSES IN THE CASE OF CERTAIN COMPANIES</b>
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1. This section applies notwithstanding anything contained in Chapter VI.
2. The section applies to a closely held company.
3. Where a change in shareholding has taken place in the case of a company in a previous year, then no loss incurred in any year prior to such previous year shall be carried forward and set off against the income of the previous year unless on the last day of the previous year and on the last day of the year in which loss was incurred, the shares of the company carrying not less than 51% of the voting power were beneficially held by the same persons.
4. The following changes in shareholdings shall not be considered as a change in shareholding for the purpose of section 79.
  - (i) where the change takes place consequent upon the death of the shareholder.
  - (ii) where the change takes place by way of gift of shares to any relative of the shareholder making the gift.

- (iii) Any change in shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of the foreign company subject to the condition that 51% of the shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company."

MAKE DIAGRAM HERE

**KEY NOTE:**

Sec 79 is not applicable for UAD.

**AMENDMENT MADE BY FINANCE ACT 2017**

**Carry forward and set off of loss in case of Eligible Start up companies.**

In order to facilitate ease of doing business and to promote start up India, it is proposed to amend section 79 of the Act to provide that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested and being an eligible start-up as referred to in section 80 -IAC of this Act, loss shall be carried forward and set off against the income of the previous year, if all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred, being the loss incurred during the period of seven years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year.

**AMENDMENT MADE BY FINANCE ACT (NO.2 ) 2019****Incentives for start-ups**

(1) Section 79 of the Income Tax Act provides conditions for carry forward and set off of losses in case of a company not being a company in which the public are substantially interested. Clause (a) of this section applies to all such companies, except an eligible start-up as referred to in section 80-IAC, while clause (b) applies only to such eligible start-up.

Under clause (a), no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred.

Under clause (b), the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated. The said clause was inserted vide Finance Act, 2017 in order to facilitate ease of doing business and to promote start-up India.

To further facilitate ease of doing business in the case of an eligible start-up, it is proposed to amend section 79 so as to provide that loss incurred in any year prior to the previous year, in the case of closely held eligible start-up, shall be allowed to be carried forward and set off against the income of the previous year on satisfaction of either of the two conditions stipulated currently at clause (a) or clause (b). For other closely held companies, there would be no change, and loss incurred in any year prior to the previous year shall be carried forward and set off only on satisfaction of condition currently provided at clause (a).

**AMENDMENT MADE BY FINANCE ACT 2018:**

Section 79, inter alia, provides that where a change in shareholding has taken place in a previous year in the case of a closely held company, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of the previous year the shares of the company carrying not less than 51 per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51 per cent of the voting power on the last day of the year or years in which the loss was incurred.

**Amendment** - The above provisions of section 79 have been amended (with effect from the assessment year 2018-19). After the amendment, section 79 shall not apply to a



company where a change in the shareholding takes place in a previous year pursuant to approved resolution plan under the Insolvency and Bankruptcy Code, 2016.

### **AMENDMENT MADE BY FINANCE ACT (NO.2 ) 2019**

#### **Measures for resolution of distressed companies**

The existing provisions of section 79 are not applicable to a company where any change in shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (IBC). Thus, loss in such cases can be carried forward and set off even if there is change in voting power or shareholding. This benefit is proposed to be extended to certain companies. Thus it has been provided in newly substituted section 79 that the provision of this section shall not apply to those companies, and their subsidiary and the subsidiary of such subsidiary, where-

- (i) the National Company Law Tribunal (NCLT) on a petition moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors, who are nominated by the Central Government, under section 242 of the Companies Act, 2013: and
- (ii) a change in shareholding of such company, and its subsidiaries and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by NCLT under section 242 of the Companies Act, 2013, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Further, it is also proposed that under section 115JB of the Act for calculating book profit, the aggregate amount of unabsorbed depreciation and loss (excluding depreciation) brought forward shall also be allowed to be reduced in cases of the above mentioned companies.

This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

### **GENERAL NOTES**

1. Losses cannot be set-off against the incomes referred to in section 115BB i.e. lottery income, crossword puzzles, incomes in TV shows, etc.ξ 3
2. Losses must be set-off in the immediate succeeding year and the loss not so set-off shall lapse.

**ISSUES ON SECTION 79:**

Case 1	SH	Year of loss		Year of set off	
	A	30%	E	30% [gift from A [he is a bother]	}
	B	30%	F	30% [on death of B]	
	C	20%	C	20%	
	D	20%	D	20%	

Case 2	SH	Year of loss		Year of set off	
	A	30%	E	30% [sold to bother E]	}
	B	25%	G	25% [Gifted to brother]	
	C	25%	F	25% [on death of C]	
	D	20%	D	20%	

Case 3	SH	Year of loss		Year of set off	
	A	15%	H	15% on death.	}
	B	15%	I	15% on sale by B ×	
	C	15%	J	15% on Gift by Friend C ×	
	D	15%	D	15% .	
	E	15%	K	15% [Sold] ×	
	F	15%	F	15%.	
	G	10%	Z	10% [Sold] ×	

**Pvt Ltd (Sec. 79)( FA 2017 Amendment)**

SH	2017-18	2018 - 19			
A	30% (3I)	SH	RS		
B	30% (3I)	A	3I		
C	20% (2I)	B	3I	$\frac{10}{210} - 4.76\%$	
D	20% (2I)	C	2I		If all shareholders in year of loss had all shares in the year of set - off, then it is allowed to be set off irrespective of % of shareholding.
	100%	D	2I		
		E	50I		
		F	50I		
		G	50I		
		H	50I		

## TAXATION OF INVESTMENT FUND & ITS INVESTORS

## TAXATION OF SECURITISATION TRUST & ITS INVESTORS

**MAKE CHART ON SEC 94(7) : DIVIDEND STRIPPING**

**MAKE CHART ON SEC 94(8) : BONUS STRIPPING****DEDUCTION AND COLLECTION OF TAX AT SOURCE**  
( MOST IMPORTANT TOPIC )**CLARIFICATION REGARDING TDS ON GST COMPONENT COMPRISED OF PAYMENTS MADE TO RESIDENTS**

It is clarified that wherever in terms of the agreement between the payer and the payee, the GST component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable **without including such GST component. This applies to all payments e.g., rent, professional fee, royalty, etc. ( Circular no- 23/2017 )**

**SECTION 206AA:REQUIREMENT TO FURNISH PAN- TAX DEDUCTION AT HIGHER RATE FOR FAILURE TO FURNISH PAN**

- (1) The deductee, shall furnish his PAN to the deductor, failing which tax shall be deducted at the higher of the following rates, namely:—
- (i) at the rate specified in the relevant provision of this Act; or
  - (ii) at the rate or rates in force; or
  - (iii) at the rate of 20%.

- (2) No declaration under section 197A shall be valid unless the person furnishes his PAN .
- (3) In case any declaration becomes invalid under sub-section (2), the deductor shall deduct the tax at source in accordance with the provisions of sub-section (1).
- (4) No certificate under section 197 shall be granted unless the application contains PAN.
- (5) The deductee shall furnish his PAN to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.
- (6) Where the PAN provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-section (1) shall apply accordingly.

### **KEY NOTES:**

Where the amount paid is below the limit on which tax is required to be deducted at source and therefore, not liable for deduction of tax, and PAN is not furnished, then section 206AA has no applicability.

### **RELAXATION FROM DEDUCTION OF TAX UNDER SECTION 206AA**

#### **RELAXATION 1:**

In the case of a **NR** or a foreign company (hereafter referred to as 'the deductee') and **not having PAN**, the provisions of section 206AA shall not apply in respect of payments in the nature of **interest, royalty, fees for technical services and payments or transfer of any capital asset**, if the deductee furnishes the following details to the deductor.

- (i) name, e-mail id, contact number;
- (ii) address in the country of which the deductee is a resident;
- (iii) a certificate of his being resident in any country from the Government of that country if the law of that country provides for issuance of such certificate;
- (iv) Tax Identification Number of the deductee in the country of his residence and 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 of which he claims to be a resident.

#### **RELAXATION 2 :**

Sec 206AA shall not apply to Non Resident or Foreign Company i.r.o Payment of Interest on Long Term Bonds as referred to in sec 194LC. ( **Refer International Tax - Non Resident** )

**WHEN SURCHARGE AND CESS SHOULD BE INCLUDED FOR TDS :**

Section	TDS Provisions	
192	TDS on Salaries	<p><u>Deductor</u> - Any Person.</p> <p><u>Deductee</u>: Resident or Non-resident</p> <p><u>Time of Deduction</u> - At the time of <b>payment</b>.</p> <p><u>Rate of TDS</u> - <b>Slab rate</b> applicable to the estimated income of the employee. ( <b>Take Average Rate</b> )</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- Income from previous employer may be considered.</li> <li>- Relief u/s 89(1) shall also be considered while deducting TDS ( <b>It's a relief for arrears of Salary received during the PY which can be obtained by furnishing to the employer a prescribed form { Form 10E}</b> )</li> <li>- Income from all sources may be considered. And any TDS there on shall also be considered.</li> <li>- Only loss under the head house property shall be taken into account for the purpose of TDS and not any other loss.</li> <li>- The employer may deposit from his own pocket tax on the non-monetary perquisites to employees. Such tax is exempt income in hands of employee and is disallowable expenditure to employer. { <b>Refer Sec 40(a)(v) &amp; 10(10CC)</b> }</li> </ul>

		<p><b>Finance Act, 2015:</b>The employer will allow the deduction/ exemption / set-off of loss only if proofs are furnished by the employee.</p> <p>- <b><u>ITC Ltd. v. CIT (Supreme Court)</u></b> Tips collected by Hotel from customers and paid to employees did not amount to salary from employer and hence employer was not liable to deduct tax at source on such payments u/s 192.</p>
192A	TDS on Payment of Accumulated Balance due to an Employee if same is taxable in hands of employee	<p><u>Deductor</u> - <b>Trustees of Employees Provident Fund Scheme</b> <u>Deductee</u> - <b>Resident or Non-resident</b> <u>Time of Deduction</u> - <b>At the time of payment.</b> Rate of tax: <b>10%</b> <b>Notes: -</b></p> <ul style="list-style-type: none"> <li>- No TDS where payment in a FY is less than Rs. 50,000.</li> <li>- No TDS if declaration is given under section 197A.</li> <li>- If PAN is not given then tax shall be deducted at MMR.</li> </ul>
193	TDS on Interest on Securities	<p><u>Deductor</u> - <b>Any Person.</b> <u>Deductee</u> - <b>Resident.</b> <u>Time of Deduction</u> - <b>At the time of credit or payment whichever is earlier.</b> Rate of tax: <b>10%</b> <b>Notes:</b> <b><u>TDS shall not be deducted in following cases:</u></b></p> <ul style="list-style-type: none"> <li>- Interest payable on Central Govt, or State Govt. Securities.</li> <li>- Interest paid to LIC, GIC or any other insurer, in respect of securities owned by it or held by it as beneficiary.</li> <li>- Interest paid on any listed security issued by a company held in dematerialized form. ₹ If security is not listed or is not in dematerialized form, then TDS shall be deducted. However, in such a case no TDS shall be deducted if the interest paid to an individual/ HUF does not exceed Rs. 5,000 during the FY</li> </ul> <p style="text-align: center;"><b><u>AMENDMENT MADE BY FINANCE ACT 2018:</u></b> Government of India introduced a new 7.75 per cent GOI Savings (Taxable) Bonds, 2018. The interest received under the new bonds will continue to be taxed as in the case of the earlier one. The</p>



		provisions of section 193 have been amended (with effect from April 1, 2018) to allow for deduction of tax at source at the time of making payment or credit of interest on such bonds to residents. However, no TDS will be deducted if the amount of interest is less than or equal to Rs. 10,000 during the financial year.
194A	TDS on interest other than 'Interest on Securities:	<p><u>Deductor</u> - Any Person, [other than individual or HUF (not liable to tax audit in preceding Financial Year)].</p> <p><u>Deductee</u> - Resident</p> <p><u>Time of Deduction</u> - At the time of <b>credit or payment</b>, whichever is <b>earlier</b>.</p> <p><u>Rate of tax</u>: 10%</p> <p><b>NOTES:</b>  <b>Exceptions to Section 194A</b>  <b>NO TDS IN FOLLOWING CASES:</b></p> <p>(i) 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 payee, does not exceed:</p> <p>(a) Rs. 40,000* where payer is Banking Company.  (b) Rs. 40,000* where payer is a Co-operative Society engaged in Banking.  (c) Rs. 40,000* on deposit with post office.  (d) Rs. 5,000 in any other case.</p> <p>* Earlier it was Rs.10000 ( Finance Act (No.1) 2019 )</p> <p><b>AMENDMENT MADE BY FINANCE ACT 2018</b>  This threshold limit of Rs. 40,000 has been increased (with effect from April 1, 2018) to Rs. 50,000 if the recipient of interest is a senior citizen (i.e., an Resident who is of age of 60 years or more at any time during the previous year).</p> <p><b>ONLY TIME DEPOSITS ARE COVERED:</b>  Time deposit = Fixed Deposits + Recurring Deposits.</p> <p><b>CBS SYSTEM:</b></p>

		<p>As per Finance Act 2015 where core Banking solution software has been adopted, TDS shall be deducted on aggregate of interest paid by all the branches of the bank i.e. where aggregate interest paid by all the branches of the bank exceed Rs. 40,000/Rs.50,000/-</p> <p><b>(ii) Where such income is credited or paid to -</b></p> <ul style="list-style-type: none"> <li>• any banking company to which Banking Regulation Act, 1949 applies ( including Indian Branch of a Foreign Bank ), or</li> <li>• any co-operative society engaged in the carrying on the business of banking i.e., cooperative bank (including a co-operative land mortgage bank), or</li> <li>• any financial corporation established by or under a Central, State or Provincial Act, or</li> <li>• LIC of India , or</li> <li>• UTI , or</li> <li>• any company or cooperative society carrying on the business of Insurance.</li> </ul> <p><b>(iii) Where Interest is credited or paid by a firm to a partner . However, if it is paid to a Non Resident Partner , then Tax has to be deducted u/s 195.</b></p> <p><b>(iv) Interest credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or co-operative land mortgage bank or a cooperative land development bank.</b></p> <p><b>(v) Where such income is credited or paid by a co operative society( other than a cooperative bank ) to a member thereof or to such income credited or paid by a cooperative society to any other co operative society.</b></p> <p><b>NOTE: Interest paid by cooperative bank to its members is liable to TDS.</b></p>
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**MAKE SUMMARY FOR COOPERATIVE SOCIETY/BANKS:**

- |  |  |   |
|--|--|---|
|  |  | <p>(vi) Interest on savings account with banks or with a co-operative society engaged in the business of banking.</p> <p>(vii) Where interest is credited or paid by the Central Government under the Income-tax Act. (However, TDS shall be deducted under section 195 where such interest is paid to a non-resident)</p> <p>(viii) such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;<br/>Deduction of tax under section 194A from interest payment on the compensation amount awarded by the Motor Accident Claim Tribunal compensation shall be made only at the time of payment, if the amount of such payment or aggregate amount of such payments during a financial year exceeds Rs. 50,000. ( <b>See Note Below</b>)</p> |
|--|--|---|

**NOTE FOR POINT (viii):**

Deduction of Tax u/s 194A from Interest payment on the compensation amt awarded by Motor Accident Claim Tribunal compensation shall be made only at the time of PAYMENT ( Not Credit ), if the amount of such payment or aggregate payment exceed Rs.50,000/- in a FY. No deduction shall be made if interest is announced and not paid.

		<p>(ix) such income which is paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or scheduled bank in relation to a zero coupon bond issued by such company or fund or public sector company or scheduled bank.</p> <p>(x) Interest i.r.o deposits under certain schemes of Post Office, Post Office (Recurring Deposits), Post Office Monthly Income Account, KVP, IVP and NSC.</p> <p style="text-align: center;"><b><u>BOARD'S CIRCULAR:</u></b></p> <p>It is clarified that since no constructive credit to the depositor's/payee's account takes place while calculating interest on time deposits 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 purposes of macro monitoring only. In such cases, tax shall be deducted at source on accrual of interest at the end of financial year or at periodic intervals as per practice of the bank.</p>
194B	TDS on winning from lottery or crossword puzzle or card game and other game of any sort	<p><u>Deductor</u> - Any Person.</p> <p><u>Deductee</u> - Any person</p> <p><u>Time of Deduction</u> - At the time of <b>payment</b>.</p> <p><u>Rate of TDS</u> - <b>30%</b></p> <p><b><u>NOTE:</u></b></p> <ul style="list-style-type: none"> <li>- No TDS where amount does <b>not exceed Rs. 10,000</b> during a Financial Year.</li> <li>- In a case where: <ul style="list-style-type: none"> <li>(i) the winnings are wholly in kind; or</li> <li>(ii) 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,</li> </ul> </li> </ul> <p>the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.</p>
194BB	TDS on Winning	<p><u>Deductor</u> - Any Person being the holder of license for the HR.</p> <p><u>Deductee</u> - Any person</p>

	from Horse Race (HR)	<p><u>Time of Deduction</u> - At the time of <b>payment</b>.</p> <p><u>Rate of TDS</u>-<b>30%</b></p> <p><b>NOTE:</b></p> <ul style="list-style-type: none"> <li>- <b>No TDS</b> where amount does <b>not exceed Rs. 10,000</b> during a Financial Year.</li> </ul>
194C	TDS on payment to contractors /Sub Contractors	<p><u>Deductor</u> - <b>Any Person</b> [other than individual or HUF (not liable to tax audit in preceding Financial Year)].</p> <p><u>Deductee</u> - <b>Any resident</b></p> <p><u>Time of Deduction</u> - At the time of <b>credit or payment</b>, whichever is <b>earlier</b>.</p> <p><u>Rate of TDS</u> - (i) <b>1%</b> in case <b>payee is individual or HUF</b>. (ii) <b>2%</b> in case of <b>any other Payee</b>.</p> <p><b>NOTE:</b></p> <ul style="list-style-type: none"> <li>- <b>No TDS</b> where amount payable <b>does not exceed:</b> <ul style="list-style-type: none"> <li>(i) <b>Rs. 30,000</b> in case of a <b>single contract</b>.</li> <li>(ii) <b>Rs. 1,00,000</b> in case of <b>aggregate of contracts</b> during a Financial Year.</li> </ul> </li> <li>- <del>No TDS is required to be deducted by individual or HUF under a contract for personal purpose, even if he is subject to tax audit.</del> <b>Finance Act (No.2 ) 2019 Refer Sec 194M 3</b></li> <li>- <u>The definition of "work" shall include:</u> <ul style="list-style-type: none"> <li>(i) advertising;</li> <li>(ii) broadcasting or telecasting including production of programs for such broadcasting or telecasting;</li> <li>(iii) carriage of goods or passengers by any mode of transport other than by railways;</li> <li>(iv) Catering;</li> <li>(v) Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer.</li> </ul> </li> </ul> <p><b>But does not include manufacturing or supplying a product according to the requirement or specification of a customer</b></p>

		<p>by using material purchased from a person, other than such customer.”</p> <ul style="list-style-type: none"> <li>- <b><u>TDS shall be deducted:</u></b></li> <li>- On the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or</li> <li>- On the whole of the invoice value, if the value of material is not mentioned separately in the invoice.</li> </ul>
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**Illustration 1:**

Armani Ltd gives cloth to Mr X and asks Mr X to Stitch shirts as per the specifications given by Armani Ltd. Mr X charges in his Invoice Rs.2,000 per shirt for stitching 1,000 shirts and raises a bill of Rs 20,00,000.

**Ans:** This is a works Contract and TDS shall be deducted by Armani Ltd @1% on Rs 20Lacs.

**Illustration 2:**

In the above illustration 1, Armani Ltd sells cloth of Rs50,00,000 to Mr X and asks Mr X to stitch shirts as per the specifications.

**CASE A: Mr X raises bill on Armani Ltd as under:**

Cloth	Rs. 50,00,000
Stitching Charges	<u>Rs. 20,00,000</u>
	<u>Rs. 70,00,000</u>

Now since value of material is separately mentioned in invoice, TDS @ 1% will be deducted by Armani Ltd on Rs .20,00,000.

**CASE B: Mr X raises a consolidated bill of Rs.70,00,000 as under:**

Sale of 1,000 shirts @ 7,000 per shirt	-	Rs.70,00,000
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**Illustration 3:**

Mr X purchases cloth from Raymond's for Rs. 50,00,000. He stitches shirts as per specification of Armani Ltd and supplies to Armani Ltd as per Invoice given below:

Material Purchased	Rs. 50,00,000
Stitching Charges	<u>Rs. 20,00,000</u>
	<u>Rs. 70,00,000</u>

This will be treated as sale of shirts and TDS is not required to be deducted since material has been purchased from other than customer.

**RELAXATION FOR GOODS CARRIAGE BUSINESS PAYEE:**

- **No deduction** shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a **contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns 10 or less goods carriages at any time during the Previous Year and furnishes a declaration to that effect along with his Permanent Account Number**, to the person paying or crediting such sum. **{ Sec 194C(6) }**

**RECENT CBDT CIRCULAR**

1. This exemption from TDS is applicable only in respect of transport charges received for plying, hiring or leasing of goods carriage (s) owned by the transporter. Therefore, if a person receives payment in respect of plying, hiring or leasing of goods carriage (s) which are not owned by him, he shall not be entitled to claim exemption from TDS in respect of these payments.
2. The condition of not owning more than ten goods carriages by the transporter is required to be fulfilled on the date on which the amount is credited or paid, whichever is earlier. In case a transporter does not own ten goods carriages on the date on which the amount is credited or paid but becomes owner of ten goods carriages later in the previous year, the payer shall not be required to deduct tax from the payment made to the transporter during the period of the previous year when he was not owning more than ten goods carriages. However, the tax shall be required to be deducted from the payment made during that part of the previous year during which the transporter owned more than ten goods carriages.
3. Further, for determining the aggregate amounts of sum credited or paid for the purposes of computing limit of Rs. 1,00,000, all the payment made during the financial year shall be taken into account including the amount credited or paid during the period of the financial year during which the transporter was not owning more than ten goods carriages.

**EXAMPLE**

Mr A owns five goods carriage from 1<sup>st</sup> April 2019 to 31<sup>st</sup> October 2019. On 1<sup>st</sup> Nov 2019, he purchased 6 more goods carriages. On 1<sup>st</sup> January 2020, he sold 8 goods carriages. Mr B makes the following payment of Transport Charges to Mr A during the FY 2019-20:

Date of Payment	Amount	Remarks
15/04/2019	35,000	No TDS as the payee does not own more than 10 Goods Carriage.
15/07/2019	40,000	No TDS as the payee does not own more than 10 Goods Carriage.
15/11/2019	20,000	No TDS as the single payment does not exceed Rs .30,000 and aggregate payment does not exceed Rs. 1,00,000.
15/12/2019	20,000	Yes TDS shall be deducted @1% on Rs 1,15,000.
15/02/2020	50,000	Yes TDS shall be deducted as the payee owned more than 10 goods carriage at anytime during the PY.

**CBDT CIRCULAR**

It is clarified that in case the Owner/Seller of the gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a 'contract for sale and not a 'works contract as envisaged in section 194C of the Act. Hence in such circumstances, provisions of section 194C are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. The use of different modes of transportation of gas by Owner/Seller will not alter the position.

It is needless to mention that transportation charges paid to a third party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and TDS shall be deductible on such payment to the third party at the applicable rates.



194D	TDS on Insurance Commission (Excluding Re Insurance )	<p><u>Deduction</u> - Any Person</p> <p><u>Deduction</u> - Any resident</p> <p><u>Time of Deduction</u> - At the time of <b>credit or payment</b>, whichever is <b>earlier</b>.</p> <p><u>Rate of TDS</u> - 5 %</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- <b>No TDS</b> where amount does not exceed Rs. 15,000 during a Financial Year.</li> </ul>
194DA	TDS on payment respect of Life insurance policy	<p><u>Deductor</u> - Any Person</p> <p><u>Deductee</u> - Any resident</p> <p><u>Time of Deduction</u> - At the time of <b>payment</b>.</p> <p><u>Rate of TDS</u> - <del>1% of Gross Amount ( till 31<sup>st</sup> August 2019)</del>  <b>5% of Net Income ( From 1<sup>st</sup> September 2019 )</b></p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- <b>No TDS</b> on amount <b>exempt</b> under section 10(10D).</li> <li>- <b>No TDS</b> where amount <b>does not exceed</b> Rs. 1,00,000 during a Financial Year.</li> <li>- <b>No TDS</b> if <b>declaration</b> is given under section 197A.</li> </ul>
194E	TDS on payment to non-resident sportsmen or sportsmen association or entertainer	<p><u>Deductor</u> - Any Person</p> <p><u>Deductee</u> - Any non-resident sportsmen not citizen of India and non-resident sports association or non-resident entertainer</p> <p><u>Time of Deduction</u> - At the time of <b>credit or payment</b>, whichever is <b>earlier</b>.</p> <p><u>Rate of TDS</u> - 20%.</p> <p>₹ Do with sec 115BBA in NR Chapter 3</p>
194G	TDS on commission, etc. on the sale of lottery tickets	<p><u>Deductor</u> - Any Person</p> <p><u>Deductee</u> - Any person</p> <p><u>Time of Deduction</u> - At the time of <b>credit or payment</b>, whichever is <b>earlier</b>.</p> <p><u>Rate of TDS</u> - 5%.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- <b>No TDS</b> where amount <b>does not exceed</b> Rs. 15,000 during a Financial Year.</li> </ul>

194H	TDS on Commission (other than insurance commission) or Brokerage	<p><u>Deductor</u> - Any Person, [other than individual or HUF (not liable to tax audit in the preceding Financial Year)].</p> <p><u>Deductee</u> - Any resident</p> <p><u>Time of Deduction</u> - At the time of <b>credit or payment</b>, whichever is earlier.</p> <p><u>Rate of TDS</u> - 5%.</p> <p><b>NOTES:</b></p> <ul style="list-style-type: none"> <li>- No TDS where amount <b>does not exceed Rs. 15,000</b> during a Financial Year.</li> <li>- <b>No TDS is required to be deducted by BSNL or MTNL</b> on commission or brokerage paid to their PCO franchisees.</li> <li>- Commission to employees and employee directors will form part of salary income and is liable to TDS under section 192 of the Act and not under this section.</li> <li>- No TDS on brokerage and commission on securities.</li> <li>- TDS will be deducted on brokerage and commission paid for commodities transactions.</li> <li>- Tax should be deducted at source under section 194H on amount available to travel agents being difference between airfare fixed by Airlines and price at which agents are enabled to sell tickets.</li> <li>- <b><u>VODAFONE ESSAR CELLULAR LTD. (KERALA)</u></b> Discount given on supply of SIM cards and recharge coupons by a telecom company to its distributors under a prepaid scheme will be treated as commission to attract the TDS provisions under section 194H. The distributor only acts as a middleman on behalf of the assessee for procuring and retaining customers and therefore, the discount given to him was within the meaning of commission under section 194H on which tax was deductible.</li> <li>- <b>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 [CBDT Circular No.619 dated 4/12/1991]</b></li> </ul>
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194-I	TDS on rent	<p><u>Deductor</u> - Any Person, [other than individual or HUF (not liable to tax audit in the preceding Financial Year)]</p> <p><u>Deductee</u> - Any resident</p> <p><u>Time of Deduction</u> - At the time of <b>credit or payment</b>, whichever is <b>earlier</b>.</p> <p><u>Rate of TDS</u> - (i) For use of Plant &amp; Machinery - 2% (ii) For use of Land, building, Furniture or fitting -10%</p> <p><b>NOTE:</b></p> <ul style="list-style-type: none"> <li>- As per Finance Act 2016 the landlord can give a declaration under section 197A for non deduction of TDS on rent to be received by him. ( <b>Form 15G &amp; H</b> )</li> <li>- No TDS when rent is paid or credited to REIT. <b>₹ See with Business Trust Chapter 3</b></li> <li>- <b>No TDS</b> where amount <b>does not exceed Rs. 2,40,000*</b> during a Financial Year. <b>This limit of Rs. 2,40,000*</b> is to <b>computed on an aggregate basis by including Rent of Land &amp; Building as well P&amp;M and Furniture paid or credited to a payee.</b></li> </ul> <p><b>* This was Rs. 1,80,000 earlier. (Finance Act (No. 1) 2019</b></p> <ul style="list-style-type: none"> <li>- <b>"Rent"</b> means any payment, by whatever name called, under any lease, sublease, tenancy or any other agreement or arrangement for the use of (either separately or together) any, <ul style="list-style-type: none"> <li>(a) land; or</li> <li>(b) building (including factory building); or</li> <li>(c) land appurtenant to a building (incl factory building); or</li> <li>(d) machinery; or</li> <li>(e) plant; or</li> <li>(f) equipment; or</li> <li>(g) furniture; or</li> <li>(h) fittings,</li> </ul> </li> </ul>
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		<p><b>whether or not any or all of the above are owned by the payee.</b></p> <ul style="list-style-type: none"> <li>- TDS should also be deducted on advance rent, warehousing charges and non-refundable deposits.</li> <li>- Where the share of each co-owner in the property is definite and ascertainable, the limit of Rs. 2,40,000 will be applicable to each co-owner separately.</li> <li>- <b><u>CBDT CIRCULAR</u></b> 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/place or the machinery of the cold store and thus does not become a tenant. Therefore, the provision of 194-I is not applicable to the cooling charges paid by the customers of the cold storage. However, 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.</li> <li>- <b><u>JAPAN AIRLINES CO. LTD. V. CIT (SUPREME COURT)</u></b> Landing and parking charges payable by Airlines in respect of aircrafts are not for the 'use of land' per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus, landing and parking charges payable by Airlines would attract TDS under Section 194C and not under Section 194-I.</li> </ul>
194-IA	TDS on payment transfer of certain immovable property	<p><b><u>Deductor</u> - Any purchaser (other than person referred to in section 194LA)</b></p> <p><b><u>Deductee</u> - Any seller being resident</b></p> <p><b><u>Time of Deduction</u> - At the time of credit or payment, whichever is earlier.</b></p> <p><b><u>Rate of TDS</u> - 1% of the total <b>consideration</b> for transfer of immovable property</b></p>

		<p><b>NOTES:</b></p> <ul style="list-style-type: none"><li>- Every person is liable to deduct tax at source @ 1% on payment made for purchase of immovable property to a person resident in India, except for:<ul style="list-style-type: none"><li>(i) rural agricultural land (which is not coming in definition of capital asset), and</li><li>(ii) where the sale <b>consideration</b> for the property is less than Rs. 50 lakh.</li></ul></li></ul> <p>Therefore, if the immovable property is purchased from a non-resident person for any value, no TDS is required to be deducted under this section. However, TDS shall be deducted under section 195.</p> <ul style="list-style-type: none"><li>- It is not necessary that the land or building should be situated in India. If any person is purchasing property outside India from a person resident in India, he is liable to deduct tax at source on sale consideration @ 1%.</li><li>- In case section 194-IA is attracted then the purchaser isn't required to obtain TAN, i.e., Tax Deduction Account Number i.e., section 203A is not applicable.</li><li>- Every person who is purchasing property of Rs. 50 lakhs or more would have to deduct TDS @ 1% of the payments made to the seller.</li><li>- In case the seller does not have PAN, then instead of 1%, TDS will be applicable @ 20% because of section 206AA of the Income-tax Act, 1961.</li><li>- In the case of property whose sale price is Rs. 50 lakhs or more and in the event part payment is being made for the purchase, then such TDS would be required to be deducted on every part payment of <b>consideration</b> and not at the time of final tranche of payment.</li><li>- If sellers jointly own a property and sells for a total consideration of Rs. 50 lakh or more, then section 194-IA is attracted even if each co-owner's consideration is less than Rs. 50 lakhs.</li><li>- TDS is required to be deducted irrespective of the fact that immovable property is held as capital asset or stock-in trade by the buyer and seller.</li><li>- In case immovable property (other than agricultural land which is not capital asset) is acquired under any law in force, the provisions of section 194LA shall apply and provisions of section 194-IA is not applicable.</li></ul>
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		<p>- Stamp Duty Value has no importance in this section.</p> <p style="text-align: center;"><b><u>AMENDMENT MADE BY FINANCE ACT (NO.2 ) 2019</u></b></p> <p>The term 'consideration for immovable property' is presently not defined for the purposes of this section. It is noted that in the transaction involving purchase of immovable property, there are other types of payments made besides the sales consideration and the buyer is contractually bound to make such payments to the builder/seller, either under the same agreement or under a different agreement. Some of such payments are those for rights to amenities like club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee etc. Accordingly, it is proposed to amend the Explanation to said section and provide that the term "consideration for immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.</p> <p>This amendment will take effect from 1st September, 2019.</p>
194J	<p>TDS on:</p> <p>-fees for professional services, or</p> <p>-fees for technical services, or</p> <p>-royalty, or</p> <p>-any sum referred to in clause (va) of section 28 i.e., non-compete fees</p> <p>-director sitting fees</p>	<p><u>Deductor</u> - Any Person, [other than individual or HUF (not liable to tax audit in the preceding Financial Year)].</p> <p><u>Deductee</u> - Any resident</p> <p><u>Time of Deduction</u> - At the time of credit or payment, whichever is earlier.</p> <p><u>Rate of TDS</u> - 10%.</p> <p style="text-align: center;"><b>2 % ( If paid to Person engaged in Call Center Business )</b></p> <p><b>NOTE:</b></p> <p>- TDS shall be deducted on:</p> <p>(a) fees for professional services, or</p> <p>(b) fees for technical services, or</p> <p>(c) royalty, or</p>

		<p>(d) any sum referred to in clause (va) of section 28, or</p> <p>(e) 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. [Finance Act, 2012]</p> <p>- No TDS where amount does not exceed Rs. 30,000 during a Financial Year for each type of payment referred to in (a) to (d). ( In Sec 194-I the limit is applicable on aggregate basis )</p> <p>- If any fees is paid through regular banking channels to any chartered accountant, lawyer, advocate or solicitor who is resident in India by the non-residents who do not have any agent or business connection in India, then no TDS is required to be deducted on such fees.</p> <p>- <del>No TDS is required to be deducted by individual or HUF for professional fees paid for personal purpose, even if he is subject to tax audit. § Finance Act (No.2 ) 2019 Refer Sec 194M 3</del></p> <p>- Central Board of Direct Taxes, hereby notifies the services rendered by following persons in relation to the <b>sports activities as</b> "Professional Services" for the purpose of the section 194J, namely : -</p> <ul style="list-style-type: none"> <li>◆ Sports Persons,</li> <li>◆ Umpires and Referees,</li> <li>◆ Coaches and Trainers,</li> <li>◆ Team Physicians and Physiotherapists,</li> <li>◆ Event Managers ( <b>See Note Below</b> ),</li> <li>◆ Commentators,</li> <li>◆ Anchors, and</li> <li>◆ Sports Columnists.</li> </ul> <p><b>Note: Services for Event Management of other activities will not be covered here . But it will covered u/s 194C.</b></p>
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		<ul style="list-style-type: none"><li>- The services rendered by hospitals to various patients are primarily medical services and, therefore, provisions of section 194J are applicable on payments made by TPAs to hospitals on behalf of insurance companies for settling medical/ insurance claims etc. with the hospitals.</li><li>- <b><u>The Finance Act, 2012 has added following three Explanations to the definition of Royalty under sec 9:</u></b> Explanation 4. – For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred. ( <b>Do with Non Resident Chapter</b>)</li></ul> <p style="text-align: center;"><b><u>CBDT NOTIFICATION:</u></b></p> <p><b><u>NO TDS where payment by a person ( transferee) for acquisition of software from another person, being resident, ( transferor), where-</u></b></p> <ul style="list-style-type: none"><li>(i) The software is acquired in subsequent transfer and transferor has transferred the software without modification,</li><li>(ii) Tax has been deducted u/s 194J or 195 on payment for any previous transfer.</li><li>(iii) Transferee obtains a declaration from transferor that TDS is deducted along with PAN.</li></ul>
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194LA	Payment of compensation on compulsory acquisition of any immovable property (Other than agricultural land)	<p><u>Deductor</u> - Any Person.  <u>Deductee</u> - Any resident.  <u>Time of Deduction</u> - At the time of payment.  <u>Rate of TDS</u> - 10%.</p> <p><b>Note:</b>  - No TDS where amount <b>does not exceed Rs. 2,50,000</b> during a Financial Year.</p> <p style="text-align: center;"><b><u>AMENDMENT MADE BY FINANCE ACT, 2017</u></b></p> <p>In order to rationalise the provisions of the Act, section 194LA has been amended (with effect from April 1, 2017) to provide that no tax deduction shall be made under this section where such payment is made in respect of any award/agreement which has been exempted from levy of income-tax under section 96 (except those made under section 46) of RFCTLARR Act.</p>
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**Note:** Where any income is credited to any account, whether called "Suspense Account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee.

**NOTE ON SEC 194A/194C/194H/194-I/194J & 206C:**

**TAX DEDUCTION FROM PAYMENT OF RENT BY CERTAIN  
INDIVIDUAL'S/HUF'S [SEC. 194-IB]**

**Who is responsible for tax deduction** - Any individual/HUF [whose books of account are not required to be audited under section 44AB(a)/(b) in the immediately preceding financial year] responsible for paying to a resident rent of land or building, is liable to deduct tax under section 194-IB. Tax is deductible under this section if the quantum of rent is more than Rs. 50,000 per month (or part of month).

**Time of deduction** - Tax shall be deducted only at the time of credit of rent (for the last month of the previous year or last month of tenancy if the property is vacated during the year) to the account of payee or at the time of payment thereof in cash or by cheque/draft, whichever is earlier.

**Rate of tax deduction** - Tax is deductible at the rate of 5 per cent of rent paid/credited during the financial year. However, no tax is deductible where rent is Rs. 50,000 per month (or less). If PAN of recipient is not available, tax is deductible at the rate of 20 per cent (however, in such a case amount of TDS cannot exceed rent payable for the last month of the previous year or last month of tenancy).

**Provisions of TAN not applicable** - Provisions of section 203A (pertaining to TAN) shall not apply in respect of tax deducted under section 194-IB.

**ILLUSTRATION:**

Issues	Tax Implication
A Person stays in rented house from April 2019 to July 2019 and paid rent @Rs.55,000 p.m.	He is liable to deduct TDS @5% on Rs.2,20,000. The same shall be deducted from rent of July , 2019.
A USA resident came to India for 2 months and took guest house on rent and paid Rs.1,40,000 for 2 months.	TDS shall be deducted u/s 194-IB on Rs. 1,40,000 @ 5%.
Mr A is paying rent @ 48,000 till February. Rent is increased to Rs. 52,800 p.m. w.e.f March.	Mr A is required to deduct TDS under this sec on whole amt of rent paid. i.e., Rs. 5,80,800 @ 5%.
Mr X is paying rent @52,000 p.m. However , the Landlord , who is 80 yrs old, does not have PAN.	Mr. X is required to deduct TDS @20% u/s 206AA since landlord does not have PAN. TDS on Rs.6,24,000 @ 20% shall be Rs. 1,24,800. However, as per sec 194-IB(4), total TDS cannot exceed the last month rent. Therefore, total TDS shall be Rs. 52,000/-

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019****Tax Deduction at Source (TDS) on payment by Individual/HUF to contractors and professionals**

At present there is no liability on an individual or Hindu undivided family (HUF) to deduct tax at source on any payment made to a resident contractor or professional when it is for personal use. Further, if the individual or HUF is carrying on business or profession which is not subjected to audit, there is no obligation to deduct tax at source on such payment to a resident, even if the payment is for the purpose of business or profession. Due to this exemption, substantial amount by way of payments made by individuals or HUFs in respect of contractual work or for professional service is escaping the levy of TDS, leaving a loophole for possible tax evasion. To plug this loophole, it is proposed to insert a new section 194M in the Act to provide for levy of TDS at the rate of five per cent on the sum, or the aggregate of sums, paid or credited in a year on account of contractual work or professional fees by an individual or a Hindu undivided family, not required to deduct tax at source under section 194C and 194J of the Act, if such sum, or aggregate of such sums, exceeds fifty lakh rupees in a year. However, in order to reduce the compliance burden, it is proposed that such individuals or HUFs shall be able to deposit the tax deducted using their Permanent Account Number (PAN) and shall not be required to obtain Tax deduction Account Number (TAN).

This amendment will take effect from 1st September, 2019.

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019****TDS on cash withdrawal to discourage cash transactions**

In order to further discourage cash transactions and move towards less cash economy, it is proposed to insert a new section 194N in the Act to provide for levy of TDS at the rate of two per cent on cash payments in excess of one crore rupees in aggregate made during the year, by a banking company or cooperative bank or post office, to any person from an account maintained by the recipient.

It is proposed to exempt payment made to certain recipients, such as the Government, banking company, cooperative society engaged in carrying on the business of banking, post office, banking correspondents and white label ATM operators, who are involved in the handling of substantial amounts of cash as a part of their business operation, from the application of this provision. It is proposed to empower the Central Government to exempt other recipients, through a notification in the official Gazette in consultation with the Reserve Bank of India.

**This amendment will take effect from 1st September, 2019.**

**SECTION 196: INTEREST OR DIVIDEND OR OTHER SUMS PAYABLE TO GOVERNMENT, RESERVE BANK OR CERTAIN CORPORATIONS**

No TDS shall be deducted from any sum payable to:

- (i) Government
- (ii) RBI
- (iii) Mutual Funds ( **Refer Taxation of Securitisation Trust** )
- (iv) Corporation established under any Central Act whose income is exempt from tax.

**SECTION 197: CERTIFICATE FOR NO/ LOWER DEDUCTION OF TDS**

Where the total income of the recipient of income is not liable to tax or is taxable at lower rates, then such recipient of income can make an application to Assessing Officer to issue a certificate for no deduction/ lower deduction of TDS from his income.

In such a case, the payer shall deduct income tax as per the rates specified in the certificate till such time the certificate is cancelled by Assessing Officer.

Certificate for the lower deduction under section 197 shall not be issued if the application does not contain the PAN of the applicant.

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**SECTION 197A: SELF DECLARATION FOR NON-DEDUCTION OF TDS**

No TDS shall be deducted if the recipient of:

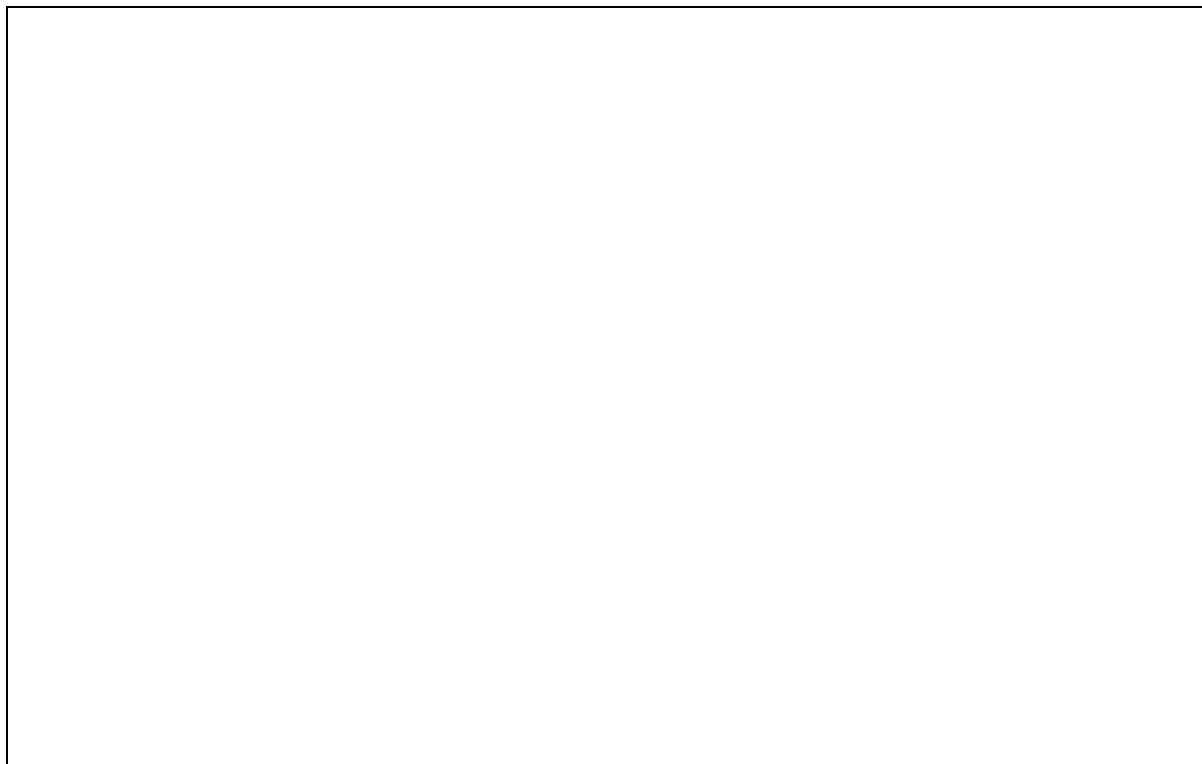
- Interest from securities and / or
- Interest other than interest on securities
- **Amount of accumulated balance due to an employee from Recognised Provident Fund (Finance Act, 2015)**
- **Amount received in respect of Life Insurance Policy. (Finance Act, 2015)**
- **Rent ( Finance Act, 2016)**
- **Recipient of Insurance Commission u/s 194D ( Finance Act, 2017)**

gives a declaration in prescribed form to the Assessing Officer that the tax on his current year income shall be NIL.

Any declaration under section 197A by the payee shall be valid only if it contains the PAN of the payee.

**Key Note:**

1. This declaration cannot be given by a Company or Firm.
2. This declaration cannot be given by a person OTHER THAN A SENIOR CITIZEN if the aggregate of the incomes referred above exceeds the taxable limit even though the tax on his total income is NIL.



<b>TIME LIMITS FOR FURNISHING QUARTERLY RETURNS OF TDS/TCS</b>
--

The Quarterly returns of TDS and TCS have to be filed by following due date:

S. No.	Date of ending of the quarter of the financial year	Due date for TDS	Due date for TCS
1.	30 <sup>th</sup> June	31 <sup>st</sup> July of the financial year	15 <sup>th</sup> July of the financial year
2.	30 <sup>th</sup> September	31 <sup>st</sup> October of the financial year	15 <sup>th</sup> October of the financial year
3.	31 <sup>st</sup> December	31 <sup>st</sup> January of the financial year	15 <sup>th</sup> January of the financial year
4.	31 <sup>st</sup> March	31 <sup>st</sup> May of the financial year immediately following the financial year in which deduction is made	15 <sup>th</sup> May of the financial year immediately following the financial year in which deduction is made

<b>SECTION 200A: PROCESSING OF STATEMENTS OF TAX DEDUCTED AT SOURCE</b>
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Where a quarterly return 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 quarterly return shall be processed in the following manner, namely:—

- (a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—
  - (i) any arithmetical error in the quarterly return; or
  - (ii) an incorrect claim, apparent from any information in the quarterly return;
- (b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the quarterly return;
- (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 section shall be sent after the expiry of 1 year from the end of the financial year in which the quarterly return is filed.

**Explanation**— For the purposes of this section, "an incorrect claim apparent from any information in the quarterly return" shall mean a claim, on the basis of an entry, in the quarterly return —

- (i) of an item, which is inconsistent with another entry of the same or some other item in such quarterly return;
- (ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

<b>SECTION 206CB: AMENDMENT BY FINANCE ACT, 2015</b>
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Finance Act, 2015 has introduced section 206CB which is exactly same as section 200A. Section 206CB deals with processing of TCS return.

<b>AMENDMENTS MADE IN VARIOUS OTHER SECTIONS</b>
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1. **Section 156** has been amended to provide that where any sum is determined as payable by the deductor/ collector in intimation under section 200A/ 206CB, then such intimation shall be deemed to be notice of demand under section 156.  
If such demand is not paid within 30 days of receipt of the intimation, then the assessee shall be deemed to be an assessee in default for which he shall pay interest under section 220 and penalty under section 221.
2. **Section 246A relating to filing of appeal:** A deductor / collector aggrieved by an intimation under section 200A/ 206CB , where he objects to the adjustments made, can file an appeal to CIT (Appeals).
3. **Section 154 relating to rectification of mistake:** An assessee can file a rectification application under section 154 for rectification of any mistake apparent from record in the intimation under section 200A/ 206CB.

<b>SECTION 201: CONSEQUENCES OF FAILURE TO DEDUCT OR PAY TDS</b>
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<b>FAILURE TO DEDUCT OR FAILURE TO PAY TDS - SECTION 201(1)</b>
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- (1) If any person who is liable to deduct TDS does not deduct the whole or any part of the tax or after deducting fails to pay the whole or any part of the tax, then, he shall be deemed to be an assessee in default in respect of the tax not so deducted or not so paid. Consequently he shall be liable to pay interest under section 220 and penalty under section 221 for being an assessee in default.

The Finance Act, 2012 clarifies that section 201(1) shall apply if assessee does not deduct whole or part of TDS. Also this section apply where assessee after deducting TDS fails to pay the whole or part of TDS. Section 201(1) shall not apply if there is a delay in deduction or delay in payment of TDS.

The Finance Act, 2012 also clarifies that interest under section 201(1A) shall not be levied where section 201(1) applies.

Provided that any person, 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 **NON RESIDENT** or on the sum credited to the account of a resident or **NON RESIDENT** shall not be deemed to be an assessee in default in respect of such tax if such resident or **NON 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 a chartered accountant in such form as may be prescribed.

### LATE DEDUCTION OF TDS OR LATE PAYMENT OF TDS - SECTION 201(1A)

(1A) If any person, does not deduct the whole or any part of the tax within the time prescribed or after deducting fails to pay the tax within the time prescribed, he shall be liable to pay simple interest, –

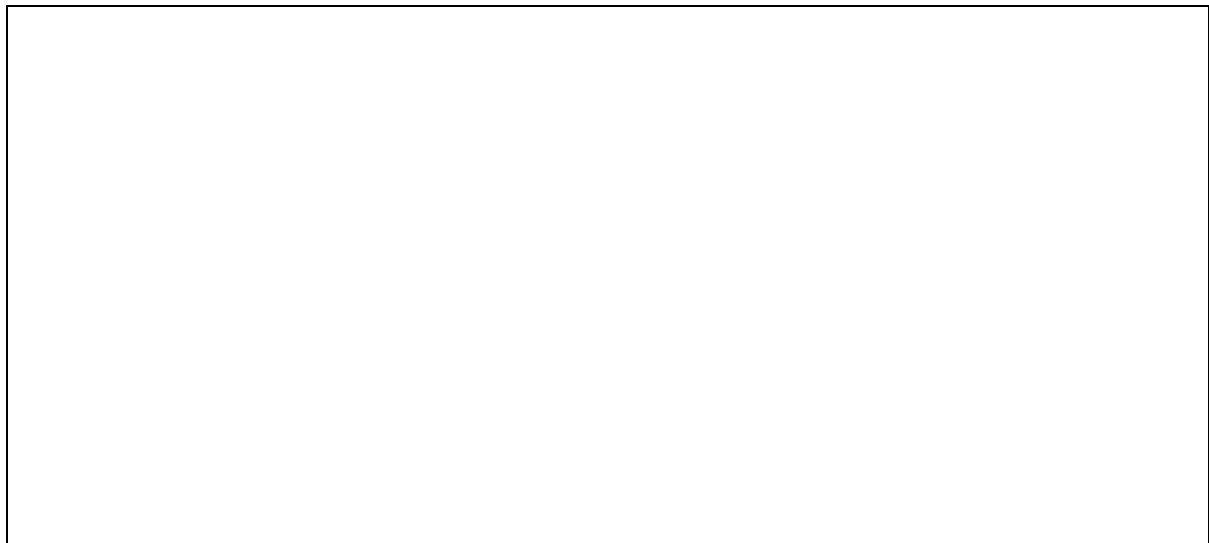
- (i) at 1% for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and
- (ii) at 1-1/2 % for every month or part of a month on the amount of such tax **from the date on which such tax was deducted** to the date on which such tax is actually paid.

and such interest shall be paid before furnishing the quarterly return of TDS.

Provided that in case any person, 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 **NON RESIDENT** or on the sum credited to the account of a resident or **NON 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 or **NON RESIDENT**.

**Note:** The words underlined and bold are amendment made by Finance Act (No.2) 2019.

(2) Where the tax has not been paid after it is deducted, the amount of the tax together with the amount of simple interest thereon shall be a charge upon all the assets of the deductor.





<b>PENALTY IN RESPECT OF QUARTERLY RETURN OF TDS / TCS</b>
--

1) **SEC 234E: FEE FOR DEFAULT IN FURNISHING QUARTERLY RETURNS OF TDS / TCS:**

- a. This section 234E is applicable for quarterly returns of TDS/TCS.
- b. Section 234E provides that where a person fails to deliver the quarterly returns of TDS / TCS within the time prescribed, then he shall be liable to pay a fees of Rs. 200 for every day during which the failure continues. This is in addition to the penalty under section 271H.
- c. However, such fees shall not exceed the amount of TDS / TCS deductible / collectible in the quarterly return.
- d. The fees under section 234E shall be paid before furnishing the quarterly returns of TDS /TCS.

**Note:**

**Is there any remedy available to him for reduction/waiver of the levy u/s 234E ?**

**Answer:**

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. Section 234E is included in the list of sections in respect of which the CBDT is empowered to issue order for relaxation of the provisions of the Act.

2) **SEC 271H: PENALTY FOR INCORRECT INFORMATION OR FAILURE TO FURNISH STATEMENT, etc.**

- a. This section 271H is applicable for quarterly returns of TDS / TCS.
- b. This section levies a penalty for delay in filing quarterly returns of TDS / TCS or furnishing incorrect information in the said returns.
- c. Section 271H provides that without effecting the provisions of section 234E, a person shall be liable to pay penalty if:-
  - (i) **he fails to deliver the quarterly returns of TDS / TCS within the time prescribed; or**
  - (ii) **he furnishes incorrect information in the quarterly returns of TDS / TCS.**
- d. The penalty shall be a minimum amount of Rs. 10,000 and it can extend upto Rs. 1,00,000.

- e. The above penalty is mandatory and cannot be waived.
- f. This section however provides that notwithstanding the above, no penalty shall be levied for delay in delivering the quarterly returns of TDS / TCS if such person proves that :-
  - after paying the tax deducted or collected along with fees under section 234E and interest under section 201 to the credit of Central Government,
  - he has filed the quarterly returns before the expiry of a period of one year from the time prescribed for filing the quarterly return.

Therefore, If quarterly returns of TDS / TCS which were to be filed on 31<sup>st</sup> July, 2016 are filed upto 31<sup>st</sup> July, 2017 and assessee has paid TDS / TCS and fees under section 234E and interest under section 201, then there shall be no penalty under section 271H for delay in furnishing of quarterly return.



### **SECTION 206C: TAX COLLECTION AT SOURCE**

#### **SECTION 206C(1): PROFIT AND GAINS FROM BUSINESS OF TRADING IN ALCOHOLIC LIQUOR, FOREST PRODUCE, SCRAP, ETC.**

- Every person, being a seller shall,
- 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 said buyer,
- whichever is earlier,
- collect from the buyer,
- a sum equal to the following percentage of the purchase price, as income-tax:

<u>Nature of goods</u>	<u>Percentage of Purchase Price</u>
(i) Alcoholic liquor for human consumption	1%
(ii) Tendu leaves	5%
(iii) Timber obtained under a forest lease	2.5%
(iv) Timber obtained by any mode other than under a forest lease	2.5%
(v) Any other forest produce not being timber or tendu leaves	2.5%
(vi) Scrap	1%
(vii) <b>Minerals being coal or Lignite or iron ore</b>	<b>1%</b>

**Note: Buyer does not include:**

- (i) public sector company
- (ii) Central Govt., State Govt.
- (iii) club.
- (iv) embassy, High Commission, Consulate or trade representative of a foreign state
- (v) A buyer who buys the above goods for his personal consumption.

**“Seller”** means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial, Act, or any company or firm or co-operative society and also includes an individual or a HUF who was subject to tax audit during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table above are sold.

### SECTION 206C(1A)

This section shall not apply where the buyer, who is a resident in India, furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to above are to be utilized for the purposes of manufacturing, processing or producing articles or things **or for the purposes of generation of power** and not for trading purposes.

### SECTION 206C(1B)

The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Chief Commissioner or Commissioner one copy of the declaration, referred to above, on or before the 7th day of the month next following the month in which the declaration is furnished to him.

**SECTION 206C(1C)**

**Every person, who grants a lease or a licence or enters into a contract or otherwise transfers**

- any right or interest in any parking lot or toll plaza or mine or quarry
- to another person, other than a public sector company (herein after called as "Licencee or Lessee")
- for the use of such parking lot or toll plaza or mine or quarry for the purposes of business shall,
- at the time of **debiting** of the amount payable by the licencee or lessee to the account of the licencee or lessee
- or at the time of **receipt** of such amount from the licencee or lessee,
- **whichever is earlier,**
- collect from the licencee or lessee.
- **2% of such amount as income-tax.**

**SECTION 206C(1D)(1E)**

~~Every person, being a seller, who receives any amount in cash as consideration for sale of bullion or jewellery or **any other goods (other than bullion or jewellery) or providing any service,** shall, at the time of receipt of such amount in cash, collect from the buyer, a sum equal to 1% of sale consideration as income-tax, if such consideration, -~~

~~(i) for bullion, exceeds Rs. 2,00,000; or~~

~~(ii) for jewellery, exceeds Rs. 5,00,000; or~~

~~(iii) **for any goods, other those referred to in clauses (i) and (ii), or any service, exceeds Rs. 2,00,000;**~~

~~However, no tax shall be collected at source under this sub-section on any amount on which tax has been deducted by the payer.~~

~~(Amended by Finance Act, 2016)~~

~~**NOTE 1:** The seller of bullion and jewellery shall collect tax at the rate of 1% of sale consideration from every buyer of bullion and jewellery if sale consideration exceeds two lakh rupees and the sale is in cash. **This would be irrespective of the fact whether buyer is a manufacturer, trader or purchase is for personal use.**~~

### SECTION 206C(1F)

Every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding Rs. 10,00,000, shall, at the time of such amount, collect from the buyer, a sum equal to 1% of the sale consideration as income-tax.

(Added by Finance Act, 2016)

#### CBDT clarifies the following queries raised by various quarters:

**Question 1:** Whether tax collection at source ('TCS') at the rate of 1% is on sale of Motor Vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/distributors.

**Answer:** section 206C of will not apply on sale of motor vehicles by manufacturers to dealers/distributors.

**Question 2:** Whether TCS at the rate of 1% is on sale of Motor Vehicle is applicable only to Luxury Cars?

**Answer:** No. As per sub-section (1F) of section 206C of the Act the seller shall collect the tax at the rate of one per cent from the purchaser on sale of any motor vehicle of the value exceeding ten lakh rupees.

**Question 3:** Whether TCS at the rate of 1% is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions for sale of motor vehicle or any other goods or provision of services?

**Answer:** Government, institutions notified under United Nations (Privileges and Immunities) Act, 1947 and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State and shall not be liable to levy of TCS at the rate of 1% under sub-section (1D) and (1F) of section 206C of the Act.

**Question 4:** Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?

**Answer:** Tax is to be collected at source at the rate of 1% on sale consideration of a motor vehicle exceeding ten lakh rupees. It is applicable to each sale and not to aggregate value of sale made during the year.

**Question 5:** whether TCS at the rate of 1% on sale of motor vehicle is applicable in case of an individual?

**Answer:** The definition of "Seller" as given in clause (c) of the Explanation below sub-section (11) of section 206C shall be applicable in the case of sale of motor vehicles also Accordingly, an individual who is liable to audit as per the provisions of section 44AB of the Act during the

financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

**Question 6:** How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?

**Answer:** The provisions of TCS on sale of motor vehicle exceeding ten lakh rupees is not dependent on mode of payment. Any sale of Motor Vehicle exceeding ten lakh would attract TCS at the rate of 1%.

### AMENDMENT MADE BY FINANCE ACT, 2017

#### Purchase of motor vehicle by Government/local authority not subject to TCS -

Under section 206C(1F), the seller is required to collect tax at source at the rate of 1 per cent, if sale consideration of a motor vehicle exceeds Rs. 10 lakh. This provision has been amended to exempt the following cases of buyers (of motor vehicles) -

- the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or a local authority; or
- a public sector company which is engaged in the business of carrying passengers.

### AMENDMENT MADE BY FINANCE ACT 2017:

#### RESTRICTION ON CASH TRANSACTIONS [SECTIONS 269ST AND 271DA]

In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money, sections 269ST and 271DA are inserted with effect from April 1, 2017.

**Mode of undertaking transaction [Sec. 269ST]** - Section 269ST provides that no person shall receive an amount of Rs. 2 lakh (or more) otherwise than by an account-payee cheque or account-payee bank draft or use of electronic clearing system through a bank account ***or such other electronic mode as may be prescribed.*** This provision will be applicable whether the recipient is seller of goods or service provider or transferor of a capital asset (or any other person). The ceiling of Rs. 2 lakh will be calculated as follows -

**1. Same payer in a day** - The aggregate amount received (other than by an account-payee cheque/draft/ use of electronic clearing system through a bank account ***or such other electronic mode as may be prescribed***), from the same person in a day should not be Rs. 2 lakh or more.

**2. Same transaction** - Amount received (other than by an account-payee cheque/draft/use of electronic clearing system through a bank account ***or such other electronic mode as may be prescribed***) in respect of a single transaction should not be Rs. 2 lakh or more.

**3. Same event/occasion** - Amount received (other than by an account payee cheque/draft/use of electronic clearing system through a bank account ***or such other electronic mode as may be prescribed***) in respect of a transaction relating to one event/occasion from a person should not be Rs. 2 lakh or more.

**When restriction not applicable** - The above restriction shall not apply when recipient is Government, any banking company, post office savings bank or co-operative bank. Further, the above restriction shall not apply when recipient is a person notified by the Central Government.

**Penalty for failure to comply with provisions of section 269ST [Sec. 271DA]** - Section 271DA provides for levy of penalty. If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt. However, penalty shall not be impossible if such person proves that there were good and sufficient reasons for the contravention. Penalty under this section shall be imposed by the Joint Commissioner.

### **AMENDMENT MADE BY FINANCE ACT (NO.2) 2019**

#### **Mandating acceptance of payments through prescribed electronic modes**

In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money and to promote digital economy, it is proposed to insert a new section 269SU in the Act so as to provide that every person, carrying on business, shall, provide facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment, if any, being provided by such person, if his total sales, turnover or gross receipts in business exceeds fifty crore rupees during the immediately preceding previous year.

In order to ensure compliance of the aforesaid provisions, it is further proposed to insert a new section 271DB to provide that the failure to provide facility for electronic modes of

payment prescribed under section 269SU shall attract penalty of a sum of five thousand rupees, for every day during which such failure continues. However, the penalty shall not be imposed if the person proves that there were good and sufficient reasons for such failure. Any such penalty shall be imposed by the Joint Commissioner.

This amendment will take effect from 1st November, 2019.

Further, it is proposed to make a consequential amendment in the Payment and Settlement Systems Act, 2007 so as to provide that no bank or system provider shall impose any charge upon anyone, either directly or indirectly, for using the modes of electronic payment prescribed under section 269SU of the Income-tax Act.

This amendment will take effect from 1st November, 2019.



## CAPITAL GAINS

### SECTION 45(1): GENERAL CHARGING SECTION

Profits & Gains arising from Transfer

(+)

of a *Capital Asset*

(+)

Shall be CHARGEABLE to tax IN the PY in  
which TRANSFER took place.

### SECTION 2(14): DEFINITION OF 'CAPITAL ASSET'

'Capital Asset' means -

- (a) property of any kind held by an assessee, whether or not connected to B or P;
- (b) any securities held by a Foreign Institutional Investor who is approved by SEBI

but does not include -

- (i) Stock in Trade.
- (ii) Personal Movable Effect\*
- (iii) Rural Agriculture land in India ( **See point 5 below** )
- (iv) Certain Gold deposit Bonds.
- (v) Deposit Certificate under Gold Monetisation Scheme, 2015.

⌘ Interest is exempt u/s 10(15) ⌘

\* However, following are capital Assets :-

- (a) *jewellery;*
- (b) *archaeological collections;*
- (c) *drawings;*
- (d) *paintings;*
- (e) *sculptures; or*
- (f) *any work of art.*

NOTES :-

1. Immovable Property in which assessee resides is a CAPITAL ASSET.
2. Jewellery used for personal purposes is excluded from personal effects and shall be regarded as capital asset.

3. Movable assets used for personal purposes e.g. television, fridge etc. are not capital assets.
4. Business assets are capital assets, but stock-in-trade, is not capital assets.
5. RURAL AGRICULTURE LAND IN INDIA IS NOT A CAPITAL ASSET.

#### CERTAIN ISSUES :

**(1) Whether Capital Gain arises on sale of silver utensils?**

**Ans.** It was held that silver utensils constitute personal effect, although they are not to be used daily. NO CAPITAL GAINS SHALL ARISE.

However, gold utensils are not personal effect and are capital assets. It is a tradition in Indian families to use silver utensils and not gold utensils.

**(2) Whether capital Gains arises on sale of gold bars, Sovereigns etc which are used for puja?**

**Ans.** It was held by the court that only those effects can be legitimately be said to be personal which pertains to Assessee. The court further said that gold bars, etc can by no stretch of imagination can deemed to be meant for personal use.

According to Supreme Court, gold bars etc have been used for the puja of deities as a matter of pride or ornamentation but if it is difficult to understand how such can be categories as personal use. Therefore, capital gains are taxable in present case.

**(3) What do you mean by the term "Gain" for the purpose of charging Capital Gains u/s 45(1)?**

**Ans.** It was held by Supreme Court, in the case of "ITO v/s KP Varghese" that the term GAIN means only REAL GAINS i.e. the selling price must be actual selling price and not fair market value or any other notional consideration. However, if govt wants to charge notional gain they have to make SPECIFIC CHARGING SECTION for it. Eg:- Sec 45(2) i.e. when capital asset is converted into stock-in-Trade etc.

**SECTION 2(47): DEFINITION OF TRANSFER**

\*Transfer includes, -

- (i) the **sale, exchange or relinquishment** of the asset; or
- (ii) the **extinguishment of any rights** ; or
- (iii) the **compulsory acquisition under any law**; or
- (iv) **the of conversion** of Capital Asset in to Stock in Trade ; or
- (v) any transaction involving the allowing of the **possession of any immovable property to be taken or retained in part performance of a contract** ;or

**Example: -**

Say Mr. X enters into an agreement to sell HP on **01.01.2019** with Mr. Y for Rs. 20,00,000. Mr X hands over the possession of HP to Mr. Y on **15/02/2019**. Mr. Y makes the payment of Rs. 20,00,000 on **30<sup>th</sup> April, 2019**. The HP is registered in name of Mr. Y on **30.06.2019**. When has the transfer taken place?

**Answer:**

As per Sec 2(47) transfer takes place on the date on which POSSESSION is given i.e. **15/02/2019**. (For year of CG and nature of CG).

- (vi) any transaction which has the effect of transferring or enabling enjoyment of any 'IP'.

**Example: -**

Generally flats in societies are registered in the name of Co-operative society formed by the members. The members in this case are deemed owners of the flats although the legal owner is the society. Therefore, definition of transfer states that if the deemed owner transfers the right to use and enjoy the flat by changing the membership of co-operative society through change in shareholding it will be treated as transfer.

- (vii) Maturity or redemption of a zero coupon Bond.

**CERTAIN ISSUES :**

- (1) **Whether exchange of shares of one company with shares of another company amounts to transfer?**

**Ans.** In case of ORIENT TRADING CO. LTD. (SUPREME COURT), it is held that the exchange of shares amount to transfer and results in capital gains in the hands of the shareholder. However, if shares are held as stock-in-trade by the assessee, then income under the head P/G/B/P shall arise. The assessee company was a dealer in Shares and held 14,500 shares of Acetylene Ltd. which were purchased at face value of Rs. 10 each. The stock of shares of Acetylene Ltd. was recorded in the books at Rs. 1,45,000. A new company Oxygen Ltd. formed in January, 2015 made an offer to the assessee company to obtain 14,500 shares of Acetylene Ltd. in exchange of allotment of its own shares amounting to 55,100 Shares of Rs. 10 each. The assessee company exchanged 14,500 shares of Acetylene Ltd., with 55,100 shares of Rs. 10 each of Oxygen Ltd. The assessee continued showing 55,100 shares of Oxygen Ltd. at the cost of Rs.

1,45,000 and contends that there is no transfer. The Assessing Officer argues that since Oxygen Ltd. is a new company, the market value of its shares is Rs.10 each. According to the Assessing Officer, the assessee has made transfer of shares of Rs. 1,45,000 at Rs. 5,51,000 and want to tax Rs.4,06,000 as business profit. Assessee contends that there is no transfer.

However it amounts to transfer and therefore it is taxable.

**(2) Whether land and building have to be considered separately for the purpose of computing the period of holding?**

**Ans.** In case of **CIT v. C.R. SUBRAMANIAM**, it was held that in case of sale of land and building, capital gain is to be bifurcated between long-term capital gain and short-term capital gain.

The assessee had purchased a site in 2004. The construction of the building was done in the year 2013. The building was sold in the relevant assessment year, i.e., 2015-16. The assessee treated that site and building as separate for the purpose of capital gains. In regard to the site he had treated the capital gains as long-term capital gains because there was a gap of more than three years from the date of purchase of the site to the date of sale. With regard to the building, the assessee treated it as short-term gains. The ITO did not accept this contention. The Tribunal, however, upheld the assessee's claim.

**Held** that the Tribunal was right in holding that the site and the building were separate assets for the purpose of capital gains and the profits arising from the sale of site were required to be considered as long-term capital gain and that the profits arising out of the sale of the building should be considered under short-term capital gain.

**SECTION 48: COMPUTATION OF CAPITAL GAINS (Other than Block Scheme)**

Full Value of Consideration ( Accrued or received )	xxx
(-) Expenses on transfer	(xxx)
(-) Cost of Acquisition	(xxx)
(-) Cost of Improvement	(xxx)
<b>CAPITAL GAINS</b>	xxx

**FIRST PROVISIO TO SECTION 48:**

Non-Resident (including FOREIGN CO'S)

(+)

Transfer SHARES OR DEBENTURES (incl. Bonds) of an INDIAN COMPANY

(+)

then compute COA, expenses to transfer and sale consideration by converting into same foreign currency as was initially utilised in purchase.

(+)

Then capital Gains so computed in foreign currency shall be reconverted in Indian currency.

### ANALYSIS

1. Non-resident includes a foreign company.
2. For the applicability of the first proviso, the shares or debentures should be purchased in the foreign currency or it should be a case of re-investment.
3. Debenture includes bonds.
4. The shares, debentures and bonds of a Government company are also covered by the first proviso. However, the bonds of Central Government, State Government and RBI are not covered.
5. The first proviso shall not apply to units of UTI and mutual funds. It also does not apply to units of a business trust.
6. The first proviso shall apply to listed as well as non-listed shares and debentures. **However first proviso is not applicable for equity shares covered in sec 112A ( See Later ).**
7. Assessee should be a non-resident in the previous year in which shares or debentures are sold.
8. The First Proviso to section 48 is mandatory. A non-resident cannot opt for the second proviso to section 48 if his case falls in the First Proviso to section 48.
9. Second Proviso to section 48 will not apply, i.e., no indexation where First Proviso applies.
10. This proviso is applicable for computing short term capital gains as well as long term capital gains.

### RULE 115A: METHOD OF CONVERSION

- (a) *Cost of acquisition =  $\frac{TTBR + TTSR}{2}$  on the date of Purchase.*
- (b) *Expenses on transfer =  $\frac{TTBR + TTSR}{2}$  on the date of Transfer.*
- (c) *Sales consideration =  $\frac{TTBR + TTSR}{2}$  on the date of Transfer.*
- (d) *Capital gains = TTBR on date of Transfer.*

### NOTES :-

- (1) Cost Inflation Index for **FY 2018-19 = 280 & for FY 2019-20 = \_\_\_\_\_**
- (2) Indexation does not apply to bonds & debentures of any company.
- (3) Indexation is available for units of UTI / Mutual Funds & Business Trust Units ( **other than covered u/s 112A**).
- (4) Indexation is available for CAPITAL INDEXED BONDS issued by CG.

- (5) Indexation is available on transfer of SOVEREIGN GOLD BONDS (FA 2016).  
( Also refer sec 47 later on )
- (6) Benefit of Indexation is available on Equity and Preference Shares. However benefit of indexation not available on Equity shares/ Equity Oriented Mutual Funds/ Units of Business Trust covered in sec 112A. ( See Later )
- (7) NO DEDUCTION OF STT shall be allowed. In PGBP it is allowed u/s 36(1)(xv) 3

#### FIFTH PROVISIO TO SEC 48:

Exemption from Capital Gains to Rupee Denominated Bonds to be issued by Indian Company to Non-Resident.

The currency exchange gain will be exempt from Capital Gains. ( Also Refer Sec 47 & 10)

#### B.C. SRINIVASA SETTY (SC) (Landmark)

Department	Assessee
<b><u>Self Generated Goodwill of Business</u></b>	
Sale consideration                    xxx	Sale consideration    xxx
(-) Cost of Acquisition <u>NIL</u>	(-) Cost of Acquisition <u>(N.A)</u>
Capital Gains <u>xxx</u>	Capital Gains                    ?

It was held by Supreme Court in this landmark judgement that whenever computation mechanism fails, then charging section cannot be effectuated. Therefore, COA of Goodwill of a Business cannot be held as nil if its is not mentioned in sec 55. Therefore, no Capital Gain arise on self generated asset.

**Therefore, Sec 55 was amended as follows:-**

#### **SECTION 55: COST OF ACQUISITION**

In respect to Capital Assets being :-

- (a) Goodwill of business.
- (b) Trade mark or brand name associated with a business.
- (c) Tenancy Rights.
- (d) Stage carriage permits.
- (e) Loom hours.
- (f) Right to manufacture etc.
- (g) Right to carry on any business / Profession.
- (h) Patents.

#### **COST OF ACQUISITION:**

↓	↓
NIL if self Generated	If purchased then purchase price

- (1) Further, in the above cases ( whether self generated or purchased ) , the option of taking FMV as on 01.04.2001 is not available. ( **At 1 more place this option is not available** )
- (2) COA of Bonus shares = Nil. But will be compared with FMV on 01.04/2001 if bonus shares are allotted before 01.04.2001. (whichever is beneficial to owner)
- (3) **COA of Self generated goodwill of a profession is still not defined u/s 55.**  
Even today No CG shall arise on such goodwill.

### SEC. 2(42A) → SHORT TERM CAPITAL ASSETS.

Short term capital Asset = held by an assessee for not more than 36 months. Long term, in following cases :-

Particulars	If held more than
(1) Equity shares / Preference shares (Listed)	12 months (+)
(2) Equity shares / Preference shares (Unlisted)	24 months (+) (FA 2016)
(3) Securities (like debentures, bond, govt Sec, etc) (Listed)	12 months (+)
(4) Units of UTI (listed or unlisted)	12 months (+)
(5) Units of Equity oriented mutual Funds (L. or UL)	12 months (+)
(6) Units of Debt oriented mutual Funds (L. Or UL)	36 months (+)
(7) Zero coupon Bonds (Listed or unlisted)	12 months (+)
(8) Any other capital Assets	36 months (+)

### FOR LAND & BUILDING: ( FA 2017 )

In case of immovable property being land or building or both the period of holding should be 24 months to determine whether a capital asset is long term or short term.

**Q. How to compute period of holding ?**

**Ans:** Date of Purchase of Land - 15/04/2019.

Date of Transfer of Land - 15/04/2021.

Period of Holding - 15/04/2019 to 14/04/2021.

Therefore the Land is a Short Term Capital Asset.

**Note:** For determining the POH , consider till the date prior to the date of transfer.

**Q. What will be the COA in cases of Right shares?**

**A. i)** A shareholder who renounce his right to someone else for him, COA will be nil. (Sec 55)

ii) A person who subscribe to such right share, for him COA is price paid by him to the person renouncing such rights and amount paid by him to the company for acquiring such right shares. The option of taking FMV on 01.04.2001 is available. (Sec 55)

**SECTION 45 (1) : - GENERAL CHARGING SECTION**

Exceptions to capital gains shall be chargeable in the PY in which transfer took place:

↓	↓	↓
<b>Section 45 (1A)</b> Insurance claim "received"	<b>Section 45(2)</b> Conversion of Capital Asset into Stock In-Trade.	<b>Section 45(5)</b> Compensation Received on Compulsory Acquisition

**4<sup>th</sup> Exception: Sec 45(5A) Capital Gains on Joint Development Agreements**

**SECTION 45 (1A) : - CAPITAL GAINS ON INSURANCE CLAIMS FOR DAMAGE OR DESTRUCTION OF CAPITAL ASSETS.**

Asset is damaged or destroyed

(+)

Insurance money (or) other asset RECEIVED

(+)

then Capital Gains shall arise in

**(year of receipt not in year of destruction)**

**Notes:-**

- (1) If asset is not insured, then 45(1A) is not attracted and therefore it is a capital loss.
- (2) Date of Transfer = Date of Destruction (To determine nature of Capital Assets and Indexation.)
- (3) If the asset is a part of block the reduce the Insurance Amount received from the Block of Asset.

**SECTION 2(47) AND SECTION 45(2) :- CONVERSION OF CA INTO SIT**

**Sec 2(47) includes conversion of capital Asset into Stock-in-Trade.**

As per Sec 45(2), Capital Gains arising from transfer by conversion of CA into SIT shall be chargeable in the year in which such SIT is sold. Therefore, in the year of sale there will be implication of tax under two heads i.e. PGBP and CG.

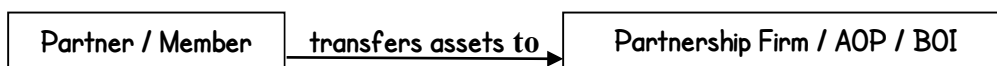
For computing CG, sale consideration will be FMV of the CA on date of conversion. Further, while computing PGBP the cost of goods will be considered as FMV on the date of conversion. This section is not applicable if SIT is converted into CA.

<b>AMENDMENT MADE BY FINANCE ACT 2018:</b>				
<b>PY 19-20</b>	→	<b>PY 22-23</b>	→	<b>PY 27-28</b>
Jewellery (SIT) Cost = 1 L		Converted into CA FMV = 5 L		Sold CA = 10 L



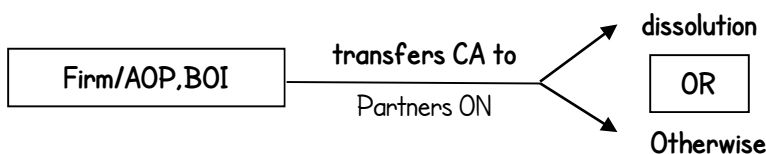
- (1) As per Sec. 2(24), FMV of such inventory will be included in income (i.e. Rs. 5 L)
- (2) As per Sec. 28, FMV of inventory on the date of conversion will be chargeable under PGBP (unlike 45(2), taxability is not deferred) i.e. Taxable in **PY 2022-23**.
- (3) As per Sec. 2(42A) → period of holding shall be considered from date of conversion to determine LTCA/STCA i.e. from **PY 22-23 to PY 27-28**.
- (4) As per Sec. 49 →  $\text{COA of such converted CA} = \text{FMV of SIT on date of conversion}$
- (5) As per Sec. 43(1) →  $\text{Actual cost of such converted asset} = \text{FMV of SIT on date of conversion}$

### Section 45(3) :- Capital Gains on transfer by Partner/ Member to Firm / AOP



then Sale Consideration = Amount recorded in BOA by Firm / AOP

### Section 45(4) :- Capital Gain on transfer by Firm to partners / members



- (1) Chargeable in P.Y. in such distribution takes place.
- (2) Sale consideration = FMV on the date of distribution.
- (3) Cost of Acquisition of such asset to partner will be FMV on the date of transfer. [Section 49(4)].

#### ISSUES RELATING TO DISSOLUTION:

#### CIT V/S A.N. Naik Associates (Bom HC)

The word otherwise used in Sec 45(4) not only cover the case of dissolution but also covers a case where a partner retires from a firm and assets are given to him.

#### A.L.A. Firm (SC)

Where a firm is dissolved, its stock-in-trade must be valued at Fair Market value. This case will apply where firm is dissolved and its business is also discontinued.

**SAKTHI TRADING CO. (SC)**

It was held by the Supreme Court that, if a firm is DISSOLVED AND its business is also DISCONTINUED then the judgement of ALA firm shall apply and stock shall be valued as per FMV.

If however, firm is dissolved but business of firm is continued by someone, then judgement of SC in Sakthi Trading shall apply and stock shall not be valued at market price. The stock shall be valued as per normal accounting principles. **£ Also Refer discussion of sec 47(xiii)3**

**R. LINGAMALLU RAGHUKUMAR ( SC )**

Where a partner retires and he receives excess amount from the firm then that cannot be chargeable to capital gains as share of profit cannot be transferred by a partner to any other partner because share of profit does not amount to capital assets.

**Section 45(5) :- CAPITAL GAIN ON COMPULSORY ACQUISITION.**

↓	↓	↓
<b>(a)</b> Capital Gains in respect of original compensation. ↓ Taxable in PY in which Compensation or part there of is first Received by Assessee	<b>(b)</b> Enhanced compensation ↓ Taxable in the PY in which it is Received.	<b>(c)</b> Proviso Any amount of compensation received in pursuance of interim order of court, Tribunal or other authority ↓ Taxable in the PY in which final order is made.

**Notes :-**

- (1) For determining nature of capital Gains, the period shall be taken from DATE asset was acquired by assessee to the DATE on which asset was acquired under any other law. (Same for enhanced compensation).
- (2) Cost of Acquisition & Improvement shall be taken to be NIL for Enhanced compensation. However, LEGAL EXPENSES incurred to obtain enhanced compensation are deductible.
- (3) Whereby reason of death or any other reason, the enhanced compensation is received by any other person, then it is deemed to be CG of person who receives it.

**TREATMENT UNDER IFOS**

↓	↓	↓
<b>Section 145B</b>	<b>Section 56(2)(viii)</b>	<b>Section 57</b>
Notwithstanding anything contained in sec 145, interest received on compensation, deemed to be income of the year in which it is received.	Such interest is taxable under <b>Income from Other sources.</b>	Deduction of 50% of such income is available.

### Section 155(16) :- RECTIFICATION

As per Sec 155(16) the A.O. shall amend the order of Assessment to compute the Capital Gains based on reduced compensation as per court etc and the provisions of Sec 154 shall apply to reduce the compensation to recompute the CG and the period of 4 years shall be reckoned from the end of the PY from in which order reducing the compensation was passed by court / Tribunal or any other authority.

### Section 45(5A) : CG IN CASE OF JOINT DEVELOPMENT AGREEMENTS

1. This section is applicable if an individual or HUF who owns a land or building or both gives a possession of land to a developer. As we have already seen in the definition of transfer that transfer includes giving possession of immovable property. Therefore such transactions will get taxed on the day of giving possession. Section 45(5A) defers such taxability to the year of completion of project (either in full or part).
2. For this purpose the assessee i.e. owner has to enter into an agreement with the developer.
3. **What will be the FVC of such transfer?**  
FVC = Amount received in monetary terms (in cash or otherwise)  
**AND**  
Stamp duty value on the date of issuance of completion certificate in respect of share received (i.e. flat) in the developed project.
4. **What will be the cost of acquisition to the assessee subsequently?**  
Cost of Acq. of share received in developed project = FVC u/s 45(5A) i.e. amount derived in Q.3.
5. The benefit of 45(5A) shall not be available if the original owner transfers his share before the completion of project. In such a situation, capital gains shall be computed as per the general provisions of the Act i.e. it will be chargeable in the year in which transfer took place (i.e. when original owner sells to someone else.)
6. Further the developer while making the payment to owner in monetary terms will deduct TDS @ 10% on payment or credit whichever is earlier **(if PAN of payee is not available then deduct @ 20% )(Section 194-IC.)**  
This section is applicable only if the payee is resident. In case the payee is a non resident then deduct TDS at the rate or rates in force as per section 195.  
There is no threshold limit for deducting TDS. i.e. any amount paid in monetary terms, TDS has to be deducted.

**SECTION 50C :- COMPUTATION IN CASE OF IMMOVABLE PROPERTY  
( LAND OR BUILDING OR BOTH )**

(1) Sale consideration will be higher of

<b>(a)</b> Consideration Received or accruing	<b>OR</b>	<b>(b)</b> Stamp Duty valuation.*

**\* (1)** Where the assessee claims before A.O. that value adopted by stamp duty authority exceeds FMV of property on the date of transfer

**AND**

Stamp Duty valuation is not disputed in any appeal, revision, etc.

Then, A.O. may refer the valuation of C.A. to a valuation officer.

**Two options possible after valuation officer :-**

<b>(a)</b> If V.O. Value > Stamp Duty Valuation		<b>(b)</b> If V.O. Value < Stamp Duty Valuation
then, SC = Stamp Duty Valuation		then, SC = V.O. Value

**PROVISO TO SEC. 50C ( Added by Finance Act 2016 )**

Where the date of agreement fixing the amount of consideration and date of registration are not same, then the SDV on the date of agreement may be taken as the full value of consideration.

However above proviso shall apply only in case where the amount of consideration or part there of has been received by A/c payee cheque, A/c payee draft or ECS or **SUCH OTHER ELECTRONIC MODE AS MAY BE PRESCRIBED** on or before the date of agreement.

Write Example here:

**AMENDMENT MADE BY FINANCE ACT 2018:**

SDV shall be taken as FVC only if SDV is 'more than' 105% of actual sale consideration.

**Q. What is the fate of those transactions which are not registered with stamp duty Authorities?**

Earlier the provision of Sec. 50C provides that where the consideration received or accruing is less than the value adopted or assessed by stamp duty authority for the purpose of payment of stamp duty then the value so adopted or assessed shall be deemed to be FVC for the purpose of Sec. 48.

However, the scope of this erstwhile provision does not include transactions which are not registered with stamp duty authority.

With a view to prevent leakage of revenue sec 50C was amended to provide that where consideration received or accruing is less than value adopted assessed or ASSESSABLE by stamp duty authority for the purpose of payment of stamp duty then the value so adopted or assessed or assessable shall be deemed to be full value of consideration for the purpose of Sec. 48.

As per explanation to Sec 50C the expression assessable means the price which the stamp valuation authority would have adopted or assessed if it was referred to such authority for the purpose of payment of such authority.

**SECTION 155(15) :- RECTIFICATION**

Where for any year the value adopted / assessed / assessable by stamp duty authority is revised in any appeal, revision, etc then the A.O. shall amend the order by taking the revised value and the period of 4 years shall be reckoned from the end of the PY in which the order revising the value was passed.

**Sec 50CA: FVC IN CASE OF UNQUOTED SHARES:**

FVC = Actual Selling Price or FMV of Unquoted Shares whichever is higher.

**TREATMENT IN THE HANDS OF BUYER:**

In the hands of buyer Sec 56(2)(x) shall be attracted as gift.

Taxable Gift = FMV - SP , if the difference is more than Rs. 50,000/-

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:**

This section shall not be applicable if transfer of unquoted shares is made by such class of persons which may be prescribed.

**SECTION 50B :- SLUMP SALE**

- (1) As per section 2(42C) slump sale means transfer of one or more undertakings as a result of sale for a lump sum consideration without values being assigned to individual assets and liabilities in such sale.

As per the explanation it has been provided that if the agreement determines the value for the sale purpose of payment of stamp duty, registration fees or similar taxes then this will not amount to assignment of values to individual liabilities.

- (2) If the agreement for transfer specifies the individual value of each asset to be transferred then the provision of slump sale shall not be applicable and the capital Gains on each asset shall be computed separately.
- (3) Nature of capital gain will depend on period of holding of the undertaking transfer by the way of slump sale. If the undertaking is held for more than 36 months immediately preceding the date of transfer than CG shall be long term. This is irrespective of the fact that the undertaking consists of certain assets which are short term capital Assets.
- (4) No PGBP shall arise in case of slump sale even if the stock is transferred in slump sale. The COA shall be the Net worth of the undertaking.
- (5) The benefit of indexation shall not be available.

#### Calculation of Capital Gains :

Slump sale consideration	xxx
(-) Net worth of undertaking	(xxx)
LTCG / STCG	xxxx

**Net worth** = Aggregate value of Total Assets of undertaking transferred

(-) Value of liabilities of undertaking as appearing in its BOA

- (6) Contingent Liabilities do not appear in BOA and therefore shall not be deducted while calculating Net worth.
- (7) Revaluation of Assets shall NOT be considered while calculating the Net worth.
- (8) For computing net worth, non-depreciable assets are to be taken at their book values.
- (9) For computation of Net worth any asset whose cost has been allowed as ded<sup>n</sup> u/s 35AD shall be taken as nil.
- (10) For computing Net worth in case of depreciable asset the WDV of an asset shall be computed as per Sec 43(6) (c)(i)(C).
- (11) Losses and UAD of the undertaking transferred shall be carried forward by the Transferor only and not by transferee.
- (12) Sec 50B is optional. If the assessee wants to sell all assets separately then he can do so.

**Refer 4 Questions on Page** \_ \_ \_ \_ \_

### Section 47 :- NON TAXABLE TRANSFERS

- (1) Any distribution of capital Asset by HUF ( on **partition**)
- (2) Any transfer of Capital Asset under gift, will or irrevocable trust
- (3) Any transfer, in a scheme of amalgamation.
- (4) Any transfer by Holding to subsidiary, provided following conditions are satisfied :-
  - (a) The Holding Co. Hold the entire share capital of the Co. AND

- (b) The subsidiary Co. Is an Indian Co.
- (5) Any transfer by S. Co. to H. Co., provided following conditions are satisfied :-
- (a) The H. Co. Holds the entire share cap of the S. Co. AND
- (b) The H. Co. Is an Indian Co. etc.

#### **Section 47A :- Withdrawal of Exemption in certain cases**

Where at any time before expiry of 8 years from date of transfer referred in clause (iv) or (v) of section 47 [i.e. H to S (or) S to H]

- (1) Such Capital Asset is converted by transfer into stock in-trade OR
- (2) Holding Co. ceases to hold the whole of share capital of subsidiary Co.

#### **Section 155(7B) :- RECTIFICATION**

Where Sec 47A is attracted, the assessment order of the transferor Co. will be rectified and the time limit of 4 years shall be counted from the end of PY in which the capital Asset was converted into SIT or in which the holding Co. ceases to hold whole of the share capital of sub. Co. The CG shall be charged in the PY in which transfer took place.

#### **SECTION 49(1) :- COST TO PREVIOUS OWNER**

Where Capital Asset became property of Assessee by above means, the COA shall be deemed to be the cost for which the previous owner acquired it, as increased by COI incurred by prev. owner and Assessee.

- (1) For determining the nature of capital Asset, the period for which the Asset was held by previous owner should also be clubbed. For Eg :- If Mr A has purchased a land of Rs. 1,00,000 on 01.04.2005 and subsequently it is gifted to Mr B on 01.04.2014 and such land is sold by Mr. B on 01.04.2019 then period of holding will be counted from 01.04.2005 to 31.03.2019. [Explanation to Sec 2(42A)]
- (2) Where the previous owner also acquired the property by way of gift etc, then COA of the Asset shall be the cost to last previous owner who acquired it by a mode other than gift etc.
- (3) Option to take FMV as on 01.04.2001 is available.

**Q. Whether indexation benefit in respect of gifted asset shall apply from the year in which the asset was first held by assessee or from the year the same was first acquired by previous owner?**

**A.** It was held by Bombay High court in case of Manjula J. Shah that by way of "deemed holding period fiction" created by the statue the assessee is deemed to have the capital Asset from the year the Asset was held by previous owner and accordingly the asset is the long term capital asset in the hands of the Assessee.

Therefore for determining the indexed COA u/s 48 the assessee must be treated to have held the asset from the year as said was first held by previous owner and

accordingly cost inflation index for the year the asset was first held by the previous owner would be considered for determining indexed cost of Acquisition.

**FROM THE JUDICIARY :-**

**R.M ARUNACHALAM (SC)**

Facts of the case :- Mr. A purchased a house property on 01.01.95 for Rs. 10,00,000 he took a loan of Rs. 8,00,000 by mortgaging the property. Mr A died on 21.01.2004 and his son, Mr B inherited the property from him. Mr B discharged the loan of Rs. 8,00,000 on 01.01.2007 and cleared the mortgage. Mr. B sold the property on 01.01.2016 for Rs. 30,00,000.

The issue under consideration is the assessee took the COA as Rs. 18,00,000 whereas the AO is of the view that cost is cost to previous owner which is Rs. 10,00,000.

- (a) It was held by Supreme Court in the aforementioned case that the Assessee is justified in taking the cost to be Rs. 18,00,000.
- (b) It was held that when the previous owner had mortgaged the property, then after his death, the legal heir inherits only the mortgager's interest in the property. Therefore, by discharging the mortgaged debt, the assessee acquires the property.
- (c) Therefore, the COA to the legal heir is the aggregate of the cost to the previous owner and amount paid to clear the mortgage.

**V.S.M.R. JAGADISHCHANDRAN (SC)**

Facts of the case :- The Assessee purchased a property on 01.01.1985 for Rs. 14,00,000. He mortgaged the property and took a loan of Rs. 9,00,000 against the mortgage. Subsequently the assessee sold the property for Rs. 30,00,000 on 01.01.2006. The assessee at the time of selling the property cleared the mortgaged debt and paid Rs. 9,00,000.

The issue under consideration is :- The Assessee argues that the said Rs. 9,00,000 paid by him to discharge the mortgaged debt is the cost of improvement to the property. The assessee argues that by discharging the mortgaged debt, he has obtained a clear title to the property.

**JUDGEMENT :-**

- (1) The SC turned down the arguments of the assessee and held that Rs. 9,00,000 paid to clear the mortgaged debt cannot be said to be COA or COI of the property.
- (2) The SC further held that the facts of the instant case are not similar to R.M Arunachalam.

**CONCLUSION :-** In the present case, the mortgage was created by assessee himself and therefore same cannot be said to be additional cost to the assessee.



### TAXATION OF AMALGAMATION

**Q. What do you mean by the term 'Amalgamation' ?**

**Ans.** As per section 2(1B), amalgamation in relation to companies means the merger of one or more companies with another company or merger of two or more companies to form one company in such a manner that :-

- (1) All property of amalgamating Co. immediately before amalgamation becomes property of Amalgamated Co.
- (2) All Liabilities of Amalgamating Co. immediately before Amalgamation becomes liability of Amalgamated Co.
- (3) Shareholders holding not less than 75% in value of shares in Amalgamating Co. become shareholders of Amalgamated Co.

MAKE DIAGRAM HERE:

### TAXATION OF SHAREHOLDERS

(1) As per section 47, there will be no transfer and hence no CG when a shareholder, in the scheme of amalgamation transfers the shares held by him in the Amalgamating Co. if following conditions are satisfied :-

(a) The transfer is made in consideration of allotment of shares in Amalgamated Co. except where the shareholders itself is the Amalgamated Co.

AND

(b) The Amalgamated Co. is an Indian Co.

(2) As per Sec 49(2), the COA of shares in Amalgamated Co. shall be COA of shares in the Amalgamating Co.

(3) As per Sec 2(42A), for determining the nature of capital Asset, the period for which the shares were held in Amalgamating Co. shall also be included.

### TAXATION OF AMALGAMATING COMPANY

- (1) As per Section 47 there will be no Capital Gains on transfer of Capital Asset by amalgamating Co. to amalgamated Co. if amalgamated Co. is Indian Co.

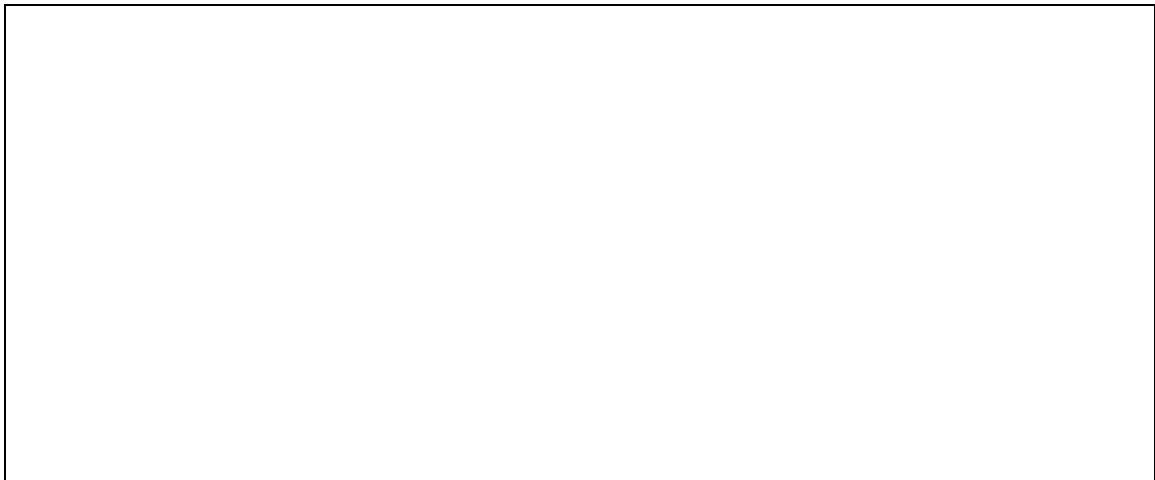
### AMALGAMATION OF FOREIGN COMPANIES HOLDING INDIAN COMPANY SHARES

- (1) There will be no capital Gains on transfer of shares held in an Indian Co. by amalgamating foreign Co. to amalgamated foreign Co. if following conditions are satisfied :-

(a) At least 25% of shareholders of Amalgamating foreign Co. continue to remain shareholders of Amalgamated foreign Co.

#### AND

(b) Such transfer does not attract Capital Gains in the country in which Amalgamating Co. is incorporated... ( Also Refer Vodafone Case later on )



### Section 72A: - Provision Relating to carry forward and set off of Accumulated losses and unabsorbed Depreciation in Amalgamation, Demerger, etc.

#### CONDITIONS TO BE SATISFIED BY AMALGAMATING CO. :-

- (1) The Amalgamating Co. should have been engaged in the business for 3 years or more prior to the date of amalgamation.

Example:- Amalgamation takes place on **01.07.2019** then Amalgamating Co. should have started the business on or before **01.07.2016**.

- (2) The Amalgamating Co. should hold at least 75% of the Book value of fixed Assets which it held two years prior to date of Amalgamation.

#### Example:

Suppose the amalgamation takes place on **01.07.2019**. Two years back, i.e., on **01.07.2017**, the amalgamating Co. had the following BV of assets.

<u>Fixed Assets</u>	<u>BV (Rs.)</u> <b>[01.07.2017]</b>
A	40
B	30
C	15
D	<u>15</u>
	100

Suppose after 2 yrs, i.e., **01.07.2019**, i.e., on the date of amalgamation, the amalgamating Co. held the following assets

<u>Fixed Assets</u>	<u>BV (Rs.)</u>
A	30
B	20
C	10
E	10

In order to c/f the losses of the amalgamating Co., at least 75% of the BV of the assets which it held 2 yrs prior to amalgamation, should be there on the DOA. Two years back Co. had BV of Rs 100 out of that, the Co. should hold at least those assets which were 75% of the total BV, on **01.07.2019**. Subsequent BVs are not relevant. In the instant case, on the DOA, the Co. holds 85% of the BV of the assets which it held 2 yrs back.

#### **CONDITIONS TO BE SATISFIED BY AMALGAMATED CO. :-**

- (1) The Amalgamated Co. should continue the business of amalgamating Co. for the period of 5 years from the date of Amalgamation.
- (2) The Amalgamated Co. should fulfil the prescribed conditions in case there is an Amalgamation of industrial Undertaking.

#### **The prescribed conditions are as follows :-**

- (a) The Amalgamated Co. shall achieve the level of production of at least 50% of installed capacity before the end of 4 years from the date of amalgamation and continue to maintain said minimum level of production till the end of 5 years from the date of Amalgamation.

However, the central Govt on an application made by an Amalgamated Co. may relax the condition of achieving the level of production or period during which same is to be achieved or both in suitable cases having regard to the genuine efforts made by Amalgamated Co. to attain the prescribed level of production and circumstances preventing such efforts from achieving the same.

- (3) The Amalgamated Co. holds continuously for a minimum period of 5 years from the date of Amalgamation atleast 75% of BV of FA of amalgamating Co. acquired in scheme of Amalgamation.

If, all the above conditions are fulfilled then the accumulated losses and unabsorbed depreciation shall be deemed to be of amalgamated Co. for the PY in which amalgamation was effected i.e. such accumulated losses can be carried forward for another 8 years.

### SEC 72A :- DEEMED INCOME

In case where any of the above conditions are not complied with, set off loss or allowance of depreciation made in any PY in the hands of A'ted Co. shall be deemed to be the income of the A'ted Co. chargeable to tax in the year in which such conditions are not complied with.

#### For the purpose of this section, Accumulated losses means

Such losses of amalgamating Co. under the head PGBP (not being a speculation loss) which the Amalgamating Co. would have been entitled to c/f and set off u/s 72 if Amalgamation had not taken place.

#### Notes:

1. Sec 72A is applicable only for Carry Forward & Set off of losses and not for claiming exemptions u/s 47.
2. Sec 72A is also applicable in cases mentioned in Sec 47(xiii)/47(xiiib) & 47(xiv) **See Later on 3**

### TAXATION OF AMALGAMATED COMPANY

- (1) As per Section 49(1) where the capital asset became the property of amalgamated Co. then COA = Cost of which amalgamating Co. acquired it (+) COI by (Amalgamating + Amalgamated Co.)
- (2) Option to take fair market value as on 01.04.2001 is available with Amalgamated Company.
- (3) Period of Holding of Amalgamated Co. will be clubbed.

#### (4) Section 35:- Expenditure on scientific Research

Where an Amalgamating Co. transfers any scientific Research Asset to an Indian Co. then provision of Sec 35 shall be applicable to Amalgamated Co. and consequently :-

- (a) Such transfer shall not be treated as transfer.
- (b) Unabsorbed capital expenditure on scientific Research can be c/f by Amalgamated Co.
- (c) If such asset is sold by Amalgamated Co, then provision of Sec 41(3) **deemed income** and explanation 1 to Sec 43(1) shall apply.

#### (5) Telecom License Fee paid :- Section 35ABB/ABA

Where a telecom license is transferred by A'ting Co. to A'ted Co. then :-

- (a) such transfer is not taxable.

- (b) Deduction u/s 35ABB/ABA shall be allowable to A'ted Co
- (c) The provisions relating to surplus or deficiency shall apply to A'ted Co. when the license is transferred by amalgamated Co.

**(6) Treatment of preliminary Expenses :- Section 35D**

In case of Amalgamation, remaining 1/5<sup>th</sup> deduction shall be allowable to Amalgamated Co. (i.e. till 5<sup>th</sup> year).

**(7) Section 35DD :- Treatment of Amalgamation Expense**

Deduction of such expense will be allowable in five equal instalments if the amalgamated Co. is an Indian Co.

**(8) Treatment of capital Expenditure on Family planning :- Sec 36(1)(ix)**

Where the Asset representing capital expenditure on family planning is transferred in the scheme of amalgamation then such transfer shall not be regarded as taxable transfer. Unamortised capital expenditure shall be allowable in the hands of amalgamated Co. for balance years.

If such assets are sold then capital gains have to be paid by amalgamated Co.

**(9) Section 35DDA :- Amortisation of VRS Expenses**

In case of amalgamation balance deduction will be allowable in the hands of amalgamated Co.

**(10) Section 35E :- Taxation of Mines**

Such deduction is amortised over 10 PY, therefore in between if there is an amalgamation then deduction would be allowable in the hands of amalgamated Co. for balance years.

**(11) Section 36(1)(vii) :- Bad Debts**

As per Supreme Court in the case of T. Veerbhadrha Rao K. Koteshwara Rao bad debts shall be allowed in the hand of amalgamated Co. if the goods are sold by Amalgamating Co.

**(12) Section 41(1) :- Recovery of Expenses**

Expenses allowed as deduction in the hands of A'ting Co. shall be taxable if recovered by amalgamated company.

**(13) Section 41(4) :- Recovery of Bad Debts**

As per Supreme Court judgement of P. K. Kaimal recovery of bad debts by amalgamated Co. is not taxable.

**(14) Proviso to Sec 32(1)**

Apportionment of depreciation between A'ted Co. and A'ting Co. (PGBP).

**(15) Explanation 7 to Sec 43(1) and Explanation 2 to Sec. 43 (6) :-**

In the scheme of amalgamation the Assets will enter the block at the value which was appearing as on 1<sup>st</sup> day of the year of amalgamation OR if the asset is acquired in the current year only then it will enter at actual cost.

**Note for Point no 5,6,7,8,9 & 10 :**

In the above 6 cases , in the year of Amalgamation the entire deduction pertaining to the year of amalgamation shall be given to amalgamated company. It shall not be bifurcated between amalgamating & amalgamated company. ( Also Refer Sec 44DB later )

**SECTION 47(xiii) :- CONVERSION OF PROPRIETORSHIP / FIRM INTO COMPANY**

As per section 47(xiii) no capital Gains shall arise where a firm is succeeded by a company in the business carried on by it as a result of which a firm transfers any capital asset to the company.

**The above benefit is available subject to following conditions :-**

- (a) All Assets and Liabilities of the firm relating to business immediately before the succession is transferred to the successor company.
- (b) All the partners of the firm immediately before the succession becomes the shareholders of the Co. in the same proportion in which their Capital account stood in the books of the firm.
- (c) The partners of the firm do not receive any consideration other than by way of allotment of shares in the Co.
- (d) The aggregate of the shareholding in the company by the partners of the firm is not less than 50% of total voting power in the company and their shareholding continues to be as such for the period of 5 years from the date of succession.

**\* Section 47(xiv) :- CONVERSION OF SOLE PROPRIETOR INTO COMPANY**

\* All the provisions of Sec 47(xiii) shall be applicable except condition (b).

\* **SECTION 72A IS APPLICABLE IN THIS CASE.**

**Section 47A :- Withdrawal in certain cases**

Where any of the conditions laid down in the proviso of clause xiii and / or clause xiv of Sec 47 are not complied with, then CG on transfer of capital Asset shall be deemed to be chargeable in the hands of successor company in the PY in which such requirements are not complied with.

**NOTES :-**

- (1) Exemption u/s 47 is applicable if a Business is succeeded. Exemption is not applicable if PROFESSION is succeeded.
- (2) Exemption is not possible if any of the partners have NEGATIVE capital since conditions of exemptions cannot be fulfilled. In this case the partner will have to convert his capital into positive before succession takes place.
- (3) BUSINESS PROFITS are NOT exempt. Profit on sale of S.I.T by the firm to the company shall be taxable in the hands of the firm as business profit. The firm should transfer the SIT to the Co. which will be valued at cost or market value whichever is lower as per the SC judgement of SAKTHI TRADING.
- (4) Partner includes minor partners admitted for the benefits of the partnership.

**SECTION 47(xiii) :- CONVERSION OF STOCK EXCHANGE INTO COMPANY**

As per section 47 (xiii) any transfer of capital Asset to a company in the course of DEMUTUALISATION or CORPORATISATION of a recognised stock Exchange in India as a result of which Association of person or Body of Individual (BOI) is succeeded by such company IS EXEMPT subject to following conditions :-

- (1) All assets and Liabilities of AOP or BOI immediately before succession become the assets and liabilities of the Co.
- (2) The corporatisation of recognised stock exchange is carried out in accordance with a scheme which is approved by SEBI.

As per Section 47 (xiii a) any transfer of Capital Asset being a membership right held by a member of a recognised stock exchange in India for acquisition of SHARES and **Trading and / or clearing rights** in that recognised stock exchange (that company) is EXEMPT, if it is in accordance with the scheme approved by SEBI.

**SECTION 55 :- COST OF ACQUISITION**

- (1) The COA being an equity share allotted to a shareholder under a scheme of demutualisation or corporatisation, shall be COA of his original membership of the exchange.
- (2) However, the cost of capital asset being Trading or clearing Right acquired by a shareholder under such scheme shall be nil.

**Section 2(42A) :- PERIOD OF HOLDING**

In case of Capital Asset being trading or clearing rights as well as equity shares in the company, the nature of capital asset shall be determined by clubbing the earlier period.

**PGBP :- EXPLANATION 12 TO SEC 43(1)**

Where any capital Asset is acquired by the Assessee under a scheme for corporatisation of stock Exchange, the actual cost of the Asset shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatisation.

- Q. Mr. Harshal Mehta became the member of BSE on 04.01.1972. He has a membership card of BSE issued on 04.01.1972 acquired for Rs. 5,00,000 (FMV of membership card as on 01.04.2001 is Rs. 14,00,000). BSE is converted into a Co. namely BSE Ltd on 20.06.2019 and Mr. Harshal Mehta is allotted 100 equity shares of BSE Ltd and trading and clearing rights of BSE Ltd in exchange of his membership cards. He sells on 3.01.2020, the following :-
- 100 Eq. Shares of BSE Ltd for Rs. 60,00,000.
  - Trading & clearing Rights for Rs. 30,00,000.
- Discuss the tax implication.

**A. For AY 20 - 21 :-**

There is transfer by Mr. Harshal Mehta on 20.06.2019. When he transfers his membership card and receives in lieu thereof, equity shares of BSE Ltd and trading and clearing rights, then no capital Gain will arise on such transfer as per Sec. 47 (xiiiia).

**CG on 100 shares of BSE Ltd :-**

Period of holding → 04.01.1972 to 02.01.2020	(Long term)
Sales price	60,00,000
<b>(-) Cost of Acquisition</b>	(5,00,000)
<b>LTCG (Subject to Indexation)</b>	55,00,000
<b><u>Capital Gain on Trading Rights :-</u></b>	
Period of Holding → 04.01.1972 to 02.01.2020	(Long Term)
Sales price	30,00,000
(-) cost of Acquisition	(NIL)
<b>LTCG</b>	30,00,000

- \* It may be noted that the option to take COA to be FMV as on 01.04.2001 is not available. ( Earlier such option was not available in respect of Self Generated Assets ( whether purchased or self generated ).

**Section 47 (xiiib) :- CONVERSION OF UNLISTED COMPANY OR PRIVATE COMPANY INTO LLP.**

Any transfer of capital Asset by a private Co. or an unlisted Co. to a LLP or any transfer of shares held in the Company by a shareholder as a result of conversion of Company into LLP is exempt subject to following conditions :-



- (a) All Assets & Liabilities of the Company immediately before conversion become assets & Liabilities of LLP.
- (b) All the shareholders of the Co. immediately before the conversion become the partners of LLP and their Capital Contribution & Profit Sharing Ratio in the LLP are in the same proportion as their shareholding on the date of conversion.
- (c) The shareholder of the Co. do not receive any consideration other than by way of share of profit.
- (d) The Aggregate of profit sharing Ratio of the shareholders of the Co. in LLP shall not be less than 50% at any time during the period of 5 years from the date of conversion.
- (e) The total sales / Turnover of the Co. in any of the three PY's preceding the PY's in which the conversion takes place does not exceed Rs. 60,00,000.
- (ea) Inserted by Finance Act, 2016.**  
The total value of Assets as appearing in BOA's of Company in any of the three PY's preceding the PY in which the conversion takes place does not exceed Rs. 5,00,00,000.
- (f) No amount is paid to any partner out of balance of accumulated profit standing in the accounts of the Company on the date of conversion for the period of 3 years from the date of conversion.

As per Sec 49(1) COA and COI will be cost to previous owner.

For determining the nature of Capital Asset, POH will be clubbed.

#### **Section 47A :- Withdrawal in certain cases**

Where any of the conditions laid down in Sec 47(xiii b) are not complied with, then capital Gain exempted shall be deemed to be chargeable in the PY in which requirements are not complied with.

#### **Section 115JAA :- MAT Credit**

In case of conversion of Co. into LLP, MAT Credit available in the hands of Co. shall not be allowed to LLP.

**Section 72A shall apply in this case.**

#### **EXEMPT U/S 47:**

#### **Section 47(xvi) :- REVERSE MORTGAGE**

Sec 47(xvi) excludes the transfer of capital Asset in a transaction of Reverse mortgage to give relief to those people who mortgage property for their survival.

Amount received as loan shall not be treated as income of senior citizen. Although loan is a capital receipt but to clarify the position of senior citizen and promote the scheme of reverse mortgage it has been provided that such income shall be exempt u/s 10(43).

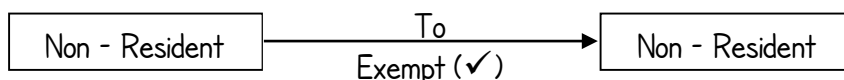
**EXEMPT U/S 47(viic): SOVEREIGN GOLD BONDS**

As per Section 47 (viic), any transfer of sovereign Gold Bonds issued by RBI under the sovereign Gold Bond Scheme 2015 by way of redemption by an Assessee being an individual.

Particulars	Transferred before Redemption	Transferred on Redemption
By Individuals	Taxable. Therefore Indexation is available.	Exempt.
By Others	Taxable. Therefore Indexation is available.	Taxable. Therefore Indexation is available.

**EXEMPT U/S 47(viib): TRANSFER OF GOVT SECURITIES BY NR :**

**As per Section 47(viib) any transfer of Capital Asset, being a Government security, carrying a periodic payment of interest made outside India through an intermediary, dealing in settlement of Securities by :-**

**EXEMPT U/S 47(ix): TRANSFER OF PAINTING, ETC TO GOVT/UNIVERSITY, ETC.**

As per Section 47(ix) any transfer of capital Asset being any work of art, archaeological, scientific or art collection, Book, manuscript, drawings, paintings, photography or print to Government, University, or National Museum or National Art Gallery or Archives (National) or other Notified Institution, or any such other public museum, as may be notified by the Central Government.

**EXEMPT U/S 47(x): CONVERSION OF BONDS TO EQUITY SHARES:**

As per section 47(x), any transfer by way of "Conversion of Bonds or debentures or debenture stock or deposit certificate of a company" into the shares or debentures of the company.

As per Section 49(2A), the cost of acquisition of the shares or debentures so received, on conversion shall be case of that part of debentures bonds, debentures stock or deposit certificate which is so converted.

**EXEMPT U/S 47(xii): SICK COMPANIES**

As per Section 47(xii) any transfer of capital Asset, being land of a sick INDUSTRIAL COMPANY, made under a scheme prepared and sanctioned u/s 17 of the sick Industrial Companies Act, 1985.

However, the exemption is applicable if such transfer is made during the period, commencing from the PY in which the said company has become a SICK INDUSTRIAL COMPANY U/S 17 of

the Act and ending with the PY in which the Entire Net worth becomes equal to or exceeds the accumulated losses.

**Example :-** Refer MAT for Illustration

### **EXEMPT U/S 47(xviii):**

#### **TRANSFER UNDER CONSOLIDATION SCHEMES OF MUTUAL FUNDS :-**

Section 47 (xviii) (FA, 2015) provides that the following transactions shall NOT be regarded as TRANSFER for the purpose of Sec 45 and therefore NO CAPITAL GAINS shall arise.

- (1) Any transfer by a mutual fund unit Holder of a unit or units held by him, in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of units in the consolidated scheme of the Mutual Fund.
- (2) However, the consolidation, should be of, two or more schemes of equity oriented fund or two or more schemes of a fund, other than Equity oriented Fund.

**Example :-**

(1)	Equity oriented (+) Equity oriented (Fund A) (Fund B)	} Exemption is available to the unit Holder
	↓ (merger)	
	Equity oriented (Fund C)	
(2)	Equity oriented (+) Debt oriented (Fund A) (Fund B)	} Exemption is NOT Available to the Unit Holder.
	↓ (merger)	
	Equity oriented (Fund C)	

- (3) As per Section 49(2AD) which provides that where the Capital Asset being a unit / units of in a CONSOLIDATED SCHEME became the property of the assessee, then the COA of the asset, shall be deemed to be the COA of the unit / units in the **consolidating scheme** of the mutual fund.
- (4) As per Sec 2(42A), the period of Holding shall be clubbed, to determine the nature of Capital Asset.

### **EXEMPT U/S 47(xix):**

#### **TRANSFER UNDER CONSOLIDATION OF PLANS OF MUTUAL FUNDS :-**

- (1) A mutual fund could have schemes as well as plans within a scheme. Section 47(xviii) provides that, any transfer by a unit holder in a scheme of mutual fund, which is merged into another scheme (consolidated scheme) is NOT chargeable to tax. However, the provision did not cover transfer in respect of **Plan with a scheme**.
- (2) Securities and Exchange Board of India (SEBI) has issued guidelines for consolidation of mutual funds plans within a scheme. Sec 47(xix) has been inserted w.e.f. AY 2017 - 18

(PY 16 - 17) to provide that transfer of units / unit from one plan to another, pursuant to consolidation of plans, within scheme of mutual funds is also EXEMPT FROM TAX.

### **WHAT WILL BE THE COA LATER ON ?**

COA of units in consolidated plan = COA of units of consolidating plan

**(New)**

**(old)**

The POH will also be clubbed from the date, the units were acquired in the consolidating plan. ( Explanations to Sec 2(42A) )

### **EXEMPT U/S 47(viiaa):**

2. A new Sec. 47(viiaa), provide that any transfer outside India of a Rupee denominated bond of an Indian Co. issued o/s India by a NR to another NR, then it is exempt. If the same bond is transferred by a NR on redemption to the Indian Co, then it is taxable. However, the gain arising due to current exchange will not be subject to tax.  
( Refer 5<sup>th</sup> Proviso to sec 48 )

### **EXEMPT U/S 47(xb):**

3. As per Sec 47 (xb), conversion of preference shares of a Co. into equity shares of that Co., is exempt (Earlier conversion of bonds or debentures into shares were exempt). The POH shall be clubbed.  
COA of Equity shares = COA of Preference shares

### **AMENDMENT MADE BY FINANCE ACT 2018:**

Section 47(viiab) has been amended to provide that transactions in the following assets, by a non-resident on a recognized stock exchange located in any International Financial Services Centre shall not be regarded as transfer, if the consideration is paid or payable in foreign currency:—

- a. bond or Global Depository Receipt, as referred to in section 115AC(1); or
- b. rupee denominated bond of an Indian company; or
- c. derivative.

### **AMENDMENT MADE BY FINANCE ACT(NO.2) 2019:**

#### **Amendment No-1:**

**Few more securities will be added in this section which the Central Government will notify.**

Amendment No-2:

**SECTION 51 :- FORFEITURE OF ADVANCE MONEY RECEIVED V/S SEC 56(2)(ix)**

- (1) As per Sec 51 where any advance money is forfeited by the Assessee as a subject matter of negotiation for its transfer, then the amount so forfeited shall be deducted from:-
  - (a) The cost for which the Asset was acquired or
  - (b) The FMV as on 01/04/2001 or
  - (c) The WDV in case of depreciable Asset.  
As the case may be, in computing the COA.
- (2) The Finance Act, 2014 has changed the taxability of such advance forfeited by defining such advance forfeited as income under Sec 2(24)(xvii) and consequently charging such advance as income from other source under section 56(2)(ix), thereby accelerating the chargeability of such advances.
- (3) Section 2(24)(xvii) states that income includes any sum referred in section 56(2)(ix).
- (4) Section 56(2)(ix) provides that any advance forfeited in the course of negotiation is taxable as Income from other sources.
- (5) Once such income is taxable as IFOS, then it cannot be reduced from the cost of the Asset when the Assessee subsequently transfers the Assets. [Proviso to section 51].
- (6) Any advance forfeited before 01/04/2014 shall be dealt with as per Sec 51.
- (7) Any advance forfeited on or after 01/04/2014 shall be treated as IFOS and shall not be reduced from cost.
- (8) Amount forfeited by previous owner is not to be deducted under section 51.

**K.R. SHRINATH (MADRAS HC)**

**FACTS OF THE CASE :-**

The assessee had entered into an agreement to purchase certain property and both parties are obligated to such agreement. After sometime another agreement was entered in the nature of cancellation of deed by which the buyer allowed the owner to sell the said property to any other person. As against this the buyer got a sum of Rs. 6,00,000 apart from being refunded advance of Rs. 40,000.

The issue under consideration is whether Rs. 6,00,000 received by Assessee from vendor could be treated as capital Gain taxable?

**JUDGEMENT :-**

- (1) It was held that the Assessee gave up the right and received a sum and therefore there could be no doubt that termination of such earlier agreement and allowing the vendor to sell the property to any person, the assessee has relinquished his right of specific performance which clearly fell within the definition of capital Asset u/s 2(14).
- (2) Further definition of transfer in 2(47) is wide enough to include the relinquishment of the Asset.
- (3) With regard to the contention that there was no cost of acquisition it was to be noted that the Assessee paid Rs. 40,000 at the time of agreement of sale and only by paying such amount the assessee had acquired the right to get the sale deed executed in his favour.

**Applying the supra ( above ), ratio decendi ( principle ) it was held that sum received by assessee is Chargeable to CG tax.**

**Section 50D :- FMV deemed to be sale consideration in certain cases:**

Where the consideration received or accruing as a result of transfer by an assessee is not ascertainable or cannot be determined, then FMV of the said asset on the date of transfer shall be deemed to be full value of the consideration.

**Refer Text book Page \_ \_ \_ \_ \_**

**EXEMPTIONS U/S 10:****SECTION 10(37): COMPULSORY ACQUISITION OF URBAN AGRICULTURAL LAND**

Agricultural land situated in urban area is a capital asset. Section 10(37) exempt the capital gains arising from transfer of agricultural land situated in urban area if the following conditions are cumulatively satisfied:

- (a) Assessee is an individual or Hindu Undivided Family.
- (b) Assessee transfers the agricultural land situated in urban area.
- (c) Such land is held as capital asset and is not held as stock-in-trade.
- (d) Such land was being used for agricultural purposes by such HUF or individual or a parent of the individual during the period of two years immediately preceding the date of transfer.
- (e) The transfer takes place by way of compulsory acquisition under any law or the transfer is the one for which the consideration is determined or approved by the Central Government or the RBI.
- (f) Capital gains computed with reference to the original compensation as well as the capital gains computed with reference to enhanced compensation are exempt.

**Note:**

If the above Urban Agricultural Land is sold by the assessee and not compulsorily acquired by CG, then the assessee can claim exemptions of Capital Gains u/s 54B by investing in another agriculture land.

**SECTION 10(37A) : EXEMPTION FOR FORMATION OF NEW CAPITAL CITY  
FOR ANDHRA PRADESH**

Exemption under section 10(37A) is applicable if the following conditions are satisfied -

1. The taxpayer (land owner) is an **individual/HUF**.
2. He owns land or building or both on June 2, 2014.
3. Such land is transferred under the land pooling scheme.

**Exemption** - If the above conditions are satisfied, capital gains arising from the following transfer shall not be chargeable to tax by virtue of section 10(37A) -

1. Capital gain on transfer of land or building or both, under land pooling scheme.
2. Capital gain on transfer of LPOC (which is received in lieu of land transferred under the scheme).
3. Capital gain on transfer of reconstituted plot or land by said taxpayer within 2 years from the end of the financial year in which the possession of such plot or land was handed over to him.

**Section 49** - Where reconstituted plot of land, received under land pooling scheme, is transferred after the expiry of 2 years from the end of the financial year in which the possession of such plot or land was handed over to the said assessee, **the cost of acquisition of such plot or land shall be deemed to be its stamp duty value on the last day of the second financial year after the end of financial year in which the possession of such asset was handed over to the assessee.**

**SEC 112A : LTCG ON TRANSFER OF EQUITY SHARES/UNITS OF EQUITY  
ORIENTED FUND/ UNITS OF BUSINESS TRUST.**

Section 112A is applicable (with effect from the assessment year 2019-20) only if the following conditions are satisfied -

<b>Condition 1</b>	The capital gains arise from the transfer of a <b>long-term</b> equity share in a company or a unit of an equity oriented fund or a unit of a business trust.
<b>Condition 2</b>	<b><i>In the case of equity shares</i></b> - STT has been paid on acquisition <b>and</b> transfer of such capital asset. The requirement of STT payment at the time of acquisition is applicable only when shares are acquired on or after October 1, 2004.

***In the case of units of equity oriented fund or unit of business trust***

In a case where the long-term capital asset is unit of an equity oriented fund or a unit of a business trust, securities transaction tax has been paid on transfer of such capital asset.

**Transactions in any IFSC not subject to Condition 3 -**

Condition 2 given above is not applicable in the case of a transfer undertaken on a recognised stock exchange located in any International Financial Service Centre. However, this concession- is available only when the consideration for such transfer is received or receivable in foreign currency.

**Condition 2 not applicable in a few notified cases -****LONG-TERM CAPITAL GAIN IN EXCESS OF RS. 1 LAKH TAXABLE AT 10 %-**

If long-term capital gain does not exceed Rs. 1 lakh, it is not chargeable to tax. If such gain exceeds Rs. 1 lakh, the amount in excess of Rs. 1 lakh will be taxable at the rate of 10 per cent (+ SC + 4 percent HEC). The rate of 10 per cent is applicable whether the assessee is a corporate-assessee or a non-corporate assessee.

**BENEFIT OF EXEMPTION LIMIT IN SOME CASES -**

Proviso to section 112A(2) gives exemption limit benefit. This benefit is available only in the case of a **resident** individual or a resident HUF (maybe ordinarily resident or not ordinarily resident). Moreover, this benefit is available only if the total income (as reduced by long-term capital gain from above ) is less than the exemption limit. ( This benefit is also available for sec 111A & 112 )

**MODE OF COMPUTATION OF COST OF ACQUISITION**

If tax is payable under section 112A, cost of acquisition of equity shares/units shall be calculated according to the provisions given under section 55(2)(ac). This provision is applicable only in respect of equity shares /units acquired by the assessee before February 1, 2018. Cost of acquisition shall be calculated as follows -

**Step 1** - Find out actual cost of acquisition of equity shares/units.

**Step 2** - Find out -

- fair market value of such asset on January 31, 2018; or
- full value of consideration received/occurring as a result of transfer of equity shares/units, **whichever is less.**

Cost of acquisition shall be deemed to be amount computed in Step 1 or Step 2, **whichever is higher.**



**HOW TO COMPUTE FMV AS ON 31<sup>ST</sup> JANUARY 2018 :**

Fair market value on January 31, 2018 shall be calculated as follows -

1. **Quoted shares/quoted units** - Highest price of share/unit quoted on such exchange on January 31, 2018 is taken as fair market value; Where, however, there is no trading in such share/unit on such exchange on January 31, 2018, the highest price of such share/unit on such exchange on a date immediately preceding January 31, 2018 when such share/unit was traded on such exchange shall be the fair market value.
2. **Units not listed** - In a case where a unit is not listed on a recognised stock exchange, the net asset value (NAV) of such unit as on January 31, 2018 is taken as fair market value.
3. **Shares (not listed on January 31, 2018) but listed on the date of transfer** - In a case, where equity share is listed on a recognised stock exchange at the time of transfer (but not listed on January 31, 2018), fair market value on January 31, 2018 will be calculated (after giving indexation benefit in a limited mode up to the previous year 2017-18) as follows-

$$\text{Cost of acquisition} \times \frac{\text{Cost inflation index (CII) of 2017-18 (ie., 272)}}{\text{CII for the year in which the shares were first held by the assessee (or previous owner in a few cases) or 2001-02 whichever is later}}$$

**OTHER POINTS** - For computation of tax under section 112A, the following points should be kept in view -

1. Indexation benefit (barring the case given above) is not available when tax is payable under section 112A.
2. Mode of computation of capital gain in foreign currency in the case of a non-resident (specified by first proviso to section 48) is not applicable when tax is payable under section 112A.
3. Deductions under sections 80C to 80U are not available from long-term capital gain (mentioned in Condition 2).
4. Rebate under section 87A is not available from income-tax on long-term capital gain mentioned in Condition 2. However, the rebate under section 87A shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.
5. Refer CBDT Circular & Notification for Exceptions of STT on purchase, on Page\_\_\_\_\_.

**SECTION 111A: STCG ON EQUITY SHARES ETC.**

Section 111A shall be applicable if all the following conditions are fulfilled:

- The gains arise from transfer of a capital asset;
- The capital asset is either an equity share in a company or a unit of an "Equity Oriented Fund" **or unit of a business trust.**

- the asset is a **short term** capital asset;
- the transaction of sale is entered into on or after 1.10.2004.
- such SALE transaction is chargeable to Securities Transaction Tax (STT);

**Note:** Unlike sec 112A there is no need to pay STT on purchase to take the benefit of this section.

**MAKE DIAGRAM HERE FOR EXEMPTIONS U/S 54 TO 54GA:**

EXEMPTIONS U/S 54 TO 54GB					
SECTION	ASSET TRFD	ASST TO BE PURCHASED	TIME LIMIT		
EXEMPTIONS U/S 54 TO 54GB.					
SEC 54 (LT)	RESIDENTIAL H.P.	Residential H.P ( F A 2019 ) <b>See Note- 5</b>	1B P	2A P	3A C
Sec 54B (ST / LT)	Urban Agricultural Land [used for Agri purpose for atleast 2 yrs either by Assessee or parents]	Any Agricultural land (Rural / Urban)		2A P	
SEC 54D (ST / LT)	Industrial L & B (used for Industrial purpose at least 2 yrs by Assessee)(Compulsorily Acquired )	Industrial L & B Bldg- ST ✓ Land -LT or ST	P	3A ↙ ↘	C
SEC 54 EC	Any LTCA being Land or Building. ( F A 2018 )	Bonds of NHAI / RECL/ Or Any Bond to be notified*	6 Months from date of transfer		
SEC 54 F	Any LTCA except Residential property	Residential House Prop.	1B P	2A P	3A C
Sec 54G (ST/LT) shifting of Industry	L/ B / P & M except furniture (from urban Area)	L/B/P & M except furniture (in Rural Area)	1B		3A
Sec 54GA (ST/LT) Shifting to SEZ	L/ B / P & M except furniture (from urban Area)	L/B/P & M except furniture (in SEZ)	1B		3A

\* Notified Bonds = Bonds of Power Finance Corporation Ltd/ Indian Railway Finance Corporation Ltd.

**Note for Sec 54B:**

If this asset is compulsorily acquired , then entire CG is exempt u/s 10(37).

SCHEME OF DEPOSIT Note 1	AMT OF EXEMPTION Note 2	LOCK IN PERIOD Note 3	ELIGIBLE ASSESSEE
Refer Note 1	Note 2	Note 3	Individual /HUF
Same (except 2 yrs)	Same	Same	Individual /HUF
Same	Same	Same	All Assessee
N.A.	Note 4	Same	All Assessee
Same	Different	Same	Individual / HUF
Same	Same	Same	All Assessee
Same	Same	Same	All Assessee

**NOTE : 1 SCHEME OF DEPOSIT: ( Not Applicable for Sec 54EC & 54EE)**

- 1) If the new asset is not acquired up to the due date of filing of return, then assessee should deposit the desired amt in 'Capital Gain A/C scheme" (Special A/c opened in certain bank.) The amt should be deposited on or before the due date of filing the return.
- 2) If the deposited amount is not utilized within the prescribed time, then unutilized amt shall be taxable as 'capital Gains' in the PY in which 3 years from the date of transfer of original asset expires. This time limit of 3 yrs is 2 yrs in respect of sec 54B
- 3) **Any amount withdrawn by legal heir on death of assessee is exempt in the hands of the legal heir.**

**NOTE 2 : AMOUNT OF EXEMPTION:**

- 1) **Under all sections [except 54 GB & 54F] lower of :**
  - a) Amt of Capital Gains or;
  - b) Cost of New Asset
- 2) **Under Sec 54F / GB & Also Refer Sec 115F in NR Chapter ,NRI Provisions**
  - i) If the net consideration is fully utilized, then capital Gains is fully Exempt.
  - ii) If Net consideration is partly utilized, then Capital Gain is partly exempt as follows:-
 
$$\text{Amt of Exemption} = \text{CG} \times \frac{\text{Cost of New Asset}}{\text{Net sale Consideration}}$$

**NOTE 3 : LOCK - IN - PERIOD**

The new asset should not be transferred within 3 years ( **5 years in case of 54EC**) from date of acquisition / construction. If the new asset is transferred within 3/5 years, then exemption allowed earlier shall be withdrawn as follows :-

i) Under sections 54/54B/54D/54G/54GA**Computation of capital Gains**

[On transfer of new assets within 3 years] FVOC (SP of New Asset)		
<b>Less:</b> Transfer Expenses		
<b>Less:</b> Reduced COA		
(Cost of New Asset - Exemption claimed earlier)		
<b>Less:</b> COI		
<b>CG</b>		

ii) Under sections 54EC/EE / F / GB**Computation of capital Gains**

(on Transfer of New Asset within 3 yrs) FVOC, (SP of New Asset)		
(-) Transfer Expenses		
NSC		
(-) Full COA ( Only COA of new asset )		
(-) COI		
CG		
<b>Add:</b> LTCG exemption withdrawn		
CG		

**Hint to Remember:**

- Follow Reduced Cost Approach where old asset and new asset are SAME.
- Follow Full Cost Approach where old asset and new asset are different.

**Note 4 : EXEMPTION LIMIT u/s 54EC/EE**

Amount of exemption u/s 54EC/EE should not exceed Rs 50 lacs in totality.

**Note 5 : 54 & 54F**

- i) Under Sec 54 the assessee is changing the house and u/s 54F the assessee is arranging the house but under both the section the assessee should purchase or construct only 1 Residential house.

If the assessee purchase or construct more than 1 house, then exemption is allowed only in respect of cost of 1 new house i.e. the one which has higher cost.

However if the assessee purchases or constructs more than 1 house which are adjacent to each other intended to be used as single residence, then exemption is allowed in respect of cost of all such houses.

₹ Also refer recent case law lecture for many more case law on exemptions 3

#### **FINANCE ACT (NO.1 ) 2019 - AMENDMENT IN SEC 54:**

**Where the amount of Capital Gains does not exceed Rs.2 cr, the assessee may, at his option, purchase or construct TWO residential houses in India.**

**This option is available just once in a life time.**

- ii) The assessee sold his residential house property and invested the capital gains within the stipulated time in construction of a new floor on another house owned by him by demolishing the existing floor, it was held that he was entitled to exemption u/s 54.
- iii) Construction of new house may start before the date of transfer but it should be completed within 3 years from the date of transfer of original house.
- iv) If the assessee has paid full consideration and obtained the possession of house within specified period then he is eligible for exemption, even if sale deed has not been registered under his favour.
- v) The assessee sold a capital asset and invested the sale proceeds in purchase of new house in the name of his wife. The DELHI HIGH COURT observed that assessee had not purchased the new house in the name of stranger or somebody who is unconnected to him. The entire investment for purchase of new residential house had come out from the sale proceeds of the capital asset and there was no contribution from his wife the assessee is therefore entitled to claim exemption u/s 54 in respect of utilization of sale proceed of capital assets for investment in residential house property in the name of his wife. ( Kamal Wahal )

#### **Note 6 : FOR SEC 54 F**

On the date of transfer of LTCA the assessee shall not own more than 1 residential house i.e. he should have either 1 house or NO house.

#### **Note 7 : FOR SEC 54EC/EE and Sec 54F**

Under Sec 54EC/EE and Sec 54F exemption is allowed for transfer for any LTCA. This means the asset should be long term. Accordingly if a depreciable asset held for more than 36 months is sold, then it is a transfer of LTCA and it is eligible for exemption u/s 54EC/EE & 54F even though the resulting gain is always STCG

Nature of gain is not relevant. Nature of Asset is Relevant. ( ACE BUILDERS LTD)

**AMENDMENT MADE BY FINANCE ACT 2018:****Amendment to section 54EC**

The following amendments have been made to the scheme of section 54EC -

1. From the assessment year 2019-20, exemption under section 54EC will be available only on transfer of long-term capital asset, being land or building or both.
2. Exemption under section 54EC is available only if the taxpayer acquires a long-term "specified asset" within 6 months from the date of transfer. "Specified assets" for this purpose is bonds of NHAI/REC/notified bonds redeemable after 3 years. Section 54EC has been amended to provide that long-term "specified asset" (for availing of exemption on or after April 1, 2018) shall mean NHAI/REC/notified bonds, redeemable after 5 years and issued on or after April 1, 2018.
3. Section 54EC requires that NHAI/REC/notified bonds should not be transferred (or should not be converted into money or loan or advance should not be taken on security of these bonds) within 3 years from the date of acquisition. This time-limit has been extended to 5 years (if investment in these bonds is made on or after April 1, 2018).

**Inserted by FA 2016. ( Same as 54EC TO GREAT EXTENT EXCEPT T/L )**

**Sec 54EE : Investment in units of Specified funds i.e. to finance START UPS.**

This exemption is available from AY 2017 - 18 subject to following conditions.

- 1) The assessee [i.e. any entity has transferred **any long term capital Asset( not like 54EC)**]
- 2) The assessee has to invest the capital Gains in long term specified assets to be notified by Central Government to finance Start ups.
- 3) Such investment can be made at any time within **6 months** from the date of transfer.
- 4) The amount of investment which is allowed as exemption in totality is Rs. 50L.
- 5) The benefit of depositing in scheme is not available here.
- 6) The long term capital asset i.e. notified asset should not be transferred (not even loan or advance is taken on security of such assets) **within 3 years** from the date of acquisition. However if it is transferred or a loan is taken **within 3 years**, then the amount of exemption given earlier will be revoked and it shall be chargeable to tax in the year in which such specified assets are transferred or loan is taken **[FOR 54EC THE TIME LIMIT IS 5 YEARS AS AMENDED BY FINANCE ACT 2018]**

**Sec 54GB : Capital Gain on Transfer of residential Property exempt in certain cases.**

**1) What kind of entity covered ?**

It applies to individual or HUF ( Resident or Non Resident )

**2) Which capital gains are covered ?**

LTCG arising from transfer of a residential property( a house or a plot of land ) owned by the assessee in India or outside India.

**3) What assessee has to do for claiming exemption u/s 54GB?**

The assessee has before the due date of furnishing return of income u/s 139(1) utilized the net consideration for subscription in EQUITY shares of an "Eligible Co" [Pref shares cannot be subscribed]

**4) Who is an eligible company?**

Eligible Co. means which fulfil all the following conditions.

- i) It should be incorporated in India during the period commencing from 1<sup>st</sup> April of the PY in which capital Gain arises and ending on the due date of return u/s 139(1). Therefore if the assessee sells residential plot of land on 30/06/2019 then Co. should be incorporated during the period 1/04/2019 to 31/07/2020 assuming that 31/07/2020 is the due date of filing of return.
- ii) **It in an eligible business i.e. eligible start up u/s 80-IAC .**
- iii) It is company in which assessee has more than **25% equity capital** after subscription of shares in the Co. **₹ Finance Act (No.2) 2019 3**

**5) What eligible Co. has to do?**

The company has to utilise the amount subscribed by the assessee by way of equity shares for purchase of 'New asset', within 1 year from the date of subscription of equity shares by the assessee. The amount received by company by issue of shares from the assessee to the extent it is not utilized by the company for purchase of new asset before



the due date of filing of return by an assessee u/s 139 (1) shall be deposited by the company, before, the said due date in 'Capital Gain A/c scheme'.

**6) What do we mean by the term 'New Asset'?**

The term **New Asset** means new Plant & Machinery but **does not include** :

- i) Any machinery or plant which was use either within or outside India.
- ii) Any machinery or plant installed in office or premise on residential accommodation incl accommodation in the nature of guest house.
- iii) Any office appliances including computer or computer software.
- iv) Any Vehicle
- v) Any machinery or plant the whole of actual cost is allowed as deduction earlier. However in case of eligible start up , being a technology driven start up , the new Asset shall include computer or computer software.

**7) Amount of capital gain exempt?**

- a) If net sale consideration > cost of new asset then,

$$\text{LTCG} \times \frac{\text{Cost of New Asset}}{\text{NSC}}$$

- b) If  $\text{NSC} \leq \text{Cost of New asset}$  then, entire LTCG is Exempt.

**8) What do use mean by term cost of new asset?**

The amount utilized by the company for purchase of new asset up to the date of filing of return together with the amount deposited in CGAS shall be deemed to be the cost of new asset.

**9) what is the effect of not utilizing the amount from CGAS within prescribed time ?**

The amount deposited in CGAS is to be utilized by eligible company for purchase of new assets within 1 yr from the date of subscription of Equity shares by assessee. If the company does not utilize wholly or partly the amt so deposited in CGAS for purchase of new asset within the said period of 1 year, then unutilised portion shall be deemed income of the year in which 1 year expires.

**10) What is the lock in period of Equity shares and New assets purchased by the Company ?**

The equity shares and the new assets should not be sold or otherwise by assessee and Eligible Company for a period of 5 years from date of subscription and date of purchase of new asset respectively. Otherwise capital gains exempt earlier will be deemed income.

**As per Finance Act (No.2) 2019 the lock in period for Computer or Computer Software shall be 3 years.**

**Note:**

As Per Finance Act (No.2) 2019 the benefit of this section shall be extended till 31<sup>st</sup> March 2021.

**SEC 50: CAPITAL GAINS IN CASE OF TRANSFER OF BLOCK OF ASSET**

**IN WHICH ALL CASES INDEXATION IS NOT AVAILABLE ?**

1. It is not available in case of BLOCK of Asset.
2. It is not available in case of SLUMP SALE.
3. It is not available for Bonds & Debentures. However in case of Capital Indexed Bonds & Sovereign Gold Bonds Indexation is available.
4. It is not available for NR in case of First Proviso to Sec 48.
5. It is not available in case of LTCG u/s Sec 112A.
6. It is not available for NR in case of Sec 115AB, 115AC, 115AD & 115C to 115-I.

**TAXATION OF DEMERGER [ NOT IN TEXT BOOK ]****Q. What is demerger?**

As per **Section 2(19AA)**, demerger in relation to a company means transfer by a demerged company of its one or more undertaking to any resulting company in accordance with companies Act, 2013 and fulfils the following conditions:

(1) **All properties** of the undertaking i.e. demerged undertaking shall become the properties of the resulting company. Property will include all assets but shall not include Miscellaneous Expenses i.e. Preliminary Expenses or Deferred Revenue Expense.

(2) **All liabilities** should be transferred to resulting company. Liabilities shall include:

(a) Specific liability for demerged unit.

(b) In case of general liability, the following equation has to be followed :

$$\text{General Liability (x)} = \frac{\text{Value of Assets trfd in demerger}}{\text{Total value of Assets of such demerged Co. immediately before demerger*}}$$

**Note:** Exclude Revaluation and Deferred Revenue Exp / Preliminary Exps from Numerator as well as Denominator.

(3) The **Properties and the liability** of the undertaking **transferred** by demerged company are transferred at the **values** appearing in the **books of accounts** immediately before demerger.

**AMENDMENT MADE BY FINANCE ACT(NO.2) 2019:****Facilitating demerger of Ind-AS compliant companies**

One of the existing conditions for tax-neutral demergers is that the resulting company should record the property and the liabilities of the undertaking at the value appearing in the books of accounts of the demerged company. It has been represented that Indian Accounting Standards (Ind-AS) compliant companies are required to record the property and the liabilities of the undertaking at a value different from the book value of the demerged company. In order to facilitate, it is proposed to amend section 2 of the Act to provide that the requirement of recording property and liabilities at book value by the resulting company shall not be applicable in a case where the property and liabilities of the undertakings received by it are recorded at a value different from the value appearing in the books of account of the demerged company immediately before the demerger in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.

This amendment will take effect, from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

- (4) The Resulting company **issues its shares** to the shareholders of Demerged company on a proportionate basis.
- (5) **Shareholders** holding **not less than 75%** of Value in shares in the demerged company should become the shareholders of Resulting company.
- (6) The transfer of undertaking is on a going concern basis.

Q. **Balance Sheet of ABB Ltd before demerger as on 01/04/2019 ( In Lacs )**

Equity Capital	30	<b>Cement division</b>	
G/R	11	FA after dep <sup>n</sup>	15
<b>Revaluation Reserves</b>		Debtors	2
On FA of cement Div	1.5	Stock	3
On FA of Power Div	0.5	Invest (MV - Rs. 5.5 lacs)	2.5
Shares premium	2.5	<b>Power Division</b>	
Workmen Comp. Res.	1.5	FA after dep <sup>n</sup>	20
Loan of Power Div	6.165	Debtors	4
Loan of Cement Div	3.835	Stock	5
General loan	2	Invst (MV - 2.5 lacs)	3.5
<b>Current liabilities</b>		<b>Head Office</b>	
Power Division	3	FA after dep <sup>n</sup>	5
Cement Division	2.5	Investment	3
General	1.5	<b>(ABB Power Alstom Ltd)</b>	
		Misc. Exp.	3
	66		66

**The Equity share Capital of ABB Ltd is held as under :**

ABB Germany	- 51%
Indian Public	- 39%
LIC	- 10%

**Balance sheet of ABB Power Alstom Ltd before Demerger**

Share Capital	300,000	Cash	300,000
---------------	---------	------	---------

100% shares of ABB Power Alstom Ltd (Resulting Co.) are held by ABB Ltd (Demerged Co.)

Now ABB Ltd wants to hive off its power division to a new company ABB Power Alstom Ltd.

∴ The following assets is to be transferred :

( In Lacs )

1) Fixed Assets (20 lacs - 50K)	19.5
2) Debtors	4
3) Stock	5
4) Investment (ignoring market value)	3.5
<b>Total book value of assets transferred</b>	<u>32</u>

**Following liabilities are to be transferred :**

1) Loan of Power Division	616,500
2) Current liabilities of Power Div	300,000
3) General Loan	104,900
4) General Current Liabilities	78,600
<b>Total book value of liabilities transferred</b>	<u>11,00,000</u>

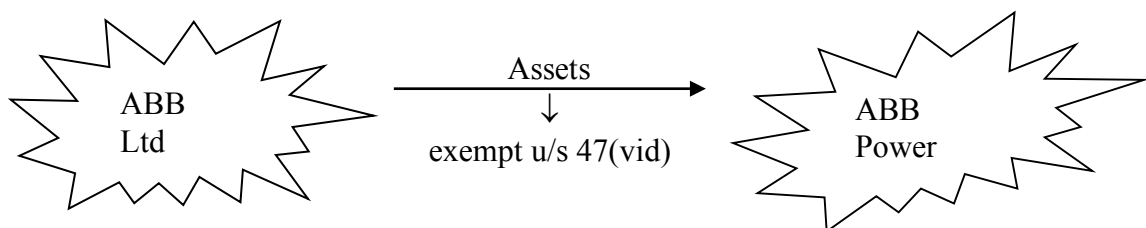
∴ Net BV of Assets transferred = 21,00,000

∴ Now shares in ABB Power Alstom Ltd will be allotted in the following ratio :

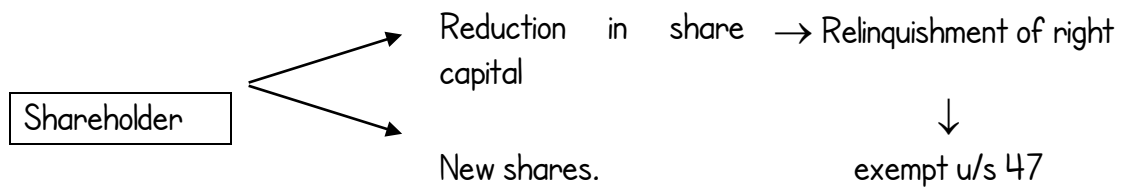
ABB Germany	51%	Rs. 10,71,000 - 107100 sh	} @ Rs. 10/sh
Indian Company	39%	Rs. 819,000 - 81900 sh	
LIC	10%	Rs. 210,000 - 21000 sh	
		Rs. <u>21,00,000</u>	

### TAX IMPLICATIONS UNDER DEMERGER :

- 1) As per Section 47, no capital gains shall be chargeable in the hands of demerged company while transferring the assets to the resulting Indian company pursuant to the scheme of demerger



- 2) As per Section 47 there will be no capital gains in the hands of shareholders of demerged company when they receive in exchange of shares of demerged company, reduced shares of demerged company and new shares of resulting company



- 3) As per Section 49(1), the COA of Capital Assets acquired by resulting company from demerged company shall be the same as in the hands of demerged company. Further, the POH of Previous owner shall be clubbed.

**What will be the COA of reduced shares of demerged company and new shares of resulting company ?**

- (1) **Section 49(2C) : COA of Resulting Company's shares:**

$$= \text{COA of shares held by assessee in Demerged Co.} \times \frac{\text{Net BV of Assets transferred in Demerger}}{\text{Net worth of demerged company before demerger}}$$

- \* Net worth for the purpose of this section includes paid up capital (+) General Reserves ONLY.

- (2) **Section 49(2D) : COA of demerged CO's shares :**

$$= \text{COA of original shares} - \text{COA arrived in 49(2C) in demerged shares}$$

**Illustration :**

**Mr. X acquired shares of ABB Ltd as under :**

(1) 600 shares of Rs. 10 each purchased on 01/01/2000 for Rs. 50 each (FMV as on 01/04/2001 - Rs. 120)

(2) 1200 shares of Rs. 10 each purchased on 01/01/2006 for Rs. 100 each

The demerger takes place on 01/04/2019 and as a result of demerger :

(1) Paid up Value of ABB ltd i.e. demerged company gets reduced to Rs. 3 / share

(2) The shareholders got 21 shares of ABB Power Alstom Ltd for every 30 shares of ABB Ltd.

∴ The shareholder received 1260 shares of ABB Power Alstom Ltd. (420 shares + 840 shares)

Now all the shares are sold on 30/06/2019.

Determine the COA of all 4 category of shares

**Solution: Now, period of holding of shares**

- |    |                                 |                        |
|----|---------------------------------|------------------------|
| 1) | 600 shares of ABB Ltd           | 1/1/2000 to 29/06/2019 |
| 2) | 420 Sh. of ABB Power Alstom Ltd | 1/1/2000 to 29/06/2019 |
| 3) | 1200 shares of ABB Ltd          | 1/1/2006 to 29/06/2019 |
| 4) | 840 Sh. of ABB Power Alstom Ltd | 1/1/2006 to 29/06/2019 |

- a) COA of 420 shares of ABB Power Alstom Ltd  
(Resulting Company)

$$= 600 \text{ sh} \times 120 \times \frac{21}{41} = \text{Rs. } 36,878 \text{ /-}$$

- b) COA of 600 shares of ABB Ltd  
= 72000 - 36878 = Rs. 35,122 /-

- c) COA of 840 shares of ABB Power Alstom Ltd  
= 1200 × 100 ×  $\frac{21}{41}$  = Rs. 61,463/-

- d) COA of 1200 shares of ABB Ltd  
= 120,000 - 61463 = Rs. 58,537/-

**Special provisions for computing deductions in case of business re-organisation of Cooperative Banks [Sec 44DB] [ NOT IN TEXT BOOK ]**

- 1) The deduction u/s 32, 35D, 35DD or 35DDA, in case where amalgamation or demerger of a Cooperative Bank has taken place shall be determined in the following manner :

- 2) Deduction allowable to **amalgamating or demerged** Co - Op Bank will be equal to

$$A \times \frac{B}{C}$$

A = amount of deduction allowable to amalgamating / demerged Coop bank as if amalgamation / demerger had not taken place.

B = No. of days comprised beginning with 1st day of FY and ending on the day immediately preceding the date of amalgamation / demerger.

C = the total no. of days in a FY in which amalgamation / demerger took place.

- 3) Deduction allowable to **amalgamated / resulting** Coop Bank is as follows :

$$A \times \frac{B}{C}$$

A = Same as above

B = No of days comprised beginning with the date of amalgamation / demerger and ending on the last day of FY in which demerger took place.

C = Same as above.



- 4) The balance amount of deduction can be taken by amalgamated / resulting Coop Bank for balance number of years. (It is important to note that in case of amalgamation of companies, deduction of dep<sup>n</sup> is governed by proviso to section 32 and deduction in respect of 35D, 35DD, 35DDA is allowed to amalgamated company in the year of amalgamation and not bifurcated like 44DB.)
- 5) As per Section 72AB, the accumulated losses (only Section 72) pertaining to amalgamating or demerged Co - Op Bank can be carried forward by Amalgamated / Resulting Co - Op Bank for balance number of years. (It is important to note that u/s 72A such accumulated losses were allowed to be carried forward by Amalgamated company / Resulting company for another 8 years.  
However, unabsorbed depreciation can be c/f by amalgamated / resulting Co - Op Bank without any time limit.

### TAXATION OF ESOP [ NOT IN TEXT BOOK ]

The ESOPs are taxable as perquisites in the hands of the employees. There are three stages in ESOP:

- Stage 1-** When the employee joins the company, he is offered shares under ESOP.
- Stage 2-** After completing a time period of service, say 3 years, the employee can exercise the options to get ESOP (i.e. acceptance of ESOP)
- Stage 3-** The company allots ESOPs

#### It may be noted that,

- 1) Perquisite shall be taxable in the hands of the employee only when shares are allotted to him under ESOP. The perquisite is not taxable when employee exercises his option to ESOP.
- 2) However the perquisite shall be worked out on the basis of FMV of ESOP on the date when employee exercises his option to ESOP. The value of taxable perquisite shall be determined as under

FMV of shares on the date on which option is exercised by employee	A
Less: Amt paid by employee for each share	B
<b>Value of taxable perquisite</b>	<b>= (A - B)</b>

- 3) Whenever such shares are subsequently sold by the employee then as per Section 49(2AA) the Cost of acquisition of such shares will be the FMV which has been taken into account for computing taxable perquisite.  
The period of holding shall be counted from the date of allotment of such shares for computing CG.

**TAXATION OF BUY BACK OF SHARES [ NOT IN TEXT BOOK ]****PART I- BUY BACK IN CASE OF LISTED SHARES:**

- ~~(i) No Tax implication in the hands of listed company. There will be no deemed dividend and consequently section 115-O shall not be attracted.~~
- ~~(ii) Section 115QA shall not be attracted since the shares are listed.~~
- ~~(iii) Apart from this, there is no other implication in the hands of the company.~~

**TAX IMPLICATION IN THE HANDS OF SHAREHOLDER OF COMPANY**

- ~~(i) Sale consideration is amount received on buy back~~
- ~~(ii) Cost of Acquisition = amount paid for acquiring shares~~
- ~~(iii) Period of holding = Date of acquisition to date of buy back.~~
- ~~(iv) Benefit of first proviso and second proviso to section 48 is available.~~

**PART II- BUY BACK IN CASE OF UNLISTED SHARES**

- (i) Section 115QA and section 10(34A) shall apply when company buyback unlisted share from the shareholders. The Company shall pay Tax @ 20% + 12% surcharge + HECESS = 23.296% under section 115 QA on the amount of distributed income calculated as under :-

Amount paid by company to shareholder (-) on buyback of shares.	Amount received by company for issue of shares including share premium if any
--	--

- (ii) Where a shareholder receives any amount on buyback of unlisted share then such amount is exempt under 10(34A). Further No Capital Gain shall be chargeable in the hands of shareholder.

**AMENDMENT MADE BY FINANCE ACT( NO.2) 2019:**

**Now the provision of Sec 115QA shall also be made applicable for Listed Shares .  
So after FA 2019 the treatment for Listed as well as Unlisted Shares are same.**

**Illustration**

The Co. buyback 10,000 unlisted Equity share of F.V. Rs.10 each at price of Rs.100 per share on 01/01/2019. The share are held by 4 shareholder equally who has subscribed to this share on 01/01/2011 for Rs. 10 each by paying premium of 20/share.

There will be no deemed dividend under 2(22) on buy back of share. Now in the hands of Company distributed income shall be as under :

$$\begin{array}{r}
 10000 \times 100 \quad - \quad 10000 \times 30 \\
 \text{Rs. } 10,00,000 \quad - \quad 3,00,000 \\
 = \text{Rs. } 7,00,000
 \end{array}$$

Company shall pay tax u/s 115QA @ 23.296% on 7,00,000 =

The amount received by shareholder shall be exempt under 10(34A). No capital gain shall arise in the hands shareholder on buy back of shares.

Suppose shareholder have shown a profit of  $100 - 30 \times 2500$  share = Rs.1,75,000 in their profit & loss account as profit on buy back of shares. Thus 1,75,000 will be deducted from Net profit to arrive at PGBP as it is Exempt.

**NOTE:** After Finance Act (No.2) 2019 the above illustration can be made applicable to both Listed as well as Unlisted Shares.

## TAXATION OF DIVIDENDS [ NOT IN TEXT BOOK ]

### SECTION 115BBD: TAX ON CERTAIN DIVIDENDS RECEIVED FROM FOREIGN COMPANIES

Prior to insertion of section 115BBD, dividend received from foreign companies was taxable in the hands of Indian Company @ 30% plus applicable surcharge and cess: It may be noted that dividend received from Indian Company is exempt from income tax under section 10(34) subject to section 115BBDA.

Section 115BBD has been introduced to provide that where total income of an Indian company includes any income by way of dividends received from a **Specified foreign company**, then such dividends shall be taxable @ 15% (plus applicable surcharge if any and cess) on the gross amount of dividends.

**No expenditure in respect of such dividends shall be allowed under the Act.**

**'Specified Foreign Company' means a foreign company in which Indian company holds 26% or more equity share capital.**

**Following conditions must be fulfilled for application of Section 115BBD:**

1. Benefit of Section 115BBD is available only to the Indian Company.
2. Indian Company must hold at least 26% in nominal value of the equity share capital of the foreign company.
3. **Dividend received under section 2(22)(e) shall not be covered.**
4. No other expense shall be claimed by the Indian Company in respect of dividend received.

**SECTION 10(34): Dividend referred to in section 115-0 is exempt from tax in hands of shareholder. ALSO REFER SEC 115BBDA.**

**SECTION 115-0(1): TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES**

- Dividend Distribution tax is payable, by domestic company
- in addition to the income-tax.
- Any amount declared, distributed or paid
- by way of dividends (whether interim or otherwise),
- whether out of current or accumulated profits
- shall be charged to additional income-tax @ 15%. (15% plus surcharge @ 12% **always** plus 4% Health & Education cess **always**). Grossing up concept introduced by Finance Act, 2014 and this tax rate works out to be **20.56%**. **ξ NA for 2(22)(e)3**

**AMENDMENT MADE BY FINANCE ACT 2018:**

**AMENDMENT TO SECTION 115-0**

At present dividend distributed by a domestic company is subject to the following provisions -

Different aspects	Tax treatment of dividend [not being deemed dividend under section 2(22)(e)]	Tax treatment of deemed , dividend [which is covered by section 2(22)(e)]
1. Declaration, distribution or payment of dividend by a domestic company	Domestic company (which declares, distributes or pays dividend) is subject to dividend tax under section 115-0 [dividend tax: 15 /85 of amount distributed (+ SC+EC)]	Dividend distribution tax under section 115-0 not applicable
2. Dividend in the hands of shareholders of a domestic company	<ul style="list-style-type: none"> <li>• Aggregate dividend (from all domestic companies received by, a shareholder) up to Rs. 10 lakh - Exempt from tax under section 10(34)</li> <li>• Aggregate dividend exceeding Rs. 10 lakh -Amount in excess of Rs. 10 lakh is .taxable in the hands of shareholder under section 115BBDA [rate of tax : 10 per cent (+SC + EC)]</li> </ul>	Taxable in the hands of recipient under section 56 under the head "Income from other sources"

- **Amendment** - Sections 115-0 have been amended with effect from April 1, 2018. After this amendment, loan or advance given, by a company (on or after April 1, 2018) which is deemed as dividend under section 2(22)(e) will be subject to the following provisions-

1. On such deemed dividend, the company which gives loan or advance will have to pay dividend tax under section 115-0 at the rate of 30 per cent (**without grossing up**)

[+ 12 per cent of such tax as surcharge + 4 per cent of tax and surcharge as health and education cess, effective rate : 34.944 per cent].

2. Such deemed dividend will be exempt in the hands of recipient by virtue of section 10(34).

### NOTES:

1. DDT is payable even if no income tax is paid by the company.
2. DDT shall be paid within 14 days from the date of -
  - (a) declaration; or
  - (b) distribution; or
  - (c) payment,
 of any dividend whichever is earliest.
3. Further credit of DDT paid is not available to company or shareholder.
4. DDT is not an allowable deduction under I.T. Act. ( **Even in MAT it is disallowed**)
5. Dividend includes deemed dividend under section 2(22)(a), (b), (c) , (d) & (e). **But for sec 2(22)(e) DDT rate will be 34.944% without grossing up. ( FA 2018)**
6. Foreign Company is not liable to pay CDT.
7. As per Finance Act, 2016, there will be no DDT where specified Domestic Company (SPV) distributes dividend to Business Trust subject to some conditions. **£This is discussed in chapter of Business Trust.£**
8. **As per Finance Act, 2016**
  - No DDT shall be chargeable
  - In respect of the total income of company, being a unit of an International Financial Service Centre,
  - Deriving income solely in convertible foreign exchange ,
  - On any amount declared, distributed or paid by such company, by way of dividends ( whether interim or otherwise )
  - On or after the 1<sup>st</sup> day of April, 2017,
  - Out of its current income, ( **or income accumulated as a unit of IFSC after 1<sup>st</sup> April 2017**)
  - Either in the hands of the company or the person receiving such dividend.

**Note 1: The bold and underlined words are inserted by Finance Act (No.2) 2019**

**Note 2:** "Unit" means a unit established in an International Financial Service Centre, on or after the 1<sup>st</sup> April, 2016;

**Note 3:** The said dividend is not chargeable to DDT u/s 115-O and is also exempt the hands of shareholder. The said dividend is not taxable in the hands of shareholder even if it exceeds Rs. 10 lakhs.

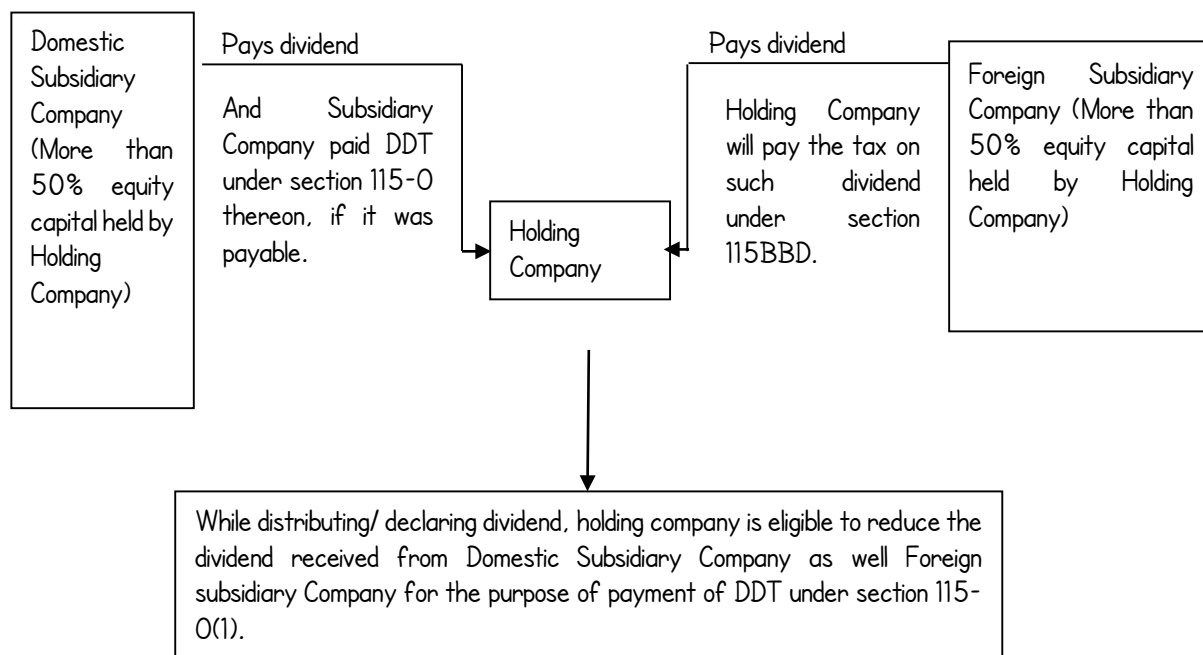
**SECTION 115-0(1A): REDUCTION IN DIVIDEND DISTRIBUTION TAX**

**CASE-1:**

- If any domestic holding company
- receives during the financial year
- any dividend from its domestic subsidiary company on which the subsidiary company has paid DDT if payable under section 115-0, if any; or
- any dividend from its foreign subsidiary company on which the tax is payable by holding company under section 115BBD,
- then, such dividend shall be reduced from the dividend declared/ paid/ distributed by the domestic holding company during the financial year

**Note:** Holding Company should hold more than 50% equity share capital of domestic subsidiary company and foreign subsidiary company.

**Provided that the same amount of dividend shall not be taken into account for reduction more than once.**



**TAXATION OF DIVIDENDS**

**Section 115-0(1A) : Reduction in DDT**

(1) ← (S <sub>4</sub> )	→	S <sub>3</sub>	→	S <sub>2</sub>	→	S <sub>1</sub>	→	H	→	Public
Foreign Company	500 Cr		600 Cr		700 Cr		800 Cr		1000 Cr	
Amount on which DDT dis.	NA		100 Cr		100 Cr		100 Cr		200 Cr	

**Note :**

S<sub>4</sub> is a foreign company and is more than 50% subsidiary of S<sub>3</sub>. Further S<sub>3</sub> is liable to pay tax @ 15% on dividend received from S<sub>4</sub> u/s 115BBD.

**Note : 1**

Benefit of reduction of dividend is available on year to year basis i.e. dividend paid for one FY can be claimed in the same FY only. carry forward of benefit is not allowed. Further benefit can be available irrespective of the fact that the dividend is paid for different FYs.

Eg:	Paid Div and DDT	
Company A (subsidiary)	—————→	Company B (Holding 60% Eq. shares of company A)
↓		↓
Paid final Dividend on 20/10/2016 for FY 2015 - 16		Declared and paid intrim dividend on 01/01/2017 for FY 2016 - 17
		↓
		∴ Can claim benefit u/s 115-0 (1A)

**Note 2:**

Subsidiary means only that subsidiary in which parent company holds more than 50% in equity share capital. Dividend received from other types of subsidiary i.e. subsidiaries having controlling composition of board etc. shall be not getting the benefit u/s 115-0 (1A).

**SECTION 115-0(1B): GROSSING UP OF DIVIDEND**

For the purposes of determining the tax on distributed profits payable in accordance with this section, any amount by way of dividends referred to in sub-section (1) as reduced by the amount referred to in sub-section (1A) [hereafter referred to as net distributed profits], shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in sub-section (1), be equal to the net distributed profits.

**ANALYSIS**

Tax rate as per section 115-0(1) on dividends is 15%. As per Finance Act, 2014 this rate shall in all cases be increased by surcharge of 12% and Health & education cess of 4% regardless of what is the total income / dividend distributed by the company. **( NA for 2(22)(e).**

The effective tax rate for payment of DDT as per section 115-0(1) shall be as under:

Tax rate	15%
Add: 12% Surcharge	1.8%
Add: 4% Education Cess	0.672%
Total tax rate	17.472%

Calculation of DDT Rate after grossing up ₹ NA for 2(22)(e)₃:**SECTION 115BBDA: TAX ON CERTAIN DIVIDENDS RECEIVED FROM DOMESTIC COMPANIES( INSERTED BY FINANCE ACT, 2016)**

1. This section shall apply to a dividend received from Domestic Company by any **resident assessee other than:**
  - Domestic Company;
  - Certain Fund, Trust , Institution registered u/s 10(23C)/12A/12AA.

Section is also not applicable where a **non resident** receives dividend exceeding Rs. 10 lacs.
2. This section shall apply where the total dividends received by the specific assessee from all companies taken together, exceeds Rs. 10 lacs during the previous year.
3. The amount of aforementioned dividends shall be taxed @ 10% ( plus surcharge if applicable and cess)
4. No deduction in respect of any expenditure or allowance or setoff of loss shall be allowed to the assessee under any provision of the Act in computing the income by way of dividends.
5. Dividends shall include deemed dividend except u/s 2(22)(e).
6. It may be noted that company shall pay DDT u/s 115-O on the dividend which is getting taxed u/s 115BBDA in the hands of shareholders.

**DEEMED DIVIDEND****1) Section 2(22) (a) to 2(22)(d)**

Under these sections, the company will pay Dividend Distribution Tax u/s 115-O. Such dividend will be exempt in the hands of the shareholder u/s 10(34) subject to 115BBDA.

**2) Section 2(22) (e)**

~~In this case, company will not pay DDT. Rather such dividends will be taxable in the hands of the shareholder. Here, 115BBDA shall not be applicable. The reason why this dividend is taxed in the hands of shareholder is because 2(22)(e) is only applicable to closely held company and ∴ the number of shareholders would be less and it would be easy for the Government to take taxes from few SHs. As against this, 2(22)(a) to 2(22)(d) is applicable to all companies and ∴ the tax liability has been kept in the hands of the company.~~ **₹ Deleted by Finance Act 2018₳**



**Section 2(22)(a) : Distribution of Assets by company.**

- (1) Dividend includes any distribution of assets by company to its shareholders to the extent company possesses accumulated profits, whether capitalised or not.
- (2) Fair Market Value of the asset on the date of distribution will be considered to compute deemed dividend.

**Balance Sheet**

Equity Capital	250,000	Cash	300,000
(includes bonus			
Shares of Rs. 50,000			
Issued out of reserves)		Assets	200,000
Reserves	250,000		

The Company distributes assets of Rs. 200,000 to shareholders. The FMV of the assets on the date of distribution is as follows :

	MV of Assets	Deemed dividend u/s 2(22)(a)
Case - I	Rs. 150,000	Rs. 150,000
Case - II	Rs. 250,000	Rs. 250,000
Case - III	Rs. 300,000	Rs. 300,000
Case - IV	Rs. 400,000	Rs. 300,000

The deemed dividend u/s 2(22)(a) is exempt in the hands of shareholders u/s 10(34) subject to section 115BBDA. The company shall be liable to pay DDT u/s 115-0.

**Section 2(22)(b) :****Dividend includes :**

- (1) Any distribution to its SHs by way of debentures or debenture stock or deposit certificate with or without interest.
- (2) Any Distribution of bonus shares to its preference shareholders (not to equity shareholders) to the extent to which company possesses accumulated profits whether capitalised or not.

**Q1.****Balance Sheet**

Equity Capital	200,000	Cash	200,000
(includes bonus			
Shares of Rs. 50000		Assets	200,000
issued out of reserves			
Reserves	200,000		

The company distributes debentures of Rs. 300,000 to the Shareholders.

**Ans:** Rs. 250,000 is the deemed dividend u/s 2(22)(b) and the company shall pay DDT on such amount. The said dividend is exempt in the hands of shareholders subject to section 115BBDA.

**Q2****Balance Sheet**

Equity Capital	150,000	Cash	350,000
(includes bonus			
Shares of Rs. 50000		Assets	200,000
issued out of reserves			
Pref. Sh. Capital	100,000		
Reserves	300,000		

The company issued bonus shares to all shareholders in the ratio of 1 : 1.

**Ans:** Bonus shares allotted to equity shareholders does not amount to deemed dividend u/s 2(22)(b). Whereas bonus shares allotted to preference SHs amount to deemed dividend.  
∴ Deemed dividend = Rs. 100,000

**Section 2(22)(d) :**

Dividend includes any distribution to its shareholders on reduction of its capital to the extent to which the company possesses accumulated profit whether capitalised or not.

**(1)****Balance Sheet**

Equity Capital	200,000	Assets	300,000
(includes bonus			
Shares of Rs. 50,000		P/L (Dr Balance)	100,000
issued out of reserves			
Creditors	200,000		

The company reduces share capital by Rs. 100,000 by setting off the debit balance of P/L A/C.

**Ans:** There is no deemed dividend u/s 2(22)(d) since to company has no accumulated profits and there is not distribution of assets to SHs.

**(2)****Balance Sheet**

Equity Capital	200,000	Cash	250,000
(includes bonus shares			
of Rs. 50,000 issued		P/L (Dr Balance)	150,000
out of reserves)			
Reserves	200,000		

The company reduces the share capital by Rs. 150,000 by giving cash to the shareholders.

→ Rs. 100,000 is the deemed dividend u/s 2(22)(d) and the same shall be liable to tax u/s 115-0.

## Section 2(22)(c) : LIQUIDATION OF COMPANIES

Company		Shareholders
		<b>46(2) - Transfer</b>
(1)	(2)	Step 1 - Amt received in money (+) FMV of assets received
Co. sells the assets & distributes money to SHs then Co. is liable for CG.	If Co. distributes assets then such transfer is exempt u/s 46(1). However such distribution of assets on liquidation amounts to deemed dividend u/s 2(22)(c). <b>[to the extent Co. possesses accumulated profits]</b>	Step 2 - Amount assessed as DD u/s 2(2)(c)
		Step 3 - Step 1(-) Step (2)
		Step 4 - CG = FVC (-) Exp NVC of shares (-) COA/COA LTCG/STCG
		XXX (XX) XXX (XX) XX

**Note:**

The period subsequent to the date on which company goes into liquidation shall not be considered to determine the period of holding.

**Q. What will be the COA of the assets received by the shareholders on liquidation?**

As per Section 55, the COA of such assets will be FMV of the asset on the date of distribution.

**Q. Liquidation of XYZ Ltd takes place on 30/06/2019.**

**As on that date, Balance Sheet stood as under :**

	B/S		
ESC	400,000	Cash	300,000
R & S	220,000	Machinery	320,000
	620,000		620,000

Shareholders	A	B	C	D
COA of shares	1,00,000	1,00,000	1,00,000	1,00,000
	(25%)	(25%)	(25%)	(25%)

Distribution of cash and assets takes place on 20/02/2020. On liquidation, each shareholder receives the following assets.

- 1) 1 machinery (BV - Rs. 80,000, FMV - Rs. 200,000)
- 2) Cash (Rs. 75,000)

**Ans:**

Total distribution (275,000 x 4)	11,00,000
∴ Deemed dividend u/s 2(22)(c)	2,20,000
Co. shall pay DDT u/s 115-0 on deemed dividend of Rs. 220,000.	

<b>In the hands of shareholders</b>		
Income from other sources		
Deemed dividend u/s 2(22)(c)		55,000
(-) Exempt u/s 10(34)		(55,000)
<b>IFOS</b>		Nil

Income from Capital gains		
<b>Sales Proceeds</b>		
FMV of Machinery	200,000	
Cash	75000	
(-) Deemed div. u/s 2(22)(c)	(55,000)	=
		220,000
(-) COA (subject to indexation)		(100,000)
<b>LTCG</b>		= 120,000

Q. Mr. X purchased 2000 shares of A Ltd on 01/01/2012 for Rs. 20,000. The company A Ltd goes into liquidation on 30/06/2019 and he receives the following on 02/03/2020.

1) Cash = Rs. 25,000

2) Machinery (BV - Rs. 40,000, FMV - Rs. 60,000)

As on 30/06/2019, the accumulated profits of the company were Rs. 150,000. Mr. X holds 20% shares of A Ltd. Other shareholders of the company also received cash and machinery as above proportionately.

You are also given that Mr. X sells this machinery on 31/03/2020 at Rs. 100,000. The company had acquired this machinery on 01/01/2005 for Rs. 40,000.

**Answer:**

As per section 46(1), no capital gains shall arise in the hands of the company on distribution of assets to shareholders on liquidation.

Deemed dividend u/s 115-O in AY 2020 - 21 = Rs.30,000 per shareholder (150,000 x 20%)

For each shareholder, deemed dividend of Rs.30,000 is exempt u/s 10(34). The capital gains implication will be as follows :

**AY 2020 - 21**

**(a) On shares in liquidating company**

POH - 01/01/2012 to 29/06/2019		L.T
<b>Sale Proceeds</b>		
FMV of machinery	60,000	
Add: Cash Received	25,000	
Less: Deemed dividend u/s 2(22)(c)	(30,000)	

NVC / FVC		55,000
(-) ICOA → 20,000 x		
<b>LTCG</b>		
<b>(b) On Sale of machinery</b>		
POH : 02/03/2019 to 30/03/2020		ST
FVC		100,000
(-) COA		(60,000)
<b>STCG</b>		40,000

**Section 2(22)(e): LOANS AND ADVANCES BY A CLOSELY HELD COMPANY  
DEEMED AS DIVIDEND.**

- 1) Dividend includes any loan or advance given by a closely held company to a shareholder (beneficial owner) not holding less than 10% of voting power, then it shall be deemed as dividend in the hands of the shareholder.
- 2) Dividend includes any loan or advance given by a closely held company to Any concern in which such shareholder is a member or a partner and in which he has substantial interest (20%), then it is deemed as dividend in the hands of the concern.

The above dividends will be taxable to the extent the company possesses accumulated profits

**NOTES :**

- 1) The following conditions are to be satisfied on the date on which loan or advance is given to shareholder of the concern by a closely held company in order to attract Section 2(22)(e) :
  - (a) Beneficial owner of shares holding 10% or more voting power.
  - (b) Member or Partner in the concern.
- 2) Concern means HUF / Firm / Company / AOP / BOI.

- 3) A person shall be deemed to have substantial interest in a concern if he is at anytime during the PY, beneficiary entitled to not less than 20% of income of such concern.
- 4) Accumulated profits shall be considered upto the date on which loan / advance is given to shareholder / concern.
- 5) The fact that the loan was repaid will not make any difference in applicability of section 2(22)(e).
- 6) ~~Since deemed dividend u/s 2(22)(e) is taxable in the hands of shareholder, ∴ Company will deduct TDS on it u/s 194. ( Amended by Finance Act 2018)~~
- 7) For the purpose of section 2(22), Accumulated profits gets reduced by the amount of deemed dividend even if no adjustment is made in the Books of Accounts.

### Illustration :

- 1) HUF through its karta is a shareholder in a private limited company and holds 12% shares in the company. The company has accumulated profits of Rs. 10 lacs. The company gives a loan of Rs. 2 lacs to Mr. X in his individual capacity and Rs. 350,000 to HUF.  
→ Rs. 350,000 is deemed dividend u/s 2(22)(e) since HUF is the beneficial owner of 12% shares in the company and thus the said dividend is **subject to DDT u/s 115-0 on which DDT @ 34.944% shall be payable by Company.**

There will be no deemed dividend u/s 2(22)(e) in case of Mr. X since he is not the beneficial owner of the shares.

### (2) **Balance Sheet**

ESC	200,000	Cash	375,000
R & S	200,000	P & L (Dr Balance)	25,000
	<u>400,000</u>		<u>400,000</u>

The company is a closely held company and it gives loan of Rs. 3,00,000 to a shareholder who holds 13% shares in the company.

- Since the accumulated profits of the company are Rs. 1,75,000, deemed dividend will be Rs. 1,75,000.
- 3) Mr. X holds 11% shares of a private limited company. The company has accumulated profits of Rs. 10,00,000 on **01/01/2020**. Mr. X is also a partner in firm M/S XYZ in which his PSR is 25% The company gives a loan of Rs. 200,000 to M/S XYZ and also a loan of Rs. 50,000 to Mr. X on **01/01/2020**.  
→ Rs. 50,000 is deemed dividend w.r.t Mr. X and Rs. 200,000 is deemed dividend w.r.t M/S XYZ. Company will pay DDT @ 34.944% on Rs. 2,50,000/-

- 4) Will your answer change if Mr. X had sold 2% shares of the company on 31/12/2019 and then required on 2/01/2020.
- Since Mr. X is not a beneficial owner of the shares carrying not less than 10% voting power as on 01/01/2020, there will be no deemed dividend.

**As per section 2(22), dividend shall not include the following:**

- (1) Any dividend paid by a company which is set off by the company against the loan which has been deemed as dividend u/s 2(22)(e).

**Case 1:** On 01/04/2020, Co gives a loan of Rs. 1,00,000 to SH Mr. X (25%) → Deemed dividend u/s 2(22)(e) on 30/04/2020, Co. declares dividend - Mr X - Rs. 10,000 which is adjusted against the loan of Rs. 100,000.

**Ans:** Rs. 100,000 is deemed dividend u/s 2(22)(e) w.r.to Mr. X for AY 2021 - 22. The actual dividend of Rs. 10,000 which has been set off against loan shall not be considered as dividend for the company. Even though the company will pay dividend of Rs. 40,000 to all SHs, it will pay DDT on Rs. 30,000 @ \_\_\_\_\_ (Total dividend payable - Dividend set off)

**Case 2:** The Company on 01/04/2020 gives a loan of Rs. 1,00,000 to Mr. X who holds 25% shares. The company declares dividends on 30/04/2020. Dividend of Rs. 10,000 is paid to Mr. X.

**Ans:** Rs. 100,000 is deemed dividend w.r.t Mr. X for AY 2021 - 22. The actual dividend of Rs. 10,000 will not be reduced from Rs. 40,000 now and the company will pay DDT on Rs. 40,000 @ \_\_\_\_\_.

- (2) As per Section 2(22), any advance or loan made to a shareholder or a concern in the ordinary course of business where money lending is  $\frac{\text{substantial part of}}{\text{not defined}}$  the company.

**Illustration:**

A company is in the business of money lending as well as manufacturing. More than 50% of the PGBP comprises of Income from Money lending business. The company has accumulated profits of Rs. 200,000 on 01/04/2020 and it gives a loan of Rs. 100,000 to shareholder who holds 15% shares in the company. In the following cases :

- (1) At no interest.
- (2) At 4% interest whereas normally company lends to other borrowers @ 18% pa.
- (3) At 18% p.a.

**Ans:** In case (1) and (2), Rs. 100,000 will be deemed dividend u/s 2(22)(e) w.r.t Mr. X for AY 2021 - 22.

In case (3) there is no deemed dividend w.r.t Mr. X as the money is lend by the company in the ordinary course of business and money lending forms substantial part of the business of the company.

**INTERNATIONAL TAXATION**  
**TAXATION OF NON RESIDENTS & FOREIGN COMPANY**

<b>Sec 5: Scope of Total Income</b>	<b>R &amp; OR</b>	<b>R &amp; NOR</b>	<b>NR</b>
Income received OR Accrued in India	√	√	√
Income Accrued & Received outside INDIA	√	X	X
PGBP Accrued outside INDIA but controlled from INDIA	√	√	X

**RESIDENTIAL STATUS OF INDIVIDUAL:**

←	(OR)	→
Stay in India for 182 days or more during PY.		60 days in PY (+) 365 days in last 4 years.

**R & OR**

←	→
Resident in at least 2 out of last 10 PY.	Stay for 730 days or more in INDIA in last 7 PY.

**EXCEPTION: ONLY 182 DAYS CONDITION APPLICABLE :**

←	(OR)	→
Indian citizen leaves INDIA during PY		India citizen or POI origin comes on a visit to INDIA in any PY.
<b>*AS*</b>		
←	→	
Crew member of <u>OR</u> Indian Ship.	For the Purpose of Employment outside India.	

**RULE 126 FOR ABOVE EXCEPTION:**

**Individual + Citizen of India + Foreign going ship :**  
**Following period is EXCLUDED:**

<b>START</b>	<b>ENDING</b>
Period beginning from date entered in CDC	Date entered in CDC

Refer Page\_\_\_\_\_ for Illustration.



**RESIDENTIAL STATUS OF HUF**

- Resident in India if Control & Management is wholly or partly in INDIA.
- If Karta is R & OR ,then HUF is R & OR.

**RESIDENTIAL STATUS OF FIRM/AOP/BOI ETC :**

- Resident in India if Control & Management is wholly or partly in INDIA.

**SEC 6(3): RESIDENTIAL STATUS OF COMPANY**

<b>(i)</b>		<b>(ii)</b>
If it is an INDIAN Company	<b>(OR)</b>	If its POEM in that year, is in INDIA

POEM means a place + key mgmt + commercial decision + necessary for business are made.

**CBDT GUIDELINES FOR DETERMINING POEM :**

CBDT → POEM is applicable only if T/O for a PY > Rs. 50 Cr.

IF A COMPANY'S ABOI then POEM is outside INDIA

<b>(i)</b>	<b>(ii)</b>	<b>(iii)</b>	<b>(iv)</b>	<b>(v)</b>
<b>Passive Income</b> ≤ 50% of TI. <b>Passive Income means:</b> 1. Income from both P & S from / to AE . 2. Royalty, CG, Dividend, Rental & Interest. (From AE or Non AE ) For Banks Interest is not a Passive Income.	Less than 50% of Total Assets are situated in INDIA. + Take AVG at Beginning & End of PY.	Less than 50% of Employees are situated in INDIA. (OR) Resident in INDIA + AVG at Beginning & End of PY. <b>Employees will include contractual persons.</b>	Less than 50% of payroll <b>expense</b> of employees situated in INDIA <b>(OR)</b> Resident in INDIA of total payroll expenses.	Majority & BM are held <b>outside</b> INDIA provided the BOD have authority to make such decisions. If Holding Co. makes <b>common</b> policy for everyone, then it cannot be said BOD does not have power.

**COMPANIES OTHER THAN ABOI:**

<b>STAGE 1</b>	<b>STAGE 2</b>
Identify the persons who makes key management & commercial decisions.	Determination of place where decisions are made. Place where decisions are implemented are not important.

**OTHER GUIDING PRINCIPLES:****GF- 1 : LOCATION OF BOD MEETINGS :**

- Location where BOD meets & makes decision may be the POEM, provided the BOD has the power to exercise such authority.
- Formal holding of BOD meetings are not relevant.
- If BOD has delegated some key decision making power to senior management, location of such senior management will be considered as POEM.

**GF- II → BOD DELEGATING AUTHORITIES TO COMMITTEES:**

If BOD delegates one or more of major authorities to certain committees like **executive committees** etc, then POEM shall be place where :

←	→
Such members are based	Where committee develops & formulate key decisions

**GF- III : LOCATION OF HO:**

If HO i.e. place where senior mgmt & their support staff are based, is in one place & that location is held out to public as principal place of business, then POEM at such HO.

**GF- IV: RESIDENCE OF DIRECTORS :**

In today's modern world **physical presence** is not **important** due to video **conferences**, etc, Therefore, Place of Residence of director is an important factor.

**GF- V : CIRCULAR RESOLUTION / ROUND ROBIN VOTING :**

POEM will be the place where the person who has authority to pass such resolution is located.

**GF- VI : LOCATION OF STRATEGIC SHAREHOLDER :**

- Generally shareholder's location is not important.
- However, if there is a strategic shareholder whose approval is **important** for **decision** making, then POEM will be such place.

**OTHER GF:**

- If above factors do not **lead** to clear identification of POEM then:

←	→
(i)	(ii)
Place where substantial activity is carried out.	(OR) Place where <b>accounting</b> records are kept.

**CONCLUSION:**

- Ultimately POEM is determined based on facts & circumstances of every case.

→ No single principle can be **decided**, like Foreign Co is owned by INDIAN Co. or Directors residence in India or Local management is in INDIA or Liaison Office is in India etc.

### PROCEDURE TO HOLD POEM IN INDIA:

Step 1	Step 2
If AO wants to initiate proceedings to hold a Foreign Co's POEM to be in INDIA, then he should take prior approval of CIT.	After that he should hold a Foreign Co's Residence in India by taking approval from 'Collegium' i.e. group of 3 CIT.

Also Refer Sec 115JH and its Notification on Page \_ \_ \_ \_ \_

### CLARIFICATION FOR NR SEAFARER'S:

→ Salary credited in NRE A/c in INDIA is Exempt.

### WHEN IS INTEREST INCOME ACCRUED IN INDIA ?

Under section 9(1)(v), an interest is deemed to accrue or arise in India if it is payable by -

(i) the Government;

(ii) a person resident in India;

**Exception:** Where it is payable in respect of any debt incurred or money borrowed and used, for the purposes of a business or profession carried on by him outside India or for the purposes of making or earning any income from any source outside India, it will not be deemed to accrue or arise in India.

(iii) a non-resident, when it is payable in respect of any debt incurred or moneys borrowed and used, for the purpose of a business or profession carried on in India by him.

**Exception:** Interest on money borrowed by the non-resident for any purpose other than a business or profession, will not be deemed to accrue or arise in India.

**Example:** *If a non-resident 'A' borrows money from a non-resident 'B' and invests the same in shares of an Indian company, interest payable by 'A' to 'B' will not be deemed to accrue or arise in India.*

**MAKE DIAGRAM HERE:**

**WHEN IS ROYALTY INCOME ACCRUED IN INDIA ?**

Under sec **9(1)(vi)**, Royalty will be deemed to accrue or arise in India when it is payable by -

- (i) the government;
- (ii) a person who is a resident in India

**Exception:** Where it is payable for the transfer of any right or the use of any property or information or for the utilization of services for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India, or

- (iii) a non-resident only when the royalty is payable in respect of any right, property or information used or services utilised for purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India.

**MAKE DIAGRAM HERE:**

**WHEN IS FEES FOR TECHNICAL SERVICE INCOME ACCRUED IN INDIA ?**

Under sec **9(1)(vii)** , Any fees for technical services will be deemed to accrue or arise in India if they are payable by -

- (i) the Government.
- (ii) a person who is resident in India

**Exception:** Where the fees is payable in respect of technical services utilised in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India.

- (iii) a person who is a non-resident, only where the fees are payable in respect of services utilised in a business or profession carried on by the non-resident in India or where such services are utilised for the purpose of making or earning any income from any source in India.

**MAKE DIAGRAM HERE:**

**EXPLANATION TO SEC 9- INCOME DEEMED TO ACCRUE OR ARISE IN INDIA.**

- 1) As per Sec 9 income by way of interest , Royalty or fees for Technical services in case of non-residents are subject to tax in India after insertion of source rule.
- 2) Doubts were raised by industry regarding whether such income would be taxable in the hands of non-resident when they have been rendered from outside India. Further doubts were raised by industry whether to tax such income in the hands of non-resident does non-resident should have place of business in India.
- 3) The above intention of legislature was not reflected in law. Therefore in order to clarify the position Finance Act 2010 has inserted an Explanation to sec 9 which states as follows:-  
For removal of doubts it is hereby declared that the income of non-resident shall be deemed to accrue or arise in India irrespective of whether such non-resident has place of business in India. Further it is irrelevant whether the services are rendered in India or not.
- 4) Therefore now what has to be seen that whether the services are utilized in India or not, irrespective of from where it is rendered i.e. location of payer is relevant to determine the taxability.

**SEC-115A: TAXATION OF INTEREST FOR NON-RESIDENT OR FOREIGN CO.**

	115 A(1)	A(2)	A(3)	A(4)
1) Lender	NR/Foreign Company	NR/Foreign Company	NR/Foreign Company	FII'S or QFI (Approved by SEBI)
2) Borrower	Indian Concern or Govt. <b>195</b>	Infrastructure debt fund <b>194LB</b>	Indian company <b>194LC</b>	Indian company or govt. <b>194LD</b>
3) Rate of tax	20%	5%	5%	5%
4) Time Limit	N.A	N.A	Money borrowed after 30/6/12 but before 1/7/20 + Approved	Interest payable after 31/5/13 but before 30/6/20 + Approved
5) Rate of interest	To be decided between borrower & lender	To be decided by Infrastructure debt fund	Not to exceed approved rate.	Not to exceed approved rate.
6) Instrument	Loans in Foreign Currency	Loans	Loans & LT Bonds & RDB in Foreign Currency	RDB and Government Security.

**KEY POINTS :**

- 1) These special rates are applicable to only to special incomes i.e. other income will be taxable at normal rates applicable to assessee.
- 2) No deductions will be allowed under PGBP or IFOS of any expenditure or allowance. Further no deduction of UAD shall be allowed. **Further no deduction of chapter VIA is available from special incomes.** However if the assessee has other incomes then chap VI can be taken subject to other incomes. Further provisions of set off and carry forward is applicable.

**However deduction under Chapter VIA shall be available to a unit located under IFSC as mentioned in Sec 80LA. § Finance Act (No.2) 2019 3**

3)

No. ROI if :

←	→
GTI= Only Special Income	(+) TDS is deducted.

- 4) The above incomes will not be liable to MAT in respect of interest ,if it is taxable at less than 18.5%.

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:****Amendment No-1**

Interest i.r.of Rupee Denominated Bonds mentioned in Sec 194LC is exempt from tax if RDB are issued from 17<sup>th</sup> September, 2018 to 31<sup>st</sup> March, 2019. {Sec 10(4C) 3}

**Amendment No-2**

As per Sec 10(15(ix)) any income by way of interest payable to a Non Resident by a Unit in an IFSC i.r.of monies borrowed by in on or after 1<sup>st</sup> September, 2019.

**SEC 115A : TAX ON ROYALTY AND FEES FOR TECHNICAL SERVICES**

- 1) The above income received by non-resident or foreign co. from Govt. or an Indian concern will be taxable at 10%.

**No MAT on such Royalty & FTS.**

The non-resident or foreign co. must have entered into an agreement with the Govt. or Indian concern. Further the Indian concern has to take approval of by central govt.

**KEY POINTS:**

- 1) Special rates applicable to special income only mentioned above. Balance will be chargeable at normal rates (Same as interest).
- 2) No deduction under PGBP and IFOS (same as interest).
- 3) The assessee can set off and carry forward losses against the above incomes (same as interest).
- 4) ROI has to be filed even if the TDS is deducted and income includes only the above income (different from interest).

The word royalty and fees for technical services are defined in sec.9 in an inclusive manner. Therefore there requires a lot of clarification in respect of this definition and accordingly central govt. has inserted 3 Explanations to the definition Royalty u/s 9 as follows:-

**EXPLANATION 4 : [EXPL TO DEFINITION OF ROYALTY IN SEC 9]**

Doubts were raised by industry whether if a computer software is imported from abroad or got a license to use software from abroad then such payment will be treated as royalty or not and accordingly Explanation 4 clarifies that for removal of doubts it is hereby clarified that payment recd for transfer of all or any rights to use the computer including granting of a license for computer software is a Royalty and accordingly TDS has to be deducted @ 10% u/s 195 (If the rate as per DTAA is lower TDS will be on such lower rate).

**TREATMENT IN THE HANDS OF PAYER OF ROYALTY:**

Sec 40(a)(i) and 40(a)(ia) provides that deduction of any income by way of royalty paid shall be subject to deduction of tax otherwise it will be disallowed.

Finance Act 2012 by inserting explanation 4 has clarified that payment for use of computer software is a royalty and accordingly deductible u/s 37(1) and subject to sec 40(a)(i) or 40(a)(ia)

However the Income Tax Rules 1962 has included such computer software in the block of computer eligible for 60% Dep, whereas the income tax Act treated it as a royalty.

As a general principle 'Rules cannot over ride Act' therefore royalty on computer software will not be added to block and will be treated as Revenue expenditure subject to deduction of TDS.

#### **EXPLANATION 5 : [EXPL TO DEFINITION OF ROYALTY IN SEC 9]**

Indian bank make use of server of foreign bank to verify the credit card transactions swiped by card holders. For such purpose the Indian bank pays royalty to foreign bank.

Now the foreign bank argues that such royalty is NOT TAXABLE in India because of following reasons :

- 1) Possession of server is not within India
- 2) Server is not used directly by Indian Banks.
- 3) Location of server is outside India.

**To clarify the legislative intent Finance Act 2012 has inserted Explanation 5 which states that:**

Payment made to foreigners shall be treated as royalty even if the possession of server is not in India or server is not used directly by Indian bank or location of such server is outside India.

**On such payment TDS has to be deducted u/s 195.**

#### **EXPLANATION 6 : [EXPLN TO DEFINITION OF ROYALTY IN SEC 9]**

Indian TV channels use satellites of Foreign Co.'s to transmit their programs. Therefore it has been clarified that payment made to foreign Co. for transmission of program is treated as Royalty liable for TDS u/s 195.

#### **TAXABILITY OF ROYALTY AND FEES FOR TECHNICAL SERVICES IN HANDS OF FOREIGN COMPANY OR A NON-RESIDENT**

<b>Where NR or Foreign Company has a PE.</b>	<b>Where NR or Foreign Company does not have a PE</b>
--	---

**Section 44DA shall apply**

Income shall be computed under the head P/ G/ B/ P after allowing all expenses

**Section 115A shall apply**

No expenses shall be allowed in computing such income

- **No deduction shall be allowed :**
  - (i) in respect of any expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment



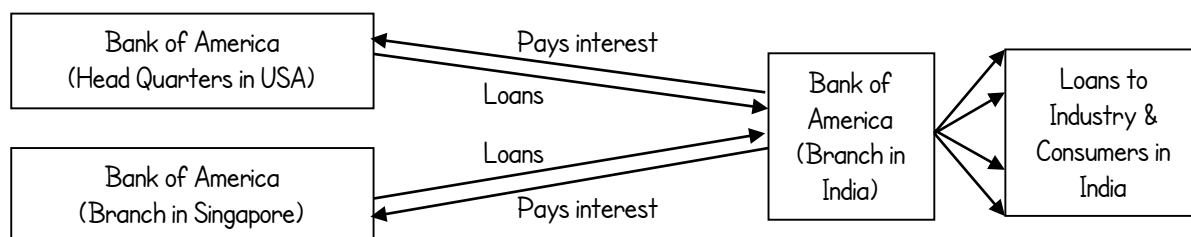
or fixed place of profession in India

(ii) in respect of any amount if any paid by the permanent establishment to its head office or to any of its other offices

**Note:** However deduction shall be allowed in respect of reimbursement of actual expenses incurred by head office or other offices provided that such expenses are incurred for the permanent establishment in India

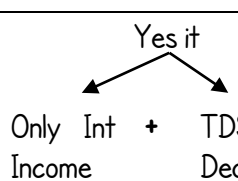
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|--|--|
| - Deduction under chapter VI-A if any shall be allowed   | - Deduction under chapter VI-A if any shall be allowed   |
| - Such income can result in a loss which shall be set off and carried forward as per Chapter-VI  | - Since expenses are not allowed, such income cannot result in a loss  |
| - Losses of other businesses in India and losses from other activities shall be set-off against the incomes referred in section 44DA subject to Chapter VI | - Losses of other businesses in India and losses from other activities shall be set off against the incomes referred in section 115A subject to Chapter VI |
| - Compulsory maintenance of books of accounts and other documents  | - No such requirement  |
| - Compulsory audit requirement and report of audit   | - No such requirement  |
| - Tax @ 40% in case of foreign companies (plus 2% or 5% surcharge) plus 4% Health & education cess Tax at normal rates in case of non-resident.            | - Tax @ 10% (plus 2% or 5% surcharge) plus 4 % Health & education cess.  |

### **EXPLANATION TO SEC 9 : FOR INDIAN BRANCHES OF FOREIGN BANKS**



- Interest payment by BOA (Indian Branch) to BOA (H.O.USA) and BOA (Singapore), although amount to payment to self, but is deductible as an expense in hands of BOA (Indian Branch) as per provisions of DTAA.
- BOA (India) shall be treated as separate PE and its income is taxable in India from banking operations in India. Interest paid to BOA (USA) and BOA (Singapore) is allowed as deduction while computing the income of BOA (India) as per DTAA.

- Several court decisions have held that this interest income is not taxable in India in hands of BOA (H.O. USA) and BOA (Singapore) as it is payment to self. DTAA do not talk about taxability of this income as per court decisions.
- Now, as per Finance Act, 2015, this interest income is taxable in hands of Non-Resident i.e., BOA (USA) and/ or BOA(Singapore), i.e., to the entity abroad to whom interest is paid. BOA(India) has to deduct TDS on such interest and failure to deduct TDS will result in:
  - o Disallowance of such interest in hands of Indian P.E. i.e., BOA India.
  - o Levy of interest and penalty for non-deduction of TDS on interest.

Particulars	Sec 115AB	Sec 115AC	Sec 115AD
1) Applicable to	Overseas Financial organization	NR or Foreign Co.	FII's
2) Applicable for	Units of UTI & MF purchased in foreign currency.	1) Bonds of Indian Co. 2) Bonds of public sector Co. 3) GDR All in foreign currency.	Securities other than 115 AB & AC purchased in any currency
3) Tax Rate & TDS	LTCG =10%  <b>Sec 196B</b>	LTCG =10% Interest = 10%  <b>Sec 196C</b>	LTCG = 10% STCG =30% Interest = 20% STCG - referred in 111A =15% LTCG - referred in 112A = 10% in excess of Rs. 1 lac. <b>Sec 196D</b>
4) 28 to 44C & 57 & Chap VI A	-	Not allowed	Not allowed
5) 1st proviso to Sec 48	Not Applicable	Not Applicable	Not Applicable
6) 2nd proviso to Sec 48	Not Applicable	Not Applicable	Not Applicable
7) set off C/G	Allowed	Allowed	Allowed
8) Exemption from ROI	No	Yes it 	No

**"Overseas Financial Organisation"** means any fund, institution, association or body, whether incorporated or not, established under the laws of a country outside India and which has entered into an arrangement for investment in India with any public sector bank or public financial institution or mutual fund. Such arrangement should be approved by the Securities and Exchange Board of India.

TAXATION OF GLOBAL DEPOSITORY RECEIPTS:

- (1) As per Sec 115AC, GDR means any instrument in the form of Depository Receipt created by overseas Bank outside India against the issue of shares of a LISTED Co in India.  
∴ we conclude 115AC does not recognize GDR representing unlisted Company.

**TAX IMPLICATIONS:****Tax Implication No-1**

As per Sec 47(via) transfer of GDR referred to in 115AC(i.e. Listed Co.) made outside India by a Non resident to another Non resident is exempt from Capital Gains. ∴ We conclude transfer of unlisted Co's GDR by a Non Resident to another Non Resident outside India is taxable.

**Tax Implication No-2**

Let us assume that 100 GDR's are issued @ Rs. 1,000 each on 15/4/2019 to Mr. A, a Non resident. Now he wishes to trade in BSE. ∴ he has get the GDR redeemed against the equity shares of Infosys Ltd.

For that purpose he made a request for redemption on 15/9/2019 for conversion into eq. shares. FMV of 1 eq sh of Infosys Ltd on that date is Rs. 2,200. Infosys Ltd allotted Mr. A 50 eq sh on 15/11/19. FMV of 1 eq sh on this date = Rs. 2,400.

As per the CBDT circular the sale consideration of such an exchange of GDR against equity shares shall be FMV of the shares on the date on which request for redemption was made . Compute CG on exchange of GDR against shares.

⇒ Sale consideration	(Rs.2200 x 50)	1,10,000	15/9/19
(-) COA	(Rs.1000 x 100)	<u>(1,00,000)</u>	15/4/19
	<b>STCG</b>	<b>10,000</b>	

**Tax Implication No-3**

Suppose later on Mr. A sold 50 eq shares @ Rs. 3000 / share on 15/12/20. Compute CG.

⇒ Sale consideration	(50 x Rs.3000)	1,50,000
(-) COA (As per Sec 49 (2ABB)	(50 x Rs.2200)	(1,10,000)
	<b>LTCG</b>	<u>40,000</u>

[15/9/18 to 14/12/19]

As per Sec 49(2ABB) the COA of the shares obtained on conversion of GDR = FMV of shares on the date on which request for redemption was made.

To determine whether the capital asset is long term or short term, period shall be considered from the date on which request for redemption was made.

**CHAPTER XII-A - SPECIAL PROVISIONS RELATING TO CERTAIN INCOMES  
OF NRI's - SECTIONS 115C-115-I ( NOT IN TEXT BOOK )**

**CHAPTER XII-A**

**Section 115C: DEFINITION**

<b>NRI</b>	: Individual + Citizen of India/Person of Indian origin + Non-Resident
<b>Specified Assets</b>	: Shares of Indian Company (Private or Public) Debentures of Public Limited Indian Company. Deposits in Public Limited Indian Company Government Securities.
<b>Foreign Exchange Assets</b>	: Specified Assets purchased in convertible foreign exchange Assets
<b>LTCG</b>	: LTCG from foreign exchange assets.
<b>II</b>	: Interest income from foreign exchange assets.

**Section 115D: METHOD OF COMPUTATION**

<b>II</b>	: Sections 28 to 44C, Section 57 and Chapter VI-A are not available
<b>LTCG</b>	: Chapter VI-A not available.
<b>First Proviso to Section 48</b>	: Available.
<b>Second Proviso to Section 48</b>	: Not Available.
<b>Other Incomes</b>	: Normal Provisions.

**Section 115E: TAX RATES**

<b>LTCG</b>	: 10%
<b>II</b>	: 20%
<b>Other Incomes</b>	Normal Tax Rates

**Section 115F: EXEMPTION & Same as Sec 54F 3**

- NRI derives LTCG
- Within Six months from the date of transfer
- Invests the net consideration in specified assets
- then

LTCG X Cost of new asset/ Net consideration

- is not taxable
- New asset should be retained for 3 years from the date of its acquisition.
- If transferred/converted into money before 3 years, then the LTCG exempted earlier taxable as LTCG in the year in which the new asset is transferred.

**Section 115G: EXEMPTION FROM CONDITION OF FILING ROI**

ROI not to be filed if:

1. Total income includes only II and/or LTCG.
2. TDS is deducted.

**Section 115H: CHAPTER TO APPLY EVEN IF NRI BECOMES RESIDENT**

- NRI Becomes Resident.
- Can file declaration with ROI of Assessment Year in which he becomes resident.
- To the effect that he wants to be governed by the provisions of this chapter.
- Chapter to apply for II from foreign exchange asset (no deduction of any expense, no deduction under Chapter VI-A and Tax Rate Flat 20%).
- Chapter to apply for subsequent Assessment Years also till the time the assets are transferred/converted into money.

**Section 115-I: CHAPTER IS OPTIONAL**



Particulars	44DA	115AB
1) Entity		
2) Payer		
3) Instrument with timing		
4) Rates		
5) 28 to 44C, 57		
6) VIA		
7) Set off		
8) Other Incomes		
9) ROI		
10) 1st Proviso to Sec 48		
11) 2nd Proviso to Sec 48		

115AC	115AD	115C-I

**SUMMARY ON SEC 10(48) / 10(48A) / 10(48B):**

<b>10(48)</b>	<b>10(48A)</b>	<b>10(48B)</b>	<b>10(48B)</b>
<b>FA 2012</b>	<b>FA 2016</b>	<b>FA 2017</b>	<b>FA 2018</b>
Received In India (+) INR (+) By Foreign Co. (+) Sale of crude oil / other notified goods or services (+) to any person in India. (+) Not engaged in any other activity in India (+) agreement with CG & there is a national interest.	Income accrued (+) By Foreign Co. (+) <b>Storage</b> of crude oil in India & sale therefrom (+) to any <b>resident</b> in India (+) agreement with CG & there is a national interest.	Income accrued (+) By Foreign Co. (+) Sale of <b>leftover</b> stock in India <b>after</b> <u>the expiry</u> of agreement	Income accrued (+) By Foreign Co. (+) Sale of <b>leftover</b> stock <b>on</b> <u>termination</u> of agreement is also exempt

**SEC 115BBA : NR SPORTSMEN/ SPORTS ASSOCIATION/ ENTERTAINER:**

<b>Where the total income of an assessee -</b>	<b>Applicable rate of tax</b>
<b>(a)</b> being a sportsman who is <b>not a citizen of India</b> and is a <b>non-resident</b> , includes any income received/ receivable by way of- <b>(i)</b> participation in India in any game (other than the games referred to in section 115BB) or sport; or <b>(ii)</b> advertisement, or <b>(iii)</b> contribution of articles relating to any game or sport in India in newspapers, magazines or journals; or	<b>20% of such income</b>
<b>(b)</b> being a non-resident sports association or institution, includes any amount guaranteed to be paid or payable to such association or institutions in relation to any game (other than the games referred to in section 115BB) or sport played in India;	<b>20% of such income</b>
<b>(c)</b> being an entertainer, who is not a citizen of India and is a non-resident, includes any income received or receivable from his performance in India	<b>20% of such income</b>



1. No deduction or Allowance shall be allowed in computing income referred to in (a), (b) and (c).
2. It shall not be necessary for the assessee to furnish return under section 139 if -
  - (i) The total income of the assessee consist of only the incomes referred to in (a), (b) and (c) above and
  - (ii) Tax at source has been deducted from such income.
3. TDS of above income for NR Payee will be deducted under sec 194E.
4. Umpires & Referees are not covered in this section, as they cannot be called as a sportsmen. However they are professional whose TDS will be deducted under sec 194J or 195 as the case may be.
5. The above incomes are taxable flat @20% without giving the benefit of Basic Exemption Limit.

**AMENDMENT MADE BY FINANCE ACT 2018:**

**Royalty/fees for Technical services by National Technical Research Organisation (NTR) to Non-Resident [Sec 10(6D)]**

Any income arising to a Non-resident/Foreign company by way of royalty from (or fees for technical services rendered in or outside India to) the National Technical Research Organisation is exempt.

**SECTION 115JG: CONVERSION OF AN INDIAN BANK BRANCH OF FOREIGN COMPANY INTO SUBSIDIARY INDIAN COMPANY**

A foreign company namely Bank of Germany is operating banking business in India through its branch. Such branch is converted into an Indian subsidiary company of Bank of Germany on **10.1.2020**.

Bank of Germany transfers all its assets of Indian branch to the Indian subsidiary company on **25.1.2020**. Now as per provisions of section 115JG, in the previous year **31.3.2019**:

- (i) No capital gains will arise to Bank of Germany when it transfers the assets of Indian branch to its Indian subsidiary Company.
- (ii) The brought forward losses and unabsorbed depreciation of branch shall be allowed to be carried forward and set-off by the Indian subsidiary company.
- (iii) MAT credit available to Bank of Germany under section 115JAA shall be allowed to be carried forward and set-off by Indian subsidiary company.

The above benefits are available if conversion of branch into Indian Company took place as per the scheme notified by the Government.

If later on, let us say in Previous Year **31.3.2022**, any of the conditions of the scheme notified are violated, then the above three benefits shall be withdrawn. Assessing Officer shall re-compute the total income of relevant Assessment Year **2021-22** and make rectification under section 154 upto **31.3.2026**.

**FOR DISCUSSION OF FUND MANAGER OF OFF SHORE FUNDS REFER  
PAGE\_\_\_\_\_**

**PRESUMPTIVE TAXATION FOR NON - RESIDENT****SEC 44B V/S SEC 172 [SHIPPING BUSINESS OF NON RESIDENT]**

- 1) As per Sec 172 it overrides the entire Income tax law and it cover amount paid or payable to Non-Resident for carriage of passengers, livestock, mail or goods shipped at any port in India.
- 2) It has been clarified by an amendment that above charges will include demurrage and handling charges.
- 3) This section is a recovery mechanism from non-resident in respect of ships leaving from India. This section is mandatory to comply.
- 4) As it overrides the entire Income Tax Act no deduction in respect of any expense or allowance, set off or carry forward or Chapter VI A shall be allowed.
- 5) The assessee is suppose to pay tax at the rate of 40% [2% or 5% surcharge if applicable plus 4% Health & Education cess]
- 6) The deemed income of the assessee under Sec 172 shall be 7.5% of the Amt paid or payable to the non-resident.
- 7) All these activities will be done in the previous year only.
- 8) In the next year i.e. in the AY the non - resident has an option to follow Sec 44B and accordingly in this sec following 2 incomes will be covered.
  - a) Amt paid or payable to non - resident in respect of carriage of passengers, livestock mail or goods shipped at any port in India. [This income is already charged in Sec 172]
  - b) The Amt received in India in respect of carriage of passengers etc. shipped at any port outside India. [This amt is not covered in Sec 172 and therefore it will be chargeable only in Sec 44B]
- 9) Since it overrides only PGBP sections. Therefore as per Sec 44B unabsorbed dep shall not be allowed but brought forward losses and chap VIA shall be Allowed.
- 10) The tax rates shall be normal rates applicable to assessee.
- 11) As per Supreme Court Judgement -  
A.S GLITRE the tax paid u/s 172 shall be considered as Advance tax and any refund of such amount shall be entitled for Interest.

SECTION 44B	SECTION 172
1. It is a charging section i.e., it deals with computation of income.	1. It is a recovery mechanism.
2. It covers the amounts paid/payable for carriage of passengers, live-stock, mail or goods <b>shipped at any port in India</b> as well as amounts received in India or deemed to be received in India for carriage of passengers,	2. It covers only the amounts paid/payable for carriage of passengers, livestock, mail or goods <b>shipped at any port in India</b> .

	livestock mail or goods <b>shipped at any port outside India.</b>	
<b>3.</b>	Normal tax rates shall apply.	<b>3.</b> Flat tax of 40% plus 2% or 5% surcharge (where total income exceeds Rs. 1 crore or 10 crores) plus 4% Health education cess.
<b>4.</b>	Over-rides sections 28 to 43A.	<b>4.</b> Over-rides the entire Income-tax Act.
<b>5.</b>	Current year and brought forward losses of other businesses can be set off.	<b>5.</b> No set off is permissible as it over-rides Chapter VI.
<b>6.</b>	Chapter VI-A deductions are available.	<b>6.</b> Chapter VI-A deductions are not available.

### **Sec 44BBA : Presumptive Income in case of operation of AIRCRAFT for Non-Resident**

The following income of non-resident shall be chargeable under the head PGBP at the rate of 5% of Amount (i.e. 5% of Revenue)

- 1) Amount paid or payable in India or outside India in respect of carriage of goods etc from any place in India.
- 2) Amount received in India in respect of carriage of goods etc from any place outside India.

The tax rates will be the normal rates applicable to assessee.

### **Sec 44BBB : Presumptive Income in case of FOREIGN CO. in respect of CIVIL CONSTRUCTION BUSINESS in a TURNKEY PROJECT**

- 1) If a Foreign Co. is engaged in a business of civil construction or business of erection of Plant & Machinery or testing or commissioning thereof as a Turnkey Project. then deemed income shall be 10% of amt paid or payable to foreign Co. in or outside India.
- 2) Erection of plant & Machinery means preparing the physical site for installing plant & machineries and fitting it in a place.
- 3) Testing or commissioning means checking whether all facilities are up to date or not.
- 4) Turnkey Project means such project constructed so that it could be sold to any payer as a completed project.
- 5) Where the assessee claims that the actual profits are lower than 10% then it can offer that by maintaining BOA as per Sec 44AA and conducting tax audit under Sec 44AB
- 6) **Can the AO change the Actual profit if it is higher than 10% of the Receipts?**

It was held by Delhi High Court -

DSD Noell GmbH that the benefit of declaring actual profits is with respect to Sec 44BBB is only with the assessee and the same cannot be invoked by the AO. This principle is applicable wherever the assessee has an option to offer Actual Profit.

**Sec 44BBB : Presumptive Income for NON-RESIDENT in respect of facilities given for EXTRACTION, EXPLORATION OF MINERAL OIL.**

- 1) If a non - resident is engaged in the business of providing services or facilities or supplying of plant & Machinery on hire for using in prospecting / extraction / production of MINERAL OIL.
- 2) Deemed Income will be 10% of the following :-
  - i) Amount paid or payable in or outside India in respect of prospecting etc. of mineral oil in India.
  - ii) Amount received in India in respect of prospecting etc of mineral oil outside India.
- 3) The assessee has an option to offer ACTUAL PROFITS by complying Sec 44AA & Sec 44BB.
- 4) The issue under consideration is whether technical services in respect of prospecting etc of mineral oil be covered under Sec 115A or Sec 44DA or Sec 44BB. The Finance Act 2010 has clarified that if the amount is FTS, then it shall be taxable as per sec 115A or 44DA irrespective of the business of the assessee. [Refer Memorandum to Finance Bill 2010. Pg \_ \_ \_ \_ \_]

**Note on Sec 44AD/44ADA/44AE/44B/44BB/44BBB/44BBA:**

In case of Sec 44AD/ADA/AE the AO can assess Income higher than Deemed Income because in those sections the wording used is " % of Turnover or such higher Income as claimed to have been earned by assessee".

However in case of Sec 44B/44BB/44BBB/44BBA the AO does not have the power increase the income beyond Deemed Incomes.

<p><b>SECTION 44C: TAXATION OF BRANCHES OF FOREIGN COMPANIES - HEAD OFFICE EXPENDITURE</b></p>
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1. The income of branches of foreign companies in India shall be computed normally as per sections 28-44D. However, the head office expenditure shall be allowed to the following extent :
  - (i) Amount equal to 5% of **ADJUSTED TOTAL INCOME; OR**
  - (ii) The amount of so much of the expenditure in the nature of head office expenditure attributable to business or profession of assessee in India

**WHICHEVER IS LESS**

**KEY NOTE:**

**ADJUSTED TOTAL INCOME** means the total income computed in accordance with the income tax act, without giving effect to:

- ✓ Brought forward depreciation;
- ✓ Brought forward losses ;
- ✓ Deductions under chapter VI-A;
- ✓ Brought forward Capital Expenditure of Family Planning expenses and;
- ✓ Actual Expenditure debited to P&L.

**SEC 9 : DISCUSSION ON INCOME ACCRUED OR DEEMED TO ACCRUED IN INDIA & NOT THERE IN TEXT BOOK 3**  
**BUSINESS CONNECTION - SEC 9(1)(i)**

**'Business connection'** shall include any business activity carried out through a person acting on behalf of the non-resident [*Explanation 2 to section 9(1)(i)*].

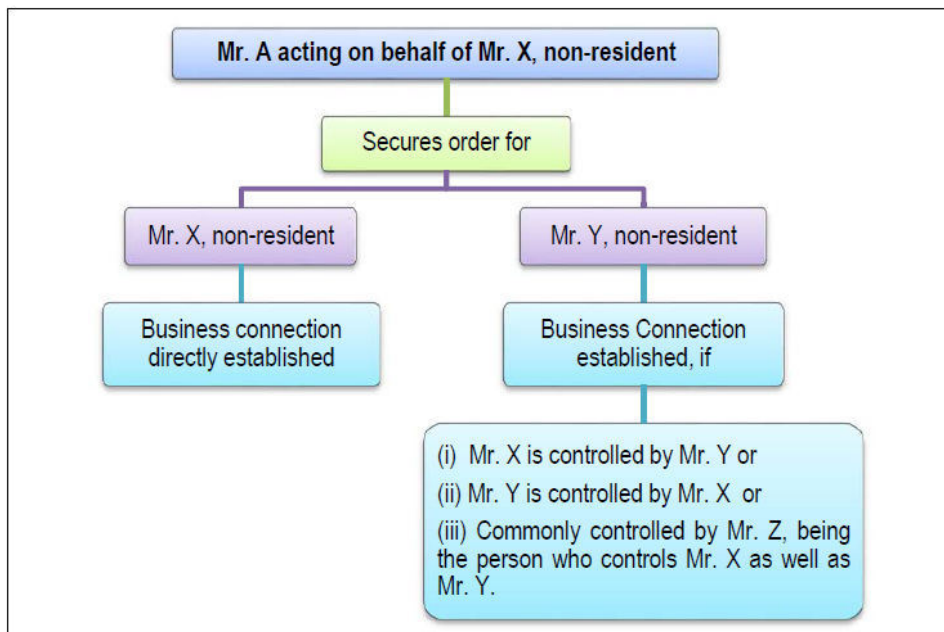
For a business connection to be established, the person acting on behalf of the non-resident-

- (a) must have an authority, which is habitually exercised in India, to conclude contracts on behalf of the non-resident or habitually concludes contracts or plays the principal role leading to conclusion of contracts by that non-resident and such contracts are
- in the name of the non-resident; or
  - for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or
  - for the provision of services by that non-resident.

**Note** - *This amendment in the definition of "business connection" is for the purpose of alignment with the provisions of the Double Taxation Avoidance Agreement (DTAA) as modified by Multilateral Instrument (MLI) so as to make the provisions in the treaty effective.*

- (b) In a case, where he has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident, or
- (c) habitually secures orders in India, mainly or wholly for the non-resident.
- Further, there may be situations when the person acting on behalf of the non-resident secure order for other non-residents. In such situation, business connection for other non-residents is established if,
- i. such other non-resident controls the non-resident or
  - ii. such other non-resident is controlled by the non-resident or
  - iii. such other non-resident is subject to same control as that of non-resident.

In all the three situations, business connection is established, where a person habitually secures orders in India, mainly or wholly for such non-residents.



**Agents having independent status are not included in Business Connection:** Business connection, however, shall not be established, where the non-resident carries on business through a broker, general commission agent or any other agent having an independent status, if such a person is acting in the ordinary course of his business.

A broker, general commission agent or any other agent shall be deemed to have an independent status where he does not work mainly or wholly for the non-resident.

He will, however, not be considered to have an independent status in the three situations explained above, where he is employed by such a non-resident.

Where a business is carried on in India through a person referred to in (a), (b) or (c) of (i) above, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India [Explanation 3 to section 9(1)(i)].

### **SIGNIFICANT ECONOMIC PRESENCE [Explanation 2A to section 9(1)(i)]**

Significant economic presence of a non-resident in India shall also constitute business connection in India.

Significant economic presence means-

	Nature of transaction	Condition
(a)	transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India,	Aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed
(b)	systematic and continuous soliciting of business activities or engaging in	The users should be of such number as may be prescribed

interaction with users in India through digital means	
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The threshold of "aggregate of payments" in (a) and "users" in India in (b) would be prescribed by Rules. Further, the above transactions or activities shall constitute significant economic presence in India, whether or not, –

- (i) the agreement for such transactions or activities is entered in India;
- (ii) the non-resident has a residence or place of business in India; **or**
- (iii) the non-resident renders services in India:

However, where a business connection is established by reason of significant economic presence in India, only so much of income as is attributable to the transactions or activities referred to in (a) or (b) above shall be deemed to accrue or arise in India.

**Note** - This provision has been inserted to take care of new business models such as digitized businesses, which do not require physical presence of itself or any agent in India. Such businesses can now be covered within the scope of section 9(1)(i).

**In the case of a non-resident the following shall not, however, be treated as business connection in India [Explanation 1 to section 9(1)(i)]:**

- (a) **In the case of a business, in respect of which all the operations are not carried out in India [Explanation 1(a) to section 9(1)(i)]:** In the case of a business of which all the operations are not carried out in India, the income of the business deemed to accrue or arise in India shall be only such part of income as is reasonably attributable to the operations carried out in India. Therefore, it follows that such part of income which cannot be reasonably attributed to the operations in India, is not deemed to accrue or arise in India.
- (b) **Purchase of goods in India for export [Explanation 1(b) to section 9(1)(i)]:** In the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.
- (c) **Collection of news and views in India for transmission out of India [Explanation 1(c) to section 9(1)(i)]:** In the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India.
- (d) **Shooting of cinematograph films in India [Explanation 1(d) to section 9(1)(i)]:** In the case of a non-resident, no income shall be deemed to accrue or arise in India

through or from operations which are confined to the shooting of any cinematograph film in India, if such non-resident is :

- an individual, who is not a citizen of India or
- a firm which does not have any partner who is a citizen of India or who is resident in India; or
- a company which does not have any shareholder who is a citizen of India or who is resident in India.

(e) **Activities confined to display of rough diamonds in SNZs [Explanation 1(e) to section 9(1)(i)]**: In case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unsorted diamonds in any special zone notified by the Central Government in the Official Gazette in this behalf.

### **Sec 9(1) : Income from Property, Asset or Source of income in India**

Any income which arises from any property in India (movable, immovable, tangible and intangible property) would be deemed to accrue or arise in India.

#### **Examples:**

- *Hire charges or rent paid outside India for the use of the machinery or buildings situated in India,*
- *deposits with an Indian company for which interest is received outside India etc.*

### **Income from salaries earned in India [Section 9(1)(ii)]**

Income, which falls under the head "Salaries", deemed to accrue or arise in India, if it is earned in India. Salary payable for service rendered in India would be treated as earned in India.

Further, any income under the head "Salaries" payable for rest period or leave period which is preceded and succeeded by services rendered in India, and forms part of the service contract of employment, shall be regarded as income earned in India.

### **Income from salaries payable by the Government for services rendered outside India [Section 9(1)(iii)].**

Income from 'Salaries' which is payable by the Government to a citizen of India for services rendered outside India would be deemed to accrue or arise in India.

However, allowances and perquisites paid outside India by the Government is exempt, by virtue of section 10(7).

**As per Sec 9(1)(iv) a Dividend paid by an Indian Company outside India is Deemed to Accrue in India.**



**TDS ON AMOUNT PAYABLE TO NON-RESIDENTS [SECTION 195]****(1) Applicability**

Any person responsible for paying interest (other than interest referred to in section 194LB or section 194LC or section 194LD) or any other sum chargeable to tax (other than salaries) to a non-corporate non-resident or to a foreign company is liable to deduct tax at source at the rates in force. Such persons are also required to furnish the information relating to payment of any sum in such form and manner as may be prescribed by the CBDT.

**Payee to be a non-resident** - In order to subject an item of income to deduction of tax under this section the payee must be a non-corporate non-resident or a foreign company.

**Payer may be a resident or non-resident** - Under section 195(1), the obligation to deduct tax at source from interest and other payments to a non-resident, which are chargeable to tax in India, is on “any person responsible for paying to a non-resident or to a foreign company”. The words “any person” used in section 195(1) is intended to include both residents and non-residents. Therefore, a non-resident person is also required to deduct tax at source before making payment to another non-resident, if the payment represents income of the payee non-resident, chargeable to tax in India. Therefore, if the income of the payee non-resident is chargeable to tax, then tax has to be deducted at source, whether the payment is made by a resident or a non-resident.

*Explanation 2* clarifies that the obligation to comply with section 195(1) and to make deduction thereunder 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 has:-

- (a) a residence or place of business or business connection in India; or
- (b) any other presence in any manner whatsoever in India.

**(2) Time of deduction**

The tax is to be deducted at source at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

Where any interest or other sum as aforesaid is credited to any account, whether called “Interest payable account” or “Suspense account” or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee.

However, in the case of interest payable by the Government or a public sector bank within the meaning of section 10(23D) or a public financial institution within the meaning of section 10(23D), deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode.

**(3) Payments subject to tax deduction**

The statutory obligation imposed under this section would apply for the purpose of deduction of tax at source from any sum being income assessable to tax (other than salary income) in the hands of the non-resident/foreign company. However, no deduction shall be made in respect of any dividends declared/distributed/paid by a domestic company, which is exempt in the hands of the shareholders under section 10(34).

Payment to a non-resident by way of royalties and payments for technical services rendered in India are common examples of sums chargeable under the provisions of the Act to which the liability for deduction of tax at source would apply.

**(4) Certificate of non-deduction of tax at source**

- (i) Any person entitled to receive any interest or other sum on which income-tax has to be deducted under section 195(1) may make an application in the prescribed form to the Assessing Officer for grant of certificate authorizing him to receive such interest or other sum without deduction of tax thereunder.
- (ii) Where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom certificate is granted make payment of such interest or other sum without deduction of tax at source under section 195(1), so long as the certificate is in force.
- (iii) Such certificate shall remain in force till the expiry of the period specified therein. However, if it is cancelled by the Assessing Officer before the expiry of such period, the certificate shall remain in force till such cancellation.
- (iv) The CBDT is empowered to make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of certificate. While doing so, it should take into account the convenience of the assessee and the interests of the revenue.
- (v) Such Rules would provide for the conditions subject to which such certificate may be granted and any other matter connected therewith.

**(5) Person responsible for paying any sum to non-resident to furnish prescribed information**

Section 195(6) provides that the person responsible for paying any sum, whether or not chargeable to tax under the provisions of the Act, 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 prescribed manner.

**(6) Specified class or classes of persons, making payment to the non-resident, to mandatorily make application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax**

- (i) Under section 195(1), any person responsible for paying to a non-corporate non-resident or to a foreign company, any interest or any other sum chargeable under the provisions of the Act (other than salary), has to deduct tax at source at the rates in force.
- (ii) Under section 195(2), where the person responsible for paying any such sum chargeable to tax under the Act (other than salary) to a non-resident, considers that the whole of such sum would not be income chargeable in the hands of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable. When the Assessing Officer so determines, the appropriate proportion, tax shall be deducted under section 195(1) only on that proportion of the sum which is so chargeable.

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:**

**Online filing of application seeking determination of tax to be deducted at source on payment to non-residents**

Under sub-section (2) of section 195 of the Act, if a person who is responsible for paying any sum to a non-resident which is chargeable to tax under the Act (other than

salary) considers that the whole of such sum would not be income chargeable in the case of the recipient, he can make an application to the Assessing Officer to determine the appropriate proportion of such sum chargeable. This provision is used by a person making payment to a non-resident to obtain certificate/order from the Assessing Officer for lower or nil withholding-tax. However, the process is currently manual. In order to use technology to streamline the process, which will not only reduce the time for processing of such applications, but shall also help tax administration in monitoring such payments, it is proposed to amend the provisions of this section to allow for prescribing the form and manner of application to the Assessing Officer and also for the manner of determination of appropriate portion of sum chargeable to tax by the Assessing Officer.

Similar amendment is also proposed to be made in sub-section (7) of section 195 which are applicable to specified class of persons or cases.

These amendments will take effect from 1st November, 2019.

(7) **Procedure for refund of TDS under section 195 to the person deducting tax in cases where tax is deducted at a higher rate prescribed in the DTAA**

- (i) The CBDT has, through *Circular No.7/2011 dated 27.9.2011*, modified Circular No.07/2007, dated 23.10.2007 which laid down the procedure for refund of tax deducted at source under section 195 of the Income-tax Act, 1961 to the person deducting tax at source from the payment to a non-resident. The said Circular allowed refund to the person making payment under section 195 in the circumstances indicated therein as the income does not accrue to the non-resident or if the income is accruing, no tax is due or tax is due at a lesser rate. The amount paid to the Government in such cases to that extent does not constitute tax.
- (ii) The said Circular, however, did not cover a situation 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. Since the law requires deduction of tax at a rate prescribed in the relevant 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.
- (iii) Accordingly, in order to remove the genuine hardship faced by the resident deductor, the CBDT has modified *Circular No. 07/2007, dated 23-10-2007* to the effect that the beneficial provisions under the said Circular allowing refund of tax deducted at source under section 195 to the person deducting tax at source shall also apply to those cases where deduction of tax at a higher rate under the relevant DTAA has been made while a lower rate is prescribed under the domestic law.

WITHHOLDING TAX PROVISIONS IN RESPECT OF PAYMENT TO TO NR's		
Section	Nature of payment	Rate of TDS
192	Salary	Normal Slab rates
192A	Premature withdrawals from EPF, aggregating to Rs 50,000 or more	10%
194B	Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort, where pay to a person > Rs.10,000	30%
194BB	Income by way of winnings from horse races, where pay to a person > Rs 10,000	30%
194E	Specified payments referred u/s 115BBA to NR sportsmen/sports association or an entertainer	20%
194G	Commission etc. on the sale of lottery tickets, where pay > Rs.15,000	5%
194LB	Payment of interest on infrastructure debt fund	5%
194LBA (2)	Distribution of any interest income, recd or receivable by a business trust (BT) from a SPV, to its unit holders.	5%
194LBA (3)	Distribution of any income received from renting or leasing or letting out any real estate asset directly owned by the BT, to its unit holders.	
194LBB	Investment fund paying income to a unit holder [other than income chargeable under PGBP which is exempted u/s 10(23FBB)].	At the rates in force
194LBC (2)	Income in respect of investment made in a securitization trust (specified in <i>Explanation</i> to section 115TCA)	
194LC	Payment of interest by an Indian Co. or BT - <ul style="list-style-type: none"> <li>- in respect of monies borrowed by an Indian Co. or BT in FC from sources outside India</li> <li>• Under a loan agrmt between 1.7.2012 and 30.6.2020 or</li> <li>• by way of issue of long-term infrastructure bonds (LTIB) between 1.7.2012 and 30.9.2014 or</li> <li>• by way of issue of long-term bonds including LTIB between 1.10.2014 and 30.6.2020 as approved by the CG</li> <li>- in respect of monies borrowed from sources outside India by way of rupee denominated bond (RDB) before 1.7.2020</li> </ul>	5
194LD	Interest payable between 1.6.2013 and 30.6.2020 to a FII or QFI on investment made in - <ul style="list-style-type: none"> <li>- RDB of an Indian Co.</li> <li>- Govt. security</li> </ul>	5
195	Payment of any other sum to a Non-corporate non resident or Foreign Co.	At the rates in force
196B	Income from units of a MF or UTI purchased in FC (including LTCG on transfer of such units) payable to an Offshore Fund	10
196C	Income by way of interest on bonds of an Indian Co. or public sector Co. sold by the Govt. and purchased by a NR in FC or dividend on GDRs referred to u/s 115AC (including LTCG on transfer of such bonds or GDRs) payable to a NR	10
196D	Income of FII from securities referred u/s 115AD(1) (not being income by way of interest u/s 194LD, dividend u/s 115-O or capital gain arising from such securities)	20
<b>Notes -</b>		
(i) In all the above cases, the rate of tax would be increased by surcharge, wherever applicable, and health and education cess @4%.		
(ii) Rates in force are specified in the Finance Act, 2019 or in the DTAA entered into u/s 90 or 90A, as the case may be.		

### DOUBLE TAX AVOIDANCE AGREEMENT

- (i) The central government may enter into an agreement with government of any country outside India or specified territory outside India for any of the following purpose :
- (a) For granting relief in respect of income which is getting tax twice.
  - (b) For exchange of information, for prevention of evasion of income Tax under this Act or for investigation purpose.
  - (c) For recovery of Income Tax under this Act.
  - (d) For promoting mutual economic relations , trade & investment.
- (ii) As per section 90(2) the provision of agreement will apply if they are beneficial to assessee. If income Tax Act is more beneficial then income Tax Act shall apply.
- (iii) Effect of DTAA is that
- (a) Income Might be Tax only in one country.
  - (b) If income is Tax in both the country, then Tax paid in one country is allowed as deduction from Tax payable in other country as per the agreement.
- (iv) If foreign company or Non-Resident receives dividend from Domestic Company and as per the relevant DTAA such Dividend is Taxable at 10% in India that DTAA shall not apply but section 10(34) shall apply which provides that dividend in exempt from Tax in India.
- (v) If assessee apply rate of DTAA then such rate shall not be increase by Surcharge and Health & Education cess.
- (vi) Earlier the Central Government was empowered to Enter into agreement only with foreign country. Many of the off-shore Center outside India are not recognized as a country but are only a small territory . Therefore the unaccounted wealth of the Indians used to be deposited in those territory and central government was not able to Exchange information with those territories as they are not empowered to enter into agreement with non-sovereign jurisdiction (i.e. small territories)
- In order to enable the government to enter into an agreement section 90 of income Tax Act was amended which now empower the central government to enter into an agreement with non-sovereign jurisdiction to be notified by the Central Government.
- For this purpose central government has issued notification 22/2010 to notify the specified territory with whom the central government can now enter into an agreement.
- (vii) In order to fasten the Exchange of information with specified territory outside India section 90A was inserted which provides that any specified association in India may enter into an agreement with any specified association in the specified territory outside India.
- \* Specified association mean any institution / association, body etc which has been notified by central government for this purpose.

(viii) The government of India has entered into DTAA with government of USA w.e.f from 1/4/1990. Section 90(3) empowers the central government to define any term used in the agreement which is neither define in Act nor in the agreement. The Central Government will do it by issuing NOTIFICATION IN OFFICAL GAZETTE. Therefore the issue under consideration is if the central government has issued a notification on 13/4/2012 then whether it will applicable from 13/4/2012 or Date of agreement (01/04/1990). This issue needs to be clarified in section 90.

Therefore an Explanation was attached to section 90 which states that definition of term given by Central Government will be applicable from Date of agreement (01/04/1990) and not from date of issue of notification (13/04/2012) (Refer Memorandum on page - \_ \_ \_ \_ \_)

(xi) Tax rate as per 115A as of the Income Tax Act on Royalty is @ 10% .

Tax rate on such Royalty is @ 5% as per DTAA between Indian and USA.

Tax rate on such royalty is @ 30% as per DTAA between India and Germany.

\* Now if a German provides know-how to India then Tax rate of @ 10% shall apply.

\* Therefore to evade Tax now this German provides know how from USA and receives the payment in USA and claims that Tax rate should be @ 5%.

As per amendment made by Finance Act 2012 the German has to provide

Tax residency certificate of USA which he cannot produce. Therefore he will pay Tax @ 10% only.

For this purpose Central Government has prescribed Rule to 21AB to explain the particulars of Tax Residency certificate (TRC)

### **RULE - 21AB : TRC (Tax Residency Certificate)**

The TRC to be obtained by the assessee, not being a resident of India shall contain the following particulars namely :-

- (i) Name of the assessee
- (ii) Status of the assessee
- (iii) Nationality in case of individual
- (iv) In case of other country or specified territory of incorporation or registration.
- (v) A unique Identification Number
- (vi) Residential status for Tax purpose
- (vii) Period of certificate
- (viii) Address of the applicant

This certificate will be duly verified by Government or specified territory outside India.

(a) An assessee being a resident in India shall make an application in form 10FA to obtain this certificate.

- (b) The assessing officer on receipt of application and being satisfied shall issue a certificate in form 10 FB.

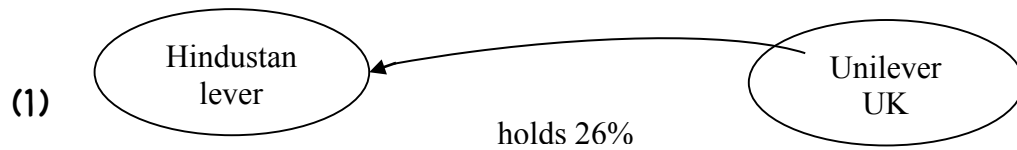
**SECTION - 91 - UNILATERAL RELIEF**  
**REFER ILLUSTRATIONS.**

**TRANSFER PRICING**

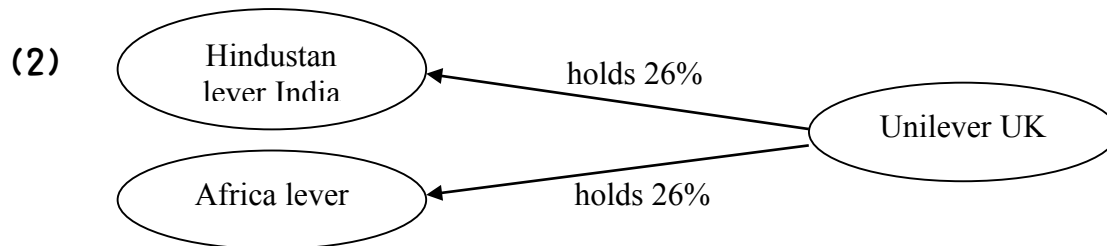
**Section 92 : COMPUTATION OF INCOME IN CASE OF INTERNATIONAL TRANSACTION**

- (i) As per section 92(1) any income arising from international transaction shall be computed based on arms length price. In common parlance arm's length price means genuine and correct market price. In respect of Income Tax it is determined as per sec 92C.  
For Eg: An enterprise in India sells goods and/or provide services to an associated enterprises in USA for Rs. 1,00,000 whereas arms length price is Rs. 3,00,000  
Income of Indian Enterprise shall be determine Considering ALP of Rs. 3,00,000.
- (ii) The Explanation to Section 92(1) clarify that it is not only the sale price which shall be determine as per ALP but even the allowance for any interest or Expenses arising from international taxation shall be determined as per ALP.  
For Example:- An Enterprise in India purchased a goods from an Associated enterprises from UK for Rs. 2,00,000. Whereas the arms length price (ALP) is Rs. 70,000.  
The income of Indian enterprise shall be determine with respect to ALP of Rs. 70,000.  
Similarly an enterprise in India takes a loan from Associate enterprise in UK at 24% p.a. whereas the market rate of interest is 11%. Then in such case the allowance of interest to Indian enterprise shall be on basis of ALP interest of 11%.
- (iii) Section 92(2) provides that if an international Transaction provides that 2 or more enterprises entered into an agreement for allocation of cost or Expenses in connection with services provided then such allocation of cost or Expenses shall be on the basis of arm's length prices of service provided.  
For Eg: An Associated Enterprises in UK Make research and development on New SOAP. It incurs R&D Expenses of Rs. 30 lakhs and Rs. 20 lakh is allocated to Indian enterprises. Now It will be determined whether Indian Enterprise is deriving proportionate benefit to this R&D Expenditure allocated. The allowance of Rs. 20 lakhs Cost contributed to Indian Enterprises shall be on the basis of Arm's length prices of service rendered.
- (iv) The provision of TP as per section 92(3) shall not be applicable where computation of income or any Expenses or interest or any cost or Expenses allocated or Re-apportioned has the effect of reducing the income chargeable to Tax or increasing the loss of the assessee to which TP is applied.

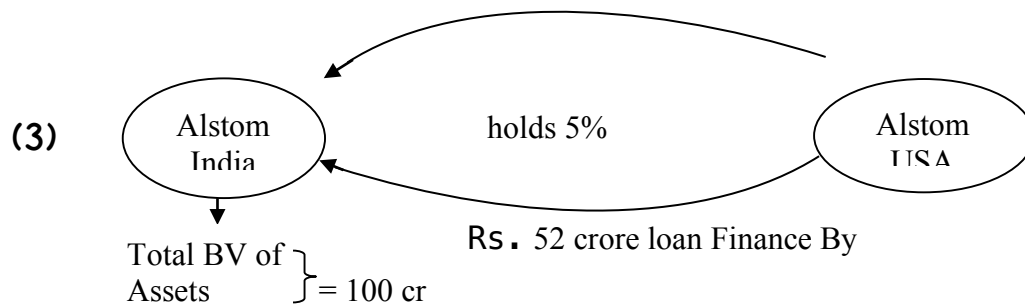
**SECTION 92A: MEANING OF ASSOCIATED ENTERPRISES**



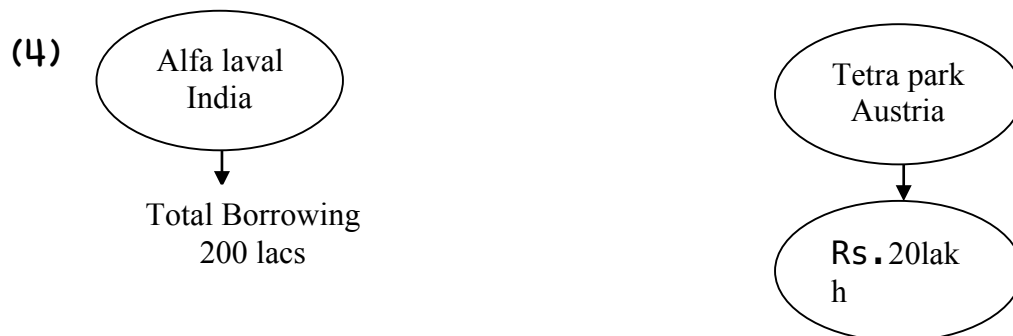
2 Enterprise shall be deemed to be Associated Enterprise if at any time during the previous year one enterprise hold share carrying not less than 26% of the voting power in another Enterprises. Therefore Hindustan lever and Unilever UK are associated Enterprises.



Now Hindustan lever and Africa lever are also associated enterprise. Further Unilever UK and Hindustan lever are also associated enterprise.



If a loan is advanced by one Enterprise to Another constituting not less than 51% of the Book value of Total asset of an Enterprise then Both are associated Enterprise In current case Alstom USA and Alstom India are Associated enterprises.



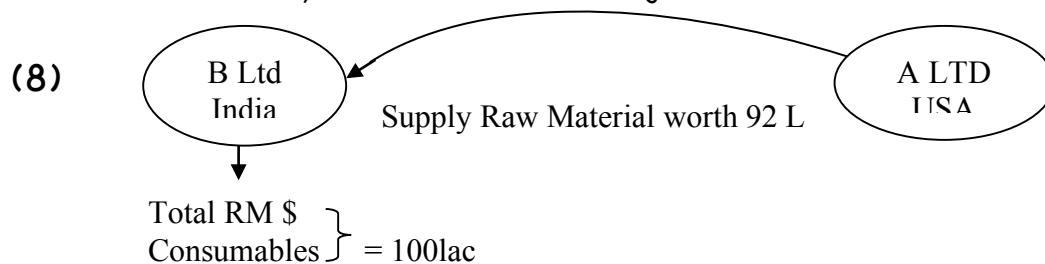
Tetro park Austria does not hold any share in Alfa laval India but has guaranteed borrowing of 10% of total Borrowing of Alfa laval India LTD. Both Companies are Associated enterprises.



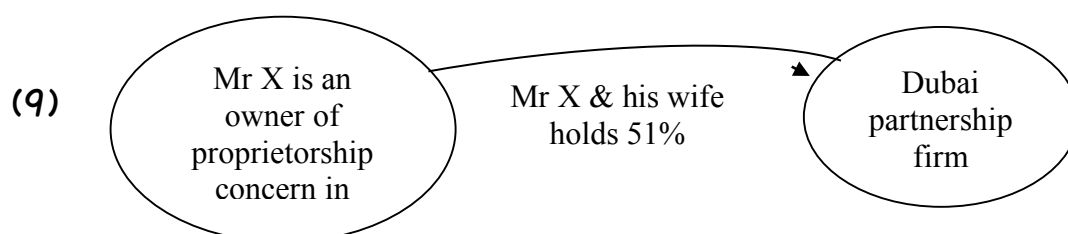
- (5) A LTD and B LTD will be Associated Enterprise if A LTD :
- (i) Appoints 7 out of 12 Director of B LTD i.e. more than half  
(OR)
  - (ii) Appoint one Executive director  
(OR)
  - (iii) One Executive member in the governing body (As per the guidance NOTE issued by ICAI the term governing body would refer to that note accordingly)  
Therefore, Appointment of Even one person to the post of executive director or member would make the Enterprises as a associated enterprises
- (6) Unilever USA appoints
- (i) 6 out 10 director in Lipton India & 5 out of 9 director in Brook bond UK.
  - (ii) An Executive director / EM in Lipton India and an Executive director/ EM in Brook bond UK.
  - (iii) An Executive director / EM in Lipton India and 5/9 director in Brook bond UK.
  - (iv) 6 out of 10 director in Lipton India and an Executive director / EM in Brook bond UK.

In all the above cases Lipton India and Brook bond UK are associated enterprise  
[EM = Executive Member]

- (7) Telco Manufacture Mercedes Car in India using the know - how of Mercedes Germany. Mercedes Car cannot be manufacture in India without the know - how from Telco. Telco and Mercedes Germany are associated enterprises as one Entity is wholly dependent on the use of know - how, Patents, Copyright, Trademark, Licenses or Franchises or any business or commercial rights of Similar Nature.



Two enterprises shall be said to be associated enterprise if 90% of raw material and consumables required for Manufacturing or processing of goods or article carried out by one enterprise is supplied by other Enterprise (applicable only / or Manufacturer not Trader)



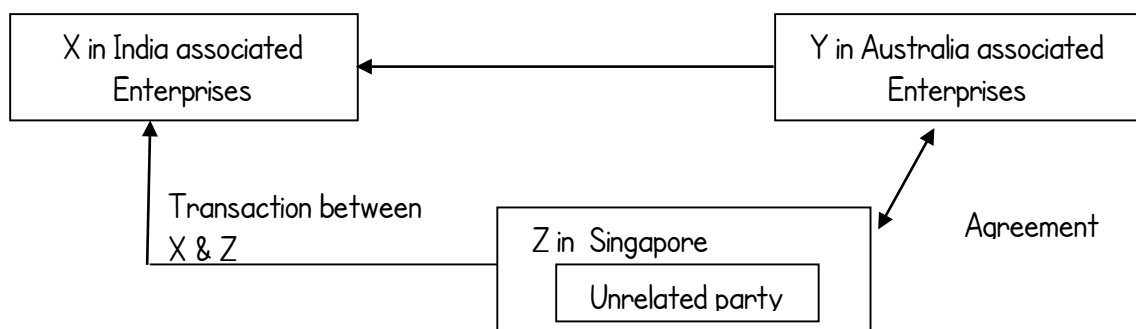
Where one enterprise is controlled by an individual the other is also controlled by such individual or his Relatives or Jointly by Such individual and relative of such individual.

- (10) M/s XYZ HUF is carrying on business in India. The member of HUF or relatives of member form a company outside India .Now M/s XYZ HUF and company outside India are Associated enterprises.

### SECTION 92B : INTERNATIONAL TRANSACTION

- (i) International Transaction means a transaction between two or more associated enterprises one of the two enterprises should be Non-resident. Both can also be non-resident but in this case the income should be accrued in India. Therefore at least one party has to be Non-resident to call transaction as International Transaction.
- (ii) The transaction should be in Nature of purchase, sale, lease, Transfer or use of tangible or intangible property. The transaction should be in Nature of provision of service.
- (iii) The transaction should be in Nature of Capital financing including any type of Borrowing, lending, guarantee etc.
- (iv) The transaction could be in the nature of business restructuring or reorganization between associated Enterprises.

### DEEMED INTERNATIONAL TRANSACTION - SECTION 92B(2)



According to section 92B(2) a transaction between X and Z shall be deemed to transaction between associated enterprises if in relation to the transaction there exist a prior agreement between Z (Singapore) and Y (Australia) in relation to that transaction or terms of the relevant transaction are determine between Z and y.

Further Finance Act 2014 clarify that for the purpose of this section such other enterprise i.e. Z may be Resident or Non-resident.

### SECTION 92C: COMPUTATION OF ARM'S LENGTH PRICE

- (i) As per Section 92C the Arm's length price (ALP) in relation to international transaction or specified domestic transaction shall be determined by the most appropriate prescribed method considering the nature of transaction or class of transaction or class of

associated person or function perform by such persons or such other relevant factors. Following are the prescribed method.

- (i) Comparable uncontrolled price method
- (ii) Resale price Method
- (iii) Cost plus method
- (iv) Profit split method
- (v) Transactional Net Margin Method
- (vi) Any such other Method may be prescribed.

- (ii) Now Assuming that a Assessee being a Hindustan lever arms length price of Royalty is Rs. 100 lakh as per assessee. Now during the course of Assessment the AO on basis of Material, information or documents in this possession is of the opinion
- (a) That the price charged or paid in an IT International Transaction or SDT I has not been determined as per this section.
  - (b) Any information or document related to IT or SDT have Not been kept according to section 92D.
  - (c) The information or data used in computation of ALP is not reliable or correct.
  - (d) The assessee has failed to reply within specified time any information or document as required under 92D.

In any of the above cases the AO may proceed to determine the arm's length price after giving a reasonable opportunity of being heard to assessee.

- (iii) Hindustan lever and Unilever are associated enterprises as per 92A and they have entered in to a International Transaction in respect to Royalty of Rs. 100 lakh.
- (iv) Now sec 92C empowers the AO to determine the Taxable income of Hindustan lever \_ by Exercising power given in sub-section (3) and if AO determine ALP Rs. 40L then the income of in Hindustan lever will be recomputed as 360L after disallowing a royalty of Rs. 60L.
- (v) Since it is concept of misreporting of income the AO shall impose a penalty.
- (vi) As per first proviso to 92C(4) deduction under 10AA or chapter VIA shall not increase by 60 lakh i.e. it shall remain as 300 L only.
- (vii) As per second proviso to Section 92C(4). Unilever USA cannot claim that its income should be 40 lakh instead of 100 lakh and cannot claim refund of Rs. 6 lakh.

METHODS OF COMPUTATION OF ARMS LENGTH PRICE- 92C & ITS RULES(1) COMPARABLE UNCONTROLLED PRICE METHODStep - 1

Determine the price charged or paid with respect to comparable uncontrolled transaction.

Step - 2

Price at step - 1 is adjusted with respect to functional differences between international transaction and uncontrolled transaction.

Step - 3

Such adjusted price is Arm's length price.

The transaction of Hindustan lever with Unilever and Tata are comparable subject to following 3 differences

- (i) Sale to Unilever is at FOB whereas sale to TATA is at CIF. Freight and Insurance amounts to Rs. 550 / unit
- (ii) The sale in TATA is backed by free warranty of 6 month whereas no such warranty is given to Unilever. The Estimation cost of warranty amounts to Rs. 250 / unit.
- (iii) Since Unilever places a larger order Hindustan lever has offered a quantity discount of Rs. 20/unit to Unilever.

Step - 1

Sale price to TATA		3000
<b>Less : Step - 2 - Difference to be adjusted for</b>		
- Freight and insurance	550	
- Warranty	250	
- Trade Discount	<u>20</u>	<u>820</u>
Arm's length price for unilever		<u>2180</u>

Price charged to unilever 10000 x 2000	=	20000000
Arm's length price for 10000 unit x 2180	=	21800000
Increased income of Hindustan lever		1800000

(2)

RESALE PRICE METHODStep - 1

Find out the price at which goods and services are obtained from associated Enterprises and are resold to unrelated Enterprises.

Step - 2

Such resale price is reduced by normal gross profit in respect of unrelated transaction

Step - 3

Then reduce the purchase related expenses

Step - 4

Add or less functional difference between international transaction and uncontrolled transaction

Step - 5

The adjusted price arrive at step 4 is an arm's length price

The Transaction between this Enterprises is subject to following functional difference

- (i) Tetra park Austria gives discount of 10/unit to Alfa laval ltd. whereas such discount is not received from ultimate industry.
- (ii) Alfa laval ltd has to incur purchase related expenses with respect to freight and custom duty

Step - 1

Resale price of goods purchased from Tetra pek

Resale price from tetra pek	3000

<b>Step - 2</b>	
Less: Normal GP margin 12%	360
Less: purchases related expenses (freight and custom duty)	35
Less: Quantity Discount allowed by Tetra pek	10
Arm's length price	2595
- price paid to Tetra pek Austria (1000 unit x 2900)	29L
- Arm's length price (1000 unit x 2595)	2595000
↑ increase income of Alfa LTD	305000

(3)

**PROFIT SPLIT METHOD****Step - 1**

Determine the combine Net profit of the Associated Enterprises (AE).

**Step - 2**

Determine the relative contribution Made by each AE in earning such combined Net profit (This ratio is evaluated on the basis of functions performed, asset employed, risk assume and reliable external data by unrelated enterprises. This ratio will be provided in the question.)

**Step - 3**

The combine Net profit as given in Step - 1 is then split among AE in the relative contribution ratio as given in step - 2.

**Step - 4**

The profit thus apportioned shall be taken into Account to determine the Arm's length price.

<b>Step - 1</b>	\$
Combined Net profit	\$ 10000
<b>Step - 2 &amp; Step - 3</b>	

Evaluation of relative contribution	
Amco India (50%)	5000
ZMC Singapore (20%)	2000
Crest USA (30%)	3000
<b>Step - 4</b>	
Total cost of Amco India	9500
Amco India Arm's length price =	<b>14500</b>
Actual revenue	\$ 12000
↑ increase Revenue	<b>2500</b>

(4)

COST PLUS METHOD

The transaction of Beta with Alto LTD and C LTD are comparable subject to following differences.

(i) While Beta derive technology support from Alto there is no such support from C LTD.

The value of Technology support received from alto may be put around 20% of GP (Normal).

(ii) As Alto give business in large volume Beta LTD offer Alto LTD a quantity Discount which may be valued at 10% of Normal GP (Gross profit).

Step - 1

Find out direct or indirect cost of production with respect to A.E (Associated Enterprise)

Step - 2

Determine the normal gross profit Mark-up which will arise in respect of unrelated transaction

Step - 3

The normal GP arise at Step - 2 should be adjusted on account of functional Difference between international transaction and uncontrolled transaction

**Step - 4**

The cost (COP) arrive at Step - 1 Should be increase by GP arrive in Step - 3 and the resulting number will be Arm's length price

**Step - 1**

Total cost	1,75,000
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**Step - 2**

GP with respect to C LTD	(50%)
--------------------------	-------

**Step - 3**

Less : Functional difference

- Technological Support from A ltd

(20% of 50%)	10%
--------------	-----

- Quantity Discount to Alto

(10% of 50%)	5%
--------------	----

Arm' length GP Mark up

35%
-----

Arm's length income

2,36,250
----------

(175000+ 35%)

Actual income

2,00,000
----------

↑ increase income

36,250
--------

(5)

**TRANSACTIONAL NET MARGIN METHOD**

Procter & gamble India's Net profit is higher by 2% since it sales are to European country only, where 2% higher margin on sales is there.

**Step - 1**

Determine the NP margin w.r.t. to AE.

**Step - 2**

Determine the NP margin w.r.t. to unrelated transaction.



**Step - 3**

Add / less functional differences between IT (international Transaction) and uncontrolled Transaction

**Step - 4**

Such NP margin as arrive at Step-3 Shall be taken into Account to arrive at Arm's length price.

**Solution:**

Now the adjusted Net profit is 23% when it is applied to sales to Hindustan lever it comes to 2300 cr. Addition of 1300 crore shall be made to the income of Hindustan lever.

**SECTION 92CA : REFERENCE TO T.P.O**

- (i) If AO considers necessary then he may refer computation of ALP to the transfer pricing officer. (T.P.O) in respect of international transaction (I.T.) or specified Domestic Transaction before doing so AO shall take the previous approval of CIT.
- (ii) After the reference is made the T.P.O shall serve a notice to assessee to produce Evidences. The TPO itself shall gathers material for computation of ALP.
- (iii) Where any other International Transaction comes to the notice of TPO which was not referred him earlier, can also be considered while computing the ALP.
- (iv) Where in respect of International Transaction assessee has not furnish report u/s 92E and such transaction comes notice of TPO then he shall considered that transaction also.
- (v) On the Basis of material gathered by TPO and Evidence be produced by assessee the TPO shall compute the ALP. This is done by passing the ORDER in WRITING. The copy of the order shall be sent to AO and assessee. The order of TPO is binding on A.O.
- (vi) The TPO shall pass the order 60 days prior to last date on which period of completion of assessment is given under 153 or 153B  
153 speaks about time limit of completion of Regular assessment u/s 143(3), 144, and 147, 153B speaks about time limit of completion of search and seizure assessment. In case of Transfer pricing all the time limit are extended by 12 month if the matter is referred to TPO.

**AMENDMENT MADE BY FINANCE ACT 2016**

The amended provision provide that where an assessment proceeding are put on stay (hold) by any court or asked for information from foreign authorities then the time available to TPO shall be at least 60 days after the stay (hold) is vacated (release).

- (vii) The TPO can rectify the mistake apparent from record in respect of the order subject to the provision of section 154.
- (viii) After the rectification under 154 the TPO shall send the copy of order to AO to rectify the order of assessment accordingly.

- (ix) The transfer pricing officer can Exercise the power to issue summon or may call for information u/s 133(6) from assessee or may conduct survey.

### **SECTION 92CB: SAFE HARBOUR RULE**

- (i) This section empowers CBDT to make safe harbour rule i.e. CBDT shall provide the circumstances under which assessee shall be exempt from transfer pricing provision. In Exercise of the power the CBDT has notify certain business who are expected to declare minimum percentage of profit. In case of such assessee who declare minimum percentage of profit transfer pricing provision shall not apply.

#### **CIRCUMSTANCE NO. 1**

##### **Provision of Software Development Services & Provision of IT Enabled Services :**

The operating margin (OP) declared w.r.t operating expenses (OE) incurred is:

<b>Where value of International Transaction entered is</b>	<b>Not less than prescribed % (i.e OP/OC )</b>
upto Rs. 100 cr	17%
> Rs. 100 cr but Upto Rs. 200 cr	18%

#### **CIRCUMSTANCE NO. 2**

##### **Provision of knowledge process outsourcing services (KPO)**

The value of IT does not exceed Rs. 200 cr & the operating profit (OP) margin declared w.r.t operating exp. is:

<b>Employee Cost w.r.t operating Expenses</b>	<b>(i.e OP/OC ) Not less than</b>
Less than 40%	18%
40% or more but less than 60%	21%
60% or more	24%

#### **CIRCUMSTANCE NO. 3**

##### **Provision of Contract R & D services wholly or partly relating to Software development & provision of contract R & D services wholly or partly relating to Generic Pharmaceutical Drugs**

The OP margin (OP/OC) declared by the eligible assessee from eligible IT w.r.t operating expense incurred is not less than 24%, where the value of International Transaction does not exceed Rs. 200 crores.

#### **CIRCUMSTANCE NO. 4**

##### **MANUFACTURE & EXPORT OF CORE AUTO COMPONENTS**

The OP margin (OP/OC) declared by the eligible assessee from eligible IT w.r.t operating expense is not less than 12%.

**CIRCUMSTANCE NO. 5****Manufacture & export of non-core auto components**

The OP margin (OP/OC) declared by the eligible assessee from eligible IT w.r.t operating expense is not less than 8.5%.

**CIRCUMSTANCE NO. 6****Advancing Intra group loans**

<b>Where loan is denominated in INR</b>	<b>Where loan is denominated in FC</b>
<ul style="list-style-type: none"> <li>The Interest rate declared is not less than one year MCLR of SBI as on 1<sup>st</sup> day of RPY</li> </ul>	<ul style="list-style-type: none"> <li>The interest rate declared is not less than 6 months LIBOR as on 30/09 of RPY</li> </ul>
<b>PLUS FOLLOWING RATES</b>	<b>PLUS FOLLOWING RATES</b>
<b>% CRISIL RATING OF AE</b>	<b>% CRISIL RATING OF AE</b>
1.75 Between AAA to A	1.5 Between AAA to A
3.25 BBB -, BBB, BBB+	3 BBB -, BBB, BBB+
4.75 BB to B	4.5 BB to B
6.25 C to D	6.0 C to D
4.25 Where no Credit rating is available & Aggregate Loan to AE ≤ Rs. 100 Cr	4 Where no Credit rating is available & Aggregate Loan to AE ≤ Rs. 100 Cr

**Q. What is the meaning of Intra group Loan ?**

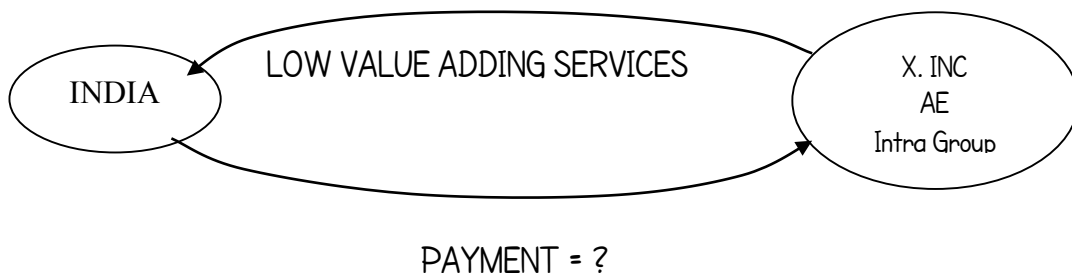
**Ans.** It means loan advanced to wholly owned subsidiary being a Non Resident.

**CIRCUMSTANCE NO. 7****Providing Corporate Guarantee**

Where the amount guaranteed does not exceed Rs. 100 cr	Where the amount exceeds Rs. 100 cr & the credit rating of AE is done by an agency registered with SEBI & is of Adequate Highest Safety
Commission / fee in respect to Guarantee is not less than 1% of Guaranteed Amount	

**Q. What does Corporate Guarantee mean?**

**Ans.** It means a Guarantee extended to a wholly owned subsidiary, being a Non Resident.

**CIRCUMSTANCE NO. 8****Receipt of Low value adding Intra group services**

The value of International transaction should not exceed Rs.10 cr. Further, the mark up should not exceed 5% of the cost.

**SECTION 92D : INFORMATION AND DOCUMENTS**

- (i) A person entering into International transaction(IT) or specified domestic transaction (SDT) shall keep and maintain such information and document as may be prescribed.

Prescribed information and document are not required to be maintained in a case where the aggregate value as recorded in the books of account does not exceed Rs. 1 crore.

**Note:** However the above limit is only for Keeping and maintaining the Information and Documents for the purpose of Transfer Pricing. For applicability of Transfer Pricing there is no monetary Limit . Therefore the assessee has to justify that ALP is computed as per 92C and its rules whether or not he maintains the below mentioned Information and Documents. For that purpose he need to have some documentation to prove it.

- **Following are the documents which are prescribed by the CBDT ( RULE 10D)**
  - (i) Profile of multinational group which assessee belongs to.
  - (ii) Ownership structure i.e. shareholding pattern.
  - (iii) Brief description of the Business of the assessee and it A.E.
  - (iv) Nature and terms of international transaction.
  - (v) Financial Estimates made by assessee. Eg. budget, forecast etc.
  - (vi) Nature and terms of uncontrolled transaction.
  - (vii) Analysis of comparison between international transaction and uncontrolled transaction
  - (viii) Computation of ALP (Arm's length price) i.e. Actual working, method adopted, reason for adopting most appropriate method and adjustment made.
  - (ix) Official publication of government to know about standard GP margin etc.
  - (x) Published accounts i.e. BOA etc
  - (xi) Price publication if listed
  - (xii) Agreement and contract of international transaction and uncontrolled transaction.

- (ii) prescribed information and document are required to kept and maintain for a period of 8 year from the end of relevant assessment year.
- (iii) The AO on the CIT(A) may require any person who has entered IT or SDT to furnish any information or document within period of 30 days from the date of issue of notice. The assessee can make an application for extension and it may be further extended by another 30 days.

(iv) **AMENDMENT MADE BY FINANCE ACT 2016**

- (i) A person being a constituent Entity of an international group shall also keep or maintain such information or document in respect of international group as may be prescribed.

A constituent entity means an entity which forms part of consolidated financial statement for the purpose of financial reporting.

- (ii) Where AO or CIT (A) calls for any information or documents then a constituent entity shall furnish prescribed information and document on or before the date to be prescribed

**SECTION 92E: REPORT FROM CA**

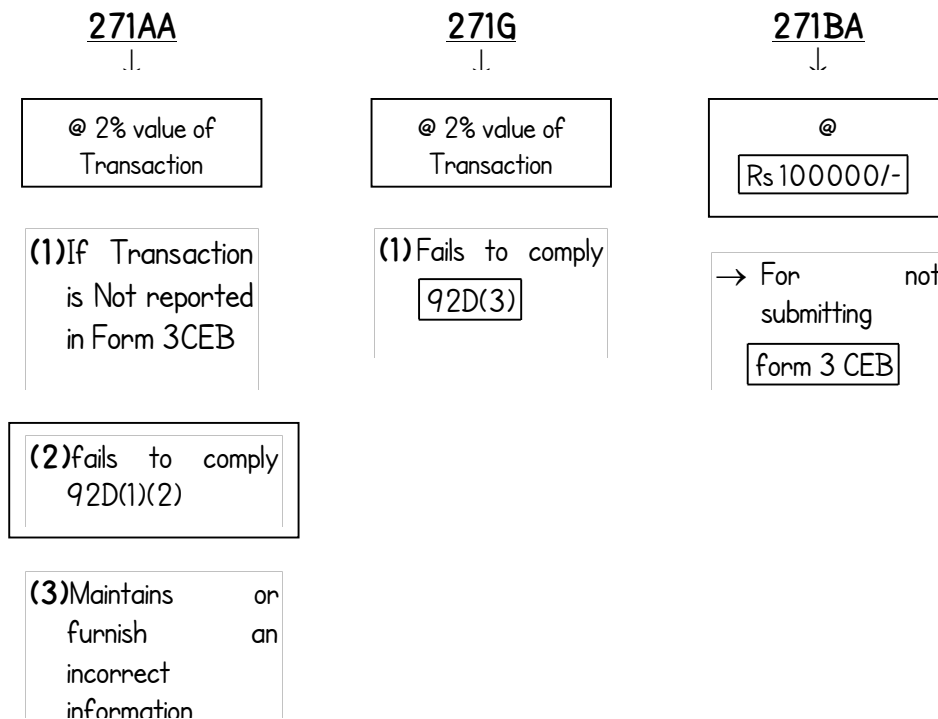
- (i) Any assessee entered into IT or SDT (specified Domestic Transaction) during the previous year shall obtain a report from chartered accountant in form 3CEB on or before the due date of filing of return. This is the report of all the international transaction with associated enterprise & SDT during the year.

Failure to submit this report shall attract penalty under section 271BA of Rs. 1,00,000/-.

Even if this report is submitted the assessee will be liable to penalty u/s 271AA if some transaction are not reported i.e. Not reported in FORM - 3CEB i.e. 2% of value of unreported transaction

If the above report is not submitted. Both the following penalty will be imposed.

- (i) penalty u/s 271BA of Rs. 100000.
- (ii) penalty u/s 271AA @ 2% of value of all international transaction i.e. unreported transaction because if reported is not submitted then obviously all transaction remain unreported.

PENALTY UNDER TRANSFER PRICING FOR IT & SDT :Note on Penalty u/s Sec 270A:

If an assessee has not reported International Transactions, then it shall be considered as MISREPORTING of Income as per Sec 270A(9). Therefore assessee shall be liable for Penalty u/s 270A @ 200% of Tax Payable on Under Reported Income ( Refer Book 2 ). This penalty will be over and above Penalty u/s 271AA, 271G & 271BA.

SECTION 92CC & SECTION 92CD

- (i) Suppose an assessee Hindustan lever makes an application to CBDT for entering into advance pricing agreement on 10/07/2015 for determining the arm's length price of Royalty payable to Unilever UK. The application has been made to determine ALP for the previous year for 31/03/15 to 31/03/19.
  - Such agreement must be approved by Central Government and it cannot be entered for more than 5 consecutive previous years as specified in the agreement.
- (ii) It may be noted that APA (Advance pricing agreement) cannot be entered for Specified Domestic Transaction.
- (iii) Suppose the CBDT signs the agreement on 01/09/2016 for 5 aforesaid years deciding the manner in which ALP has to be determined.
- (iv) Now section 92C gets overruled and AO cannot determine ALP as he is bound by APA for 5 previous years.
- (v) Now section 92CA gets overruled and AO cannot refer the case to TPO under 92CA to determine ALP. He has to determine ALP as per APA for 5 consecutive years.

- (vi) The APA shall be binding on the assessee, CIT and AO. Therefore the assessee shall follow APA and there is no question of filing appeal to CIT (A). CIT also cannot revise under action 263. Even AO cannot re-open the case later on under 147.
- (vii) **RETURN IS FILED BUT ASSESSMENT NOT STARTED**  
Suppose for the previous year 31/03/15 the assessee filed return on 30/11/2015 which is not as per APA. Now the assessee shall file the modified return within 3 month from the end of the month in which APA was entered i.e. on or before 31/12/2016.
- (viii) **RETURN FILED AND ASSESSMENT COMPLETED ( Finance Act (No.2) 2019)**  
Suppose for the previous year 31/03/15 the assessment u/s 143(3) was completed on 31/11/2016 without applying APA. The AO shall assess the income again under 143(3) for PY 31/03/16 in accordance with APA.  
Let say modified return filed on 31/12/2016, the AO shall **PASS AN ORDER MODIFYING THE TOTAL INCOME** within one year from the end of financial year in which modified return was filed i.e. 31/03/2018.
- (ix) **RETURN IS FILED AND ASSESSMENT IS PENDING**  
If the assessee has filed modified return on 31/12/2016 and the assessment u/s 143(3) is pending on that day, then the assessing officer shall complete the assessment u/s 143(3) as per APA & the period of assessment for AY 15-16 shall be increased by 12 month over and above 153.  
Under 153(1) the time limit for completion of assessment under 143(3) is within 12 month from the end of relevant A.Y. The period of assessment for AY 15-16 shall be increased from 31/03/17 to 31/03/18.
- (x) The Advance pricing agreement shall not be binding if there is change in law or facts of agreement.
- (xi) Suppose CBDT find that APA is obtain by fraud or misrepresentation of facts then CBDT can declare the APA as void ab-initio. Let say CBDT declare APA to be void on 31/08/17 then all the provision of this act will apply as if APA was never entered into and the time period under this Act shall increased from 01/09/2016 to 31/08/2017 i.e. 1 year.
- (xii) Therefore time limit of issue of notice under 149(1) shall increase by one year and time limit for assessment shall also increase by one year.

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:**

In cases where assessment or reassessment has already been completed and modified return of income has been filed by the tax payer under sub-section (1) of said section, the AO shall **pass an order modifying** the total income of the relevant assessment

year determined in such assessment or reassessment, having regard to and in accordance with the APA.

**Amendment made by Finance Act, 2017 :**

**Section 94B : LIMITATION ON INTEREST DEDUCTIBLE**

**Q1. What is the applicability of this section i.e. the nature of borrower ?**

**Ans:** The borrower should be either an Indian company or a permanent establishment of a foreign company.

**Q2. What borrower has to do under this section?**

**Ans:** The borrower should raise debt from Associated Enterprises and it should incur interest on it.

**DEEMED DEBT:**

- (i) If a borrower has raised a loan from non-associated enterprise then also this section will be applicable **if the guarantee is provided by associated enterprise.**
- (ii) If a borrower has raised a loan from non-associated enterprise then also this section will be applicable **if the associated enterprise has deposited a matching amount** in the account of such non associated lender.

Above 2 points will be deemed to be debt.

**Q3. What is the quantum of payment of interest to apply section 94B ?**

**Ans:** The amount of interest should exceed Rs. 1 crore in a previous year. Further the interest should be deductible under PGBP.

**Q4. Is there any exception to the borrowers?**

**Ans:** This section is not applicable to a borrower engaged in the business of banking and insurance.

**Q5. How much interest will be disallowed?**

**Ans: Lower of the two will be disallowed :**

- (1) Interest in excess of 30% of EBITDA of borrower in the previous year (this talks about total interest payment made by the company and not only to associated enterprise)
- OR
- (2) Interest paid / payable to associated enterprise for that previous year.



Two views possible for point (1) :

**Q6. What will happen with interest which got disallowed in section 94B?**

**Ans:** It shall be carried forward to the subsequent AYs for 8 years and it shall be allowed as a deduction in subsequent years, subject to the limit specified in section 94B.

**AMENDMENT MADE BY FINANCE ACT 2017.**

**Section 92CE - Secondary Adjustment in certain International Transaction.**

**( Applicable from A.Y. 2018-2019 )**

**1) To make a secondary adjustment, primary adjustment has to be made first.**

Primary Adjustment may arise in the following situations :

- (i) Where adjustment is made by assessee suo motu.
- (ii) Where adjustment is made by AO/ Appellate Authority & accepted by Assessee.
- (iii) Where adjustment is made by an Advance pricing Agreement **on or after 1<sup>st</sup> April 2017 ( Finance Act (No.2) 2019 )**
- (iv) Where adjustment is made due to safe harbour Rules.
- (v) Where adjustment is made due to DTAA.

only if primary adjustment is made, secondary adjustment is possible.

**2) When secondary Adjustment is not applicable ?**

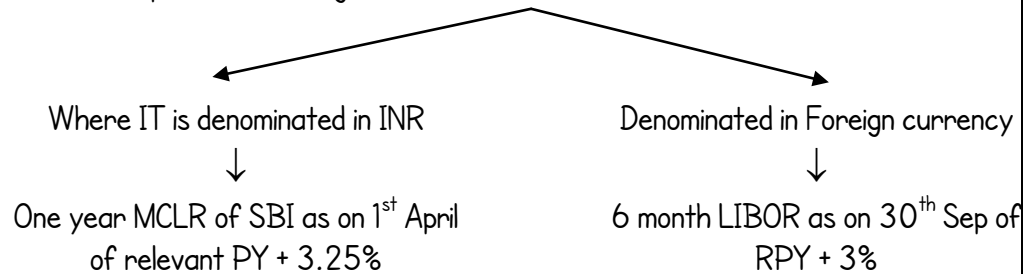
- i) In case the amount of primary adjustment made in a previous year does not exceed Rs. 1 crore **or**
- ii) Primary Adjustment is made in respect of AY 2016 - 17 or earlier years.

**Note:**

- 1. If a primary adj is made in PY 15-16 or earlier years, then secondary adj. will never be done even if the amount is not repatriated to India.
- 2. If a primary adj. is made in PY 16-17, & if the amt. is not repatriated to India within 90 days, then secondary adjustment will be made in PY 17-18.

**RULE 10CB(1) / (2) & ILLUSTRATION :**

As per Rule 10CB(1), the amount should be repatriated to India within 90 days from due date of filing of ROI w.r.t (i), (iii), (iv), & (v) **given in point 1 above** and w.r.t. point no. (ii), the amount should be repatriated to India within 90 days from the date of order of AO/appellate Authority. In case the amount is not repatriated within 90 days, the interest will be calculated as per the following rates:

**Illustration:**

A Ltd. & X Inc( USA ) are Associated Enterprise. During **FY 18-19**, A Ltd. exported goods of Rs. 100 crores to X Inc. The ALP is Rs. 110 crores. Rs. 10 cr primary adjustment is made by assessee on **30<sup>th</sup> Nov, 2019** while filing ROI.

Now, this amount should be repatriated to India within 90 days i.e. till **28/02/2020**, in order to avoid secondary adjustment. Assumed, it has not been repatriated to India within 90 days, & SBI's MCLR is 8%, ∴ interest will be computed as follows:

**29/2/20 to 31/3/20** ∴ 10 cr x 11.25% x 32/366.

The above Interest Income shall be chargeable to tax in the **PY 2019-20**.

**Illustrations**

- 1) Suppose X Ltd, an Indian company renders services to Y Inc (USA), an Associated enterprise. During PY 2017 - 18 X Ltd charges 8% profit on cost however, the AO determines the ALP to be 11%. Suppose excess 3% amounts to Rs. 11.5 crore. This addition of Rs. 11.5 crore is called as primary Adjustment. In this entire transaction, Y Inc is benefited with cash of Rs. 11.5 crores. Provisions of sec 92CE targets such cash benefit and it is deemed to be a loan given by X to Y. Therefore till the time such amount is not repatriated to Indian entity there will be a secondary adjustment in the hands of X Ltd (India). That secondary adjustment will be in the nature of Interest on Deemed loan of Rs. 11.5 crores.
- 2) A Ltd, an Indian Company gets a loan of US \$ 50 lakh from B Ltd, its overseas entity. A Ltd is required to pay interest @ 8%. However, TPO finds that the interest is excessive to the extent of 3.5% This 3.5% amounts to approximately Rs. 1.14 crores. This amount is a primary adjustment. The secondary adjustment will be also made on Rs. 1.14 crores till the time the amount is repatriated in India. This transaction took place in PY. 2017 - 18.

In the PY 2018 - 19 again a primary adjustment of 3.5% which amounts to 1.05 crores is made. Now interest on deemed loan will be calculated on Rs. 2.19 crores till the time such amount is not repatriated in India.

In PY 2019 - 20 again a primary adjustment of 3.5% is made which amounts to Rs. 97 lakhs. In this year no secondary adjustment will be made on Rs. 97 lakhs as primary adjustment does not exceed Rs. 1 crore. However, secondary adjustment on the amount is not repatriated to the Indian entity will be made.

### AMENDMENT MADE BY FINANCE ACT(NO.2) 2019

### SECTION 144C : DISPUTE RESOLUTION PANEL

- **MEANING**

Dispute resolution panel is collegium (group) of 3 CIT. As per this section AO shall complete the regular assessment, Income Escaping assessment with the help of 3 CIT. This means it will be quality assessment and there are less chances of appeal.

- **ELIGIBLE ASSESSEE**

Following assessee are eligible for dispute resolution panel:

- (i) A foreign company.
- (ii) Any other assessee in whose case variation arises due to order of TPO and such variation are prejudicial to such assessee.

### PROCEDURE

- (i) The AO shall forward the copy of draft order to the assessee
- (ii) within 30 days from the date of receipt of draft order, the assessee shall.

- (i) file its acceptance to AO
- (ii) file its objection to AO and DRP
- (iii) If the assessee file his acceptance then AO shall pass the final order within one month from the end of the month from which assessee acceptance is received by the AO (Ignore 153 & 153B as it override those section).
- (iv) If the assessee files his objection then the AO shall wait for direction of DRP.
- (v) The DRP shall issue direction within 9 month from the end of the month in which the draft order is forwarded to the assessee.
- (vi) After receiving the direction of DRP the AO shall pass the final order within 1 month from the end of the month in which direction are received by AO.
- (vii) The DRP shall issue the direction after considering the Draft order, objection filed by assessee, evidence furnished by assessee, report of AO or valuation officer or TPO, records relating to Draft order, Evidence collected by DRP.
- (viii) Before issuing the direction DRP shall provide an opportunity of being heard to assessee and AO.
- (ix) The direction of DRP is binding on AO.
- (x) If member of DRP is differ in opinion on any point, the point shall be decided according to opinion of majority of the member.
- (xi) Appeal against the order of such AO shall be file to ITAT.

### **SECTION 92BA: SPECIFIED DOMESTIC TRANSACTION**

- (i) Where the aggregate of following transaction exceed Rs. 20 crore then provision of Transfer pricing shall be applied.
  - Transaction referred in 80 IA, 80 IB, 80 IAB, 80 IAC, 80 ID, and 80 IE  
AND
  - Transaction referred in 10AA AND
  - Any other transaction as may be prescribed
- (ii) Suppose an assessee filed the return as under PGBP

From eligible business	1000 cr
From Non eligible business	250 cr
Gross Total Income	1250 cr
Less: Deduction u/s 80-IB (100% of 1000 cr)	(1000 cr)
Total Income	250 crore

The assessee has made sales of Rs. 2000 crore to Non Eligible business. AO himself or by referring to TPO determine the ALP of say of 1400 crore .The assessee has overstated the profit of eligible business by 600 crore.

The AO shall compute the Total income as under

<b><u>PGBP</u></b>	
From eligible business	1000 cr
From Non Eligible business	<u>250 cr</u>
GTI	1250 crore
Less: Deduction u/s 80 - IB (100% of 400 cr)	(400 crore)
Total income	850 crore

- (iii) The AO shall determine the Arm's length price as per 92C and its Rules. He can use any of the Six method. Further allowance of Expenses, interest shall be as per Arm's length price.
- (iv) The AO can refer case to TPO as per 92CA after prior approval of commissioner to determine ALP. However additional two power given in 92CA is not available to TPO with respect to specified domestic Transaction (SDT)
- 1<sup>st</sup> power → To raise Mater other than referred.
  - 2<sup>nd</sup> power → To raise matter which are not reported in form 3CEB
- (v) The assessee will be required to maintain prescribed information and document as per 92D.
- (vi) The assessee has to furnish the report from CA, where in CA certify that transaction has taken place on Arm's length price.
- (vii) Any under reported or misreported income will be subject to penalty u/s 270A.
- (viii) Further other penalty is 271BA, 271AA, and 271G shall be levied.
- (ix) The benefit of Advance Pricing Agreement is not available.
- (x) The chapter of TP (Transfer pricing) shall not apply to domestic transaction as well if income get reduced or losses get increased.
- (xi) **Provision of sec 92CE & 94B are not applicable for SDT.**

**FOR DISCUSSION ON COUNTRY BY COUNTRY REPORTING & SEC 286 3 REFER TEXT BOOK PAGE - \_ \_ \_ \_ \_**

<b>SECTION 94A: SPECIAL MEASURES IN RESPECT OF TRANSACTIONS WITH PERSONS LOCATED IN NOTIFIED JURISDICTIONAL AREA</b>
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### 1. PRE CONDITIONS FOR APPLICABILITY

The Section is applicable only if the following pre-conditions are fulfilled:

- (a) There is a country or territory outside India with whom India does not have effective exchange of information on taxation matters.

- (b) Such country/area is specified by notification in the Official Gazette as a Notified Jurisdictional Area (NJA), having regard to the lack of effective exchange of information with such country or territory.
- (c) An assessee enters in to a transaction where one of the parties to the transaction is a person located in an NJA.

2. **'Person located in a notified jurisdictional area' shall include, -**

- (a) a person who is resident of the NJA;
- (b) a person, not being an individual, which is established in the NJA; or
- (c) a permanent establishment of a person not falling in clause (a) or clause (b), in the NJA;

3. **CONSEQUENCES**

If the aforesaid pre-conditions are fulfilled:

- (a) All the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A.
- (b) The transaction shall be deemed to be an international transaction within the meaning of section 92B.
- (c) The provisions of transfer pricing [except the condition of variation of 3%], shall apply to such transaction and accordingly, the income or expenditure, as the case may be, shall be computed having regards to the Arm's Length Price.
- (d) **DEDUCTION OF INTEREST:** Any payment made to any financial institution located in an NJA shall be allowed as a deduction only if the assessee furnishes an authorization, in the prescribed form, authorising the CBDT or any other income - tax authority acting on its behalf, to seek relevant information from the said financial institution. Also such interest should be allowed on the basis of Arm's Length Price.
- (e) **DEDUCTION OF EXPENSES & DEPRECIATION:** No deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in an NJA shall be allowed unless the assessee maintains such other documents and furnishes the information may be prescribed. The deduction shall be allowed on the basis of Arm's Length Price.
- (f) **RECEIPT-** If the assessee has received or credited any sum from any person located in an NJA, and the assessee does not offer any explanation about the source of such receipt/ credit or the explanation offered by him is not satisfactory, in the opinion of the Assessing Officer, then such sum shall be deemed to be the income of the assessee for that previous year.

#### 4. Notifications of countries With Whom India has a Double Taxation Avoidance Agreement (DTAA).

The question that arises is whether a country with whom India has a DTAA can be notified under section 94A. A comprehensive DTAA would have an 'Exchange of Information' Article putting an obligation on the competent authorities of both the countries to exchange information. In view of this, on a literal reading, a DTAA country could also be notified, if there is lack of effective exchange of information.

#### 5. INCOME

Section 94A(4) provides that if an assessee has received or credited any sum from any person located in an NJA, assessee shall offer explanation about the source of the said sum in the hands of such person or in the hands of the beneficial owner (if that person is not the beneficial person of the owned sum).

If the assessee does not offer any explanation or the explanation offered by him is not satisfactory, in the opinion of the Assessing Officer, then such sum shall be deemed to be the income of the assessee for that previous year.

#### 6. CAPITAL RECEIPT

The section applies to any sum including share capital, loans, deposits, distribution by a trust to a beneficiary, etc. It would apply to sums which are otherwise capital receipts.

#### 7. TDS

Section 94A(5) provides that any payment made to a person located in the NJA shall be liable to deduction of tax at the higher of -

- i. the rate or rates in force; or
- ii. the rates specified in the relevant provisions of the Act; or
- iii. 30%

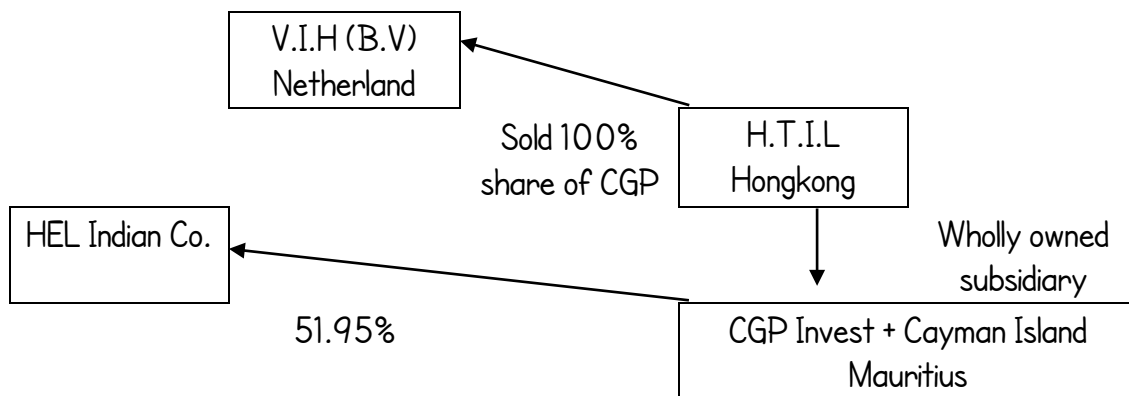
However, it may be noted that the recipient would be entitled to offer such income to tax at a lower rate. To illustrate, although a payment of royalty or fees for technical services to a person located in NJA (with whom India does not have a DTAA) will be subject to TDS at the aforesaid rates, the recipient will be liable to tax at the rates specified in section 115A.

**Clarification on removal of Cyprus from the list of notified jurisdictional area under section 94A of the Income-tax Act, 1961 - [Circular No. 15/2017, dated 21-04-2017]**

Cyprus was specified as a "notified jurisdictional area" (NJA) under section 94A of the Income-tax Act, 1961 vide Notification No. 86/2013 dated 01.11.2013. The said Notification No. 86/2013 was subsequently rescinded vide Notification No. 114 dated 14.12.2016 and Notification No. 119 dated 16.12.2016 with effect from the date of issue of the notification.

The CBDT has, vide this Circular, clarified that Notification No. 86/2013 has been rescinded with effect from the date of issue of the said notification, thereby, removing Cyprus as a notified jurisdictional area with retrospective effect from 01.11.2013.

### VODAFONE CASE LAW



- 1) Vodafone International Holding acquired 100% shares of CGP Investments from H.T.I.L with a view to acquire controlling interest in an Indian Co. HEL.  
The agreement of sale of shares of CGP took place outside India.
- 2) The issue under consideration was whether the shares sold by H.T.I.L to Vodafone would attract capital Gains in the hands of H.T.I.L and subsequently is Vodafone suppose to deduct TDS on the same u/s 195.
- 3) The Income tax dept issued a show cause notice u/s 201 to Vodafone asking for the cause 'Why it should not be treated as ASSESSEE - in - DEFAULT' for not deducting TDS.
- 4) As against this Vodafone filed a WRIT PETITION in Bombay High Court.  
And the Bombay HC held that :
  - Transfer of shares of CGP by HTIL to Vodafone is amounting to transfer of controlling Interest of an Indian Co. HEL in Favour of Vodafone.  
The Bombay High court further held that the dominant purpose was not sale of shares of CGP but was to transfer controlling interest of an Indian Co. and to make Vodafone eligible to enjoy rights of Managment or control of an Indian Co.
- 5) Therefore, Bombay HC dismissed the petition and the court rejected the argument of Vodafone that it only transferred the shares of CGP Mauritius and no Capital Gain shall arise.
- 6) Thereafter Vodafone filed a "REVIEW PETITION" in Supreme court and SC reversed the Bombay HC decision and it held that Assessing officer in India has no jurisdiction to tax transactions which took place outside India and what was transferred was shares of a foreign Co. namely CGP and not the Indian Business.



Therefore with the intention of overriding the SC Judgement and affirming the Bombay HC Judgement, Finance Act 2012 has made retrospective amendment in the following sections.

**1) CAPITAL ASSET u/s 2(14)**

An explanation is inserted to clarify the term 'property' used in this def and it clarifies that property includes rights in an Indian Co. including rights of mgmt. or control or any other right whatever.

eg: In the instant case, the Hongkong Co. has transferred to Vodafone a capital Asset in India being right in Indian Co. including right of mgmt. and control.

**2) TRANSFER u/s 2(47)**

An explanation is attached to Sec 2(47) to clarify that the Hongkong Co. had made a transfer to Vodafone of rights in Indian Co. by transferring shares of Mauritius Co. i.e. it is disposed or part away with right of in Indian Co. + created Interest of Vodafone in an Indian Co. not by direct means but by an Indirect means i.e. by transfer of shares of CGP + By entering into an agreement + and such transfer of right took place by transfer of a share of foreign Co. (incorporated outside India)

**3) Amendment in Sec 9 - Income deemed to Accrue or Arise in India.**

All Income arising directly or indirectly through the transfer of a capital asset located in India shall be deemed to accrue or arise in India.

An Explanation was inserted by Finance Act, 2012 i.e. Explanation 5 to Sec 9 which provides that income shall be deemed to accrue or arise in India in the hands of HTIL Hongkong if the shares of CGP i.e. Company registered outside India, if the shares of CGP derive its value substantially from the business of Indian Co. located in India. Therefore in the instant case CG shall be chargeable in the hands of HTIL on the transfer of shares to CGP to Vodafone as the value of shares of CGP derived its value from an Indian Co's. Assets [For the purpose of knowing the meaning of the term derive its solve substantially refer Explanation 6 inserted by FA, 2015]

**CBDT CIRCULAR 04/2015**

Questions were raised by taxpayers whether Explanation 5 which speaks about income accrued in India is applicable in ALL CASES or only when shares of a foreign Co. is transferred which derive its value substantially from assets located in India.

It is clarified that the deeming fiction of Explanation 5 inserted by FA, 2012 is only applicable when shares of a foreign Co. are transferred whose value is derived substantially from assets located in India. This deeming fiction cannot be stretched beyond the purpose for which it is drafted.

Therefore if CGP declares 'DIVIDENDS' of say Rs. 100 Cr then such dividend received by HTIL Hongkong shall not be deemed to accrue or arise in India.

### Reasons for Amendment made by FA 2015.

The expert committee under the chairmanship of 'Parthasarathi Shome' has recommended that :-

- 1) He observed that the existing EXP 5 are so WIDELY WORDED that even if a single share of CGP is transferred that would be deemed to accrue or arise in India. Therefore, he recommended that transfer of a small shareholding in a foreign Co. should not be subject to undue hardship as it does not result in transfer of controlling interest in the Indian Assets. With a view to give benefits to very small shareholder Finance Act 2015 inserted Explanation 7(a) to Sec 9. Therefore Exp 7(a) if in CGP 95% share. Holding is of HTIL and balance 5% is held by Mr A or Mr B at the rate of 3% and 2% respectively.

Now if Mr A or Mr. B transfers the shares of CGP on 1/1/2016 then also such transfer will be EXEMPT even though shares of CGP derive its value substantially from assets located in India if :

- i) Mr A or Mr B do not have right of control or mgmt. at any time in the 12M preceding the date of transfer i.e. from 1/1/2015 - 31/12/2015
- ii) Their voting power does not exceed 5% at any time during the last 12 months.

### A new Explanation 7(b) to Sec 9

In the instant example if CGP does not have invested entirely in Indian Co. but substantially in Indian Co. and same portion in some other country the Exp 7(b) provides that when shares will be transferred by HTIL to any foreign Co then it will be subject to cap Gain for an a proportionate basis.

**Eg:**

	CGP B/S		
Share Cap	10000 Cr.	Invest in HEL (Ind Co.)	7000 Cr.
		Invest in Dubai Co.	3000 Cr.

Suppose in the instant case HTIL might have acquired the shares of CGP at Rs. 10000 Cr. i.e. at Face value. Now if it transfers the shares to another foreign Co. for Rs. 60000 Cr. Cap Gains would have been Rs. 50000 Cr.

But since all the assets are not located in India Exp 7(b) gives a proportionate mechanism.

$$\begin{aligned} \text{Now Cap Gain} &= \text{Rs. } 50000 \text{ Cr} \times \frac{7000 \text{ Cr}}{10000 \text{ Cr}} \\ &= \text{Rs. } 35000 \text{ Cr.} \end{aligned}$$

### Recommendation 2

The share committee has further recommended that law must clarify as to when it can be said that the share derive its value substantially from assets located in India.

For this purpose Explanation 6 was inserted in Sec 9.

The term 'share or interest will derive its value SUBSTANTIALLY from assets located in India' means if the following 2 conditions are simultaneously fulfilled :

- 1) The Value of such asset exceeds Rs. 10 Cr
- AND**
- 2) The Value of such asset represent 50% of value of all asset owned by the Co.

### **Recommendation 3**

The existing provision provide NO TAX EXEMPTION in case of restructuring of foreign Co. i.e. amalgamation etc. [Although such benefit is available to Indian Co v/s 47]

If a foreign amalgamating Co. transfer shares of Indian Co. to foreign amalgamated Co. then such capital Gain are EXEMPT by virtue of Sec 47(via) subject to some conditions.

However the same benefit is not available if shares are transferred by foreign amalgamating co. in the scheme of amalgamation to foreign amalgamated Co. u/s 47 (via)

Therefore, Finance Act 2015 has inserted Sec 47 (viab) which provides that if shares of CGP is transferred by HTIL to another foreign Co. say Hutchman Japan in the scheme of amalgamation then such capital Gain is EXEMPT if :

- 1) 25% of shareholders of HTIL continue to remain shareholders of Hutchman Japan
- 2) Such transfer does not attract Capital Gain in Hongkong i.e. the country in which Amalgamating Co is Amalgamated.

### **REPORTING OBLIGATION ON INDIAN ENTITY & ITS PENALTY.**

1. FA 2015 has inserted a new Sec. 285A whereby, an Indian entity has to report info relating to foreign transactions having impact directly or indirectly on the Ownership structure of an Indian entity.
2. In case of failure, penalty shall be imposed u/s 271GA as follows:
  - a) A sum equal to 2% of value of transaction in respect of which, such failure has taken place and such transactions had the impact of changing the management or control of an Indian entity.
  - b) In any other case, a sum of Rs.5,00,000 shall be imposed.

**MEASURES TO PREVENT GENERATION &  
CIRCULATION OF UNACCOUNTED MONEY**

**SECTION 56(2)(x): INCOME FROM OTHER SOURCES**

- Where **ANY PERSON** receives,
- in any previous year **ON OR AFTER 1<sup>ST</sup> APRIL 2017**,
- **from any person** or persons

Asset Gifted	Mode	Taxability
<b>Money</b>	Without Consideration	If aggregate value of money exceeds Rs.50,000, the whole of the aggregate value of such money.
<b>Immovable Property</b> being Land or Building ( Finance Act 2018 See Below )	Without Consideration	Stamp duty value of property if it exceeds Rs. 50,000.
	With Consideration (If stamp duty value exceeds the purchase price by more than Rs. 50,000)	Value of Gift = Stamp Duty Value - Purchase Price
<b>Property</b> being - Shares & Securities - Jewellery - Archaeological Collections - Drawings - Paintings - Sculptures - Any work of Art; or - Bullion	With Consideration (If the Fair Market value of such property exceeds the purchase price by more than Rs. 50,000)	Value of Gift = Fair Market Value - Purchase Price
	Without Consideration	Fair Market Value of such property if it exceeds Rs. 50,000.

- shall be taxable as income from other sources.

**AMENDMENT MADE BY FINANCE ACT 2018:**

**Amendment to Section 56(2)(x)**

**Amendment no-1**

Section 56(2)(x), inter alia, provides the following -

1. A person receives an immovable property from any person.
2. Stamp duty value is more than consideration.
3. Difference between consideration and stamp duty value is more than Rs. 50,000.

If these conditions are satisfied, the difference between consideration and stamp duty value is taxable as income in the hands of recipient under section 56(2)(x) under the head "Income from other sources".

**Amendments** - The above provisions have been amended as follows -

- Section 56(2)(x) applicable only if stamp duty value exceeds 105 per cent of consideration - From the assessment year 2019-20, section 56(2)(x) will be applicable if the following conditions are satisfied -
  1. A person receives an immovable property from any person.
  2. Stamp duty value exceeds 105 per cent of consideration.
  3. Difference between consideration and stamp duty value is more than Rs. 50,000.

#### **Amendment no-2**

From the assessment year 2019-20, the difference between stamp duty value and consideration is taxable under the head "Income from other sources" only if the above conditions are satisfied.

- Section 56(2)(x) not applicable in transactions between holding and 100 per cent subsidiary companies -Fourth proviso to section 56(2)(x) has been amended with effect from the assessment year 2018-19. After this amendment, section 56(2)(x) will not be applicable if a capital asset is received by a holding company from its 100 per cent subsidiary company (and vice versa) provided the transferee-company is an Indian company.

#### **Illustration:**

**E1** X acquires a commercial flat from Y on June 16, 2019. Cost of acquisition and stamp duty value are as follows -

	Case 1 Rs.	Case 2 Rs.	Case 3 Rs.	Case 4 Rs.	Case 5 Rs.
Consideration	8,00,000	8,00,000	8,00,000	12,00,000	12,00,000
Stamp duty value	8,39,000	8,46,000	8,70,000	12,59,000	12,80,000

**Discuss the tax consequences in the hands of X and Y.**

		Case 1 Rs.	Case 2 Rs.	Case 3 Rs.	Case 4 Rs.	Case 5 Rs.
Consideration	(a)	8,00,000	8,00,000	8,00,000	12,00,000	12,00,000
105% of (a)	(b)	8,40,000	8,40,000	8,40,000	12,60,000	12,60,000
Stamp duty value	(c)	8,39,000	8,46,000	8,70,000	12,59,000	12,80,000
Relevant conditions to attract section 56(2)(x) -						
- Whether (c) is more than (b)		No	Yes	Yes	No	Yes
- Whether the excess of (c) over (a) is more than Rs. 50,000		No	No	Yes	Yes	Yes
Amount taxable in the hands of X under section 56(2)(x) [applicable only if the above two conditions are satisfied]		Nil	Nil	70,000	Nil	80,000

simultaneously, taxable amount will be (c)-(a)]						
Section 50C - Full value of consideration for calculating capital gains in the hands of Y		8,00,000	8,46,000	8,70,000	12,00,000	12,80,000

### **SECTION 49(4): COST OF ACQUISITION**

Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under section 56(2)(x), the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the section 56(2)(x).

**It would, however, not include any receipt of money or property:**

- from any relative; or
- on the occasion of the marriage of the individual from anyone; or
- under a will or by way of inheritance; or
- in contemplation of death of the payer; or
- from any local authority as defined in section 10(20); or
- from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in section 10(23C); or
- from any trust or institution registered under section 12AA.
- by way of transaction not regarded as transfer under section 47, in the form of amalgamation, demerger etc.

For the purposes of this clause, **"relative"** means—

**(A) In case of an Individual**

- (i) spouse of the individual;
- (ii) brother or sister of the individual;
- (iii) brother or sister of the spouse of the individual;
- (iv) brother or sister of either of the parents of the individual;
- (v) any lineal ascendant or descendant of the individual;
- (vi) any lineal ascendant or descendant of the spouse of the individual;
- (vii) spouse of the person referred to in clauses (i) to (vi).

**(B) In case of Hindu Undivided Family (HUF), any member thereof.**

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019****Deemed accrual of gift made to a person outside India**

In a few cases, gift received by a non-resident/ foreign company from a resident person, is not taxable in India [even if it is not covered by exceptions specified in section 56(2)(x)]. There is no deeming provision under section 9 for this purpose.

To plug in this loophole, clause(viii) has been inserted in section 9(1) with effect from the assessment year 2020-21. This clause is applicable if the following conditions are satisfied –

1. Payer is resident in India (or money is received from a person resident in India). Payer may be resident and ordinarily resident in India or resident but not ordinarily resident in India. Payer may be an individual, HUF, AOP, BOI, artificial juridical person, firm, LLP, company or any other person.
2. Recipient is non-resident/foreign company(or money is received by a non-resident/ foreign company).
3. A sum of money is received by non-resident/ foreign company on or after July 5, 2019.
4. Income arises outside India. The transaction is not covered by any of the exceptions specified by section 56(2)(x).

If these conditions are satisfied, money received by a non-resident/foreign company, shall be deemed to accrue or arise in India.

**GIFT IN CONTEMPLATION OF DEATH**

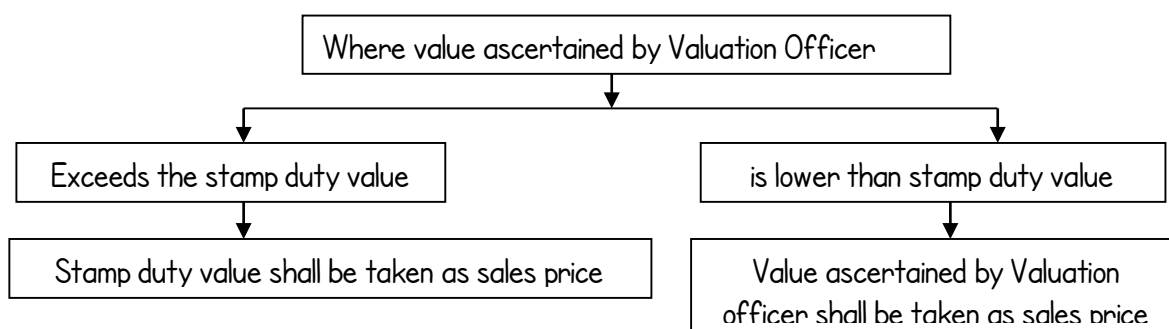
- Where a person is ill and expects to die shortly,
- gift any movable property which can be disposed of by will, and
- delivers the possession of the moveable property.
- But such gift may be resumed by the giver, if donor recovers from the illness during which it was made,
- or if donee dies before the donor.

**IMPORTANT POINT**

Section 56(2)(x) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

**SECTION 43CA: SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION FOR TRANSFER OF ASSETS OTHER THAN CAPITAL ASSETS IN CERTAIN CASES**

- Where the sales consideration received or accruing on transfer of a stock in trade, being land or building or both,
- is less than
- the value assessed or assessable by the stamp valuation authority for the purpose of payment of stamp duty,
- the value so assessed or assessable shall deemed to be the sale consideration.
- Where the assessee claims that
- the value so assessed or assessable exceeds the FMV of the property; and
- the value so assessed or assessable has not been disputed in any appeal or revision before any authority/ Court,
- the A.O. may refer the valuation of the stock in trade to a Valuation Officer.



**AMENDMENT MADE BY FINANCE ACT 2018:**

**AMENDMENT NO-1**

SDV shall be taken as FVC only if SDV is "more than" 105% of actual sale consideration.

**AMENDMENT NO-2**

Where the date of agreement fixing the amount of consideration and date of registration are not same, then the SDV on the date of agreement may be taken as the full value of consideration.

However above proviso shall apply only in case where the amount of consideration or part there of has been received by A/c payee cheque, A/c payee draft or ECS or **such other electronic mode as may be prescribed**, on or before the date of agreement.

**The above 2 provisions are also covered in Sec 50C.**



**SECTION 56(2)(viib): SHARE PREMIUM RECEIVED BY CLOSELY HELD COMPANY**

- Where a closely held company
- receives
- in any previous year
- from any person, being A RESIDENT
- any consideration
- for issue of shares
- that exceeds the face value of such shares
- then
  - Aggregate consideration                      -                      Fair Market value of the shares received for such shares
- shall be income from other sources in the hands of the company.

**NON-APPLICABILITY OF SECTION 56(2)(viib)**

Section 56(2)(viib) shall not apply where consideration for issue of shares is received:

1. By a venture capital undertaking from a venture capital company or a venture capital fund **OR A SPECIFIED FUND** **ξ Finance Act (No.2) 2019** **ξ**
2. By a Company from a class or class of persons as may be notified by Central Government . ( Finance Act (No.2 ) 2019 ) ( See Below )
3. This section does not apply where a closely held company issues shares to a Non-Resident at a premium in excess of FMV.
4. This section does not apply if a widely held company issues shares at a premium.

**AMENDMENT MADE BY FINANCE ACT (NO.2 ) 2019****Compliance with the notification of exemption issued under section 56(2)(viib)**

The provisions of section 56(2)(viib) of the Act provides for charging of the consideration received for issue of shares by certain companies, where such consideration exceeds the fair market value of such shares. However, the Central Government is empowered to notify that the provisions of this section shall not be applicable to consideration received by a notified company. Certain notifications issued under this sub-clause by the Central Government provide for exemption, subject to the fulfilment of certain conditions. With a view to ensure compliance to the conditions specified in the notification, it is proposed to provide that in case of failure to comply with the conditions, the consideration received for issue of shares which exceeds the face value of such shares shall be deemed to be the income of the company chargeable to income-tax for the previous year in which the failure to comply with any of the said conditions has taken place.

These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

**TAX EVASION BEFORE FINANCE ACT 2012:**

Section 56(2)(viib) has been introduced by Finance Act, 2012 to nullify the following modus-operandi of converting black money into white money:

**Balance Sheet of A Pvt. Ltd. as on 31.03.2013**

Assets	Amount	Liabilities	Amount
Equity Share Capital (1 crores shares of Rs. 10 each)	10 crores	Net Assets	12 crores
Reserves & Surplus	2 crores		
<b>Total</b>	<b>12 crores</b>	<b>Total</b>	<b>12 crores</b>

The share capital of the company is held by Mr. Kumar and his family.

Now Mr. Ganeshan wants to transfer his white money of **Rs. 20 crores** to company A Pvt. Ltd. Prior to introduction of section 56(2)(viib), the following modus-operandi was adopted:

- Mr. Ganeshan subscribes to 10 lakh shares of A Pvt. Ltd. of face value of **Rs. 10 each @ Rs. 200 per share** at a premium of **Rs. 190 per share**.
- Therefore, Mr. Ganeshan gives a cheque of **Rs. 20 crores** to the company and he is allotted 10 lakh shares of A Pvt. Ltd.
- Mr. Kumar in turn gives black money of **Rs. 20 crores** to Mr. Ganeshan.

Now Balance Sheet of Company A Pvt. Ltd. is as under:

Assets	Amount (Rs.)	Liabilities	Amount (Rs.)
Equity share capital (1.10 crores share of Rs. 10 each)	11 crores	Bank Balance	20 crores
Share Premium	19 crores	Other Net Assets	12 crores
Reserves & Surplus	2 crores		
<b>Total</b>	<b>32 crores</b>	<b>Total</b>	<b>32 crores</b>

Mr. Kumar and his family have successfully converted black money of **Rs. 20 crores** into white money of **Rs. 20 crores** in the hands of their company. The share premium is on capital account and is a capital receipt not taxable.

The shareholding pattern is:

Mr. Kumar & Family Ganeshan	1 crores shares of <b>Rs. 10 each</b> <u>10 Lakh share of <b>Rs. 10 each</b></u> <u>110 Lakh shares of <b>Rs. 10 each</b></u>
-----------------------------	---

Mr. Kumar and his family still have control over the company since shareholding pattern is as under:-

Mr. Kumar & Family	90.91%
Mr. Ganeshan	9.09%

Practically, what happens is that instead of Mr. Ganeshan, there are let's say 40 persons who have white money of **Rs. 50 Lakhs**, then these 40 persons subscribes to 25,000 share each of **Rs. 200** and Kumar & Family gives black money of 50 Lakhs each to these 40 persons.

After this, the fair market value of shares of the company is derived as under:-

$$\frac{\text{Assets} - \text{Liabilities}}{\text{Paid-up equity share capital}} \times \text{Paid up value of unquoted equity share}$$

Thereafter, Mr. Ganeshan / 40 people sell their shares to Kumar & family @ **Rs. 29.09 per share** and there is no gift implications under section 56(2)(vii). Mr. Ganeshan / 40 people book loss under the head Capital Gains of **Rs. 200 - Rs. 29.09 = Rs. 170.91 per share**. Mr. Kumar and family purchases these 10,00,000 shares @ **Rs. 29.09** using their white money of **Rs. 2,90,90,000**. Therefore, Mr. Kumar and his family have effectively converted **Rs. 17,09,10,000** black money into white money and having 100% control over the company. Mr. Ganeshan / 40 people are able to book loss of **Rs. 17,09,10,000** under the head capital Gains.

Now, this planning has been nullified by introducing section 56(2)(viib) by Finance Act, 2012.

In the Illustration given above the fair market value of shares before issue of 10 lakh shares is:

$$\frac{12 \text{ crore}}{10 \text{ crore}} \times 10 = \text{Rs. 12 per share}$$

Therefore,

Rs. 20 crores - Rs. 12 × 10 lakhs shares

Rs. 20 crores - 1.20 crores = Rs. 18.80 crores

is taxable as Income from Other Sources in hands of the company.

### SEC 10AA : DEDUCTION FOR NEWLY ESTABLISHED UNITS IN SEZ 10AA(1)

Total Income of a unit which begins manufacture or production of any article or things or computer software shall be deductible :

(i)			(ii)
100% of P & G derived from export for 5 years	<b>AND</b>	50% of P&G derived from export for futher 5 yrs.	for 5 years maximum 50% of profits, provided such amount is transferred to "SEZ Re-investment allowance Reserve Account" & utilized for the purpose of the business in the manner laid down in sub section (2)

#### Sub section (2)

The deduction under clause (ii) shall be allowed only if following conditions are fulfilled

(a)		(b)	
<b>amt credited to Reserve is to be utilized :</b>			Specified particulars must be furnished along with ROI
(i)		(ii)	
for new P&M which is put to use before expiry of 3 years next following the P.Y in which reserve was created.	<b>AND</b>	Reserve should be kept intact until the acquisitions of new P&M	

\* Deduction under 10AA is not available if the units starts its operation on or after 31.03. 2020 [Amendment made by FA, 2016 to phase out the deduction]

#### Sub section (3) Deemed Income

(a)	(b)
If Reserve has been utilized for non-specified purpose	If Reserve, has not been utilized till the expiry of time limit

Of the year in which wrongly utilized.	Of the year immediately following the period of 3 years.

**Example :**

Suppose an industrial undertaking is set up in a SEZ & it starts the production on 31/1/2007.

The deduction u/s 10AA shall be :

- (i) 100% of profits from export from AY 2007 - 08 to AY 11 - 12.
- (ii) 50% of profits from export from AY 2012 - 13 to AY 2016 - 17.
- (iii) 50% of profits from export from AY 2017 - 18 to AY 21 - 22, provided conditions of sec 10AA(2) are satisfied.

Now suppose in AY 2018 - 19, the profits from exports are Rs. 100L. Now deduction of Rs. 50L is available if the following entry is passed in P & L A/c of PY 31/3/2018

P/L A/c	on	50L	
	To SEZ Reinvestment allowance Res		50L

Now the undertaking should purchase a new P&M and should put to use on or before 31/3/2021

Suppose P&M of Rs. 40L has been purchased in PY 31/3/2020 and is put to use in PY 31/3/2021.

Rs. 10L will be treated as income of PY 31/3/2022

$$\text{Deduction u/s 10AA} = \text{Profits of the undertaking} \times \frac{\text{Export T/o of the undertaking}}{\text{Total T/o of the undertaking}}$$

**1) EXPORT TURNOVER :**

- (a) means consideration in respect of export by the undertaking received in India in convertible foreign exchange within a period of 6M from the end of PY.
- (b) but does not include freight, Insurance or other similar expenses.
- (c) Further export T/O shall not include cash compensatory support, Duty drawback and profit on sale of import entitlement licenses.

**2) TOTAL TURNOVER :**

- (a) shall not include freight, insurance or other similar expenses.
- (b) Further it shall not include CCS, DD and profit on sale of import entitlement licenses. Total T/O includes Export T/O and Domestic T/O and
- (c) It further includes even that portion of export T/O which is not received in convertible foreign exchange.

- 3) Profits of the business of the undertaking shall mean profits of the undertaking under the head PGBP. It was held by SC in the case of, Liberty India - that the words 'derived' are quite narrower as compared to the words 'profit attributable to' therefore it was held that export incentives like ccs, duty drawback etc are on account of statutory provisions of the Customs Act or schemes framed by Central Govt and they do not form part of profits of the eligible undertaking for the purpose of sec 80IA, 80 IB, 10AA etc and accordingly such receipts cannot form part of profits of the business of the undertaking.

Applying the principle of Liberty India the Supreme Court again held in the year 2013 in the case of "Orchev Pharma ltd" that such profits cannot be called as profits of the business of the undertaking.

### **CIRCULAR NO. 1/2013 dated 17/1/2013**

The following issues have been addressed by CBDT in the aforesaid circular :-

- 1) It is clarified that the software developed abroad at client place would be eligible for 10AA pursuant to a contract between client and SEZ unit.
- 2) It is further clarified that the profits earned as a result of deployment of technical manpower at client place abroad specifically for software development shall be eligible for 10AA pursuant to a contract between both the parties.
- 3) It is clarified that in case of change in ownership deduction shall be available during the unexpired period at applicable rates subject to fulfilment of prescribed conditions.
- 4) It has been clarified that the tax holiday should not be denied merely on the ground of physical relocation of an eligible SEZ unit from one place to another SEZ unit.

### **TAXATION OF MUTUAL FUND AND UNIT HOLDER**

#### **Income of Mutual Fund is exempt under section 10(23D)**

- (i) Unit holder shall not be liable to pay tax on income distributed on units by following 3 person:
  - (a) Specified company. ( **Liabe for DDT** )
  - (b) A mutual fund. ( **Liabe for DDT** )
  - (c) Administrator. (**Not Liabe for DDT** )Exempt under sec 10(35) in the hands of Unit Holders.
- (ii) A **specified company** and **mutual fund** will be liable to pay Tax @ 25% of income distributed to the individual and HUF and 30% of income distributed to other person. This rate will further subject to surcharge and education cess. After grossing up the effective rate is as follows:

**AMENDMENT MADE BY FINANCE ACT 2018:****DDT IN CASE EOMF:**

Where any income is distributed by a mutual fund (being an equity oriented fund), the mutual fund shall be liable to pay additional income-tax at the rate of 10 per cent on income so distributed [+12 per cent of such tax as surcharge + 4 per cent of tax and surcharge as health and education cess, effective rate: 12.9422 per cent].

The Administrator of specified undertaking shall not be required to pay tax on income distributed to unit holder. The unit holder are also Exempt to pay tax on such income as it is exempt u/s 10(35).

**DDT IN CASE OF INFRASTRUCTURE DEBT FUND:**

In case of an infrastructure debt fund the interest payment made by fund to Non resident investor is Taxable @ concessional rate of 5% under - 115A.

However in case of distribution of income by such infrastructure debt fund set up as mutual fund the distribution Tax is levied at rate given on 115R in case of a mutual fund.

In order to bring parity in taxation of income from investment made by Non resident investor in an infrastructure Debt the tax to be paid on Distribution of income shall be 5% and after grouping up 6.13%

These provision are applicable on Distribution of income and redemption of unit are not covered here. When unit are repurchased or redeemed than there shall be capital gain chargeable in those cases.

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:**

In order to incentivize relocation of Mutual Fund in IFSC, it is proposed to amend the said section so as to provide that no additional income-tax shall be chargeable in respect of any amount of income distributed, on or after the 1st day of September, 2019, by a Mutual Fund of which all the unit holders are non-residents and which fulfills certain other specified conditions.

This amendment will take effect, from 1st September, 2019.

**\* CAPITAL GAINS ON UNITS****(1) Units of equity oriented mutual funds**

Long term capital gain on equity oriented fund shall be taxable u/s 112A.

STCG on unit of equity oriented fund shall be Taxable @ 15% on 111A.

**\* Units of other mutual fund**

STCG shall be Taxable @ normal rate. LTCG shall be taxable @ 20% or 10% in some cases.

**FOR YOUR KNOWLEDGE:**

After the security scam unit trust of India nearly went Bankrupt and came into heavy losses. Therefore in the year 2002 the central Government enacted UTI (transfer of undertaking and Repeal) Act 2002 by which certain specify undertaking of UTI have been transferred to administrator and other undertaking transfer to specified company. Hence UTI is broken into following two parts.

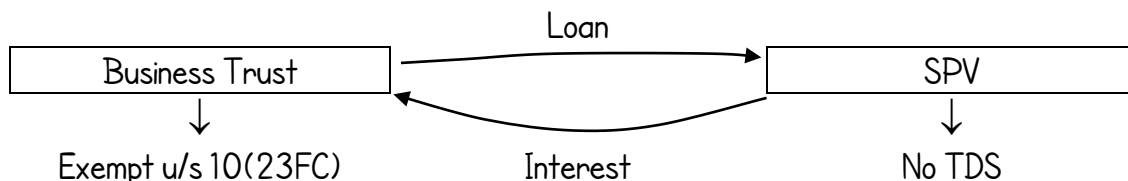
- (i) Administrator of specified undertaking (Now this part of UTI distribute income to investor then it is not liable to pay tax)
- (ii) Specified Company  
(This part of UTI suppose to pay Tax on distribution of income as per section 115R)

**TAXATION OF BUSINESS TRUST**  
**(REIT / INVIT)****Taxability between Business Trust and special purpose vehicle:**

1. The business Trust will acquire the shares of the SPV by allotting them units in business trust. Such exchange is exempt under capital gains u/s 47 (xvii). The business Trust will acquire controlling interest from promoters of SPV.
2. Now the promoters of SPV hold units of Business Trust,  
then COA of such units = COA of shares in SPV [Section 49(2AC)]
3. The period of holding during which the shares were held by sponsors will also be clubbed to determine whether units are long term or short term [Section 2 (42A)]
4. A unit of a business trust becomes long terms if it is held for more than 36 months.
5. When the sponsor i.e. promoters sells these units and if it is a long term capital asset, then it is **taxable u/s 112A.**
6. When these units are short term capital asset it will be chargeable to tax u/s 111A @ 15%.

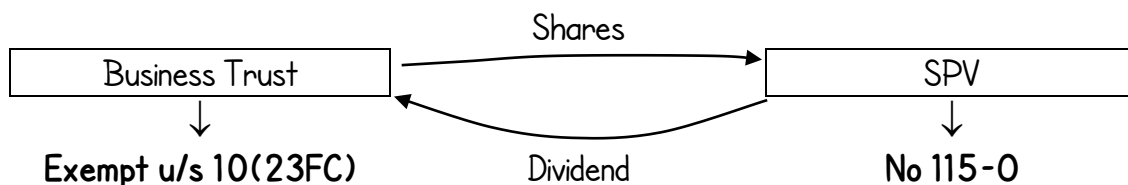
**TAXABILITY OF OTHER INCOMES.**

- The business trust will give loans to its SPV and in return SPV will pay interest to Business Trust. Such interest earned by a Business Trust is exempt in the hands of business trust u/s 10(23FC). Further, the SPV shall not deduct TDS on such interest.



- When SPV pays dividend to Business Trust then no DDT shall be paid u/s 115-0 if the following conditions are fulfilled :**

- If Business Trust holds 100% of share capital of SPV or
  - If it holds all the share capital other than which is required to be held by any specified entity mentioned by the government
- AND
- The exemption from levy of DDT would only be in respect of dividend paid out of current income after the date business trust acquires the shareholding as mentioned in point (i) above i.e. 100% or eg. 70% + 30% by government. Dividend paid out of accumulated and current profits upto this date (i.e. 100% holding) shall be liable for DDT.



Investor	REIT / BT	
Taxable in the hands of unit holders	1. Interest from SPV 2. Rent from direct investment	- Exempt in the hands of BT
Exempt	3. Dividend from SPV 4. LTCG u/s 112A	- Exempt - Taxable @ 10% in excess of Rs 1 lac.
Exempt	5. Other LTCG	- Taxable as per sec 112.
Exempt	6. STCG u/s 111A	- Taxable at 15%
Exempt	7. Other Incomes	- Taxable at MMR @ 42.744%



**TDS IMPLICATION ON PAYMENT OF RENT:**

When a REIT makes payment to a resident investor, it shall deduct TDS @ 10%

When a REIT makes payment to a non resident investor, it shall deduct TDS u/s 195.

**TDS IMPLICATION ON PAYMENT OF INTEREST:**

When a REIT distributes interest to a resident investor then it shall deduct TDS @ 10%

(194LBA) However, when a REIT distributes interest to non resident investors, it shall deduct TDS @ 5% u/s 194LC. Such interest is taxable for non-resident u/s 115A.

**ILLUSTRATION:**

Q. A REIT earns Rs. 10 crore income as follows :

(i) Rs. 4 crore from rentals from real estate.

(ii) Rs. 2 crores as interest from SPV.

(iii) Rs. 3 crores as dividend from SPV

(iv) Rs. 1 crore as LTCG

Rental income of Rs. 4 crore is exempt in the hands of REIT. Interest income of Rs. 2 crore is exempt in the hands of REIT. Dividend income of Rs. 3 crore is exempt in the hands of REIT. On LTCG, REIT will pay tax as per sec 112 if it is not covered by section 112A.

Suppose REIT distribute Rs. 6 crore to its unit holders. A unitholder Mr. X receives Rs. 50,000 the treatment of Rs. 50,000 in the hands of Mr. X is as follows :

**Amount Attributable to REIT's Rental Income**

$$\frac{4\text{Cr}}{10\text{Cr}} \times 50,000 = 20,000$$

This amount is taxable in the hands of Mr. X u/s 115UA. REIT will deduct TDS @ 10% if unitholder is a resident and it will deduct TDS u/s 195 if the unitholder is a non resident or a foreign company.

**Amount attributed to REIT's Interest Income From SPV**

$$50,000 \times \frac{2\text{Cr}}{10\text{Cr}} = 10,000$$

This amount is taxable in the hands of Mr. X u/s 115UA. REIT shall deduct TDS @ 10% if the unitholder is a resident and @ 5% if the unitholder is a non resident.

**Amount attributed to REIT's Dividend income**

$$50,000 \times \frac{3\text{Cr}}{10\text{Cr}} = 15,000$$

This amount is exempt in the hands of investor, whether the investor is a resident or a non resident.

**Amount attributed to REIT's CG income**

$$50000 \times \frac{1\text{Cr}}{10\text{Cr}} = 5000$$

This amount is exempt in the hands of unitholder whether the unitholder is a resident or non resident.

**Note:** In Business Trust Chapter Income is taxable in the hands of the investor only in the year in which it is received by the investors. However in the chapter of Taxation of Investment Fund & Taxation of Securitisation Trust ( **Book 2** ) Income is taxable in the hands of the investor in the year in which Income is earned by the Fund whether or not it is received by the Investors.

**Conclusion :** In Business Trust Income is taxable to Investors on receipt basis whereas in Investment Fund & Securitisation Trust it is taxable the moment it is accrued.

**Q. CA Final (10 Marks)**

ABC Realty Trust, a Business Trust registered under SEBI (Real estate Investment Trust) Regulations, 2014. provides the following particulars of its income for PY. 2019-20 :

- (i) Rental income of Rs. 3 crores from directly owned real estate assets
- (ii) STCG - Rs. 1.5 crore on sale of listed shares of XYZ Ltd, an Indian company in which ABC Realty Trust holds controlling interest through holding 60% of shareholding of XYZ Ltd.
- (iii) STCG - Rs. 2 crore on sale of development properties.
- (iv) Interest of Rs. 1 crore received from investment in unlisted debentures of real estate companies
- (v) Dividend of Rs. 3.5 crores from XYZ Ltd.

**Other Information :**

ABC business trust has distributed Rs. 10 crore to its unitholders in PY. 2019 - 20. Discuss the tax implications including TDS implication both in the hands of ABC and its unitholders.

**Solution:**

Particulars	REIT	Investor
1. Rental Income of crores	Any income of REIT by letting any real letting any real estate asset owned by it is exempt. The REIT shall deduct TDS @ 10% if the investor is resident or u/s 195 if the investor is a non - resident.	Such rental income when distributed it will be taxable in the hands of the investor in the proportion of 3/11.
2. STCG of Rs. 1.5 crore	ABC Realty Trust is liable to tax @ 15% u/s 111A	Such income is exempt in the hands of the unitholders.

3. STCG of Rs. 2 crores	Such STCG of Rs. 2 crore will be taxable at maximum marginal rate @ 35.88%	Such income will be exempt in the hands of the unitholder.
4. Interest of Rs. 1 crore	Such interest will be taxable at MMR i.e. 35.88%	Such income is exempt in the hands of the unitholders.
5. Dividend income of Rs. 3.5 crores	Since BT does not hold 100% shares, it is liable for DDT, ∴ XYZ has to pay DDT @ _____ % such dividend will be exempt in the hands of REIT.	Such dividend when distributed will be exempt in the hands of investor as well.

### ANALYSIS OF PROVISION RELATING TO MAT IN REFERENCE TO BUSINESS

#### TRUST :

- (1) Cost of shares of SPV in (Oberoi Reality Ltd) the hands of shareholders Co. (Oberoi Ltd.) (01.01.2014) 1,000L
- (2) Shares of SPV transferred to B/T and B/T allots 120L units of FV Rs. 10 each (MV of units is Rs. 11 / unit) 1,200L
- (3) Units are sold by shareholders (Oberoi Ltd.) on 31.03.19 for Rs. 20/unit. 2,400L

#### OBEROI LTD : SHAREHOLDER COMPANY

(1)	Units of BT A/c	Dr 1,320
	To shares in SPV A/c	1,000
	To P & L A/c (on Exchange)	200
	To P & L A/c (on Bringing at MV)	120

The profit of Rs. 200 will be reduced from NP to arrive at BP by virtue by clause (ie) (A). The profit of Rs. 120 will be reduced from NP to arrive at BP by virtue of clause (ie) (B).

P & L A/c			
		By Manufacturing profit	3,000
		By profit on Exchange	200
		By profit on change in carrying Account	120
To Net profit	4,400	By profit on sale of units	1,080

Normal provisions (IT Act)		115JB	
N.P	4,400	N.P.	4,400
(-) Profit on Exchange by Sec 47 (xvii)	(200)	(-) Profits on Exchange by clause (ie) (A)	(200)
(-) Profit on change in valuation (Since it is national)	(120)	(-) Profits on change in valuation by clause (ie) (B)	(120)

(-) Capital Gains	(1,080)	(-) Profits on sale of units by clause (ie)(c)	(1,080)
PGBP	3,000	(+) S.P. (-) cost of shares (2400-1,000)	1,400
		Clause (k)/Book profit	4400

**Capital Gains :-**

Sales consideration	2,400
(-) COA [Sec 49 (2AC)]	(1,000)
CG	1,400
Total Income	4,400

- (1) When units of business trust are sold by the Co. in Recognised stock Exchange, then the gain which has arisen amounts to actual gains.
- (2) Earlier when shares of SPV were exchanged with the units of business trust, such gain is notional gain which is not taxable under normal provisions of IT Act by virtue of Sec 47(xvii). Such notional gain is also reduced to arrive at Book profits by clause (ie)(A).
- (3) When there is change in the carrying amount of units, then such notional gain is also not taxable under normal provisions of IT Act as what is chargeable generally under IT Act are actual profits. Such notional gains is also reduced from Net profit to arrive at Book profit by virtue of clause (ie)(B).
- (4) Now since the units are actually sold and they have realized profits under normal IT provisions, it will be chargeable under the heads CG (ST/LT) depending upon the period of holding (depends upon 36 months).

For the purpose of section 115JB, profit of Rs.1,080 will also be removed from NP by virtue of clause (ie)(c). But this can't be understood as benefit to the assessee as clause (k) will add back Rs.1,400 to NP i.e. by taking the cost of shares in SPV (2400-1000).

**MISCELLANEOUS AMENDMENT MADE BY FINANCE ACT 2017 & 2019:****AMENDMENT - 1: FA 2017****DISALLOWANCE FOR TDS DEFAULT EXTENDED TO INCOME TAXABLE UNDER THE HEAD 'INCOME FROM OTHER SOURCES' [SEC. 58(1A)]**

Existing provisions of section 58 specify the amounts which are not deductible in computing the income under the head "Income from other sources" which include certain disallowances made in computation of income under the head "Profits and gains of business or profession". These disallowances include disallowances such as disallowance under section

40(a)(i)/(ii)/(iii) [i.e., TDS default pertaining to payment/credit to non-residents, payment of salary to non-resident] and disallowance under section 40A [i.e., disallowance pertaining to cash expenditure, payment to inter-connected concerns, contribution towards unrecognised staff welfare schemes/funds, provision for unapproved gratuity funds, etc.].

- **Amendment** - Disallowance pertaining to TDS default when payment/credit is given to resident [which is covered by section 40(a)(ia)] is not applicable while computing income under the head "Income from other sources". With a view to improving compliance of provision relating to TDS, section 5 8(1 A) has been amended (with effect from the assessment year 2018-19) so as to provide that provisions of section 40(a)(ia) shall, so far as they may be, apply in computing income chargeable under the head "Income from other sources" as they apply in computing income chargeable under the head "Profit and gains of business or profession".

### **AMENDMENT - 2: FA 2017**

#### **TAX ON INCOME FROM TRANSFER OF CARBON CREDIT [SEC. 115BBG]**

Sec 115BBG provides that where the total income of the assessee includes any income from transfer of carbon credit, such income shall be taxable at the concessional rate of 10 per cent (+SC+EC+SHEC) on the gross amount of such income.

**No expenditure or allowance in respect of such income shall be allowed.**

### **AMENDMENT - 3: FA 2017 & FA 2019**

#### **NO NOTIONAL INCOME FOR HOUSE PROPERTY HELD AS STOCK-IN-TRADE**

Section 23(5) is inserted with effect from the assessment year 2018-19. This sub-section is applicable if the following conditions are satisfied -

1. The property (consisting of any building and land appurtenant thereto) is held as stock-in-trade by the owner of the property.
2. The property (or any part of the property) is not let during the whole (or any part) of the previous year. If the above conditions are satisfied, annual value of such property (or part of the property) shall be taken to be nil. However, this concession will be available only for the period up to 2 year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority. ( FA 2019 )

### **MISCELLANEOUS AMENDMENTS MADE BY FINANCE ACT 2018:**

#### **AMENDMENT TO SECTION 2(24)**

Compensation on termination of employment or modification of terms of employment - A new sub-clause (xviiib) has been inserted in section 2(24) so as to include any compensation on

other payment referred to in section 56(2)(xi) [i.e., compensation on termination of employment or modification of terms of employment] also within the definition of income.

£ Already done in PGBP }

### AMENDMENT MADE BY FINANCE ACT 2018 & 2019:

#### Standard deduction to salaried employees and withdrawal of exemption pertaining to medical reimbursement [Sees. 16 and 17]

The following amendments have been made to the scheme of sections 16 and 17 -

- Standard deduction - Clause (ia) has been inserted in section 16. This clause provides standard deduction from the assessment year 2019-20 in computing income chargeable under the head "Salaries". The amount of standard deduction will be Rs. **50,000 or the amount of salary, whichever is lower. ( FA 2019)**
- Withdrawal of exemption pertaining to reimbursement of medical expenditure - Section 17(2) has been amended to withdraw exemption pertaining to reimbursement of medical expenditure of Rs. 15,000. This modification is also applicable from the assessment year 2019-20. However, other existing exemptions which are available for different medical facilities (e.g, medical facility to employees in Government hospitals and approved hospitals, payment of medi-claim insurance premium by employer) will continue. ( FA 2018)

Further, the Finance Minister in his budget speech has announced to withdraw the present exemption of Rs. 1,600 per month of transport allowance (however, transport allowance exemption at enhanced rate of Rs. 3,200 per month shall continue to be available to differently abled persons).

#### Penalty for failure to furnish statement of financial transaction or reportable account [Sec. 271 FA]- FA 2018

A penalty is imposed under section 271FA if a person [who is required to furnish the statement of financial transaction or reportable account under section 285BA(1)] fails to furnish such statement within the prescribed time. The quantum of penalty is Rs. 100 for every day of default. Further, it provides that in case such person fails to furnish the statement of financial transaction or reportable account within the period specified in the notice issued under section 285BA(5), he shall be liable to pay penalty of Rs. 500 for every day of default.

- **Amendment** - The aforesaid provisions have been amended (with effect from April 1, 2018) so as to increase the penalty leviable from Rs. 100 to Rs. 500 and from Rs. 500 to Rs. 1,000, for each day of continuing default.

**MISCELLANEOUS AMENDMENT MADE BY FINANCE ACT(NO.2) 2019:****AMENDMENT NO-1**

Under the existing provisions of section 10 of the Act, any payment from the NPS Trust to an assessee on closure of his account or on his opting out of the pension scheme, to the extent it does not exceed forty per cent of the total amount payable to him at the time of such closure or on his opting out of the scheme, is exempt from tax. With a view to enable the pensioner to have more disposable funds, it is proposed to amend the said section so as to increase the said exemption from forty per cent to sixty per cent of the total amount payable to the person at the time of closure or his opting out of the scheme. {Sec 10(12A)}  
3

**AMENDMENT NO-2****Rationalisation of provision relating recovery of tax in pursuance of agreements with foreign countries**

The existing provisions of section 228A of the Act provide inter alia that where an agreement is entered into by the Central Government with the Government of any foreign country for recovery of income-tax under the Income-tax Act and the corresponding law in force in that country and where such foreign country sends a certificate for the recovery of any tax due under such corresponding law from a person having any property in India, the Board, on receipt of such certificate may, forward it to the Tax Recovery Officer within whose jurisdiction such property is situated for the recovery of tax in pursuance of agreement with such foreign country.

In order to provide assistance in recovery of tax as per treaty obligation with the other country, it is proposed to amend the said section so as to provide for tax recovery where details of property of the persons are not available but the said person is a resident in India. It is also proposed to amend the said section so as to provide for tax recovery, where details of property of an assessee in default under the Act are not available but the said assessee is a resident in a foreign country.

These amendments will take effect from 1st September, 2019.

**AMENDMENT NO-3****Notional rent on second self-occupied property exempt from tax  
[Secs. 23 and 24]**

If a person has occupied one house property for his own residential purposes, it is not chargeable to income-tax. Annual value of such property is taken as *nil* and interest on capital which was borrowed to finance purchase, construction, etc., of such property is deductible (subject to satisfaction of a few conditions) up to Rs. 2,00,000. If a person has occupied more than one house property for his residential purposes, only one property (according to his own choice) is treated as self-occupied property (annual value of such

property is taken as nil, interest liability is deductible up to Rs. 2,00,000 subject to a few conditions). In such a case, income from other self-occupied property / properties will be calculated as if such property / properties are "deemed to be let out".

● **Amendment** - The aforesaid provision has been amended to exempt notional income pertaining to two self-occupied residential house properties. Salient features of the amendment (applicable from the assessment year 2020-21) are given below -

1. If a person occupies only one house property for his own residential purposes, annual value of such property will be nil (as earlier). Interest on borrowed capital will be deductible up to Rs. 2,00,000 (subject to a few conditions).
2. If a person occupies two house properties for his own residential purposes, annual value of both the properties will be taken as nil, Aggregate interest on capital borrowed for the purpose of purchase / construction of these properties, will be deductible up to Rs. 2,00,000 (subject to similar conditions as were applicable earlier).
3. If a person occupies more than two house properties for his own residential purposes, only two properties (according to his own choice) will be treated as self-occupied properties and other houses will be "deemed to be let out". In the case of two self-occupied properties (as selected by the assessee), annual value will be nil and aggregate interest on borrowed capital will be deductible up to Rs. 2,00,000 (subject to similar conditions as were applicable earlier).

## OVERVIEW OF MODEL TAX CONVENTION

### INTRODUCTION

1. For standardization in treaties between different countries OECD and UN has given some Model Tax treaties.
2. This can be taken as a starting point for negotiating with other countries.
3. These are not legally binding, but still many countries follow it.

### **MODEL CONVENTIONS**

	↓	
<b>OECD Model</b>	<b>UN Model</b>	<b>US Model</b>
Model convention between Developed countries	Model convention between Developed & Developing Countries	Applied by U.S
↓	↓	



Mainly Follows Residence Rule	Mainly Follows Source Rule	
-------------------------------	----------------------------	--

### TITLE AND PREAMBLE TO THE MODEL CONVENTIONS

#### The title of the UN Model Convention reads as follows:

"Convention between (State A) and (State B) for the elimination of double taxation with respect to taxes on income and capital and the prevention of tax avoidance and evasion"

#### The Preamble to the UN Model Convention reads as follows:

##### (State A) and (State B),

Desiring to further develop their economic relationship and to enhance their Cooperation in tax matters, Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax avoidance or evasion (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States)

### ARTICLE 1- PERSONS COVERED

This Article states that this treaty shall only apply to "Residents" of 2 contracting states

#### Write Note on Fiscally Transparent Entity:

**ARTICLE 2: TAXES COVERED**

This convention shall apply to taxes on Income & Capital imposed

By {through T.D.S / A.T or otherwise}

Contracting State country i.e. CG	Political Sub. Division i.e. State Government	Local authorities i.e. Municipality

The treaty shall also apply to any identical tax that are imposed after signature of treaty. For this purpose, the competent authorities of both the nation shall notify each other.

**ARTICLE 4: RESIDENT**

Treaty benefit are available for "Resident" of 2 states

<b>OECD</b>	<b>UN</b>
↓	↓
Resident of contracting states means any person who as per laws of a state Liable to tax because of his Domicile, residence, place of management or any other criteria.	Resident of contracting states means any person who as per Laws of a state Liable to tax, because of his Domicile, residence, place of <b>incorporation</b> , place of management or any other criteria.

**TIE BREAKER RULE FOR INDIVIDUALS**

**OECD & U.N**

If a person is Resident of BOTH STATES then;

- 1) Resident of state where he has permanent Home (P.H)
- 2) P.H in both; then where personal & economic relations are closer

**{Centre of Vital Interest}**

- 3) If the C.V.I is indeterminable or No P.H; then he shall be deemed to be Resident of that state in which he has a "Habitual abode".

- 4) If H.A in both state or neither; then he shall be deemed to be a resident only of a state of which he is a national
- 5) If he is a national of both or neither, then 'C.A' of both states shall determine.

### TIE BREAKER FOR OTHER THAN INDIVIDUALS

If a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement, the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention.

### ARTICLE 5: PERMANENT ESTABLISHMENT

1. To Tax Business profit of Non-resident, treaty requires permanent establishment
2. P/E means fixed place of business through which business of an enterprise is wholly or partly carried on.
3. P/E includes:- Place of management, Branch, office, Factory, workshop & a mine, an oil or gas well or a quarry or any other place of extraction of natural resources.

#### CONSTRUCTION PE / SERVICE PE:

←—————→	
OECD	UN
<p><b>A)</b> Construction or installation project constitutes P/E only if it last for &gt;12 months</p>	<p><b>A)</b> A construction, <b>assembly</b>, installation project, <b>supervisory service</b> will amt to P/E &gt; 6 months.</p> <p><b>B)</b> Furnishing of Service amts to P/E &gt; 183 days in one or two FY.</p> <p>{Service P/E → Absent in OECD}</p>

P/E shall NOT Include the following

←	→
OECD	UN
1. Facilities solely for storage, display, Delivery of Goods	1. Facilities solely for storage, display of goods. { Mere delivery will amt to P/E }
2. Maintenance of stock of Goods solely for the purpose of processing by another enterprise.	
3. Maintenance of fixed place of business for purchasing goods.	
4. Maintenance of fixed place of business for carrying on auxiliary service.	
{Example: Service Centers etc}	

←	→
OECD	UN
1. If an agent in contracting state has an authority to conclude contract in the name of foreign enterprise, then that enterprise is deemed to have P/E in contracting states	1. SAME 2. Where he has no such authority in INDIA (contracting state), but habitually maintains stock in contracting states from which he regularly delivers goods.

OECD	UN
1. No P/E in contracting state if an Independent agent acts on behalf of N.R in contracting state in the course of his ordinary business.	1. SAME 2. Where activities of agent are devoted wholly on behalf of foreign enterprise, then the agent is not Independent agent & ∴ P/E in India.

**ARTICLE 7. BUSINESS PROFIT.**

←	→
OECD	UN
<p>1. Profit should be charged in Home country (Resident state) However if it has a P/E in other state then attributable profit shall be charged in other state.</p>	<p>1. SAME 2. <b>Force of Attraction - F.O.A :</b> This implies a Foreign Enterprise set up a P/E in INDIA (contracting state), it brings itself within India jurisdiction to such a degree that all profits that foreign enterprise derives from INDIA, whether through P/E or not can be taxed.</p>
	↓
<p>Under F.O.A principle there is a showroom in India to sell cars of a foreign enterprise, if such enterprise sells cars, directly to some customers i.e. not through showroom but directly export from outside India to India then profit arising, from such sale would also be attributed to P/E in INDIA.</p>	

**ARTICLE 11: INTEREST INCOME**

1. Interest paid may be taxed in resident state also.  
 ↳ also includes kind or set-ff. ↳ It can be taxed in source country If DTAA provides

2.

←	→
OECD	UN
<p>→ Interest may also be taxed in source country, but tax so charged &lt; 10% Gross amt of interest</p>	<p>Interest may also be taxed in source country, but tax so charged ≤% negotiated through DTAA</p>

**DEFINITION OF INTEREST:**

Interest means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment are not regarded as interest for the purpose of this Article.

**ARTICLE 12: ROYALTY INCOME**

OECD	UN
→ It shall be taxable in resident state	→ It may be taxable in resident state.
NOT IN OECD. ←	→ Royalty may also be taxed in source country, but tax so charged ≤ % Negotiated through DTAA.

**ARTICLE 12A : FEES FOR TECH SERVICES ( ONLY IN UN MODEL )**

It is same as Article 12 i.e Royalties.

OECD Model conventions do not contain a specific article on Fees for tech services.

∴ In absence of it, Fees for tech services has to considered either under Art 7/14/21 → Other incomes.

**DEFINITION OF FTS:**

FTS IS DEFINED AS PAYMENTS FOR MANAGERIAL, TECHNICAL OR CONSULTANCY SERVICES BUT EXCLUDES:

1. PAYMENT TO AN EMPLOYEE.
2. PAYMENT FOR TEACHING IN AN EDUCATIONAL INSTITUTION OR FOR TEACHING BY AN EDUCATIONAL INSTITUTION.
3. PAYMENTS BY AN INDIVIDUAL FOR SERVICES FOR PERSONAL USE.

**ARTICLE 13. CAPITAL GAINS.**

It covers sharing of capital gains revenue with respect to Immovable property, Movable Business Property, Shares & Securities, Ships & Aircrafts etc.

**ARTICLE 14: INDEPENDENT PERSONAL SERVICES. {ONLY UN MODEL. }**

This article deal with income derived in source state for professional or specified services

1. By default income shall be taxable in Resident State
2. However, if he has :
  - (a) a fixed base {P/E } in source state then that proportion may be taxed in that other state i.e. source state.

**OR**

- (b) if he stay in source state > 183 days in one or two F.Y then it may be taxed in source state.

'Professional Service' includes especially independent, scientific, literary, artistic, educational or teaching, physicians, Lawyers, engineers, architects, dentists & accountants.

This article 14 is Deleted from OECD now smatters will be dealt by Article 7

It normally covers services rendered by individuals. However in case of DTAA with Australia, UK, USA etc partnership firm are also covered.

It excludes professional service through employment → (Article 15 )

It excludes income of Artists, Athletes & Sportsmen. They are covered in separate article. (Article 17)

**ARTICLE 21: OTHER INCOME.****OECD + UN**

1. Any Income not dealt in above articles shall be taxable in the country of residence.
  2. If a foreign enterprise carries on business in contracting state (INDIA) through P/E & income earned is connected to such P/E then it is taxable in contracting state (INDIA)
- {Source Rule }**

**3. ONLY UN Model {Source}**

Income can also be taxed in source state in such cases country of residence will give credit or exemption if taxed in both the states.

**ARTICLE 23A: EXEMPTION METHOD**

1. Resident country will give exemptions for tax which is paid in source country.

This is known as full exemption method. India does not follow this.

**2. Exemption with progression / partial Integration :**

In this case though income earned in source country is exempt in resident country. but it is still included in the total income to determine effective tax rate {Just like Agriculture Income in India.}

**ARTICLE 23B: CREDIT METHOD.**

1. Under this principle, contracting State (residence) would determine the resident's world income ( including Foreign Income) & compute tax liability.
2. From the above tax ,country of residence would grant deduction = Tax paid on Foreign Income {like Sec 91}
3. If Tax payable > Tax paid abroad ; then,

↙  
Pay Balance in  
Contracting States (India)

4. If tax payable in < Tax paid abroad then; Lapsed.  
contracting states

**ARTICLE 25: MUTUAL AGREEMENT PROCEDURE.**

Despite a treaty, Double tax still occurs. This happens due to difference in interpretation.

∴ This article attempts to reconcile the conflict by competent authority of the States & prevent Double taxation.

**Step 1:** Where a person is not taxed as per this treaty, then he may present his case to competent authorities of which he is Resident within 3 years.



**Step 2:** The Competent authorities shall Endeavour, if objection is justified

**AND**

If it is not able to arrive at satisfactory results

**then;**

Resolve the case by Mutual agreement with C.A of other State.

**Step3:** The 'C.A' of contracting State shall endeavor to resolve by mutual agreement any difficulties or doubts arising from interpretation of treaty.

**Step 4:**

OECD	UN
1. The 'C.A' of 'C.S' may Communicate with each other directly, inc through a Joint Commission i.e. group of representatives	1. Same 2. The C.A, through consultation may develop bilateral procedures, conditions, methods is techniques for Implementation of MAP.

**Alternative B**

OECD	UN
Where a case is presented to 'C.A' & 'C.A' is unable to resolve that case within 2 yrs	Where a case is presented to 'C.A' & 'C.A.' is unable to resolve that case within 3 yrs
↓	↓
then, any unresolved issues shall be submitted to arbitration if person so request	then, any unresolved issues shall be submitted to arbitration if 'C.A' so request. The person will be notified about such request.

<b>Absent in OECD</b>	"C.S", unless both C.A agrees on a diff solution within 6 months after the decision has been Communicated to them
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**ARTICLE 26 : EXCHANGE OF INFORMATION**

In order to complete tax cases a country may require certain information from it's treaty partners. This article provides for information which may be exchanged & the request that has to be made. A contracting state cannot be expected to provide confidential information to another state, unless it has confidence that the information would not be disclosed to unauthorized persons. Further, a country can avoid exchange of information which contains communication between a legal representative & it's clients.

**APPLICATION & INTERPRETATION OF TAX TREATIES**

**DISCUSSION 1:**

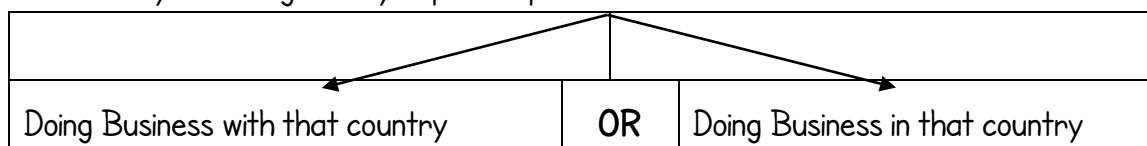
Article 38(1) of International court of Justice provides that court shall apply the following while deciding a particular matter:

(A)	(B)	(C)	(D)
International Treaties	International Customs	General principle recognized by civilized {Developed Nation}	Judicial decisions

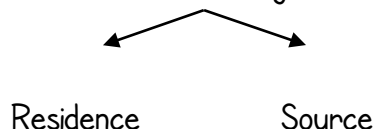
**DISCUSSION 2: DOUBLE TAXATION & CONNECTING FACTOR.**

**DOUBLE TAXATION MEANS WHEN SAME INCOME IS TAXED TWICE IN SAME HANDS IN TWO JURISDICTIONS.**

→ Taxability of Foreign Entity depends upon 2 Factors



Internationally, the term used for jurisdiction of tax = connecting factor



**TYPES OF DOUBLE TAXATION**

<b>Jurisdictional D.T</b>	<b>Economic D.T</b>
Tax is imposed by 2 countries as per their Domestic Law i.r. of same transaction	This happens when the same transaction, is taxed in 2 states but in hands of different person.
∴ To avoid D.T a country can enter into DTAA	<b>Example</b>
OR In absence of such DTAA unilateral relief can be given.	DDT in one hand in India. + Tax to share holder in U.K

**DISCUSSION: 3 OTHER MATTERS.**

**IMPORTANT CONCEPTS :-**

Apart from Allocation of Taxing Rights , a DTAA is important for many other purpose

. Explain ?

→ The concept of 'S & R' is the root cause of Double taxation.

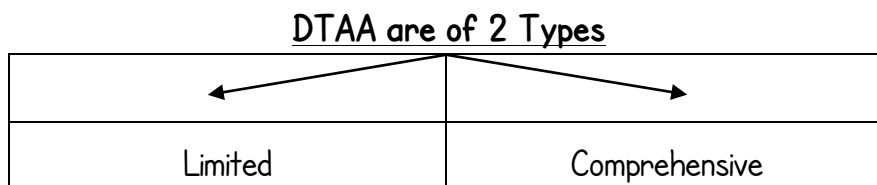
Countries should consider following points in Tax treaties

(1)	(2)	(3)	(4)	(5)
Non-discre between 'R' is 'N.R'	Resolution of Disputes between 2 states w.r.t treaties	Provide assistance in collection of tax	Equity & fairness, i.e. Same income must be taxed at same rate to everyone.	Promotion of mutual economic relation in trade & Investment.

**DISCUSSION : 4 APPLICATION OF TAX TREATIES.**

→ Article 2 of Vienna convention Law of Treaties, 1969 defines Treaty as:

An International Agreement	+	in written form	+	Governed by International Law.
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Article 51 of constitution of India has set out some directive principle which must be followed while making a treaty.

←	←	←	←
<b>(A)</b>	<b>(B)</b>	<b>(C)</b>	<b>(D)</b>
Promote int <sup>n</sup> peace & security	Maintain Just & honorable relation	Foster Respect for Int <sup>n</sup> Law	Encourage settlement of Int <sup>n</sup> disputes by arbitration.

**DISCUSSION NO 5 : Role of Vienna convention in application & Interpretation of tax treaties.**

- 114 countries have ratified it.
- Since tax treaty is a part of International Law ∴ it's interpretation should be based on certain set of principles.

The principles of V.C.L.T are as follows:

**Article 26: Pacta Sunt Servanda** → Treaty should be binding + Followed in good faith.

**Article 28: Non - retro activity of Treaties**

Treaties cannot have retrospective application unless provided.

**Article 29: Territorial scope of Treaties**

Treaties is binding on entire territory{i.e. no state - wise exclusions}

**Article 31: General rule of interpretation**

A treaty shall be interpreted with ordinary meaning to be given to the term used.

**Article 32: Supplementary means of Interpretations.**

When interpretation as per article 31 Leaves the meaning ambiguous / obscure (Not known) or leads to a result which is manifestly absurd, then go for supplementary means. Supplementary means are as follows:

i.e. preparatory work of treaty	Circumstances of it's conclusions
i.e. analyse the Documents based on which treaty was drafted.	

**Article 33: Interpretation of treaties authenticated in two or more Languages.**

→ When a treaty is authenticated in 2 or more languages then text is equally authoritative in each Language.

However, if it provides that a particular language text shall prevail in case of divergence then apply accordingly.

→ The Terms of treaty are presumed to have same meaning in each text.

**Article 60: Termination or suspension of operation of treaty as a consequence of a breach.**

→ A breach of a Bi-Lateral treaty by one of the parties, entitles the others to invoke breach as a ground for terminating or suspending it's operations (whole or part)

→ A breach of a multi-Lateral treaty by one of the parties entitles:-

←	→
Other parties by unanimous agreement to suspend operation of treaty between them & defaulting State.	OR Suspend operation between all of them i.e. treaty cease to exist now.

**Article 64: Emergence of new peremptory (not challenged) norm of General international Law.**

Any existing Law inconsistent with new norm will make treaty terminated.

**DISCUSSION 6: Basic Principles of Interpretation of treaties.**

(before V.C.L.T)

**(i) Golden Rule - Objectives Interpretation / Liberal construction.**

- Ideally any term should be interpreted keeping its ordinary meaning in mind.
- In first instance give plain & natural meaning.
- However, if grammatical interpretation would result in absurdity then do not follow this rule.

**(ii) Subjective interpretation :**

- Terms should be interpreted according to common intention of contracting parties at the time treaty was concluded

{Listen Speech of Finance minister of India & other State}

**(iii) Teleological Or Purposive Interpretation:**

- Treaty is to be interpreted so as to facilitate the attainment of the aims & objective of treaty.

**(iv) Principle of Effectiveness:**

As per "permanent court of International Justice" 1922-1946 treaty should be given an interpretation which on the whole will render the treaty 'most effective & useful.

**(v) Principle of Contemporanea Exposito :**

This principle States that terms should be interpreted on the basis of their meaning at the time the treaty was concluded. However, this is not a universal principle.

**Discussion 7: Extrinsic Aids to Interpretation of a Tax Treaty.**

→ A wide range of extrinsic material is permitted to be used in interpretation of tax treaties.

→ According to Prof Stark one may, resort to following 'Extrinsic Aid'

(1)	(2)	(3)
Tax committee Report	Subsequent Agreement between parties	Subsequent meeting held by parties where speeches are Delivered

(4) Other treaties, in Pari materia → i.e. relating to the same subject matter

**Provisions in parallel Tax Treaties**

- The Language used in 2 tax treaties (say x & y) are same & one treaty is more elaborative or clear in it's meaning (say treaty x), then one can rely on interpretation / explanations provided in a treaty x while applying provisions of treaty y.

→ However, the view of Indian Judiciary are not consistent in this respect. There are contradictory Judgements by Indian court / Tribunal.

→ **International Articles / Essay's Report:-** are referred as extrinsic aid for Interpretation of tax treaties.

- **Cahiers** {exercise or note book} published by International Fiscal Association (IFA), Netherlands.  
Cahiers are published on 2 topics annually by IFA.

### **Protocol : (End of the Law)**

- It is like a supplement to the treaty.
- It is Generally attached at the end of treaty to clarify certain critical issues.
- It is an integral part of treaty & it is also binding in nature.
- **Preamble**
- Preamble to a tax treaty could guide in Interpretation of a Tax Treaty.
  - Preamble to Indo - Mauritius DTAA recites that it is for the 'encouragement of mutual trade & investment' & this aspect of matter cannot be Lost sight of while interpreting the treaty.

### **M.A.P**

- It helps to interpret any ambiguous term through bilateral negotiations.
- This is more authentic than other extrinsic aid.

### **Discussion 8 : Commentaries on OECD/UN Models.**

- These are widely used in interpretation of treaties
- These are cited by courts of many countries
- In many decisions, the commentaries have been extensively quoted & analysed & have frequently played a key role in judge's verdict.

### **Discussion 9 : Foreign Court Decisions.**

Must be considered to interpret a treaty at international Level.



**Discussion 10: Ambulatory v/s Static Approach.**

→ Whenever a reference is made in a treaty to the provisions of domestic tax Laws for assigning meaning to a particular term, then.

the meaning which was prevailing on the date of signing a tax treaty.	OR	the one which was prevailing on the date of application of tax treaty.
↓		↓
Static		Ambulatory

**Objectives of Tax Treaties**

		<b>India Sec 90(1)</b>
<b>OECD model</b>	<b>UN model</b>	
To promote by eliminating double tax, exchange of goods & Services & movement of capital & persons. To prevent tax avoidance & evasion.	<ul style="list-style-type: none"> <li>- To Protect tax payer against Double Taxation.</li> <li>- To encourage free flow of International trade &amp; investment</li> <li>- To prevent discrimination</li> <li>- To arrive at a acceptable basis to share tax revenue between 2 states.</li> </ul>	

BASE EROSION & PROFIT SHIFTINGBACKGROUND

↓	↓	↓
Impact of Globalization	Growth of E commerce	Adverse effects of BEPS
↓	↓	↓
<ul style="list-style-type: none"> <li>- Boosted trade / increased FDI</li> </ul>	<ul style="list-style-type: none"> <li>- MNC represents significant global GDP</li> </ul>	<ul style="list-style-type: none"> <li>- Critical issue for Govt.</li> </ul>
<ul style="list-style-type: none"> <li>- It led to movement of capital / Labour, shift of Mfg from high to Low cost</li> </ul>	<ul style="list-style-type: none"> <li>- Service component &amp; digital products have also increased.</li> </ul>	<ul style="list-style-type: none"> <li>- Govt. has to cope up with less Revenue &amp; more cost.</li> </ul>
<ul style="list-style-type: none"> <li>- Removed trade barriers.</li> <li>- Improved tech Development</li> <li>- Created Jobs</li> <li>- Globalisation is not new, but the pace of integration of national economies &amp; markets has increased substantially &amp; has great impact on countries corporate income tax.</li> </ul>	<ul style="list-style-type: none"> <li>- These developments have allowed tax payers to identify &amp; exploit the legal, arbitrage opportunities &amp; thus encourage MNC to minimize their tax burden by doing aggressive tax planning.</li> </ul>	<ul style="list-style-type: none"> <li>- In Developing country less tax revenue leads to under funding.</li> <li>- Then it affects individual tax payers &amp; it affects fairness &amp; equity</li> <li>- Affects integrity of tax system.</li> </ul>

**WHAT IS BEPS?**

Tax planning strategy	+	Exploits gaps & mismatches in tax rules	+	to make profit disappear
				OR
				Shift to Locations where there is Little or no real activity but taxes are Low.

**OVERVIEW OF BEPS**

In Feb 2013, OECD published a report on "Addressing BEPS" explaining the need for analyzing the issue of BEPS by Global corporations.

∴ In July 2013 Action plan on BEPS was drafted	→	It became final in Oct 2015 & 15 Action plan were addressed.
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**FUNDAMENTAL PILLARS OF 15 ACTION PLANS**

↓	↓	↓
Put substance in existing International Standards	Alignment of tax with Location of value creation & economic activity	Improving transparency.

**ACTION PLAN 1: Addressing the challenges of Digital economy.**

**Taxation issues in E-commerce**

←		→
(1)		(2)
Difficulty in Finding nature of payment & its relationship with transactions & taxing jurisdiction.		Difficulty of Locating the transaction & identifying the tax payer for I.T purpose

→ Digital Business P/E problems ∴ If P/E principles are to remain effective in new world; then it has to be reconciled with Digital economy.

**Therefore A.P-1 recommends Following options**

Modify existing PE Rules	Cover virtual P/E concept	Imposition of Final withholding Tax:
↓	↓	↓
i.e. If an entity has a significant digital presence in another country then it is a P/E	i.e. If a website is Located on a server Located in another country will be a P/E	Like Equalization levy. <b>{Refer PGBP }</b>

**ACTION PLAN 2: Neutralize the effect of Hybrid Mis-match Arrangements.**

H.M.A is an arrangements that:

Exploits difference in tax treatment	+	Of an entity	+	under the Law of 2 states	+	To achieve double non - Taxation.

The A.P 2 → report has following 2 recommendations

PART 1	PART 2
Recommend to change Domestic Laws	Recommend to change Tax treaties.

**ACTION PLAN 3: Strengthen Controlled foreign Company rules C.F.C****Indian Taxation Regime**

- At present there are no CFC rules in IT Act 1961.
- CFC rules formed part of the proposed D.T.C
- In order to encourage repatriation of profits, sec 115BBD provides a concessional tax rates of 15% (gross basis) on dividend received from a **specified foreign company**.

Specified Foreign Company means a Foreign Company in which an Indian Company holds not less than 26% Equity Shares. **₹ Refer Taxation of Dividends. 3**

**ACTION PLAN 4: Interest Deductions & other Financial payments.**

The OECD is concerned that MNC group are able to erode their tax base with Interest expenses, using intra-group Loans, using related party etc.	+	∴ BEPS A.P 4 calls for the Development in Domestic Laws to curb such practice.	+	All these activities are possible due to mobility of money which enables MNC's to carry such practice
---	---	--	---	---

**Therefore the following approaches are recommended**

↓	↓
Limits net interest deductions to set percentage of EBITDA	→ Allows to claim higher Int ded <sup>n</sup> based on relevant Financial ratio of it's world wide group.

**Banking & Insurance Sectors.**

Common approach may not be suitable for Banking & insurance Companies	+	Each Country should identify the risk posed by banking & insurance Company.	+	Where no material risks are identified, a country may exempt them.	+	Where BEPS risk are identified, a country should introduce appropriate rules to address these risks considering the tax system in the economy	Sec 94 B introduced by FA 2017.
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**ACTION PLAN 5:- Counter Harmful Tax Practices**

<p>The Report identifies factors for determining a potential harmful tax practice that results in Low</p> <p style="text-align: center;">OR</p> <p>No effective tax. Lack of transparency etc.</p>	+	<p>In case of preferential regime activity like I.P.R, a minimum standard has been set up based on same methodology to find out whether the intellectual activity is carried out in India</p> <p style="text-align: center;">OR Not.</p>	+	<p>Royalty on patent registered in India is taxable at 10%. But for this purpose 75% of <b>expense</b> should be incurred In INDIA, on this income.</p> <p>Even MAT is not applicable on such Royalty Incomes.</p>
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**ACTION PLAN 6. Preventing Treaty Abuse**

- Because of treaty shopping, countries have committed to ensure a minimum level of protection against such practices.
- Such commitment should be expressly included in the **treaty** that their common intention is to eliminate double tax without creating any opportunity for tax evasion.

↓	↓	↓
Section A	Section B	Section C
<p>Provide safeguard against treaty abuse, specially treaty shopping.</p> <p>These rules should not only be incorporated in treaty but also in Domestic Laws to make it more effective.</p>	<p>Make changes in the title or preamble of the treaty that will clearly state that the joint intention of parties is eliminate double tax without creating opportunity for tax evasion / avoidance especially</p>	<p>This section provides that while entering into a treaty both the states should be careful before entering into a treaty with a 3<sup>rd</sup> state where there is no tax or low tax.</p> <p>This section also provides that whether the 2 states shall</p>

	through treaty shopping activities.	modify/terminate the treaty with 3 <sup>rd</sup> state where there has been BEPS issues earlier.
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### ACTION PLAN 7: Prevent Artificial Avoidance of P/E status.

This report includes changes to the definition of P/E

↓	↓
<b>Reworking exceptions to PE Definition</b>	<b>Analyzing arrangement entered through contractual agreements</b>
<p>Aggregate all the activities carried out on by an entity in a state.</p> <p style="text-align: center;">+</p> <p>Also activities by closely related parties &amp; then determine the PE.</p>	<ul style="list-style-type: none"> <li>- OECD model proposes to include "Commissionaire Business model" under P/E.</li> <li>- A Commissionaire arrangements is an arrangement through which a person sells product in a state <b>in its own name</b> but on behalf of a foreign enterprise.</li> <li>- Through such an arrangement the foreign Co is able to sell it's products in other state without any P/E &amp; ∴ not Liable for tax in other state.</li> <li>- Such person does not own the goods &amp; ∴ he cannot be taxed on those profits &amp; he will be taxed only on his remuneration.</li> <li>- Commissionaire arrangements have been a major cause of concern for tax administration in many countries.</li> </ul> <p>∴ To cover such cases in P/E the definition has been amended by many countries on recommendation of <b>AP 7</b>.</p>

### ACTION PLAN 8-10 - Transfer pricing outcomes in line with value creation / intangibles / Risk & capital & other High-risk transactions:



**ACTION PLAN 11 - Measuring is Monitoring BEPS**

Adverse impact of BEPS have been the Focus of OECD since Beginning.	+	But the scale of negative impacts have been uncertain	+	Although measuring the scale of BEPS <b>proves</b> challenging but still the following points are worth noting.
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**Indicators of BEPS Activity**

↓	↓	↓	↓	↓
(1)	(2)	(3)	(4)	(5)
Profit reported by MNE's Located in Low-tax countries are twice as compared to their group worldwide Average	The effective tax rates paid by Large MNE are estimated to be Lower than similar enterprises with only Domestic operations	FDI is increasing	Difference in Location of value creation & profit allocation	<b>Debt from</b> both related & third party taken by high tax rate countries "INDIA" Sec 94B

**ACTION PLAN 12 - Disclosure of Aggressive Tax-Planning Arrangements.**

- (1) A significant challenge faced by tax authorities is Lack of information on aggressive tax planning strategies.
- (2) Timely access to such info would Lead to quick response to such risk.
- (3) The A.P recommends to draft rules to get early info on potentially aggressive or abusive tax planning.

- (4) The primary objective of mandatory disclosure regime is to increase transparency by providing the tax administration with early information regarding aggressive tax planning & to identify the promoters & user of those schemes.

### ACTION PLAN 13 → Re-examine T.P Documentation

#### Three-tier structure Mandated by BEPS

↓	↓	↓
(1)	(2)	(3)
Master file	Local file	Country by country report CBCR
<ul style="list-style-type: none"> <li>→ Standard info for all MNE group members</li> <li>→ Provide high Level info regarding their global business operations &amp; T.P policies directly to Local Tax authorities.</li> </ul>	<ul style="list-style-type: none"> <li>- Requires maintaining of transaction info specific to each country in detail covering related party transactions &amp; the amt involved</li> <li>- Financial info like Comparability analysis, analysis of method etc. Directly give to Local tax authorities</li> </ul>	<ul style="list-style-type: none"> <li>- Info relating to Global allocation of MNE Income tax paid.</li> <li>- Provide amt of revenue, PBT, Tax paid &amp; accrued income i.r.t tax jurisdiction in which they do business.</li> <li>- File CBC report in tax residence country of ultimate parent entity</li> </ul> <p><u>Subsequently Shared</u> with other jurisdiction through automatic exchange of information mechanism.</p>

#### Advantages of Three-tier Structure.

(1)	(2)	(3)
Consistent <b>TP</b> Position	Tax administration can get useful info to assess T.P risk	Tax administration can understand where their resources can be deployed most effectively.

**ACTION PLAN 14 → Making Dispute Resolution more effective.****Objective of Action plan - 14**

To Minimize the risk of uncertainty	+	Minimize unintended double taxation
Through		
Consistent & proper implementation of Tax treaties 'MAP'		Effective timely resolution of disputes regarding their interpretation OR application through MAP
Countries concur that the measures introduced to address BEPS should not affect honest tax payers. ∴ Improving Dispute resolution Mechanism is critical.		

**ACTION PLAN 15 → Developing a Multilateral Instruments**

- (1) OECD approved to develop a multilateral instruments on tax treaty measures to tackle BEPS. Further it was endorsed by G20 Finance minister & central Bank Governner in 2015 Feb.
- (2) In line with action Plan 15, an adhoc group was formed for development of MLI in Nov 2016.
- (3) Once drafted the said document was kept open for sign from 31/12/2016
- (4) On 7<sup>th</sup> June 2017, 68 countries signed MLI at first Joint signing ceremony held in PARIS.
- (5) At the time of signing, signatories submitted a list of their tax treaties in force that they would like to designate as covered Tax Agreement (CTA's) to be amended through MLI
- (6) The convention will operate to modify tax treaties between 2 or more parties to the convention.
- (7) The Convention will modify India's treaties in order to curb revenue Loss through treaty abuse & BEPS strategies by ensuring that profits are taxed where substantive economic activity generating the profit are carried out & where value is created.

**SUMMARY OF IMPORTANT SECTIONS :-**

Sections	Particulars
1) 28(va)	Non - compete fees
2) 28(iv)	Value of benefit / perquisite arising from B/P
3) 32(1)(ia)	Additional depreciation [20%, 35%]
4) 43(3)	Plant (excludes.....)
5) 43(6)	WDV
6) 43(1)	Actual cost (Explanation 3, 4**)
7) 43A	Foreign currency loan (+) Foreign Asset imported
8) 32(2)	UAD (Priority : CY Dep (+) B/F loss (+) UAD)
9) 36(1)(iii)	Interest on Borrowed capital
10) 36(1)(vii)	Actual Bad Debts
11) 32AD	Special Incentives to 4 states
12) 33AB	Growing (+) Mfg T/C/R in India
13) 35	Expenditure on Scientific Research
14) 35ABB / 35ABA	Amortisation of Telecom license / Spectrum fees
15) 35D	Amortisation of Preliminary Expenses
16) 35AD	Investment linked deductions
17) 36(1)(vii)	Provision for BD to Banks (+) NBFC
18) 36(1)(viii)	Transfer to S/R
19) 37(1)	General Deduction and its & explanations
20) 37(2B)	Advertisement in brochure of political party
21) 40A(2)	Excess (+) Unreasonable → FMV (+) → to relatives Legitimate Needs
22) 40A(3)/3A)	Payment > Rs. 10,000 other than 4 modes
23) 40A(7)	Provision for payment of gratuity is disallowed
24) 40(a)(i)	TDS in case of NR
25) 40(a)(ia)	TDS in case of Residents (30% DA)
26) 40(a)(ib)	Disallow of Equalisation Levy not deducted etc.
27) 40(a)	IT/WT/Tax on Non monetary perquisite is D/A
28) 43B	Certain deduction allowed on actual payment
29) 41(1)	Recovery / write off of expenses
30) 41(4)	Recovery of Bad debts
31) 14A	Expense i.r.t. exempt income disallowed
32) 44AD	Presumptive income for business (T/O ≤ 2 Crore)
33) 44ADA	Presumptive income for Specified profession (GR ≤ 50 I)

34) 80P	Deduction under Chapter VI-A for Co-Op Societies
35) 40(b)	Book profits, Remuneration, Interest to Partners of firm / LLP
36) 10(2A)	Share of Profit exempt
37) 13A	Exemption to Political Party
38) 2(15)	Charitable Purpose definition
39) 11	Various exemptions [11(1)(2) etc]
40) 11(1A)	Exemption from CG for Trust
41) 115BBC	Anonymous Donation
42) 115JB	MAT
43) 115JAA	MAT Credit (15 years - FA, 2017)
44) 115JC	AMT
45) 115JD	AMT Credit
46) 139(1)	ROI on time
47) 139(3)	Loss Return
48) 139(4)	Belated Return
49) 139(5)	Revised Return
50) 142(1)(i)(ii)	Notice for ROI after 139(1) (+) Enquiry
51) 142(2A)	Special Audit
52) 142A	Reference to valuation Officer
53) 143(1)	Scheme of processing of Return
54) 143(2)	Scrutiny Notice (+) 292BB
55) 143(3)	Scrutiny Assessment
56) 144	Best Judgement Assessment
57) 144A	Power of Joint Commissioner
58) 147	Income Escaping Assessment (148 - ROI)
59) 154	Rectification of mistake apparent from Records
60) 263	Revision by CIT, prejudicial to department
61) 264	Revision by CIT, prejudicial to assessee
62) 133A	Scrutiny
63) 132	Search and Seizure
64) 153A	Search and Seizure assessment
65) 153C	S & S Assessment of other person
66) 270A	Penalty for under reporting / Mis-reporting of income
67) 271AAB	Penalty in special case of search and seizure
68) 273A(1)(4)	Waiver / Reduction of Penalty by CIT
69) 269SS/T	Cash loan taken or repaid $\geq$ Rs. 20,000/-

70) 79	Set off and c/f in case of closely held company
71) 44B v/s 172	NR → Shipping business
72) 44C	Head office expenses allowed to branch in India
73) 115-0	DDT
74) 10(34)	Exemption from Dividend
75) 115BBDA	Dividend taxed @ 10% in excess of Rs. 10 lacs in a PY
76) 2(22)(a) to (e)	Deemed Dividend
77) 115BBD	Dividend received from foreign subsidiary of more than 26% holding
78) 45(1)	General charge of Capital Gains
79) 2(14)	Capital Asset
80) 2(47)	Transfer
81) 1 <sup>st</sup> Proviso to Sec 48	NR (+) Shares / Deb (+) Indian Co (+) TTBR / TTSR → Rule 115A
82) 2(42A)	STCA
83) 55	COA (Self generated Assets (+) Bonus (+) Right shares (+) Others
84) 45(1A)	Insurance Claim Received
85) 45(2)	Conversion of CA into SIT
86) 45(3)	Partner → Firm
87) 45(4)	Firm → Partner on dissolution or otherwise
88) 45(5)	Compulsory Acquisition under any law
89) 45(5A)	CG in case of Joint Development Agreement (FA 2017)
90) 50C	SDV in case of Immovable Property
91) 50CA	FMV in case of unlisted shares (FA 2017)
92) 50B	Slump Sale
93) 49(1)	Cost to previous owner
94) 47	Exempt transfers [47(xiii), 47(xiiib)], 47 (xiv)
95) 72A	c/f and sets off of losses and dep <sup>n</sup> in case of amalgamation / succession / demerger
96) 51	Advance money forfeited v/s 56(2)(ix) (Before 01/04/2014)
97) 50D	FMV is deemed to be SVC if not ascertainable
98) 10(37)	Compulsory Acquisition of urban Agri. Land
99) 10(37A)	Comp. Acq for Amravati City by Andhra Pradesh Govt
100) 112A & 111A	LTCG /STCG taxable at 10% & 15%
101) 54	RHP sold and RHP purchased / Const.
102) 54EC/EE	Any LTCA sold and NHAI/RECL /Any Notified Bonds/Startup Bonds <b>54EC ( LTCA being L &amp; B )</b>
103) 54GB	Any LTCA RHP sold and invested in "Eligible company"

104)115A	4 Int (+) Royalty/Fees for T/S by NR / Foreign Co. (Refer chart of 10 Sections) - also summary in Notebook before chart
105)10(48) (48A) (48B)	/ Foreign Co (+) Crude Oil Income - exempt /
106)92(1)	Charging Section of TP
107)92A	Associated Enterprises
108)92B	International Transactions
109)92C	Arms length price
110) 92CA	Reference to TPO
111) 92D	Maintain certain info and documents
112) 92E	Report of CA → Form 3CEB
113) 92CC / CD	Advance pricing Agreement
114) 92CE	Secondary Adjustment
115) 94B	Limitation of Interest Payment
116) 90	Bilateral Relief
117) 91	Unilateral Relief
118) 194A	TDS on Interest other than on securities (only resident)
119) 194C	Contract
120)194H	Commission
121) 194I	Rent
122)194J	Professional fees
123)194 - IA	Immovable Property
124)194 - IB	TDS on rent of personal property
125)234E / 271H	Penalty for non filing of TDS Return
126)80JJAA	Deduction for employment
127)56(2)(x)	Gifts
128)10AA	Deduction for SEZ units
129)80 - IAC	Deduction for Eligible Startups
130)80 - IBA	Deduction for Eligible Housing Projects
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**\* ALL THE BEST \***

**I HOPE YOU ALL HAD GREAT TIME LEARNING DIRECT TAX & INTERNATIONAL TAXATION.**

**HOPE TO SEE YOU ALL IN INTERNATIONAL TAXATION BATCH COMMENCING FROM 1st Jan 2020 .**

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